

## ICT~OFFICE TERMS AND CONDITIONS

### Module 5 Development and maintenance of a website

#### 1. Applicability

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier is commissioned to design, develop, manage and/or maintain a website.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

#### 2. Specifications of the website

- 2.1 If the Client has not already provided the Supplier with specifications or a – rough or otherwise – design or prototype of the website to be developed before or on entering into the agreement, the parties shall draw up written specifications in consultation with regard to the website to be developed. The parties both acknowledge that effective coordination and good mutual communication are essential factors in the proper specification, design and development of a website. Collaboration and mutual communication will take place wherever possible subject to due observance of any project plan, arrangements and/or procedures agreed between the parties.
- 2.2 The specifications of the website to be developed may relate to the style and number of the webpages to be developed by the Supplier (including a 'homepage' and next pages) and the text files, forms, logos, photo and video images, graphics files, codes and/or other material to be included or incorporated in the website. The specifications or design must also provide a clear indication of the functional, aesthetic and technical properties that the website must have, such as the use of frames and e-mail facilities. The specifications may also include the communication objectives and the language or languages of the website.
- 2.3 The parties shall reach timely agreements with regard to the information and material to be developed by the Supplier for the purpose of inclusion or incorporation in the website, and the information and material to be provided to the Supplier by the Client or a third party to be engaged by the Client. If no agreements are made in this regard, the Client shall provide the materials required for the purpose of inclusion or incorporation in the website.
- 2.4 The Client shall at all times guarantee the correctness, completeness and consistency of any information, specifications and designs submitted to the Supplier, even if such information, specifications and designs have been provided by a third party. Any errors, omissions or inconsistencies shall be at the risk and expense of the Client.
- 2.5 The Supplier is entitled, however not obliged, to check the correctness, completeness and consistency of the information, specifications or designs submitted to it and on identifying any errors or omissions to suspend the agreed work until such time as the Client has fixed the errors or omissions in question. The Client undertakes

to notify the Supplier in all cases as soon and in as much detail as possible of any errors or omissions in the specifications or the design for the website to be developed of which it becomes aware or of which it should reasonably be aware.

- 2.6 If the content and/or style of the website is entirely or partly dependent upon decisions to be reached at a later date during the execution of the agreement, the Supplier shall make these decisions, taking into account any of the Client's ideas and criteria of which it is aware wherever possible.

#### 3. Development of the website

- 3.1 The Supplier shall develop the website with due care, subject to due observance of the website specifications or design and – where appropriate – with due observance of the project plan, methods, techniques, arrangements and/or procedures agreed in writing with the Client. Before commencing the development work, the Supplier may require the Client to issue a written declaration of its full and unconditional agreement to the specifications or design. The Supplier shall be entitled to suspend its activities until such time as the Client has issued a written declaration of its full and unconditional agreement to the specifications or design.
- 3.2 The Client shall provide the materials required for the purpose of inclusion or incorporation in the website in a timely manner, with due observance of the deadlines referred to in the agreement and in a format to be determined by the Supplier.
- 3.3 The Supplier shall be entitled to create a draft version or prototype of the website to be developed on the basis of the specifications it receives. The Supplier may suspend further development work on the website until such time as the Client has approved the draft version or prototype in writing.
- 3.4 The Supplier shall carry out the development work on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 3.5 If the Supplier requires one or more translations for the purpose of including or incorporating one or more text files in the website, the Client shall arrange for the translation work to be carried out at its own expense, except where agreed otherwise in writing. If the Supplier arranges for the translation work to be carried out, it shall submit an invoice, or arrange for an invoice to be submitted, to the Client for the associated costs.
- 3.6 If it has been agreed that the design and development services will take place in stages, the Supplier shall be entitled to delay the start of the services associated with a stage until such time as the Client has approved the results of the previous stage in writing.
- 3.7 Within the bounds of reasonableness to be determined by the Supplier, the Supplier shall comply with reasonable and timely instructions issued by the Client during the realisation of the design and development work, provided that the Supplier deems such instructions to be technically and otherwise sound.

3.8 Except where agreed otherwise in writing, the Supplier shall not be obliged to apply to the appropriate authorities for a domain name for the website.

#### **4. Delivery and installation**

4.1 Unless the agreement stipulates that the Supplier shall host the website on its own computer system on behalf of the Client, the Supplier shall deliver the website to the Client on a data medium and in a format of its own choice.

4.2 The Supplier shall only install the website on the premises of the Client or those of a third party (host-provider) designated by the Client if this has been agreed in writing between the parties.

#### **5. Acceptance test and acceptance**

5.1 If the parties have not agreed that an acceptance test will be carried out, the Client shall accept the website in the condition that it is in at the time of delivery ('as is'), therefore with all visible and invisible errors and defects, without prejudice to the Supplier's obligations pursuant to the guarantee scheme in Article 10 of this module.

5.2 If the parties have agreed to an acceptance test in writing, the provisions of Articles 5.3 to 5.10 inclusive of this module shall apply.

5.3 Where this module refers to 'errors', this shall be understood to mean the substantial failure to meet the specifications explicitly agreed in writing between the parties. An error shall only be deemed to exist if the Client is able to demonstrate the error and if it can be reproduced. The Client is obliged to notify the Supplier immediately of any errors.

5.4 If an acceptance test has been agreed to, the test period shall be fourteen days following delivery or, if it has been agreed in writing that the Supplier will carry out the installation, following completion of the installation. The Client is not entitled to use the website for productive or operational purposes during the test period. The Supplier may at any time demand that the Client carry out a proper test, using appropriately qualified personnel, with an adequate scope and in sufficient depth, on the (interim) results of the development work and that it provide the Supplier with a written, clear and understandable report on the test results.

5.5 If an acceptance test has been agreed to, the Client shall be obliged to assess under its full and exclusive responsibility whether the website delivered conforms to the specifications agreed between the parties in writing. Except where agreed otherwise in writing, any assistance provided by or on behalf of the Supplier during the performance of an acceptance test shall be entirely at the risk and expense of the Client.

5.6 The website shall be deemed to have been accepted between the parties:

- a. if the parties have not agreed that the Client will carry out an acceptance test: on delivery or, if it has been agreed in writing that the Supplier will carry out the installation, on completion of the installation, or
- b. if the parties have agreed that the Client will carry out an acceptance test: on the first day following the test period, or

c. if the Supplier receives a test report as referred to in Article 5.7 before the end of the test period: at such time as the errors described in the test report have been fixed, notwithstanding the presence of defects that do not preclude acceptance according to Article 5.8.

Contrary to the above, if the Client uses the website for productive or operational purposes before the time of

explicit acceptance, the website shall be deemed to have been accepted in full from the time at which such use commenced.

5.7 If on carrying out the agreed acceptance test it emerges that the website contains errors, the Client shall notify the Supplier of the errors no later than on the last day of the test period by means of a written and detailed test report. The Supplier shall make every effort to fix the errors identified within a reasonable period of time.

5.8 Acceptance of the website may not be withheld on grounds that do not relate to the specifications explicitly agreed between the parties, nor due to the existence of minor defects, these being defects that cannot reasonably be deemed to prevent the operational or productive use of the website, without prejudice to the Supplier's obligation to fix these minor defects within the context of the guarantee scheme in Article 10, if and in so far as applicable. Acceptance may also not be withheld on the basis of aspects of the website that can only be assessed subjectively, such as style, aesthetic aspects and aspects relating to the design.

5.9 If the website is delivered and tested in stages and/or parts, the non-acceptance of a specific stage and/or part shall not affect the acceptance of a previous stage and/or other part, where appropriate.

5.10 Acceptance of the website by one of the methods referred to in this Article shall mean that the Supplier is discharged in respect of compliance with its obligations in relation to the design and development of the website and, if it has been agreed that the Supplier will also carry out the installation, with its obligations in relation to the installation of the website. Acceptance of the website shall not affect the Client's rights pursuant to Article 5.8 in relation to minor faults and Article 10 in relation to the guarantee scheme.

#### **6. Right of use**

6.1 The Supplier shall make the website developed on behalf of the Client and the corresponding user documentation available to the Client for use.

6.2 Without prejudice to the provisions of the General module of the general terms and conditions, the Supplier shall only grant the Client a non-exclusive, non-transferable and non-sublicensable right of use of the website.

6.3 The user documentation shall be provided in paper or digital format. The Supplier shall decide on the format and language in which the user documentation is provided.

#### **7. Maintenance and management**

7.1 Except where agreed otherwise in writing, the Supplier shall not be obliged to provide the auxiliary software required for the use, maintenance and management of the website and/or a so-called 'content management system'.

7.2 If, contrary to Article 7.1, the parties agree that the Supplier shall also be required to provide auxiliary software required for the use, maintenance and management of the website and/or a 'content management system', the Supplier may require the Client to enter into a separate written agreement for this purpose.

7.3 Except where otherwise agreed in writing, the Supplier's performance obligations shall not include the maintenance and/or management of the website or the provision of support to website administrators responsible for technical aspects or content.

7.4 If, contrary to Article 7.3, the parties agree that the Supplier shall also be required to provide maintenance and management services, the Supplier may require the Client to enter into a separate written agreement for this purpose. The content and scope of these services shall also be agreed, however if no agreements are reached in this regard, the Supplier's obligation shall be limited to ensuring that it makes every effort to fix errors in the reproduction of the website and in the technical operation of the website within a reasonable period of time.

## **8. Term of provision of the website and maintenance services**

8.1 The website developed on behalf of the Client shall be made available to the Client for the term agreed between the parties. If no term has been agreed between the parties, the term of the right of use shall not be subject to a time limit and the Supplier shall not be entitled to terminate the agreement by giving notice, provided that the Client strictly complies with all of its obligations vis-à-vis the Supplier arising from the agreement.

8.2 Where appropriate, the Client shall return all copies of the website that it has in its possession to the Supplier immediately following expiry of the right of use of the website. If the parties have agreed that the Client will destroy the relevant copies on expiry of the right of use, the Client shall notify the Supplier immediately in writing that this has been carried out.

8.3 Where applicable, the agreement for the provision of maintenance and/or management services shall be entered into for the term agreed between the parties. If no term has been agreed, a term of one year shall apply. The term of the agreement shall be extended automatically by the term of the original period each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of three months prior to the end of the period in question.

## **9. Payment**

9.1 If an invoicing schedule has not been explicitly agreed, all amounts relating to the design and development of the website shall in each case be payable in arrears each calendar month. The Supplier may also demand that an advance payment be made.

9.2 Except where agreed otherwise in writing or stated by the Supplier, the price for the design and development work shall also include the fee in respect of the right of use of the website.

9.3 Except where otherwise agreed in writing, the fee for the design and development of the website shall not include a fee for the auxiliary software required by the Client, 'content management system', installation services and maintenance and management of the website. The right of use fee also does not include the provision of support to website administrators responsible for technical aspects and content. Such work and services shall be invoiced separately at the Supplier's standard rates as appropriate.

## **10. Guarantee**

10.1 The Supplier shall not guarantee that the website will function effectively in conjunction with all types or new versions of web and internet browser or any other software. The Supplier also does not guarantee that the

website will function effectively in conjunction with all types of hardware.

10.2 The Supplier does not guarantee that the website will be suitable for the use or purpose envisaged by the Client. The Supplier also does not guarantee that the website will operate with no interruptions, errors or other defects or that all errors and other defects will always be fixed. The Client accepts that errors and defects in the operation of a website can be caused by the actions of one or more third parties.

10.3 The Supplier shall make every effort to fix errors in the reproduction of the content of the website or shortcomings in the technical operation of the website that are attributable to the Supplier within a reasonable period of time provided that the Supplier receives detailed, written notification of these errors within a period of three months following delivery or, if the parties have agreed to an acceptance test, within three months of acceptance. Errors shall be fixed free of charge, unless the website was developed on behalf of the Client other than at a fixed price, in which case the Supplier shall invoice the costs associated with fixing the errors at its standard rates. The Supplier shall be entitled to invoice the costs of fixing errors at its standard rates in the event of operational errors or improper use by the Client, or other causes that are not attributable to the Supplier, or if the errors or defects could have been discovered during the implementation of the agreed acceptance test. The Supplier shall not be obliged to fix errors if the Client has made changes to the website, or has arranged for this to be carried out, without the written consent of the Supplier. Such consent shall not be withheld on unreasonable grounds.

10.4 The fixing of errors or defects shall take place at a location to be determined by the Supplier. The Supplier shall be entitled to install temporary solutions, bypasses or problem-avoiding restrictions in the website at any time.

10.5 Under no circumstances shall the Supplier be obliged to recover scrambled or lost data.

10.6 The Supplier shall not be obliged to fix errors or defects that are reported following expiry of the guarantee period referred to in Article 10.3 of this module, unless the parties have entered into a separate maintenance agreement that incorporates an obligation to this effect.

## **11. Liability**

11.1 Without prejudice to the provisions of the General module, the provisions of this Article in respect of liability shall also apply. Any liability on the part of the Supplier for the unavailability – temporary or otherwise – of the website designed, developed, maintained or managed by the Supplier shall be excluded. Any liability on the part of the Supplier for failure of the content of the website to appear, or to appear accurately or in full, as well as for the release of data – confidential or otherwise – from a closed part of the website, shall also be excluded.