

# Forty One Digital Limited GENERAL TERMS AND CONDITIONS for Website design & Development - 2020

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the following definitions apply:

"**Business Day**" a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

"**Charges**" the charges payable by the Client for the Services as set out in the Form of Agreement/Proposal.

"**Client**" the person, firm or company who purchases the Services from Forty One Digital Limited.

"**Conditions**" these terms and conditions (as amended from time to time in accordance with condition 14.9).

"**Deliverables**" any documentation, software, know-how or other works created or supplied by Forty One Digital Limited (whether alone or jointly) in the course of providing the Services.

"**Form of Agreement**" the form of agreement for services and signature page attached to these Conditions.

"**Intellectual Property Rights**" patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"**Proposal**" the proposal provided by Forty One Digital Limited describing the Services, as attached to these Conditions.

"**Services**" the services to be provided by Forty One Digital Limited under this Agreement as set out in the Proposal, Specification and any Special Conditions.

"**Forty One Digital Limited**" Forty One Digital Limited Software Limited (Company No. 10187695) of 11a Faraday Court, Centrum One Hundred, Burton-On-Trent, England, DE14 2WX.

"**Special Conditions**" the special conditions governing specific services (if any) detailed in any schedule or appendix to these Conditions.

"**Specification**" any specification agreed in writing between Forty One Digital Limited and the Client, attached to the Form of Agreement.

1.2 In these Conditions the following rules apply:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 a reference to writing or written includes email but not faxes.

## 2. APPLICATION OF CONDITIONS

2.1 These Conditions shall:

2.1.1 apply to and be incorporated into the Agreement; and

2.1.2 prevail over any inconsistent terms or conditions contained in, or referred to in, the Client's order, confirmation of order, or implied by law, trade custom, practice or course of dealing.

2.2 The Client's standard terms and conditions (if any) attached to, enclosed with, or referred to by the Client shall not govern the Agreement.

2.3 Particular services are also governed by additional and alternative terms which are set out in the Special Conditions.

2.4 These Conditions shall apply to the Agreement, save to the extent that they are contradicted by any Special Conditions. In the event of a conflict between the Special Conditions and these Conditions, the Special Conditions shall prevail.

## 3. THE AGREEMENT

3.1 The Client's email confirmation of acceptance of the Form of Agreement constitutes an offer by the Client to purchase the Services. Accordingly, the acknowledgement of it by Forty One Digital Limited or Forty One Digital Limited's commencement or execution of the Services, shall establish a contract between Forty One Digital Limited and the Client.

3.2 Any samples, drawings, descriptive matter or advertising issued by Forty One Digital Limited, and any descriptions or illustrations contained in Forty One Digital Limited's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement or have any contractual force.

3.3 The Proposal given by Forty One Digital Limited shall not constitute an offer, and is only valid for a period of [30] Business Days from its date of issue.

## 4. SUPPLY OF SERVICES

4.1 Forty One Digital Limited shall supply the Services to the Client in all material respects.

4.2 Forty One Digital Limited shall use reasonable endeavours to meet any performance dates specified by the Client, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4.3 Forty One Digital Limited shall have the right to make any changes to the Proposal, Specification and Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Forty One Digital Limited shall notify the Client in any such event.

4.4 Forty One Digital Limited warrants to the Client that the Services will be provided using reasonable care and skill.

4.5 Forty One Digital Limited may sub-contract to a third party any of the Services under this Agreement. Such subcontractors shall have no authority to incur liability on Forty One Digital Limited's behalf, or act as its agent.

4.6 Forty One Digital Limited shall perform its obligations under the Agreement in compliance with the provisions of the Data Protection Act 1998.

## 5. CLIENT'S OBLIGATIONS

5.1 The Client shall:

5.1.1 ensure that the terms of the Proposal and any Specification are complete and accurate;

5.1.2 co-operate with Forty One Digital Limited in all matters relating to the Services;

5.1.3 provide Forty One Digital Limited, its employees, agents, consultants and subcontractors, with access to its premises, office accommodation and other facilities as reasonably required by Forty One Digital Limited;

5.1.4 provide Forty One Digital Limited with such information and materials as Forty One Digital Limited may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

5.1.5 be responsible (at its own cost) for preparing the relevant premises for the supply of the Services;

5.1.6 obtain and maintain all necessary licences (including in relation to any hardware or software), permissions and consents which may be required before the date on which the Services are to start;

5.1.7 keep and maintain all materials, equipment, documents and other property of Forty One Digital Limited ("**Supplier Materials**") (if any) at the Client's premises in safe custody at its own risk, maintain Forty One Digital Limited Materials in good condition until returned to Forty One Digital Limited, and not dispose of or use Forty One Digital Limited Materials other than in accordance with Forty One Digital Limited's written instructions

- or authorisation.
- 5.2 If Forty One Digital Limited's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Client or the Client's agents, sub-contractors or employees, the Client shall in all circumstances be liable to pay Forty One Digital Limited on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Forty One Digital Limited confirming such costs, charges and losses to the Client in writing.
- 6. CHARGES AND PAYMENT**
- 6.1 The Charges for the Services shall be as detailed in the Form of Agreement/Proposal and if not specified to the contrary therein shall be payable as to:
- 6.1.1 in relation to projects having: (i) a contract value of £5,000; or less; or (ii) involving 30 days or less development:
- (a) 50% non-refundable deposit on confirmation of contract;
  - (b) 40% on delivery of the project; and
  - (c) 10% on go live;
- 6.1.2 in relation to projects having: (i) a contract value in excess of £5,000; or (ii) involving more than 30 days development:
- (a) 30% non-refundable deposit on confirmation of contract;
  - (b) 30% thirty days after confirmation of contract;
  - (c) 30% sixty days after confirmation of contract; and
  - (d) 10% on go live.
- 6.2 For Services provided by Forty One Digital Limited outside of its normal working hours, Forty One Digital Limited shall calculate the Charges in accordance with its emergency/out of hours rates from time to time (which are available on request).
- 6.3 The terms for payment are set out in the Form of Agreement/Proposal and time for payment shall be of the essence of the Agreement. If no payment terms are stated in the Proposal, the Client shall pay each invoice submitted by Forty One Digital Limited:
- 6.3.1 within 30 days of the date of the invoice (unless otherwise agreed in writing); and
- 6.3.2 in full and in cleared funds to a bank account nominated in writing by Forty One Digital Limited.
- 6.4 The Client shall reimburse any reasonable expenses (including without limitation reasonable travel, accommodation and subsistence) incurred by Forty One Digital Limited where such expenses are incurred wholly and exclusively for the purpose of providing on-site support as part of the Services, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.
- 6.5 All amounts payable by the Client under the Agreement are exclusive of amounts in respect of value added tax chargeable for the time being (VAT) which shall be payable by the Client to Forty One Digital Limited.
- 6.6 If the Client fails to make any payment due to Forty One Digital Limited under the Agreement by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per cent per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 6.7 The Client shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Silver ride may at any time, without limiting its other rights or remedies, set-off any amount owing to it by the Client against any amount payable by Forty One Digital Limited to the Client.
- 6.8 Where invoices are, at the Client's request, raised in currency other than sterling the applicable exchange rate shall be that as at the date of invoice not at the date of payment.
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services and the Deliverables shall be owned by Forty One Digital Limited.
- 7.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on Forty One Digital Limited obtaining a written licence from the relevant licensor on such terms as will entitle Forty One Digital Limited to license such rights to the Client.
- 7.3 All Supplier Materials are the exclusive property of Forty One Digital Limited.
- 8. CONFIDENTIALITY**
- 8.1 A party ("**Receiving Party**") shall, subject to clause 8.2, keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("**Disclosing party**"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this condition as though they were a party to the Agreement. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This condition 8 shall survive termination of the agreement. Forty One Digital Limited shall, unless specifically agreed in writing to the contrary, be entitled to use the Client's name and project details for publicity purposes.
- 9. LIMITATION OF LIABILITY**
- 9.1 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 9.2 Nothing in these Conditions shall limit or exclude Forty One Digital Limited's liability for:
- 9.2.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 9.2.2 fraud or fraudulent misrepresentation; or
  - 9.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.3 Subject to condition 9.1 and 9.2:
- 9.3.1 Forty One Digital Limited shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
- (a) loss of profits; or
  - (b) loss of business; or
  - (c) depletion of goodwill or similar losses; or
  - (d) loss of anticipated savings; or
  - (e) loss of goods; or
  - (f) loss of contract; or
  - (g) loss of use; or
  - (h) loss or corruption of data or information; or
  - (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- 9.3.2 Forty One Digital Limited's total liability to the Client in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total amount paid by the Client to Forty One Digital Limited under this Agreement over the year immediately preceding such a claim.
- 9.4 This condition 9 shall survive termination of the Agreement.

## 10. TERMINATION

- 10.1 Without limiting its other rights or remedies, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 10.1.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
  - 10.1.2 the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
  - 10.1.3 the other party enters into bankruptcy/insolvency proceeding or makes any arrangements with its creditors;
  - 10.1.4 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
  - 10.1.5 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 10.2 Without limiting its other rights or remedies, Forty One Digital Limited may suspend provision of the Services under the Agreement or any other contract between the Client and Forty One Digital Limited if the Client becomes subject to any of the events listed in condition 10.1.3 to condition 10.1.4, or Forty One Digital Limited reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Agreement on the due date for payment.

## 11. CONSEQUENCES OF TERMINATION

- 11.1 On termination of the Agreement for any reason:
- 11.1.1 the Client shall immediately pay to Forty One Digital Limited all of Forty One Digital Limited's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Forty One Digital Limited shall submit an invoice, which shall be payable by the Client immediately on receipt;
  - 11.1.2 the Client shall return all of the Supplier Materials which have not been fully paid for. If the Client fails to do so, then Forty One Digital Limited may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement;
  - 11.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
  - 11.1.4 conditions which expressly or by implication survive termination shall continue in full force and effect.

## 12. CHANGE CONTROL

- 12.1 Forty One Digital Limited reserves the right to modify the Agreement, Proposal and Special Conditions without notice to the extent necessary to ensure compliance with any regulatory or legislative requirement.
- 12.2 For the avoidance of doubt, if the Client requests any changes to the Services, the Client should request such change in writing to Forty One Digital Limited providing at least 30 days notice. Forty One Digital Limited shall respond to such request, within a reasonable period, detailing its decision of the request or details of any change to the Charges necessary due to such change.

## 13. FORCE MAJEURE

- 13.1 Forty One Digital Limited shall not in any circumstances have any liability to the Client under the Agreement if it is prevented from, or delayed in, performing its obligations under the Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Forty One Digital Limited or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.
- 13.2 The Client acknowledges and accepts that Forty One Digital Limited has no control over the market place and that changes in technology (including without limitation operating systems and hardware) may affect the operation of certain software and/or applications and that in such circumstances Forty One Digital Limited shall not be liable to the Client. Similarly, Forty One Digital Limited has no influence over the market place and shall have no liability for any delay or rejection of any software or application due to changes in market conditions.

## 14. OTHER IMPORTANT CONDITIONS

- 14.1 **Non-Solicitation:** The Client shall not, for the duration of the Agreement, and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee/subcontractor of Forty One Digital Limited who has been engaged in the provision, receipt, review or management of the Services or otherwise in connection with this Agreement to leave the employment of Forty One Digital Limited.
- 14.2 **Entire Agreement:**
- 14.2.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  - 14.2.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
  - 14.2.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 14.3 **Assignment and other dealings:**
- 14.3.1 Forty One Digital Limited may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.
  - 14.3.2 The Client shall not, without the prior written consent of Forty One Digital Limited, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.
- 14.4 **Notices:**
- 14.4.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this condition, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail.
  - 14.4.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 14.4.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
  - 14.4.3 The provisions of this condition 14.4 shall not apply to the service of any proceedings or other documents in any legal action.
- 14.5 **Severance:**
- 14.5.1 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition 14.5 shall not affect the validity and enforceability of the rest of the Agreement.
  - 14.5.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 14.6 **Waiver:** A waiver of any right under the Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.7 **No partnership or agency:** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 14.8 **Third parties:** A person who is not a party to this Agreement shall not have any rights to enforce its terms.
- 14.9 **Variation:** Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Forty One Digital Limited.
- 14.10 **Governing law:** This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 14.11 **Jurisdiction:** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation including non-contractual disputes or claims).