

THE DIGITAL MOOSE

GENERAL CONDITIONS



The Digital Moose (hereafter TDM) will only commence work once an order has been placed by either phone, email, in writing or approved project proposal. An 'order' is deemed to be a verbal or written contract between The Digital Moose and the Client including telephone and email agreement. Invoices will be generated and issued electronically and sent by email to the Client. Our preferred method of payment is Bank Transfer. The details of our account will be included on all invoices.

TDM accept no legal liability for loss or damage caused by any work carried out by TDM. All quotations are valid for a period of 30 days only. These Terms and Conditions supersede all previous agreements or understandings. Acceptance and or payment of a quotation, estimate or invoice constitutes agreement and full acceptance of these Terms and Conditions. The most up-to-date version of these Terms and Conditions will always be available on our website.

At TDM we reserve the right to terminate a project if;

- Client behaves poorly and effects the workflow of a project.
- Client shows a lack of focus in getting a project finished through no communication after 60 days.

If any of these circumstances arise the deposit will be non-refundable.

WEBSITE, (ONLINE SYSTEM OR PORTAL)

Design work will be provided to the client for approval and 'sign-off'. As will details of required pages and functionality. The creation of the website code and functionality will only begin after client sign-off for these elements. Any significant changes to the design or website structure and functionality will be subject to an additional charge, to be agreed with the client at this point. No further work will be conducted until the client has agreed the extra cost and scope of work.

TDM are not responsible for writing client copy or providing images. We can provide web copy and source suitable images, but this will be at additional cost, to be agreed with the client before any such work will be undertaken.

TDM reserve the right to refuse to handle in any way, material which may be deemed obscene or pornographic, contains abusive or offensive language, anything that may be construed as threatening or defamatory or any material to which the Client has no rights. The client must guarantee that any elements of text, graphics, photos, designs, trademarks, or other artwork that they provide us for inclusion in the web site are either owned by the client or that they have permission to use them.

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TDM will make every effort to ensure that the Website and any scripts or programs are error-free, but TDM cannot accept liability for any losses incurred due to failure or malfunction of the Website or any part of it.

Any code written by TDM remains the copyright of TDM (unless prior agreement is made and may only be reproduced or reused commercially with the permission of TDM.

TDM accept no responsibility for copyright infringements caused by materials used and submitted to us by the Client. TDM reserve the right to refuse any material that it believes to contravene copyright laws unless proof is given that permission has been granted to use the material. It is the responsibility of the client to provide all agreed materials as agreed verbally or in writing. Any significant delays caused due to the failure of the client to provide agreed materials may be chargeable. It is not the responsibility of TDM to create copy, images or other materials for the client unless explicitly agreed in the quotation or subsequent communication. Supplied materials should be in agreed format – if extra time required to crop/optimize images this will be chargeable (at agreed hourly rate for extra work) unless this is expressly outlined in the original quote. If TDM have to source image, design, logo or icon materials for the creation of a client website, the cost of the materials is chargeable at the cost incurred, unless the cost of the materials is explicitly outlined in any quotation or invoice.

TDM will not be liable for costs incurred; compensation or loss of earnings due to the failure to meet agreed deadlines, but every effort will be made to ensure all agreed deadlines are met and every effort will be made to inform the Client if a deadline will be missed.

TDM will not be liable or become involved in any disputes between the website owner and any other party and cannot be held responsible for any unlawful behaviour or other wrongdoing by the website owner. If instructed by the client, TDM can maintain the website at a monthly or agreed price in a fully operational condition without errors after the launch. TDM cannot always guarantee that this will be the case and as such cannot accept liability for any defects which may exist, economic losses (including revenues and profits), loss of goodwill, reputation or any other consequential or indirect losses the client may suffer due to the use of the website or their inability to access the website.

TDM cannot be held responsible for issues relating to software bugs in supplied open source or paid-for software solutions. Whilst TDM will endeavour to find solutions for such issues, this cannot be guaranteed and may be chargeable if significant time is required to provide the solution. Similarly, TDM cannot be held responsible for issues relating to software upgrades, plugins, modules or any other additional software packages requested by the client. Issues relating to email, including lost emails, cannot



be considered the responsibility of TDM. Clients must create local copies of emails that they consider to be commercially important or sensitive. If clients exceed any agreed or set quotas and lose data, it is their responsibility.

TDM retains the copyright of all individual artwork, graphic design and website design created for a client project. Artwork, graphic design and website design created for a client project shall not be altered, retouched, damaged or reproduced in any other form by the client without the written permission of TDM, unless said copyright is purchased from TDM in a separate transaction. This does not apply if the artwork, graphic design and/or website design is supplied or designed by the client.

All websites designed by TDM will show a link to the TDM website near the bottom of each webpage, unless otherwise agreed. Removal of the link is only allowed with the express permission of TDM. We also reserve the right to include details of our work for clients on the TDM website, this can include screen shots of the clients' website and links to the Client website.

If any discussed and/or created wireframes or images are subsequently used by the client, or a third party, without the express permission of TDM and without payment, we reserve the right to instigate legal action for damages and copyright infringement.

The customer also agrees that TDM holds no responsibility for any amendments made by any third party, before or after a design is published. Agreement for the website to 'go-live' will constitute acceptance of all work and the balance owing will become payable immediately.

The client must provide feedback on work and provide details of issues, omissions or bugs within 10 working days of feedback requests or they will be deemed to have accepted the work and any monies owing will become immediately payable.

After initial feedback any subsequent comments must relate to changes made in response to the initial feedback and must be made within 5 working days of notification of changes made.

BROWSER COMPATIBILITY

Whilst every measure will be made to ensure compatibility with a wide range of web browsing software we can offer no guarantees of correct function with all browser software and cannot accept responsibility for loss of goodwill, reputation or any other consequential or indirect losses the client may suffer due to a third parties inability to access the website due to browser incompatibility. We do not support Internet Explorer 6 and if the client expressly requires compatibility with this browser it must be stipulated

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before acceptance of any quote and any extra cost incurred in supporting this browser must be agreed before the project begins. We will test for and guarantee compatibility of any website we create with the most recent version of Internet Explorer, Mozilla Firefox, Safari, Chrome, Opera. Websites will be designed responsively as standard and will be expected to render correctly on a wide range of device sizes. Compatibility with specific devices is not guaranteed, unless explicitly requested and included in the quotation / proposal. If it is required it must be stipulated before acceptance of any quote and any extra cost incurred in supporting specified devices must be agreed before the project begins.

WEBSITE HOSTING

Where TDM provide hosting and maintenance services we cannot be held responsible for difficulties experienced when accessing the Website or individual parts of the Website due to circumstances beyond our control. These may include (but are not limited to): problems with the clients internet service provider or other third party, failure (partial or whole) of server hardware or software, hacker attacks, disruption or failure of any service that prevents TDM functioning in a normal manner, natural disaster, weather, war, invasion, riot and other civil disorder, rebellion and revolution. Where the client decides to host the website with a third party it is fully and completely their responsibility to maintain the website.

Website hosting, maintenance and backup services offered by TDM are for the express purpose of enduring the continuation of and maintenance of existing website pages and minor text and image changes to these pages. This service does not include the creation of new website pages or the addition of new regions (whether text or image) to the existing pages. Hosting can be cancelled at the end of the period covered and specified, but refunds are not possible during the hosting period. Hosting charges are applicable from the day the website hosting area is created, at the clients request, and website development begins. Where a client, or a third-party employed by a client, makes changes to a client website, hosted by TDM, resulting in issues with the website or any other associated services, TDM will not be held responsible in any way for loss of business or solving any issues. If TDM is asked to assist in solving issues the time will be chargeable at an agreed hourly rate.

Where the client requests a website to be installed on a third-party server it is the sole responsibility of the client to ensure the hosting is sufficient for the requirements of the website. TDM must be granted FTP access with read/write ability. Where it is necessary for TDM to create email accounts or setup databases then full admin access must be provided (usually CPanel). TDM reserve the right to charge on a time basis for the transfer of a client website to third-party hosting, unless this service is explicitly included in an estimate or invoice.

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Although hosting packages may be charged on a per year basis, if the bandwidth allowance for the selected package is exceeded, then additional hosting costs will be applicable. In this instance the client will have the option to upgrade the hosting package or reduce the timescale covered by the hosting package to cover the additional costs. It is the responsibility of the client to inform TDM if a hosting or maintenance contract/package is no longer required. Any used, but unbilled hosting time, will be owing for the period between the end of the last billed period and the notified end date for the hosting services.

DOMAIN TRANSFERS

TDM cannot be held responsible for the loss of email data or website functionality during transfer of domain name (however long it takes) or changes to the nameservers or any other domain-related record and as such cannot accept liability for any economic losses (including revenues and profits), loss of goodwill, reputation or any other consequential or indirect losses the client may suffer due to the loss of website functionality, loss of email data or their inability to access the email data.

In the event that a client requires the ownership of their domain name to be changed to a third party, this will generally require a fee to cover administration and must be paid before the transfer is initiated.

SEARCH ENGINE OPTIMISATION

We don't guarantee improvements to your website's search engine ranking, but the pages that we develop are accessible to search engines.

PAYMENT TERMS

TDM reserve the right to require a first payment or 'deposit' of between 30% and 50% of the agreed total costs before any work will be carried out. Once designed, a draft version of the Website(s) will be made live for testing and commenting by the Client. Once this basic design has been agreed to be suitable via email or in writing, any changes to the layout or general design may be chargeable.

For work of value less than £500 TDM reserves the right to invoice for full payment, and receive full payment of said invoice, before any work commences.

When work on the Website(s) has been completed the final balance of payment is then due in accordance with our terms of payment, stated on the initial estimate / quotation

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/ proposal and /or each invoice. Upon completion, if the Client decides they no longer want the website, or wish to make changes to the website, they are still obliged to pay for all work that has been done. i.e. if the site has been completed, all monies are now due for payment with no exception.

All accounts are payable nett 14 days (unless other prior arrangement has been made) meaning that all monies due to TDM must be paid within 14 days of completion of work and date of issue of the final invoice. Accounts still outstanding 30 days after invoice will be considered 'in default' and any client information or services may be suspended. Clients with accounts that are 'in default' agree to pay all reasonable costs and expenses, including legal fees in enforcing these Terms and Conditions.

Once a first payment or 'deposit' has been paid and work begins, the client is obliged to pay the balance of payment in full, even if the client decides to cancel the project for whatever reason. We will contact clients via email and telephone to remind them of such payments if they are not received when due. If a due payment becomes more than 30 days overdue, TDM reserves the right to request payment in full for the project at that point. Further work will not be conducted until such payment has been received. If a client persistently fails to provide access to their hosting or domain, such that TDM cannot complete scheduled and agreed work, the client will be deemed to have broken their agreement with TDM and all monies owing will be immediately due.

All website code and graphics will remain the property of TDM until all accounts are paid in full. If the client does not respond to email or phone messages requesting agreed content or sign-off, for a period of two weeks or more, TDM reserve the right to issue a final warning to the client that if they do not then respond within three days of the final warning, the project will be paused at that point and the client will be invoiced in full for work completed up to that point.

In the event that the client fails to respond to communication for a period of 28 days or more, TDM reserve the right to 'archive' the project and immediately invoice for all completed work and materials. At this point the project will on-hold until the scope of work and cost for completion of the project is agreed and any deposit required is paid.

Where TDM agree to invoice for a final payment when the created or modified website is ready to 'go live' and the client has 'signed-off' all work, the act of making the website 'live' on the internet implies acceptance of the work conducted by TDM and acts as 'sign-off'. All outstanding monies owing will become immediately payable and will be invoiced for immediately.



OUTSTANDING ACCOUNTS

We reserve the right to claim statutory interest at 8% above the Bank of England reference rate in force on the date the debt becomes overdue and at any subsequent rate where the reference rate changes and the debt remains unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002.

TDM reserve the right to charge for costs and expenses incurred in recovering late payments and to charge interest at the rate then in force pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 as at the due date.

A copy of "The Act" is available from www.opsi.gov.uk/acts/acts1998/19980020.htm. We will also claim compensation under the late payment legislation - £40 up to £999 debt, £70 for £1000 to £9999.99 and £100 for £10,000 and above.

For outstanding accounts TDM reserve the right to disable the Client's website or system until such time as we receive all outstanding monies. Following consistent non-payment of an invoice we, or our solicitors, will contact the Client in question, with a view to taking the matter further and if the need arises to seek payment through legal proceedings, and if necessary, court summons.