



Big blue door Ltd

Terms & conditions

February 2013

1. Definitions

1.1 In these Terms and Conditions the following words and phrases have the following meanings:

- “Big blue door” or “we” means Big blue door Ltd (company registration 07958927) with registered offices at WS Unit 21, Phoenix Square, 4 Midland Street, Leicester LE1 1TG.
- “the Client” means the individual, business, organisation or company identified in the Letter of Agreement.
- “Terms and Conditions” are Big blue door’s standard terms and conditions as set out in this document.
- “Agreement” means the agreement between the Client and Big blue door in respect of the provision of Services as set out in these Terms and Conditions and the Letter of Agreement.
- “Material(s)” means all and any written articles, typescripts, proofs, reports, documents, graphics, designs drawings, photographs, research, videos, audios, software, CD’s disks or any other material of whatsoever nature produced by Big blue door in accordance with the Agreement, and including the source code version of any electronic-form material.
- “Normal Working Hours” means Monday to Friday 9.00am to 5.30pm.
- “The Parties” means Big blue door and the Client.
- “Services” means the services to be provided to the Client by Big blue door pursuant to these Terms and Conditions and the terms set out in the Letter of Agreement entered into by Big blue door and the Client which is likely to include the production of Material(s).
- “Letter of Agreement” means a document signed by Big blue door and the Client that describes the services to be provided by Big blue door and sets out other specific agreed terms including but not limited to payment and timing for the provision of the Services.
- “Required Items” such information, drawings, products, documents or other pre-requisites required by Big blue door from the Client as identified in the Letter of Agreement in order for Big blue door to provide the Services to the Client.

1.2 In these Terms and Conditions the singular is deemed to include the plural and vice versa.

2. Provision of services

- 2.1 Big blue door will provide Services to the Client in accordance with the Agreement. Whereas these Terms and Conditions are deemed to constitute Big blue door's standard terms and conditions of business the Letter of Agreement includes terms and conditions personal to the Client and Big Blue Door. In the event of a conflict between these Terms and Conditions and the Letter of Agreement the latter will prevail.
- 2.2 The Client acknowledges that the Services recommended or provided to the Client by Big blue door are done so on the basis of information and/or specifications or requirements provided by the Client.
- 2.3 The Client shall immediately upon request provide Big blue door with any Required Items and agrees that we will not be liable for any delay or failure to provide the Services caused by the Client's failure to provide any Required Items.
- 2.4 The Client shall be provided with and shall retain duplicate copies of all Materials and insure these against their accidental loss or damage. All Materials shall be at the sole risk of the Client from the time of delivery to the Client. The Client acknowledges that Big blue door will retain original Materials for its own purposes including those set out at clause 7.4 below unless the provisions of clause 7.1 apply.
- 2.5 Where Big blue door provides the Client with web development services, the Client has the right to obtain maintenance and future development work from a different developer of their own choosing, upon completion of any work by Big blue door under the Agreement, but we reserve the right to provide the Client with an estimate and/or quote in respect of such work.
- 2.6 The Client shall not unlawfully discriminate against Big blue door employees when receiving Services under the Contract either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age.

3. Commencement and duration

- 3.1 Subject to the provisions of clause 2.3 above Big blue door will start providing the Services to the Client on a date agreed and identified in the Letter of Agreement but for the avoidance of doubt no work will be undertaken by Big blue door unless and until the Client signs the Letter of Appointment and in so doing agrees to adhere to these Terms and Conditions.
- 3.2 The estimated duration of the Services will be identified in the Letter of Agreement and in the event that the Parties have agreed interim payments, the various stages in respect of the Services and the duration of each stages, and timing of interim payments, will be set out either in the Letter of Agreement itself or as an addendum thereto.

4. Charges and payments

- 4.1 The Letter of Agreement will specify the charges and related payment terms applicable to the Client in respect of the provision of Services, which may include interim payments.
- 4.2 Any estimates and/or quotes provided by Big blue door to the client shall be valid for a period of 60 days from the date specified on the quote/estimate and we reserve the right to review, and if appropriate increase any such quote/estimate if a Letter of Agreement has not been signed by the Client within that time limit.
- 4.3 Where corrections, additions and/or alterations are required and such corrections, additions and/or alterations fall outside the original estimate/quote given by Big blue door, then we reserve the right to submit a revised estimate/quote that will require written agreement by the Parties before work can commence or continue.
- 4.4 Big blue door reserves the right to revise any estimates and/or quotes provided to the Client in order to compensate for any unanticipated 'rush' requests by the Client. In the event such unanticipated 'rush' requests by the Client, we reserve the right to charge two times our standard hourly rate for time that falls outside Normal Working Hours.
- 4.5 The Client shall pay Big blue door, unless the invoice is subject to dispute and notified within 5 working days of receipt, within 30 days of the date of our invoice.
- 4.6 The Client will be liable for interest on any outstanding invoices and or interim payments at the rate of 5% per month above the Bank of England base rate (at the time of invoicing) from the due date until the outstanding amount is paid in full together with any costs and expenses incurred by Big blue door in obtaining payment of such invoice.
- 4.7 Where interim payments are agreed between the Client and Big blue door, we reserve the right to stop all work for the Client or withhold delivery of any Material(s) in the event that the Client fails to pay any interim payment specified in the Letter of Agreement and Big blue door shall be free to exercise its rights under clause 4.6 above.
- 4.8 The client may cancel all or part of the work at any stage subject to payment of a cancellation fee of 25% before delivery of development plans or 50% once work has commenced on prototypes or 100% on delivery of finished work.

5. Expenses

- 5.1 The Client agrees to reimburse Big blue door for out-of-pocket expenses reasonably incurred by Staff in the proper provision of the Services. Any anticipated expenses will be specified in the Letter of Agreement but the Client acknowledges that there may be expenses properly incurred by Big blue door in the provision of Services to the Client that were not reasonably foreseeable at the time of entering into the Agreement. Any such expenses must be detailed and justified in writing at/or prior to invoicing.

6. Confidentiality

- 6.1 The Client agrees during the continuance of the provision of Services by Big blue door to the Client, and at any time thereafter, to treat as secret and confidential and not at any time for any reason to disclose, or permit to be disclosed, to any person or otherwise make use of or permit to be made use of any unpublished information relating to our business, trade secrets, technology or other know-how, finances, published or unpublished publications, client, customer or supplier details, or any such information relating to a subsidiary, supplier, customer or client where the information was received as a result of the Agreement.
- 6.2 Big blue door agrees during the continuance of the provision of Services by it to the Client and at any time thereafter to treat as secret and confidential and not at any time for any reason to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to the Client's business, trade secrets, technology or other know how, plans or finances, published or unpublished publications, client, customer or supplier details, or any such information relating to a subsidiary, supplier, customer or client where the information was received as a result of the Agreement. Please refer to our Information Security policy for more information.
- 6.3 Any information, correspondence or accounts relating to the Client's business, and held by Big blue door is available for inspection at our premises, during normal working hours provided that reasonable notice is given by the Client.

7. Title, copyright and moral rights

- 7.1 Any original Material generated by Big blue door shall remain our absolute property until such time as all or part shall be transferred to the client upon written agreement of the Parties. After written agreement has been received for the release of Material to the Client, all liabilities for that Material are transferred to the Client and the Client undertakes to indemnify Big blue door against any and all actions, suits, proceedings, claims, demands, awards, costs and damages in respect of the transferred Material.
- 7.2 Any production of Material(s) by Big blue door for the Client is protected by the Copyright Designs and Patents Act of 1988 (“the Act”), and any statutory modification or re-enactment thereof for the time being in force and the words, expressions and phrases defined in or assigned or having a meaning by or under the Act or any statutory modification or re-enactment shall have the same meaning where used herein. For the avoidance of doubt Big blue door shall remain the owner of all intellectual property rights in the Material(s) unless such rights are specifically transferred to the Client in the Letter of Agreement.
- 7.3 Big blue door reserves the right to refuse to publish any Material that is or is likely to be interpreted as being illegal, obscene and or in breach of any intellectual property right.
- 7.4 Big blue door reserves the right to reproduce Material generated for the Client, under these Terms and Conditions in any form for marketing purposes.
- 7.5 Big blue door reserves the right to place an unobtrusive logo and link to their website on any work undertaken for publication on the Internet.
- 7.6 Big blue door reserves the right to publish any software, programs or code developed on behalf of the client under a suitable Open Source license unless such right is specifically revoked in writing before development commences.
- 7.7 Big blue door asserts that it may or may not hold copyright of software, programs or code used in the Services, but that it will hold an appropriate license for the use of such software, programs or code.

8. Warranties and indemnities

- 8.1 Big blue door warrants that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Agreement.
- 8.2 The Client hereby warrants that it will be fully responsible for all claims made, all trademarks, copyright materials and clearances supplied to Big blue door throughout the provision of Services under the Agreement.
- 8.3 The Client indemnifies and will keep Big blue door indemnified on a continuing basis against any and all actions, suits, proceedings, claims, demands, awards, costs and damages whatsoever arising as a result of any breach or alleged breach of the warranties and indemnities set out in this clause 8.
- 8.4 Subject as expressly provided in these Terms and Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law and Big blue door will not be liable to the Client for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Big blue door, its employees or agents or otherwise) whether arising out of or in connection with the provision of the Services to the Client.
- 8.5 Notwithstanding the provisions of clause 8.4, the entire liability of Big blue door under or in connection with the Agreement shall not exceed the total charges payable by the Client.
- 8.6 Should any actions, suits, proceedings, claims, demands, awards, costs and damages be brought against Big blue door as a result of Material produced for the Client, under the Agreement, the Client hereby agrees to repay any losses we may suffer.
- 8.7 Big blue door will not be liable to the Client or in breach of contract or otherwise for delays in performing, or fails to perform, any of its obligations to the Client, if that delay or failure was beyond our reasonable control.
- 8.8 Big blue door will not be not be liable to the Client or in breach of contract or otherwise for delays in performing, or if we fail to perform, any of our obligations to the Client, or if Big blue door delivers Material late to the Client, if that delay failure and or later delivery was caused by the Client.
- 8.9 Big blue door does not make any level of guarantee of availability or continuity of service for any web site hosting or support service(s) it may provide to the Client.
- 8.10 Big blue door does not make any level of guarantee of response time or availability of support for any of its web hosting, support or other services unless specifically agreed with the Client.

9. Termination

- 9.1 Either party (“the Terminating Party”) may terminate the Agreement immediately by giving written notice to the other party (“the Other Party”) if:
- The Other Party has committed a breach of any of the terms of the Agreement and that breach is not capable of remedy or, in the case of a breach capable of remedy, the Other Party has failed to remedy the breach within 21 days of a receipt of notice from the Terminating Party specifying the breach and requiring its remedy; or
 - The Other Party becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the Other Party (otherwise than for the purposes of a reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or a substantial part of the assets of the Other Party, or the Other party enters into or proposes any composition or arrangement with its creditors generally analogous to the foregoing agreement.
- 9.2 Big blue door reserves the right to terminate the Agreement with the Client for whatever reason on giving no less than fourteen days written notice to the Client, and the Client shall be liable to Big blue door for all costs and expenses incurred by us up to the date of termination.
- 9.3 Upon termination of the Agreement for whatever reason:
- all monies owing to Big blue door by the Client under the Agreement shall be paid by the Client forthwith;
 - Big blue door will not be held liable for any third part costs incurred.
- 9.4 In the event of Big blue door taking the Client to court to recover any monies owed, the Client Agrees to pay our legal fees incurred together with any interest and costs
- 9.5 Clauses 6,7,8 and this clause 9 shall survive termination of the Agreement.

10. Miscellaneous

- 10.1 These Terms and Conditions together with the Letter of Agreement (referred collectively throughout as “the Agreement”) constitute the entire agreement between the Parties and supersede any previous agreement or understanding whether oral or in writing between the parties. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 10.2 No variations or amendments to the Agreement will be effective unless agreed in writing and signed by the Parties.
- 10.3 Any notice required or permitted to be given by either party to the other under the Agreement shall be in writing addressed to the other party at its registered office or principal place of business, or such other address in England or Wales, as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 10.4 No failure or delay by either party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.5 If any provision of these Terms and Conditions and or the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Terms and Conditions and or the Agreement and the remainder of the provision in question shall not be affected.
- 10.6 The Client will not hold responsible the Supplier for loss or damage to the Client’s property by third parties.
- 10.7 Big blue door reserves the right to amend or vary these Terms and Conditions at any time on giving the Client reasonable notice provided that such amendment or variation does not materially affect the nature or quality of the Services provided to the Client.
- 10.8 These Terms and Conditions shall be governed by and construed in all aspects in accordance with the laws of England.
- 10.9 Any dispute or difference of any kind whatsoever which arises or occurs between the Parties in relation to anything or matter arising under, out of or in connection with this agreement shall be referred to arbitration under the Arbitration Rules of the Chartered Institute of Arbitrators.

SIGNED by the Client:

Signature

Name

[If company] for and on behalf of.....

Dated