

Websites4property.com – Terms & Conditions of Trade

1. Preamble

- 1.1 All Services of Websites4property.com, whether gratuitous or not, are supplied subject to these Conditions and:
- the provisions of Part I shall apply to the provision of all and any Services.
 - the provisions of Part II shall only apply to the provision of Web Site Hosting Services.
 - the provisions of Part III shall only apply to the provision of Web Development Services.

PART I - GENERAL CLAUSES

2. Definitions

- 2.1 **%Supplier+** shall mean Websites4property.com its successors and assigns or any person acting on behalf of and with the authority of Websites4property.com.
- 2.2 **%Client+** shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation, sales order, proposal, or any other forms to which these terms and conditions apply, and shall include any person acting on behalf of and with the authority of such person or entity.
- 2.3 **%Guarantor+** means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 2.4 **%Materials+** shall mean all data, graphics, pictures, trade marks, software and other materials to be incorporated in the Client's web site (including, but not limited to), user data created by the operation of the Client's web site.
- 2.5 **%Services+** shall mean all services supplied by the Supplier to the Client and includes any advice or recommendations, (and where the context so permits shall include any supply of Goods as hereinafter defined) and are as described on the invoices, quotation, sales order or any other forms as provided by the Supplier to the Client.
- 2.6 **%Goods+** shall mean Goods supplied by the Supplier to the Client.
- 2.7 **%Price+** shall mean the cost of the Goods / Services as agreed between the Supplier and the Client subject to clause 5 of this contract.
- 2.8 **%Prohibited Content+** means any content on a Web Site or email that:
- is, or could reasonably be considered to be, in breach of the Broadcasting Act 1990; or any other applicable law or applicable industry code; or
 - contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
 - is, or could reasonably be considered to be, in breach of any person's Intellectual Property Rights.
- 2.9 **%Web Site+** means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.

3. Acceptance

- 3.1 Any instructions received by the Supplier from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Supplier shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Client shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Supplier.
- 3.4 None of the Supplier's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Supplier in writing nor is the Supplier bound by any such unauthorised statements.
- 3.5 The Client undertakes to give the Supplier not less than fourteen (14) days prior written notice of any change in the Client's name and/or any other change in the Client's details.

4. Services

- 4.1 The Services are as described on the invoice, quotation, sales order or any other work commencement forms as provided by the Supplier to the Client.

5. Price And Payment

- 5.1 At the Supplier's sole discretion the Price shall be either:
- as indicated on invoices provided by the Supplier to the Client in respect of Services supplied; or
 - the Supplier's quoted Price (subject to clause 5.2) which shall be binding upon the Supplier provided that the Client shall accept in writing the Supplier's quotation within thirty (30) days.
- 5.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.3 At the Supplier's sole discretion a deposit may be required.
- 5.4 At the Supplier's sole discretion:
- payment shall be due on delivery of the Services; or
 - payment shall be due before delivery of the Services; or
 - payment for approved Clients shall be made by instalments in accordance with the Supplier's payment schedule.
- 5.5 The Supplier may submit a detailed payment claim at intervals not less than one month for Services performed up to the end of each month. The value of Services so performed shall include the value of any variations, whether or not the value of such variations has been finally agreed between the parties.
- 5.6 Time for payment for the Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 5.7 The Supplier may withhold delivery of the Services until the Client has paid for them, in which event payment shall be made before the delivery date.
- 5.8 Payment will be made by cash, cheque, credit / debit card, BACS, or by any other method as agreed to between the Client and the Supplier.
- 5.9 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

6. Proof Reading

- 6.1 Whilst every care is taken by the Supplier to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading of the Goods and Services. The Supplier shall be under no liability whatever for any errors not corrected by the Client in the final proof reading. Should the Client's alterations require additional proofs, this may be invoiced as an extra.
- 6.2 The Supplier shall be under no liability whatever to the Client for any variation (beyond the reasonable control of the Supplier) in colours between the approved prototype and the finished Goods.

7. Delivery Of Goods and Services

- 7.1 At the Supplier's sole discretion delivery of the Goods shall take place when:
- the Client takes possession of the Goods at the Supplier's address; or
 - the Client takes possession of the Goods at the Client's address or other address nominated by the Client (in the event that the Goods are delivered by the Supplier or the Supplier's nominated carrier); or
 - the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent; or
 - the Materials are made available on the Web Site.
- 7.2 The costs of delivery are included in the Price, unless otherwise specified in the quotation.
- 7.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery.

- 7.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 7.5 The Supplier may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 7.6 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that such discrepancy in quantity shall not exceed 5% and the Price shall be adjusted pro rata to the discrepancy.
- 7.7 The failure of the Supplier to deliver shall not entitle either party to treat this contract as repudiated.
- 7.8 The Supplier shall not be liable for any loss or damage whatever due to failure by the Supplier to deliver Goods/Services (or any of them) promptly or at all.

8. Risk

- 8.1 If the Supplier retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

9. Title

- 9.1 It is the intention of the Supplier and agreed by the Client that property in the Services shall not pass until:
- the Client has paid all amounts owing for the particular Services, and
 - the Client has met all other obligations due by the Client to the Supplier in respect of all contracts between the Supplier and the Client, and that where practicable the Services shall be kept separate until the Supplier shall have received payment and all other obligations of the Client are met.
- 9.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Supplier's ownership of rights in respect of the Services shall continue.
- 9.3 It is further agreed that:
- until such time as ownership of the Services shall pass from the Supplier to the Client the Supplier may give notice in writing to the Client to return the Services or any of them to the Supplier. Upon such notice the rights of the Client to obtain ownership or any other interest in the Services shall cease.
 - the Supplier shall have the right of stopping the Services in transit whether or not delivery has been made; and
 - if the Client fails to return the Services to the Supplier then the Supplier or the Supplier's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Services are situated and take possession of the Services.
 - the Client is only a bailee of the Services and until such time as the Supplier has received payment in full for the Services then the Client shall hold any proceeds from the sale or disposal of the Services on trust for the Supplier.
 - the Client shall not deal with the money of the Supplier in any way which may be adverse to the Supplier.
 - the Client shall not charge the Services in any way nor grant nor otherwise give any interest in the Services while they remain the property of the Supplier.
 - the Supplier may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to the Supplier arising out of these terms and conditions, and the Supplier may take any lawful steps to require payment of the amounts due and the Price.
 - the Supplier can issue proceedings to recover the Price of the Services sold notwithstanding ownership of the Services may not have passed to the Client.
 - until such time that ownership in the Services passes to the Client, if the Services are so converted, the parties agree that the Supplier will be the owner of the end products.

10. Defects, Errors and Omissions

- 10.1 The Client shall inspect the Services on delivery and shall within seven (7) days notify the Supplier of any alleged defect, error, omission or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions the Services shall be presumed to be free from any defect or damage. For defective Services, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to replacing the Services.
- 10.2 No Goods shall be accepted for return except in accordance with 10.1 above.

11. Search Engine Optimisation Services (SEO)

- 11.1 For any Search Engine Optimisation Services, as outlined on the quotation, sales order, proposal or any other form the Supplier to the Client, the Supplier will, to its best endeavours optimise the Client's website to achieve a high ranking for any website searches.
- 11.2 The Client agrees that the Supplier does not represent or warrant that the Client's website will achieve a favourable position, or any position, within a particular search engine and within any timescale.
- 11.3 The Client agrees that no guarantees by the Supplier can be made to the favourable SEO rankings achieved or the timescales for which any favourable SEO rankings can be achieved.

12. Pay Per Click Campaign Management

- 12.1 For any Pay Per Click Campaigns as outlined on the written agreement on the quotation, sales order or any other form the Supplier to the Client, the Client agrees;
- that the Supplier will set up the campaign as per the written agreement; and
 - to specify, in writing, to the Supplier the maximum monthly chargeable budget made by the 3rd party search engine provider to the Client; and
 - to specify, in writing, to the Supplier any specific parameters relating to the campaign.
- 12.2 In the event that the Client fails to notify the Supplier of any budgets and other parameters as outlined in clause, 12.1 or the Client makes any direct changes to the pay per click campaign with the 3rd party search engine provider, the Client agrees to be bound by the charges made by the 3rd party search engine provider and understands that these charges may have no limit.

13. Client's Disclaimer

- 13.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Supplier and the Client acknowledges that he buys the Services relying solely upon his own skill and judgement.

14. Sale of Goods Act 1979 and Supply of Goods and Services Act 1982

- 14.1 This agreement is subject to the provisions of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 (or any replacement or re-enactment thereof) in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 14.2 Notwithstanding clause 14.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts, laws or legislation.

15. Intellectual Property

- 15.1 Notwithstanding anything herein, the Intellectual Property Rights in the Supplier's Materials and the Supplier's Routines do not vest in the Client and there is no assignment of the Intellectual Property Rights in the Supplier's Materials or the Supplier's Routines to the Client. The Supplier hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use and reproduce the Supplier's Materials and Supplier's Routines for the purposes of this agreement only.
- 15.2 The Client warrants that all designs, graphics, images, photographic (digital or otherwise) images, samples, specifications, typewritten or other good copy or instructions provided by the Client to the Supplier will not cause the Supplier to infringe any patent, licence, registered design or trademark in the execution of the Client's order.
- 15.3 The Client indemnifies the Supplier against any claim by a 3rd party made for use of any designs, graphics, images, photographic (digital or otherwise) images, samples, specifications, typewritten or other good copy or instructions provided by the Client to the Supplier.
- 15.4 Where the Supplier has provided photographic or graphical (digital or otherwise) images for the Client, at the Supplier's sole discretion any such images may be subject to ongoing licence payments for use of such images. The period of any such licence is determined by the Supplier from time to time.

16. Default & Consequences of Default

- 16.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 16.2 The Supplier may charge interest on overdue invoices in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 16.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in pursuing the debt including legal costs on a solicitor and own Client basis and the Supplier's collection agency costs.
- 16.4 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Supplier may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 16.5 If any account remains overdue after fourteen (14) days then an amount of (£20.00) shall be levied for administration fees which sum shall become immediately due and payable.
- 16.6 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Security And Charge

- 17.1 Despite anything to the contrary contained herein or any other rights which the Supplier may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Supplier or the Supplier's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Supplier (or the Supplier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Supplier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own Client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Supplier or the Supplier's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 17.1.

18. Cancellation

- 18.1 The Supplier may cancel these terms and conditions or cancel delivery of Services at any time before the Services are delivered by giving written notice. The Supplier shall not be liable for any loss or damage whatever arising from such cancellation.
- 18.2 At the Supplier's sole discretion the Client may cancel delivery of the Goods and/or Services (except for Web Site Hosting services as outlined in clause 26). In the event that the Client cancels delivery of the Goods and/or Services the Client shall be liable for any costs incurred by the Supplier up to the time of cancellation.

19. Data Protection Act 1998

- 19.1 The Client and the Guarantor/s (if separate to the Client) authorises the Supplier to:
- (a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
 - (b) to disclose information about the Client, whether collected by the Supplier from the Client directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing a default by the Client on publicly accessible credit reporting databases.
- 19.2 The Supplier may also use information about the Client to monitor and analyse its business. In this connection the Client authorises the Supplier to disclose personal information to agents or third parties engaged by the Supplier.
- 19.3 The Client consents to the transfer of information outside of the European Economic Area for the purposes listed above.
- 19.4 Where the Client is an individual the authorities under (clause 19.1) are authorities or consents for the purposes of the Data Protection Act 1998.
- 19.5 The Client has the right to request the Supplier for a copy of the information about the Client retained by the Supplier and the right to request the Supplier to correct incorrect information about the Client held by the Supplier.

20. General

- 20.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of England and Wales and are subject to the jurisdiction of the courts of England and Wales.
- 20.3 The Supplier shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions.

- 20.4 In the event of any breach of this contract by the Supplier the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Supplier exceed the Price of the Services.
- 20.5 The Client shall not set off against the Price amounts due from the Supplier.
- 20.6 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 20.7 The Supplier reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Supplier notifies the Client of such change.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 20.9 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.

PART II: WEB SITE HOSTING

21. Acceptance

- 21.1 Unless expressly included in the agreement Hosting Services does not include the building or development of a web site.
- 21.2 The Supplier reserves the right to charge the Client in addition to the Price in the event of an increase in third party hosting fee charges. In this event, the Supplier will notify the Client in writing.
- 21.2 Third party applications installed via a third party are provided, free with Hosting Services, as is with no warranty and with no technical support (this can be purchased on an ad hoc basis).

22. What The Supplier Will Do

- 22.1 The Supplier will:
- (a) host the Client Web Site on a webserver; and
 - (b) ensure that from the Live Date:
 - (i) sufficient capacity is maintained on the Supplier's webserver to enable Users access to the Client Web Site in a timely manner; and
 - (ii) the Client Web Site is accessible to Users in accordance with the Service Levels (subject to reasonable downtime for server maintenance which has been notified to the Client prior to the commencement of the downtime or Web Site Maintenance in accordance with Clause 22.1(c));
 - (c) provide the Client with reasonable electronic access to the Client Web Site to perform maintenance services.

23. What The Supplier Will Not Do

- 23.1 The Supplier will not:
- (a) alter or amend, or permit any person to alter or amend the Client's Web Site without the written consent of the Client; and
 - (b) post or display on the Client's Web Site any advertisement, sponsorship or promotion without the written consent of the Client; and
 - (c) use any user data for marketing, referral or other purposes except as expressly authorised by this agreement; and
 - (d) sub-licence, rent, time-share, lease, lend or grant any rights to use the Client's Web Site; and
 - (e) assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this agreement.

24. What The Client Will Do

- 24.1 The Client will, at its sole cost and expense:
- (a) develop and maintain the Client's Web Site; and
 - (b) provide the Client's Materials to the Supplier, in such form as reasonably prescribed by the Supplier from time to time, and hereby grants the Supplier a non-exclusive, world wide, irrevocable licence to use the Client's Materials for the purposes of hosting the Client's Web Site; and
 - (c) do all things reasonably necessary to enable the Supplier to host the Client's Web Site on the Supplier's webserver; and
 - (d) ensure that the Client's Materials supplied to the Supplier do not contain:
 - (i) prohibited Content; or
 - (ii) a Link to any Web Site that contains Prohibited Content; or
 - (iii) any viruses, trojan horses, worms, time bombs or any other software program or routine designed for or capable of interfering with the operation of the Hosting Services.
- 24.2 The Client indemnifies the Supplier against any losses or damages, including, but not limited to loss of profit, in the event of any server downtime, howsoever caused.

25. What The Client Will Not Do

- 25.1 The Client will not do anything that prevents or hinders the Supplier from providing hosting services to any other person.

26. Termination Of Website Hosting Services

- 26.1 The Client agrees that any Web Site hosting services is for a minimum service period as stated on the Invoice (and where no minimum service period is stated, the minimum period will be for a period of twelve (12) months) and will continue on an annual basis thereafter until the Client provides thirty (30) days notice in writing to the Supplier to terminate the Web Site Hosting service.

PART III: DEVELOPMENT OF THE WEB SITE

27. What The Supplier Will Do

- 27.1 Upon approval of the specifications and quotation in accordance with this agreement, the Supplier will:
- (a) use its best endeavours to develop the Web Site in accordance with the development stages; and
 - (b) to the extent specified in the specifications, negotiate and procure third party agreements on behalf of the Client.

28. What The Client Will Do

- 28.1 The Client will, in addition to any other obligations expressed in this agreement, have the following responsibilities:
- (a) provision of all data to be incorporated into the Web Site; and
 - (b) provision of logos, designs, graphic and related materials to be incorporated into the Web Site; and
 - (c) provision of any other information, ideas or suggestions which are to be expressly considered by the Supplier in developing the Web Site.
- 28.2 The Client will ensure that the Supplier is given such information and assistance as the Supplier reasonably requires to enable it to construct and maintain the Web Site.
- 28.3 The Supplier will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Web Site which is attributable to:
- (a) incorrect information provided by the Client, either pursuant to this clause or otherwise; or
 - (b) failure by the Client to provide relevant information, either pursuant to this clause or otherwise; or
 - (c) any third party Materials used by the Supplier in creation of the Web Site.

29. Maintenance

- 29.1 Subject to clause 29.2, the Supplier will provide the maintenance services in accordance with the maintenance terms set out in the Supplier's maintenance schedule.
- 29.2 The Client will procure all necessary authorisations, licences and consents to enable the Supplier to have access to the Web Site in order to provide the maintenance services.