

Terms and Conditions of Business

1. Definitions

“Agreement” means the agreement between you and us for the provision of the Service, the terms of which are set out in these Terms and Conditions, the Confirmation of Order and the Confirmation of Service.

“Business Day” means a day, other than a Saturday or a Sunday, on which clearing banks are open for commercial business in both Edinburgh and London.

“Charges” means the monthly fee, the set up fee and any one-off payments due to us by you for the use of our services.

“Confirmation of Order” means the document entitled “Confirmation of Order” sent by us to you after your placement of an order for Services and confirming certain details of the Services you have selected and certain terms applicable to those Services.

“Confirmation of Service” means the document entitled “Confirmation of Service” contained in the welcome pack sent by us to you following your placement of an order for services and confirming certain details of the services you have selected, certain terms applicable to those services, and your selected payment method.

“Service” means products and services provided by us relating to the Internet, World Wide Web and e-commerce, including but not limited to internet advertising, internet access, email, website building, website hosting, domain name registration and telecommunication services.

“Us” and “we” and “our” means Dynamic Web Marketing, a company incorporated in England and based in Canteen Media and Arts Centre, Michelson rd, Barrow-in-Furness, Cumbria, LA14 1AD. For more information please visit www.dynamicwebmarketing.co.uk

“You” and “your” means the company or other persons wishing to buy services.

2. Terms and Conditions

Before using the Service you should read these terms and conditions carefully. By using the Service you show your agreement to be bound by these terms and conditions, whether or not you are a registered user of the Service. If you do not agree to these terms and conditions do not use the Service. Where we agree to provide any more products or services these may be provided by us or a third party. We will tell you if any additional products or services (whether provided by us or by a third party) attract separate charges or have more or different terms and conditions. You confirm that in relation to any Agreement entered into and the purchase by you of the Service that you are acting in a business capacity and are not and will not “deal as a consumer” for the purpose of section 12 of the Unfair Contract Terms Act 1977. If you believe that you may be acting as a consumer and not for the purpose of a business you should contact us using the contact details given in the Confirmation of Order and Confirmation of Service.

3. Customer Obligations

You appoint us to act on your behalf for the provision of the Service.

3.1 Account security – You will be asked to register a security password for use with the Service which will be your mother’s maiden name or your date of birth. You are responsible for maintaining the confidentiality of the passwords and also for all activities that take place under use of passwords.

3.2 Acceptable use

3.2.1 The following clause 3.2 applies to all uses by you of the Service, including all use of any website built by you or by us and/or hosted by us as part of the service. We may suspend or block access to your use of the Service if you break, or we have reason to believe you may have broken this clause or any other provision of these terms and conditions. You shall not:

3.2.1.1 Use the Service or your website in any way to send unsolicited commercial email or “spam”, or any similar abuse of the Service.

3.2.1.2 Send email or any type of electronic message with the intention or result of affecting performance of any computer facilities.

3.2.1.3 Publish, post, distributes or spread defamatory, infringing, obscene, indecent or other unlawful material or information via the Service, or on the website.

3.2.1.4 Use the Service to threaten abuse, disrupt or violate the rights (including rights of privacy and publicity) of others.

3.2.1.5 Engage in illegal or unlawful activities through the Service or via your website.

3.2.1.6 Make available or upload files to your website or to the Service that you know or should be reasonably aware contain a virus, worm, Trojan or corrupt data.

3.2.1.7 Get or try to get access, through whatever means, to areas of our network or the service which are identified as restricted or confidential, or

3.2.1.8 Move material to or from your computer or website which infringes any laws, regulations or the rights of others.

3.2.2 In using the service you shall keep to all laws applicable to this use.

3.2.3 We reserve the right to remove material from your website or the Service that we find offensive or believe that others may find offensive.

3.2.4 You are responsible for providing all information that you want to be put on your website. You have full responsibility for the content of your website including without limitation any images that you display on your website. It is your responsibility to ensure

that the content of your website does not breach the intellectual property rights of any third party and that you have permission to use all content. We accept no liability for the content of your website.

3.2.5 We reserve the right to stop the whole or any part of the Service in relation to your website and to stop the Agreement if we deem the content of your website to be unsuitable.

3.2.6 It is your duty to terminate the Agreement within the parameters of clause 7.1.1.

4. Our Service Obligations

4.1 Scope

4.1.1 The scope of the service to be provided is set out in the Confirmation of Service.

4.1.2 We warrant that we will make reasonable attempts to make sure that the service is provided as described in the Website and confirmed in the Confirmation of Service but because the Service is provided by means of a computer and telecommunication system we make no warranties or representations that the service will be uninterrupted or error free.

4.1.3 You confirm and accept that no software including without limitation software supplied as part of or used to provide the Service is error free and if any errors, interruptions or viruses (save as expressly set forth in the Agreement) all conditions and warranties express or implied, by law or otherwise, (including but not limited to any conditions or warranties as to satisfactory quality or concerning the fitness of the Service or any part of that for a particular purpose) are excluded to the fullest extent permitted by law. No oral advice or written information given by us, our employees, agents, licensors or the like shall create a warranty nor shall you rely on any such information for advice.

4.2 Suspension of Service

4.2.1 We may stop the service without liability on our part, and with as much prior notice to you as reasonably possible (except in the case of paragraph (a) or paragraph (c) below in which case we may do so without prior notice):

(a) if necessary for operational reasons or for the purpose of carrying out work at our premises or maintaining or upgrading the Service or system; or

(b) if obliged to comply with an order, instruction or request of an emergency service organisation or a governmental or other competent authority; or

(c) if you owe any payment to us.

5. Limitation of Liability

5.1 Our entire liability and your only remedy for any claim for breach of duty, tort or breach of these terms and conditions, whether or not arising out of negligence, is limited to the fee paid by you for the Service from which the breach has arisen, in the twelve (12) months before the action or event giving rise to the liability.

5.2 In no event will we be liable to you for any indirect or consequential loss or damage whatever (without limitation for example loss of business, loss of opportunity, loss of profits) including as a result of disclosure of your username or password. This shall apply even where a loss was reasonably foreseeable or if we had been made aware of the possibility of you incurring a loss.

5.3 Our liability to you for fraudulent misrepresentation and for death or injury resulting from our own negligence or that of our employees' or agents' negligence while acting in the course of their duties shall not be limited.

6. Payment

6.1 In consideration of our provision of the service you shall pay to us the charges as follows:

6.1.1 The set up fee (as written in the welcome pack) in advance.

6.1.2 The monthly fee (as written in the relevant confirmation of order) monthly starting day one of the contract starts date.

6.1.3 Any other payments due to us for the provision of the Service as given by us, all by the payment method selected by you and written in the Confirmation of Order or the relevant invoice sent to you by us. If payment is to be taken on a recurring basis from a credit or debit card then this will be taken on the monthly anniversary of the commencement of the Agreement. If the normal payment date is affected by a Saturday, Sunday or National Holiday, then payment will be taken on the last business day prior to the normal payment date.

6.2 If any invoice for the Service is unpaid we reserve the right to immediately suspend or cancel the Service (including any domain name registration). Suspension of Service will not remove your liability to pay any charges that are due and payable on your account at the date of termination. Also we will have the right to charge interest on any unpaid amounts at the rate of 3% over the then current Bank of England base

rate. If the domain name reverts to us then you may negotiate directly with us to purchase the domain however we have no obligation to give the domain to you.

6.3 Where a credit card arrangement exists and if a termination or cancellation has not been received and if expiration date on a credit card occurs we reserve the right to automatically change the expiration date.

If you are in the United Kingdom you must add the applicable rate of VAT to all charges. In the rest of the European Union you must also add the applicable rate of VAT, unless you are VAT registered, in which case no VAT is payable providing you quote your VAT number. Outside the European Union no VAT is payable.

6.5 All amounts due to us under the Agreement are exclusive of value added tax. VAT shall apply and be added at the appropriate rate.

7. Term

7.1 The Agreement will become effective on the date the Service (as set out in the Confirmation of Order) is first provided and depending on any rights of termination set out in these terms and conditions shall continue for a period of not less than one (1) month.

7.1.1 Written cancellation must be sent by Royal Mail recorded delivery to Dynamic web marketing, Canteen Media and Arts Centre, Michelson rd, Barrow in Furness, Cumbria, LA14 1AD, so proof of postage and receipt can be supplied.

7.2 We shall have the right to end the Agreement by notice in writing to you if any of the following events occur:

7.2.1 You fail to make any payment when it becomes due to us, or

7.2.2 The bandwidth used for traffic to and from the website is exceeded beyond use considered acceptable by us and is deemed by us to affect the performance of other client websites. Notwithstanding any other remedies we may have under these terms and conditions or in law, if the acceptable bandwidth is exceeded, we may elect to charge you an extra monthly fee to be discussed with a sales consultant at the time, or

7.2.3 If you break any of your obligations under the Agreement.

7.3 If you end the agreement during the initial one (1) month period other than in accordance with clause 7.1, or because we have increased the charges or materially changed the terms of the Agreement to your detriment, or if the Agreement is ended under clause 7.4 below, you must pay us the applicable charges for the remainder of the one (1) month period.

7.5 Either party may end the Agreement or the service provided under it immediately by notice to the other if:

7.5.1 The other party commits a material breach of the Agreement and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so, or

7.5.2 The other party commits a material breach of the Agreement which cannot be remedied under any circumstances, or

7.5.3 The other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court makes an order to that effect, or

7.5.4 The other party ceases to carry on its business or substantially the whole of its business, or

7.5.5 The other party is declared insolvent, or convenes a meeting of or proposes to make any arrangement or similar composition with its creditors or a liquidator, receiver, administrative receiver, manager, trustee, or similar officer is appointed over any of its assets.

7.6 Any rights to end the Agreement shall be without prejudice to any other accrued rights.

7.7 On termination of the Agreement for any reason: we shall have the right immediately to remove any apparatus belonging to us from your premises; and all amounts owing for the Service shall be due and payable in full on demand whether or not then due and you shall have no right to withhold or set off such amounts; and we may delete all email, websites, and other data stored via the Service by you and re-use the email addresses, domain names and web space not held by you. We shall not exercise this right for six (6) weeks in the case of termination by us other than for breach by you and in such circumstances shall transfer any domain names held by you to another ISP subject to your payment of the relevant prevailing domain name transfer charge rate.

7.8 Upon the termination of the Agreement for any reason whatsoever: you shall promptly return to us all copies of all software relating to the Service in your possession; and we may cease to host your website with immediate effect; and each party shall on request promptly return any documents or papers relating to the other party (including any of the other party's confidential information) which it then has in its possession or control.

7.9 Refunds

7.9.1 Where a service issue arises during the initial set up period you may request a refund, however we reserve the right to provide a service extension or another product or to resolve the service issue as an alternative to providing a refund.

7.9.2 If at any time a refund is to be given then we shall provide this payment in the form of a company cheque. Only under extreme circumstances shall a refund be made via refund card transaction, these circumstances include, but are not limited to, third party fraud or theft of your payment card.

7.9.3 We reserve the right to charge for any extra services you have requested from us for your cancellation of service, including without limitation any services relating to web design for a temporary website, forwarding or transferring the service and providing backup whilst any such transfer is carried out.

7.10 Assignment

7.10.1 We may assign or transfer the whole or any part of the Agreement at any time. You may not assign or otherwise transfer the Agreement or any part of it without written consent.

8. Renewal

8.1 We will automatically renew your contract after the initial one (1) month period of the Agreement unless you tell us in writing at 8.1 We will automatically renew your contract after the initial one (1) month period of the Agreement unless you tell us in writing at least three (3) days before the end of the initial period instructing us to do otherwise.

8.2 You agree in the event that we are not told at least three (3) days prior to the end of the initial one (1) month period of your wishes not to renew we will automatically renew the contract for a further one (1) months and continue to bill you for the service. If a credit card or debit card is on file with us, you agree that we will be entitled to automatically take payment via that device.

8.3 If payment is not received via this process (i.e. credit card or debit card is no longer valid, credit card or debit card has expired etc) prior to the end of the initial one (1) month, we will inform you via telephone, fax or letter and you agree that the invoice is to be paid prior to the end of the initial one (1) month period and that we reserve the right to pursue any outstanding invoice through the appropriate legal channels.

8.4 You agree that any package of ours purchased under promotion at a discounted price for the first year me be charged at the full price for all subsequent years at our discretion. Any change in pricing is subject to clause 6.6 of the Terms and Conditions.

8.5 We will use our reasonable endeavours to make sure that your domain name, internet keyword or any other product comprising the Service will be automatically renewed after expiry of the initial Agreement period and will endeavour to make sure that the renewal is for a period covering the Agreement period.

8.6 Where a domain name is to be renewed we will automatically renew a domain(s) either as part of the overall package or as an individual domain. An annual renewal fee will be applicable as outlined in the renewal notice sent at least three (3) days prior to renewal.

8.7 Whilst we use all reasonable endeavours to make sure your domain name, internet keyword or any other product of ours is renewed at the relevant renewal date, you acknowledge that it is not possible for us to guarantee such renewal and that we shall not be liable for any failure to renew the domain name.

9. Product Terms and Conditions

9.1 Website construction

9.1.1 We shall assist you with the construction of and / or development of a website in accordance with the options selected by you when ordering services.

9.1.2 On packages that include a website construction option, the following options are available.

9.1.3 We will provide you with access to our web space as specified below.

9.1.4 Upon payment of the appropriate fee, we shall allocate web space on our website server as defined by our package, as outlined on the relevant invoice, on which your website may be hosted.

9.1.5 Any updates and/or amendments to your website, web space or retrieval of email shall be made by Dynamic Web Marketing, by accessing your website on our website server via our designated connection platforms (dial-up or broadband). In the event your website is accessed, updated or retrieval of email is facilitated in any other way than via the connection platform as specified by us, you will incur an additional fee.

9.1.6 Whilst we shall use all reasonable endeavours to ensure your website can be accesses by users of the internet at all times, you acknowledge that it is technically impossible to provide such access free of fault at all times and we do not undertake to do so. We expressly reserve the right to suspend availability of your website for the purposes of scheduled maintenance. Access to your website may also be adversely affected by conditions and performance outside our control, including without limitation the breakdown of transmission and telecommunication links.

9.1.7 If we agree to design your website you acknowledge and agree that you are responsible for supplying to us the materials which you would like to be included in the building of your website. We may reproduce, as well as digitally manipulate the materials in the course of building your website and you confirm that we are allowed to do so. We reserve the right to reject any part of the material submitted if it is deemed by us unsuitable for inclusion within your website or if such materials violate any aspect of our acceptable use policies.

9.1.8 You acknowledge that the volume or type of material submitted must be commercially realistic for us to build your website within the defined scope of work. You accept that we may, at our discretion, decline to perform the website development services if your expectation exceeds that scope of the work as agreed with you when the order for the Service was placed.

9.1.9 You accept that we will not be responsible for holding design material for more than one (1) month from date of completion and uploading of your website to your web space. You must write to us on your company or business letterhead instructing how and where to return the design material along with a self addressed postage paid envelope before the expiration of the one month period if you desire the material to be returned.

9.1.10 If you request, we will include in your website links to other websites and you acknowledge that we will not make any independent enquiry into those links. You confirm that the creation of those links is authorised by the owner/operator of the linked site and that the linked site does not conflict with our acceptable use policy.

9.1.11 Where we are designing a bespoke website or template we are unable to proceed with the build until you supply us with the materials which you would like to be included. We will remind you to send these materials for a period of six months during which you will receive three written reminders. No refund will be given on the grounds that the website or template was not created.

10. General

10.1 We may update or amend these terms and conditions at any time. We will communicate changes to you via the website www.dynamicwebmarketing.co.uk

10.2 The Agreement and any documents expressed by the Agreement to be incorporated in the agreement constitute the entire understanding between us and you and save in respect of fraudulent statements supersedes all prior agreements, arrangements, understandings and representations (whether oral, written or otherwise) made by or between us and you.

10.3 The Agreement and these terms and conditions shall be governed by and construed and interpreted in accordance with the laws of England and subject to the non-exclusive jurisdiction of the courts in England.

10.4 The headings of the paragraphs of the Agreement are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of the Agreement

10.5 Dynamic web marketing often provides a personalised service. Once such a service has started the statutory cooling off period is non-applicable. This is in accordance with government legislation, for full details please see <http://www.legislation.hmso.gov.uk/si/si2000/20002334.htm>

10.6 Please note there is no requirement to sign this document, its purpose is to provide third party verification that it has been viewed in the event of a dispute. .

10.7 We advise that you read these terms and conditions throughout and print a copy to keep for your records.