

# Notes

- All 3 parts of the contract are contained within this single PDF document and can be seen below.
- Edit this document in an PDF editor or copy and paste into something like Google Docs or Microsoft Word and then customise.
- See the last page (Customisation for your own business) with full details about what you have to replace with your own business details and your clients business details.
- Remove this Notes section and the last page (Customisation for your own business) before printing off.

**[remove the notes above this before printing  
off]**

# PART 1 – The Terms and Conditions

## 1. DEFINITION OF TERMS

**[YOUR BUSINESS NAME]** – **Your Business Address** trading as **[YOUR BUSINESS NAME]** having its principal place of business at **Your Business Address**, aforesaid.

**The Client** - the entity which enters into a contract with **[YOUR BUSINESS NAME]**

**Domain Name** - the root address of a website, e.g. www.webaddress.com. All such names must be registered with the appropriate naming authority, which will usually charge a fee.

**Downtime** - time when the website is not accessible via the Internet. This may be because of a technical failure of the Host or because work is being carried out on the site.

**Host** - the company on whose system the Website physically resides.

**Link, Hyperlink** - a 'clickable' link embedded on a web page which may take the form of a graphic or text.

**Search Engine** - a website which contains a directory of websites on the Internet enabling users to find websites by subject matter classification. Examples - Google and Bing.

**Website** - a collection of web pages and associated code which forms an integrated presence.

**The Work** - the subject matter of the contract between the Client and **[YOUR BUSINESS NAME]**

## 2. FEES

### 2.1

#### Fee Payable

A non refundable deposit of **40%** of the total fee payable under the contract is due immediately upon the signing of the contract. The remaining **60%** shall become due when the Work is completed to the reasonable satisfaction of the Client but subject to the terms of Clause 4.3 Approval of Work and Clause 4.4 Rejected Work hereof. **[YOUR**

**BUSINESS NAME]** reserves the right not to begin the Work until the said deposit has been paid in full. The fee quoted in the contract does not include the cost of domain registration, hosting set up fee or hosting.

## 2.2

### Maintenance Fees

Maintenance, shall be on a month to month basis, with a fee of **XX** payable each month.

## 3. DISCLAIMERS

### 3.1

#### Third Parties

**[YOUR BUSINESS NAME]** can take no responsibility for services provided by third parties through us or otherwise, including the Hosting of the Client's Website, although **[YOUR BUSINESS NAME]** will endeavour to ensure that Website downtime is kept to a minimum.

### 3.2

#### Maintenance and Correction of Errors

**[YOUR BUSINESS NAME]** takes no responsibility for the functionality or maintenance (unless a maintenance contract is in place) of the Website after the Work has been completed. Errors (both technical and typographical) attributable to **[YOUR BUSINESS NAME]** will be corrected free of charge, but **[YOUR BUSINESS NAME]** reserves the right to charge a reasonable fee for correction of errors for which **[YOUR BUSINESS NAME]** is not responsible, including, but not limited to malicious modification of the Website by a third party and typographical errors contained in materials provided to **[YOUR BUSINESS NAME]** by the Client.

### 3.3

#### Extent of Work

Installation on the Internet is limited to the uploading of all necessary files to the Host, and testing of functionality. No registration of the Website with Search Engines will be undertaken unless otherwise agreed with the Client.

### 3.4

#### Consequential Loss

Under no circumstances will **[YOUR BUSINESS NAME]** be responsible or liable for financial or other loss or damage caused by the failure or use or misuse of its

software. The Client should ensure that data on their site is regularly backed up and that a contingency plan is in place to minimize possible losses as a result of software failure.

### 3.5

#### Status and Duration of Offers

Proposals and offers are valid for a period of one month from the date issued. [YOUR BUSINESS NAME] is not bound to honour offers that have expired. Offers are not legally binding until an acceptable timetable for the work has been agreed by both parties. This timetable must be agreed within the month that the offer is valid. If an acceptable timetable has not been approved by both parties within one month of the offer being made, the offer is deemed to have expired.

### 3.6

#### Search Engine Rankings

[YOUR BUSINESS NAME] does not guarantee listings on Search Engines (such as Google and Bing) and the Client accepts that it is Search Engines and not [YOUR BUSINESS NAME] who determine whom they list and whom they will not. If there is search engine work undertaken no manipulative techniques will be used by [YOUR BUSINESS NAME]. The Client further understands there is no guaranteed placement or rank on the Search Engines and that a new website may never even appear on Search Engines at all. [YOUR BUSINESS NAME] does not control Search Engines' algorithms and huge shifts can appear daily, weekly and even hourly.

## 4. COMPLETION OF WORK AND PAYMENT

### 4.1

#### Completion of Work

[YOUR BUSINESS NAME] warrants completing the Work in accordance with its Standard Terms and Conditions to the specifications previously agreed with the Client. [YOUR BUSINESS NAME] will not charge more than the amount previously agreed unless the Client has varied the specifications of the Work since the agreement. [YOUR BUSINESS NAME] will not undertake changes to the specifications of the Work which would increase the cost, without prior written authorisation from the Client.

### 4.2

#### Supply of Materials

The Client is to supply all materials and information required for [YOUR BUSINESS NAME] to complete the Work in accordance with the agreed specification. Such

materials may include, but are not limited to, photographs, written-copy, logos and other printed materials. Where the Client's failure to supply such materials leads to a delay in completion of the work, [YOUR BUSINESS NAME] has the right to extend previously agreed deadlines for the completion of the Work by a reasonable amount. Where the Client's failure to supply materials prevents progress on the Work for more than 21 days, [YOUR BUSINESS NAME] has the right to invoice the Client for any part or parts of the Work already completed.

### 4.3

#### **Approval of Work**

On completion of the Work, the Client will be notified and have the opportunity to review it. The Client should notify [YOUR BUSINESS NAME] in writing, of any unsatisfactory points within 7 days of receipt of such notification. Any of the Work which has not been reported in writing to [YOUR BUSINESS NAME] as unsatisfactory within the 7 day review period will be deemed to have been approved. Once approved, or deemed approved, work cannot subsequently be rejected, and the contract will be deemed to have been completed and the 60% balancing payment under Clause 2.1 Fee Payable will become due. The Contract will remain in effect until all obligations have been completed in terms of this Clause.

### 4.4

#### **Rejected Work**

If the Client rejects the Work within the 7 day review period, or will not approve subsequent Work performed by [YOUR BUSINESS NAME] to remedy any points reported by the Client as unsatisfactory, and [YOUR BUSINESS NAME] considers that the Client is unreasonable in his repeated rejection of the Work, the contract will be deemed to have expired and [YOUR BUSINESS NAME] can take any legal measures to recover both payment for the completed Work and reasonable expenses incurred in recovering payment.

### 4.5

#### **Payment**

Upon completion of 7 day review period, [YOUR BUSINESS NAME] will invoice the Client for the 60% balancing payment in accordance with Clause 2.1 Fee Payable hereof, which, in the absence of agreement to the contrary, is to be paid by the Client within 21 days of the date that the invoice was issued.

### 4.6

#### **Remedies for Overdue Payment**

If payment has not been received by the due date, **[YOUR BUSINESS NAME]** has the right to suspend ongoing work for Client, until such time that full payment of the outstanding balance has been received. If full payment has still not been received 21 days after the due date, **[YOUR BUSINESS NAME]** has the right to replace, modify or remove the Website and revoke the Client's licence of the Work until full payment has been received. By revoking the Client's licence of the Work or removing the web site from the Internet, **[YOUR BUSINESS NAME]** does not remove the Client's obligation to pay any outstanding monies owing.

## 5. INTELLECTUAL PROPERTY

### 5.1

#### Offers and Proposals

Offers and proposals made by **[YOUR BUSINESS NAME]** to potential clients should be treated as trade secrets and remain the property of **[YOUR BUSINESS NAME]**. Such offers and proposals or the information contained within them must not be passed to third parties or publicly disseminated without prior written authorization from **[YOUR BUSINESS NAME]**. This includes, but is not limited to, technical features, functionality, aspects of the design and pricing information.

### 5.2

#### Warranty by Client as to Ownership of Intellectual Property Rights

The Client will obtain all the necessary permissions and authorities in respect of the use of all copy, graphic images, registered company logos, names and trademarks or any other material it supplies to **[YOUR BUSINESS NAME]** for inclusion on the Website. The conclusion of a contract between **[YOUR BUSINESS NAME]** and the Client shall be regarded as a guarantee by the Client to **[YOUR BUSINESS NAME]** that all such permissions and authorities have been obtained and that the inclusion of such material on the Website would not constitute a criminal offence or civil delict. By agreeing to these terms and conditions, the Client removes the legal responsibility of **[YOUR BUSINESS NAME]** and indemnifies the same from any claims or legal actions however related to the content of the Client's site.

### 5.3

#### Domain Name

Any Domain Name obtained will belong to the Client. The Client agrees to indemnify **[YOUR BUSINESS NAME]** including any incidental costs, against any claims that a

Domain Name applied for, or obtained, violates the intellectual property rights of a third party. The Client warrants that the domain name sought is not a trademark of a third party.

## 5.4

### Licensing

Once **[YOUR BUSINESS NAME]** has received full payment of all outstanding invoices and the Work has been approved by the Client in accordance with Clause 4.3 hereof, the Client will be granted a licence to use the Website and its contents.

## 5.5

### Trade Secrets

Any code that is not freely accessible to third parties and not in the public domain, and to which **[YOUR BUSINESS NAME]** or their suppliers owns the copyright, may not be copied, published, distributed or passed to any third parties in any form without prior written consent from **[YOUR BUSINESS NAME]**. Unless previously agreed otherwise in writing, no modifications may be made by the Client or any third party to code to which **[YOUR BUSINESS NAME]** or their suppliers owns the copyright. **[YOUR BUSINESS NAME]** acknowledges the intellectual property rights of the Client. Information passed in written form to **[YOUR BUSINESS NAME]**, and that the Client has indicated is confidential or a trade secret, will not be published or made available in any other way to third parties without the prior written consent of the Client.

## 6. RIGHTS AND RESPONSIBILITIES

### 6.1

#### Right to Terminate

**[YOUR BUSINESS NAME]** reserves the right to refuse or break a contract without prior notice, if it is believed that the Client, their Website, or any material is illegal, immoral or otherwise unacceptable.

### 6.2

#### Events Beyond the Control of **[YOUR BUSINESS NAME]**

**[YOUR BUSINESS NAME]** will not be liable for breach of contract where that breach was due to software, hardware or electrical failure, natural events such as fire or other events beyond the control of **[YOUR BUSINESS NAME]**

### 6.3

#### Supply and Pricing of Services

**[YOUR BUSINESS NAME]** reserves the right to use whoever it feels appropriate at the time for third party software and services, and to alter its prices as necessary without prior notice and without affecting existing contractual pricing agreements.

## **7. INTERPRETATION**

### **7.1**

#### **Jurisdiction**

This Agreement shall be governed by the laws of **Country** which shall claim venue and jurisdiction for any legal action or claim arising from the contract between **[YOUR BUSINESS NAME]** and the Client. The said contract is void where prohibited by law.

### **7.2**

#### **Survival of Contract**

Where one or more terms of the said contract are held to be void or unenforceable for whatever reason, any other terms of the contract not so held will remain valid and enforceable at law.

### **7.3**

#### **Change of Terms and Conditions**

These terms & conditions may change from time to time. The Client will be informed of revisions as and when they are issued.



# PART 2– The Works

THESE ARE THE WORKS REFERRED TO IN THE FOREGOING CONTRACT BETWEEN  
[YOUR BUSINESS NAME] AND Client Business Name

*List extensively here the details of work going to be carried out*

*If you have a maintenance agreement provide details here too.*

Total cost XXX

# PART 3 – The Contract

**[YOUR BUSINESS NAME]** CONTRACT

**[YOUR BUSINESS NAME]** residing at **Your Business Address**, trading as

**[YOUR BUSINESS NAME]** , having its principal place of business at **Your**

**Business Address** aforesaid (hereinafter referred to as “the first party”)

and

**Client Business Name** having its principal place of business at **Client Business**

**Address** (hereinafter referred to as “the second party”)

The Works (Part 2) will be completed subject to the The Terms and Conditions (Part 1)

Signed on behalf of **[YOUR BUSINESS NAME]**

.....

At.....

Date.....

Signed on behalf of **Client Business Name**

.....

At.....

Date.....

**[remove the Customisation notes below this before printing off]**

# Customisation for your own business

**The above contract is written with a 40% up front payment and 60% final payment agreement. You may want to change these figures to suit your own needs but 40% / 60% has worked well for us over the years.**

Use a search and replace feature to insert your own business name. That is the majority customisation you have to do. There are further edits for clients name and address but they are minimal compared to replacing your own business name.

- .1) Replace all terms **[YOUR BUSINESS NAME]** with your own business name. If you are a sole trader then use your full name.
- .2) Replace all terms **Your Business Address** with your own address.
- .3) Replace **Client Business Name** with the clients business name.
- .4) Replace **Client Business Address** with the clients physical address.
- .5) In Terms - 2.1 Fees payable – optionally replace the **40%** and **60%** if need be.
- .6) In Terms - 2.2 Maintenance - replace the **xx** if you have a maintenance fee. If you do not have a maintenance agreement with the client remove this 2.2 section from the contract altogether.
- .7) In 4.3 Approval of work Edit the **60%**, if you have agreed a different final payment percentage.
- .8) In 4.5 payment. Edit the **60%**, if you have agreed a different final payment percentage.
- .9) In 7.1 Jurisdiction: Replace **country** with the country your business is located.
- .10) Part 2 - The works needs to be filled with detail. Elaborate more than 'a website'. Number of templates, Logo design (if applicable) and some details of the CMS platform are useful to add.
- .11) Part 2 - The Works. Add total cost marked **XXX**.

*Media Surgery is not liable for anything within this contract document and the law may vary in your jurisdiction. It is advised your get this document checked by a legal firm, located where your business is registered.*

**[Remove this page and the first page titled 'Notes' before printing off and signing with the client.]**