

# THESE ARE THE 'EXPRESS WEBSITE' TERMS AND CONDITIONS REFERRED TO IN THE FOREGOING CONTRACT BETWEEN JMC WEBSITE DESIGN AND THE CLIENT

## 1. DEFINITION OF TERMS

**JMC WEBSITE DESIGN** – Jason McElhinney, 21 Knowsley Crescent, Thornton-Cleveleys FY5 4NR, Lancashire, England trading as **JMC WEBSITE DESIGN** having its principal place of business at 21 Knowsley Crescent, Thornton-Cleveleys FY5 4NR, Lancashire, England, aforesaid

**The Client** - the entity which enters into a contract with **JMC WEBSITE DESIGN**

**Domain Name** - the root address of a website, e.g. www.webaddress.com. All such names must be registered with the appropriate naming authority, which will usually charge a fee.

**Downtime** - time when the website is not accessible via the Internet. This may be because of a technical failure of the Host or because work is being carried out on the site.

**Host** - the company on whose system the Website physically resides.

**Link, Hyperlink** - a 'clickable' link embedded on a web page which may take the form of a graphic or text.

**Search Engine** - a website which contains a directory of websites on the Internet enabling users to find websites by subject matter classification.

**Website** - a collection of web pages and associated code which forms an integrated presence.

**Project** – any agreed work undertaken (web page creation, custom design, templates etc).

**The Work** - the subject matter of the contract between the Client and **JMC WEBSITE DESIGN**.

## 2. FEES

### 2.1

#### **Fee Payable**

The total fee payable shall become due when the Work is completed to the reasonable satisfaction of the Client but subject to the terms of Clause 4.3 Approval of Work and Clause 4.4 Rejected Work hereof. The fee quoted in the contract does not include the cost of domain registration, hosting set up fee or hosting, and extra custom page features unless otherwise stated.

### 2.2

#### **Maintenance Fees**

Maintenance, if included in the contract, shall be on a month to month basis, with a minimum of £5.00 payable in any month where updating is necessary. Fees will be assessed on a 1/4 hourly basis at £5.00 per 1/4 hour or part thereof. No fee will be required in a month where no updating is necessary.

### 2.3

#### **Cancellation Fees**

On cancellation of an agreed project, 50% of the total fee will immediately become due at the initial mock-up/design stage. 75% of the total project fee will immediately become due in the html/page building phase. 100% of the total fee will become due when a fully functional page is available for viewing online.

## 3. DISCLAIMERS

### 3.1

#### **Third Parties**

**JMC WEBSITE DESIGN** can take no responsibility for services provided by third parties through us or otherwise, including the Hosting of the Client's Website, although **JMC WEBSITE DESIGN** will endeavour to ensure that Website downtime is kept to a minimum.

### 3.2

#### **Maintenance and Correction of Errors**

**JMC WEBSITE DESIGN** takes no responsibility for the functionality or maintenance (unless a

maintenance contract is in place) of the Website after the Work has been completed. Errors (both technical and typographical) attributable to JMC WEBSITE DESIGN will be corrected free of charge, but JMC WEBSITE DESIGN reserves the right to charge a reasonable fee for correction of errors for which JMC WEBSITE DESIGN is not responsible, including, but not limited to malicious modification of the Website by a third party and typographical errors contained in materials provided to JMC WEBSITE DESIGN by the Client.

### 3.3

#### **Extent of Work**

Installation on the Internet is limited to the uploading of all necessary files to the Host, and testing of functionality. No registration of the Website with Search Engines will be undertaken unless otherwise agreed with the Client.

### 3.4

#### **Consequential Loss**

Under no circumstances will JMC WEBSITE DESIGN be responsible or liable for financial or other loss or damage caused by the failure or use or misuse of its software. The Client should ensure that data on their site is regularly backed up and that a contingency plan is in place to minimize possible losses as a result of software failure.

### 3.5

#### **Search Engine Listings**

JMC WEBSITE DESIGN does not *guarantee* listings on Search Engines and the Client accepts that it is Search Engines and not JMC WEBSITE DESIGN who determine whom they list and whom they will not. The Client further understands there is no guaranteed placement or rank on the Search Engines and that a *new* website may never even appear on Search Engines at all. JMC WEBSITE DESIGN does not control Search Engines' algorithms and huge shifts can appear daily, weekly and even hourly.

## 4. COMPLETION OF WORK AND PAYMENT

### 4.1

#### **Completion of Work**

JMC WEBSITE DESIGN warrants completing the Work in accordance with its Express Terms and Conditions to the specifications previously agreed with the Client. JMC WEBSITE DESIGN will not charge more than the amount previously agreed unless the Client has varied the specifications of the Work since the agreement. JMC WEBSITE DESIGN will not undertake changes to the specifications of the Work which would increase the cost, without prior written authorisation from the Client.

### 4.2

#### **Supply of Materials**

The Client is to supply all materials and information required for JMC WEBSITE DESIGN to complete the Work in accordance with the agreed specification. Such materials may include, but are not limited to, photographs, written-copy, logos and other printed materials. Where the Client's failure to supply such materials leads to a delay in completion of the work, JMC WEBSITE DESIGN has the right to extend previously agreed deadlines for the completion of the Work by a reasonable amount. Where the Client's failure to supply materials prevents progress on the Work for more than 21 days, JMC WEBSITE DESIGN has the right to invoice the Client for any part or parts of the Work already completed. Production timescales depend entirely upon how quickly aforementioned materials are passed on to JMC WEBSITE DESIGN.

### 4.3

#### **Approval of Work**

On completion of the Work, the Client will be notified and have the opportunity to review it. The Client should notify JMC WEBSITE DESIGN, in writing, of any unsatisfactory points within 24 hours of receipt of such notification. Any of the Work which has not been reported in writing to JMC WEBSITE DESIGN as unsatisfactory within the 24 hour review period will be deemed to have been approved. Once approved, or deemed approved, work cannot subsequently be rejected, and the contract will be deemed to have been completed and the total payment fee under Clause 2.1 will become due. The Contract will remain in effect until all obligations have been completed in terms of

this Clause.

#### **4.4**

##### **Rejected Work**

If the Client rejects the Work within the 24 hour review period, or will not approve subsequent Work performed by JMC WEBSITE DESIGN to remedy any points reported by the Client as unsatisfactory, and JMC WEBSITE DESIGN considers that the Client is unreasonable in his repeated rejection of the Work, the contract will be deemed to have expired and JMC WEBSITE DESIGN can take any legal measures to recover both payment for the completed Work and reasonable expenses incurred in recovering payment.

#### **4.5**

##### **Payment**

Upon completion of 24 hour review period, JMC WEBSITE DESIGN will invoice the Client for the total balance due in accordance with Clause 2.1 Fee Payable hereof, which, in the absence of agreement to the contrary, is to be paid by the Client within 14 days of the date that the invoice was issued.

#### **4.6**

##### **Remedies for Overdue Payment**

If payment has not been received by the due date, JMC WEBSITE DESIGN has the right to suspend ongoing work for Client, until such time that full payment of the outstanding balance has been received. If full payment has still not been received 14 days after the due date, JMC WEBSITE DESIGN has the right to replace, modify or remove the Website and revoke the Client's licence of the Work until full payment has been received. By revoking the Client's licence of the Work or removing the web site from the Internet, JMC WEBSITE DESIGN does not remove the Client's obligation to pay any outstanding monies owing.

#### **4.7**

##### **Cancellation Policy**

Reasonable notice must be given to JMC WEBSITE DESIGN if the client intends to cancel any active project. In the event of cancellation prior to project completion, all ownership of intellectual and creative copyright of aforementioned projects shall be retained by JMC WEBSITE DESIGN unless stated otherwise. Fees for any cancellation will be enforced as of Clause 2.3. Any usage of cancelled copyrighted projects without prior written consent of JMC WEBSITE DESIGN will result in the appropriate legal action being taken. JMC WEBSITE DESIGN will take reasonable action to rectify any problems raised as stated under Clause 4.4 before deeming a project cancelled.

## **5. INTELLECTUAL PROPERTY**

#### **5.1**

##### **Offers and Proposals**

Offers and proposals made by JMC WEBSITE DESIGN to potential clients should be treated confidentially and remain the property of JMC WEBSITE DESIGN. Such offers and proposals or the information contained within them must not be passed to third parties or publicly disseminated without prior written authorisation from JMC WEBSITE DESIGN. This includes, but is not limited to, technical features, functionality, aspects of the design and pricing information.

#### **5.2**

##### **Warranty by Client as to Ownership of Intellectual Property Rights**

The Client will obtain all the necessary permissions and authorities in respect of the use of all copy, graphic images, registered company logos, names and trademarks or any other material it supplies to JMC WEBSITE DESIGN for inclusion on the Website. The conclusion of a contract between JMC WEBSITE DESIGN and the Client shall be regarded as a guarantee by the Client to JMC WEBSITE DESIGN that all such permissions and authorities have been obtained and that the inclusion of such material on the Website would not constitute a criminal offence or copyright infringement. By agreeing to these terms and conditions, the Client removes the legal responsibility of JMC WEBSITE DESIGN and indemnifies the same from any claims or legal actions however related to the content of the Client's site.

### 5.3

#### **Domain Name**

Any Domain Name obtained will belong to the Client. The Client agrees to indemnify JMC WEBSITE DESIGN, including any incidental costs, against any claims that a Domain Name applied for, or obtained, violates the intellectual property rights of a third party. The Client warrants that the domain name sought is not a trademark of a third party.

### 5.4

#### **Trade Secrets**

Any code that is not freely accessible to third parties and not in the public domain, and to which JMC WEBSITE DESIGN or their suppliers owns the copyright, may not be copied, published, distributed or passed to any third parties in any form without prior written consent from JMC WEBSITE DESIGN. Unless previously agreed otherwise in writing, no modifications may be made by the Client or any third party to code to which JMC WEBSITE DESIGN or their suppliers owns the copyright. JMC WEBSITE DESIGN acknowledges the intellectual property rights of the Client. Information passed in written form to JMC WEBSITE DESIGN, and that the Client has indicated is confidential or a trade secret, will not be published or made available in any other way to third parties without the prior written consent of the Client.

### 5.5

#### **Ownership of Images**

Where images, photographs or illustrations used on the clients website have been purchased by JMC WEBSITE DESIGN on behalf of the client, these images are strictly for use on the website only. JMC WEBSITE DESIGN is not liable for misuse of these images by the client or any other person(s) copying, altering or distributing the images to other individuals or organisations.

## **6. RIGHTS AND RESPONSIBILITIES**

### 6.1

#### **Right to Terminate**

JMC WEBSITE DESIGN reserves the right to refuse or break a contract without prior notice, if it is believed that the Client, their Website, or any material is illegal, immoral or otherwise unacceptable.

### 6.2

#### **Events Beyond the Control of JMC WEBSITE DESIGN**

JMC WEBSITE DESIGN will not be liable for breach of contract where that breach was due to software, hardware or electrical failure, natural events such as fire or other events beyond the control of JMC WEBSITE DESIGN.

### 6.3

#### **Supply and Pricing of Services**

JMC WEBSITE DESIGN reserves the right to use whoever it feels appropriate at the time for third party software and services, and to alter its prices as necessary without prior notice and without affecting existing contractual pricing agreements.

## **7. INTERPRETATION**

### 7.1

#### **Jurisdiction**

This Agreement shall be governed by the laws of the United Kingdom which shall claim venue and jurisdiction for any legal action or claim arising from the contract between JMC WEBSITE DESIGN and the Client. The said contract is void where prohibited by law.

### 7.2

#### **Survival of Contract**

Where one or more terms of the said contract are held to be void or unenforceable for whatever reason, any other terms of the contract not so held will remain valid and enforceable at law.

### 7.3

**Change of Terms and Conditions**

These terms & conditions may change from time to time. The Client will be informed of revisions as and when they are issued.

*Express Website Terms and Conditions Rev2 14<sup>th</sup> February 2010*