



## Terms And Conditions Of Business

The Client's attention is drawn to the fact that these Terms are divided into the following parts;

Part GL – General Terms and Conditions

Part WD – Website Design

Part SC – Speculative Work & Concept Design

Part M – Maintenance

Part WH – Website Hosting

Part EM – Email Marketing

Part SO – Search Engine Optimisation and Social Media

All parts of these Terms shall apply to all contracts.

Nothing in these Terms shall affect the statutory rights of a Client dealing with Zesty Marketing as a consumer. Information on consumers' rights is available from the Office of Fair Trading.

### PART GL – GENERAL TERMS AND CONDITIONS



## GL1. Interpretation

GL1.1 In the Terms, unless the context otherwise requires:

**Client** means the person named on the Order who is the purchaser of the Services in accordance with the Terms;

**Documents** includes, in addition to any document in writing, any map, plan, graph, drawing or photograph, film, negative, tape or other device embodying visual images whether or not such item is provided in paper or electronic format and any disc, tape or other device embodying any other data;

**Goods** means the goods, if any, (including instalment of the goods or any part for them) that Zesty Marketing is to supply in accordance with the Terms and which are specified in the Order;

**Input Material** means any Documents or other materials and any data, specification or other information provided by the Client including any email sent by the Client to third parties using Zesty Marketing's systems or the Output Material

**IPRs** means all copyright, trade marks, trade names, patents, registered and unregistered design rights and all other intellectual property and proprietary rights, powers and benefits, including the right to register, transfer, licence and assign;

**Order** means the Zesty Marketing standard proposal and order form;

**Output Material** means any Documents or other materials and any audio, video material, data, ideas, concepts, designs, images, machine code, manufacturing or other techniques or other information provided by Zesty Marketing to the Client;

**Services** means the services to be provided by Zesty Marketing for the Client in accordance with the Terms and which are specified in the Order;

**Terms** means these terms and conditions and the additional terms and conditions contained in the Order; and

**Zesty Marketing** means Zesty Group Limited (CRN: **11081060**), whose registered office is at Business Start-Up Hatchery, 4<sup>th</sup> Floor Wynne Jones Building, Ellison Place, Newcastle upon Tyne, NE1 8ST.

GL1.2 The headings in the Terms are for convenience only and shall not affect their interpretation. Any reference to any enactment includes reference to that enactment as amended from time to time and to any subordinate legislation made under that enactment.

GL1.3 Any references to "in writing" or "written" shall include emails.

GL1.4 Any references to legislation refer to all subordinate legislation that are set down under or pursuant to that legislation. Those references also include instances where the original legislation referred to is replaced by new legislation.

## GL2. Application of the Terms

GL2.1 The Terms constitute the entire agreement between the parties, supersede any previous agreements, representations, statements or understandings, may not be varied except in writing between the parties (signed by a Director of Zesty Marketing) and set out the full extent of Zesty Marketing's obligations and liabilities. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Zesty Marketing which is not



set out in the Terms. Nothing in the Terms shall be interpreted so as to exclude or limit Zesty Marketing's liability for fraudulent misrepresentation.

GL2.2 The supply of all Services shall be on and in accordance with the Terms. All other terms, conditions, collateral contracts, undertakings and warranties, whether express or implied by statute or otherwise, in respect of the Services, are excluded to the fullest extent permitted by law (including any terms and conditions that the Client purports to apply under any purchase order or correspondence or otherwise).

### GL3. Quotations and Orders

GL3.1 Quotations are not binding on Zesty Marketing and do not constitute an offer. Zesty Marketing reserves the right to withdraw or revise any quotations.

GL3.2 The Client shall be responsible to Zesty Marketing for ensuring the accuracy of the terms of any Order and for giving Zesty Marketing any necessary information relating to the Services within a sufficient time to enable Zesty Marketing to provide the Services in accordance with the Terms.

GL3.3 Zesty Marketing may at any time without notifying the Client make any changes to the Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Services.

GL3.4 The Client may not cancel an Order or amend the scope of the Services without the consent in writing of Zesty Marketing. If consent is given, the Client shall indemnify Zesty Marketing against all loss (including loss of profit), damage, claims, costs (including the cost of all labour and materials used), expenses and actions arising out of such cancellation or changes unless otherwise agreed in writing. Rolling contracts shall be renewed automatically unless written notice to the contrary is received from the Client no less than 1 calendar month prior to the renewal date in question.

GL3.5 The Client's acceptance of the Order may take the form of its counter-signature on the Order or may take the form of correspondence confirming the same or may be implied in the form of the fulfilment by the Client of any of its obligations under these Terms, such as, without limitation, the payment of a deposit or the provision of Input Material.

### GL4. Charges and Payment

GL4.1 Save as provided for to the contrary under these Terms, the charge for the Services shall be as set out in the Order and shall be exclusive of VAT and other applicable taxes and duties (which shall be paid by the Client in the manner and rate described by law) and any disbursements including the costs of materials and external services (which may be charged to the Client in addition unless the Order provides otherwise).

GL4.2 The Client shall pay such additional sums which, in Zesty Marketing's sole discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy or unfinished nature of, errors in or additions or amendments to any Input Material or any other cause or fault attributable to the Client.

GL4.3 All sums owed by the Client to Zesty Marketing shall be paid by the Client together with any applicable VAT, and without any set off or other deduction, within 14 days of Zesty Marketing's invoice.

GL4.4 If the Client fails to make payment within 14 days Zesty Marketing shall charge the Client interest on the unpaid amount (before and after judgment) at a daily rate equal to 8 per cent per annum above the base lending rate from time to time of Bank of England from the due date until payment is received. In the event that Zesty Marketing issues legal proceedings in respect of any breach of these Terms by the



Client, the Client will reimburse all costs and expenses incurred by Zesty Marketing as a result of such action on demand and on an indemnity basis. Any termination by Zesty Marketing of any contract with the Client on these terms shall be without prejudice to any sums chargeable to and payable by the Client for Goods or Services provided to the Client up to and including the effective date of the said termination.

#### GL5. Rights in Input Material

- GL5.1 The Client warrants that it is the sole beneficial owner of any and all IPRs in the Input Material or is otherwise entitled to make use of and licence the same to Zesty Marketing for the purposes of the provision by Zesty Marketing of the Services and/or Output Material.
- GL5.2 Zesty Marketing acknowledges that any and all of the IPRs subsisting in the Input Material shall remain the sole property of the Client or its licensors and Zesty Marketing shall:
- GL5.2.1 only use the Input Material for the purposes of providing the Services; and
  - GL5.2.2 upon completion of the Services, return all original Input Material to the Client.
- GL5.3 The Client shall indemnify Zesty Marketing fully against all liabilities, costs and expenses that Zesty Marketing may incur as a result of using the Input Material and/or preparing the Output Material in accordance with the Client's instructions, arising out of the infringement of any IPRs belonging to third parties.
- GL5.4 If any Input Material contains or uses any IPRs owned by the Client or under its control, Zesty Marketing shall have the right to use or allow use of any such IPRs for the purpose of fulfilling Zesty Marketing's obligations under the Terms. Zesty Marketing shall not gain any rights over such IPRs by virtue of its use, but shall be entitled to use the IPRs both during and after the production and supply of the Input Material to promote and advertise its own work.
- GL5.5 The Client warrants that the Input Material does not contain inappropriate material such as material that infringes any applicable laws, regulations or third party rights, material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing or blasphemous and that the Client shall not use the Output Material nor any facilities provided by Zesty Marketing for the purpose of sending unsolicited bulk commercial email. The Client shall indemnify Zesty Marketing against all damages, losses and expenses arising as a result of any action or claim that the Input Material and/or the Output Material created consequently contains any such inappropriate material.

#### GL6. Liability

- GL6.1 Zesty Marketing shall have no liability to the Client for any loss, damages, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or format, or arising from their late arrival or non-arrival, or due to any fault of the Client or any delay in transit not caused by the fault of Zesty Marketing.
- GL6.2 Save as provided otherwise in the Terms, Zesty Marketing shall not be liable to the Client by reason of:
- GL6.2.1 any misrepresentation (unless fraudulent);
  - GL6.2.2 the breach of any implied warranty, condition or other term;



GL6.2.3 the breach of any duty at common law; or

GL6.2.4 the breach of these Terms;

for any loss of profit, reputation, opportunity, goodwill, business or anticipated savings or any indirect, special or consequential loss, damages, costs, expenses or other claims (whether caused by the negligence of Zesty Marketing its servants or agents or otherwise) which arise out of or in connection with the provision or late provision of the Goods or Services, or the failure to provide the Goods or Services or their use by the Client or any third party.

GL6.3 The entire liability of Zesty Marketing under or in connection with the Terms shall not exceed the amount of Zesty Marketing's charges for the Services, except as expressly provided to the contrary in the Terms.

GL6.4 Zesty Marketing shall not be liable to the Client by reason of any defamation or breach of the British Codes of Advertising and Sales Promotion arising from the use of the Input Material by Zesty Marketing in the Output Material or otherwise in the provision of the Services or creation of the Goods and the Client shall indemnify Zesty Marketing against any loss, damages, costs, expenses or other claims arising from any such defamation or breach.

GL6.5 Unless otherwise stated in the Order, Zesty Marketing does not warrant that the Output Material are suitable for use by all or any persons with disabilities and shall not be deemed to be in breach of its obligations to the Client or liable by reason of any such non-suitability. The Client acknowledges that it is under an obligation to expressly specify that Output Material should be suitable for use by persons with disabilities and to specify its requirements in full in writing in those respects, such requirements to be acknowledged and agreed by Zesty Marketing prior to work starting. The Client acknowledges that it is responsible for ensuring compliance under the Disability Discrimination Act 1995 and agrees to indemnify Zesty Marketing against any loss, damages, costs, expenses or other claims arising from any such breach.

GL6.6 Nothing in the Terms shall operate to exclude or limit Zesty Marketing's liability:

GL6.6.1 under Section 2 of the Consumer Protection Act 1987;

GL6.6.2 under Section 2 of the Supply of Goods and Services Act 1982;

GL6.6.3 for any matter in respect of which it would be illegal for Zesty Marketing to exclude or attempt to exclude its liability; and

GL6.6.4 for death or personal injury caused by Zesty Marketing's negligence or breach of these Terms.

GL6.6 All indemnities given by Zesty Marketing under these Terms or any Order are provided on the basis that:

GL6.6.1 the Client gives notice to Zesty Marketing of any infringement upon becoming aware of the same;

GL6.6.2 the Client gives Zesty Marketing the sole conduct of the defence to any claim or action in respect of any infringement and does not at any time admit liability or otherwise attempt to settle or compromise the claim or action except upon the express instructions of Zesty Marketing;

GL6.6.3 the Client acts in accordance with the reasonable instructions of Zesty Marketing including providing to Zesty Marketing such assistance as it shall reasonably require in respect of the



conduct of the defence of the claim including without prejudice to the generality of the foregoing filing of all pleadings and other court process and the provision of all relevant documents; and

## GL7. Confidentiality

- GL7.1 Except as otherwise provided in the Terms and subject to clause GL7.3, Zesty Marketing shall treat all Input Material as strictly confidential and shall not disclose the same to any third party, other than third party sub-contractors who shall be bound by an obligation of confidentiality and to whom it is necessary to provide the information in order for Zesty Marketing to fulfil its obligations to the Client.
- GL7.2 Except as otherwise provided in the Terms and subject to clause GL7.3, the Client shall treat all prices and terms quoted as strictly confidential and shall not display, use or disclose the same to any third party for any reason whatsoever.
- GL7.3 Clauses GL7.1 and GL7.2 shall not apply to any information:
- GL7.3.1 already known to the other party or in its possession before the disclosure and free from the obligation to keep it confidential;
  - GL7.3.2 that is or becomes public knowledge through no wrongful act or default of the relevant party;
  - GL7.3.3 received from a third party without similar obligations of confidence and without breach of the Terms;
  - GL7.3.4 independently developed;
  - GL7.3.5 disclosed to a third party without similar restrictions on that third party's rights of disclosure; or
  - GL7.3.6 approved for release by written authorisation.

## GL8. Termination

- GL8.1 Without prejudice to any other right or remedy available to it, either party may terminate the Contract at any time by providing the other with 30 day's written notice.
- GL8.2 In addition to clause GL4.4, Zesty Marketing may terminate the contract immediately, or suspend the Services, if the Client is in material breach of its obligations under these Terms and either that breach or those breaches are not capable of remedy or, if they are capable of remedy, the Client has failed to remedy that breach within 21 days of being notifying of the same.
- GL8.3 Zesty Marketing may terminate the contract immediately, or suspend the Services, if the Client is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the Client's administration, winding-up or dissolution (otherwise that for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the Client's assets or the Client enters into or proposes any composition or arrangement with its creditors or the Client ceases to trade.
- GL8.4 Should this contract be terminated for any reason, the Client will remain liable for any and all sums accrued and which are due prior to, on or after the effective date of termination. If the Client has cancelled its credit card mandate when Zesty Marketing attempt to make collection, Zesty Marketing will forward you an invoice for the outstanding sum, payable within 14 days.

## **GL9. General**

- GL9.1 Zesty Marketing shall not be liable to the Client or deemed to be in breach of its obligations to the Client by reason of any delay in performing, or failure to perform, any of its obligations to the Client in accordance with the Terms, if the delay or failure was due to any cause beyond Zesty Marketing's reasonable control, including without limitation:
- GL9.1.1 act of God, explosion, flood, tempest, fire or accident;
  - GL9.1.2 war or threat of war, national emergency, acts of terrorism, sabotage, insurrection or civil disturbance;
  - GL9.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, regional or local authority;
  - GL9.1.4 strikes, lock-out or other industrial actions or trade disputes (whether involving employees of Zesty Marketing or of a third party);
  - GL9.1.5 unavailability or shortages of goods, materials, fuel, part-machinery, or transportation;
  - GL9.1.6 power failure or breakdown in machinery; or
  - GL9.1.7 default of third party suppliers or subcontractors.
- GL9.2 No failure or delay by either party in exercising any of its rights under the Terms shall be deemed to be a waiver of that right and no waiver by either party of any breach of the Terms by the other shall be considered as a waiver of any other breach or default or any subsequent breach or default. If any provision of these Terms is or becomes invalid, illegal or void, that shall not affect the validity and legality of the other provisions.
- GL9.3 Zesty Marketing will process all personal data provided to it by the Client or otherwise received in consequence of providing the Services, in accordance with the General Data Protection Regulation ("GDPR") and any associated or subsequent legislation, codes of practice or statutory instruments. In particular Zesty Marketing will act only on the instruction of the Client and will take reasonable precautions to keep such personal data secure, to prevent unauthorised disclosure and to ensure that appropriate steps are taken against the accidental loss, destruction or damage, or any unlawful processing of the data. At all times the Client will remain the data controller (as defined in the GDPR) in respect of any personal data received by Zesty Marketing in consequence of providing the Services.
- GL9.4 The Client gives consent to the holding, processing and accessing of personal data provided to Zesty Marketing for the purposes relating to the performance of the Services including (but not limited to) transferring such personal data to a sub-contractor or an agent for the purposes of debt collection. Zesty Marketing shall give the Client 5 days notice before transferring personal data to any sub-contractor, to enable the Client to enter into a data processing agreement with the sub-contractor. For the purposes of the GDPR all data processed under these Terms shall be processed on the legal basis of the performance of a contract between Zesty Marketing and the Client.
- GL9.5 Nothing in the Terms shall confer on any third party any benefit whatsoever or the right to enforce any term of any contract to which the Terms relate and the Contract (Rights of Third Parties) Act 1999 shall not apply.
- GL9.6 The Terms shall in all respects be determined and governed by English law. The parties submit to the exclusive jurisdiction of the English courts.



- GL9.7 Without prejudice to any other right or remedy available to it, Zesty Marketing may terminate the Contract or, notwithstanding any previous agreement or arrangement to the contrary, suspend any further deliveries without liability to the Client and where the Goods have been delivered but not paid for the price shall become immediately due and payable if either the Client makes any voluntary arrangement with its creditors, (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order (whether out of court or otherwise), goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or an encumbrancer takes possession of or a receiver or administrator is appointed over any of the property or assets of the Client or the Client ceases to trade.
- GL9.8 The Client agrees to refrain from directly or indirectly recruiting any person employed or engaged by Zesty Marketing for the purpose of providing the Services (including any sub-contractor) for a period of six months following completion of the Services.

## PART WD – WEBSITE DESIGN

### WD1. Services and Performance

- WD1.1 Zesty Marketing will exercise reasonable skill and care in providing the Services in accordance with the Order, and will try to meet any stated performance dates in the Order or such other performance dates as may be advised in writing by the Client to Zesty Marketing. The Client acknowledges however that any performance dates shall be estimates only and time shall not be of the essence in Zesty Marketing providing the Services.
- WD1.2 The Client acknowledges that its signature of the Order constitutes its agreement to the specification of the Services contained in the Order. If the Client requests changes to the specification following signature of the Order, such additional services or modifications shall be dealt with in accordance with Zesty Marketing's normal hourly or daily rates as revised from time to time. Alternatively, Zesty Marketing may at its sole discretion, or on request from the Client, submit a quotation for the cost of the modifications or additional services requested and an indication of the additional time required and/or an indication of any anticipated delay to the Services.
- WD1.3 Zesty Marketing will provide any basic training and support as set out in the Order.
- WD1.4 The Client acknowledges that Zesty Marketing's ability to provide the Services is dependent upon the full and timely co-operation of the Client, which the Client agrees to provide, as well as the accuracy and completeness of the Input Material and any other information the Client provides to Zesty Marketing. Accordingly, the Client shall, in accordance with any timetable agreed between the parties:
- WD1.4.1 provide Zesty Marketing with the Input Material and access to, and use of, all information, data and documentation reasonably required by Zesty Marketing for the performance of the Services; and
  - WD1.4.2 be responsible for checking the proofs and carrying out acceptance tests within 14 days of receipt of Output Material, for the purpose of ensuring compliance of the Output Material with the Input Material and the specification set out in the Order.
- WD1.5 Where the Client is satisfied that the Output Material has been created in accordance with the specification set out in the Order and the final proofs of the Output Material are satisfactory, the Client shall promptly inform Zesty Marketing thereof in writing, but in any event within 14 days from receiving the Output Material.





WD1.6 If the Client fails to inform Zesty Marketing of any issues, errors or dissatisfaction within 14 days of receiving the Output Material, the Client will be deemed to have accepted the Output Material in its current form and Zesty Marketing will not be obliged to make any amendment to such Output Material.

WD1.7 Aside from carrying out such acceptance testing, the Client may make no use of the Output Material until it has accepted that the Output Materials is satisfactory and meets the specification set out in the Order in accordance with clause WD1.5, or the Client is deemed to have accepted the Output Material in accordance with clause WD1.6. Any use that the Client makes of the Output Material before that time will infringe Zesty Marketing's rights in the Output Materials, save where such use is made with Zesty Marketing's advance written permission.

WD1.8 The Client shall observe the procedures that Zesty Marketing may from time to time prescribe in regards to accessing and using the Output Material.

## WD2. Rights in Output Material

WD2.1 No part of any Output Material supplied to the Client may be copied, reproduced or modified in any form by any means without the prior written approval of Zesty Marketing. Subject to the Client's acceptance of the Output Material in accordance with clause WE1.5 or clause WE1.6, Zesty Marketing hereby grants the Client a licence to load, display, run, transmit, store or use the Output Material for the sole purpose specified in the Order and subject to the Terms.

WD2.2 The Client shall not:

WD2.2.1 copy the whole or any part of any software provided except that the Client shall be entitled to make such back-up copies of the software programs that are necessary for security reasons; and

WD2.2.2 decompile, reverse engineer, translate, adapt, arrange or alter the whole or any part of any software, save as permitted under the Copyright Designs and Patents Act 1988 (as amended).

WD2.3 The Client acknowledges that the Output Material is only for use in its entire form as specified in the Order. The Client shall not reproduce, modify, copy or redistribute any part of the Output Material in Order to produce a new product or project not specified in the Order.

WD2.4 The Client shall not decompile, remove, reverse engineer, adapt, arrange or alter audio within the Output Material. Any audio must never be used in isolation and is only to be used within the Output Material in its entire form as specified in the Order.

WD2.5 The Client shall not make use of, copy or disclose to any third party any scripts, underlying principles or ideas in any Services or related software provided, whether or not such script, principles or ideas were discovered through the Client's lawful use of the Services or software.

WD2.6 The Client acknowledges that any and all of the IPRs, created, developed, subsisting or used in or in connection with the development of the Output Material are and shall remain the sole property of Zesty Marketing unless agreed to the contrary by Zesty Marketing in writing.

WD2.7 In the event that new inventions, designs or processes evolve in the performance of or as a result of the provision of the Services, the Client acknowledges that the same shall be the property of Zesty Marketing unless otherwise agreed in writing.

WD2.8 Zesty Marketing will retain the right to use any such Output Material in its own marketing.



WD2.9 The Output Material may contain technical protection measures that will be used by Zesty Marketing to ensure that the Output Material is used solely for the purposes stated in the Order.

### WD3. Charges and Payment

WD3.1 Save where payment by identified milestones has been specified in the Order or agreed in writing, the Client shall pay 50% of the charges for the Services after the Order has been accepted and before work begins and the remaining balance of the charges upon the acceptance or deemed acceptance of the Output Material. Zesty Marketing reserves the right to invoice the Client for the charges in full.

WD3.2 The Client shall pay Zesty Marketing within 14 days of the date of 's invoice, save for manifest error on the part of Zesty Marketing or a genuine dispute in relation to the provision of the Services.

WD3.3 Where payment is not made in accordance with the Terms, Zesty Marketing shall be entitled to withhold or suspend the Services and, where appropriate, post a notice to that effect in place of the Services.

WD3.4 Repairs carried out by Zesty Marketing to remedy damage caused by the Client or third parties to the Output Material shall be charged at 's standard maintenance rates, as set out in the Order.

### WD4. Warranties

WD4.1 Zesty Marketing shall perform the Services with reasonable skill and care.

WD4.2 Save for any infringement arising from the Client's breach of its obligations under any part of clause GL5 above and subject to clause GL6, Zesty Marketing warrants that the Output Material and its use by the Client will not knowingly and intentionally infringe the IPRs of any third party and Zesty Marketing shall indemnify the Client against any loss, damages, cost, expenses or other claims arising from any such infringement.

WD4.3 Save in respect of Input Material or third-party software or materials that form part of the Output Material, Zesty Marketing warrants that it has the title to and property in the Output Material which is free and unencumbered and/or that it has the right, power and authority to licence the same in accordance with the Terms.

WD4.4 Zesty Marketing shall use best efforts to ensure that the Output Material is provided to the Client error and virus free. Should the Client experience any errors or viruses within 28 days from accepting the Output Material, Zesty Marketing shall promptly repair the Output Material on behalf of the Client at no additional charge.

### WD5. Liability

WD5.1 The liability of Zesty Marketing to the Client shall not exceed the charges paid or payable (excluding any set up fees) in accordance with the Terms for the provision of the Services in the 12 months preceding the event giving rise to the said liability.

WD5.2 Except in relation to Clause GL7, Zesty Marketing's liability to the Client shall cease 28 days after the completion or termination of the Services.

WD5.3 Zesty Marketing accepts no liability for loss or damage to information or data stored on the Client's system during an installation or otherwise. The parties agree that the Client is the best judge of the value of its data. Accordingly, the Client shall be responsible for ensuring that it has adequate back-up



copies of all information, data and files at all times and for maintaining adequate insurance cover in respect of any loss or damage to data.

WD5.4 The Client hereby indemnifies Zesty Marketing against any loss, damages, costs, expenses or other claims arising from any virus, infection or other damage caused to Zesty Marketing's server by any fault or error of the Client, its employees, agents and servants.

## PART SC – SPECULATIVE WORK & CONCEPT DESIGN

### SC1. Services

SC1.1 Zesty Marketing will use reasonable skill and care to create the Output Material.

SC1.2 In the case of speculative work, designs, tenders, ideas, or pitches being provided by Zesty Marketing:

SC1.2.1 the Client will be bound by Clause SC2; and

SC1.2.2 Zesty Marketing makes no warranties in relation to such speculative Output Material that has not been paid for, and accordingly clause SC3 does not apply to such Output Material.

### SC2. Rights in the Output Material

SC2.1 All IPRs in the Output Material shall belong to Zesty Marketing until full payment for the Services is received by Zesty Marketing, at which time Zesty Marketing grants to the Client an exclusive licence to use and publish the Output Material solely for the limited purposes specified in the Order, or as otherwise specified in the Order.

SC2.2 The Client will treat all Output Material and all other ideas, concepts and information provided by Zesty Marketing, whether provided in relation to the supply of the Services, speculatively or otherwise, as strictly confidential until full payment is received by Zesty Marketing and shall not display, make use of or disclose the same to any third party.

SC2.3 Zesty Marketing will retain the right to use any such Output Material in its own marketing.

SC2.4 Zesty Marketing retains all IPRs and other proprietary rights in all speculative Output Material.

### SC3. Warranties

SC3.1 Zesty Marketing warrants that:

SC3.1.1 all Output Material and its use by the Client and any ideas used in developing the Output Material are original and will not infringe the IPRs of any third party;

SC3.1.2 it has not granted, assigned or otherwise disposed of any rights of any nature in the Output Material to any third party; and

SC3.1.3 the Output Material does not contain anything that is libellous, defamatory or indecent and does not infringe the statutory or common law rights of any third party.



#### **SC4. Liability**

- SC4.1 The liability of Zesty Marketing to the Client shall not exceed the charges paid or payable in accordance with the Terms for the provision of the Services relating only to the design or concept material giving rise to the liability in question.
- SC4.2 Zesty Marketing will not be required to provide assistance to the Client with any proceedings which may be brought by the Client against any third party in relation to the IPRs in the Output Material. If, at Zesty Marketing's discretion, assistance is provided, the Client will indemnify Zesty Marketing in respect of any and all costs and expenses (including legal costs) incurred by Zesty Marketing.

### **PART M – MAINTENANCE**

#### **M1. Services and Performance**

- M1.1 Subject to the Client complying with its obligations under these Terms, Zesty Marketing shall provide the Services as detailed in the Order.
- M1.3 Zesty Marketing shall use reasonable endeavours to meet any timescales and performance dates stated in the Order, or such other performance dates as may be advised in writing by the Client to Zesty Marketing. However, any such dates shall be estimates only and shall depend upon Zesty Marketing's availability to provide the Services as further described in clause M1.4.
- M1.4 Upon payment of the charges further to clause M2, the Client shall be allocated a number of hours that can be used to access the Services. The Client is then required to contact Zesty Marketing to request its availability over a certain timescale. Upon receipt, the Client can select availability within the number of hours that it has been granted and then notify Zesty Marketing of that choice and what Services will be required.
- M1.5 Should the Client require Services on an urgent basis, Zesty Marketing will use best efforts to provide early availability but makes no guarantee to be able to do so.
- M1.6 If, after the Client has confirmed availability with Zesty Marketing, the Client requires a change to the scope or execution of the Services, the Client must notify Zesty Marketing as soon as possible. Zesty Marketing has no obligation to proceed with the proposed change until the parties have agreed in writing on the necessary variations to its charges, the Services, any other relevant terms and/or the Order. Zesty Marketing may charge for its time spent in assessing a request for change from the Client.
- M1.7 Zesty Marketing may, from time to time and without notice, change the specification of the Services in the Order to comply with any applicable safety, statutory or regulatory requirements, provided that such changes do not materially affect the nature, quality scope of, or the charges for the Services. Where practicable, Zesty Marketing will give the Client at least 1 months' notice of any change.

#### **M2. Charges and Payment**

- M2.1 Save where payment by identified milestones has been specified in the Order or agreed in writing, the Client shall;
- M2.1.1 pay Zesty Marketing for the Services by the hour, at the rate set out in the Order; or



- M2.1.2 pay Zesty Marketing a monthly 'retainer' at the rate set out in the Order, which will allocate the Client a specific number of hours to be used in the following month for the Services, but in any event an allocation of no less than 20 hours.
- M2.2 Prices and rates specified in the Order shall be subject to review every 6 months by Zesty Marketing with increases to be notified promptly to the Client.
- M2.3 Should the Client pay for Services further to clause M2.1.1, the Client shall pay Zesty Marketing within 14 (fourteen) days of the date of Zesty Marketing's invoice, save for manifest error on the part of Zesty Marketing or genuine dispute in relation to the provision of the Services.
- M2.4 Should the Client pay for Services further to clause M2.1.2, the Client shall pay Zesty Marketing's invoice by no later than the 7 days after invoice is sent, should the Client wish to access the Services in the following month.
- M2.5 Where payment is not made in accordance with the Terms (and without prejudice to Zesty Marketing's other rights and remedies), Zesty Marketing may suspend its performance of its obligations.
- M2.6 Zesty Marketing is not obliged to carry out any work except that which is specifically included in the Services, and Zesty Marketing reserves the right to charge the Client for any work carried out at the Client's request by Zesty Marketing which is (i) not included in the Services or (ii) which is necessary because of the Client's failure to comply with its obligations under the Terms, at Zesty Marketing's standard daily rate applicable to that work along with all reasonable expenses incurred in connection with the same by Zesty Marketing or a third party.
- M2.7 Should the Client fail to use all of its allocated hours in the calendar month to which they apply, they cannot be carried forward to any future date and the Client will be unable to receive any refund or credit note.

### **M3. The Client's Obligations**

- M3.1 At its own expense, the Client will:
- M3.1.1 appoint a dedicated point of contact with sufficient authority to instruct Zesty Marketing on behalf of the Client, with authority to bind contractually the Client and to liaise with Zesty Marketing at all times;
  - M3.1.2 fully co-operate with Zesty Marketing in all matters relating to the Services;
  - M3.1.3 give Zesty Marketing prompt and clear briefings to ensure that all the facts given about the Services and the Client's requirements are accurate; and
  - M3.1.4 promptly provide Zesty Marketing with any information that Zesty Marketing reasonably requests in providing the Services.

### **M4. Warranties**

- M4.1 Zesty Marketing shall perform the Services with reasonable skill and care.

### **M5. Liability**



M5.1 Subject to clauses GL6, the entire liability of Zesty Marketing under or in connection with the provision of the Services shall not exceed the total charges and fees paid or payable to Zesty Marketing by the client during the 12 months prior to the event giving rise to such liability.

## M6. Termination

M6.1 The Services shall be provided by Zesty Marketing until the Client's allocated number of hours have expired, or upon Zesty Marketing's last working day of the calendar month within which they were due to provide the Services (whichever is applicable), unless terminated in accordance with these Terms.

M6.2 Provided that it has first given the Client 28 days' notice of its intention to do so (and that the Client has failed in that time to arrange collection of the materials in question at a mutually convenient time), Zesty Marketing may destroy any item or property belonging to the Client that remains in the possession of Zesty Marketing 12 months or more after the termination or expiry of the Services.

## PART WH - WEBSITE HOSTING

### WH1. Services and Performance

WH1.1 Zesty Marketing will exercise reasonable skill and care in providing the Services in accordance with the Order.

WH1.2 Unless otherwise notified by Zesty Marketing, the Services will be provided to the Client using servers rented from hosting providers. Zesty Marketing will use best efforts to provide the Services 24 hours a day, seven days a week, but does not warrant that it will be uninterrupted or on a continuous basis.

WH1.3 The Client acknowledges that its signature of the Order constitutes its agreement to the specification of the Services contained in the Order. If the Client requests changes to the Services following signature of the Order, such additional services or modifications shall be dealt with in accordance with Zesty Marketing's normal hourly or daily rates as revised from time to time. Alternatively, Zesty Marketing may at its sole discretion, or on request from the Client, submit a quotation for the cost of the modifications or additional services requested and an indication of the additional time required and/or an indication of any anticipated delay to the Services.

WH1.4 Zesty Marketing reserves the right to carry out maintenance in relation to the Services and anticipates that the hosting providers will also undertake maintenance on the servers. This means that the Services may be suspended or taken out of service at any time. Zesty Marketing will try to give the Client at least three days' notice of any of its planned interruptions but reserves the right to make interruptions on short notice to remedy significant problems with the Services. Zesty Marketing will also use best efforts to provide the Client with advance notice of the hosting provider's planned interruptions but cannot guarantee or estimate any timescale for that notice.

WH1.5 The Client shall observe the procedures that Zesty Marketing may from time to time prescribe in regards to accessing and using the Services, and shall make no use any server, or other facilities provided by Zesty Marketing or its suppliers, which would be detrimental to other customers or users of internet or email services.

### WH2. Charges and Payment

WH2.1 Save where payment by identified milestones has been specified in the Order or otherwise agreed in writing, the Client shall pay the charges for the Services in full after the Order has been accepted and before work begins.



WH2.2 Zesty Marketing shall issue invoices in respect of any charges relating to the Services as set out in the Order. The Client shall then pay Zesty Marketing within 14 days of the date of Zesty Marketing's invoice, save for manifest error on the part of Zesty Marketing or genuine dispute in relation to the provision of the Services.

WH2.3 The charges relating to the Services, as set out in the Order, are to be subject to review every 6 months by Zesty Marketing each year with increases to be notified promptly to the Client.

WH2.4 Where payment is not made in accordance with the Terms (and without prejudice to Zesty Marketing's other rights and remedies), Zesty Marketing may suspend its performance of its obligations.

### WH3. Warranties

WH3.1 Zesty Marketing shall perform the Services with reasonable skill and care.

WH3.2 The Client understands and accepts that Zesty Marketing cannot make any warranties in respect of the servers rented for the Services, and that the server providers may indefinitely suspend or terminate any of their servers at any time (possibly, without giving any advance notice to Zesty Marketing). Should that circumstance arise, Zesty Marketing shall use best efforts to rent another server as soon as practicable, and to continue with the Services with minimum interruption.

### WH4. Liability

WH4.1 Subject to clauses GL6, the entire liability of Zesty Marketing under or in connection with the provision or the Services shall not exceed the total charges and fees paid or payable to Zesty Marketing by the client during the 12 months prior to the event giving rise to such liability.

## PART EM – EMAIL MARKETING

### EM1. Services and Performance

EM1.1 Zesty Marketing will exercise reasonable skill and care in providing the Services in accordance with the Order.

EM1.2 Zesty Marketing shall set up and prepare an email account for the Client to deliver such emails as they choose to their recipients. The Client understands and accepts that Zesty Marketing will not;

EM1.2.1 deliver any emails on the Client's behalf;

EM1.2.2 advise, seek to advise or offer any opinion to the Client on their email marketing strategy;

EM1.2.3 advise, seek to advise or offer any opinion on the recipients chosen to receive such emails, or the content of such emails;

EM1.2.4 manage that email account on the Client's behalf.

EM1.3 The Client acknowledges that its signature of the Order constitutes its agreement to the specification of the Services contained in the Order. If the Client requests changes to the Services following signature of the Order, such additional services or modifications shall be dealt with in accordance with Zesty Marketing's normal hourly or daily rates as revised from time to time. Alternatively, Zesty Marketing may at its sole discretion, or on request from the Client, submit a



quotation for the cost of the modifications or additional services requested and an indication of the additional time required and/or an indication of any anticipated delay to the Services.

EM1.4 The Client shall observe the procedures that Zesty Marketing may from time to time prescribe in regard to accessing and using the Services and shall not send any emails that contain inappropriate material such as material that infringes any applicable laws, regulations or third-party rights, or material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing or blasphemous. The Client shall indemnify Zesty Marketing against all damages, losses and expenses arising as a result of any action or claim that the emails created consequently contain any such inappropriate material.

## **EM2.Charges and Payment**

EM2.1 Save where payment by identified milestones has been specified in the Order or otherwise agreed in writing, the Client shall pay the charges for the Services in full after the Order has been accepted and before work begins.

EM2.2 Zesty Marketing shall issue invoices in respect of any charges relating to the Services as set out in the Order. The Client shall then pay Zesty Marketing within 14 days of the date of Zesty Marketing's invoice, save for manifest error on the part of Zesty Marketing or genuine dispute in relation to the provision of the Services.

EM2.3 The charges relating to the Services, as set out in the Order, are to be subject to review every 6 months by Zesty Marketing each year with increases to be notified promptly to the Client.

EM2.4 Where payment is not made in accordance with the Terms (and without prejudice to Zesty Marketing's other rights and remedies) Zesty Marketing may suspend its performance of its obligations.

## **EM3.Warranties**

EM3.1 Zesty Marketing shall perform the Services with reasonable skill and care.

EM3.2 The Client understands and accepts that Zesty Marketing cannot make any warranties in respect of the email software owned by a third party, and that such owners may indefinitely suspend or terminate any of their email accounts, or the email software as whole, at any time (possibly, without providing any advance notice). Should that circumstance arise, Zesty Marketing can create another email account for the Client as soon as practicable, but upon additional charges set at Zesty Marketing's normal hourly or daily rates as revised from time to time.

## **EM4.Liability**

EM4.1 Subject to clauses GL6, the entire liability of Zesty Marketing under or in connection with the provision of the Services shall not exceed the total charges and fees paid or payable to Zesty Marketing by the client during the 12 months prior to the event giving rise to such liability.

# **Part SO – SEARCH ENGINE OPTIMISATION & SOCIAL MEDIA**

## **SO1. Services**

SO1.1 Zesty Marketing will use reasonable care and skill in providing the Services with the objective of



improving the Clients online visibility as described in the Order.

- SO1.2 Although Zesty Marketing will provide the Services to the standard that may be expected from a competent online marketing services agency, the Client acknowledges that the nature of SEO is such that Zesty Marketing cannot guarantee any definitive levels of success or specific outcomes. In particular, the Client acknowledges that if it chooses to make changes to a website in respect of which Zesty Marketing are providing Services, this may affect the results achieved.
- SO1.3 Since it takes at least 3 months to see a return on SEO Services in terms of greater visibility and a more marketable status, the Client agrees to retain Zesty Marketing for a minimum 'Initial Period' of 3 months. During the Initial Period, the specification of the Services that Zesty Marketing are to deliver may not be reduced or downgraded.
- SO1.4 After the Initial Period, the Client may specify a further fixed term for the continued delivery of the Services, which will be agreed in writing with Zesty Marketing. If the Client does not, the contract between Zesty Marketing and the Client will continue on a rolling monthly basis. The Client may terminate at any time by giving 28 days' notice, where termination will take effect on the final day of the month in question. No refunds will be given.
- SO1.5 In delivering the Services, Zesty Marketing will be required to manage your online advertising activity through social media or other online platforms. Zesty Marketing will obtain the Client's written consent prior to going live with any campaign or commencing any contract on your behalf. Where Zesty Marketing are required to contract on the Clients behalf but in its own name, Zesty Marketing will endeavour to transfer that contract to the Client when the Services come to an end.
- SO1.6 Where the Services include copywriting or the creation of graphical content, Zesty Marketing warrant that the Output Material produced will be of its own authorship or that it is otherwise entitled to licence that Output Material to the Client under these Terms. When Zesty Marketing complete the Output Material in question, it will provide it to the Client so that the Client may check it and request any corrections. If the Client does not respond with any changes that it would like to make to the drafts within 7 days, it will be deemed to have accepted the Output Material in its current form. The Client may not make use of any such Output Material unless it has accepted it expressly or it has been deemed to have accepted it under this clause SO1.6.

## SO2. Charges and Payment

- SO2.1 The Client will be charged an initial set up cost, as outlined in the Order, before Zesty Marketing commence the delivery of the Services. For each month that the Client has access to the Services, including those months within the Initial Period, it will be charged a 'Monthly Fee' which is also outlined in the Order. Each Monthly Fee shall be invoiced monthly in advance and be payable on the terms of that invoice.
- SO2.2 Following the expiry of the Initial Period, Zesty Marketing may review the Monthly Fee at its discretion and will notify the Client in advance of any increases, which will take effect at the end of the calendar month following the month in which it gives the Client notification.
- SO2.3 If the Client wishes to increase the specification of the Services that Zesty Marketing are to supply an increased Monthly Fee may apply, which Zesty Marketing will confirm in writing before commencing the revised Services. Where the change in specification is to take effect during a period for which an invoice has already been raised, a pro rata charge will be invoiced immediately with payment due in accordance with these Terms.
- SO2.4 Zesty Marketing may ask the Client to provide funds to hold on account of expenses that Zesty



Marketing is to incur in managing the Clients online advertising activity. When this happens, Zesty Marketing will hold those funds on trust for the Client in a separate account and draw down on them as and when the expenses are incurred, issuing the Client with a receipted invoice documenting the transactions at such intervals as Zesty Marketing feel to be appropriate.

- SO2.5 Alternatively, if Zesty Marketing are not holding funds on account of any Client expenses, it may invoice for those expenses immediately before the expenses concerned are due.

### SO3. Warranties

- SO3.1 The Client warrants that all information that it supplies to Zesty Marketing (including keywords and social media account log-in details) are accurate and current in all respects. The Client also warrants that Zesty Marketing are entitled to make use of the keywords that the Client wishes to be used in the delivery of the Services and that Zesty Marketing's use of social media accounts on its behalf and any advertising materials that it is to manage on its behalf will not infringe the IPRs of any third party.
- SO3.2 The Client agrees to indemnify Zesty Marketing (including its officers and employees) against all damage, claims, expenses, loss and costs (including legal fees) that it suffers as a result of the Client's breach of the warranties given at clause SO3.1.
- SO3.3 Should Zesty Marketing so request, the Client will produce evidence to Zesty Marketing's reasonable satisfaction that it is entitled to make use of the keywords, social media accounts and advertising materials that Zesty Marketing is to use in delivering the Services and that these things will not infringe any third party IPRs or breach any laws or regulations in any applicable jurisdiction.
- SO3.4 Should Zesty Marketing reach the reasonable conclusion that any advertising materials, social media accounts or keywords the Client asks it to manage contains content that is illegal, unlawful or generally objectionable in any way, Zesty Marketing may suspend or terminate delivery of the Services immediately and without notice. Should Zesty Marketing suspend or terminate delivery in this way, the Client will not be entitled to any refund.
- SO3.5 Zesty Marketing do not warrant that the Output Material or its provision of the Services will comply with advertising codes of practice for any media for which that Output Material has been produced or with the Data Protection Act 1998, the General Data Protection Regulations or any associated regulations or codes of practice. In the event that the Client provide Input Material for Zesty Marketing to implement in the course of managing its online advertising activities, just because Zesty Marketing proceed to publish that material does not mean that it confirms that its use conforms with any such codes of practice or other regulations or laws. It is for the Client to seek independent advice on these compliance issues, should they arise.