

TERMS AND CONDITIONS FOR CUSTOMER AND SUPPLIER

DATED:

1 DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply to the Terms:-
 - “**Activ**” is the provider of the hosting services for the Customer Website;
 - “**Activ Website**” www.activwebdesign.com, or any other website from time to time created by Activ;
 - “**Contract**” the contract for the provision of the Services between the Supplier and the Customer;
 - “**Customer**” the individual, firm, company or other party for whom the Supplier has agreed to provide the Services in accordance with these Terms;
 - “**Customer Website**” the website sold to the Customer by the Supplier for the Customer’s use and operation including the domain name;
 - “**Delivery Date**” the date when the Customer Website is registered by Activ and ready to use by consumers;
 - “**Deposit**” a minimum of 25% of the Fees as stated in the Payment Order Form;
 - “**Documentation**” electronic or hard copy information relating to the usage of the Customer Website together with a username and password where appropriate;
 - “**Fees**” the fees for the Services as set out on the Activ Website and includes the initial registration fee;
 - “**Hosting Renewal Fee**” is the fee payable by the Customer to the Supplier on the yearly anniversary of the registration of the Website;
 - “**Input Material**” any material provided by the Customer relating to the Services, including but not limited to material in the Specification and any document, instruction or information provided by the Customer and added to the Customer Website from time to time by the Customer;
 - “**Intellectual Property Rights**” copyright, database right, patents, registered and unregistered design rights, registered and unregistered trade marks and all other industrial, commercial or intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world;
 - “**Order**” the Customer’s order for the Services which will be based on the Specification and set out on the Payment Order Form;
 - “**Payment Order Form**” the invoice in triplicate containing the Terms;
 - “**Services**” the website design, creation, development and consultancy services which the Supplier is to supply in accordance with these Terms and the Specification;
 - “**Specification**” the detailed description of the content and functionality of the Website and the Documentation to be developed under these Terms;
 - “**Supplier**” as stated on the Payment Order Form;
 - “**Terms**” the standard terms of supply set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Customer and the Supplier;
 - “**Trade Name**” “Activ Web Design” or such additional or alternative trade names as Activ may specify from time to time in respect of Activ’s business.
 - “**Writing**” and any similar expression, includes facsimile transmission but not electronic mail or other forms of electronic communication.
- 1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 References to clauses are clauses of these Terms, unless stated otherwise.

2 BASIS OF THE SUPPLY

- 2.1 The Supplier operates a website design business under a franchise provided by Activ and Activ have agreed to host the Customer Website.
- 2.2 The Contract is between the Customer and Supplier.
- 2.3 The Contract is not confirmed until it is signed by both parties.
- 2.4 The Supplier has agreed to provide the Services under the Terms and the Customer agrees to pay the Fees for the Services based on the Terms.
- 2.5 The Services shall be provided in accordance with the Specification.
- 2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list on the Activ Website, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 2.7 All Input Material shall be at the sole risk of the Customer.
- 2.8 The Supplier’s employees or agents are not authorised to make any representations concerning the Services unless confirmed by the Supplier in Writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

3 ORDERS AND SPECIFICATION

- 3.1 No Order shall be deemed to be accepted by the Supplier unless and until confirmed in Writing by the Supplier.
- 3.2 The Customer shall be responsible to the Supplier for ensuring the accuracy of the Order, which will be based on the Specification, submitted by the Customer, and for giving the Supplier any necessary information relating to the Services within a sufficient time to enable the Supplier to perform the Contract in accordance with its Terms.
- 3.3 The Supplier reserves the right to make any changes to the Customer Website to ensure that the Customer does not breach clause 6 or any applicable statutory or E.U. requirements, which do not materially affect their quality or performance.
- 3.4 No Order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in Writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

4 DELIVERY

- 4.1 On the Delivery Date, the Supplier shall deliver to the Customer the Customer Website together with the Documentation and any further information agreed between the Customer and the Supplier.

5 FEES AND PAYMENT

- 5.1 The Fees shall be as quoted on the Activ Website current at the date of acceptance of the Order unless agreed to the contrary between the Supplier and Activ.
- 5.2 The Customer shall pay the Deposit on signing the Payment Order Form. Once the Payment Order Form is signed, the Customer acknowledges that the Deposit is non-refundable.
- 5.3 The Supplier will invoice the Customer for the Fees, less any Deposit, on or at any time after the Delivery Date unless the Customer delays or the Supplier suspects (or has reasonable grounds to suspect) that the Customer is delaying providing the Input Material or any other information requested by the Supplier as a mechanism to avoid payment in full being due, in which case the Supplier shall have the right to take full payment from credit card details provided by the Customer.
- 5.4 The Customer shall pay the Fees within 21 days of the date of the Supplier’s invoice. The time of payment of the price shall be of the essence of the Contract.
- 5.5 The Customer shall pay to the Supplier the Hosting Renewal Fee on each one year anniversary from the date of registration of the Customer Website.
- 5.6 The Supplier will invoice the Customer for the Hosting Renewal Fee and the Customer shall pay such fees within 14 days of the date of the invoice.
- 5.7 No payment shall be deemed to have been received until the Supplier has received cleared funds from the Customer.
- 5.8 Where the Customer fails to pay the Hosting Renewal Fee within the due date for payment, Activ may:
 - 5.8.1 stop the hosting of the Customer Website in relation to which payment has not been received subject always to Activ acting reasonably and in good faith; or
 - 5.8.2 recover the Hosting Renewal Fee due to the Supplier from the Customer in accordance with and as set out in the Payment Order Form.

- 5.9 Pursuant to clause 5.8.2, where Activ have received the Hosting Renewal Fee from the Customer, the Customer is under no obligation to pay such Hosting Renewal Fee to the Supplier for that year.
- 5.10 In relation to any additional changes to the Customer Website, the Supplier will not charge for any small alterations, which include any minor text changes. There will be a nominal charge for major alterations, which include changes to the structure of the Customer Website, logos and the addition of a new page.

- 5.11 Where the cost of registering the Customer Website or obtaining a domain name increases due to an increase in the cost to Activ, which is normally as a result of the increases imposed by internet domain name registries, Activ retains the right to increase the Hosting Renewal Fee but will notify the Customer reasonably in advance of the same, giving the Customer a reasoned justification for the increase.

6 WEBSITE CONTENT

- 6.1 The Customer shall at its own expense, provide the Supplier with the Input Material as reasonably required by the Supplier to provide the Services to the Customer.
- 6.2 The Customer shall ensure that the Input Material is not illegal and against the interests of the public.
- 6.3 The Customer indemnifies and holds harmless the Supplier against any claims that the Supplier may be liable to as a result of any Input Material which is contrary to public interests and/or causes offence.
- 6.4 The Customer shall use its best endeavours to ensure that the Input Material:
 - 6.4.1 complies with all applicable laws and regulations;
 - 6.4.2 are accurate in relation to facts; and
 - 6.4.3 where the Customer states opinions, that these are genuinely held.
- 6.5 The Customer acknowledges that the Input Material cannot:
 - 6.5.1 reveal any confidential or sensitive information,
 - 6.5.2 be obscene, offensive, hateful or inflammatory,
 - 6.5.3 promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age,
 - 6.5.4 infringe any copyright, database right or trade mark of any other person,
 - 6.5.5 breach any legal duty owed to a third party, such as a contractual duty or a duty of confidence,
 - 6.5.6 contains viruses or other components which are harmful or have contaminating effects on the Customer Website or any equipment connected to it;
- 6.5.7 be in contempt of court, advocate, promote, incite any third party to commit, or assist any unlawful or criminal act, or
- 6.5.8 contain a statement which you know or believe, or have reasonable grounds for believing, that members of the public to whom the statement is, or is to be, published are likely to understand as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism.
- 6.6 Both the Supplier and the Customer agree that the Trade Name is always displayed in a reasonably prominent position on the homepage of the Customer Website offering all users of the Customer Website a direct link to the Activ Website.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Customer is the owner of all of the Intellectual Property Rights created through the Customer Website as set out in the Specification and Input Material.
- 7.2 The Customer represents and warrants to the Supplier that any Input Material furnished or given by the Customer, in the Specification or otherwise, shall not be such as will cause the Supplier to infringe any Intellectual Property Rights of a third party in the execution of the Order. The Customer agrees to indemnify the Supplier and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Supplier, or for which the Supplier may become liable, with respect to any claim that any Intellectual Property Rights of a third party have been infringed.

8 TERMINATION

- 8.1 Where the Customer commits a material breach, which includes a breach of clause 6, of any of the Terms and if such breach is capable of remedy, fails to remedy the breach within 30 days of receiving notice from the Supplier specifying the breach and requiring the breach to be remedied:
 - 8.1.1 the Supplier shall be entitled to terminate the Contract immediately by notice in writing; and
 - 8.1.2 Activ may stop hosting the Customer Website immediately.
- 8.2 For the avoidance of doubt, a material breach under clause 8.1 includes a breach of clause 5.
- 8.3 The Contract can be terminated where the Customer is in breach of clause 5.8.
- 8.4 Either party shall be able to terminate the Contract by giving one month’s notice in writing to the other party if the other party:
 - 8.4.1 enters into liquidation whether compulsorily or voluntarily (otherwise than for purposes of a solvent amalgamation or reconstruction);
 - 8.4.2 becomes insolvent;
 - 8.4.3 ceases to carry on business;
 - 8.4.4 compounds or makes any voluntary arrangement with its creditors;
 - 8.4.5 is the subject of a notice of appointment of an administrator, or a notice of intention to appoint an administrator or liquidator;
 - 8.4.6 is unable to pay its debts as they fall due;
 - 8.4.7 has an encumbrancer take possession of, or a receiver or administrative receiver appointed over, all or any part of its assets; or
 - 8.4.8 takes or suffers any similar action due to debt.
- 8.5 The termination of the Contract for any reason shall not affect any rights and/or obligations:
- 8.5.1 accrued before the date of termination or expiry; or
- 8.5.2 expressed or intended to continue in force after and despite expiry or termination.

9 WARRANTIES AND LIABILITY

- 9.1 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Specification. Where the Supplier provides any third party material, being any material owned, supplied or licensed by a third party that are used in undertaking the Services at the request of the Customer, the Supplier does not give any warranty, guarantee or other term as to its quality, or otherwise.
- 9.2 Neither Activ nor the Supplier shall have any liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material.
- 9.3 Except in respect of death or personal injury caused by the Supplier’s negligence, or as expressly provided in these Terms, the Supplier shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Supplier, its servants or agents or otherwise) which arise out of or in connection with the provision of the Services or their use by the Customer, and the entire liability of the Supplier under or in connection with the Contract shall not exceed the amount of the Supplier’s charges for the provision of the Services, except as expressly provided in these Terms.
- 9.4 The Supplier shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Supplier’s obligations in relation to the Services, if the delay or failure was due to any cause beyond the Supplier’s reasonable control.

10 GENERAL

- 10.1 No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.2 These Terms constitute the entire agreement between the parties and supersede any previous agreement or understanding.
- 10.3 No variation to these Terms shall be binding unless agreed in Writing by the Supplier.
- 10.4 If any provision of these Terms is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 10.5 These Terms shall be governed by the laws of England and all parties submit to the non-exclusive jurisdiction of the English courts.