



**Flash Monkey Web Design**

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## **Terms and Conditions of Flash Monkey Web Design**

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This Agreement is made between Flash Monkey Web Design (the Company) and the party contracting the services (the Client), and becomes effective upon the date that the Company accepts this signed agreement (be that by Royal Mail post, or in person) for the contracting party (the Client) to use the service or services requested. Please note that the Company reserves the right to refuse services and/or access to its servers to anyone.

## 1. DEFINITIONS

- **"Agreement"** means any agreement made subject to these Terms and Conditions, which shall incorporate or be subject to these Terms and Conditions.
- **"Services"** means Website design and construction, Website maintenance, graphic design, Web training and any other service or facility provided by the Company to the Client.
- **"User"** means any person(s) accessing or viewing a Website using the World Wide Web.
- **"Server"** means any computer server equipment operated by or contracted to The Company in connection with the provision of the Services.
- **"Website"** means the area on a server allocated by the Company (or any other hosting company) to the Client for use by the Client as a Website on the World Wide Web.
- **"Website Design"** means web page design, custom HTML, custom programming and associated construction which may include web page layout, graphics, photographs of materials and/or products that the Client wishes to display on the Website, including the redesign of existing Websites.
- **"Web Traffic"** means data transferred from a Website.
- **"Search Engine Registration"** means submission of the Client's URL, or domain name, to Internet Search Engines to assist in the effort of gaining recognition for the Client's Website.
- **"Domain Name Registration"** means the registration with the appropriate authorities of the desired domain name on behalf of the Client.
- **"Website Hosting"** means providing World Wide Web page hosting on a server with email message facilities.
- **"Completion of Website"** means 5 days from the Website being uploaded to a temporary area on the server of the Company, for approval by the Client, without notification from the Client that the Website is unsatisfactory.
- **"Website Development Cycle"** means the process of taking the initial design brief through to design, development and full implementation.
- **"Signed off"** means both parties, the Company and the Client signing an agreement which confirms they are fully satisfied with specific work completed under the project agreement.

## 2. HEADINGS & GENERAL TERMS

Headings are included in this Agreement for ease of reference only and shall not affect the validity or interpretation of this Agreement.

By performing any contact actions from this Agreement, the Client agrees to these Terms and Conditions and also agrees to make any person(s) who use the Company services aware of the Company's Terms and Conditions.

By agreeing to these Terms and Conditions the Client's statutory rights are not affected.

The Company reserves the right to change or modify any of the terms and conditions contained in the Terms and Conditions.

## 3. TERMS OF PAYMENT

The Company retain the right of ownership of all the Services provided by the Company until such a time that full payment is made by the Client. If for any reason other than that agreed in writing between the Client and the Company full payment is not made the Company is the sole owner of the Services provided and is free to use the Services elsewhere.

**By using our services the Client is bound by the Company's Terms and Conditions below:**

- Consultancy services are charged hourly.
- All advice is based on the details and information the Client provides to the Company.
- All project quotations are valid for 3 months only. After such time a new quotation will be required.
- Work will not start until 50% of the total project quotation amount is received and cleared (this is non-refundable).
- Throughout the project's development, the Client will be asked to Sign Off various stages within a stated 7-day period. By Signing Off a stage, the Client is confirming that all work on this section of the project is complete and has their full approval. Once a section is Signed Off it cannot be further developed without incurring an additional fee.
- Once the project is complete and fully Signed Off the remaining 50% of the project quotation amount will be invoiced and payment in full must be received within 7 working days before any data will be given over to the Client.
- On receipt of cleared payment, the Company will issue all Services commissioned, for example publish a Website on the client's server, or provide the source code for the Website in an appropriate format for the Client to upload. Alternatively the Company will upload files to the designated server if applicable. At this point all ownership of the design files are handed to the Client.
- If payment is not received after 10 working days of our official request, any outstanding payments will incur a 5% monthly interest charge in addition to the Client's outstanding payment.
- Payments can be made by UK cheque, bankers draft, BACS or CHAPS payments. All payments must be in UK Sterling.
- The Company reserves the right to alter prices at any time without notice. If a Client has commissioned any services from the Company prior to a change in prices that commission will not be subject to any increase, but any subsequent commissions may be subject to an increase.
- In the event of the Client being liable for a 'returned cheque', bank charges incurred beyond the Company's control will be compensated by the Client. This will be invoiced and will be added to the total outstanding debt owed by the Client.
- All payment agreements are non-negotiable.

**4. INTELLECTUAL PROPERTY**

- All intellectual property, e.g. images, text, animation and code are the copyright of the Company and may not be used without written confirmation from a partner of the Company.
- All copyright breaches will be pursued to the fullest extent allowable under law.
- The names, images and logos identifying the Company, their products and services are proprietary marks of the Company.
- Any Services produced by the Company carry the intellectual property of the Company and cannot be reproduced without written consent.

**5. OWNERSHIP**

- All intellectual property, e.g. text and images supplied by the Client and used in the construction of the Client's Website, will remain the Client's property. All such material will be assumed to be the property of the Client and free to use without fear of breach of copyright laws.
- The Company accepts no responsibility for privacy of information collected from any Client's Website.
- The Client will obtain all the necessary permissions and authorities in respect of the use of all copy, graphics, registered company logos, names and trademarks or any other material supplied to the Company by the Client for the design and construction of any Web pages. Acceptance of this Agreement shall be regarded as a guarantee by the Client that all such permissions and authorities have been obtained. Evidence of permissions and authorities may be requested. No responsibility will be accepted by the Company for damages to or losses incurred by the Client from the use of material for which the required permission or authority has not been properly obtained.

- The Client is required to ensure that the content of their Web pages meets all the current UK government legislation regarding publications.
- The Client reserves the exclusive right to alter its Website content in any way, at any time and for any reason without prior notification and the Company accepts no liability for any consequences of such changes.

## **6. DESIGN CREDIT**

Client's Web pages, which have been designed and constructed by the Company, shall have a link to the Company's Website, appearing in small type at the bottom of each Web page. If the client wishes for this to be removed, it shall be agreed prior to the commencement of the project. The Company reserves the right to charge a link removal fee.

## **7. REVIEW OF WEBSITE DESIGN & CONTENT**

- The Services provided by The Company are at the exclusive direction of and based on information provided by the Client. The sole and entire responsibility for that same information rests with the Client.
- All content provided should be supplied in an understandable legible format. The Company reserves the right to request that the content be re-supplied in an understandable, legible format.
- The Company will provide the Client with an opportunity to review the design concepts for the Website before construction of the Website begins. The Company will also provide the Client with an opportunity to review the appearance and content of the Website once they are scripted and laid out. Any request for alterations should be made at this time. Such scripted materials will be deemed to be accepted and approved at the time of presentation, unless the Client notifies the Company to the contrary within 7 days. Alterations requested after this time will be charged for as extras.
- If at any point during the Website Development Cycle a client wishes to cancel, they may do so but will be invoiced an amount that the Company judges to be proportional to the amount of work completed on the commission.
- The Company will not be liable for costs incurred, compensation or loss of earnings due to failure to meet agreed deadlines.
- If, during the Website Development Cycle, the Client does not supply the content required in order to complete the commission within a reasonable amount of time, the Company will consider that the Client wishes to cancel the commission and the Company will charge the Client compensation for design work completed up to this point. Charges including but are not limited to: stock photography; electronic commerce software; online transaction processing solutions; domain name registration; Web space; Internet connection provided by third parties and are non refundable.
- The Company reserves the right to refuse to handle in any way material which the Company deem offensive, illegal or in anyway controversial.

## **8. POST PROJECT COMPLETION AND ALTERATIONS**

- The Company does not accept responsibility for any alterations caused by a third party to the Client's services produced by the Company at any time. Such alterations include, but are not limited to additions, modifications, or deletions.
- The Company does not undertake to maintain or update a Client's Website as part of the design commission.
- If a Client wishes the Company to maintain or update a Website as a separate commission, the Company will negotiate with the Client a maintenance contract appropriate to the amount of work required. Website maintenance may also be undertaken on a time and materials basis if the Client so wishes.

## 9. PRIVACY

- The Company is committed to protecting the Client's privacy. The Company will only use the information that it collects lawfully (in accordance with the Data Protection Act).
- The Company collects information about the Client for two reasons: firstly, to process the Client's order and secondly, to provide the Client with the best possible service.
- The Company will not pass the Client's details to any other third parties unless the Client agrees.
  
- The type of information the Company will collect about the Client includes:
  - Client Name
  - Client Address
  - Email Address
  - Client Telephone Numbers
  - Internet Provider Address
- The information the Company holds will be accurate and up to date. The Client can check that the information that the Company holds about the Client by emailing the Company. If the Client find any inaccuracies the Company will delete or correct it promptly. The personal information which the Company hold will be held securely in accordance with the Data Protection Act.

## 10. CONFIDENTIALITY

- The Company will not at any time or in any manner, either directly or indirectly, use for the personal benefit of the Company or divulge, disclose, or communicate in any manner, any information that is proprietary to the Client.
- The Company will act reasonably to protect such information and treat it as strictly confidential. This provision shall continue to be effective after the termination of this Agreement.
- Upon request, the Company will return to the Client all notes, records, documentation or other items belonging to the Client that were used for the Services of this Agreement.

## 11. THIRD PARTY WEBSITES AND LINKS – The Company is not responsible for:

- The availability or content of any third party Websites or materials the User accesses through any Website the Company produces.
- The User visiting any linked Websites. The User does so at their own risk and it is their responsibility to take all protective measures to guard against viruses or other destructive elements.
- Any content, advertising, products, services or information on or available from third party Websites or material (including payment for and delivery of such products or services).
- Any damage, loss or offence caused by or, in connection with, any content, advertising, products, services or information available on such Websites or material.
- Any terms, conditions, warranties or representations associated with such dealings, which are solely between the User and the relevant provider of the service.
- Any liability and will not become involved in any disputes between the Client and any third parties and cannot be held responsible for any wrongdoing of either party.

## 12. RELATIONSHIP OF PARTIES

- It is understood by the parties that The Company is an independent contractor with respect to the Client, and not an employee of the Client, and as such the Client will not provide any employee or fringe benefits.
- The Company will not be held liable for any service that it provides which is totally reliant upon a third party over which the Company has no administrative control.

### **13. ERRORS AND LIABILITIES – The Company takes no liability for:**

- Any damage of any kind (direct, indirect, consequential, incidental or punitive) which results from the use of, access to or inability to use the information contained in any Website which it has designed
- Any errors or omissions in the content of any Website which it has designed and has been Signed Off. However the Company will endeavour (but not be obliged) to correct these issues to meet the standards of function outlined in the brief.
- Any damages to, or viruses that may infect a User's computer equipment, software, data or other property which result from a User accessing or browsing any Website designed by The Company.
- Any damages which result from the downloading of material, data, text, images, video or audio from any Website designed by The Company.
- Any content in any Website linked to a Website designed by the Company and any resulting damages from a User's access to any such linked Website. Users link to any other Websites at their own risk.
- Any losses incurred due to malfunction of any Website designed by the Company or any part of it.
- And cannot guarantee improved profits as a result of the Services provided. Any subsequent exposure related to the design is beyond the Company's control.
- Any applications or Websites that are developed on servers not recommended by the Company. In these circumstances:
  - The Client is expected to provide or seek any information required by the Company.
  - Additional software/hardware, support or co-operation relevant to the server is required in order for the application or Websites to be correctly developed and hosted.
  - Where large applications are to be developed, it is the Client's responsibility to provide a suitable testing environment, which is identical to the final production environment.

### **14. INDEMNITY**

The Client shall further indemnify The Company in respect of any claims, costs or expenses that may arise from any material provided by the Client.

### **15. SERVICE AVAILABILITY AND PERFORMANCE**

- The Client acknowledges that The Company will not be held responsible for the appearance or operation of any Web pages within any version or type of Web Browser software. All Websites designed by the Company will be optimised for viewing in Microsoft Internet Explorer or Mozilla.
- The Client accepts that certain features of their Website may not work, or may not be visible, or may look different, depending on the functionality of the hardware and software used to view the Website. The Company accepts no liability for the user's personal browser or display settings.
- The Services provided to the Client hereunder and the Client's account with the Company cannot be transferred or used by anyone other than the Client.

### **16. WEBSITE LINKS**

Links to the Company's Website must be direct to any complete Web page (and not any part of a Web page) within the Company Website and must not be viewed within the pages of any other Website. The Company disclaims all liability for any legal or other consequences (including for infringement of third party rights) of links made to the Company Website.

Links do not imply that the Company endorses, is affiliated or associated with any linked Website, or is legally authorised to use any trademark, trade name, logo or intellectual property displayed in or accessible through the links, or that any linked Website is authorised to use any trademark, trade name, logo or intellectual property of the Company or any of its affiliates or subsidiaries.

**17. LAW**

This Agreement shall be governed by and construed in accordance with English law and the client hereby submits to the non-exclusive jurisdiction of the English courts, and any alteration to part of the agreement shall not invalidate the remainder.

**18. ENFORCEMENT EXPENSES**

The Client shall pay to the Company all reasonable costs and expenses incurred by the Company in enforcing any of these Terms and Conditions, or exercising any of its other rights and remedies under the Agreement, including (without prejudice to the generality) all costs incurred in tracing the Client in the event that legal processes cannot be enforced at the address last notified to the Company.

**19. ENTIRE AGREEMENT**

These Terms and Conditions contain the entire Agreement between the Company and the Client relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral, between the Company and the Client in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these Terms and Conditions.

The Company reserves the right to change or modify any of the terms and conditions contained in the Terms and Conditions.

**20. COMPLAINTS PROCEDURE**

If the Client has any complaints about the quality of the services the Company has provided to the Client, please e-mail **info@flashmonkeywebdesign.co.uk** , or write to the Company at:

**Flash Monkey Web Design**

6 Pendeford Place  
Pendeford Business Park  
Wobaston Road.  
Wolverhampton  
WV95HD

Please state the full nature of your complaint. We take customer satisfaction very seriously and will investigate your complaint promptly and thoroughly.

*Please note that we do not accept unsolicited sales calls on this number.*

\_\_\_\_\_

Print Client's Name

\_\_\_\_\_

Date

\_\_\_\_\_

Client's Signature

\_\_\_\_\_

Date