

# Made Simple Media Ltd Terms & Conditions

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY ACCEPTING AN ESTIMATE OR INSTRUCTING US TO UNDERTAKE WORK FOR YOU, YOU ARE BOUND BY THE TERMS AND CONDITIONS BELOW. THESE TERMS AND CONDITIONS ARE SUBJECT TO CHANGE WITHOUT NOTICE.

## Contents

	Page number
<b>Made Simple Media Ltd Terms &amp; Conditions</b>	<b>1</b>
1. Definitions	1
2. Design & Development Services	2
3. Website Support Package	3
4. Third Party Code and Software	4
5. Hosting, Email, Backups & Security	4
6. Digital Marketing Services	5
7. Company Obligations and Warranties	6
8. Client's Obligations and Indemnities	6
9. Referral Scheme	7
10. Website Warranty	8
11. Prices	8
12. Mutual Confidentiality Agreement	9
13. Your Personal Data	10
14. Right to Cancel	10
15. Our Details	12

## 1. Definitions

**You / Client** - You the client/company/organisation and your staff/colleagues

**We / Us / The Company** - Made Simple Media Ltd and its Directors and staff.

**CMS** - Content Management System such as Concrete5 / ConcreteCMS

**Business Day** - a day other than public holiday or annual closure of the company.

**Contract** - the contract between Made Simple Media Ltd and you the client for the supply of Services governed by these Terms and the Agreement.

**Force Majeure Event** - an event beyond the reasonable control of either party, including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, major change in the Search Engine algorithm, compliance with any EU directive, law or governmental Agreement, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

**Intellectual Property Rights** - all patents, rights to inventions, utility models, creative productions, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Agreement** - the agreed work that is to be undertaken as specified in the estimate. Acceptance of the estimate forms the Agreement. It also includes the daily rate and mentions the payment specification of the service fees. The Agreement associated with these Terms and Conditions shall form a binding contract.

**Specification/Scope of work** - the description or specification of the Services in the Agreement/Estimate.

**Estimate(s)** - the written estimate prepared by us which contains its proposals for providing Services to you, the Client.

**Project/Service(s)** - the project or services The Company will provide to you the Client as specified in the Agreement.

**Set Live / Setting Live** - The process of putting software, websites, website amends/additions or updates on a live location on the internet for public consumption.

**Referral Scheme** - A scheme we run to pay a referral fee or commission fee to anyone referring new clients to us.

## 2. Design & Development Services

### 2.1 Service(s) Estimate and Specification

The client accepts that the estimate covers the entire scope of the work and services to be delivered. If we have not been informed of anything required by you then you accept that this 1) may affect any agreed deadlines 2) we may need to charge more over and above the original estimate.

The client agrees to inform us as soon as possible of any required work being missing from the original estimate.

### 2.1 Design Services

Our web design estimates normally allow for one website design (and reasonable amendments) unless otherwise specified. You, the client, agree to provide a written acceptance of the design or written confirmation of any required amendments or additions if you do not wish to accept the design. However if the design is rejected by the client then we will produce a second one providing adequate feedback is provided by the client. If the second design is rejected and we have sufficient feedback as to why it was rejected, we may produce a third design or we may require a meeting or phone call to discuss how to proceed. If we have exceeded the allowed time in the estimate we may need to charge more for our time. If this is the case we will discuss this with you before undertaking any additional work.

### 2.2 Development Services

All development work is guaranteed for 30 days after completing the work. Within 30 days we will make small alterations and amends providing they are within the original scope of work as defined by the original estimate. Anything beyond the original scope of the project as defined in the estimate may incur an additional charge. We will advise if this is the case before undertaking any work. Any changes, alterations or bug fixes after 30 days will be charged for.

We cannot be held liable for bugs and errors and other issues arising from third party code that we have not previously identified. We will do our best to identify and avoid any known issues with third party code and recommend fully working alternatives to any code with any known issues.

### 2.3 Software Versions and Editing Capability

We will use stable releases of all bespoke software, CMS, addon, third party integration or plugin to reduce the chance of errors/bugs arising the project/services and ensure it is as up to date as possible. However, we will not use the latest minor releases of software unless we have been able to fully test it on a test project first. We will endeavour to ensure we deliver code and systems in such a way as to provide the customer with the maximum level of editing capability possible. If a new software version is released during development of the project we may need to charge to update it if it incurs a significant increase in development time.

We will install, configure and modify the software and version as detailed in the estimate. If the client wants to change the software, configuration or version of any bespoke software, CMS, addon, third party integration or plugin, then it may result in an additional charge. We will inform the client of any additional costs before beginning any work.

#### **2.4 Deadlines**

Please note it is very difficult to accurately say how long a website project will take because there are many stages that need approval and with final amendments and bug fixes it is very hard to say how long these will take. Any deadlines discussed between client and the Company are based on immediate approval of project planning, including wireframes and sitemaps, design work and development work and are subject to change. Deadlines are also agreed assuming there are no changes to the scope of the project, including design, functionality, number of pages, or any other aspect of the project.

Any changes significant changes to the scope of work in the original estimate will result in a change in the agreed deadline. You, the client accept that any changes to the agreed work will affect the deadline and agree to not hold the Company liable for any damages resulting from a change to the deadline.

Unless otherwise specified in writing, we are not responsible for any losses resulting from the project not being ready in time for a deadline.

#### **2.5 Testing**

We will test all new functionality including websites, software, Addons, emails and amendments with the devices and software available to use. Due to the vast range of different software versions and devices in the marketplace we cannot test everything on every configuration.

Where possible, all new websites, updates and changes will be done on a development server first, prior to going live.

However, errors can still occur after a project has gone live, so we will ask you, the client, to do a final test to ensure everything is working as required by the client. You accept that mistakes and omissions can occur with code and testing and that we will not be held responsible for damages resulting from the function or malfunction of new software, websites, emails, website/software amendments, alterations and functionality that have not been tested and approved in writing by you, the client.

Before going live we will endeavour to fix any bugs or errors within a reasonable amount of time and notify you when they are ready for final testing and approval. After going live we will prioritise any bugs/errors that arise and aim to fix these as soon as we can.

#### **2.6 Maintenance**

Unless otherwise specified in an estimate, maintenance on a website, app or any other product is not included in the costs to build said website, app or product. Maintenance will be charged as an additional service. We agree to supply an estimate of maintenance for the website, app or product on demand, but the estimate will be subject to change due to the fast moving pace of third party code, third party terms and conditions, the amount of users the product gains and changes with hosting and infrastructure.

### **3. Website Support Package**

3.1 Support packages give you technical support via phone and email and a maintenance service from us that covers updates to Concrete5 CMS, Addons and hosting software such as PHP. It also covers error and bug fixing and if necessary guidance on workarounds, supporting you when you encounter issues with your website up to the value of the support package.

3.2 Concrete5/Concrete CMS and any Addons your site uses are third party software so you accept that we may not have full control of the code and functionality so there could be limitations to the work we can do including: Unable to update your site to the very latest version due to lack of upgrade path from Concrete5/Concrete CMS core team. We will inform you if this is the case. It may not be possible for us to fix bugs/errors that exist in Concrete5/Concrete CMS itself, but once these are fixed within the CMS by the core team in a new version we will upgrade your site to that version as soon as possible / if possible. Sometimes we may recommend a workaround to achieve the same results as a process you have been historically using. We may not be able to update/fix bugs with Addons if the addon developer is no longer updating the addon. This will mean we may use the support budget to build an alternative addon or we may recommend changing site functionality so that it works correctly and is easier to maintain in the future.

3.3 The Support Packages allow a set number of hours work per year. Should support be required over the value of the package and it cannot wait until the following year, we will discuss this with you and quote for the extra work, based on our standard hourly rate.

3.4 We will strive to fix any errors / bugs but on very old websites or old Addons it may not be possible, so we will inform you of this and any unused Support Package budget can then be used towards a new website or the creation of new Addons/code to fix the errors encountered.

3.5 The support package does not cover: Setting up email on your computer(s) / device(s), website changes or additions such as design changes, additions and new pages, GDPR advice on the Basic package, new websites, website redesigns and rethemeing, any other changes that are not Concrete5/Concrete CMS updates, PHP updates, website Addons updates.

## 4. Third Party Code and Software

4.1 Sometimes unforeseen issues may arise with third party code such as the CMS, CMS add-ons, blocks, third party integrations and hosting software and hardware. We will attempt to avoid such issues by using tried and tested code where possible and proposing alternatives to avoid bugs, errors and system failures where possible.

4.2 If we have to make unforeseen amends, fixes, changes or alter third party code in any way to supply the originally proposed solution we may have to charge for this. We will advise in advance before undertaking any work and if there is a lower cost / free of charge option we will propose that in addition to the originally proposed solution.

4.3 You accept that issues can occur with third party code and we can't be held liable for missing deadlines due to unforeseen issues with third party code that cause a delay to a project. We will inform you, the client of any likely delays as soon as we have discovered any issues with third party code and will advise, if possible, how long the delay will be.

## 5. Hosting, Email, Backups & Security

### 5.1 Website Hosting

Hosting is provided by a third party provider called Krystal Hosting Ltd who offer free support via telephone, email and online ticket system to us, based in the United Kingdom.

In the event of your website going offline we will contact the hosting company as soon as possible to report the issue and they will get the website restored as soon as possible. We use an online tool to automatically monitor some of the websites that we host. Usually if one website goes down it means the server is down so it is not necessary to don't monitor all sites.

If Krystal require assistance from us, we will provide that as our top priority during normal working hours. You accept that we don't work 24 hours a day and we take all reasonable measures to get the website back up and running.

We were careful to choose a hosting provider with an excellent track record offering a high level of uptime, with an outstanding level of support.

You accept that issues with hosting can occur from time to time and it is not unreasonable to have occasional hosting outages and problems with the function of third party hosting. We cannot be held liable for damages resulting from website downtime due to hosting problems.

## 5.2 Email

Usernames, passwords and incoming and outgoing server details will be supplied free of charge, as part of the hosting package. However, setting up of email addresses on the clients computers, tablets and mobile phones (devices) is not included in the hosting packages and will incur an additional fee. The client must inform us of all computers and devices required for each email address so that we can quote for setting these up. IMAP and POP based email is supplied and uses the web server(s) for storage. This is not suitable for clients with a huge amount of storage >50GB so in this case we may recommend an alternative email service which may incur an extra charge. We will discuss this with you before migrating email

## 5.3 Backups

We will automatically take off-site backups of all data we host including website files, databases and email using R1 Backups Pro (a third party tool) supplied by our hosting company.

We will continue to invest in this service to provide you and us with an easy way of restoring a recent backup should data be lost resulting from external attack, accidental deletion, issues with recently added code etc. R1 Backups Pro are responsible for keeping data backed up and safe on their external systems. We will periodically check that the backups system is working.

You accept that backups are provided by a third party provider and we, Made Simple Media Ltd are not liable for loss of data resulting from a failure to backup websites and/or email by the third party provider.

## 5.4 Security

For security reasons, when we set up website and email logins we will set a "strong" password. This is a password of a reasonable length, containing a mixture of lower and uppercase letters, numbers and special characters such as hash, question mark, dollar signs etc.

If you set or reset any passwords, you agree to use strong passwords that do not contain your name, your business name or website address. In the event of a suspected website breach we recommend changing your password immediately and we may overwrite any password(s) that you have set. We will supply you with the new password(s).

Strong passwords are used for SFTP, cPanel and database access too. If you suspect someone may know your password please inform us immediately and we will change it for you.

The hosting company are responsible for preventing attacks such as DDoS, SQL injection etc. and will use their expertise, software and firewalls to help prevent and actively block new attacks.

# 6. Digital Marketing Services

6.1 Digital Marketing services supplied by third-party companies will be subject to their terms and conditions.

6.2 Any dispute related to SEO, PPC or other digital marketing services carried out by a third party company, must be taken up with the third party company directly.

6.3 Made Simple Media Ltd and its Directors and employees are not responsible or liable for any aspect of any digital marketing service carried out by a third party company and are not liable for any damages or disputes arising from the undertaking of any digital marketing work for the client.

6.4 Any recommendations or referrals we make in regard to third party digital marketing services should be researched and investigated by the client before instructing any third party marketing company to undertake work and before sending payment for any such services.

## 7. Company Obligations and Warranties

7.1 The Company warrants that it will provide the Services as stipulated in the Estimate/Agreement using reasonable care and skill to conform in all material respects with the Specification.

7.2 The Company shall use all reasonable endeavours to meet any performance dates specified in the Agreement but any such dates shall be estimates only and time shall not be of the essence for the provision of the Services. The Company shall not be liable for any delay in delivery of the Services caused by a Force Majeure event or the Client's failure to provide the Company with adequate delivery instructions, requested materials or any other instructions relevant to the supply of the Services.

The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law.

The Company shall be entitled to use other subcontractors for the provision of the Services provided always that the Company shall remain liable to the Client for the performance of the Services as if it had carried them out itself.

## 8. Client's Obligations and Indemnities

8.1 The Client shall provide assistance and technical information to the Company, as reasonably required by the Company in sufficient time to facilitate the execution of an Agreement in accordance with any estimated delivery dates or milestones. The Client shall have sole responsibility for ensuring the accuracy of all information provided to the Company and warrants and undertakes to the Company that the Client's employees assisting in the execution of an Agreement have the necessary skills and authority.

8.2 The Client shall be obliged as quickly as possible and within the agreed deadline to comment on and or approve materials provided under the Services, including (without limitation) advertising copy, search terms and graphic material submitted by the Company. In addition, the Client shall be obliged as quickly as possible and within the agreed deadline to implement changes on websites, in IT systems or where it may otherwise be required by the Company.

8.3 The Client shall be obliged to inform the Company immediately of changes of domain names, websites, technical setup and any other material information regarding the technical infrastructure which may affect the Services delivered by the Company.

8.4 In the event that the Client fails to undertake those acts or provide those materials required under this clause 5 within any agreed deadline (and at least within 15 Business Days of the date requested by the Company) the Company shall be entitled to invoice for the Services that it has supplied and the remaining Services specified in the Agreement whether or not the Company has been able to deliver them.

The Client shall indemnify and keep the Company indemnified fully against all liabilities, costs and expenses whatsoever and howsoever incurred by the Company in respect of any third parties as a result of the provision of the Services in accordance with the Agreement, Specification, or the content of the Client's advertising or web pages which result in claims or proceedings against the Company for infringement of any Intellectual Property Rights or other proprietary rights of third parties, or for breach of confidentiality or contract or for defamation.

8.5 The Client undertakes to comply with all applicable rules, regulations, codes of practice and laws relating to its use of the Services, including without limitation its obligations under the Data Protection Act 1998

8.6 Regulation of Investigatory Powers Act 2000, Competition Act 1998 and the E-Commerce Directive and equivalent legislation and hereby agrees to indemnify and to keep the Company indemnified in respect of any and all costs, claims or proceedings whatsoever brought against the Company by any third party in connection with any breach of the same by the Client.

8.7 As standard across the Services and unless otherwise notified, the Client shall be exclusively responsible for implementing the optimisation changes recommended by the Company. As notified by the Company, in certain cases for amendments to existing optimisations, the Client shall allow the Company use of the site's FTP or content management system's username and password in Agreement to gain access to add in keywords.

8.8 The Company require that prior notice be given for any alterations relating to the Client's website(s) that may affect the services supplied by the Company. If alterations are made by the Client or a third party to the Client's site(s) search engine placements may be affected and the Company cannot be held responsible. In the event, the Client wishes to hire a subcontractor by its own means (unless prior agreement by both parties); excluding in consequence the Provider of Services of its role of advisor; the Client understands and acknowledges the right of the Company to reject any liability or responsibility for any issues or problems impacting the work or the schedule already performed or yet to be.

## 9. Referral Scheme

9.1 If you introduce someone to us, who is not already an existing client of ours and they instruct us to undertake work for them, we will pay you a 20% referral fee/commission on successful completion of the project.

9.2 Commission will only be paid after we have successfully been paid by the client, receiving funds into our bank account. At this time we will request an invoice from you and we will only pay the commission fee once we have received your invoice.

9.3 We charge VAT at the normal rate, we will ask you to invoice us the 20% of the project value, plus VAT (if you are VAT registered).

9.4 We will only pay a 20% referral fee/commission on the first project we undertake for the new client. Subsequent projects will not be subject to this referral scheme.

## 10. Website Warranty

10.1 Website warranties (formerly known as maintenance and support packages) are designed for security, technical helpline and updates only, for your peace of mind. They do not include design changes, tweaks, new websites, marketing and other website amendments and additions.

10.2 There are different levels of Website Warranty and we will carry out work depending on the level of that warranty and the budget that the fees for each Website Warranty allow.

10.3 We will carry out the monthly checks covered by your Website Warranty plan and inform you of the results every month, providing that you have paid the fee that month for your Website Warranty

10.4 Work other than the monthly checks, will be carried out once the Website Warranty has accrued enough budget to cover staff time to undertake the work.

10.5 Failure to keep up payments within 30 days of each invoice may result in us pausing all work, including important updates to your website.

10.6 A Website Warranty allows us to keep your website up to date and secure and we will endeavour to do so.. However, you acknowledge that it is still possible for a site to be hacked or attacked and data to be lost.

10.7 Website Warranties are only available to existing clients, but new clients should contact us should you require maintenance or hosting for your website.

## 11. Prices

11.1 Unless otherwise expressly stated, all prices shall be in Pounds Sterling and shall be exclusive of VAT and other duties. In the event that duties are introduced or changed after the conclusion of an Agreement, the Company shall be entitled to adjust the agreed prices accordingly.

11.2 The Client acknowledges that certain Services may involve the licensing of third party Intellectual Property Rights and that the Client may be required to enter into a licence directly with such third party. Unless otherwise expressly stated, all prices shall be exclusive of costs for the acquisition of Intellectual Property Rights for materials to be included in marketing materials, including if relevant (but without limitation) pictures and licenses from third party owners and licensors.

11.3 The price stated in the estimate shall be based on a qualified estimated number of days/hours required to provide the Services. This is an estimate only and could change depending on changes to the scope of work in the agreement, issues arising from third party code and changes/amendments to design, development and other services carried out as agreed with the client in the original scope of work.

11.4 The Company shall be obliged to update the estimate and budgets on an ongoing basis following, among other things, changes made to an Agreement.

11.5 Whilst every effort is made to ensure that costing estimates are accurate, the Company reserves the right to amend any estimate, should an error or omission have been made.

## 12. Mutual Confidentiality Agreement

### 12.1 Whereas

12.1.1 When discussing business opportunities or potential business opportunities with regard to the Agreement or Service(s), the company (Made Simple Media Ltd) may need to disclose confidential proprietary information regarding its products, services or commercial activities.

In order to protect the said proprietary confidential information belonging to the Company and also matters arising from the discussions, this Agreement sets out the Terms and Conditions on which information is disclosed.

### 12.2 It is hereby agreed

12.2.1 In consideration of being permitted to receive and evaluate Confidential Information, The Client undertakes to the Company (Made Simple Media Ltd) that without the prior consent of the Company, The Client will not disclose any Confidential Information which has been

1. disclosed to The Client orally or in writing by, or on behalf of, Made Simple Media Ltd in the course of the discussions;
2. obtained by observation made by The Client at any premises of Made Simple Media Ltd or at any location where observation was facilitated by Made Simple Media Ltd;
3. acquired in any other way by The Client directly or indirectly as a result of the discussions.

12.2.2 "Confidential Information" shall mean information of any kind and in any form emanating directly or indirectly from Made Simple Media Ltd (including its subsidiary or associated companies) and shall also include information in any form developed or learned in the course of the discussions.

12.2.3 Information shall not constitute Confidential Information to the extent that

1. it was known to The Client prior to the date that disclosure thereof was received by The Client from Made Simple Media Ltd as evidenced by written records produced to Made Simple Media Ltd within 14 (fourteen) days of receipt; or
2. it was known to the public or generally available to the public prior to the date the disclosure was received by The Client from Made Simple Media Ltd; or
3. it becomes known to the public or generally available to the public after the date it was received by The Client from Made Simple Media Ltd, other than because of The Client's negligence or fault; or
4. it is disclosed to The Client at any time by an external party having good and legal right to disclose it to The Client.

12.2.4 No party shall at any time disclose to any external party or acquiesce in the disclosure to any external party of any Confidential Information which it has received from the Company and shall use such Confidential Information only for considering the business opportunities herein referred to and for no other purpose whatsoever.

12.2.5 Any document, written material, designs, drawings, samples, computer software or other tangible item supplied by either party in the course of their discussions of the business opportunities, shall be returned promptly at the request of the party which supplied them, together with any copies thereof.

12.2.6 The Client will procure that any of its directors, officers or employees to whom the Confidential Information is disclosed will observe all the provisions of this Agreement and will enter into a written agreement in the form of the attached and will provide signed copies of the agreement to Made Simple Media Ltd.

12.2.7 The Client shall immediately refer third party enquiries for the Products referred to under business opportunities to Made Simple Media Ltd.

12.2.8 The Client shall not solicit or initiate offers from any other persons, or enter into any negotiations, discussions or agreement relating to the supply of products or products performing a similar function to the Products.

12.2.9 The Client will not manufacture or supply Products as detailed in business opportunities for any Company other than Made Simple Media Ltd.

The confidentiality undertakings herein shall extend for a period of 5 YEARS from the date of this agreement.

This agreement shall be construed under and governed by English law.

## 13. Your Personal Data

13.1 We will not share, sell or otherwise pass on your personal data to any other third party for marketing purposes, without your consent.

13.2 It may be necessary to share your name, company name, website address, phone number, email or links to social media accounts with third party service providers if within the scope of the work that we are undertaking for you. For more information, please contact us on [info@makesimplemedia.co.uk](mailto:info@makesimplemedia.co.uk)

13.3 If you have any concerns about your personal data, or you would like us to destroy hard copies and delete data copies of your information, you have the right to contact us and ask us to do that. Please email us on [info@makesimplemedia.co.uk](mailto:info@makesimplemedia.co.uk)

## 14. Right to Cancel

14.1 You, the Client, have a right to cancel the Agreement referred to in the estimate within 14 days of the date hereof (the Cancellation Period). You can do so without having to give any reason at all.

14.2 The Cancellation Period will expire fourteen days from the date hereof.

14.3 To exercise that right, you must inform us, Made Simple Media Ltd of 20 Rushams Road, Horsham, West Sussex, RH12 2NU of your decision to cancel the Agreement by a clear, written statement or email to [info@makesimplemedia.co.uk](mailto:info@makesimplemedia.co.uk).

14.4 The best way to cancel is a dated letter or email to the above address setting out your clear decision to cancel will also suffice. To meet the cancellation deadline, your chosen form of communication must be sent before the Cancellation Period has expired.

#### **14.5 Effects of Cancellation**

If you exercise your right to cancel and we have not yet started work on the services/project, we will not undertake any more work on the services/project on your behalf and you will not incur any liability for any charges.

However, if you request work to begin on your instruction during the Cancellation Period, and you subsequently cancel the Agreement after we have started work as requested but before the expiry of the Cancellation Period, we may charge you any fees, disbursements and applicable VAT reasonably incurred during that period.

## 15. Our Details

### 15.1 Company Name and Contact Details:

Company Name: Made Simple Media Ltd

Registered Address:

Made Simple Media Ltd, 52 York Close, Horsham, West Sussex, UK, RH13 9XJ

Registered in England & Wales.

Company Registration Number: 09877849

Tel: 0800 111 4504

Tel: 0771 609 7440

Email: [info@makesimplemedia.co.uk](mailto:info@makesimplemedia.co.uk)

### 15.2 Hours of Work

Our hours of work are:

Monday to Friday: 9am to 5:30pm

Saturday - Sunday: Closed

Bank Holidays: Closed