

# WEBSITE AGREEMENT

## 1 INTERPRETATION

1.1 In this Agreement the following words have the following meanings:

"Agreement" means this agreement between Two Dogs Design ("TDD") of Unit 3 Bridgwater Court, Oldmixon Crescent, Weston-super-Mare, North Somerset, BS24 9AY and the Customer relating to the use of the Web Site, which term shall include the Schedule;

"Customer" means the person, firm or company who purchases the use of the Web Site from TDD, whose details are included in the Schedule;

"Schedule" Means the schedule to this Agreement

"Web Site" means the web site designed by TDD for the Customer, details of which are set out in the Schedule;

1.2 In this Agreement references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In this Agreement references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In this Agreement headings will not affect the construction of this Agreement.

## 2 APPLICATION OF TERMS

2.1 Subject to any variation under Clause 2.3 this Agreement will be on the terms set out herein to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document). Any order placed by the Customer for the development of the Web Site shall constitute an unequivocal acceptance of the terms of this Agreement, save as varied between the parties from time to time. Any such variations to be recorded in writing and signed by both parties.

2.2 No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of this Agreement.

2.3 No representations about the Web Site nor any variations to this Agreement shall have any effect unless expressly agreed to in writing by TDD.

2.4 The Customer must ensure that the terms of its order and any applicable specification are complete and accurate. This shall include the personal details of the Customer, including, without limitation, its name and address.

- 2.5 For the avoidance of doubt the Customer hereby acknowledges and accepts that when TDD places the Web Site with a web host of its choice the Customer is deemed to contract directly with that web host and TDD is not responsible for any breach of contract or tortious act or omission including negligence of the web host.

### **3 DESCRIPTION**

- 3.1 The description of the Web Site to be developed for the Customer shall be as set out in the Schedule.
- 3.2 All artwork, drawings, descriptive matter, specifications, samples and advertising issued by TDD and any descriptions or illustrations contained in TDD's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the web sites it designs. They will not form part of this Agreement.

### **4 DELIVERY**

- 4.1 Unless otherwise agreed, any dates specified by TDD for completion of the Web Site are intended to be an estimate and time for completion shall not be made of the essence by notice. If no dates are so specified, completion will be within a reasonable time.
- 4.2 The Customer acknowledges that TDD shall not be responsible for any delay in creating the Web Site where that delay is wholly or partly due to an act or omission of the Customer which shall include the quality of information provided to TDD by the Customer if, in the reasonable opinion of TDD, that information is not of satisfactory quality. Whenever it appears to TDD that such delay is likely it shall use its reasonable endeavours to notify the Customer in advance.
- 4.3 Subject to the other provisions of this Agreement TDD will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in completion of the Web Site (even if caused by TDD's negligence), nor will any delay entitle the Customer to terminate or rescind this Agreement unless such delay exceeds 180 days.

### **5 PRICE**

- 5.1 Unless otherwise agreed by TDD in writing, the price for the Web Site shall be the price set out in the Schedule (the "Price").
- 5.2 The price paid for the Web Site shall be exclusive of any value added tax which the Customer will pay in addition to the sum paid for the Web Site and on that date.
- 5.3 The Customer shall pay to TDD promptly and in full the Price (as set out in the Schedule) for design and completion of the Web Site, or satisfactory completion thereof. Satisfactory completion will be deemed to occur on the earlier of:

- 5.3.1 the Customer using the Web Site; or
  - 5.3.2 5 days from TDD notifying the Customer in writing (which term, for the benefit of doubt shall include email, which shall be deemed delivered according to clause 14.2.3) of the fact that in its reasonable opinion the Web Site is complete and receiving no written notice from the Customer within that period contradicting that view.
- 5.4 The parties agree that the Customer shall be required to pay either 50% of the Price in advance of TDD commencing development of the Web Site or an alternative percentage agreed in writing between the parties, in both cases the remainder of the Price being payable on the completion or satisfactory completion of the Web Site by TDD. The Customer agrees that if TDD does not receive the Price by the dates specified then it shall not be required to complete the Web Site.

## **6 USE OF THE WEB SITE**

- 6.1 By placing an order for the Web Site on the terms of this Agreement the Customer confirms that it has the legal right and ability to enter into this Agreement and to use the Web Site in accordance with its terms. This shall include any information promoted or provided by the Customer on the Web Site at any time.
- 6.2 The Customer shall ensure that all the information it includes on the Web Site is accurate and reliable (including, without limitation, any statements of fact and any advice given) and that it shall comply at all times with all relevant legislation.
- 6.3 The Customer shall ensure that it keeps any passwords and/or confidential information provided to it by TDD confidential. This obligation shall extend to all information designated as confidential as well as all information which is manifestly such.
- 6.4 The Customer acknowledges that, although TDD shall use its reasonable endeavours to ensure that the Web Site is not infiltrated by third parties, it cannot guarantee its security. If, at any time, the Customer is aware of any infiltration, or suspects that such infiltration may be taking place, it shall notify TDD forthwith.
- 6.5 The Customer shall have full responsibility for the information displayed on its Web Site and, in particular, shall not:
- 6.5.1 publish, post, distribute or otherwise disseminate defamatory, obscene, indecent or illegal material or information;
  - 6.5.2 threaten, harass, abuse, disrupt or violate the legal rights of any person;
  - 6.5.3 engage in any illegal activities whatsoever;

- 6.5.4 make available any material protected by the intellectual property laws of any jurisdiction without the consent of the owner of those rights;
- 6.5.5 by act or omission fail to comply with all relevant laws and regulations.
- 6.6 The Customer shall defend, indemnify and hold harmless TDD and its employees, agents and sub-contractors from all liabilities, claims and expenses, including all legal fees, that arise from its use or misuse of the Web Site.
- 6.7 TDD makes no representation that the Web Site will be appropriate or available for use in locations outside England and Wales and accessing it from territories where its content is illegal is prohibited.
- 6.8 The Customer acknowledges that all intellectual property rights in the Web Site (including by way of illustration and without limitation the source code and object code used) as developed belong to TDD absolutely and the Customer shall have no right to use the Web Site save under the terms of this Agreement.
- 6.9 Immediately upon receiving a request from TDD, the Customer shall include the logo and name of TDD on the Web Site in a format required by TDD. In addition, immediately upon receiving a request from TDD the Customer shall remove the logo and name of TDD.
- 6.10 Except as expressly permitted in writing by TDD the Customer shall not nor permit others to:
  - 6.10.1 alter, adapt, merge, modify, combine or translate the whole or any part of the Web Site in any way for any purpose, including, without limitation, for error correction;
  - 6.10.2 sell, rent, charge, loan, lease, assign, sub-license or otherwise deal in or encumber the Web Site;
  - 6.10.3 reverse-engineer, disassemble or decompile the Web Site except under any legislation implementing the EC Council Directive on the Legal Protection of Computer Programs (including without limitation Section 50B of the Copyright, Designs and Patents Act 1988) as from time to time amended, consolidated, modified, extended, re-enacted or replaced, as the case may be. If the Customer requires information about the meaning of these exceptions you can contact TDD.

## **7 PAYMENT**

- 7.1 Payment of the Price for the Web Site is due within 14 days of the date of an invoice issued by TDD to the Customer.
- 7.2 Time for payment shall be of the essence.

- 7.3 No payment shall be deemed to have been received until TDD has received cleared funds.
- 7.4 All payments payable to TDD under this Agreement shall become due immediately upon termination of this Agreement despite any other provision although, for the avoidance of doubt, if this Agreement is terminated prior to TDD satisfactorily completing the Web Site (as defined) TDD shall only be entitled to be paid immediately such sum as is fair and reasonable and commensurate with its efforts on a quantum meruit basis.
- 7.5 The Customer shall make all payments due under this Agreement without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid Court Order requiring an amount equal to such deduction to be paid by TDD to the Customer.
- 7.6 If the Customer fails to pay TDD any sum due pursuant to this Agreement then the Customer will be liable to pay interest to TDD on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. TDD reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## **8 BREACH OF CONTRACT**

- 8.1 Without prejudice to any of its other rights or remedies whether under this contract or otherwise TDD specifically reserves the right in the event of non-payment or other breach of contract by the Customer (included but not limited to breach of copyright) to remove the Web Site from the host server and to withhold use of the Web Site by the Customer until payment has been received in full.

## **9 LIMITATION OF LIABILITY**

- 9.1 The following provisions set out the entire financial liability of TDD (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 9.1.1 any breach of this Agreement; and
- 9.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. All materials, information, software, products and services provided by TDD as part of the Web Site are provided "as is" and TDD does not warrant that its content is accurate, reliable or

correct nor that the Web Site will be available at any particular time or location nor that it will be free of any viruses.

- 9.3 Nothing in this Agreement excludes or limits the liability of TDD for death or personal injury caused by TDD's negligence or its liability for fraudulent misrepresentation.

**THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN  
TO THE PROVISIONS OF CLAUSE 9.4**

- 9.4 Subject to Clauses 9.2 and 9.3:

9.4.1 TDD's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the Price; and

9.4.2 TDD shall not be liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Agreement.

- 9.5 Where the Customer has not requested that TDD carry out a trade mark search on its choice of domain name, at TDD's then current charges, the Customer acknowledges that it assumes all the risks of a third party bringing an action against the Customer for trade mark infringement and/or infringement of any other third party right.

**10 ASSIGNMENT**

- 10.1 The Customer shall not be entitled to assign this Agreement or any part of it without the prior written consent of TDD.
- 10.2 TDD may assign this Agreement or any part of it to any person, firm or company.

**11 FORCE MAJEURE**

- 11.1 TDD reserves the right to defer the date of completion or to cancel this Agreement (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of TDD including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 60 days, the Customer shall be entitled to give notice to TDD to terminate this Agreement.

## **12 Termination**

- 12.1 TDD reserves the right to terminate this Agreement upon 30 days notice to the Customer at any time.
- 12.2 TDD reserves the right to terminate this Agreement immediately on notice if the Customer fails to comply with any term of this Agreement. This Agreement will also terminate immediately on notice if the Customer becomes bankrupt, goes into liquidation, suffers or makes any winding up petition, makes an arrangement with creditors, has an administrator, administrative receiver or receiver appointed or suffers or files any similar action in consequence of debt.
- 12.3 Upon termination of this Agreement for any reason the Customer's right to use the Web Site will cease automatically.

## **13 GENERAL**

- 13.1 Each right or remedy of TDD under this Agreement is without prejudice to any other right or remedy of TDD whether under this Agreement or not.
- 13.2 If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of this Agreement and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by TDD in enforcing or partially enforcing any provision of this Agreement will not be construed as a waiver of any of its rights under this Agreement.
- 13.4 Any waiver by TDD of any breach of, or any default under, any provision of this Agreement by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this Agreement.
- 13.5 The formation, existence, construction, performance, validity and all aspects of this Agreement shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- 13.6 For the avoidance of doubt, nothing in this Agreement shall confer on any third party any benefit or the right to enforce any term of this Agreement.
- 13.7 In the event of a conflict between the terms of this Agreement and the Schedule the terms of this Agreement will prevail.

**14 COMMUNICATIONS**

14.1 All communications between the parties about this Agreement must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile or email transmission:

14.1.1 (in case of communications to TDD) to its address shown at the top of this Agreement or such changed address as shall be notified to the Customer by TDD; or

14.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of this Agreement or such other address as shall be notified to TDD by the Customer.

14.2 Communications shall be deemed to have been received:

14.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

14.2.2 if delivered by hand, on the day of delivery;

14.2.3 if sent by facsimile or email transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

14.3 Communications addressed to TDD shall be marked for the attention of Adam Bowyer.

Signed by

[ ]

for and on behalf of

**Two Dogs Design**

Signed by

[ ]

for and on behalf of

**[NAME OF CUSTOMER]**

Dated

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# SCHEDULE

## CUSTOMER DETAILS

NAME	
ADDRESS	
TEL NO	
FAX NO	

## DESCRIPTION OF THE WEB SITE TO BE DEVELOPED

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## THE PRICE

<u>TICK BOX</u>	<u>CHARGE</u>
	The Price for the completed Web Site shall be £_____ .
	The work done to complete the Web Site shall be charged at £_____ per hour.