

Terms and Conditions of Business (Marketing Manager 360)

1. Definitions

Company	means YODEL CREATIVE LIMITED (Company Registration No. 08048615) whose registered office is at Office 1 Acorn Business Centre Acorn Court Butts Street Leigh Lancashire WN7 3DD
Client	the person who buys or agrees to buy the Services from the Company.
Agreement	the Marketing Manager 360 Agreement made between the Company (1) and the Client (2)
Charges	the price payable by the Client to the Company for the provision of the Services, excluding VAT and any ancillary costs.
Company Materials	has the meaning set out in clause 8.1.6.
Conditions	the terms and conditions of sale as set out in this document and any special terms and conditions agreed in writing by the Company.
Force Majeure Event	has the meaning set out in clause 13.
Hosted Services	services including but not limited to hosted mailboxes, hosted back up, hosted servers, hosted desktop products and website and domain hosting supplied by the Company to the Client as set out in the Specification
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Protected Works	work produced by the Company in or arising out of or in connection with the Services and protected by Intellectual Property Rights including (but not limited to) written content, designs, artwork, images and code.
Services	the services supplied by the Company to the Client as set out in the Specification.
Specification	the Services as defined in the Agreement.
Website Files	files including but not limited to HTML, CSS, Image, JavaScript and Flash files relating to the Client's website

2. Conditions

- 2.1 These Conditions shall form the basis of the contract between the Company and the Client in relation to the sale of Services to the exclusion of the Client's standard conditions of purchase or any other conditions which the Client may purport to apply under any purchase order or confirmation of order or any other document.
- 2.2 All orders for Services shall be deemed to be an offer by the Client to purchase Services from the Company pursuant to these Conditions.

- 2.3 Commencement of the Services shall be deemed to be conclusive evidence of the Client's acceptance of these Conditions.
- 2.4 These Conditions may not be varied except by the written agreement of the Company.
- 2.5 These Conditions represent the whole of the agreement between the Company and the Client. They supersede any other conditions previously issued.
- 2.6 Any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 Any quotation given by the Company shall not constitute an offer and is only valid for a period of 21 days from its date of issue.

3. **Charges**

The Charges shall be the price quoted in the Agreement.

4. **Payment and Interest**

- 4.1 The Client shall pay the amounts specified on the dates set out in and in accordance with the terms contained within the Agreement.
- 4.2 Interest on overdue invoices shall accrue from the date when payment becomes due calculated on a daily basis until the date of payment at the rate of statutory interest. Such interest shall accrue after as well as before any judgment.
- 4.3 The Client shall pay all accounts in full and not exercise any rights of set-off or counter-claim against invoices submitted by the Company.
- 4.4 The Company shall be entitled to charge the Client for any expenses reasonably incurred in connection with the supply of the Services, including but not limited to travelling expenses, accommodation costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Company for the performance of the Services and for the cost of any materials.
- 4.5 The Company reserves the right to increase its rates from time to time.
- 4.6 If the Client fails to make any payment for web hosting services supplied by the Company, the Company reserves the right to remove the Client's website from its servers and withhold the Client's access to its website and/or email services.
- 4.7 The Company reserves the right to charge the Client a fee in the sum of £90 plus VAT for reactivation of the website and/or email services where payment is received from the Client following withdrawal of its services pursuant to clause 4.6.
- 4.8 The Company reserves the right to charge the Client a fee in the sum of £15 plus VAT for the administration of the collection of Charges by Direct Debit where an earlier attempt to collect the Charges by Direct Debit has failed.

5. **Domain Names**

- 5.1 The Company will register domain names on the Client's behalf on a per domain name basis and the Client is

granted exclusive use of this domain as long as all applicable fees are paid and the balance of any accounts are kept up to date.

- 5.2 The domain names registered by the Company for use by the Client should not be used for any illegal or immoral purpose.
- 5.3 The Company reserves the right not to register or assign a domain name on the Client's behalf for any reason.
- 5.4 If the Client fails to make any payment to the Company for the registration of a domain name the domain name will become the property of the Company. If after a valid termination of this Contract the Client wishes to transfer the domain name to another provider then the Company will facilitate this, providing that all payments due by the Client have been made. A transfer fee of £25 plus VAT will be payable by the Client.

6. **Warranties**

- 6.1 The Company warrants that the Services shall:
 - 6.1.1 conform with their description in the Specification;
 - 6.1.2 be fit for any purpose held out by the Company; and
 - 6.1.3 be carried out in accordance with the Supply of Goods and Services Act 1982.

7. **Supply of Services**

- 7.1 The Company shall provide the Services to the Client using reasonable skill and care.
- 7.2 The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Client in any such event.
- 7.4 The Company may from time to time use open-source software in supplying the Services. This is provided without warranty. It is likely that from time to time the software used by the Company will require updating and the Company will notify the Client of this when appropriate.
- 7.5 The Company may at any time assign transfer subcontract or deal in any other manner with all or any of its rights under this Contract and may subcontract or delegate in any manner any or all of its obligations under this Contract to any third party or agent.
- 7.6 The Company is not required to retain, back up or otherwise store data, artwork, images, files, documentation or other information relating to the Client or the Services following termination of the Contract for any reason or otherwise in circumstances where the Company has ceased to deliver the Services to the Client.
- 7.7 The Company reserves the right to archive from its network any data, artwork, images, files, documentation or other information relating to the Client or the Services and which has been stored for two or more years by the Company.
- 7.8 Where data, artwork, images, files, documentation or other information has been removed from the Company's network pursuant to clause 7.6 or 7.7, the Client may make a request to the Company for the recovery of any files. The Company reserves the right to charge an administration fee of £30 plus VAT to the Client for the management of such request.

7.9 Hosted Services, are supplied on an 'as available' basis. The Company will not be liable for any direct or indirect damage, costs, losses, claims or expenses, including (but not limited to) the loss of profits, data or goodwill arising from any inability to use or access Hosted Services and the Client's use of Hosted Services is entirely at the Client's risk. The Company gives no warranty as to the uninterrupted, secure or timely availability or supply of Hosted Services.

8. **Client's Obligations**

8.1 The Client shall:

- 8.1.1 ensure that the terms of the Specification are complete and accurate;
- 8.1.2 co-operate with the Company in all matters relating to the Services;
- 8.1.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Client's premises as reasonably required by the Company to provide the Services;
- 8.1.4 provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- 8.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 8.1.6 keep and maintain all materials, equipment, documents and other property of the Company (Company Materials) at the Client's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation;
- 8.1.7 guarantee that all elements of text, images or other artwork provided to the Company are owned by it or that it has the requisite permission to use such text, images or artwork; and
- 8.1.8 ensure that artwork is carefully checked before printing and provide authorisation to the Company to print artwork. Once the Company has sent artwork to print the Client will be liable for all printing costs. If there is subsequently found to be an error in artwork then the Client will be responsible for payment of all printing costs including costs of the initial and any replacement print batches and any additional design costs.

8.2 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (Client Default):

- 8.2.1 the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Company's performance of any of its obligations;
- 8.2.2 the Company shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 8; and
- 8.2.3 The Client shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Client Default.

9. **Intellectual Property Rights**

- 9.1 All Intellectual Property Rights and moral rights in respect thereof in or arising out of or in connection with the Services shall be owned by and vested in the Company. The Company does not grant any sale or assignment of Intellectual Property Rights to the Client other than where expressly agreed and documented.
- 9.2 The Company grants to the Client exclusive license to use Protected Works solely for their intended purpose and not to copy, recreate, or otherwise reproduce the whole or any part of any Protected Works, nor to pass on to others any Protected Works to be copied, recreated or otherwise reproduced. The Company reserves all rights in connection with Protected Works.
- 9.3 The Client acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Client's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Client.
- 9.4 All Company Materials are the exclusive property of the Company.
- 9.5 The Company accepts no responsibility for trademarking or registration of the Client's company or brand names or other Intellectual Property Rights and it is the Client's responsibility to ensure that such rights are appropriately protected. The Company gives no warranty as to the validity, enforceability or otherwise of any company or brand names proposed as part of the Services. The Company can provide trademark services but this is only upon request of the Client and is subject to additional charges.

10. **Limitation of Liability**

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 10.1 Nothing in these Conditions shall limit or exclude the Company's liability for:
- 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 10.1.2 fraud or fraudulent misrepresentation;
 - 10.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - 10.1.4 defective products under the Consumer Protection Act 1987.
- 10.2 Subject to clause 10.1:
- 10.2.1 The Company shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 10.2.2 the Company's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Specification.
- 10.3 This clause 10 shall survive termination of the Contract.

11. **Termination**

- 11.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than six months' written notice.

- 11.2 Without limiting its other rights or remedies, the Company may terminate the Contract or suspend the supply of Services with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.
- 11.3 On termination of the Contract for any reason:
- 11.3.1 the Client shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Client immediately on receipt;
 - 11.3.2 The Client shall return all of the Company Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Company may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - 11.3.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 11.3.4 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. **Transfer of Website Files and Hosting**

- 12.1 Subject to clause 11.1, the Client may request that Website Files created owned and hosted by the Company are transferred to either the Client or a third party (the "Transferee") by giving written notice to the Company.
- 12.2 Where the Client makes such a request, the Company will within ten working days of expiry of the Client's written notice transfer sufficient Website Files to the Transferee to enable the Transferee to host manage and update the Client's website, provided that no unpaid invoices remain outstanding by the Client and subject to the following:
- 12.2.1 **Rights to Intellectual Property**
 - 12.2.1.1 Following the transfer of Website Files, the Company will retain rights of intellectual property over the code the Company has created.
 - 12.2.1.2 The Company grants license to the Transferee to host maintain and update the Company's code as the Transferee sees fit.
 - 12.2.1.3 The permission of the Company must be sought by the Transferee and the Client before the Company's code is transferred or sold to any business or persons other than the Transferee.
 - 12.2.2 **Disclaimer of Warranty**

The Company's code is licensed to the Transferee without warranty or representation, whether express or implied.
 - 12.2.3 **Third Party Property**
 - 12.2.3.1 Certain elements or functions of the Client's website may be owned by third parties and not the Company including but not limited to calendar software, contact form software, social media plug-ins, blog plug-ins and stock photography, graphics, video or sound.

12.2.3.2 Any third party software and/or images currently being used on the Client's website may need to be re-purchased or re-licensed to the Transferee. It is the responsibility of the Transferee and the Client to ensure compliance with the relevant licensing terms.

12.2.3.3 The Company will not be liable following the transfer of Website Files, whether directly or indirectly, for the use, licensing or breach of any third party software licenses in connection with the Client's website and the Client fully indemnifies the Company in respect of any costs, losses, claims, damages or expenses arising out of any such use, licensing or breach.

12.2.4 **Limitation of Liability**

12.2.4.1 Following the transfer of Website Files, the Company shall not be liable, whether directly or indirectly, for any costs, loss or damage, including direct or consequential losses, financial losses, loss of profits or loss of use, arising from the hosting and use of the Website Files by the Transferee.

12.2.4.2 The Client fully indemnifies the Company in respect of any such losses.

12.2.5 **Indemnity**

Following the transfer of Website Files, the Client agrees to fully indemnify the Company in respect of any losses, damages or costs, including reasonable legal fees, incurred by the Company or arising as a result of the Transferee's hosting and usage of the Website Files.

13. **Force Majeure**

13.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake, epidemic or similar events, or default of suppliers or subcontractors.

13.2 The Company shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

13.3 If the Force Majeure Event prevents the Company from providing any of the Services for more than six weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

14. **Confidentiality**

14.1 The Company hereby agrees that during the duration of this Contract it is likely to obtain knowledge of trade secrets and other confidential information with regard to the business and financial affairs of the Client and those of the Client's clients, customers and suppliers details of which are not in the public domain ('Confidential Information'), and accordingly the Company hereby undertakes to and covenants with the Client that:

14.1.1 it shall not use the Confidential Information other than during the continuance of this Contract and in connection with the provision of the Services; and

14.1.2 it shall not at any time (save as required by law) disclose or divulge to any person other than to officers or employees of the Client whose province it is to know the same any Confidential Information and it shall use reasonable endeavours to prevent the publication or disclosure of any Confidential Information by any other person.

14.2 The restrictions set out in Clause 14.1 shall cease to apply to information or knowledge which comes into the public domain otherwise than by reason of the default of the Company.

15. **General**

15.1 **Notices**

15.1.1 Any communication or notice to be given pursuant to the terms of this Contract shall be in writing and shall be delivered by hand, electronic mail or sent by post to the address of the addressee as set out in this Contract or such other address (being in Great Britain) as the addressee may from time to time have notified for the purpose of this Clause.

15.1.2 Where any communication or notice is served by electronic mail from the Client to the Company pursuant to Clause 15.1.1, such notice shall be deemed validly served three working days following the date of transmission of such electronic mail and where it is delivered to the following addresses:

the Company: paul.newton@thinkcre8.co.uk; and victoria.gregson@thinkcre8.co.uk

15.1.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.2 **Waiver**

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.3 **No partnership or agency**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

15.4 **Third parties**

A person who is not a party to the Contract shall not have any rights to enforce its terms.

15.5 **Entire agreement**

This Contract and the Agreement together contain the entire agreement and understanding of the parties relating to the subject matter of this Contract and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral. Where there is a conflict between the terms of this Contract and the Agreement, the terms contained in the Agreement shall prevail.

15.6 **Variation**

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Company.

15.7 **Governing law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

15.8 **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

January 2019