

STANDARD TERMS & CONDITIONS FOR THE SALE OF WEBSITE DESIGN AND DEVELOPMENT SERVICES

1. Application of Conditions

The Seller shall sell and the Buyer shall purchase Services in accordance with any quotation or offer of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2. In these Conditions:-

"Business Day"	means any day excluding: Saturday, Sunday or bank holiday's;
"the Buyer"	means the person who accepts a quotation or offer of the Seller for the sale of the Services or whose order for the Services is accepted by the Seller;
"the Contract"	means the contract for the purchase and sale of the Services under these conditions;
"these Conditions"	means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;
"the Services"	means website design or development services (including any hosting package or any parts for it) which the Seller is to supply in accordance with these Conditions;
"month"	means a calendar month;
"the Seller"	means Net Magik, a company registered in England under No. 094717547;
"writing"	includes any communications effected by e-mail, facsimile transmission or any comparable means.

- 2.1 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 2.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

3 Basis of Sale

- 3.1 The Seller's employees or agents are not authorised to make any representations concerning the Services unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 3.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 3.3 Sales literature, price lists and other documents issued by the Seller in relation to the Services are subject to alteration without notice and do not constitute offers to sell the Services which are capable of acceptance. An order placed by the Buyer may not be withdrawn cancelled or altered prior to acceptance by the Seller and no contract for the sale of the Services shall be binding on the Seller unless the Seller has issued a quotation which is expressed to be an offer to sell the goods or has accepted an order placed by the Buyer by whichever is the earlier of:-
- (a) the Seller's written acceptance;
 - (b) delivery of the Services; or
 - (c) the Seller's invoice.

- 3.4 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

4 Orders and Specifications

- 4.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.
- 4.2 The specification for the Services shall be those set out in the Seller's sales documentation unless varied expressly in the Buyer's order (if accepted by the Seller).
- 4.3 The Seller reserves the right to make any changes in the specification of the Services which are required to conform to any applicable statutory or regulatory requirements or, where the Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 4.4 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller on the terms that the Buyer shall indemnify the Seller 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 Seller as a result of cancellation.

5 Price of Goods

- 5.1 The price of the Services shall be the price listed in the quotation provided by the Seller or such other price as may be agreed in writing by the Seller and the Buyer.
- 5.2 Where the Seller has quoted a price for Services the price quoted shall be valid for 30 days only or such lesser time as the Seller may specify.
- 5.3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 5.4 The price is exclusive of any applicable value added tax excise, sales or taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Services, which the Buyer shall be additionally liable to pay to the Seller.

6 Terms of Payment

- 6.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the price of the Services on or at any time after delivery of the Services.
- 6.2 The Buyer shall pay the price of the Services (less any credit allowed by the Seller, but without any other deduction credit or set off) within 30 days of the date of the Seller's invoice or otherwise in accordance with such credit term as may have been agreed in writing between the Buyer and the Seller in respect of the Contract. Payment shall be made on or before the due date. Receipts for payment will be issued only upon request.
- 6.3 The Seller may request and invoice for a deposit for larger works of Services; this deposit must be paid before any work will be carried out on the specified Services. Deposits are non-refundable unless otherwise specified.
- 6.4 All payments shall be made to the Seller in Pounds Sterling at its office as indicated on the quotation or invoice issued by the Seller. Payments by BACS into the Seller's bank account are also acceptable.
- 6.5 The Seller is not obliged to accept orders from any customer or buyer who has not supplied the Seller with references satisfactory to the Seller; if at any time the Seller is not satisfied as to the creditworthiness of the Buyer it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer in which event no further Services will be delivered to the Buyer other than against cash payment and notwithstanding Clause 6.2 of these conditions, all amounts owing by the Buyer to the Seller shall be immediately payable in cash.

7 Delivery

- 7.1 Delivery of Services shall be made by the Seller via the Internet.
- 7.2 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Seller in writing.

8 Seller's Default

- 8.1 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in delivery or in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:-
- (a) act of God, explosion, flood, tempest, fire or accident;
 - (b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - (c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - (d) import or export regulations or embargoes; and/or
 - (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party).

9 Defective Services

- 9.1 The Seller shall be under no liability in respect of any defect arising from any wilful damage, negligence, subjection to normal conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration of the Services without the Seller's approval, or any other act or omission on the part of the Buyer, its employees or agents or any third party.
- 9.2 Subject as expressly provided in these Conditions, and except where the Services are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.3 Where the Services are sold under a consumer sale the statutory rights of the Buyer are not affected by these Conditions.
- 9.4 Except in respect of death or personal injury caused by the Seller's negligence, or as expressly provided in these Conditions, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under statute, or under the express terms of the Contract, for any direct or consequential loss or damage sustained by the Buyer (including without limitation loss of profit or indirect or special loss), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its servants or agents or otherwise) which arise out of or in connection with the supply of the Services or their use or resale by the Buyer.

10 Buyer's Default

- 10.1 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-
- (a) cancel the order or suspend any further services to the Buyer;
 - (b) appropriate any payment made by the Buyer to such of the Services (or the services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - (c) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of two per cent per annum above National Westminster Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest), as per the Seller's statutory right to interest under the Late Debts (Interest) Act of 1988.

10.2 This condition applies if:-

- (a) the Buyer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or
- (b) the Buyer becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or
- (c) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- (d) the Buyer ceases, or threatens to cease, to carry on business; or
- (e) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.3 If Condition 10.2 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Services have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11 Confidentiality, Publications and Endorsements

11.1 The Buyer undertakes to the Seller that:-

- (a) the Buyer will regard as confidential the contract and all information obtained by the Buyer relating to the business and/or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default;
- (b) the Buyer will not use or authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which the Seller is licensed to use or which is owned by the Seller upon any premises note paper visiting cards advertisement or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) its Licensor;
- (c) the Buyer will use all reasonable endeavours to ensure compliance with this Condition by its employees, servants and agents.

This Condition shall survive the termination of the Contract.

12 General

- 12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 Seller is not responsible for storing or re-supplying passwords/images or content supplied for any web project or related service regardless of format whether electronic or hardcopy.
- 12.4 Seller is not responsible of the actions of third parties or the services they provide, this includes but is not limited to: Internet Search Engines, Providers of Web Browsers, Internet Service Providers, Domain Name Registrars, or any other Third Party Company.
- 12.5 After the design process has been completed, if the final design has been produced in accordance with the specification but is rejected, Net Magik reserves the right to charge 70% of the design.
- 12.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

12.7 The Contract shall be governed by the laws of England.