

Website Design Terms and Conditions

1. Introduction

1.1 Unless otherwise stated in writing, all orders are accepted subject to these terms and conditions as stated herein and the Customer by authorising or allowing work to proceed is deemed to have acknowledged this fact.

1.2 These terms and conditions should be read together with the Order Confirmation. If there is any conflict between the Order Confirmation and these terms and conditions, the provisions of the Order Confirmation shall prevail.

1.3 No variation to these terms and conditions shall be binding unless agreed in writing to between the authorised representatives of the Designer and the Customer.

2. Definitions and Interpretation

2.1 In this Agreement:-

“Agreement” means these terms and conditions together with the Order Confirmation.

“the Customer” and **“You / Your”** means the company, firm, person, persons, corporation or public authority using any of the Designer’s services as identified in the Confirmation Order and includes their successors or personal representatives.

“Completion Date” means the date (if any) specified in the Order Confirmation as the estimated date on which the Project shall be Complete.

“the Contract Price” means the price for the Project set out in the Order Confirmation.

“the Designer” or **“we/our/us”** means Richard Pavey trading as Richard Pavey Web Design and Development, 12 South Charlotte Street, Edinburgh EH2 4AY.

“Final Artwork” means the visual appearance of the Website, page layout, content, graphics, animation, videos, music and text, audio components and digital components, branding, corporate image and look-and-feel, all as contained within the finished Website.

“Instruction” means the order from the Customer for the Project.

“the Order Confirmation” means the email or letter sent to the Customer by the Designer which confirms the work to be carried out, the technical specification, price, Completion Date and such other specific contractual terms as may be appropriate.

“Products” means all content management systems, interfaces, navigational devices, menus, menu structures or arrangements, icons, help, all operational instructions, scripts, cgi applications, software , programming/source code, and all other components of any source or object computer code that comprises the Website, all literal and non-literal expressions of ideas that operate, cause, create, direct, manipulate, access, or otherwise affect the content and design elements used or developed and all software, products and results of the Project.

“Project” means the design and delivery of the Website and the provision of ancillary services thereto, as set out in the Order Confirmation.

“the Specification” means the Website design specification instructed by the Customer as set out or referred to in the Order Confirmation.

“the Website” means the website to be designed by the Designer for the Customer.

“Writing” includes any written paper document, any fax and any email correspondence.

3. Obligations of the Designer

3.1 The Designer shall develop and deliver the graphical, technical and navigational design for the Website and create and deliver the pages of the Website containing all text, graphics, logos, photographs, images, moving images, sound, illustrations and other materials to be featured, displayed or used in or in relation to the Website, all as set out in the Specification.

3.2 On completion of the Project, the final Website will be uploaded , however in the event that the Customer has specified that web hosting is to be carried out by a party other than the Designer, the Designer reserves the right if not satisfied that the server to be used is adequate for the purpose of hosting the final Website, to nominate a suitable web hosting company to host the final Website and in the event that the Customer does not agree to use this web hosting company for whatever reason, the Designer shall have no further obligations in this regard.

4. Customer Obligations

4.1 The Customer shall provide the Designer with access to sufficient information to allow the design of the Website to be implemented, including without prejudice to the foregoing generality all necessary drafts, concepts, text, graphics, logos, photographs, images, moving images, sound, illustrations and other materials in the correct format, shall use reasonable endeavours to ensure that the information is correct and shall update it when required to do so pursuant to this Agreement.

4.2 Should the Customer fail to provide the material required for inclusion in the Website within onemonth of the date of this Agreement then the Designer may at his sole discretion terminate the Agreement and recover from the Customer any costs, expenses, fees or other charges which may have been incurred.

4.3 The Customer shall provide passwords and authority if required by the Customer’s Internet Service Provider to allow the Designer to upload Web pages into the Customer’s Webspace and otherwise allow satisfactory operation of the Website.

4.4 Where the Customer has engaged more than one supplier in the provision of brand identity, design and development services, the Customer shall deliver the brand identity or design to the Designer upon request.

4.5 The customer will be provided with an opportunity to review the appearance and content of the Website during the design phase. At the completion of the Project, the Website will be deemed to be fully accepted and approved when the website goes live.

4.6 The Customer shall not allow, permit or require the design to include, publish, link to or otherwise broadcast or disseminate, whether directly or indirectly, any material which is indecent, obscene, immoral, offensive, defamatory or otherwise unlawful in any form whatsoever and should the Designer at his sole discretion consider the Customer to be in breach of this condition or any part thereof, he may terminate the Agreement forthwith without compensation being due to the Customer.

4.7 The Customer will be responsible for obtaining and holding all consents, licences, permits and other similar instruments applicable to material it supplies to the Designer for incorporation into the Website, including without limitation copyrights, trade marks, logos, patents and all such similar instruments.

4.8 On handover of files from The Designer to the Customer, the Customer shall assume entire responsibility in ensuring that all files are functioning correctly before use.

5. Timescales

5.1 The Designer will use reasonable endeavours to complete the Project by the Completion Date set out in the Order Confirmation or such other date as may be mutually agreed however any date for performance by the Designer in relation to the Project whether stated in the Agreement or otherwise is only approximate and shall not be an essential term of the Agreement.

5.2 The Designer will have no liability for delays or omissions caused by a failure on the part of the Customer to perform its obligations in terms of this Agreement, nor for circumstances outwith the Designer's control.

6. Price and Payment

6.1 The Customer shall pay the Contract Price for the Project by way of an advance payment and subsequent payments as set out in the Order Confirmation. The advance payment invoice will be sent to the Customer with the Order Confirmation. Work on the Project will commence upon receipt by the Designer of the Customer's payment in respect of the advance payment invoice.

6.2 Payment of the advance payment invoice will be due within 7 days of the invoice date. Payment of subsequent invoices will be due within 14 days of the invoice date unless otherwise specified in the Designer's invoice. The Customer agrees that timely payment of the Designer's invoices shall be an essential term of the Agreement. Payment is currently accepted by cheque or standing order. If the Customer's cheque is returned by the bank as unpaid for any reason, the Designer reserves the right to levy a "returned cheque" charge of £25. Accounts that have not been settled within 7 days of a final reminder will incur a late payment charge of 10% of the amount outstanding. Where the Designer is providing hosting services, the Website will be removed from the server if timely payment is not made.

7. Warranties

7.1 The Customer warrants and represents to the Designer that every element of text, graphics, photos, designs, trademarks or other material supplied to the Designer for inclusion in the Website is owned by the Customer, or that the Customer has permission from the rightful owner to use each of these elements and that the Designer's use of such material shall not infringe the intellectual property rights of any third party.

7.2 The Designer warrants and represents to the Customer that all works created by the Designer in the course of the Project will, unless otherwise stated in this Agreement, be original work and not subject to any intellectual property or other rights of any third party and that the Customer's use of the Website shall not infringe the intellectual property rights of any third party.

8. Ancillary Services

8.1 Domain Name Registration

If required by the Customer, the Designer will purchase any required domain names on its behalf. The domain name(s) will be registered in the Customer's name.

8.2 Web Hosting

The Designer will provide web hosting for the Customer unless the Customer has instructed alternative arrangements. The Designer may also arrange web hosting packages, or work with the Customer's nominated web host, as detailed in the Order Confirmation. Where the web host specified in the Order Confirmation is not the Designer or is not one which the Designer has arranged, the Designer cannot be held responsible for and will have no liability in respect of any extra costs incurred by the Customer through: a) changes which may require additional web server facilities, b) any delays to the launch of the Website caused by the hosting company, c) the Website being off-line due to server problems at the hosting company, d) actions resulting from unauthorised hacking into any website or on-line database created by the Designer or e) from the misuse of any content management system provided by the Designer.

8.3 Domain Name and Web Hosting Transfer

Where the Designer has registered a domain name(s) on the Customer's behalf it shall transfer the domain name(s) to the Customer's preferred hosting provider immediately upon request and without charge. All web hosting and related charges will then be issued by the new provider.

9. Database, Application and E-Commerce Development

9.1 The Designer cannot take responsibility for any losses incurred by the use of any software created for the Customer. Whilst every care has been taken to ensure products are problem free and accurate, the ultimate responsibility lies with the Customer in ensuring that all software is functioning correctly before use.

9.2 Any HTML, XHTML, scripts, cgi applications or software (unless specifically agreed) written by the Designer remain the copyright of the Designer and may only be commercially reproduced or resold with the permission of the Designer.

9.3 Where applications or sites are developed on servers not recommended by the Designer, the Customer shall provide any information, additional software, support or co-operation pertaining to the server which is required in order for the application to be correctly developed. Where large applications are to be developed, it is the Customer's responsibility to provide a suitable testing environment which is identical to the final production environment.

9.4 The Customer is expected to test fully any application or programming relating to a site developed by the Designer before being made generally available for use. Where "bugs", errors or other issues are found after the site is live, the Designer will endeavor to correct these issues to meet the standards of function outlined in the Specification.

9.5 The Customer agrees to pay all taxes and tariffs pertaining to products and services which may be sold from the Website and indemnifies the Designer against any liability in this regard in respect of the Customer's e-commerce activities.

10. Alterations

The Customer may at any time request alterations to the Specification or other changes to the Agreement by notice in writing to the Designer. Upon receipt of such a request the Designer shall notify the Customer in writing as to the effect of the alteration on the Contract Price, Completion Date and any other aspect of the Agreement. The Customer shall within 5 days of receipt of notification by the Designer of the effect of the requested alteration advise the Designer in writing whether the alteration is to be implemented. In the event that the alteration is to proceed on terms different to those already agreed between the parties, the Agreement shall be deemed automatically to have been amended so as to include the alteration and thereafter the Agreement shall be performed in accordance with the amended terms.

11. Intellectual Property Rights

11.1 All Customer-owned content and materials including all pre-existing Trademarks shall remain the sole property of the Customer or its respective suppliers and the Customer or its suppliers shall be the sole owner of all rights in connection therewith. The Customer hereby grants to the Designer a nonexclusive, non-transferable licence to use, reproduce, modify, display and publish the Customer-owned content and materials solely in connection with the Project.

11.2 All third party-owned materials are the exclusive property of their respective owners. The Designer shall inform the Customer of all third party materials which may be required in connection with the Project and the Customer shall at its expense obtain any licences in respect of copyright or other intellectual property rights and any other releases or permissions which are required for all such third party-owned materials which are to be included in the Website.

11.3 All preliminary or sample materials and original artwork which has been provided by the Designer prior to or in the course of the Project remains the exclusive property of the Designer, who retains all intellectual property rights therein. Such preliminary or sample materials and artwork shall be returned to the Designer within thirty days of completion of the Project.

11.4 Unless otherwise agreed in writing, all Products remain the property of the Designer who shall retain full ownership rights and all intellectual property rights. The Customer specifically agrees not to crop, distort, manipulate, reconfigure, create derivative works or extract portions or in any other manner alter the design and code without prior written permission from the Designer, nor to do anything that may in any way infringe upon or undermine the Designer's rights, title, or interest in the Website or its products and service, which includes, but is not limited to, any sale, transfer or gift of the whole or of any part of any item, data or anything whatsoever owned by the Designer. The Customer accepts that the Designer may reproduce, reuse, develop and use in any other way, anything within the Designer's ownership.

11.5 Copyright and other intellectual property rights in the Final Artwork shall remain vested in the Designer unless otherwise agreed on writing. Upon written confirmation by the Designer that final payment in terms of the Agreement has been received the Designer shall assign to the Customer all ownership rights, including any copyrights, in and to the Final Artwork. The Designer shall cooperate with the Customer and shall execute any additional documents reasonably requested by the Customer to evidence such assignment. The Customer shall have sole responsibility for ensuring that any artwork or designs intended to be a Trademark are available for use and registration and do not otherwise infringe the rights of any third party. The Customer hereby indemnifies and holds harmless the Designer from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand or action by any third party alleging any infringement arising out of the Customer's use and/or failure to obtain rights to use or use of the Trademark.

11.6 No rights as described in sub-clauses 11.5 above will pass to the Customer until all amounts due to the Designer have been paid. The Designer will have a lien over any service, products, data or information. Should final payment not be made in full within two months from the date of the relative invoice(s) the Customer agrees and accepts that it will forfeit its rights in terms of this Agreement.

12. Confidentiality

12.1 The Designer and the Customer shall keep confidential all information of the other party, whether designated as confidential or not, obtained under or in connection with the Agreement and shall not divulge the same to any third party without the written consent of the other party. The provisions of this clause shall not apply to any information in the public domain otherwise than by breach of the Agreement; or information obtained from a third party who is free to divulge the same.

12.2 Unless otherwise agreed, the Designer may refer to the Agreement or to the fact that the Customer is the Designer's customer.

12.3 The Designer reserves the right to place a discrete link back to its website from the Website and to use any design created as a 'portfolio' item displayed on the Designer's website / brochure / advertising and to place a discrete label on the Customer's home page identifying the Designer with the Website.

13. Termination

13.1 A party ('the Initiating Party') may terminate this agreement with immediate effect by written notice to the other party ('the Breaching Party') on or at any time after the occurrence of one or more of the following events:-

13.1.1 the Breaching Party committing a material breach of this agreement and failing to remedy the breach within 30 days starting on the day after receipt of notice from the Initiating Party giving details of the breach and requiring the Breaching Party to remedy it;

13.1.2 the Breaching Party passing a resolution for winding up, a court of competent jurisdiction making an order for the Breaching Party's winding up or the presentation of a petition for the Breaching Party's winding up that is not dismissed within seven days, in each case other than for the purposes of solvent amalgamation or reconstruction in such manner that the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the Breaching Party's obligations under this agreement;

13.1.3 the making of an administration order in relation to the Breaching Party or the appointment of a receiver over, or an encumbrancer taking possession of or selling any asset of, the Breaching Party;

or

13.1.4 the Breaching Party making an arrangement or composition with his creditors generally or making an application to a court of competent jurisdiction for protection from his creditors generally.

13.2 The Designer shall have the right to terminate this Agreement with immediate effect by notice in writing to the Customer if the Customer fails to make any payment when it becomes due.

13.3 Should the Customer wish to terminate in whole or in part the Project prior to completion the Customer shall be liable for all work carried out up to the point of termination and shall be invoiced accordingly.

13.4 The Designer shall be entitled to retain any advance payment and other payments which may have been made on a quantum meruit basis for work carried out in relation to the Website up to the time of termination for whatever reason.

13. No Waiver

Failure or delay by either party in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement. Any waiver by a party of any breach of, or any default under, any provision of the Agreement by the other party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement.

14. Force Majeure

The Designer shall not be liable for any delay or failure to perform any of its obligations under this Agreement if delay or failure results from events or matters beyond its reasonable control, including but not limited to, acts of God, fire, lightning, explosion, war, disorder, accidents, flood, industrial dispute (whether or not involving its employees), failures or interruptions of electricity supplies, weather of exceptional severity, acts or omissions of local or central government or other authorities, the acts or omissions of any Internet Service Provider, or the delay or failure in manufacture, production or supply by third parties of equipment or services, and it shall be entitled to a reasonable extension of its obligations after notifying the Customer of the nature and extent of such events.

15. Indemnity

15.1 The Customer hereby indemnifies and holds harmless the Designer against all claims, demands, losses, damages, costs or expenses howsoever arising incurred by the Designer in connection with the Agreement as a result of a breach by the Customer of any provision of this Agreement, law or regulation and/or as a result of any third party legal action or threatened action in relation to Intellectual Property Rights infringement whatsoever and howsoever arising. Without prejudice to the foregoing generality:-

15.1.1 the Customer indemnifies and holds harmless the Designer from any and all claims, demands, losses, damages, costs or expenses arising out of the Customer's failure to obtain copyright or other intellectual property rights or other releases or permissions with respect to content or materials included in the Website; and

15.2 the Customer indemnifies and holds harmless the Designer against any misrepresentation, whether intentional or unintentional, supplied to the Designer orally or in writing in connection with this Agreement.

16. Disclaimers

16.1 Whilst the Designer will endeavour to design and deliver the Website to meet and even surpass the Customer's expectations, the Customer shall accept that the Website and its contents are provided on an "as is" basis and the Designer makes no warranties with regard to the Website and its contents, or fitness of services offered for a particular purpose. The Designer cannot guarantee the functionality or operations of the Website or that it will be uninterrupted or error free, nor does it warrant that the contents are current, accurate or complete.

16.2 The Designer will not be liable for any costs incurred, compensation or loss of earnings due to the unavailability of the Website, its servers, software or any material provided by its agents.

16.3 The Designer will not be liable to the Customer for any loss or destruction of software or systems, temporary or otherwise, which occurs following use of the Website except and to the extent that it is caused by the wilful default of the Designer, its employees or agents.

16.4 The Designer will not be liable in respect of any failure, delay or defect in relation to the Website which has been caused by the supply or specification by the Customer of unsuitable material or content or by the reproduction of the Website by a third party.

16.5 The Designer will not be liable to the Customer in the event that any hardware or software used in conjunction with the Website malfunctions, fails or is otherwise unable to communicate with other systems or Internet users (including where computer viruses have caused such failures) such that the use of the Website is hindered or impeded.

16.6 The Designer gives no warranty either express or implied as to the frequency of accessing the Website by visitors or the periods of availability of the Website to visitors, neither of which is within the Designer's control.

16.7 The Designer will not be liable to the Customer or any third party for any damages, including loss of profits or consequential damage arising out of either the operation or inoperation of the Website.

16.8 Where the Customer uses a third party or service such as Macromedia Contribute for website editing, PayPal or SecPay for e-commerce or Constant Contact for email newsletters, then the Customer's relationship is exclusively with the supplier of that product or service and it is entirely the responsibility of the Customer to satisfy itself as to the benefits, risks and correct use of said product or service regardless of whether the Designer has introduced the products or services to the Customer.

16.9 The Designer shall endeavour to ensure that the Website will function correctly on the server it is initially installed in and that it will function correctly when viewed with the main browsers Internet Explorer and Mozilla Firefox latest releases. New layouts are tested with older browsers to ensure as much compatibility as possible. The customer agrees and accepts that The Designer cannot guarantee correct functionality with all browser software across different operating systems, particularly where browsers do not support or do not fully support W3C standards-based code. The Designer does not support compatibility with Internet Explorer 6 as standard.

16.10 The Designer endeavours to design pages which display acceptably in the most popular current browsers but cannot accept responsibility for pages which do not display acceptably in new versions of browsers released after pages have been designed. The Customer agrees and accepts that after handover of files any updated software versions of the main browsers Internet Explorer and Mozilla Firefox, domain name setup changes or hosting setup changes thereafter may affect the functionality and display of the Website. As such, the Designer reserves the right to quote for any work involved in changing the Website design or code for it to work with updated browser software, domain name or hosting changes.

16.11 The Customer agrees and accepts that more advanced applications on a web site page may require a newer browser version or Plugin.

17. Limitation of Liability

17.1 Notwithstanding any other provision in this agreement, the Designer's liability to the Customer for death or injury resulting from its own negligence or that of his employees, agents or sub-contractors shall not be limited.

17.2 The Designer's entire liability to the Customer in respect of any breach of its contractual obligations, any breach of warranty, any representation, statement or delictual act or omission including negligence arising under or in connection with this Agreement shall be limited to an amount equal to the Contract Price.

17.3 The Designer shall not be liable to the Customer for any indirect or consequential loss the Customer may suffer, even if the loss is reasonably foreseeable or the Designer has been advised of the possibility of the Customer incurring it.

17.4 Without prejudice to the foregoing generalities, the Designer will not be held responsible for any losses arising from the supply by the Customer or others of incorrect or incomplete information, or the Customer's or others' failure to supply any appropriate information or the Customer's failure to act on the advice of the Designer or respond promptly to communications from the Designer or other relevant authorities.

17.5 The Customer's property and all property supplied to the Designer by or on behalf of the Customer shall while in the possession of the Designer or in transit to or from the Customer, be deemed at the Customer's risk unless otherwise agreed in writing. The Designer's liability to the Customer or any other party for the loss including theft, or destruction or damage to any Customer property whilst in the possession of the Designer will be limited to the replacement cost of the actual material.

18. Assignment

Neither party shall assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of this agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.

19. Customer Satisfaction

Satisfaction with the quality of the Services provided is of paramount importance to us. If at any time you would like to discuss with us how our service to you could be improved, or if you are dissatisfied with the service you are receiving, please let us know, by telephoning 0131 538 1988 or emailing us at mail@richardpavey.co.uk. We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. If you feel that we have given you a less than satisfactory service, we undertake to do everything reasonable to address your concerns. Should matters not be resolved to your satisfaction and any dispute arise in connection with the Agreement parties shall attempt to settle it by Mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

20. Remedies

The rights and remedies provided for by this agreement are cumulative with and not exclusive of any rights or remedies provided by law.

21. Notices

21.1 Any notice, demand or other communication given or made under or in connection with the matters contemplated by this agreement shall be deemed to have been duly given and received:-

- a. if personally delivered, upon delivery at the address of the relevant party;
- b. if sent by first class post, two business days after the date of posting;
- c. if by email, when sent;

provided that if, in accordance with the above provision, any notice, demand or other communication would otherwise be deemed to be given or made after 1700 hours, it shall be deemed to be given or made at the start of the next business day.

21.2 A party may notify the other party to this Agreement of a change to its name, relevant addressee, address or fax number for the purposes of the above clause provided that such notification shall only be effective on:

21.2.1 the date specified in the notification as the date on which the change is to take place, or

21.2.2 if no date is specified or the date specified is less than five business days after the date on which notice is given, the date falling five business days after the notice is given.

22. Entire Agreement

This Agreement set out the entire understanding of the parties with respect to their subject matter and replace any prior agreements or understandings or representations (unless fraudulent), whether written or oral.

23. Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of Scotland the courts of which shall have non-exclusive jurisdiction.