

General Terms and Conditions

This Agreement applies to ALL services Open Imagination provides for the Customer.

1. Introduction and Contract Formation

- 1.1. Unless otherwise agreed in writing by Open Imagination, these Terms and Conditions (as revised or replaced under Condition 1.8) apply to all goods and services supplied by Open Imagination to the exclusion of any other terms and conditions. That exclusion applies to any terms and conditions proposed by the Customer or included in any purchase order issued by the Customer .
- 1.2. Open Imagination is a limited company incorporated in England and Wales (registration number 8482039) having its registered office at 26 Harley Road, Oxford, OX2 0HR, United Kingdom. Its VAT registration number is GB 161 1499 17.
- 1.3. Following a request from a prospective Customer to provide goods or services, Open Imagination will normally issue a quotation. That quotation is open to acceptance by the prospective Customer for 30 days after its date.
- 1.4. If the Customer accepts Open Imagination's quotation within that 30 day period, a contract between the Customer and Open Imagination will be formed for the supply of the goods and services listed in that quotation and, unless otherwise agreed in writing by Open Imagination, that contract will be subject to these Terms and Conditions.
- 1.5. If the Customer: asks Open Imagination to proceed to supply any of the goods and services listed in a quotation; gives Open Imagination delivery instructions for any goods or services; or issues any purchase order for any goods or services: the Customer will be deemed to have accepted Open Imagination's quotation.
- 1.6. If a prospective Customer does not accept Open Imagination's quotation within that 30 day period, but later purports to accept it, the purported acceptance will be an offer to treat. If a prospective Customer places an order with Open Imagination without Open Imagination first having issued a quotation, that order will be an offer to treat. In either of those circumstances a contract will only come into existence if and when Open Imagination accepts the Customer's offer. Open Imagination may decline the Customer's offer as Open Imagination sees fit.
- 1.7. Each offer made by the Customer and accepted by Open Imagination and each quotation issued by Open Imagination and accepted by the Customer will form a separate contract.
- 1.8. Open Imagination may revise these Terms and Conditions at any time by publishing new or revised Terms and Conditions on its website. If a quotation for any goods and services is accepted by the Customer after the new or revised Terms and Conditions have been published on Open Imagination's website, those new or revised Terms and Conditions will apply to the supply of those goods and services.
- 1.9. If the contract for the supply of any Service is renewed or extended beyond the Initial Term, Open Imagination's Terms and Conditions in force at the time of renewal or extension will apply to the supply of that Service after the end of the Initial Term.
- 1.10. If there is any conflict or inconsistency between these Terms and Conditions and any Open Imagination quotation, the quotation will prevail; if there is any inconsistency between these Terms and Conditions and any other content on Open Imagination's website, these Terms and Conditions will prevail.

2. Definitions and Interpretation

- 2.1. In these Terms and Conditions the following expressions have the meanings set opposite:

Acceptance	takes place when the Website Software or the Equipment (as the case may be) passes the acceptance tests or is deemed to do so under Website Design and Development Services: Condition 2;
the Charges	the changes for the provision of Service set out in a quotation (or in the absence of a Quotation, as set out on Open Imagination's website from time to time), as revised from time to time in accordance with General Terms and Conditions: Condition 3.5;

Content	any and all information, data, graphics, pictures, photographs, images (moving and still), documents, text, literary or artistic work, software, designs, music, broadcasts (sound and visual), and any other material that is, from time to time, provided by the Customer to Open Imagination, published on the Website, inputted by the Customer or any User into any system that Open Imagination hosts for the Customer, or sent to or from any such system;
the Customer	the person that accepts the Quotation, and where that person is an individual acting on behalf of a company or organisation, the Customer is that company or organisation;
a Defect	a failure to comply with the Requirements Strategy and ‘defective’ is to be construed accordingly.
Intellectual Property Rights	any patent, trademark, service mark, registered design, copyright, design right, right to extract or exploit information from a database, database rights, know-how, confidential information or process, any application for any of the above and any other intellectual property right recognised in any part of the world, whether or not now existing or applied for, and all accrued rights of action in respect of any such right;
a Naming Authority	ICANN or any equivalent body; any registry responsible for any type of domain name; and any registry gateway provider responsible for any type of domain names;
the Price	the fixed price (if any) to be paid for any goods or services as stated in the Quotation or (if there is no Quotation) as stated on Open Imagination’s website from time to time;
the Quotation	the quotation issued by Open Imagination to the Customer;
the Rates	Open Imagination’s standard rates of charge in force from time to time plus VAT;
a Software Product	any software product that Open Imagination supplies to the Customer, excluding any Website Software;
the Requirements Strategy	if a requirements strategy has been agreed between the Customer and Open Imagination, that requirements strategy as amended by the written agreement of the Customer and Open Imagination from time to time, and otherwise Open Imagination’s description of the relevant goods and services on Open Imagination’s website from time to time;
a User	any individual employed or engaged by the Customer, any individual allowed by the Customer to use any Software Product or to post any Content on the Website, and anyone who has access to any Software Product or the Website Software by using any of the Customer’s passwords or IDs;
the Website Software	software that Open Imagination incorporates for the Customer;
Website Support	any client request required to fix or change the Website Software that is outside of any other agreed Website Design and Development Service.
Hosting Support	any client support required to enable investigate and endeavour to fix any problem with the hosting service that is not Website Support.
Working Hours	means 9 am to 5.30 pm on Mondays to Fridays, excluding English bank holidays and the period between Christmas and New Year.

2.2. Any reference in these Terms and Conditions to a statute or regulation is to be construed as a reference to that statute or regulation as amended or re-enacted from time to time.

- 2.3. The Interpretation Act 1978 applies to these Terms and Conditions as if they were an enactment.
- 2.4. A reference to a Condition or a Section is to a condition or section of these Terms and Conditions.
- 2.5. The headings in these Terms and Conditions are for ease of reference only; they do not affect their interpretation or construction.

3. Charges

- 3.1. The Customer will pay the Price and the Recurrent Charges in the Stages or, if no Stages apply, within 30 days after the date of Open Imagination's invoice.
- 3.2. If Open Imagination is prevented or delayed from performing any of its obligations, or if it repeats any work or does any additional work because of any act or omission on the part of the Customer or on the part of any third party then, despite anything else in these Terms and Conditions or any Quotation:
 - 3.2.1. if, as a result, the completion of any Stage is delayed, the Customer will immediately pay Open Imagination the payment due to be paid on the completion of that Stage even though completion of that Stage has not taken place;
 - 3.2.2. the Customer will pay Open Imagination a reasonable sum in respect of all additional time spent and materials and computer time used by its employees and consultants resulting from the Customer's or any third party's act or omission including, without limitation, the provision of any incorrect or inadequate information or data; and
 - 3.2.3. the Customer will pay Open Imagination all other reasonable costs, charges and losses sustained or incurred by Open Imagination as a result of that act or omission and for which Open Imagination is not fully compensated under Condition 13.2.1 or Condition 13.2.2.
- 3.3. Open Imagination may increase the Rates and the Recurrent Charges at any time by giving the Customer not less than 30 days' written notice. Open Imagination may increase the Charges to take account of any increased expense incurred by Open Imagination in acquiring goods or services necessary to perform its obligations to the Customer.
- 3.4. Except to the extent that any goods or services are to be provided for the Price or the Recurrent Charges, the Customer will pay Open Imagination for all of the time it spends in providing the Services at the Rates. Open Imagination may invoice the Customer monthly for any charges and expenses except the Recurrent Charges and the Price or any Charges due at a Stage. All invoices are payable within 30 days after the date of invoice.
- 3.5. The Price, the Charges, the Rates and all other charges payable by the Customer are exclusive of value added tax, sales tax or similar taxes which the Customer will pay at the rate and in the manner from time to time prescribed by law.
- 3.6. If any amount payable by the Customer is not paid on or before the due date then, without prejudice to Open Imagination's other rights and remedies, Open Imagination may do either or both of the following: suspend the performance of Open Imagination's obligations; charge interest on the amount outstanding (as well as after and before any judgment), from the date or last date for payment of that amount to the actual date of payment (both dates inclusive), and charge the Customer the costs of recovery in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Customer will pay that interest and those costs to Open Imagination on demand.
- 3.7. The Customer will reimburse Open Imagination for all travel, subsistence or other expenses incurred by its employees and contractors in connection with the provision of the goods and services to the Customer at the rates in the Quotation or (in the absence of a Quotation) at its standard rates at the time.
- 3.8. Open Imagination is not obliged to carry out any work except as specifically set out in the Quotation, but if it does so, the Customer will pay Open Imagination for that work at the Rates, and these Terms and Conditions will apply to that work.
- 3.9. Open Imagination may make a reasonable charge for considering any amendment or alteration to the Services proposed by the Customer and for preparing any quotation or estimate and, if the Customer's request for any alteration is later withdrawn but contributes to a delay in the performance of Open Imagination's obligations, Open Imagination will not be liable for that delay and will be

entitled to a reasonable extension of time at least equal to the period of the delay, but also taking into account Open Imagination's other commitments.

4.10. Open Imagination is not responsible for any third party charges which the Customer incurs.

5. Termination

5.1. Despite anything else contained in these Terms and Conditions or any Quotation, the Customer may terminate the Agreement for breach if Open Imagination:

5.1.1. materially fails to provide the Services as agreed and do not remedy that failure within ten (10) days of the Customer's written notice describing the failure;

5.1.2. materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within thirty (30) days of the Customer's written notice describing the failure.

5.2. Despite anything else contained in these Terms and Conditions or any Quotation, Open Imagination may, at its option, suspend the performance of its obligations or terminate any or all Contracts immediately on giving notice in writing to the Customer if:

5.2.1. Open Imagination discover that the information you provided for the purpose of establishing the Services is materially inaccurate or incomplete;

5.2.2. the individual signing the Agreement did not have the legal right or authority to enter into the Agreement on behalf of the person represented to be the customer;

5.2.3. the Customer's payment of any invoiced amount is overdue and the Customer does not pay the overdue amount within four (4) Business Days of our written notice;

5.2.4. the Customer have made payment arrangements via credit card or other third party, and the third party refuses to honour our charges;

5.2.5. the Customer fail to comply with any other obligation stated in the Agreement and do not remedy the failure within thirty (30) days of the written notice to the Customer describing the failure;

5.3. Either of party may terminate the Agreement with immediate effect on written notice if the other (or we reasonably believe that the other) (i) is unable to pay its debts; or (ii) enters into compulsory or voluntary liquidation; or (iii) compounds with or contravenes a meeting of its creditors; or (iv) has a receiver or manager or an administrator appointed (or an application is made to the court for the same); or (v) ceases for any reason to carry on business or takes or suffers any similar action which means that it may be unable to pay its debts - ("Insolvency Event").

5.4. Notwithstanding anything to the contrary within the Agreement, the fees for the Services shall become due immediately upon the occurrence of an Insolvency Event.

5.5. No refund of any charges, fees or expenses paid in advance will be made on the termination or expiry of any Contract.

6. Liability

6.1. Nothing in this agreement or any quotation shall exclude or restrict either party's liability in respect of death or personal injury arising from its negligence.

6.2. Despite anything else contained in this Agreement, Open Imagination will not be liable to the Customer for loss of profits, loss of savings, loss of use, loss of business, loss of opportunity, loss or spoiling data, loss of contracts, loss or damage to reputation or goodwill, or for any indirect or consequential loss, whether arising from negligence, or breach of contract, or in any other way, even if Open Imagination were advised of, or knew, of the likelihood of that loss or type of loss arising.

6.3. Open Imagination will not be liable to the Customer to the extent that any loss or damage is caused by the Customer's act or omission or that of any of the Customer's suppliers, contractors, customers or employees.

6.4. Open Imagination are not responsible for any third party charges, which the Customer may incur, or for any software or hardware used by the Customer or a Customer's supplier.

- 6.5. Open Imagination's total liability in connection with each Contract, whether in contract, or tort (including negligence) or arising in any other way, will not exceed the Price and Charges paid by the Customer under that Contract or, if greater, £50,000.
- 6.6. Because of the uncertainty of future events and circumstances Open Imagination does not guarantee that its forecasts, projections, advice, recommendations or the contents of any report, presentation or other document will be achievable; Open Imagination gives the same to address specific circumstances at the time. All information which Open Imagination supplies is supplied in good faith, but Open Imagination does not warrant or guarantee the accuracy or completeness of any information obtained from, or based on information obtained from, the Customer or any third party. It is not within the scope of Open Imagination obligations to enquire as to, or to verify, the accuracy or completeness of that information.
- 6.7. The provisions of this Liability conditions will survive the termination or expiry of any Contract and will continue in force indefinitely.

7. Delays

- 7.1. Despite anything else contained in these Terms and Conditions or any Quotation, Open Imagination will not be liable for any delay in performing or failure to perform its obligations caused by circumstances beyond its control (including, without limitation, any act or omission on the part of the Customer or on the part of any third party, and any defect, error, fault or deficiency in any software not provided by Open Imagination or in any equipment), and Open Imagination will be granted a reasonable extension of time for the performance of its obligations, the reasonableness of that extension to be assessed not only in the context of the project in hand but also in the context of its other commitments.
- 7.2. Open Imagination will endeavour to comply with any timetable or dates which Open Imagination have given to the Customer's for the performance of the Services, but these are estimates only, and Open Imagination will not be liable for any delay or failure to supply or perform in accordance with that timetable or those dates.
- 7.3. Both Open Imagination and the Customer will use reasonable endeavours to carry out their respective obligations so as to allow the other a reasonable period within which to perform its obligations. If either Open Imagination or the Customer becomes aware of the possibility of any delay or slippage, it will notify the other as soon as practicable. If either Open Imagination or the Customer causes any delay, the other will be allowed a reasonable extension of time for the performance of its tasks, the reasonableness of that extension to be assessed not only in the context of the project in hand but also in the context of other commitments.

8. Confidentiality

- 8.1. Open Imagination and the Customer each agrees:
 - 8.1.1. to keep the other's Confidential Information confidential and, except as permitted elsewhere in these Terms and Conditions, not to disclose that information to any other person, or use it for any purpose except the exercise of its rights, or the performance of its obligations, under these Terms and Conditions;
 - 8.1.2. to disclose the other's Confidential Information only on a need-to-know basis to its employees, officers, professional advisers, contractors and suppliers who have given an undertaking similar to this Confidentiality section; and
 - 8.1.3. immediately on receipt of a written request from the other party, or on the termination or expiry of any Contract (however it happens), destroy or, at the other's request, deliver to the other, all copies of the other's Confidential Information, and certify to the other that this has been done.
- 8.2. Nothing within this Confidentiality section:
 - 8.2.1. will prevent either party from disclosing or retaining any of the other's Confidential Information in order to comply with the law or any regulation, or the order of any court or authority of competent jurisdiction, provided that where the Customer is a public authority and receives a Request for Information complies with Condition 7.3; or

- 8.2.2. applies to any of the other's information that is or comes into the public domain through no breach of this Confidentiality section, or that is trivial or obvious, or that by its nature cannot be confidential.
- 8.3. Each party will immediately notify the other if it becomes aware of any breach of confidence in relation to that other's Confidential Information, and it will give the other any assistance reasonably required in connection with any action or proceedings that the other may institute against any third party for breach of confidence.

9. Force Majeure

- 9.1. Neither of Open Imagination or the Customer will be in breach of the Agreement if the failure to perform the obligation is due to an event beyond our control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organised labour action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.

10. Entire Agreement

- 10.1. The relevant Sections of these Terms and Conditions and any Quotation supersede all earlier agreements, arrangements and understandings between the Customer and Open Imagination in relation to the subject matter of the Contract and constitute the entire agreement between Open Imagination and the Customer relating to that subject matter. No addition to or modification of any provision of these Terms and Conditions or any Quotation will be binding on Open Imagination or the Customer unless recorded in writing and signed by a duly authorised representative of each of Open Imagination and the Customer.

11. Partnership and Staff

- 11.1. Nothing in these Terms and Conditions or any Quotation creates, evidences or implies any partnership or joint venture between Open Imagination and the Customer or the relationship between them of principal and agent.
- 11.2. Open Imagination has the discretion to allocate such staff as Open Imagination from time to time sees fit to the provision of the Services.
- 11.3. The Customer will not, either during the period when Open Imagination is providing any Services to the Customer, or for 6 months afterwards, without first obtaining Open Imagination's written consent:
 - 11.3.1. solicit or endeavour to entice away from, or discourage from being employed or engaged by, Open Imagination anyone who is or has been involved in the provision of those Services; or
 - 11.3.2. employ, engage or endeavour to employ or engage anyone who is employed or engaged by Open Imagination and is or has been involved in providing those Services.

12. Third Party Rights

- 12.1. No third party is entitled to the benefit of these Terms and Conditions or any Contract under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

13. Assignment

- 13.1. The Customer may not assign, or transfer, or sub-contract or sub-license any of its rights or obligations under any Contract, whether in whole or in part, without first obtaining Open Imagination's written consent.