



switchstance

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# Switchstance Ltd Standard Terms and Conditions

## Definitions

In these terms "we/us/our" means: Switchstance Ltd,

Trading Address: 2 Forncett Street, Sheffield, S4 7QD

Company Registration Number: 05752681

VAT: 880473017

"You" means the Client, to whom we are providing services.

The "Contract" means the agreement between you and us based on this and supporting documentation.

The "website" means the services to be provided under this Contract.

## 1) Variations

1.1 These terms will remain valid for acceptance for 30 days from the date of issue.

1.2 After acceptance, these terms will remain valid for the duration of the agreed project. Switchstance Ltd reserves the right to amend these terms in the future if necessary, subject to giving you 30 days' notice. You have the right to refuse any future changes to these terms by giving us 30 days written notice of your desire to terminate any ongoing working relationship with us.

1.3 If you have any uncertainties about these conditions as they might apply to you or your project, it is your responsibility to clarify the situation by contacting us before the project gets under way.

## 2) Website Content

2.1 It is your responsibility to provide us with the required information about your business, such as telephone numbers, existing email addresses, business addresses, etc. Switchstance Ltd take no responsibility for errors in content supplied by you for the website. Any changes thus occasioned once the website has gone live must be chargeable.

2.2 Unless specified otherwise, it is your responsibility to provide all necessary written information and imagery that makes up the content of the website. No refund will be made in the event that you fail to provide sufficient content to complete the website.

2.3 All content must be supplied in a suitable digital format (such as a Word document or Excel spreadsheet) unless agreed otherwise beforehand. Failure to supply material in an accessible digital format will result in extra charges being made for us to process your content for use on your website. Where the content which is provided is in a format where a sizeable amount of copywriting is required (for example, if hand written), a further charge will be made. This cost will be advised in writing before we commence the additional work to transfer the content into a suitable digital format.

2.4 You grant Switchstance Ltd permission to utilise logos and any other company identity for the purposes of creating the website.

2.5 You agree to indemnify Switchstance Ltd from any and all claims arising from your negligence or inability to obtain proper copyright permissions for all content you supply. In turn, we agree to take appropriate steps to ensure that we do not infringe copyright laws with any content it may be agreed that we will provide, such as stock imagery.

2.6 It is your responsibility to provide Switchstance Ltd with copies of your terms and conditions and any privacy statement that you require to be incorporated into the design of your website.

## 3) Delivery

3.1 We will provide you with our estimated time-scale for progress and completion of the project and will use reasonable endeavours, within the agreed project plan, to meet those time-scales (as long as you perform your agreed obligations promptly)

3.2 Any quoted dates are our best estimates only and we cannot guarantee 100% that they will be met if delays are caused by you not providing us with requested information or necessary documents in a timely manner.

3.3 We shall have no liability to you nor be deemed to be in breach of this Contract if we are delayed in performing or unable to perform any of our obligations under it, when due to circumstances beyond our reasonable control.

3.4 Switchstance Ltd will use the most appropriate technology in the development of the website.

3.5 Where information required to continue work on the project is not delivered within 30 days, Switchstance Ltd reserves the right to bill the outstanding project fees in full.

## 4) Acceptance of Milestones

4.1 Acceptance procedure will be as follows:

- Switchstance Ltd will require an initial payment totalling 25% of the final project cost before the project will begin. This is the deposit, payment of which marks the commencement of your project.

- Once the design stage has been completed to your satisfaction, and signed off by email, the design sign-off stage is complete.
- Following design sign-off, the front-end development will commence. During the front-end development phase, a link to the development website will be provided to the client.
- During the development, updated development link/ URLs will be provided for the Client to examine and test the website and software to make sure it functions as anticipated and in accordance with this Agreement.
- Agreement to 'go live' with the product notifies us of your satisfaction and signifies 'sign-off'. Launch of your website will now be scheduled, and your final sign-off invoice generated, with 21-day payment terms.
- In the event that the website is to be hosted by a third party, all payments must be received in full before the code is released for deployment outside of Switchstance's control.
- Any further changes are then chargeable. This would be discussed at the time and agreed before further work commenced.

## 5) Change requests

- 5.1 If the Client requires any changes to be made to the original design and specification after the build stage has commenced, they must notify Switchstance Ltd by email.
- 5.2 Switchstance Ltd will notify the Client in writing of any charges for the additional work arising from 5.1.
- 5.3 If the Client accepts the terms of the Change Request, they should notify Switchstance Ltd by email. Switchstance Ltd will acknowledge your acceptance in writing, and any agreed changes will then be actioned as appropriate.

## 6) Payment

- 6.1 An initial deposit payment totalling 25% of the total project fee (unless otherwise agreed), payable in advance, will be required to secure commencement of the requested services. No work will commence until this initial payment has been made, and this payment is non-refundable.
- 6.2 Milestone payments will be invoiced at agreed stages during the project on payment "due now" terms (see 4.1).
- 6.3 Subsequent annual subscription or licence payments will be in advance on the anniversary of the initial payment (if applicable).
- 6.4 All fees referred to in the proposal and these terms are exclusive of Value Added Tax.
- 6.5 If payments are not received by the due date for payment (as stated in these terms and/or order form) you will accrue statutory interest on the amount unpaid at the annual rate of 8% above Bank of England base rate from time to time (without prejudice to any other remedy available to us). This will also incur an additional late payment fee. These amounts are set by Late Payment Legislation, more details of which can be found on [www.gov.uk](http://www.gov.uk).
- 6.6 If payments are not received by us by the due date, we reserve the right to suspend the services until such time as payment is received in full (without prejudice to any

other remedy available to us) with suitable allowances then being made to any timescales.

6.7 Our payment terms (with the exception of Discovery phase payment, deposits, design and milestone signoffs which are due on receipt of invoice) are strictly 21 days. No other payment terms will supersede these terms, and by agreeing to these terms and conditions, you agree to abide wholly by our payment terms. Verbal requests to amend our stated payment terms will not be entertained.

6.8 Your final invoice will be issued on completion of all work as agreed prior to commencement of the project in the specification document produced after the Discovery session. The completion invoice is due for payment within 21 days of issue, and payment is not dependent on launch of the site (when delayed through waiting for content or other requirements that have been agreed are your responsibility to provide). Withholding payment - without prior agreement being sought with us within 7 days of invoice issue - will not be accepted, and proceedings may be brought against you for non-payment of debt.

6.9 Non-payment of invoices for agreed work will result in suspension of any ongoing services until your account has been brought up to date.

## 7) Ownership and intellectual property issues

- 7.1 You will retain ownership of copyright, trademarks and other intellectual property rights in materials that you provide to us for use in the design of your website.
- 7.2 All copyright, trademarks, patents created, developed, subsisting or used in or in connection with the design or development of your website will be transferred to you on settlement of all outstanding sums due to us. Until all outstanding invoices relevant to the project are paid, you do not own copyright to your website or anything we have created for you.
- 7.3 All screen displays, graphics, domain names, content and the "Look and feel" of the website developed shall be transferred to you on settlement of all outstanding sums due to us.
- 7.4 Switchstance Ltd retains the rights to use any software, object code, digital programming, source code and the like developed during the course of the project. However, you will be granted a perpetual, irrevocable, worldwide and royalty free transferable license for the use of this facility. If applicable, this may be subject to the continuing payment of any fees agreed as part of the services to be provided under this agreement, for example, subscription payments for third party payment gateways, which will be agreed in advance.
- 7.5 If Switchstance Ltd is bundling or using any prior intellectual property that it owns and of which it wishes to retain ownership you will be granted a perpetual, irrevocable, worldwide and royalty free transferable license for the use of this facility. This may be subject to the continuing payment any fees previously agreed as part of the services to be provided under this agreement.
- 7.6 We will not transfer rights in any design or software work owned by a third party.

## 8) Hosting and domain names

8.1 If requested, Switchstance Ltd will arrange hosting for the website, and the annual subscription for this will be included in the initial quotation for the design.

8.2 If you choose to host your website yourself, FTP access details to your website files will be issued on payment of all outstanding invoices due.

8.3 Switchstance Ltd accepts no responsibility for web server downtime or interruptions to service caused by circumstances beyond our control, unrelated to the website design.

8.4 Switchstance Ltd will advise Clients on selecting domain names and register these for them as requested at current rates but cannot guarantee a certain name will be available.

8.5 Any charges that we incur as a result of any administrative work associated with hosting or domain name transfers into or out of our facilities will be passed on to you. This will be with your prior agreement only.

8.6 Where applicable, any required renewals are made automatically unless we are notified in writing 28 days in advance, but please note we accept no responsibility if a domain fails to be re-registered due to any delay in payment.

8.7 If you choose to host with us, website hosting is payable annually, in advance of the anniversary unless otherwise agreed.

8.8 Where payment for hosting (if taken with us) is not made by the due date, Switchstance Ltd reserves the right to remove the website from the internet. Alternatively, Switchstance Ltd may, at its discretion, leave the website in place but with Google AdSense running on the home and other pages until such time as payment is received or Switchstance Ltd is requested to remove the website from the internet.

## 9) Email

9.1 Email addresses using the website domain must be arranged up-front and separately to any website project.

9.2 You will be given the appropriate user name and password details for each account where applicable.

9.3 Switchstance Ltd will not keep records of passwords.

9.4 Requests for changes to user/password combinations may be made by email or telephone and will be acted upon within 24 hours wherever possible.

9.5 Switchstance Ltd accepts no responsibility for email server downtime or interruptions to service.

9.6 Email accounts must not be used for "spam" emailing operations.

9.7 Once initially set up and operational, Switchstance Ltd is not responsible for subsequent problems caused by the operating system of your computer. If you need to contact Switchstance Ltd for such support this is chargeable at £67.50 per hour, agreed in advance.

## 10) Promotion

10.1 Where Switchstance Ltd undertakes promotion of the website through Search Engine placement (if applicable), no guarantee is given that rankings can be achieved on particular Engines. Re submission will take place as and when we deem appropriate and may vary in frequency depending on the level of maintenance updates

undertaken. This will be agreed in advance as part of an ongoing SEO strategy.

## 11) Warranties

11.1 Switchstance Ltd warrants that commencing from the date of development signoff by the Client and continuing for a period of thirty (30) days (60 days if your final invoice is paid on time), that the website and software substantially conforms to the Specification and the Scope of Works and is substantially suitable for the purposes for which it was designed. The terms of the Warranty are that during this period any errors or omissions will be rectified by Switchstance Ltd at no cost to the Client. The Warranty does not apply if the website and software have not been operated in accordance with the instructions given by Switchstance Ltd. However, we will continue to support you if requested, beyond the 30/60 days.

11.2 Switchstance Ltd makes no warranty that the website and software is totally error free or that the Client will be able to operate the website and software without any problems or interruptions caused by unforeseen problems or untested scenarios not yet reasonably known.

11.3 Switchstance Ltd makes no further warranties of any kind, whether express or implied, for the services it provides. Switchstance Ltd also disclaims any warranty of merchantability or fitness for any particular purpose other than that covered by the 30-day Warranty.

11.4 Due to the continual development of new techniques for intruding upon and attacking Internet based systems, Switchstance Ltd cannot warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack, but we will take reasonable steps to protect against attack. No liability will be accepted for the loss, corruption or theft of personal or financial information caused by deliberate and malicious intrusion or attack, however, we will take reasonable steps to protect against this, including encryption of data.

11.5 Switchstance Ltd will not be responsible for any direct, indirect or consequential damages that may result from the use of its services, including loss of data resulting from delays, non-delivery or interruption in service. You acknowledge and agree that Switchstance Ltd cannot guarantee the absence of service interruptions caused by Acts of God or other circumstances beyond our control.

## 12) Support

12.1 Switchstance Ltd will provide telephone and email support for services we have agreed to provide to you, during normal office hours. Outside these times support by email only is available with a 24 hour response, although we cannot be held liable for any delays in response, in particular due to weekends or bank holidays unless separately outlined in an SLA.

12.2 Problems with the operating system and software on your own computer and your Internet connection are

specifically excluded from this agreement. We always recommend that you maintain up to date OS and software, and that your internet connection is secure and reliable.

### **13) Reservations**

13.1 In the unlikely event that we need to suspend or withdraw services due to exceptional circumstances, we will arrange alternative hosting and support services to ensure the ongoing hosting and functionality of the Client's website.

13.2 Switchstance Ltd reserves the right to feature customer websites, animations and testimonials in future promotions without seeking consent unless otherwise agreed.

### **14) Covenants**

14.1 Switchstance Ltd will not during development or thereafter use the Client's trademarks, logos or service marks without the Client's express approval.

14.2 Switchstance Ltd will comply with all applicable laws in connection with its activities.

14.3 Switchstance Ltd will maintain satisfactory insurance. provide proof of these policies if requested by the Client.

### **15) Disputes**

15.1 In the event of a dispute it shall be determined by a mediator appointed by joint agreement between Switchstance Ltd and the Client.

15.2 The decision of the said mediator shall be final and binding on the Client and Switchstance Ltd, no appeal will be permitted.

15.3 This Agreement is subject to the laws of England and Wales.

### **16) Indemnity**

All services that you instruct us to provide to you may be used for lawful purposes only. You agree to indemnify

and hold Switchstance Ltd harmless from any claims resulting from your use of our service that damages you or any other party.

### **17) Liability**

17.1 Our total liability to you in contract or in tort arising in connection with this Contract shall not exceed the total price paid by you. And in turn, your liability to us shall not exceed the value of the work agreed. We maintain suitable insurance in the unlikely event that any claims should arise that are outside of the scope of these terms and conditions.

17.2 We shall have no liability for loss of profits, business, revenue, goodwill or anticipated savings or for any other indirect or consequential loss.

### **18) Cancellation**

18.1 If you wish to cancel your contract you are required to do so by registered post giving 30 clear days' notice, and cancellation will only be effective on receipt of such notice. If the design stage is not complete, you will be required to pay the balance of our costs to date. No refunds will be made for any part of any annual hosting and maintenance subscription remaining.

In the event of cancelling your contract, your website will be taken offline the day after the contract expires. Once all sums due have been settled, Switchstance Ltd will cooperate with the smooth transfer of hosting of the domain and pass over ownership of any website files as requested.

18.2 Your termination rights are as follows: You may terminate this contract at any time, by giving us 30 days' notice in writing. Any sums outstanding will fall due immediately. Once all sums are settled, any work that has been produced to that point will be handed over in a digital format, and neither party will have any further liability to the other



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