



design by **Mito**

# terms

Version: 15.03.2019

These terms and conditions (as from time to time amended) set out the terms under which we, Mito Web Media (registered in the UK), provide marketing and related services to our clients. Our trading names include 'Mito Web Media', 'Mito Web Media UK', 'Mito Web Media Italia', 'Design by Mito' and 'Mito'. All marketing and other services provided by us shall, unless otherwise agreed by us in writing, be subject to these terms. By requesting us to provide any services to you, you hereby agree to be bound by these terms.

## DEFINITIONS AND INTERPRETATIONS

The following definitions and interpretations apply in these terms:

**Mito Web Media / Design by Mito:** Web designers, graphic designers, web developers, SEO consultants, server administrators and advertising campaign managers providing services to the client.

**Back End Code:** The more complex functionality than Front End Code which enables a website to perform processes and store information. It includes databases and programming using languages such as PHP.

**Client:** The company or individual requesting the services of Mito Web Media.

**Front End Code:** The HTML code and CSS style sheets, which sit immediately behind the 'look and feel' of a website to make the user interface operational.

**Contract:** Your order for services and our acceptance of it.

**Intellectual Property Rights:** All patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** Deemed to be a written or verbal contract between Mito Web Media and the client; this includes telephone and email agreements. Clause, schedule and paragraph headings shall not affect the interpretation of these terms.

Words in the singular shall include the plural and vice versa. A reference to writing or written includes faxes and e-mail.

## OUR OBLIGATIONS

Mito Web Media shall carry out services with reasonable skill and care, and shall endeavour to provide all the deliverables to you as agreed.

We will endeavour to meet all dates and deadlines specified.

## YOUR OBLIGATIONS

You shall co-operate with us in all matters relating to the services and appoint your manager in relation to a project, through whom questions and enquiries relating to the services or deliverables will be channelled.

You shall provide, in a timely manner, information as we may request and ensure

that it is accurate in all material respects.

You shall ensure that your equipment is in good working order and suitable for the purposes for which it is used in relation to the services and conforms with all standards reasonably requested by us in order for us to perform the services.

You shall obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the services we provide.

You shall provide us with written feedback on such stages of the project as we may specify.

You shall indemnify us against all damages, losses and expenses arising as a result of any claim that the client materials infringe the intellectual property rights of a third party.

If our performance of our obligations under agreement is prevented or delayed by any act or omission by you, your agents, sub-contractors or employees, we shall not be liable for any costs, charges or losses sustained or incurred by you arising directly or indirectly from such prevention or delay. We reserve the right to invoice you for any expenses reasonably incurred by us as a result of such delays.

## CHARGES AND PAYMENT

Unless otherwise stated, Mito Web Media invoices are to be paid in full within 30 days of issue.

Failure to pay the invoice in full within 30 days will result in a 4% penalty per full week under the Late Payment of Commercial Debts (interest) Act 1998 and suspension of all services until payment has been made in full.

Non-payment after 60 days may result in legal action being taken. A non-refundable deposit of 25% (unless otherwise stated on initial quote) is required with all of our projects before any design work will be carried out.

The second payment of 25% is due two months after the project start date or on project completion, whichever date arrives sooner.

The remaining balance will be due four months after the project start date or on project completion, whichever date arrives sooner.

All sums payable to us under the contract shall become due immediately on its termination, despite any other provision.

The price stated in the quote is an estimate based on certain assumptions;  
(a) That each project proceeds without undue or unforeseen complication.  
(b) That the approach of everyone involved is reasonably constructive, efficient, decisive and expeditious.  
(c) The scope of the services remains as agreed.

Any fixed price and daily rate excludes any ancillary expenses reasonably incurred

by the individuals whom we engage in connection with the services, the cost of any materials and the cost of third party products reasonably and properly provided by third parties and required by us for the supply of the services. Such expenses, materials and third party services shall be invoiced by us.

We shall be entitled to increase any recurring fees specified in the order form annually in line with the consumer price index.

All sums payable to us under the contract shall become due immediately on its termination, despite any other provision.

We may, without prejudice to any other rights we may have, set off any of your liability to us against any of our liability to you.

Any deposits or initial payments are non-refundable, unless otherwise agreed by us in writing.

#### **INTELLECTUAL PROPERTY RIGHTS**

All rights, including Intellectual Property Rights, for any design work or services shall be owned by Mito Web Media.

Once the invoice is paid for in full, all rights for any bespoke design work created for you will be transferred to you unless otherwise stated. This excludes services or work not specifically created for you, such as use of our content management system or PHP scripts written for your website.

You acknowledge that your use of any pre-existing materials in which we do not own the Intellectual Property Rights (such as any third party products) is conditional on our obtaining a licence from the relevant third party on such terms as will entitle us to license such rights to you; and shall be subject to the terms of such licence.

#### **CONFIDENTIALITY**

You shall keep in strict confidence all technical or commercial knowhow, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to you by us, our employees, agents or sub-contractors and any other confidential information concerning our business or our products or services which you may obtain.

You shall restrict disclosure of such confidential material to your employees, agents or sub-contractors as need to know the same for the purpose of discharging your obligations to us, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind you.

We shall keep in strict confidence all technical or commercial knowhow, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to us by you, your employees, agents or sub-contractors and any other confidential information concerning your business or your products or services which we may obtain.

We shall restrict disclosure of such confidential material to such of our employees, agents or sub-contractors as need to know the same for the purpose of discharging our obligations to you, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind us.

All materials, equipment and tools, drawings, specifications and data supplied by us to you (including pre-existing materials and our equipment) shall, unless otherwise stated, be and remain our exclusive property, but shall be held by you in safe custody at your own risk and maintained and kept in good clause by you until returned to us, and shall not be disposed of or used other than in accordance with our written instructions or authorisation.

#### **LIMITATION OF LIABILITY**

We shall not be liable (including for negligence or breach of statutory duty) for any loss of profits, loss of business, depletion of goodwill, corruption of data or any indirect or consequential loss, costs, damages, charges or expenses and/or similar losses however arising.

#### **DATA PROTECTION**

You acknowledge and agree that details of your name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of us in connection with our services.

Mito Web Media hold a strict privacy policy and promise to never divulge your details to any other client, existing or potential, unless your prior consent is given. However, we reserve the right to show your website and company name in our portfolio and other marketing materials, unless otherwise requested by the client before starting the project.

We do not share or sell any of your details with third party companies.

#### **TERMINATION**

Unless the nature of the services to be provided requires otherwise and is specified, the contract shall terminate automatically on completion of the project.

Contracts with agreed renewals will be automatically renewed unless cancelled a set amount of time (usually 30 days) before the renewal date by either party.

Without prejudice to any other rights or remedies which the parties may have and where the nature of the services to be provided is on an ongoing basis, either party may terminate the contract without liability to the other immediately on giving notice to the other if:

- (a) the other party commits a material breach of any of these terms or the contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party;
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
- (d) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets;
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

On termination of these terms or the contract for any reason:

- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt;
- (b) you shall (unless otherwise agreed by us), within 10 business days return to us all of our equipment, pre-existing materials and deliverables. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned or repossessed, you shall be solely responsible for their safe keeping;
- (c) we shall use our best endeavours to make available to you for a period of three months after termination any artwork we have prepared for you as part of the services, but you acknowledge that we cannot retain such materials indefinitely and any request for such artwork after the said three month period may not be possible or may be subject to additional fees for retrieving such materials from archiving or recreating deleted files; and
- (d) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

#### **UNFORESEEN CIRCUMSTANCES**

We shall have no liability to you if we are prevented from or delayed in performing our obligations or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control, including strikes, lock-outs or other industrial disputes (whether involving our workforce or that of any other party),

failure of a utility service or transport network, power outage or electrical failure, theft of computers or related equipment, hostile computer act, telecommunications failures, non-availability of third party data centres, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (including the suppliers of any third party products).

## **PUBLICITY**

For our marketing purposes, you agree that we may include your company name, any design concepts (whether or not in draft, accepted or final form) in our portfolio and any marketing materials, to show clients and potential clients examples of our work.

Except in the case of any client or potential client that is a material competitor of yours, you agree that we may demonstrate bespoke software to clients and potential clients.

Subject to the clause above, you agree that we may make announcements from time to time via online channels such as but not limited to Twitter, Facebook and LinkedIn, that our services have been provided to you or that a particular website or campaign is live.

## **SIGN OFF**

A low resolution proof of all design work will be sent to the client to comprehensively check before finalisation (printing, submission etc.). It is the full responsibility of the client to ensure there are no errors or submissions on the proof, and confirmation of such from the client is final.

## **WEBSITE DESIGN AND DEVELOPMENT**

Whilst every endeavour will be made to ensure that the website and any scripts or programs are free of errors, Mito Web Media cannot accept responsibility for any losses incurred due to malfunction, the website or any part of it.

The website, graphics and any programming code remain the property of Mito Web Media until all outstanding accounts are paid in full.

Any scripts, javascript sliders, cgi applications, php scripts, or software (unless specifically agreed) written by Mito Web Media remain the copyright of Mito Web Media and may only be commercially reproduced or resold with the permission of Mito Web Media.

Mito Web Media cannot take responsibility for any copyright infringements caused by materials submitted by the client. We reserve the right to refuse receipt of any material of a copyrighted nature unless adequate proof is given of permission to use such material.

Any additions to briefs provided will be carried out at the discretion of Mito Web Media and where no charge is made by Mito Web Media for such additions, Mito Web Media accept no responsibility to ensure such additions are error free and reserve the right to charge an according amount for any correction to these or further additions. All additional charges will be agreed between Mito Web Media & the client before the additional work is started. The client agrees to make available as soon as is reasonably possible to Mito Web Media all materials required to complete the site to the agreed standard and within the set deadline.

Mito Web Media will not be liable for costs incurred, compensation or loss of earnings due to the failure to meet agreed deadlines. Although every effort is made to meet the agreed deadlines, certain unforeseeable external events may make this not possible, in which case Mito Web Media will ensure that the work is a high priority and will aim to complete as soon as possible after the deadline date.

Mito Web Media will not be liable or become involved in any disputes between the site owner and their clients and cannot be held responsible for any wrongdoing on the part of a site owner. eg. Any disputes re content/images that have been provided to us for inclusion on the site.

Mito Web Media will not be liable for any costs incurred, compensation or loss of earnings due to the work carried out on behalf of the client or any of the clients appointed agents.

Mito Web Media will not be liable for any costs incurred, compensation or loss of earnings due to the unavailability of the site, its servers, software or any material provided by its agents.

Once a website has been designed and completed the final balance of payment is then due in accordance with our payment terms. There are no exceptions to this, i.e. if the client decides they no longer want the site, as they have commissioned the work and paid a deposit they are still obliged to pay for the work that has been done. Once full payment is received for a website, it is assumed that the project has been completed to the client's satisfaction and no refunds can be offered. We do offer free updates (usually for a month) after completion to allow for any final amendments that may be required.

We will endeavour to answer any technical support questions during working hours over the telephone, or by email reply within a reasonable time frame. This covers questions about the usage of our contentmanagement system or software written by us for use in your website. This does not cover larger amendments and/or changes that cannot be performed from within the content-management system itself.

## **E-COMMERCE & CONTENT-MANAGED WEBSITE DEVELOPMENT**

Mito Web Media cannot take responsibility for any losses incurred by the use of any software created for the client. Whilst every care has been taken to ensure products are problem free and accurate, the ultimate responsibility lies with the client in ensuring that all software is functioning correctly before use.

Where applications or sites are developed on servers not recommended by Mito Web Media, the client is expected to provide or seek any information, additional software, support or co-operation pertaining to the server required in order for the application to be correctly developed. Where large applications are to be developed, it is the client's responsibility to provide a suitable testing environment which is identical to the final production environment.

The client is expected to test fully any application or programming relating to a site developed by Mito Web Media before being made generally available for use. Where "bugs", errors or other issues are found after the site is live, Mito Web Media will endeavour (but is not obliged to) to correct these issues to meet the standards of function outlined in the brief.

## **COMPATIBILITY**

Mito Web Media will endeavour to ensure that any developed/designed site or application will function correctly on the server it is initially installed in and that it will function correctly when viewed with the web browsing software Google Chrome and to an acceptable level with Microsoft Internet Explorer (latest available version). Mito Web Media can offer no guarantees of correct function with all browser software.

## **WEBSITE HOSTING**

Whilst Mito Web Media recommends certain hosting companies to host websites, and hosts websites for some clients through an agreement with our supplier(s), no guarantees can be made as to the availability or interruption of this service. Mito Web Media cannot accept liability for losses caused by the unavailability, malfunction or interruption of this service, or for loss of turnover, sales, revenue, profits or indirect, consequential or special loss.

Mito Web Media reserve the right to refuse to handle in any way, material which may be deemed offensive, illegal or in any way controversial.

## **SEARCH ENGINE OPTIMISATION**

Due to external factors, such as changes to the way search engines rank websites and the SEO activities/investments of the clients' competitors, we cannot offer any guarantees regarding the position we will achieve for websites. The process of optimizing websites itself aims to bring in more traffic to your site. We cannot accept liability for any change in rankings, or drop off in the position of your website due to changes in the algorithms of the search engines or increased SEO activities of your competitors.

We always aim to achieve a top ten ranking for your website within six months of undertaking the optimization process. Due to the work involved payment is

required in advance and we are unable to offer a refund of any monies to clients in relation to this type of work.

We must be notified if the client has created any duplicate sites, duplicate content or pages, redirects or doorway pages to their website prior to or whilst using the services of Mito Web Media.

The client must not request or exchange links with any link farms or undertake any spamming techniques which may harm the website's search engine ranking with Google.

#### **DISCLAIMERS AND LIMITATIONS ON LIABILITY**

Mito Web Media shall not be responsible for URLs dropped or excluded by a search engine for any reason.

Mito Web Media shall not be responsible for delays or failure of performance resulting from Internet Service Provider delivery problems or failure, or any communication or delivery problems associated with client's receipt of information.

Mito Web Media shall not be responsible for acts or causes beyond their control, including but not limited to: acts of God, strikes, lockouts, communications line or equipment failures, power failures, earthquakes, or other disasters.

Mito Web Media do not represent or warrant that client's URLs will achieve a specific position within a particular search engine.

Mito Web Media do not warrant or represent that the use or the results of the use of the materials available through the Mito Web Media services or from third parties will be correct, accurate, timely, reliable or otherwise.

You expressly agree that use of the Mito Web Media services provided hereunder is at your sole risk. These services are provided on an "as is" and "as available" basis.

Mito Web Media expressly disclaim all warranties of any kind, express or implied, including without limitation any warranty of merchantability, fitness for a particular purpose or non-infringement.

Notwithstanding the security precautions taken against disclosure of information, there are certain conditions that exist on the Internet generally which are outside Mito Web Media's control and could result in a breach of security. Accordingly, Mito Web Media cannot guarantee that your account service data information will be free from corruption or piracy.

You hereby expressly waive any claim against Mito Web Media arising out of the loss of data through corruption, piracy, and breach of security or for any other reason that is not based on intentional or grossly negligent actions of Mito Web Media.

To the maximum extent allowed by law, Mito Web Media and any of their employees shall not be liable for any direct, indirect, special, incidental or consequential damages (no matter how they arose, including negligence), or for interrupted communications, lost data or lost profits, arising out of or in connection with the services provided hereunder. Further, Mito Web Media will not have any liability for any losses arising because the Mito Web Media services are not operational or accessible.

#### **HOSTING**

The client agrees that their website is not hosted on free web space using domain forwarding (either framed or otherwise) whilst using the SEO services of Mito Web Media.

The client must also grant FTP and website login access to Mito Web Media for the SEO work undertaken to be fully effective. If the website was also created by Mito Web Media then we may already have this information.

Unless using our own hosting services, hosting is not provided by Mito Web Media and is the responsibility of the client.

#### **WEBSITE CONTENT**

The client must guarantee that the material included in the website:

- (a) Is not in breach of the Intellectual Property rights of any third party.
- (b) Is not obscene within the definition of the Obscene Publications Act 1959 or any other relevant provision or statute.
- (c) Is not in breach of any code or provision of statute or common law or otherwise in force from time to time in relation to advertising of goods or services.
- (d) Contains no element of corporative advertising which is in breach of the Control of Misleading Advertisements (Amendment) Regulations 2000.
- (e) Is not in breach of the Defamation Act 1996 or any other relevant provision or statute.
- (f) Does not contain any misleading price comparison in breach of Consumer Protection Act.

Unless otherwise agreed upon between Mito Web Media and the client, a small and non-intrusive link to our own website will be placed on the website. This is usually in the footer, and will likely be similar to "Website by Mito" or "Website design by Mito". Our quoted prices to the client are subsidised by this promotion, and a new quote can be created without the footer link before starting work on the project if requested by the client.

#### **PAYMENT OF ACCOUNTS**

Full payment is required by the 1st of each month in which any SEO work is to be carried out (unless otherwise stated).

For fixed SEO contracts we recommend that a direct debit or standing order is set up in order to avoid the risk of non-payment and withdrawal of services. We will contact clients via email and telephone to remind them of such payments if they are not received when due.

If accounts are not settled or Mito Web Media have not been contacted regarding the delay, services may be withdrawn and backlinks to your website may be removed, we may then pass such cases through the appropriate legal channels.

Following consistent non payment of an invoice our solicitors may contact the client in question, with a view to taking the matter further and if needed to seek payment through legal procedures.

An SEO project can be cancelled at any time as long as the next invoice date is not within 14 days of the initial cancellation request. If you wish to cancel, please email [info@designbymito.com](mailto:info@designbymito.com) or your sales representative.

#### **COMPLAINTS PROCEDURE**

Anyone who experiences a problem with the service provided by Mito Web Media should raise the matter directly using our online contact form, giving sufficient information to locate the material (such as a URL) and clearly outlining the grounds for complaint, or alternatively by sending an email to [support@designbymito.com](mailto:support@designbymito.com).

Mito Web Media will approach the individual responsible for the material in question with a view to resolving the matter to the satisfaction of the complainant.

The formal complaints procedure should be used where the complainant feels that the nature of the complaint is too serious to be dealt with informally, or where a satisfactory conclusion has not been reached after following the informal procedure.

A formal complaint should be made in writing to [info@designbymito.com](mailto:info@designbymito.com) who will acknowledge receipt and ensure that the matter is dealt with as soon as possible.

An initial response to any complaint can be expected within seven days of its receipt; a full and considered response to the complaint should be completed within 30 days and any subsequent remedy implemented with the minimum of delay.