

# **FyneWeb-Design**

## **Web Site Design and Hosting Company**

**Established 1998**

### **Terms and Conditions - updated February 2011**

#### **1. Website Design**

**1.1** We will, if required, agree with you a "Project Plan" setting out certain activities and timescales. We will then design a web site for you in accordance with the details as agreed. It is important that you consider carefully your right to use the material you supply for the web site. Accordingly, you are responsible for obtaining all consents, permissions and clearances in relation to the use of all materials you supply to us for use in the web site. You shall be responsible for complying with all relevant legislation and regulations in relation to the web design and content and the ongoing use of and access to the web site including but not limited to data protection regulations. You shall be responsible for ensuring none of the materials you supply is defamatory, indecent or in breach of copyright and you will thus indemnify us against all and any losses incurred by us in relation to the use of any such materials or arising out of our providing the Services to your specific requirements or instructions

**1.2** Where there is a "Project Plan" and it contains a timetable, whilst we will use our reasonable endeavours to meet the relevant dates time will not be of the essence in relation to this timetable and we shall be entitled to amend the timetable where failure to meet the due dates is due to your actions (or lack of them) or due to third parties or due to other circumstances beyond our reasonable control.

**1.3** The performance of our work in relation to the web site is subject to you providing all materials (this shall include text, graphics, photographs and any other content) and all other necessary data, information, input and decisions as are required of you. You agree to provide these promptly and accurately and will nominate a contact for us to deal with who will act on your behalf and will be authorised to make decisions on your behalf. To avoid any doubt, we will not be liable for any loss arising from material, data, information, input or instructions supplied by you or on your behalf which is incomplete, inaccurate, illegible, out of sequence or in the wrong form.

**1.4** Text supplied by you shall be typed up in a word processing application and supplied in a recognised and commonly used electronic format. Graphics shall be provided in a commonly used format to be mutually agreed. Photographs shall be provided on prints or such other commonly used format to be mutually agreed. Any other media or content shall be provided in a commonly used format as mutually agreed.

**1.5** On receipt of all materials and others required in terms of Clause 1.3 we shall prepare the site which shall be as detailed in the "Project Plan" previously agreed.

We will 'publish' the content on the draft web site and prepare designs and layout as appropriate.

**1.6** On completion of the draft site it shall be published to a test area on a web server for viewing. This web server will be one which FyneWeb-Design has access control. This will be for testing and approval. You shall have a period of seven days following our intimation of such publishing to request any corrections or alterations required in terms of the contract to be implemented and which failing or following any reasonably required correction and alterations the site or section shall be deemed to be completed and accepted by you. You

undertake to act reasonably and in good faith in requesting such corrections or alterations. We will take all reasonable care to ensure that site content is typographically correct. However the final responsibility for checking the content of the site lies with you. On completion of the web site it will be published live on a web server which FyneWeb-Design has access control with Domain Name Server pointing at this, the final hosting location. It will be understood that the web site will be hosted at a location of FyneWeb-Designs choosing.

**1.7** Upon payment of all outstanding sums in relation to our design of the web site, we will be deemed to have assigned to you copyright and related rights in relation to all material specifically created for you in relation to the web site. To avoid any doubt, this will include rights to any bespoke code specifically written for you and any text and photographs provided by you but shall not include any third party materials, code, photos or text provided by FyneWeb-Design nor any rights in general designs layouts, structures, methodologies, techniques, coding, HTML, database structures or configurations or other materials which were in existence prior to commencement of the site or were not created for exclusive use by you. Copyright will not be assigned to you for any text, photographs or video of the local area provided by FyneWeb-Design for use on your web site.

**1.8** Whilst we use our best endeavours to ensure the site can be viewed across a spectrum of available World Wide Web platforms or viewers we currently design sites to a specification to be viewed by Microsoft IE, Firefox Google Chrome and Safari running within a Microsoft Windows and Apple platform and do not warrant the site will be fully functional within any other combination of viewer or operating system We carry out our design in accordance with a combination of criteria including W3C Standards, Browser manufacturers published data, Good/Common Practice and it is understood our design is liable to alteration to reflect changes in such standards and practice.

**1.9** On completion of the "Project Plan" you will accept the handover of the site meaning that we have completed our contractual obligations. If a maintenance arrangement has been previously agreed then maintenance commences from this time and any changes, within reason, will be carried out at no extra charge from this point on. Maintenance and hosting payment shall be due on the 1st day of the next calendar month. If you have previously agreed to no maintenance hosting then any changes required after a 2 week period (10 working days) from the date of handover will incur charges. Any minor defects realised in the 2 week period following handover will be undertaken by FyneWeb-Design to correct within a reasonable timescale.

A period of no longer than 14 days from sending of invoice is allowed for payment on completed web sites. The web site will be moved to its final web hosting location (Domain Name Server pointing) only after payment is made in full and as soon as is reasonably possible by FyneWeb-Design. Search Engine registration can only be implemented when the web site is moved to its final web hosting location.

## **2. Services Agreement**

In relation to all the services to be provided by us as detailed in the "Project Plan" including all previously mentioned services, the following conditions shall apply:-

**2.1** All prices detailed in the Proposal are exclusive of value added taxes and any other relevant government imposed duties. You shall pay any due taxes in addition at the prevailing rate at the relevant time. FyneWeb-Design is not a VAT registered company therefore in this case 0% VAT applies.

**2.2** Prices detailed in the "Project Plan" remain valid for a period of 30 days only from the date of issue of the Proposal. However, we shall be entitled following your acceptance to vary our prices to reflect any change in third party dependent costs which are imposed on us, by giving written notice to you, such variations to take effect from the date such revised costs are imposed on us. In relation to any periodic costs detailed in the "Project Plan" (such as hosting fees), we shall be entitled to vary these at any time by giving 30 days' notice to you.

**2.3** Although payment terms are as detailed in the original quote. (such as Domain Name registration, hosting, e-commerce and third party software), it is understood such sums shall be payable by you as a deposit on your acceptance of the "Project Plan". You will not be entitled to set off any claims against us or make any other deductions in relation to any payment due and all sums shall be payable within 7 days of the date of the invoice requesting deposit payment. Work will not proceed on any further web related matters until this payment is made.

**2.4** If payment is not made in full within the stated timescale as specified in Clause 1.9 and 2.3, we shall be entitled (without affecting any other rights we may have) to charge interest on the outstanding amount (notwithstanding any court decree obtained) at the rate of 5% above the base rate charged by Bank of Scotland Plc from the due date until the payment in full.

**2.5** At all times you must specify a communication address and a recognised format by which we may send messages in relation to the provision of the services (particularly in an emergency). Should you fail to do so then, to avoid any doubt, we shall not be responsible for any loss arising as a result.

**2.6** Where maintenance has been agreed on web site updates and Meta Tag / Search engine changing and monitoring then this contract will run for periods of one month at a time. This contract may be termination by us or by you by giving notice to the other to expire at the end of the next calendar month.

**2.7** If at termination of the services as specified in the contract between us or any renewal period you wish to transfer your web site to any third party host, we will provide reasonable co-operation to you in doing so but reserve the right to make reasonable charges for the work or expenses (if any) incurred in such a transfer. FyneWeb-Design cannot initiate the transfer of your web site to other hosting but will accept a request from a third party host acting on your behalf. All information required to successfully complete hosting changes must be provided by you or your third party host. Code created at FyneWeb-Design which is not specific to your web site but is used in the current hosting environment is copyright of FyneWeb-Design and as such cannot be used or carried over to any new hosting company. All contracts cease in their entirety at the end of the next payment calendar month.

### **3. Confidentiality**

**3.1** Both we and you undertake to maintain the confidentiality of all information provide by one to the other (including in your case information relating to your customers). In particular we undertake to use your confidential information solely for the purposes of providing the services to you and you will not disclose any technical information obtained from us to any other persons without our prior written consent except in each case insofar as such information enters the public domain (other than through unauthorised disclosure under this Agreement).

### **4. Liability**

**4.1** You will indemnify us against all and any losses incurred by us whether arising directly or indirectly from any act, omission, lack of compliance, breach or failure on your part in relation to any materials supplied by you in terms of Clause 1.1 or otherwise arising out of our providing the Services to your specific requirements or instructions

**4.2** Whilst we undertake to provide the Services with reasonable skill and care no other warranty express or implied is given and all implied warranties of any nature on our part are expressly excluded.

**4.3** We also expressly exclude liability of any kind in relation to the following:

**(i)** the transmission or acceptance of information of any nature on your behalf and your acts and omissions in relation to the use or misuse of the Services;

**(ii)** the acts or omissions of other providers of hardware, software or telecommunications

services for faults in or failures of their equipment programmes processes or apparatus;

(iii) liability for consequential loss of any nature howsoever arising including but not limited to loss of profit and opportunity;

(iv) any delay, malfunction, non performance or other degradation of any of the Services caused by or resulting from any alteration and/or modifications and/or amendments made by you or due to changes of specifications requested or implemented by you

**4.4** in any event, our liability for the Services shall be limited to the total price paid for the services in aggregate in relation to all claims under this Agreement. To avoid any doubt, as required by law, nothing in these Conditions attempts to restrict or exclude our liability for death or personal injury arising directly out of our negligence.

## **5 Termination**

**5.1** Either party will be entitled to terminate the contract between us by written notice effective immediately if the other is in material breach of contract. To avoid any doubt, a breach arising under this contract shall be deemed to be a material breach if not remedied within 14 days of written notice requiring the breach be remedied issued by the party not in breach to the other.

**5.2** You will be deemed to be in material breach and we will be entitled but not bound to terminate the contract between us if at any time you fail to pay any sums due within 14 days of the due date (as specified in Clause 1.9 / 2.3) or if you are subject to insolvency proceedings of any nature.

**5.3** Termination will be without prejudice to any accrued rights or liabilities of either party or any other rights or obligations, which due to their nature are intended to survive termination. Where termination occurs and work has been carried out by us and not paid for because the due date has not been reached, we reserve the right to charge you for such work and you shall pay such charges within 14 days of the date of invoice.

**5.4** If appropriate, we reserve the right at our sole discretion to elect to suspend any or all of the services in the circumstances set out in conditions 5.1 and 5.2 but this will not affect our right to terminate at any time after such suspension.

**5.5** Within 7 days of the termination of the contract between us for any reason you will return or destroy (at our option) all materials provided by us to you in connection with the provision of the Services and shall (on request) give us a certificate certifying that you have complied with these terms. This does not affect your rights under condition 1.7 if applicable

## **6 Terms of Payment**

Unless otherwise defined in the proposal our standard terms of payment will apply as follows:

Payments shall be requested as follows:

Upon commencement of project/acceptance of quote 25% variable depending on requirements. Upon launch of site 75% variable and dependant on commencement charge.

Payment would be due strictly within 14 days of receipt of invoice.

The web site will only be moved to its final web hosting (Domain Name Server location) by FyneWeb-Design when payment is made in full.

## **7 Web sites Maintenance**

FyneWeb-Design will only maintain Web sites which are hosted with FyneWeb-Design. This is to enable complete access control over the hosting environment of our client's Web sites and to enable deployment of our own script and code for use on your web site. No web site updates will be undertaken whilst there is any amount outstanding on your account.