

Terms of Business

Definitions

"Software"	the solution which is delivered to you accessible via a web browser, or as described in the associated technical specification. If there is any other Intellectual Property transfer to occur it will be listed in a separate IPR document.
"We or Mercurytide"	the company Mercurytide Limited, and its employees.
"Client or you"	the person/company that has employed Mercurytide to undertake work, has received a copy of these Terms of Business and who provides instructions to Mercurytide.
"Support tickets"	issues, changes or queries raised via phone, email, fax or letter which may result in investigation and/or programming work.
"Critical security update"	an update which will remedy a security compromise or sufficiently severe that it needs to be rectified quickly.
"Terms or TOB"	the terms of business issued by Mercurytide Limited.

These terms of business are intended to make clear, in as straightforward a manner as possible, the way we carry out work on your behalf. This benefits us both by setting out where we stand at the beginning of our relationship and should avoid any misunderstandings or uncertainty in the future. If you have any doubts or concerns about any of the following Terms of Business please ask before you commence business with us and we will be happy to explain or help.

These Terms of Business are issued by Mercurytide Limited. They constitute the entire agreement between Mercurytide Limited and you, the Client, and prevail over any other Terms or purchase conditions put forward by you. These Terms of Business supersede any previous Terms of Business issued by us.

No variation or alteration of these Terms of Business shall be valid unless the details of such variation are issued by Mercurytide Limited and are set out and approved in writing by a Director and a copy of the varied Terms is given to you stating the start and end date of the period for which they shall apply. All variations agreed to our Terms of Business shall apply only to the specific single project they were introduced for.

1. Instructions

- 1.1 We can act only on the information and instructions given to us. You should not assume that we have any knowledge of any factual matters. Instructions may be given to us in writing or verbally. We may ask you to confirm in writing the terms of verbal instructions given to us. If there are any changes in your instructions you must notify us immediately.
- 1.2 If you wish us to accept instructions regarding your business from anyone other than you the client, we shall require specific instructions to do so, specifically naming the person from whom we may accept instructions on your behalf. If we are no longer to accept instructions from a person you have previously nominated then we will be required to be notified of this in writing by you.
- 1.3 If you wish us to accept instructions by email or letter you should not assume that your email or letter has been received unless we confirm its receipt to you. If matters are urgent you should contact us by telephone to ensure that the email or letter has been received by the person to whom it has been sent.
- 1.4 Unless we agree otherwise in writing we shall assume that where we act for more than one person, each person for whom we do work is equally responsible for the instructions given to us and each person will be jointly and severally liable for payment of our fees and outlays in connection with the matter.
- 1.5 If you are a Private Limited Company or a Limited Liability Partnership we shall accept instructions from any of the Directors/Partners or from persons nominated by such Director/Partner.
- 1.6 The contract between us and you, incorporating these Terms of Business will be constituted by your acceptance of a proposal or business requirements document and this will be followed up with a sales order.

2. Confidentiality

- 2.1 Information passed to us that you request to be kept confidential will not be disclosed to third parties unless authorised by you or required by law.
- 2.2 Information passed to you by us regarding our business or methods should remain confidential and not disclosed to third parties unless authorised by us.

3. Copyright and Third Parties

3.1 Any material we produce is copyright reserved to Mercurytide Limited. Advice given and documentation prepared are for your use only and may not be copied or used by any third party without our express written consent. All software produced will remain the property of Mercurytide Limited and is licensed only for use by the client. A licence will be granted to the Client in perpetuity.

3.2 We will assign to you all Intellectual Property rights of any original graphical designs, logos, layouts and designs specific to you and specified in the contract upon full receipt of payment.

3.3 We shall retain all Intellectual Property rights in the underlying software and techniques used in the course of the development of the project.

4. Costs

4.1 Unless agreed upon in advance, our fees are charged on the basis of time spent on the work, together with an element of responsibility, which can vary according to a number of matters such as urgency, importance of the work to you, amount or value of money or property involved, complexity, difficulty or novelty in the matters, skill and knowledge required, length, number or importance of documents or papers. All costs quoted exclude VAT unless otherwise stated. Our current charges will be outlined to you in any business requirements, estimate or sales order sent to you. Our daily rate is based on 7.5 hours per day. These charges do not include payments made by us on your behalf (outlays) or VAT which will be added to your account.

4.2 All invoices are due for settlement within 7 days unless otherwise stated. Interest on overdue amounts may be charged at 4% per annum over the Royal Bank of Scotland base rate.

4.3 We will issue our invoices at regular intervals during the project. Payments made by us on your behalf (outlays) may be invoiced to you as they are incurred. Large outlays will require to be paid to Mercurytide Limited before they are due to be paid out by us. The term "outlays" includes all necessary expenses incurred and paid by us in the course of the project. If you do not pay any invoice within 30 days, we reserve the right to stop working for you and to charge you for the full amount of the work we have done for you. We may also make a charge for any additional direct or indirect losses which we have incurred as a result of failure to pay.

4.4 Any estimate that may be given will be for a probable fee based on our understanding of the work you have asked us to undertake. If the work turns out to be more complicated or takes longer than we had anticipated then we may require to increase our estimate to take account of this. We will inform you as soon as possible about this. A deposit may be requested. You should not regard any estimate as a firm quotation unless otherwise specifically agreed in writing.

4.5 We will produce a Business Requirements document prior to actual costs being agreed. In order to provide the Business requirements document a considerable amount of time and effort will have been allocated to this and therefore should you elect not to proceed with the project the following fees will be charged:

- Project estimated under £20,000 - a fee of £2,500+VAT or 15% of the estimated project cost (whichever is highest).
- Project estimated above £20,000 - a fee of £5,000 + VAT or 15% of the estimated project cost (whichever is highest).

Estimates are not a confirmed price until after the Technical Specification is completed. Upon completion of the Technical Specification revised costs will be advised to you.

4.6 Any queries on invoices must be addressed to Mercurytide Limited within seven days of receipt of invoice. Failure to do so will result in you deemed to have accepted the charges.

4.7 All our rates are subject to review from time to time. If your work has not been concluded by the next review date, the new rates, which will be notified at least four weeks prior to any rate change, will apply to work undertaken after the review date. The current rate may be held for a specific project at the Managing Director's discretion.

4.8 If invoice payments are not kept up to date we may suspend some or all of your websites, systems and services until such payments have been made and your account is up to date. Should we suspend any websites, systems or services then an administration fee may be charged to re-activate it, the invoice for which must be paid before re-activation. Mercurytide Limited will not be responsible for any direct or in-direct losses you incur as a result of this action.

5. Services

5.1 These Terms of Business together with the business requirements or proposal and sales order form the whole agreement between us and you to carry out the work. In the

- case of future work these Terms of Business and any documentation from us acknowledging instructions will form the whole agreement between us and you to carry out the work referred to in the future documentation acknowledging instructions.
- 5.2 These Terms are deemed to be accepted by you by virtue of you asking us to carry out work.
- 6. Delivery of work**
- 6.1 Password protected sites may be made available prior to it going live and you have until the site goes live to test it. Going live will be considered acceptance of the site and its content and all issues after that date will be charged for.
- 6.2 On services for which we require pre-payment, no work will commence until full payment has been received and cleared.
- 6.3 Ownership to property which is agreed to pass in terms of the contract will only pass on full payment.
- 7. Customer Supplied Content**
- 7.1 We must receive all completed content in agreed format before 9am at least two working days, in advance of the go-live date agreed, otherwise we may not be able to achieve the specified go-live date, although in such circumstances you must pay the full amount set out in your sales order.
- 7.2 You are responsible for the content of material supplied to us and for ensuring that you have the right to supply it to us, the right to use it, that we have the right to use it as you have directed us and that it complies with all relevant legislation and codes of practice. If we receive complaints about any material or its content we may, at our discretion, remove the material from the website without reference or liability to you. You will indemnify us against any claim that the material infringes the Intellectual Property Rights or other rights of others or is defamatory or otherwise offensive. Should we incur any costs or indirect loss as a result of defending this action then these costs will be payable by you.
- 8. Site Support**
- 8.1 Unless specified in the contract, no site support will be included in the charges. We advise you to take out a support contract with us when your site goes live. This will allow any changes to be made within agreed timescales. Should you elect not to take out a support contract then any changes you require to be made to the code will be done and will be charged for at our current standard hourly rate or part thereof with the minimum cost being one hour. For any support tickets raised covering multiple requests we reserve the right to split these tickets into individual tickets where we deem it appropriate.
- 9. Renewals**
- 9.1 Items that require renewals such as domain names, certificates, hosting contracts, etc. will be renewed by us unless notified otherwise before the renewal date. You will be liable for any charges incurred.
- 10. Passwords**
- 10.1 Passwords are for the sole use of the person to whom they are issued. We may deny access to a password if we reasonably believe that it is being used by an unauthorised person or that the user is breaching these Terms of Business.
- 11. Termination of Project**
- 11.1 If for whatever reason you decide to halt the project at any point we will charge you for all work undertaken and completed to date, as well as any costs that have been incurred by us on your behalf.
- 11.2 We may terminate the provision of services if:
- i. You are in material breach of these Terms of Business and have not remedied such breach within ten days of notice specifying the breach and requiring that it be remedied; or
 - ii. You have failed to pay invoices that are due for payment; or
 - iii. You become insolvent, cease to trade or go into liquidation or administration; or
 - iv. An unforeseeable and unavoidable event of either accidental or natural causes occurs preventing or prohibiting the continuation of services for which neither Mercurytide or you the client can be held responsible.
- 12. Transfer of Services**
- 11.1 If at any point you elect to transfer the services provided by us to another supplier, including hosting, domains, and development work, a transfer cost as well as any charges incurred by us up to that point will be made to you. You must also agree to take all reasonable steps to ensure that our Intellectual Property Rights are not used by a third party
- 13. Security**
- 13.1 Occasionally we may be required to perform a critical security update on your system without being able to notify you first. In such cases we will charge for the time taken to do the update and you agree to pay for any such work that needs to be undertaken.
- 14. Contact Information**
- 14.1 It is your responsibility to advise us of any change to contact details. We cannot be held responsible for not updating you with regard to your project, failing to action renewals, etc. if we have incorrect contact details.
- 15. Miscellaneous**
- 15.1 You may not assign, sub-licence or otherwise transfer any of your rights under these Terms of Business. If any provision of these Terms of Business is found to be invalid by any court having competent jurisdiction, the invalidity of that provision will not affect the validity of the remaining provisions of these Terms of Business which remain in full force and effect. If you breach these Terms of Business and we ignore it, we will still be entitled to exercise our rights and remedies at a later date or in any other situation where you breach the Terms of Business. Nothing in these Terms of Business shall give any rights or benefits pursuant to the Contracts (Rights of Third Parties) Act 1999 where applicable or otherwise to any person who is not a party to it.
- 16. Mercurytide Limited Team**
- 16.1 Should you employ any employee of Mercurytide Limited within 12 months of having contact with them an introductory fee will be made at 20% of annual salary. Annual salary is defined as the level of salary paid by us to the employee at time of leaving including any bonuses and benefits. You agree that this fee is reasonable. Should any such employee enter your employment you must not use any confidential or commercially sensitive information which you may gain from this employee.
- 17. Liability Disclaimer**
- 17.1 We shall not accept responsibility for any consequences that arise as a result of us carrying out your requests, except where there has been negligence on our part
- 17.2 We shall not be liable for any loss, damage, expense or delay as a result of materials you have supplied to us. If we have caused any error we shall use all reasonable efforts to rectify this in a reasonable timeframe.
- 17.3 We will only be responsible for direct losses arising from any work carried out negligently by us. We will not be responsible for any indirect loss.
- 17.4 We shall not be liable to you for any loss or damage which you may incur as a result of non-renewal of domain names.
- 18. Applicable Law**
- 18.1 These Terms of Business are governed by the Law of Scotland and are subject to the ~~non~~ exclusive jurisdiction of the Scottish Courts.
- 19. Complaints / Comments**
- 19.1 Should you wish to make any comments about your dealings with us, or to raise a complaint you should do so in writing addressing your correspondence to Tamlin Roberts, Managing Director, at our Head Office in Edinburgh.
- We may update our terms of business from time to time and any changes will be intimated to you. By continuing to do business with us you will be deemed to have accepted the changes.

Thank you for choosing Mercurytide Limited