



Terms of Business - Updated January 2019

Summary

We are Semantic Ltd, a company registered in England and Wales, company number 03820499 and registered office at Epsilon House, Southampton, Hampshire, SO16 7NS.

We provide website and systems design, development, consultancy and integration, along with related services including Search Engine Optimisation, Analytics, Reporting, Email creation and strategy/advice.

You the client ("You"), are hiring us, Semantic ("We or Us"), to help with a project or ongoing maintenance/development. The total price and key areas of work are outlined in our previous correspondence.

We'll always do our best to fulfil your needs and exceed your expectations. These are the general terms and conditions that will regulated the way we work together ("Terms and Conditions").

1. Getting engaged

1.1. We will work with you to determine the project or ongoing maintenance requirements

1.2. We will review your request, ask any additional information we may need and prepare a plan to implement the project or ongoing maintenance ("Project Plan").

1.3. Our Project Plan will contain:

- details of the scope of work ("Scope");
- details of the services that we will provide you ("Services");
- details of the deliverables that we will deliver to you ("Deliverables");
- where possible, a list of all materials, writing, images, creative content and any other information you provided and/or will need to provide us in connection with your project ("Assets needed");
- delivery dates and Milestones (as defined in item 5.1 below);
- price and payment terms and estimates of any Additional Costs (as defined in item 8.2 below);

1.4. The Scope of Work, the Services and the Deliverables as described in the Project Plan will be collectively referred to in these Terms and Conditions as "Project".

1.5. We will send the Project Plan for you to your review

1.6. Unless otherwise stated in the Project Plan, the Project Plan will be open for your acceptance for 60 days after we send it to you. After the expiry of this 60-day period, the Project Plan will no longer be valid.

1.6.1. If a Project Plan expires and you contact us again about your project we may send you a new Project Plan.

1.7. When you approve the Project Plan, you will send us your acceptance via email or by accepting the estimate online. When we receive your acceptance, a binding contract is formed between you and us.

1.8. We will work with you to address any comments or queries and send an amended Project Plan if required.

2. What constitutes our agreement

2.1. As mentioned in item 1.7 above, there will be a binding contract between you and us when you accept the Project Plan. This contract ("Agreement") will comprise (i) the Project Plan, (ii) these Terms and Conditions and (iii) any other agreed documents we and you exchange via email and/or via shared drive during the Project.

3. Services and Deliverables

3.1. We will provide the Services and prepare the Deliverables in accordance with the Project Plan.

3.2. Testing is an important part of all software development so Deliverables will be tested against current versions of popular browsers. We will set out our user acceptance criteria in the Project Plan. You will work with us to confirm the Deliverables meet the specifications set out in the Project Plan and meet your needs.

3.3. Where needed, whenever possible we will use servers and web space on your account during the implementation of the Project. This minimises deployment time and ensures the code works as expected on the live hosting environment.

4. Changes

4.1. Of course, changes happen and we are happy to work with you on changes to the Project Plan. If this is after you accepted the Project Plan in accordance with item 1.7 above, then we will confirm the changes together to determine any impact on costs or timelines. If changes are significant (at or near 20% of the project budget/time) then we will not implement any of them until we reach an agreement on any necessary adjustments to the costs and timelines.

5. Acceptance of Services and Deliverables

5.1. Unless otherwise set out in the Project Plan, the Project will be divided in milestones ("Milestones"). The details of each Milestone will be set out in the Project Plan.

5.2. We will notify you about the completion of each Milestone and you will have 14 days to accept the Services and Deliverables included in the completed Milestone.

5.3. For the avoidance of doubt, your acceptance of the Services and Deliverables included in a certain Milestone means that such Services and Deliverables comply with the Agreement and have been delivered to your satisfaction and in accordance with the Project Plan.

5.4. If you understand that the Services and/or Deliverables failed to comply with the Project Plan, you shall inform us within the 14 day period referred to in item 5.2 above and we will have 14 days after the receipt of your notification to work out a solution and inform you of the updated plan.

6. Delays

6.1. As with any creative projects, the delivery dates and Milestones set out in the Project Plan are estimates only. Nevertheless, we will use all reasonable efforts to comply with them whilst balancing the need for being fast and adaptable as things change.

6.2. If we suspect that a delay is expected, we will communicate this to you as soon as we become aware of that and we will also inform the measures required to mitigate such potential or actual delay.

6.3. You understand that the implementation of the Project depends on the Client Content and that delay in providing or adding such Client Content may result in delays to delivery dates and Milestones set out in the Project Plan.

6.4. You will use all reasonable efforts to provide us in a timely manner any information, materials or approval requested.

7. Warranty Period and Maintenance

7.1. Unless otherwise set out in the Project Plan, for the first 3 months after the acceptance of the Services and Deliverables included in a Milestone ("Warranty Period"), we will provide you with commercially reasonable technical support and assistance to correct any errors or deficiencies in the Services and the Deliverables. Support will be scheduled as a priority in our usual pipeline. For small projects (less than 1 day) the time value would be up to the equivalent of the overall project budget. For large projects (greater than 1 day) the time value would be up to the equivalent of 10% of the project budget.

7.1.1. Additional support and maintenance may be agreed at the prevailing hourly or daily rates in place at the time.

7.2. For the avoidance of doubt, the commercially reasonable technical support and assistance referred to in item 7.1 do not include any enhancement to the Services and Deliverables to any service outside the Project.

7.2.1. We are happy to help you with additional enhancements and further updates, and would work with you to plan these into our pipeline and to agree on any applicable additional costs.

7.2.2. If you modify the Deliverables without our permission, we will not be obliged to give you any support during the Warranty Period and we will not be liable for any liabilities, costs, expenses, damages and losses, including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, legal costs and all other reasonable professional costs and expenses arising out or related to such modification to the Deliverables.

8. Price, Additional Costs and Payment

8.1. The price of the Project will be as set out in the Project Plan ("Price").

8.2. The Price include only our fees. The Project may involve other costs and expenses (including but not limited to hosting, art licensing and photography) which are not included in the Price ("Additional Costs").

8.3. We will inform you the Additional Costs related to the Project. If you want to pre-approve the Additional Costs before we incur them, please inform that to us when you accept the Project Plan. Otherwise, we will be allowed to incur such Additional Costs and add them to your invoice for reimbursement.

8.4. Unless otherwise stated in the Project Plan, payment will be invoiced on completion of each Milestone, and invoices are payable within 30 days.

8.5. The invoices will include the amount to be paid and a description of the amounts related to the Price and the amounts related to the Additional Costs.

9. Your Main Responsibilities

9.1. You must:

9.1.1. timely provide us the Client Material which must be as complete, precise and accurate as possible;

9.1.2. pay the invoices when due; and

9.1.3. assist us whenever we need your approval under the Agreement and also in connection with the engagement of third parties that will work in the implementation of the Project.

10. Our Main Responsibilities

10.1. We must provide the Services and Deliverables in accordance with the Agreement.

11. Representations and Warranties

11.1. You represent and warrant to us that, to the best of your knowledge:

11.1.1. the Client Content and its use under the Agreement do not infringe any third party's rights (including but not limited to third parties' intellectual property rights of any nature);

11.1.2. you must comply with the terms and conditions of any agreements related to the use of proprietary third party materials which are incorporated into the Deliverables, including without limitation stock photography or illustration ("Third Party Materials");

11.1.3. you will obtain all necessary and appropriate rights and licenses to allow our use of Third Party Materials under the Agreement.

11.2. We represent and warrant to you that, to the best of our knowledge:

11.2.1. we will provide the Services and supply the Deliverables in a professional manner;

11.2.2. we will secure all necessary rights, title and interest in and to the Deliverables, including the necessary rights on all design tools developed and/or used by us in performing the Agreement, including pre-existing and newly developed software including source code, web authoring tools, type fonts and application tools, together with any other software or other inventions whether or not patentable, and general non-copyrightable concepts such as website design, architecture, layout, navigational and functional elements ("Semantic Tools").

11.2.3. the Deliverables will not violate the rights of any third parties (including but not limited to third parties' intellectual property rights of any nature).

11.3. If you or any third parties modify the Deliverables or use the Deliverables outside of the scope or purpose of this Agreement, all our representations and warranties set out in item 11.2 will be void.

11.4. Except for the express representations and warranties stated in this item 11, we make no further warranties. We explicitly disclaim any other warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose or compliance with foreign laws or government rules or regulations applicable to the Project.

12. Licence of Intellectual Property Rights

12.1. You grant us a non-exclusive, royalty free licence to use, reproduce, modify, display and/or publish the Client Content for the exclusive purposes of the Agreement, in particular but not limited to the provision of the Services and the Deliverables. We will

not be authorised to use the Client Content or any part of them otherwise than for the purposes of the Agreement.

12.2. The Client Content will at all times remain your property, and we will have no right, title or interest in or to any part of it save the rights under the licence set out in item 12.1 above.

12.3. We grant you a non-exclusive, royalty free, perpetual, worldwide licence to use the Semantic Tools for the exclusive purposes of taking the benefit of the Services and exploiting the Deliverables for the purposes to which they were developed.

12.3.1. The purposes to which the Deliverables were developed is set out in the Project Plan.

12.3.2. Unless otherwise agreed with us, you will not be authorised to use the Semantic Tools or any part of them otherwise than for the purposes set out in item 12.3.1. For the avoidance of doubt, such other uses may involve additional fees to be paid by you.

12.4. The Semantic Tools will at all times remain our property, and you will have no right, title or interest in or to any part of it save the rights under the licence set out in item 12.3 above.

12.5. Subject to item 12.3 and provided that you do not change, create derivative works out of them or extracts portions of them, after you accept the Deliverables in accordance with item 5 above, the Deliverables will belong to you.

13. Accreditation and Promotion

13.1. We will be entitled to place accreditation on the Deliverables, as a hyperlink or other format agreeable to you.

13.2. We will retain the right to reproduce, publish and display the Deliverables in our portfolios and websites, in galleries, design periodicals and other media or exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the Deliverables in connection with such uses.

13.3. Either party, subject to the other's reasonable approval, may describe its role in the Project on its website and in other promotional and marketing materials, and, if not expressly objected to, include a link to the other party's website.

14. Termination

14.1. The Agreement will remain in full force and effect until the last delivery date or Warranty Period, whatever happens later.

14.2. For one-off projects, we and you will have the right to terminate the Agreement at any time before the Project is launched at any point if you are not 100% happy.

14.3. If you decide to terminate the Agreement in accordance with item 14.2 above, you must pay us within 30 days after the termination date:

14.3.1. the reimbursement of any costs and expenses we have paid to third parties in connection with the Agreement and which we cannot recover despite the termination of the Agreement; and

14.3.2. any Additional Costs and/or other costs and expenses we have agreed to pay to third parties in connection with this Agreement and which we must pay irrespective of the termination of the Agreement, as advised in the Project Plan.

14.4. If we decide to terminate the Agreement in accordance with item 14.2 above, we must reimburse you within 30 days after the termination date any payment you have made before the termination (in relation to the Price, the Additional Costs and otherwise) in connection with Services and Deliverables that have not been provided before the termination date.

14.5. Either party may also terminate the Agreement with immediate effects, if the other party ceases to conduct business in its normal course; makes an assignment for the benefit of creditors; is liquidated or otherwise dissolved; becomes insolvent; files a petition in bankruptcy; or a receiver, trustee, or custodian is appointed for it.

15. Limitation of Liability and Indemnities

15.1. We will not be responsible to You for any loss of profit or any consequential loss arising from the Agreement, and our total liability to you under the Agreement will not exceed the total amount paid to us for the project, unless set out otherwise in the Project Plan.

15.2. The Agreement does not limit our responsibility for (i) breach of third parties' intellectual property rights and (ii) matters that the law says we cannot exclude.

15.3. We and you will not be liable for failures or delays in carrying out the Agreement which were caused by an event (i) beyond our reasonable control, (ii) which we could not have foreseen, and (iii) which was unavoidable. This includes industrial disputes, energy or transport failures, acts of God, war, terrorism, civil unrest, explosions, mechanical breakdown, natural disasters, deliberate damage, or failures of suppliers or sub-contractors to do what they are supposed to.

15.4. Subject to items 15.1, 15.2 and 15.3 above, each party will defend, indemnify and hold harmless any and all liabilities, costs, expenses, damages and losses, including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, legal costs and all other reasonable professional costs and expenses arising out or related to such party's breach of any obligation set out in the Agreement.

16. Data Protection

16.1. Each party will (i) comply with all applicable controller obligations under the General Data Protection Regulation (EU) 2016/679 (GDPR), the UK Data Protection Act (as amended or replaced) and any other applicable data protection or electronic privacy laws, regulations and decisions in force from time to time ("Data Protection Law") and (ii)

provide assistance in respect of the other party's compliance with the obligations determined by the Data Protection Law.

17. Confidentiality

17.1. We will keep your information confidential and you will keep our information confidential too. Except as permitted by item 17.2 below, each party undertakes that it shall not for as long as the Agreement is in full force and effect and for a period of 3 years after termination of the Agreement, disclose to any person:

17.1.1. any information about the Client Content;

17.1.2. any information about the Semantic Tools;

17.1.3. any other confidential information (however recorded or preserved) disclosed by a party to the other party whether before or after the date of the Agreement, including but not limited to:

17.1.3.1. any information concerning the business, affairs, customers, clients or suppliers of a party;

17.1.3.2. the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party; and

17.1.3.3. the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party.

17.2. Each party may disclose the other party's confidential information:

17.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations set out in the Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this item 17;

17.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and

17.2.3. which is already known by the recipient, becomes publicly known through no fault of the recipient, or is received from a third party without a restriction on disclosure.

17.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations set out in the Agreement.

18. General terms

18.1. **How we provide the Services and the Deliverables:** Provide that we comply with the Agreement, we will be free to determine in our sole discretion, the manner and means by which the Services are performed and the Deliverables are supplied.

18.2. **Subcontracting:** We are allowed to use third parties as independent contractors in connection with the Services and the Deliverables (“Design Agents”).

18.3. **Parties Relationship:** No agency, partnership, joint venture, or employee-employer relationship is intended or created by the Agreement.

18.3.1. Neither party is authorized to act as agent or bind the other party except as expressly stated in the Agreement.

18.3.2. The Agreement does not create an exclusive relationship between we and you. You are free to engage others to perform services of the same or similar nature to those provided by us and we will be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services we offer.

18.3.3. The Services and the Deliverables are not and will not be deemed to be a work for hire as defined under copyright law.

18.3.4. All rights granted to you under the Agreement are contractual in nature and are expressly defined by the Agreement.

18.4. **Assignments:** Subject to item 18.2, neither party shall assign, transfer, subcontract, delegate or deal in any other manner with any of its rights and obligations under the Agreement unless otherwise approved by the other party.

18.5. **Entire Agreement:** The 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.

18.5.1. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.

18.6. **Costs:** Each party shall bear its own costs and expenses in connection with the negotiating, preparing and executing the Agreement.

18.7. **Variation:** No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18.8. **Waiver:** No failure or delay by a party to exercise 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 the 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.

18.9. **Rights and Remedies:** The rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

18.10. **Severance:** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.

18.10.1. If any provision or part-provision of the Agreement is deemed deleted under item 18.10 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

18.11. **Further Assurance:** At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Agreement.

18.12. **Notices:** Any notice or other communication given to a party under or in connection with the Agreement will be in writing and will be:

18.12.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or

18.12.2. sent by email to the address specified in the Project Plan; or

18.12.3. sent via any other electronic documents with proof of transmission mutually agreed by the parties.

18.12.4. Any notice or communication shall be deemed to have been received:

18.12.4.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

18.12.4.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the business day after posting;

18.12.4.3. on acknowledgement of receipt of email or other electronic documents, by way of reply by email.

18.12.5. This item 18.12 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18.13. **Third Parties Rights:** The Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

18.13.1. The rights of the parties to rescind or vary the Agreement are not subject to the consent of any other person.

18.14. **Governing Law:** The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

18.15. **Jurisdiction:** The parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to the Agreement or any breach of it.

18.15.1. If any such dispute cannot be settled amicably through ordinary negotiations between the parties, then any party may exercise any right to seek a remedy through judicial proceedings before the courts of England and Wales, which shall have exclusive jurisdiction to settle any dispute or claim that arises out

of or in connection with this Agreement or its subject matter (including non-contractual disputes or claims).

18.15.2. Any dispute shall not affect the parties' ongoing obligations under the Agreement.

Thanks for taking the time to read through these terms.

For further information, or if you have any questions then please send me message on neil@semantic.co.uk. Alternatively you can call me on 02380 111 545 and I'll be happy to help.

Kind regards,

Neil Lewin
MD/Owner Semantic