

Standard Terms & Conditions

The developer, HWD Ltd, reserves the right to terminate this contract at any time in the event that the client breaches any of the terms and conditions contained herein. (See Termination below)

These Terms & Conditions are subject to regular reviews. HWD reserve the right to adjust them where appropriate to changing climate of our industry.

General

1. Definitions

In these conditions, the "Client" shall mean any person(s), company(s) or authority(s) who shall order or purchase services or goods from HWD Ltd (hereinafter referred to as 'HWD'). 'The Contract' shall mean the contract for sale or supply of services or goods by HWD to the Client.

2. Contract

- So far as they are not expressly varied in writing by HWD these conditions shall be incorporated into all contracts made by HWD and all work undertaken or goods supplied by HWD shall be deemed to be carried out pursuant to a contract incorporating these conditions.
- HWD reserves the right to renegotiate price where the contract is varied; these variations to be confirmed in writing.
- The invalidity or unenforceability for any reason of any part of these conditions shall not prejudice or affect the validity or enforceability of the remainder.
- A commission of the work described on the estimate or proposal will be deemed to have been accepted if a copy of the estimate or proposal is signed by the Client and returned to HWD. Where an order is made and accepted by phone or email. A copy of the current HWD terms and conditions will deem to be in place, along with any special terms relevant to the contract. A copy will emailed to the client along with confirmation of the order and any relevant delivery details. A copy of the current HWD terms and conditions is available on the HWD website.
- The client is deemed to be satisfied as to the suitability of the specifications/ proposals in the contract for the purpose for which the Client requires them.

2. Completion

Any completion date(s) given by HWD to the Client is a best approximation and although every endeavour will be made to meet such date(s). HWD will not accept any responsibility or liability if dates are not met.

3. Non Disclosure of Material

During the provision of Services the parties may disclose or exchange certain Proprietary and Confidential Material, and they desire that the recipient keep such material confidential, and use it only in connection with the applicable Engagement Work Authorisation

This non-disclosure Agreement shall take effect on the date shown on the applicable Proposal Acceptance and shall continue in effect for five years from such date.

The Proprietary and Confidential Material and all physical copies of it shall at all times remain the property of the disclosing party.

Each party shall, upon the other party's written request at any time, promptly return all copies of the Proprietary and Confidential Material to the disclosing party.

4. Personnel

HWD reserves the right to select and employ subcontractors to assist in the provision of any part of the Services. Any reference to HWD personnel herein includes HWD subcontractor personnel.

If at any time a third party, not associated with HWD, attempts to amend, modify or in any other way touch any aspect of the services delivered or created by HWD without express written permission from HWD any agreement or contract will be deemed as void. Any remedial work required will be charged at our standard hourly rate and be scheduled in amongst any other work commitments.

5. Intellectual Property and site ownership

Any idea, concept, know-how, technique which relates to data processing, source codes and programming for the Service, and is developed by HWD or any third party software used remains the sole property of HWD or the respective third party supplier and may not be duplicated, passed on or in any way used without the express permission in writing from HWD or the relevant third party software supplier.

The acceptance by HWD of an Order shall not;

- Prevent either party or its Related Companies from entering similar agreements with others whether or not they are in the same industry or independently developing materials, products or services which are similar to those of either party or its Related Companies, irrespective of their similarity to any materials, products or services which might result from the acceptance of such an Order.
- Confer on either party the right to use in any advertising, publicity, promotional, marketing or other activities any name, trademark, trade name or other designation of the other party or its Related Companies.

Physical site files and Databases are the property of the Client. Should you, the Client, decide to change suppliers, HWD will provide you, the Client, all required site files and databases to allow your website to be set up and administered by a third party. From that point HWD no longer has any responsibility or liability of any kind over the performance, content, administration or management of the website.

6. Website Content

You, the Client are responsible for all the content you publish on your website. In order to make it easier for you, in some, but not all cases, you can also send content directly to HWD and we will publish it on your behalf. In both methods you are responsible for the content that is published on your website. Content can consist of audio, video, text, images and software. Take care to make sure that you are legally allowed to publish the content on your website. Especially take care that you have the rights to publish all images on your website and you are not breaking copyright. If you are found to be breaking any laws with the content published on your website you are entirely responsible for any consequences or legal action taken as a result of such content.

7. **Third Party Software**

Occasionally HWD may use third party software in the construction of a website. For example, but not exclusively - Adobe Typekit, SendGrid, Facebook, Twitter and Google (inc Maps and Analytics). HWD Ltd make no warranties or guarantees of service on behalf of 3rd Party software or services. HWD are not responsible for the levels of service of 3rd party software providers. This remains the sole responsibility of the 3rd Party Provider.

8. **Desktop & Mobile Browser Compatibility**

Browser compatibility is the term used to ensure that a given website project displays and functions correctly on all mainstream Browsers as deemed by HWD Ltd on the start date of development..

All Browsers are updated on a regular basis with new, modern functionality to ensure the best possible user experience.

- HWD will ensure that ALL website projects, unless otherwise stated in individual proposal contracts, will be tested on the most up to date mainstream browsers. If a browser is no longer supported by its creator (e.g. Microsoft) then HWD will not support or code for it, unless specifically stated in an individual proposal contract.
- If there is a browser upgrade during the development period i.e.: between the issue date of the Quote/Proposal and the live date, HWD will revert to the latest, supported version for browser compatibility testing.
- If a customer requires a specific project to be 'backward' browser compatible to an older, unsupported browser, they must state this specifically. HWD will then assess the request and will quote accordingly.
- HWD will make best efforts to ensure that a new project will work on as many browsers as possible, including older, obsolete browsers, but can't make any guarantees to all areas of display and functionality working as precisely as intended.

9. **Design and Functionality**

Our websites are based on frameworks we have either created or purchased from a third party. We then design the website for your requirements. Although we design each website specifically for each customer we do not guarantee that your website will not be similar to other websites we produce requiring a similar design and style. Each website comes with an array of features which are detailed on an individual basis in the relevant Proposal Document.

We take care to make sure the design of your website fits with your requirements. We cannot, however, guarantee that we will not make mistakes. These mistakes could result in your website not functioning in the way it was intended. In the event of a mistake such as this occurring we will endeavour to rectify the situation as best we can and as quickly as possible. HWD do not, however, accept any liability for damages or loss of income resulting from any such mistake or mistakes. It is your (the Client's) responsibility to ensure that your site is working how it is intended, and it is your responsibility to notify HWD of any circumstances where this is not the case.

10. **Web Site Hosting and Email**

HWD use third party providers to host your website. Although great care has been taken to choose a provider it is possible that your site may be offline for any amount of time in the event of technical problems. HWD will not be liable for any damages or loss of income due to your site being offline and you will not be entitled to a refund of any kind. If we feel your site traffic or requests to the server are excessive we may be required to move your site to a different host or hosting package which may result in an additional monthly fee.

Web servers run third party software which is upgraded from time to time. This may or may not have an impact on the compatibility of your website and its functionality. HWD will make best efforts to inform the Client in advance of a significant upgrade which may affect the Client's website and inform the Client of the action required. HWD will charge for any time spent upgrading or otherwise

We make no representation and give no warranty as to the accuracy or quality of information received by any person via the Server and we shall have no liability for any loss or damage to any data stored on servers owned or managed by HWD.

You shall effect and maintain adequate insurance cover in respect of any loss or damage to data stored on the Server or loss of e- commerce opportunities.

You represent, undertake and warrant to us that you will use the Web Site allocated to you only for lawful purposes. In particular, you represent, warrant and undertake to us that:

- You will not use the Server in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will you authorise or permit any other person to do so.
- You will not post, link to or transmit:
 - any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way.
 - any material containing a virus or other hostile computer program.
 - any material which constitutes, or encourages the commission of, a criminal offence or which infringes any patent, trademark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.
- You will not send bulk email whether opt- in or otherwise from our network unless you have our agreement in writing to do so. Nor will you promote a site hosted on our network using bulk email.
- You will not employ programs which consume excessive system resources, including but not limited to processor cycles and memory
 - We reserve the right to remove any material which we deem inappropriate from your website without notice. E.g. we do not host Warez or illegal MP3 content.
 - You shall keep secure any identification, password and other confidential information relating to your account and shall notify us immediately of any known or suspected unauthorised use of your account or breach of security, including loss, theft or unauthorised disclosure of your password or other security information.
 - You shall observe the procedures which we may from time to time prescribe and shall make no use of the Server which is detrimental to our other customers.
 - You shall procure that all mail is sent in accordance with applicable legislation (including data protection legislation) and in a secure manner.
 - In the case of an individual User, you warrant that you are at least 18 years of age and if the User is a company, you warrant that the Services will not be used by anyone under the age of 18 years.
 - Any access to other networks connected to HWD must comply with the rules appropriate for those other networks.
 - While we will use every reasonable endeavour to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers or from corruption by virus and we shall be under no liability for non- receipt or misrouting of email or damage to data or operations.

11. Service availability

We shall use our reasonable endeavours to make available to you at all times the relevant server and web services but we shall not, in any event, be liable for interruptions of Service or down-time of the Server.

We shall have the right to suspend the Services at any time and for any reason, generally without notice, but if such suspension lasts or is to last for more than 7 days you will be notified of the reason.

12. Domain Name Registration

- We make no representation that the domain name you wish to register is capable of being registered by or for you or that it will be registered in your name. You should therefore not assume registration of your requested domain name(s) until you have been notified that it has or they have been registered. Any action taken by you before such notification is at your risk.
- The registration and use of your domain name is subject to the terms and conditions of use applied by the relevant naming authority; you shall ensure that you are aware of those terms and conditions and that you comply with them. For UK domain registrations you shall ensure that you are aware of the terms and conditions of Nominet UK, the UK naming authority, that can be found at <http://www.nominet.org.uk/nominet-terms.html> and that you comply with them. You shall have no right to bring any claim against us in respect of refusal to register a domain name. We can supply you with details of how to access the terms and conditions of other naming authorities on request (eg UKERNA for ac.uk domain names).
- We shall have no liability in respect of the use by you of any domain name; any dispute between you and any other person must be resolved between the parties concerned in such dispute. If any such dispute arises, we shall be entitled, at our discretion and without giving any reason, to withhold, suspend or cancel the domain name. We shall also be entitled to make representations to the relevant naming authority but will not be obliged to take part in any such dispute.
- We shall not release any domain to another provider unless full payment for that domain name or any other outstanding service has been paid.
- We give no warranty that the Domain Name requested will not infringe the rights (eg copyright, trademark or other Intellectual / Commercial Property Rights) of any third party and that you indemnify HWD in respect of any such infringements.
- We cannot give refunds for the registration of new domain names.
- While HWD make every effort to remind you of an impending domain name renewal, it is your responsibility to ensure that the domain name is renewed by the domain name renewal date. This is normally two years after the registration of the domain name. The registration and/ or transfer of a domain name does not imply that we will undertake to renew that domain name by the expiry date.

Charges & Payments

HWD Ltd reserves the right to increase its charges. This will normally take place annually in January but is at the sole discretion of HWD Ltd and may occur at any time. Existing clients will be informed of any changes 30 days in advance.

13. *Standard and bespoke build websites*

In the case of one off bespoke services such as website design, 50% of the estimate shall be paid before work commences and the remaining outstanding balance will be paid at the agreed live date or within 14 days of the actual live date whichever is the earlier. Failure to pay within the 14 day period may result in credit charge of 10% of the contract price.

HWD reserves the right to reverse and cancel any work or contract if payment terms are not met.

14. Pay Monthly Websites

- Pay Monthly websites are where you will be required to pay an upfront set up charge, which will vary dependant upon the website specification, followed by monthly payments for the rental, support and ongoing maintenance of the website over a time frame that will be agreed with the you prior to entering into a 'Pay Monthly Agreement'.
- The set up charge will cover the development costs to ensure that your website is ready, as agreed, to be presented to the public and set live.
- The ongoing monthly payment will cover the area detailed in the relevant Proposal.
- Pay monthly Websites are a website subscription based service and the website code, framework and any technology used by HWD in creating your website remains the sole property of HWD.
- You may cancel this service at any time by email, with the cancellation date being the day after the next payment cycle date (2nd day of the next nearest month). If you require the Content then you must ensure that you have all that you require prior to this date after which the content will no longer be available to you. HWD reserves the right to charge an administration fee for any work or time spent directly after the final date a contract is cancelled at our standard hourly rate.
- HWD will calculate any outstanding balances which will include the build cost for the project and will charge the Client Accordingly.
- All charges will be paid via GoCardless on a subscription basis
- HWD reserves the right to reverse and cancel any work or contract if payment terms are not met.

15. Monthly Support Contracts

- Monthly Support Contracts will be issued as a separate agreement to the customer on request. Once a Customer agrees and enters into a Support Contract with HWD payment must be made by Direct Debit on the first day of each month for the amount (including VAT) that has been agreed in the Monthly Support Contract.
- HWD will provide the support detailed in the Monthly Support Contract Agreement.
- All charges will be paid via GoCardless on a subscription basis

16. Ongoing Charge for Non Support Contract Customers

HWD will support a customer's new website/project for up to 6 weeks from the live date for no additional charge. This includes any minor functionality changes or design changes, content amendments that HWD deems to be within the scope of the original proposal contract.

It is the sole responsibility of the Customer to fully test, proofread and approve a project prior to its live date to ensure that all aspects are working as expected and/or requested.

Areas not covered are:

- Browser Upgrades that occur during the 6 weeks post live date period
- Changes to content that have been made by the Customer that require remedial work by HWD to correct.
- Hardware support of any kind
- Email Software setup support of any kind
- Request that are extensions or changes to the original specification as detailed in the proposal contract

Any support or amendment requests that are made after the 6 weeks live date will be charged for at the appropriate standard hourly rate at HWD's discretion.

17. Hosting Charges, Domain name and SSL Certificate renewals

- **Web hosting** will be charged on a monthly basis, being payable on the 1st day of each month. Payment will be taken via our GoCardless system until we are informed to stop by the client with 1 month's notice.
- **Domain Names** will be automatically renewed and charged for on a biannual basis. Payment will be taken via our GoCardless system.
- **SSL Certificates** will be automatically renewed and charged for on an annual basis. Payment will be taken via our GoCardless system.

18. Responsibilities

HWD may not be held responsible for the failings of the Internet Service Provider, or any telecommunications carrier, Internet Backbone or server or the client's computers or Internet software

Any changes to the specifications outlined below may result in changes to this contract at the discretion of the developer, HWD. The client is solely responsible for any charges that these may incur.

HWD makes no guarantees or representations about the rankings of the client's website within any search engine listings or the amount of hits that your site will receive pro rata.

19. Disclaimer of Warranties

The Website is provided "as is". HWD and its suppliers and licensors hereby disclaim all warranties of any kind. Neither HWD nor its suppliers and licensors, makes any warranty that the Website will be error free or that access thereto will be continuous or uninterrupted.

20. Limitation of Liability

In no event will HWD, or its suppliers or licensors, be liable with respect to any subject matter of this agreement under any contract, negligence, strict liability or other legal or equitable theory for:

- i. any special, incidental or consequential damages;
- ii. the cost of procurement for substitute products or services;
- iii. for interruption of use or loss or corruption of data; or
- iv. for any amounts that exceed the fees paid by you to HWD under this agreement during the one (1) month period prior to the cause of action. HWD shall have no liability for any failure or delay due to matters beyond their reasonable control. The foregoing shall not apply to the extent prohibited by applicable law.

21. General Representation and Warranty

You represent and warrant that your use of the Website will be in strict accordance with any legally required Privacy Policy that you should include on your website. You also warrant that your website will be in strict accordance with this Agreement and with all applicable laws and regulations (including without limitation any local laws or regulations in your country, county, city, or other governmental area, regarding online conduct and acceptable content, and including all applicable laws regarding the transmission of technical data exported from the United Kingdom or the country in which you reside) and your use of the Website will not infringe or misappropriate the intellectual property rights of any third party.

22. Indemnification

You agree to indemnify and hold harmless HWD, its contractors, and its licensors, and their respective directors, officers, employees and agents from and against any and all claims and expenses, including attorneys' fees, arising out of your use of the Website, including but not limited to your violation of this Agreement.

Termination / Cancellation

An agreement may only be terminated;

- i. By the Customer at anytime, by providing written notice to HWD. Upon receipt of such notice, HWD will terminate all related tasks as a soon as practical unless a mutually agreed schedule is established.
- ii. By either party, in the event of a failure by the other party to comply with any of the provisions of the Agreement, by serving notice on the party in default requiring to remedy such failure within seven (7) days. If the failure is not remedied within such time, the party serving notice shall be entitled to serve a further notice terminating the Agreement forthwith.
- iii. By HWD if the Customer fails to pay any sum due hereunder within 14 days of the due date therefore.
- iv. Forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within in Part I of the Insolvency Act 1986 or a proposal for any composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or it a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any party of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administrative order (otherwise than for the purposes of an amalgamation or reconstruction).
- v. DISTANCE SELLING REGULATIONS - Under the UK's Distance Selling Regulations, you have the right to cancel a contract concluded online or over the phone within a period of 7 working days, beginning the day after the day on which the contract was accepted. This applies to all of our services with the exception of contracts for the purchase of domain names or server space HWD Ltd purchases on your behalf. Please note that we are also unable to accept cancellation of, or returns for, digital items once electronic transmission has commenced.
- vi. To cancel this contract, please notify HWD Ltd in writing, giving the reason for the contract cancellation. As soon as we receive notice of your cancellation, we will refund all relevant payments.

HWD has the right (though not the obligation) to, in HWD's sole discretion, refuse or remove any content or terminate or deny access to the use of the Website to any individual or entity for any reason. HWD will have no obligation to provide a refund of any amounts previously paid.

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