

Everlook Marketing

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TERMS AND CONDITIONS

These terms and conditions shall govern the contract between (1) Everlook Marketing trading as Everlook Marketing and (2) the Client. Everlook Marketing may agree modifications to these terms but such modifications must be in writing signed by Everlook Marketing and cannot be inferred from a course of behaviour.

1. SCOPE OF CONTRACT

- (a) Everlook Marketing provides graphic design, brand consultancy, web and application development, marketing consultancy, design advice, hosting and other web services relating to the packaging and marketing advertising promotion of the Client's goods and/or services and the Client's brand and corporate identity and:-
 - (i) will on request pitch for such work (a "Pitch") and/or
 - (ii) will provide such advice in accordance with a brief agreed in Writing (for the avoidance of doubt this expression includes electronic communication) ("the Service")
- (b) Everlook Marketing will provide the Service to the Client using reasonable care and skill and, unless Everlook Marketing is prevented by circumstances beyond its reasonable control, in accordance with the agreed Brief.
- (c) In the event of an unsuccessful Pitch the Client will not use any designs documents concepts ideas or information provided as part of the Pitch ("Pitch Material") and will return all Pitch Material to Everlook Marketing.
- (d) If the Client shall have any complaint about the quality of the Service or goods provided then notice shall be given to Everlook Marketing within [7] days of

delivery. In the absence of such notification the Client shall be deemed to have accepted the supply.

- (e) A binding contract for the provision of the Service will be made when Everlook Marketing confirm in Writing the instructions received from the Client.
- (f) Everlook Marketing cannot guarantee that emails sent to it or its agents or representatives will be received and all critical communications should be sent or confirmed by personal delivery, post or fax.
- (g) Everlook Marketing will accept and act upon instructions communicated to it by means howsoever by the Client and/or its representatives, agents or authorised persons and is not obliged to seek verification of such instructions.

2. **CLIENT'S DUTY TO PROVIDE INFORMATION**

- (a) The Client shall be solely responsible for providing Everlook Marketing with all necessary information concerning its goods/services, the Service (including the scope of use required), the market and generally. Everlook Marketing shall not be responsible for any shortcomings in such information. The Client accepts that its knowledge and experience in its industry sector and the manufacture processing and packaging of its goods/services is vital in this regard.
- (b) Any advertising material supplied by or on behalf of the Client must comply with the Trades Description Act 1968 and 1972 and any other applicable laws and regulations.
- (c) The Client shall be responsible for providing all necessary permissions, licences and consents, which may be required for the provision of the Service unless Everlook Marketing has expressly agreed in writing to do so.
- (d) The Client warrants that it either owns or holds the necessary licence(s) in respect of materials supplied by it to Everlook Marketing in connection with

the provision of the Service and indemnify Everlook Marketing against all costs, claims, liabilities and losses if this is not the case.

3. **RETAINERS**

- (a) Everlook Marketing is prepared in certain circumstances to provide its Service on a retainer basis and will agree in writing the nature of the services covered by the retainer. The retainer fee and the frequency of payment (“Retainer Service”). Any service provided to the Client outside the Retainer Service will be charged for either at the agreed fees/agreed rates or otherwise at Everlook Marketing’s usual rate applicable for the individual(s) at the time.
- (b) Whilst Everlook Marketing is providing a Retainer Service it will use its reasonable endeavours to notify the Client before it provides any services which are not part of the Retainer Service.
- (c) Save as expressly agreed to the contrary any agreed Retainer Service will not include any third party costs or expenses/disbursements incurred by Everlook Marketing and these will be charged to the Client (plus a reasonable handling charge) either before they are incurred or as part of a subsequent Retainer Invoice.
- (d) Everlook Marketing will submit invoices in respect of its Retainer Service regularly (usually monthly) for the agreed Retainer Fee together with its charges for services/goods provided to the Client over and above the Retainer Service.
- (e) Unless otherwise agreed the Retainer Service/Fees shall be reviewed every 3 months.
- (f) Everlook Marketing will keep a record of the time spent on the Retainer Service during each month and if this shows that had the work carried out as part of the Retainer Service been charged for on a time spent basis then the fee

will be 10% or more greater than the Retainer Fee for that month and Everlook Marketing reserves the right to charge such additional fees to the Client but if the charge calculated on a time spent basis for a particular month is 10% or more below the amount of the Retainer Fee then Everlook Marketing shall make a refund to the Client or if it has not already charged the relevant Retainer Fee then it will reduce the fees for that month accordingly.

- (g) A Retainer Service can be terminated with not less than 60 days written notice at the end of any calendar month.

4. **PITCHES**

- (a) All pitches (other than those where purely the credentials of Everlook Marketing are shown) shall be charged for at the previously agreed fee.
- (b) All intellectual property rights in and title to any material created by Everlook Marketing and shown at a pitch remains with Everlook Marketing.
- (c) All ideas and concepts of Everlook Marketing which are disclosed to a Client as part of a pitch are confidential and shall remain the property of Everlook Marketing and unless the same shall come into the public domain other than by reason of a breach of a duty of confidentiality due to Everlook Marketing the Client shall not use any such ideas or concepts itself or disclose them to a third party without the written permission of Everlook Marketing.

5. **DELIVERY**

- (a) The delivery times of the Service stated by Everlook Marketing are reasonable estimates and Everlook Marketing shall not be responsible for any delay that is not directly attributable to the fault of Everlook Marketing, which for the avoidance of doubt means any circumstances beyond Everlook Marketing's reasonable control. Time shall not be of the essence unless expressly agreed in writing. Everlook Marketing will use its reasonable endeavours to meet client timescales.

- (b) The Client recognises that for Everlook Marketing to be able to perform the services in a timely fashion and to meet any agreed timetable the Client must also respond to enquiries and deal promptly with the signing off and approval of materials submitted to it. The Client acknowledges that if it fails to do this then Everlook Marketing cannot be expected to perform the Service within the agreed period of time.

6. **CONTRACT PRICES/TITLE**

- (a) The Contract Price includes studio costs and fees (plus additional charges for extras and modifications) and all reasonable expenses (including materials, travelling and accommodation expenses, courier fees and electronic costs) plus a handling charge of 17.65% and is exclusive of VAT and local tax
- (b) Any estimate of the whole or any part of the Contract Price is given based upon information available to Everlook Marketing at the time and shall remain valid for 1 month and is given in good faith and shall be treated as an estimate only and all errors and omissions shall be excepted.
- (c) The Client must contact Everlook Marketing concerning any queries with an invoice within 5 working days of the date of the invoice.
- (d) Payment of the Contract Price shall be made in pounds sterling within 30 days of the date of invoice and without any set off or counterclaim (save where such claim is based on fraud). Everlook Marketing shall be entitled to charge interest and claim compensation on overdue sums in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Interest will be calculated from the invoice date to the date of payment.
- (e) The Client may not withhold payment of any part of the Contract Price or any expenses or other monies due to Everlook Marketing, by reason of claims

or alleged claims against Everlook Marketing unless the amount to be withheld has been agreed in writing by Everlook Marketing as due to the Client or has been awarded in adjudication, arbitration or litigation in favour of the Client in relation to the same project and save as aforesaid all rights of set off are excluded.

- (f) Title to or license to use any property or intellectual property forming part of the Service shall pass to the Client when and only when the full Contract Price for the Service has been paid in accordance with clause 7.
- (g) Where the Contract is quoted in stages then each such stage shall be under these conditions and Everlook Marketing shall be entitled to be paid [50%] of the estimated Contract Price for each stage in advance.
- (h) For new business, Everlook Marketing may, at its discretion, invoice up to [50%] of the total estimated fees and/or costs in advance and will not commence work until this has been settled.
- (i) All approved third party costs will be invoiced prior to commissioning and Everlook Marketing reserves the right to wait until such costs have been paid before commencing work.
- (j) Everlook Marketing reserves the right to withhold final delivery of work until all of its fees and expenses have been paid in full.
- (k) Unless otherwise agreed in writing the Contract Price will make provision for up to two sets of reasonable minor corrections and further corrections shall be charged for as additional work.
- (l) The Client shall pay Everlook Marketing any expenses incurred by or in connection with recovery of monies owing by the Client to Everlook Marketing.

7. **INTELLECTUAL PROPERTY**

(a) Graphic Design

The copyright design right registered designs trade marks patents confidential information and ideas (“the Rights”) of Everlook Marketing and/or its subcontractors forming part of the Service belongs to Everlook Marketing and is hereby asserted. Everlook Marketing shall grant to the Client an irrevocable exclusive royalty-free non-assignable worldwide licence to use all the Rights in the final design (“Final Graphic Design”) chosen by the Client for implementation for the purposes of the contract for which it was supplied only.

(b) Web and Application Development

(i) As part of the Service and unless the Client notifies Everlook Marketing otherwise, Everlook Marketing shall host the work in accordance with provision 11 and on completion of the Service and subject to the payment of a monthly hosting management fee Everlook Marketing shall grant to the Client an irrevocable exclusive non-assignable worldwide licence to use the Rights in the visual appearance of the work including the page layout content photographs videos music text branding and corporate image chosen by the Client for implementation (“the Front End”) (which for the avoidance of doubt includes all software specifically developed by Everlook Marketing for the Client as specified in the proposal for the purposes of operating the website but not the Back End Code as defined below)

(ii) If the parties agree that the Client shall host the Service the Client shall take full responsibility for the operation and accessibility of the work. In addition to the licences granted in provision 7(b)(i) and on payment of the relevant fee Everlook Marketing will grant to the Client a non-exclusive world-wide irrevocable non-assignable royalty-free licence to use the Rights in all the coding and programming required for the

development and use of the work including any content management or booking systems for updating the work or similar programming tools which are not specifically included within the definition of the Front End (“the Back End Code”).

- (iii) Everlook Marketing shall permit the Client to use the Front End and the Back End Code prior to completion of the Service but only to enable the Client to review and sign off the work.
- (iv) The Client acknowledges and understands that it shall not have the right, by itself or through any third party:-
 - a) to access any source code, object code, middleware or any other proprietary program or software incorporated into the Back End Code ; or
 - b) to modify the Back End Code including the content management system without the prior written consent of Everlook Marketing.
- (v) If the Client wishes to use the Rights in the Front End, Back End Code or Final Graphic Design or elements of it for any purposes not connected with the Service Everlook Marketing shall negotiate a further license to accommodate this at market value.

c) **Reservation of Technical and Artistic Concepts**

Everlook Marketing will not infringe the Final Graphic Design but reserves exclusive right to use all other designs software concepts ideas or intellectual property developed during the course of the Service.

d) **Multi Designs**

If more than one design is chosen by the Client and this was not provided for in the agreed brief for that Service an additional fee may be payable by the Client.

e) **Sub-contractors Intellectual Property**

i) Everlook Marketing will use all reasonable endeavours to secure the relevant intellectual property rights of its sub-contractors.

ii) Clients are reminded that illustrators, photographers and copywriters usually retain ownership of the original illustration and may demand its return undamaged although this should not restrict the Client's use of any illustration within the negotiated usage rights.

f) **Originality**

Everlook Marketing warrants that its own design work is original and that it will not knowingly or negligently infringe the rights or intellectual property of a third party but (unless expressly agreed to the contrary) it is under no obligation to make any enquiry in this respect and it shall have no liability to the Client in respect of any infringement or alleged infringement of intellectual property or passing off.

g) **Further Assurance**

Everlook Marketing will on demand and at the cost of the Client execute such documents and do such things as are necessary to give effect to this clause.

8. **MORAL RIGHTS**

Everlook Marketing hereby reserves and asserts all moral rights.

9. **CANCELLATION OF CONTRACT**

a) The Client shall be entitled to cancel the Service at any time upon 30 days notice and thereupon shall immediately pay to Everlook Marketing all fees due up to cancellation and all disbursements which cannot be cancelled.

- b) Following cancellation and subject to the payment to Everlook Marketing of all sums due (but being not less than 50% of the Contract Price) the Client shall be entitled to select and will receive title and intellectual property rights in accordance with clause 7 in one of the designs that have been presented to the Client prior to the date of termination.
- c) All materials relating to any other designs presented by Everlook Marketing shall be returned forthwith. For the avoidance of doubt unless a minimum of 50% of the Contract Price has been paid to Everlook Marketing the Client shall receive no rights in respect of any design materials or intellectual property.
- d) Everlook Marketing shall be entitled to terminate the Contract if any part of the Contract Price (on any work being undertaken for the Client) is outstanding (but not formally disputed) 30 days after the due date or if the Client shall go into liquidation, receivership or equivalent (or if proceedings are issued in relation thereto) or if it shall enter into an agreement with its creditors.
- e) Everlook Marketing reserve the right to terminate the Contract if in its reasonable opinion the continuing involvement with the Client or the Project might be damaging on the goodwill and reputation of Everlook Marketing and in such circumstances the provisions of clause 7 shall apply.
- f) In respect of (d) and (e) above the Client shall pay to Everlook Marketing all fees due up to the date of termination.
- g) Each party shall comply with the obligations under the Data Protection Act 1998 relating to the use and storage of personal information.

10. **DUTY OF CONFIDENTIALITY**

Each party will use its best endeavours to preserve the confidential information of the other and will comply with the other's reasonable requirements in this regard. The Client recognises that Everlook Marketing's methods of working and pricing structures are proprietary and are not generally in the public domain.

11. **HOSTING**

- (a) Everlook Marketing do not allow any of the following on sites hosted by them:
- (i) Any material which is or might (in the reasonable opinion of Everlook Marketing) be illegal or, unlawful. It is the Client's responsibility to verify whether the content violates any law or other national and international controls including inter alia those relating to the collection storage and use of personal data.
 - (ii) Any content which infringes any patent, trade mark, trade secret, copyright or other proprietary right.
- (b) Everlook Marketing reserves the right (and will have no liability for any consequences thereof) to immediately suspend for any period of time (or after consultation with the Client to terminate the hosting) any site hosted by or on its behalf if in its opinion there is displayed on the site anything that is contrary to what Everlook Marketing considers to be good, lawful and ethical business practice on the World Wide Web. The opinion of Everlook Marketing with regard to such matters shall not be challenged provided that it is reached having regard to its own contractual obligations and also having applied the highest standards of acceptable behaviour in relation to the use of the Internet and where Everlook Marketing exercises its rights in this regard then it shall inform the Client as soon as is reasonably practical and provide an explanation for the action it has taken.
- (c) Everlook Marketing shall not be responsible for the actions of the internet service provider who hosts a Client's site withstanding that Everlook Marketing may have an ongoing responsibility to manage the relationship with that internet service provider with a view to maximising the accessibility of the site.

- (d) If Everlook Marketing refers the Client to a third party internet service supplier the Client acknowledges that they will have a contractual relationship with the third party and will be required to adhere to the third party terms and conditions. Everlook Marketing will not be responsible for any failings by the third party supplier.
- (e) The Client will own the rights to any data stored in the Client's database hosted by Everlook Marketing.

12. **WEBSITE DEVELOPMENT**

- (a) The Client acknowledges that any new inventions, designs or process which evolve in the provision of the Services in relation to website application or software development shall belong to Everlook Marketing unless otherwise agreed in writing.
- (b) The Client shall take exclusive responsibility to ensure that any agreed specification contains full details of, and adequately, reflects the Client's business and/or financial requirements in relation to any website commissioned by the Client.
- (c) the Client acknowledges that the website shall only be compatible or interoperable with the platforms, browsers and operating systems set out in the website specification set out by Everlook Marketing and will only operate to any performance benchmarks set out in the specification.
- (d) On completion of the website development by Everlook Marketing the Client shall carry out an acceptance test for the purposes of confirming that the website has been successfully completed in accordance with the specification. The Client shall report any errors to Everlook Marketing within 28 days of delivery including any additional information which may correct the error. If the Client fails to notify Everlook Marketing within this time period the website shall be deemed accepted by the Client.

- (e) Everlook Marketing will use reasonable endeavours to correct any errors and supply a corrected version of the website to the Client as soon as reasonably possible.

13. **CLIENT'S RESPONSIBILITY FOR IMPLEMENTATION**

- a) In the case of graphic designs full responsibility for implementation, display, electronic integration and compatibility, back up, production and manufacture of the Service shall remain with the Client.
- b) In the case of three dimensional designs:-
 - i) Subject to Clause 2 above, Everlook Marketing will advise on implementation based upon normal production methods and techniques.
 - ii) Proposals for implementation of the Service are based upon the information provided by the Client and no warranty or representation is given concerning performance of any packaging.
- c) Everlook Marketing is not responsible for the production of packaging, full responsibility for which remains with the Client.
- d) The Client shall indemnify the company in respect of any claim howsoever arising under consumer protection or other legislation other than due to a default of Everlook Marketing
- e) Failure to consult Everlook Marketing on implementation may result in unsatisfactory implementation.
- f) In the case of electronically displayed designs Clients are reminded that they may need to obtain relevant licenses for proprietary software, and once the final electronically displayed design has been shown the Client must then inform Everlook Marketing of all final required alterations within 7 days and upon completion of them the design will be deemed to have been accepted.

14. **LIMITATION OF LIABILITY**

- a) The liability of Everlook Marketing under the Contract or in tort (other than in respect of death or personal injury) shall not exceed the greater of the sums paid by the Client under the contract or such sum as shall be receivable by Everlook Marketing in respect of any claim under any insurance policy effected by Everlook Marketing from time to time. Everlook Marketing warrants that it maintains insurances and that the cover is better if these conditions apply.
- b) Everlook Marketing shall not be liable for any indirect or consequential loss (including loss of sales, profit, production, goodwill, reputation, or packaging or distribution costs)
- c) If the Service includes the provision of subcontractors then Everlook Marketing will advise on and procure the services of subcontractors who Everlook Marketing is satisfied are reasonably professionally competent. Everlook Marketing will not be responsible for any default of any third party or sub-contractor, manufacturer or supplier but will give all reasonable assistance to permit the Client to enforce its rights against them to include assigning all of its rights to the Client.
- d) Where an error is found in delivered work that is the responsibility of Everlook Marketing then the liability of Everlook Marketing shall be limited to correcting or replacing (as appropriate) the work.
- e) Everlook Marketing warrants that it maintains such insurances as are reasonable and normal in its industry.
- f) The Client accepts reasonable tolerances in relation to the Service including in respect of, inter alia, paper quality and colour.
- g) Everlook Marketing shall not be responsible for any errors apparent in artwork, copy or proofs that have been signed off by or on behalf of the

Client. The Client is reminded in these circumstances that they will be responsible for Everlook Marketing's additional costs in rectifying the error in any work signed off by the client.

- h) The Client is deemed to provide Everlook Marketing with the authority to determine the print finish, colour balance, paper stock, weight, type and colour in addition to all other print quality related matters unless such authority is withdrawn by the Client in writing to Everlook Marketing.

15. **PUBLICITY AND EXAMPLES**

Once the Service is in the public domain the Everlook Marketing shall have a right to reasonable publicity.

16. **RESTRICTIONS**

The Client agrees that whilst Everlook Marketing is providing Services to is and for a period of six months thereafter it shall not:-

- a) Approach any of the employees of Everlook Marketing regarding the possibility of them providing services directly to the Client independent of Everlook Marketing.
- b) Engage or employ or offer to engage or employ an employee or former employee (being a person who has been an employee of Everlook Marketing in the previous six months) for the provision of services that Everlook Marketing are capable of providing.
- c) Contract directly with any subcontractor of Everlook Marketing who have been associated with the provision of the Services to the Client.

17. **LEGAL**

- a) The Contract shall be subject to English Law and under the non-exclusive jurisdiction of the English Courts.

- b) Any of these provisions which may be unenforceable shall (to that extent) be severable
- c) Everlook Marketing is the trade name of Everlook Marketing a company whose office is at 12 North Road, Builth Wells, Powys, LD2 3BU.