



Web Site Design Contract

The acceptance of Quotation by Client signature implies that the below terms and conditions have been read and understood and accepted by the Client.

1. Definitions

The following terms and conditions document is a legal agreement between Creative Designs, hereafter "Developer" and "Client" for the purposes of web site design or development. Creative Designs preferred web site hosting supplier, RealX, will be known as the "Internet Service Provider" (ISP). These Terms and Conditions set forth the provisions under which the Client may use the services supplied.

The Developer is an Internet web site design provider offering the Client graphical design, HTML, CSS, Javascript and other related computer programming languages for web site development. The Developer is an independent contractor for the specific purpose of developing and/or improving a web site to be installed on the Clients web space located on an Internet Service Providers (ISP) server.

2. Standard Hosting Service

The Developer will either secure an account with an ISP on behalf of the Client, or the Client may secure the account independently. If the Client is not an advanced user of the Internet, the Client is encouraged to use the services of the Developer to secure and maintain this account (at a cost of R115.00 per month), this also ensures that Creative Designs are able to install the CMS system and guarantee that the hosting platform supports all functionality. Should the Client already host a web site with another hosting company but wish to move to the Developers ISP Servers, the Clients domain/s transferred to the ISP free of charge.

The Client hereby authorizes Developer to access this account, and authorizes the Web Hosting Service Provider to provide the Developer with "write permission" for the Clients web page directory, cgi-bin directory, and any other directories or programs which need to be accessed for this project. The Client also authorizes Developer to publicize their completed web site to Web search engines, as well as other Web directories and indexes, should it so deem.

3. Domain Name Registration

The Developer will secure a domain name (www.domainname.com) for the Client at the Clients request. All charges incurred in doing so will be billed to the Client as an addition to the base price contemplated by this agreement. These are Internet fees, and are not a source of income for the Developer.

If the Client already owns a domain name, which is authorized to move to the ISP, the Developer will coordinate redirecting the address to the new host. Should the Client desire a specific domain name, which is already owned by another party, negotiations for said domain name, must be undertaken by the Client.

Client agrees to take all legal responsibility for use of third party domain name, hosting and email services and hereby agrees to indemnify and hold harmless the Developer from any claim resulting from the Clients publication of material and use of the domain name, hosting and email services. Any support or payment due relating to the domain name, hosting and email services are to be made between the Client and the third party service (unless otherwise stated).

Client agrees to pass on FTP details and any other access details relating to their domain name and hosting account which the Developer requires to upload the web site, if required as part of a project.

Developer reserves the right without notice to refuse work with domain names or hosting and email services without reason for such rejection or refusal.

4. Content

Copy for web site must be supplied by the Client in Microsoft Word .DOC or .RTF format via disk or email attachment. If not supplied on disk or via email, there will be an additional charge for typesetting. Copy writing services are also available at an additional charge.

If the Client does not supply the Developer complete text and graphic content for all web pages contracted, within six (6) weeks of the date the contract was agreed to, the entire amount of the contract becomes due and payable. If the client has not submitted complete text and graphics content within two (2) months of agreeing to this contract, an additional continuation fee of 10% of the total contract price will also be assessed each month until the web site is advertised.

Additional web pages requested over and above the amount stated on the quotation will be charged at R180.00 per additional page. Graphics or photos beyond the allowed average of 1-2 per web page shall be billed at an additional R95.00 each. Where custom graphic work is requested, it will be billed at the hourly rate specified below.

5. Cross Browser Compatibility

Developer shall make every effort to ensure sites are designed to be viewed by the majority of visitors. Sites are designed to work with the main browsers Internet Explorer and Mozilla Firefox latest releases. Client agrees that Developer cannot guarantee correct functionality with all browser software across different operating systems.

Client agrees that after the handover of files, any updated software versions of the main browsers, domain name setup changes or hosting setup changes thereafter, may affect the functionality and display of the web site. As such, the Developer reserves the right to quote for any work involved in changing the web site design or web site code for it to work with updated browser software, domain name or hosting changes.

Client is aware that some advanced techniques on the Internet may require a more recent browser version and brand or plug-in. Client is also aware that, as new browser versions of Internet Explorer and Firefox are developed, the new browser versions may not be compatible. In the absence of a Maintenance Agreement time spent to re code a site for compatibility due to the introduction of a new browser version will be separately negotiated and in addition to the base price of our agreement.

6. Online stores only

The text and graphic content of the web pages will be supplied by the Client and executed as specified by the Client in the "Web Page Planning Worksheet" and/or the "Store Planning Worksheet". The quotation provided includes the quantities of products, categories, photos, regular pages, etc. in the final store. Any variations to this will incur additional charges. Product web pages, products, or photos added after the store is ready for advertising to the Web will be calculated for actual time spent at the hourly rate specified below.

7. Additional Expenses

Client agrees to reimburse the Developer for any requested expenses necessary for the completion of the project.

Examples would be:

- Purchase of specific fonts at the Clients request
- Purchase of specific photography at the Clients request
- Purchase of specific software at the Clients request
- Submittal to specific search engines at the Clients request (i.e. paid submissions)

8. Client Amends / Changes

The Developer prides itself in providing excellent customer service. That is the spirit of our agreement and the spirit of the Developers business. To that end, we encourage input from the Client during the design process. The Developer understands, however, that the Client may request significant design changes to pages that have already been built to the Clients specification. To that end, please note that our agreement does not include a provision for "significant page modification" or creation of additional pages in excess of our agreed page maximum. If significant page modification is requested after a page has been built to the Clients specification, we must count it as an additional page. Some examples of significant page modification at the request of the Client include:

- Developing a new table or layer structure to accommodate a substantial redesign at the Clients request
- Recreating or significantly modifying the company logo or other graphics at the Clients request
- Replacing more than 75% of the text to any given page at the Clients request
- Creating a new navigation structure or changing the link graphics at the Clients request
- Significantly re configuring the Clients shopping cart with new product, shipping or discount calculation if an e-commerce enabled site has been selected by the Client

If the Client requests significant page modification after the page maximum has been reached, a Change Request with estimated costs will be submitted for Clients approval prior to changes being done. Moderate changes, however, will always be covered during our development of the site and also covered by our maintenance agreements.

9. Maintenance Agreements

Maintenance Agreements are negotiated on a Client-by-Client basis as each Client will have differing needs. The Developer offers two kinds of Maintenance Agreements:

a. The Monthly "Flat Rate" Maintenance Contract - The Client pays a fixed monthly rate for such things as changing the price of an item, adding additional inventory to online store, addition of email addresses and making minor changes to a sentence or paragraph, etc. "Flat Rate" Agreement is payable each month, whether the time is used or not. Please enquire for the rate choices.

b. The "As Needed" Maintenance Contract - A monthly chargeable agreement, higher than the "Flat Rate", but offering cost savings on sites with little to no changes. Charges incur when Client requests a change.

Changes requested by the Client beyond those limits will be billed at the hourly rate of R350.00 per hour. This rate shall also apply toward additional work authorized beyond the maximums specified above for such services as: general Internet orientation education, marketing consulting, web page design, editing, modifying product pages and databases in an online store, and art, photo, graphics services, and helping Clients learn how to use their own web page editor. Programming charges are excluded from the maintenance agreements.

Maintenance Agreements exclude any additional functionality added to the web site, for example galleries, calendars, forums, polls etc. Any web site or web page redesigns, graphic design (banners, advertisements etc.) are also excluded from the maintenance agreement. Should the Client or an agent, other than the Developer, attempt to update the web site and damage the design or impair the ability for the web pages to display or function properly, time to repair the web pages will be assessed at the hourly rate, and is not included as part of the updating time. There is a one-hour minimum.

10. Training

The Developer will provide both e-mail and telephonic support to the Clients designated representatives regarding management of the Clients web site for a period of 1 month upon completion of the web site development. Any further support required will incur a charge.

11. Work Schedule & Payment Terms

An advance of 50% of the total cost of the project is required before work can commence, unless otherwise stated. Only upon receipt of payment, will a project be opened for the services requested. Payment is accepted by Electronic Funds Transfer (ETF), or PayPal for International clients, in South African Rands unless otherwise agreed. For cheque deposits, an additional R30.00 must be added to the total payable. Once the Developer receives the deposit, basic design concepts will begin.

Developer to submit a 'First Mock-up Draft' of web site no later than ten (10) days after Developer receives signed agreement, along with down payment and initial direction from the Client (Web Site Design Brief). The Client is to provide Developer with all the data needed to complete web site, including text, company logo, and images. Communication between Developer and Client is crucial during this phase to ensure that the ultimate publication will match the Clients taste and requirements.

Upon completion of this stage, the Client will be asked to confirm acceptance for the basic site design via e-mail or by signing a printed copy of the design and faxing back to the Developer. Once this acceptance is received from the Client, the work necessary to complete the project will continue.

Upon completion of the web site, an e-mail and invoice will be sent to the Client advising the Client that the work has been completed. Client will supply written approval by printing, initialling and faxing back each page in web site. Final payment plus any additional charges incurred will be due within seven (7) days after delivery of this email and invoice.

If paying by cheque, Client agrees that should Clients bank return their cheque for any reason, Client will be liable for any additional fees incurred by Developer. Client further agrees that should the bank return their cheque(s) for any reason, a R130.00 fee will be incurred (per returned cheque) and the Client will be responsible for payment in full upon notification by bank and/or Developer.

Should payment not be made within thirty (30) days of notification, simple interest will accrue on the balance owed at a rate of 12% from the date payment was due. Developer reserves the right to remove all web content from the Internet if payment is not made within thirty (30) days of completion notification. If case collection proves necessary, Client agrees to pay all fees incurred in that process. Regardless of the place of signing this agreement, Client agrees that for the purposes of venue, this contract was entered into in Johannesburg, South Africa, and any dispute will be litigated or arbitrated in Johannesburg, South Africa.

12. Completion Date

Developer and Client must work together to complete the web site in a timely manner for both parties to remain profitable. We agree to work expeditiously to complete this project no later than twenty (20) working days from date of cleared deposit, and receiving all relevant material from the Client.

13. Copyrights and Trademarks

The Client represents to Developer and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to Developer for inclusion in web pages 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 Developer and its subcontractors from any claim or suit arising from the use of such elements furnished by the Client.

14. Limited Liability

Client agrees that any material submitted for publication will not contain anything leading to an abusive or unethical use of the Web Hosting Service, the Host Server or the Developer. Abusive and unethical materials and uses include, but are not limited to, pornography, obscenity, nudity, violations of privacy, computer viruses, harassment, any illegal activity, spamming, advocacy of an illegal activity, and any infringement of privacy.

The Client hereby agrees to indemnify and hold harmless the Developer from any claim resulting from the Clients publication of material or use of those materials. It is also understood that the Developer will not publish information over the Internet which may be used by another party to harm another. The Developer will also not develop a pornography or warez web site for the Client. The Developer reserves the right to determine what is and is not pornography.

15. Indemnification

Client agrees that it shall defend, indemnify, save and hold the Developer harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorneys fees associated with the Developers development of the Clients web site. This includes liabilities asserted against the Developer, its subcontractors, agents, clients, servants, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by the Client, its agents, employees or assigns.

Client also agrees to defend, indemnify and hold harmless the Developer against liabilities arising out of any injury to person or property caused by any products or services sold or otherwise distributed over the Clients web site. This includes infringing on the proprietary rights of a third party, copyright infringement, and delivering any defective product or misinformation which is detrimental to another person, organization or business.

16. Assignment of Project

The Developer reserves the right to assign subcontractors to this project to ensure the right fit for the job as well as on-time completion. The Developer warrants all work completed by subcontractors for this project. When subcontracting is required, the Developer will only use industry recognized professionals.

17. Age

Authorized representative of the Client certifies that he/she is at least 18 years of age and is legally capable of entering into a contract in the Republic of South Africa on behalf of the Client.

18. Ownership to Web Pages and Graphics

Copyright to the finished assembled work of web pages produced by the Developer and graphics shall be vested with the Client upon final payment for the project. This ownership is to include design, photos, graphics, source code, work-up files, text and any program(s) specifically designed or purchased on behalf of the Client for completion of this project.

All materials developed under this contract and intended for publication to the web remain the property of the Developer until such time as Client has tendered final payment for the work described herein. At this time, all materials become the property of Client and may be used by them as desired. Should Client use materials described in this contract on the web before the tender of final payment, then this contract is breached and appropriate penalties will apply. The Developer retains the right to display graphics and other web design elements as examples of their work in their portfolios.

19. Laws Affecting Electronic Commerce

From time to time governments enact laws and levy taxes and tariffs affecting Internet electronic commerce. The Client agrees that the Client is solely responsible for complying with such laws, taxes, and tariffs, and will hold harmless, protect and defend Developer and its subcontractors from any claim, suit, penalty, tax, or tariff arising from the Clients exercise of Internet electronic commerce. Client also understands that the Developer cannot provide any legal advice.

20. Design Credit

Client agrees that the Developer may put a byline on the bottom of the web pages establishing design and development credit. Client also agrees that the web site created for the Client may be included in Developers portfolio.

21. Non-disclosure

The Developer, its employees and subcontractors agree that, except as directed by the Client, it will not at any time during or after the term of this agreement disclose any confidential information to any person whatsoever. Likewise, the Client agrees that it will not convey any confidential information obtained about the Developer to another party.

22. Client Referral Commission Program

The Developer recognizes 'word-of-mouth' advertising as our most favourable method of developing new business. As such, the Developer will reward Clients who are pleased with work completed and refer Developer to another individual, business or organization. Should the Developer ultimately establish a contract with a third party that the Client has referred, the Developer will provide Client with a 10% referral fee, paid directly into their bank account within thirty (30) days of third party signing contract.

23. Rights Upon Termination of Agreement

The Developer shall transfer, assign and make available to Client all property and materials in Developers possession or subject to Developers control that are the property of Client, subject to payment in full of amounts due, pursuant to this agreement. Developer also agrees to provide reasonable co-operation in arranging for the transfer or approval of third parties interest in all contracts, agreements and other arrangements with advertising media, suppliers, talent and others not then utilized, and all rights and claims thereto and therein, following appropriate release from the obligations therein.

Cancellation of the project at the request of the Client must be made by registered letter. In the event that work is postponed or cancelled at the request of the Client by registered letter, the Developer shall have the right to retain the original deposit. In the event this amount is not sufficient to cover the Developer for the time and expense already invested in the project, the Client shall be liable to pay for all work completed at the hourly rate. If additional payment is due, this will be billed to the Client within seven (7) days of notification via registered letter to stop work. Final payment will be expected under the same terms as listed in point 11 above.

Cancellation of project must be submitted by registered letter to Creative Designs, P.O. Box 2031, Randpark Ridge, Johannesburg, Gauteng, 2156. The cancellation clause of your contract may further specify:

- all materials delivered to the client to date (in connection with that specific project) must be returned
- use of work done in connection with the project without your consent could result in additional fees or legal action
- you will keep all original artwork, digital files, disks or CDs prepared in connection with the project

24. Default

In the event of any default of any material obligation by or owned by a party pursuant to this Agreement, then the other party may provide written notice of such default. If such default is not cured within fourteen (14) days of the written notice, then the non-defaulting party may terminate this Agreement.

25. Litigation

Any disputes arising from this contract will be litigated or arbitrated in Johannesburg, South Africa. This agreement shall be governed and construed in accordance with the laws of the Republic of South Africa. Client hereby agree to the terms, conditions and stipulations of this agreement on behalf of his/her organization or business. This Agreement constitutes the entire understanding of both parties. Any changes or modifications thereto must be in writing and signed by both parties.

26. Arbitration

Any disputes in excess of R7000.00 (or the maximum limit for small claims court) arising out of this agreement shall be submitted to binding arbitration before the Joint Ethics Committee or a mutually agreed upon Arbitrator pursuant to the rules of the South African Arbitration Association. The Arbitrator's award shall be final, and judgment may be entered in any court having jurisdiction thereof. The Client shall pay all arbitration costs, reasonable attorneys fees and legal interest on any award or judgment in favour of the Developer.

27. Terms and Conditions

The Developer does not warrant that the functions contained in these web pages or the Internet web site will meet the Clients requirements or that the operation of the web pages will be uninterrupted or error-free. The entire risk as to the quality and performance of the web pages and web site is with the Client. In no event will Developer be liable to the client of any third party for any damages, including any lost profits, lost savings or other incidental, consequential or special damages arising out of the operation or inability to operate these web pages or web site, even if Developer has been advised of the possibility of such damages. If any provision of this agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this agreement and shall not affect the validity and enforceability of any remaining provisions.

28. Sole Agreement

The agreement contained in this "Web Site Design Contract" constitutes the sole agreement between Developer and the Client regarding this web site. Any additional work not specified in this contract must be authorized by a written change order. All prices specified in the quotation will be honoured for 14 days. Continued services after that time will require a new agreement.

This agreement constitutes the entire understanding of the Developer and Client. Both parties warrant that they have read and understand the terms set forth in this agreement. This agreement terminates and supersedes all prior understanding or agreements on the subject matter hereof. Any changes or modification thereto must be in writing and signed by both parties The Client agrees to the terms of this agreement on behalf of his or her organization or business.