

Katapult Ltd - Terms and Conditions

These are the only terms and conditions under which we are willing to provide services to you. By entering into any contract with us for the supply of goods or services by us, you agree to be bound by them.

We are: **Katapult Ltd**. This includes all trade names or divisions under which we operate.
Registered in England, Number: **4232323**. VAT Registration Number: **772 1378 23**. Data Protection Act Registration Number: **Z7035112**

Our address is: 28 Ashbourne Road
Derby
DE22 3AD
United Kingdom

Our e-mail address is: info@katapult-studios.com

You are: Our "Client" or "Customer".

The Terms and Conditions

1 In this document the following terms shall be interpreted as follows:

the "Company" means Katapult Ltd
the "Contract" means a contract between us for us to provide Services or complete a Project;
"Created Work" means all work, including all intellectual property, created or designed by us in the course of the Project in any medium. For the avoidance of doubt this definition includes, among others, software, web sites, and graphical, photographic and video work.
the "Project" means a piece of work we do for you and described either (if for a fixed price) in our quotation or (if paid at an hourly or weekly rate) in some other document provided by us;
"Media" means all media used by us in our work on the Project. It includes, among others, web pages, video, voice, graphics, coding, photography, film, illustrations and paper;
"Media Platform" means any platform, device or technology which stores, contains or transmits any medium;
"Content" means created work in any medium;
"Our Website" means any or all websites owned or operated by us;
the "Services" means any work we do for you;
the "Price" means the price we charge for the Services. This may be a fixed price or a price per hour or per week, or any combination of these.

2 Basis of contract

- Subject to the terms set out in this document and to your compliance with our Acceptable Use Policy ("AUP") we agree to provide to you our Services for the Price.
- The Contract between us comes into existence:
 - where we have quoted a fixed price, when you accept that price in writing;
 - where we are to work for you at a time based rate, when we confirm in writing that we agree to work on your Project.
 - If it is in the nature of the project that we ask you to confirm your approval of our work at any stage, then that approval is final, so that we may charge for any additional work arising from your instructions to make changes at a later date.

3 Identification of the Service

- You acknowledge that:
- you understand exactly what is included in the Service;
 - you are satisfied that the Service is suitable and satisfactory for your requirements;
 - you have not relied on any representation or information from any source except the definition and explanation of the Price and the Service given on our Web site and / or provided by us in writing with reference to this Project.

4 Price, payment and delivery

- The rates we charge are set out in our rate card. We may increase our rates at any time. We will give you 30 days notice of any increase by e-mail.
- If we provide a fixed price quotation to you, that price is fixed for 30 days.
- You may pay us by Banks' Automated Clearing Service (BACS) or Cheque.
- If a cheque is returned to us due to insufficient funds, we may charge you £10 + VAT for the administration necessarily resulting.
- If we have agreed that we should be paid in stages as the work progresses, and you fail to make a payment at the time you agreed, we are entitled to stop work until your payment has cleared our bank account.
- If we have agreed that the Project is subject to any approval or other action to be taken by you, and you fail to take that action in accordance with the timetable set out in any agreed document before or after commencement of our work on the Project, then we are not to be prejudiced by your delay.

5 Early termination

- You acknowledge that if your payment is not received by the renewal date we may suspend work on the Service and/or cancel the Project. If you pay by BACS it is your responsibility to ensure cleared funds are in our account by the renewal date.
- If you fail to renew a continuing contract by payment within 7 days of the renewal date, your account will be closed and the Services will be discontinued. For the avoidance of doubt, all files, including but not limited to, web pages, video files, design work, documents and e-mail messages that are residing on our systems will also be deleted. We are then free to cancel the Services. In the event that we are able to recover your files at your request, we shall charge you a fee related to the value of the files.
- You are not entitled to a refund of any fees paid to us;
- if you terminate this agreement earlier than you intended at the time you entered into it, or
- if we terminate this agreement because you have failed to comply with our AUP.

6 Termination

Where we have agreed to supply you with an ongoing service, for a variable period of time, this agreement terminates:

- upon either of us giving the other 30 days notice in writing addressed by post to the last known land address or by e-mail to the last known e-mail address of the other of us. For this and all purposes in connection with this agreement, our addresses are as at the head of this document. If your cancellation is to be effective, you must give us full information to enable us to identify:
 - who you are and
 - that you have proper authority to cancel and
 - the Services you wish to cancel.
- when we terminate it, without notice, on account of your failure to comply with these terms or our AUP.

7 Passwords and instructions

- You accept that you are liable for any loss or damage to us or to you or to any third party arising from any act or omission of a person who uses your identity or password to gain access to the Services or to any part of our computer installation, whether or not they have your permission.
- You acknowledge that any instruction to us which is validated by your identity and password is a valid instruction so far as we are concerned. We have no obligation to make any check under any circumstances.

8 Technical support

We will provide technical support within the areas of our expertise relating to the Services. We do not guarantee to provide any particular support nor that the support we provide will be adequate for your requirements.

9 Third party rights

- If we incorporate or embed third party software or other Created Work, in the Project then such software or Created Work will so far as possible be properly licensed to you, with full and appropriate legal documentary evidence in support and any money payable to a third party shall be paid by us.
- Insofar as the terms of business of a third party seller of software do not permit the arrangement set out in sub-paragraph 1, above, then you shall yourself buy the software or Created Work concerned whereupon we shall have no obligation in respect of it except to warrant that it functions as a part of the completed Project.

10 Intellectual property rights

Created Work owned by a third party is not affected by this agreement. During and after completion of the Project and unless otherwise specified in this agreement ownership of Created Work shall be as follows:

- Concepts in Created Work belong to us.
- Created Work not used in the final version of your Project belongs to us;
- Created Work created specifically for your Project and incorporated into it, belongs to you with regard to your Project after you have paid us for it;
- We may use any part of Work Created for your Project, not exceeding 20% in all, in any other Project, for any client whose business is not competitive with the business for which your Project is to be used;
- Working files in all media belong to us;
- We now grant an exclusive license to you for all Created Work owned by us, for use by you for a period of 99 years. You may not assign this licence except by way of sale or transfer of the whole of the Project in any medium.

11 Intellectual property rights indemnity by Customer

- You agree to indemnify us against all claims and costs arising:
 - in connection with any material in any medium supplied by you, whether for breach of intellectual property rights, defamation or otherwise
 - out of any failure to comply with any law or statutory instrument.
- provided that we:
 - give notice to you of any infringement immediately we become aware of it;
 - give you the sole conduct of the defence to any claim and do not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the claim except upon the express instructions of you; and
 - act in accordance with your reasonable instructions and give to you whatever assistance you reasonably requires in respect of the conduct of your defence.
- You will reimburse us our reasonable costs incurred in our complying with the above provisions.

12 Confidentiality

- We are both aware that in the course of business we will each have access to and be entrusted with information in respect of the business and operation of the other and their dealings, transactions and affairs, all of which information is or may be confidential.
- We and you hereby undertake for ourselves and every employee or sub-contractor whose services we use that neither we nor they will divulge to any person whatever or otherwise make use of (and shall use their best endeavors to prevent the publication or disclosure of) any trade secret or confidential information.
- We both mutually undertake to the other to make all relevant employees' agents and sub-contractors aware of the confidentiality of information and the provisions of this paragraph and to take all such steps as shall from time to time be necessary to ensure compliance by our employee's agents and sub-contractors with these provisions.

13 Backup procedures

We maintain reasonable procedures for general backup of data for our own purposes but we give no warranty that your data will be saved or backed up in any particular circumstances unless we have made specific contractual arrangements with you in writing.

14 Privacy policy exception

You agree that we may disclose your information including assigned IP addresses, account history, account use, etc. to any judicial or proper legal authority who makes a written request without further consent or notification to you.

15 No duty to monitor

We are under no obligation to monitor or record the activity of any customer for any purpose, nor do we assume any responsibility through our AUP or otherwise to monitor or police Internet-related activities.

16 Violation of AUP

- You agree to comply with the acceptable use policy set out from time to time on our Web site or as notified to you from time to time by e-mail.
- Failure to comply with the AUP will be a material breach of our terms and conditions and shall be cause for the immediate suspension or termination (without liability), of the Services and/or this Contract without notice.
- In making the decision to suspend or terminate the Services we are not obliged to consider the cost or damage to you that may be caused by suspension or termination of the Services to you.
- Money will not be refunded to you in respect of any period during which the Services are suspended or in the event that the Services are terminated.

17 Your contact details and information

- You undertake to provide to us:
- Your current land address, e-mail address, telephone and fax numbers as often as they are changed.
 - All information that may be reasonably necessary to enable us to fulfill our obligations under this contract.

18 Insurance of goods on hire or loan

These terms apply when you borrow or hire goods of ours.

- In this paragraph, "Goods" includes the intangible property contained in any relevant media and accordingly, the value of the Goods includes the value of the intangible property.
- You undertake to insure the Goods to their full replacement value.
- At any time, we may ask you to produce evidence that the insurance policy is effective.
- If we decide the value you have insured is inadequate, we may insure to what we regard as the full value. We do not have to consult you on this.
- The cost of any premium we have paid becomes a debt due by you to us.

19 Limitation of liability

- We give no warranty in connection with the Services.
- We do not represent that the Services are suitable for any particular use unless you have made clear before the contract comes into existence, your requirement with regard to use.
- You agree that in entering into this agreement you have not relied on any representation or other information except the list of services and the prices posted on our Web site.
- We accept no responsibility for:
 - malfunction in any hardware provided by you;
 - malfunction in any software whether provided by you or by us;
 - the security of your data, including data loss;
 - backup of your data, unless we have contractually agreed otherwise;
 - delivery of material or privacy of any transmission;
 - receipt by you of any material from any source;
 - the safety or security of any goods or yours deposited on our premises or in transit to or from our premises under any circumstances.
- So far as we handle or store media of any sort on your behalf, we do so on condition that:
 - our liability for the Created Work contained in such media does not exceed the replacement cost of new, unused media of a similar specification;
 - you warrant that you have insured the Created Work contained in such media for its full value;
 - you agree that in any circumstances when we may become liable to you, the limit of our liability is the amount you have paid us in the immediately preceding 12 month period for the Services concerned.
- (for the avoidance of doubt) We shall not be liable to you for loss of profits, business, goodwill or any type of special, indirect or consequential loss (including loss or damage suffered by you as a result of an action brought by a third party) even if such loss was reasonably foreseeable or we had been advised of the possibility of your incurring it.
- All goods hired or lent to you by us remain ours. You may not sell or deal with our goods in any way.

20 You indemnify us

You agree to indemnify us against all costs, claims and expenses arising directly or indirectly from:

- your failure to comply with our AUP;
- your failure to comply with the law of any country;
- the posting by you of any content on your Web site;
- a breach of the intellectual property rights of any person;
- your failure to conform to any relevant Internet protocol;
- the posting by any third party with or without your knowledge of any material on your Web site;
- any action taken or omitted by any third party in relation to your Web site;
- any use of your Web site for a purpose forbidden by this agreement;
- and for the purpose of this paragraph you agree that the cost of our management and technical time is properly recoverable and can reasonably be valued at £60.00 per hour without further proof.

21 Third party rights

Nothing in this Contract shall be interpreted as granting any rights to any person other than us or you, whether by the Contracts (Rights of Third Parties) Act 1999 or otherwise.

22 Notices

Any notice to be served on either of the parties by the other shall be sent by first class post or by fax or by e-mail. It shall be deemed to have been received by the addressee within 72 hours of posting; within 24 hours if sent by fax to the correct number or by e-mail to the correct address.

23 Force majeure

- Neither party shall be liable for any breach of its obligations resulting from causes beyond its reasonable control including strikes of its own employees.
- Each of the parties agrees to give notice immediately to the other upon becoming aware of an event of force majeure such notice to contain details of the circumstances giving rise to it.
- If a default due to force majeure shall continue for more than 6 weeks then the party not in default shall be entitled to terminate this agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of force majeure.

24 Successors to the agreement

- The benefit and obligations of this agreement shall be binding on any successor in title.
- Neither party shall be entitled to assign this agreement nor all or any of their rights and obligations hereunder without the prior written consent of the other.

25 Dispute resolution

In the event of a dispute arising out of or in connection with this Contract (other than the collection of monies due on unpaid invoices) and which has not been resolved following discussions and negotiations between a person or persons appointed or authorised by you then both parties undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation. This clause shall not exclude either party from making an application to the court.

26 Waiver

Failure by us to enforce at any time or for any period any one or more of the terms or conditions of this Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Contract.

27 Contract is divisible

Each sub paragraph in this Contract is independent and severable from each other paragraph and therefore separately enforceable. If any restriction is unenforceable for any reason but would be enforceable if part of the wording were deleted, it will apply with such deletions as may be necessary to make it valid and enforceable.

28 Jurisdiction

This Contract is governed by English law and is subject to the jurisdiction of the English courts.

