



ATTRACT & ENGAGE
Smarter commercial content

Retained Services - Terms and Conditions

Introduction

These are the Terms and Conditions that will apply to any quotation or estimate that you accept for retained services, and your confirmation or order shall be regarded as an acceptance in full of all of the Terms and Conditions set out herein without amendment.

Application and Internal Agreement

1. These Terms and Conditions apply to the provision of the services detailed in our quotation (**Services**) by (**We** or **us**) to the person buying the Services (**you**)
2. You are deemed to accept the Terms and Conditions when you accept our quotation or from the date of any performance of the Services (whichever happens earlier) and these Terms and Conditions and our quotation (**the Contract**) are the entire agreement between us.
3. You acknowledge that you have not relied on any statement, promise or representation given by or on our behalf. These Conditions apply to the Contract to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

Definitions & Interpretation “

4. **“the Company”**. **“We”** or **“us”** means Sutherland Communications trading as Attract & Engage
5. **“the Client”** **“You”** means the person buying the Services
6. **“the Services”** These are the detailed Services and/or goods to be provided in and set out in an estimate or quotation.
7. a **“Business Day”** means any day other than a Saturday, Sunday, Statutory or Bank Holiday.

8. The headings in the Terms and Conditions are for convenience only and do not affect their interpretation.
9. Words imparting the singular number shall include the plural and visa versa

Services

10. We warrant that we will use reasonable care and skill in our performance of the Services which will comply with the quotation including any specification in all material respects.
11. We shall be entitled to make any changes to the Services which are necessary to comply with any applicable law, and we will notify you of this if this is necessary.
12. We will use our reasonable endeavours to complete the performance of the Services within any time agreed to as set out in the quotation; however, such time shall not be of the essence in the performance of our obligations.
13. All of these Terms and Conditions apply to the supply of any goods as well as Services unless we specify otherwise.

Your Obligations

14. You must obtain any permissions, consents, licences or otherwise that we need and you must give us together with access to any and all relevant information, materials, properties and any other matters which we need to provide the Services.
15. If you do not comply with Clause 14 we can terminate the Services.
16. We are not liable for any delay or failure to provide services if this is caused by your failure to comply with the provisions of this section (**Your obligations**)

The Fees

- 17.** The Fees for the retained Services are set out in the quotation.
- 18.** In addition to the Fees, we can recover from you: -
- a. Reasonable incidental expenses including, but not limited to travelling expenses, hotel costs, subsistence and any associated expenses.
 - b. The cost of services provided by third parties as required by us in our absolute discretion for the performance of the Services included but not limited to research and marketing analysis expenses and
 - c. You must pay us for any additional services provided by us that are not specified in the quotation which, if not agreed between us, shall be at our then current applicable rates in effect at the time of the performance. Any final determination of the amount that we can charge shall be at our sole discretion. The provisions of clause 14 also apply to additional services.

Cancellation and amendment

- 19.** We can withdraw, cancel or amend a quotation if it has not been accepted by you, or if the Services have not been started within a period of 30 days from the date of the quotation (unless the quotation has been withdrawn).
- 20.** Either party can cancel an order for any reason prior to your acceptance (or rejection) of the quotation.
- 21.** If you want to amend any details of the retained Service you must tell us in writing as soon as possible. We will use reasonable endeavours to make any required changes and shall raise additional costs to be included in the Fees and invoice to you.

22. Should you seek to amend details of the Services it shall be in our absolute discretion as to whether we consider such amendments to be viable or acceptable. If you fail to make contact with us for a period of 30 days or if you instruct another marketing consultant we shall be entitled unilaterally to cancel the contract, and cease provision of the Services forthwith.
23. If, due to circumstances beyond our control, including those set out in the clause below (**Circumstances beyond a party's control**), we have to make any change in the Services or how they are provided, we will notify you immediately. We will use our reasonable endeavours to keep any such changes to as minimum.

Payment

24. We will invoice you for payment of the fees either:
- a. on the 1st of the month for the month's commencing work; or
 - b. on the 1st of a quarter for the quarter's commencing work
25. You must pay the Fees due within 15 days of the date of our invoice otherwise in accordance with any credit terms agreed by us in writing.
26. Time for payment shall be of the essence of the Contract.
27. We will apply the Late Payments of Commercial Debts (Interest) Act 1998, the Late Payment of Commercial Debts Regulations 2002 and the Late Payment of Commercial Debts Regulations 2013. This means that if you do not pay us on time we may charge you extra
28. All payments due under these Terms and Conditions must be made in full without any deduction or withholding except as required by law and neither of us can assert any credit set off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.

- 29.** Failure to make any payment on the due date in accordance with these Terms and Conditions will entitle us to suspend any further provision of the Services and cancel any future Services which have been ordered by or otherwise arranged with you.
- 30.** Receipts for payment will only be issued by your request.
- 31.** Any alterations in payment terms will only be valid if it is agreed in writing between us.

Sub-Contracting and assignment

- 32.** We can at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights under these Terms and Conditions and can sub-contract or delegate in any manner all or any of our obligations to a third party.
- 33.** You must not, without our prior written consent, assign, transfer, charge sub-contract or deal in any other manner with all or any of your rights or obligations.

Termination

- 34(a)** This agreement can be terminated at any time by either party giving 3 months' written notice to the other. It will otherwise be a rolling agreement while the Company requires the services of the Consultant.
- 34(b)** We can terminate the provision of the Services immediately if you:
- a. commit a material breach of your obligations under these Terms and Conditions; or
 - b. fail to make payment of any amount due under the Contract on the due date for payment; or
 - c. you are or become or, in our reasonable opinion are about to become the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtors; or
 - d. enter into a voluntary arrangement under part 12 of the Insolvency Act 1986, or other scheme or any other scheme or arrangement is made with your creditors; or

- e. convene any meeting of your creditors, enter into voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver appointed in respect of your assets or undertakings or any part of them, any documents are filed with the court for appointment of an administrator in respect of you notice of intention to appoint an administrator is given by you or any of your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B12 of the Insolvency Act 1986) a resolution is passed or petition presented to any court for your winding up or for the granting of an administration order in respect of you, or any proceedings are commenced relating to your insolvency or possible insolvency.

Intellectual property

35. All Services provided by us shall be for your exclusive use other than our promotional use. Upon payment of all monies that become due under the Contract the following reproduction rights for all approved final designs created by us for you under this Contract shall be granted:
- a. to enable you to gain all transferable rights to brand identity
 - b. and to gain full license for you to reproduce works through commercial printers.
36. You shall be entitled to full rights to brand identity and for you to gain full license for you to reproduce works through commercial printers. You shall be entitled to full ownership of final artwork created during the project upon full payment of all monies due under the Contract. If a choice of concept is presented only one solution is regarded as having been given and all other concept remain our property unless expressly agreed to the contrary in writing.
37. Subject to clauses 35 and 36 we reserve all copyright and any other intellectual property rights which may subsist in any goods supplied in connection with the provision of the Services. We reserve the right to take any appropriate action to restrain or prevent the infringement of such intellectual property rights

Liability and indemnity

38. Once we have handed over our designs and goods and have received payment we will cease to have any obligation to retain any details of the Services or information provided to you.
39. Our liability under these Terms and Conditions and in breach of statutory duty, and in tort or misrepresentation or otherwise shall be limited as set out in this clause.
40. The total amount of our liability is limited to the total Fees payable by you under the Contract at the date of claim.
41. We are not liable (whether caused by our employees, agents or otherwise) in connection with our provision of the Services or the performance of any of our other obligations under these Terms and Conditions or the quotation for:
- a. any indirect special or consequential loss, damage, costs or expenses or;

- b. any loss of profits loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or other third party claims; or
 - c. any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; or
 - d. any losses caused directly or indirectly by any failure or breach in relation to our obligations in relation to which and without prejudice to the generality of this Sub-Clause arises from a failure by you to check all materials submitted to you by us for approval resulting in any errors in the final form of the product; or
 - e. any losses arising directly or indirectly from the choice of Services and how they will meet your requirements or your use of the Services or any goods supplied in connection with the Services.
- 42.** You must indemnify us against all damages, costs, claims and expenses suffered by us arising from materials supplied to us approved by you or supplied to us for publication for which another party has intellectual property rights and/or for which information when published proves defamatory or any loss or damage to any equipment (including that belonging to third parties) caused by you or your agents or employees.
- 43.** Nothing in these Terms and Conditions shall limit or exclude our liability for death or personal injury caused by our negligence, or for any fraudulent misrepresentation, or for any matters for which it would be unlawful to exclude or limit liability.

Circumstances beyond the party's control

- 44.** Neither of us is liable for any failure or delay in performing our obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, government action or any other event that is beyond the control of the party in question. If the delay continues for a period of 30 days either of us may terminate or cancel the Services to be carried out under these Terms and Conditions.

Communications

- 44.** All notices under these Terms and Conditions must be in writing and signed by, or on behalf of, the party giving notice (or duly authorised officer of that party).
- 45.** Notices shall be deemed to have been given:
- a. when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
 - b. when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated
 - c. on the fifth business day following mailing, if mailed by national ordinary mail; or
 - d. on the tenth business day following the mailing, if mailed by airmail.

- 46.** All notices under these Terms and Conditions must be addressed to the most recent address, email address notified to the other party.

No waiver

- 47.** No delay or act or omission by a party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy nor stop further exercise of any other right, or remedy.

Severance

- 48.** If one or more of these Terms and Conditions is found to be unlawful; invalid or otherwise unenforceable, that those provisions will be deemed severed from the remainder of these Terms and Conditions (which will remain valid and enforceable).

Law and Jurisdiction

- 49.** These Terms and Conditions are governed by and interpreted according to English Law. All disputes arising under these Terms and Conditions are subject to the exclusive jurisdiction of the courts of England and Wales.