

## Terms and Conditions

These terms and conditions may be updated from time to time.

### 1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Service Specification;
- 1.2 "Client" means the organisation or person who purchases, or agrees to purchase, services from the Supplier;
- 1.3 "Supplier" means David Groom trading as Vectis Webdesign, of 114 High Street, Bembridge, Isle of Wight;
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4 "Service Specification" means a statement of work, quotation or other similar document describing the services to be provided by the Supplier, whether given verbally or in writing;

### 2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of services by the Supplier to the Client.
- 2.2 Before the commencement of the services the Supplier shall submit to the Client a Service Specification which shall specify the services to be performed and the fees payable. The Client shall notify the Supplier immediately if the Client does not agree with the contents of the Service Specification. All Service Specifications shall be subject to these Terms and Conditions.
- 2.3 The Supplier shall use all reasonable endeavours to complete the services within estimated time frames but time shall not be of the essence in the performance of any services.

### 3 FEES AND PAYMENT

- 3.1 The fees for the performance of the services are as set out in the Service Specification. The Supplier shall invoice the Client for the services.
- 3.2 Invoiced amounts shall be due and payable within 30 days of receipt of invoice. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of the base rate of the Bank of England. In the event that the Client's procedures require that an invoice be submitted against a purchase order to payment, the Client shall be responsible for issuing such purchase order before the services are rendered.

### 4 CLIENT'S OBLIGATIONS

- 4.1 To enable the Supplier to perform its obligations under this Agreement the Client shall:
  - 4.1.1 co-operate with the Supplier;
  - 4.1.2 provide the Supplier with any information reasonably required by the Supplier;
  - 4.1.3 obtain all necessary permissions and consents which may be required before the commencement of the services; and
  - 4.1.4 comply with such other requirements as may be set out in the Service Specification or otherwise agreed between the parties.
- 4.2 The Client shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Client's failure to comply with Clause 4.1.
- 4.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Client unlawfully terminates or cancels the services agreed to in the Service Specification, the Client shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed. For the avoidance of doubt, the Client's failure to comply with any obligations under Clause 4.1 shall be deemed to be a cancellation of the services and subject to the payment of the damages set out in this Clause.
- 4.4 In the event that the Client or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Client as soon as possible and:
  - 4.4.1 the Supplier shall have no liability in respect of any delay to the completion of any project;
  - 4.4.2 if applicable, the timetable for the project will be modified accordingly;

### 5 ALTERATIONS TO THE SERVICE SPECIFICATION

- 5.1 The parties may at any time mutually agree upon and execute new Service Specifications. Any alterations in the scope of services to be provided under this Agreement shall be set out in the Service Specification, which shall reflect the changed services and fees and any other terms agreed between the parties.
- 5.2 Additional features to websites including but not limited to extra database services, specific hosting requirements, animations that are not included in the quotation are subject to surcharge. In the event a feature is required which has not been included in the quotation the Supplier will give notice prior to implementation and seek acceptance of the surcharge.

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### 6 WARRANTY

6.1 The Supplier warrants that the services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.

6.2 Without prejudice to Clause 6.1, and except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the services to be provided by the Supplier.

6.3 The Supplier shall not be responsible for poor performance or failure of the website that results from changes in agreed HTML conventions, changes of the host upon which the website is run, changes in the way the site is used, any other factor outside the Suppliers' control.

### 7 INDEMNIFICATION

7.1 The Client shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Client's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any services provided by the Supplier in accordance with the Service Specification infringes a patent, copyright or trade secret or other similar right of a third party.

### 8 LIMITATION OF LIABILITY

8.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Client in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the fees paid by the Client to which the claim relates.

8.2 In no event shall the Supplier be liable to the Client for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Client incurring such a loss.

8.3 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.

### 9 TERMINATION

9.1 Either party may terminate this Agreement forthwith by notice in writing to the other if:

9.1.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to take action to remedy it within 30 calendar days of being given written notice from the other party to do so;

9.1.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;

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

9.1.4 the other party ceases to carry on its business or substantially the whole of its business; or

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

### 10 INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Supplier, and the Client shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.

10.2 Copyright to the website including HTML code, other code, graphics and web pages produced by the supplier is owned by the Supplier. Upon final payment of this contract, the client is assigned rights to use the finished web pages as a website. Rights to photos, graphics, source code, and computer programs are specifically not transferred to the Client, and remain the property of their respective owners. The Supplier and its subcontractors retain the right to display graphics and other web design elements as examples of their work in their respective portfolios.

10.3 The Client unconditionally guarantees that any elements of text, graphics, photos, logos, trademarks, or other artwork furnished to the Supplier for use in the website are owned by the Client, or that the Client has permission from the rightful owner to use each of these elements, and will hold harmless, protect, and defend the Supplier and its subcontractors from any claim or suit arising from the use of such elements furnished by the Client.

10.4 Only one instance of a website can be made available by the Client on the World Wide Web or any Intranets / Extranets unless a licensing agreement has been reached with the Supplier. No portion of the coding can be copied / duplicated or redistributed in any form electronic or otherwise unless a licensing agreement has been reached with the Supplier.

### 11 FORCE MAJEURE

11.1 Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God,

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accidents, war, fire, the act or omission of government or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

### 12 INDEPENDENT CONTRACTORS

12.1 The Supplier and the Client are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Client and such engagement shall not relieve the Supplier of its obligations under this Agreement.

### 13 ASSIGNMENT

13.1 The Client shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.

### 14 SEVERABILITY

14.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

### 15 WAIVER

15.1 The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

### 16 NOTICES

16.1 Any notice to be given by either party to the other may be served by electronic mail, fax, hand or post to such address of the other party as may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

### 17 MISCELLANEOUS TERMS

17.1 Where the Supplier organises website hosting for the Client it is recognised that the Supplier uses third party Hosting Companies for website hosting. No guarantees of service are or can be made by The Supplier on behalf of the Hosting Company. If special requirements / guarantees of service are required then this should be communicated to the Supplier who shall endeavour to find a Hosting Company to match the said requirements. Any guarantees of service are made between the Hosting Company and the Client, the Supplier cannot offer or enforce any such agreement.

17.2 It is hereby agreed between the Supplier and the Client that in the event that any monies are owed and overdue to The Supplier, the Supplier will withdraw its services. The Supplier may remove any material stored upon any computer or server and shall retain such material, and shall not be liable for any loss monetary or otherwise and not be under any obligation to return or provide access to, any and all documents, papers, etc. belonging to the Client until payment is made in full.

17.3 The Supplier will not be held responsible for the failure in any of the services provided by a third party to the Supplier for the Client, this may include but is not restricted to web site hosting, domain name registration, internet promotions, third party multimedia provisions.

17.4 In the event of a problem with the website the Supplier will endeavour to solve the discrepancy as quickly as possible. Please contact the Supplier and describe any problems that you may be experiencing. The Supplier cannot accept responsibility for any loss either monetary or otherwise due to web site failure or misuse.

17.5 All data and information stored in an online database remains the property of the client along with any rights associated.

17.6 The client agrees that a hyperlink to the designers' own website may be placed on the first page of the website.

### 18 ENTIRE AGREEMENT

18.1 This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written.

### 19 NO THIRD PARTIES

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19.1 Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

### **20 GOVERNING LAW AND JURISDICTION**

20.1 This Agreement shall be governed by and construed in accordance with the law of the United Kingdom and the parties hereby submit to the exclusive jurisdiction of the British courts.

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