

**Amaryllis Design Agency Ltd.  
Standard Terms and Usage Conditions**

All business is transacted in accordance with the following Terms and Conditions.

**Definitions**

**"Additional Service"** shall mean Services provided by the Seller to the Client in addition to the Initial Service  
**"the Client"** means the party purchasing the Services and Goods  
**"Confidential Information"** means all Quotations, sitemaps, on time proposals, services design samples provided by the Seller to the Client  
**"Contract"** means the contract between the Seller and the Client for the sale and purchase of the Services and Goods  
**"Due Date"** means the date stated in the Quotation  
**"Goods"** shall mean any goods provided by the Seller  
**"Initial Payment"** means the payment made by the Client in relation to the Initial Service and the ISP Agreement  
**"Initial Period"** means the period one year from the date of this agreement  
**"Initial Service"** means the Service detailed in the Quotation  
**"ISP"** means the Internet Service Provider which contracts with the Client  
**"ISP Agreement"** means the agreement between the ISP and the Client  
**"ISP Services"** means web or FTP hosting or E-mail provision or any other internet service utilised by the Seller on behalf of the Client or made available to the Client by the ISP  
**"Order"** means the Client's Order  
**"Price"** means the price for the Services and Goods  
**"Quotation"** means the Seller's quotation for the Goods and Services  
**"Requested Information"** means any data or other information requested by the Seller from the Client  
**"the Seller"** means Amaryllis Design Agency Ltd. of Rosedale House, Station Road, Ulceby, North Lincolnshire, DN39 6UA.  
**"Service"** means any web design or origination provided by the Seller. Such definition (as the context shall permit) shall include Initial Services and Additional but shall exclude Third Party Services  
**"Third Party Agreements"** means agreements entered into between the Client and third parties for the provision of the Third Party Services and ISP Services  
**"Third Party Service"** means services provided by third parties which shall include but not be limited to website backups, search engine, marketing services, marketing advertising, advertising and shopping cart systems  
**"Website"** means the Client's Website

**1. General**

- 1.1 These Conditions represent the entire Contract made between the Seller and the Client. They apply to the supply of Services and Goods and shall govern any future Orders. Any other terms and conditions save any special terms or specifications agreed by the parties as part of their written contract, including any on which the Client may claim to rely whether in a confirmation of order or purchase order or otherwise, are hereby expressly excluded.
- 1.2 No variation to these Conditions shall be valid unless agreed in writing by the Seller.
- 1.3 All Orders are subject to acceptance. Any Order shall be deemed to constitute an offer to purchase subject to these Conditions.
- 1.4 No waiver or forbearance by the Seller, whether express or implied, in enforcing any of its rights under

these Conditions shall prejudice its right to do so in future.

- 1.5 The Seller's acceptance of an Order is conditional upon the Client producing evidence satisfactory to the Seller that:
  - 1.5.1 the Client is over the age of 18;
  - 1.5.2 the Client is a business and does not act as a consumer or member of the general public.
2. **Price and Payment**
  - 2.1 The Initial Payment shall be made by the Client on the making of the Order.
  - 2.2 In the event that the Client does not terminate the Contract in accordance with condition 5.3, the Seller shall deliver an invoice to the client in relation to the Renewal Payment. The Renewal Payment shall be made on or before the Due Date.
  - 2.3 Payment by the Client for any Additional Service, Third Party Services or Goods shall be invoiced separately by the Seller. Payment of such invoices shall be as follows and paid upon delivery of the Additional Service
    - 2.3.1 a 30% non refundable deposit shall be payable in relation to Additional Service on the placing of an Order with the balance being paid 14 days following completion and acceptance of the work.
    - 2.3.2 the full amount for Third Party Services and Goods will be payable on the placement of an order.
  - 2.4 In the event that full payment is not received by the Seller by the Due Date, the Seller may:-
    - 2.4.1 charge interest on overdue invoices from the Due Date on a day-to-day basis until full and final payment is received in accordance with the Commercial Debts (Interest) Act 1998 together with any regulations thereunder;
    - 2.4.2 terminate the Contract or suspend any further deliveries to the Client; or
    - 2.5.3 appropriate any payment made by the Client to such of the Goods as the Seller may deem fit.
  - 2.5 The Client shall not be entitled to withhold payment of any invoice or part thereof or any other amount due to the Seller, or to seek to limit the same, by reason of any purported right of set-off or counterclaim which the Client may assert on any grounds relating to the supply of services or goods under the Contract.
  - 2.6 The Client will not be entitled to delay unreasonably the completion of the provision of any Services due to his failure to provide Requested Information.
  - 2.7 In the event of the Client delaying the provision of the Requested Information, the Seller reserves the right to submit the corresponding invoice covering at least the value of the work done to date.

- 2.8 At any time up to 14 days before delivery of the Service or Goods, the Seller may give notice to the Client to increase the Price to reflect any increase in cost to itself provided this is due to factors which (a) are beyond the Seller's reasonable or foreseeable control and (b) occur after the Seller's acceptance of the Order. The Client shall be entitled to terminate the Contract in writing within 7 days of any such notice from the Seller but if the Client does not do so the increased price as notified shall be deemed to be the Price.

**3. Services**

- 3.1 The Client shall be responsible for ensuring the accuracy of any Order and providing the Requested Information within a sufficient time to enable the Seller to perform the Contract in accordance with these Conditions.
- 3.2 The description of the Services and Goods and any specification for them shall be as set out in the Quotation.
- 3.3 The Services are provided which are deemed suitable for broad business use. The Seller at its sole discretion reserves the right to refuse to provide and which in its sole opinion it considers to be a service which is required on a "business or mission critical, life dependency or similar crucial requirement basis" and shall not be liable for any loss or consequential loss relating to such refusal.
- 3.4 The Seller may assign or subcontract the provision of the Services. The Client may not assign any of his rights or obligations under the Contract without the prior written consent of the Seller.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods or Services which are required to conform with any applicable statutory requirements or, where the Goods or Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.6 If the Client makes any changes to the Order after the Client has accepted the Seller's design proposals or visual mock ups, the Seller may increase the Price to reflect the additional work done. Such changes may also affect the time of delivery.
- 3.7 The Seller may at its discretion, and at no charge to the Client, update, modify or amend the contents or coding behind the Client's web site following acceptance of the Service in order to maintain or improve technical quality or performance or consistency in light of usage experience or browser or software enhancements, insofar as such background modifications will be minor or imperceptible to the Client or other users.
- 3.8 The Seller shall not be deemed to be aware of any specific purpose of the Client for which the Service or Goods may be intended unless such purpose has been stipulated in writing prior to the date of the Seller's agreement to supply them.
- 3.9 The Seller will provide finished work of a generally accepted technical and professional standard but will not warrant performance against specific standards including Disability Discrimination Acts, web browser or software version compatibilities or any other such standards unless specific criteria have been stipulated by the Client and agreed in writing at the time of order regarding compliance of the Service with such standards.

- 3.10 No Order may be cancelled by the Client except with the agreement in writing of the Seller and on terms that the Client shall indemnify the Seller 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.

- 3.11 The Client shall not acquire any right or interest and shall not use or disclose any intellectual property rights incorporated in either the Quotation or the Services without the prior written consent of the Seller.

- 3.12 Unless agreed to the contrary, web hosting will be supplied using shared web and mail servers. In the event that a Client requests FTP (File Transfer Protocol) access to the Website then:

- 3.11.1 the Seller shall be under no further obligation to update and maintain the Website or the keeping of backups for any time or edited data; and

- 3.11.2 the Seller shall charge a minimum sum of £40.00 should the Client request that the Seller restore any material from the Client's archives to the Website.

**4. Third Party Agreements**

- 4.1 The Client appoints the Seller as agent to enter into Third Party Agreements and the ISP Agreements on behalf of the Client.
- 4.2 The Third Party Services and the ISP Services are provided subject to the ISP Agreement and the Third Party Agreements and the Client agrees to indemnify and keep the Seller indemnified against all losses, claims, proceedings and costs incurred by the Seller as a result of any breach by the Client of the Third Party Agreement or any ISP Agreement.

**5. Termination**

- 5.1 The Seller may terminate this agreement immediately if the ISP terminates the ISP Agreement or the ISP suspends the ISP Agreement for a period of more than one month.
- 5.2 The Seller may by giving 14 days' written notice terminate the Contract at any time provided that the Seller promptly repays any sums which the Client may have paid in respect of the Services. The Seller will not be liable for any consequences of any nature which may subsequently arise due to said termination.
- 5.3 Subject to conditions 2.8, 5.1 and 5.2, this Agreement shall continue in effect for the Initial Period. It shall then continue thereafter unless the Client gives the Seller not less than 30 day's written notice prior to the end of the Initial Term or any subsequent one year term.
- 5.4 All material hosted by the ISP and published as the Website may be removed either by the Seller or the ISP if the Client terminates the Contract in accordance with condition 5.2, or may be suspended or terminated in accordance with the ISP Agreement following any breach of said or other Agreement by the Client.

## 6. Delivery

- 6.1 Any completion date offered by the Seller shall be deemed an estimate and time shall not be of the essence for the provision of the Services and Goods.
- 6.2 The Client shall not be entitled to reject any service or part of service after it has given either oral or written acceptance of any design proposal, visuals, creatives or mock ups.
- 6.3 The Supplier shall not be liable to the Client for the late completion of any Service or delivery of any Goods, nor for any consequential loss, damage or expense of any kind arising therefrom directly or indirectly, nor shall the Client be entitled to reject any part of the design, origination, services or goods which the Seller has agreed to supply.

## 7. Warranties

- 7.1 The Supplier warrants to the Client that the Services shall be provided using reasonable care and skill and as far as reasonably possible, in accordance with the Specification.
- 7.2 The Seller is not responsible for the creation of the Client's business model, performance or viability and notwithstanding the Seller's general duty of care shall not be responsible for any loss, damage, costs or expenses arising from any general advice given. Clients are strongly advised to seek their own financial and legal advice in relation to any issues arising.

### AND THE CLIENT'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THESE CONDITIONS 7.3 and 7.4.

- 7.3 The Seller shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from:
- 7.3.1 any inaccuracy in or the late arrival of the Requested Information;
- 7.3.2 any misuse of the Website or breach of condition 9 by the Client;
- 7.3.3 any failure of the Website to fulfil a particular purpose taking into account the nature of the Service used by the Client;
- 7.3.4 the transmission or receipt of any viruses, malware, spyware or unsolicited emails; or
- 7.3.5 the provision of the Third Party Services or ISP Services
- 7.4 Save for death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this Contract, for any tort, loss of profit or any indirect, or economic or financial or special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Client's servants or agents or otherwise) which arise out of or in connection with the provision of the Services or Goods or their use by the Client, and the Seller's entire liability under or in connection with the Contract shall not exceed the Price.
- 7.5 Nothing within this Contract shall confer or purport to confer on any third party any benefit or any right to

enforce any rights under the terms of this Contract or otherwise.

## 8. Title and risk

- 8.1 Title and property in the Service or in any Goods supplied shall not pass to the Client until the full Price has been paid pursuant to any transaction between the Seller and the Client.
- 8.2 Until the Client has acquired title in accordance with the foregoing provision the Client shall hold any Goods in a fiduciary capacity and as bailee for the Seller, store the Goods at the Client's own expense, separately and apart from all other goods in the Client's possession and so marked as to be clearly and legibly identified as the Seller's property, and shall keep the Goods insured against all risks to the Seller's reasonable satisfaction. The Client shall not charge or pledge by way of security any Goods which are the Seller's property. If the Client does so or fails to produce a copy of any relevant insurance policy when so requested by or on behalf of the Seller, then without prejudice to the Seller's other rights all sums whatever owed by the Client to the Seller shall immediately become due and payable.
- 8.3 The Seller shall be entitled to recover the Price notwithstanding that property in the Good or Services has not passed from the Seller.
- 8.4 Until such time as property in any Goods has passed the Client shall upon request deliver up to the Seller any Goods within the Client's possession or control, provided the due date for payment under condition 2.4 has expired. If the Client fails to do so the Seller shall be entitled to enter upon any premises under the Client's occupation, ownership or control where the Goods are situated and then and there repossess them.

## 9. Client Conduct

- 9.1 The Client may not use the Website for any of the following purposes:
- 9.1.1 disseminating any unlawful, harassing, libellous, abusive, threatening, harmful, vulgar, obscene, or otherwise objectionable material;
- 9.1.2 transmitting material that encourages conduct that constitutes a criminal offence, results in civil liability or otherwise breaches any relevant laws, regulations or code of practice;
- 9.1.3 gaining unauthorised access to other computer systems;
- 9.1.4 breaching any laws concerning the use of public telecommunications networks; and
- 9.1.5 making, transmitting or storing electronic copies of materials protected by copyright without the permission of the owner.
- 9.2 The Seller reserves the right to refuse to arrange the hosting of any Website which is in breach of condition 9.1 and the Client shall indemnify and keep the Seller indemnified against any costs, losses, proceedings or

actions incurred by the Seller arising from any breach by the Client at condition 9.1.

## 10. Intellectual Property

- 10.1 Unless otherwise stated by the Seller, all rights to the source codes relating to any Services remain with the Seller unless separate written agreements are made for the Client to purchase them. Ownership of any other copyright, design rights or other intellectual property relating to the Service shall pass to the Client once all payments have been made. Any non-exclusive material included in any new design by the Seller including photography, sounds, icons, fonts or templates shall have no ownership rights conferred on the Client.
- 10.2 Where the Client has provided designs, artwork, photography, catalogues, written copy, models, prototypes, samples or other material to the Seller the Client warrants that the Seller's use thereof for the purposes of incorporation into a web site shall not constitute any infringement of any third party's Intellectual Property Rights and the Client shall indemnify and keep the Seller indemnified against any liability, costs, proceedings, actions, arising from the breach of this clause 10.2.
- 10.3 Unless otherwise agreed in writing, the Client agrees to the incorporation of a hyperlink to the designer's web site within the Website. Unless expressly agreed in writing to the contrary, the Client agrees that the Website may be linked to or referred to by the Seller in a portfolio of work either online or offline.

## 11. Data Protection and Confidentiality

- 11.1 The Seller will never pass the Client's details to any third party except:
- 11.1.1 to any Third Party in relation to the provision of the Third Party Services;
- 11.1.2 to any subcontractor providing the Services pursuant to condition 3.4;
- 11.1.3 As required to do so by law enforcement agencies or other authorities;
- 11.1.4 to any successors to the Seller's Business.
- 11.2 The Seller may access the Client's mail servers or mail boxes:
- 11.2.1 as may be required by law, or;
- 11.2.2 with the written or verbal consent of the Client for fault finding or troubleshooting purposes.
- 11.3 The Seller undertakes with the Client that it will not during or after the term of the Contract disclose any Confidential Information to any third party except for purposes ancillary to providing the Services and Third Party Services without the written or verbal consent of the Client.

## 12. Insolvency

- 12.1 All sums outstanding and/or payable in relation to the Service or Goods shall become payable immediately if:
- 12.1.1 any distress or execution is levied upon any of the Client's goods or other assets;
- 12.1.2 the Client offers to make any arrangement with its or his creditors or commits an act of

bankruptcy or being a company is unable to pay its debts as they fall due or is the subject of any resolution or petition for winding up on the grounds of insolvency;

- 12.1.3 if a receiver, administrator, administrative receiver or manager is appointed over part or all of the Client's business or assets, or if the Client is the subject of foreign proceedings action or process of law similar in kind to the foregoing.

- 12.2 Upon the occurrence of an event specified in condition 12.1 above the Seller may, without prejudice to any other rights which it may have and in its absolute discretion, suspend all services to the Client, terminate the Contract without liability on its part and/or exercise any of its rights pursuant to condition 8 above.

## 13. Force majeure

- 13.1 The Seller shall not be liable to the Client for any failure to perform its obligations hereunder which arises as a result of any strike, industrial action or lock-out, technical, software or hardware failure, power failure or telecommunications outage anywhere in the world, or any act of God, fire, flood, drought, tempest, war, armed insurrection or technical, software, hardware, network or telecommunications issues beyond its reasonable control, but in such event it shall notify the Client as soon as is reasonably practicable that its intended supply has been or is likely to be prevented thereby, whether wholly or substantially, and shall state the reason therefor.
- 13.2 The Client shall inform the Seller as soon as it becomes aware of any force majeure event detailed in condition 13.1 above.

## 14. General

- 14.1 Any notice in writing required by these terms to be given to the Seller shall be deemed duly given if sent by recorded delivery to the Seller's postal address or by facsimile to the Seller's fax number (01469-589400). In the case of notice to the Client, which shall be deemed to suffice if given in like manner, the Seller will serve notice by the same means.
- 14.2 The Contract shall be governed by and construed and interpreted in accordance with the law of England and Wales, the Courts of which shall have exclusive jurisdiction.
- 14.3 No waiver by the Seller or any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.4 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 14.5 These terms are effective from 27<sup>th</sup> May 2010.