

## Websites by Mark - Terms of Business

Following are the terms of business (hereinafter Terms of Business or Agreement) of Mark Excell, trading as Websites by Mark of 31 Westcliff Road, Weston, Portland, Dorset DT5 2HW (hereinafter Websites by Mark, We, Our or Us) for the provision of: Website design services; Website hosting services; Search engine optimisation (SEO) services; email services and Domain registration and renewal services, either as individual service items or collectively as a package combined with such other services as may be agreed from time to time (hereinafter the Services) between Us and You the customer (hereinafter Customer, You or Your).

In these Terms of Business Websites by Mark and You are referred to jointly as the Parties and individually as the Party (as the case may be).

By purchasing or agreeing to purchase the Services You agree to be bound by these Terms of Business to the exclusion of any other form of agreement howsoever expressed. These Terms of Business are subject to change at any time without notice, such changes and their date of coming into force being notified on Our website ([www.websitesbymark.co.uk](http://www.websitesbymark.co.uk))

The paragraph headings are for convenience only and shall have no effect upon the interpretation of this Agreement.

### 1. Definitions

**Content Management** means functionality provided by Websites by Mark to enable the Customer to change, add or delete Information on the Website independently of Websites by Mark

**Agreement** means this agreement and the conditions herein together with the quotation for the Services and Specifications together with any amendment thereto agreed in writing between Websites by Mark and Customer

**Information** means material supplied by the Customer to be included in the Site

**Know How** means all information, methods and knowledge whether or not patentable and includes any improvement or modification made to the Site and developed by Websites by Mark

**Intellectual Property/Intellectual Property Rights** means all intellectual property, including patents, utility models, trade and service marks, trade names, domain names, right in designs, copyrights, moral rights, topography rights, rights in databases, trade secrets and know-how, in all cases whether or not registered or capable of being registered and including registrations and applications for registration of any of these, or rights to apply for the same, rights to receive equitable remuneration in respect of any of these and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world

**Effective Date** the earliest of the dates this Agreement is signed as hard copy by the Parties, is notified by the exchange of confirmation emails between the Parties or Websites by Mark is provided by the Customer with a written notice to proceed

**Business Day** any day not including a Saturday, Sunday or UK Public Holiday

**Working Hours** hours between 09.00 and 17.00 on a Business Day

**Fees** means the amounts set out in the quotation and payable in accordance with the terms of this Agreement

Service(s)	means the service or services to be provided as set out in the quotation
Site	means the internet web pages, associated applications, software, screen designs, screen layouts and any Third Party Software developed by Websites by Mark which collectively form the site as set out in the Specification, including subsequent amendments as may be agreed in writing between the Parties. Websites by Mark may or may not host the Site as set out in this Agreement
Specification	means the specification as set out in the quotation
Term	means the term of this agreement as set out herein
Third Party Software	means any software or applications or services not belonging to Websites by Mark but comprising part of the Site
User	is any authorised (if such authorisation is required to gain access to certain areas of the Site) visitor accessing Information held on the Site

## **2. Commencement and authorisation to enter into this Agreement**

This Agreement comes into force on the Effective Date and You warrant that You have the authority to enter into this Agreement or where required that You have obtained all necessary authority and approval to do so. You warrant that You are aged 18 or over.

## **3. Services**

The Services to be provided under this Agreement are set out in the quotation and the Fees relating to the provision of each of the Services are set out in the quotation.

## **4. Obligations and undertakings of Customer**

The Customer warrants and agrees:

- a. that Information supplied for inclusion in the Site is accurate, complete and true. Websites by Mark reserves the right at its discretion to decline to publish or to omit or to suspend any Information otherwise accepted for publication that in the reasonable opinion of Websites by Mark is, or becomes, inaccurate, incomplete or untrue.
- b. that the Information complies with the requirements of relevant legislation being in force or applicable in England (including the rules of recognised regulatory authorities and the laws of the European Union).
- c. that the reproduction and/or publication by Websites by Mark of Information submitted by the Customer (or amended by Websites by Mark with the agreement of the Customer) does not breach or infringe or violate any copyright, trademark or any other personal or proprietary right of any organisation or person and further agrees to indemnify Websites by Mark in respect of any action or proceedings that may arise from the failure of the Customer to observe this clause 4c.
- d. that all Information is legal, decent, honest, truthful, does not infringe a third party's rights and otherwise complies with relevant codes and regulations under the British Code of Advertising Practice and codes under the general supervision of the Advertising Standards Authority.
- e. to assume full responsibility to check the correctness of the Information submitted to Websites by Mark for publication on the Site and to bear the cost for the correction of errors in the Information following publication, such errors being corrected by Websites by Mark as soon as is reasonably possible but without strict time obligation following notification in writing by the Customer of such errors.
- f. to make timely responses to requests for information and/or direction from Websites by Mark in order that Websites by Mark is able to meet its obligations under this Agreement.
- g. that all payments shall be made in accordance with the terms of this Agreement.
- h. to grant to Websites by Mark a non-exclusive, royalty-free licence to use the Information for the duration of this Agreement for the sole purpose of performing its obligations under this Agreement.

## **5. Obligations and undertakings of Websites by Mark**

Websites by Mark warrants and agrees:

- a. to perform its duties with reasonable skill and care and to provide a website design and development original in nature that will not infringe any third party intellectual property rights
- b. to set up the Site in accordance with the Customer Specifications as set out in the quotation and as may be amended from time to time by agreement in writing between the Parties
- c. use reasonable endeavours to meet requested deadlines but time shall not be of the essence in the fulfilment of the obligations of Websites by Mark under this Agreement
- d. to be responsible to procure (where such procurement is permissible) at the Customer's expense and with the Customer's assistance any necessary rights, permissions, licences or consents in respect of any Third Party Software that forms a part of the Specification insofar as Websites by Mark does not already have such rights, permissions, licences or consents
- e. to grant to the Customer for the duration of this Agreement a non-exclusive, non transferable, royalty-free licence to the Site for the use envisaged under this Agreement.

## **6. Warranties**

- a. In selecting the Services You warrant that You have made proper and due evaluation and that You consider them to be fit for purpose for the use intended.
- b. Websites by Mark warrants that the Services set out in the quotation and provided under this Agreement shall conform to the Specification for a period of thirty (30) days from the date of delivery to the Customer and agrees to correct any part of the Services that do not comply with the Specification and which are notified within the warranty period. Correction of non compliant elements of the Specification shall be the sole liability of Websites by Mark and the sole remedy of the Customer.
- c. Websites by Mark makes no warranty in respect of the accuracy of information obtained through the Site or in respect of goods obtained through the Site or any transactions conducted through the Site.
- d. Websites by Mark will use reasonable endeavours to maintain continuity of Services but cannot guarantee that the Services will be available at all times or that access will be uninterrupted, secure or remain error free. Provided always that We use reasonable endeavours to restore the Services promptly such interruption shall not be considered a breach of these Terms of Business and the Parties agree that time shall not be of the essence in the process of restoring the Services.
- e. To the fullest extent permitted by applicable laws Websites by Mark makes no other warranties express or implied including but not limited to warranties of merchantability and fitness for a particular purpose of any of the Services provided under this Agreement.

## **7. Acceptable use of the Services**

- a. The Customer warrants that it shall not use the Services for purposes which in the reasonable opinion of Websites by Mark are inappropriate, antisocial or illegal and if so notified You agree to cease such use with immediate effect. Such use shall be a serious breach of these Terms of Business and We reserve the right to terminate provision of the Services either temporarily or permanently and without notice in the event You use or attempt to use the Services for such purposes. You agree to bear all costs and expenses, direct or indirect and howsoever arising out of your misuse of the Services under this clause.
- b. Where the Customer is provided with Content Management functionality You agree to remove or amend or for Websites by Mark to remove or amend any Customer uploaded content that in the reasonable opinion of Websites by Mark is contrary to the obligations of the Customer under this Agreement.
- c. For the avoidance of doubt the terms inappropriate, antisocial or illegal purposes includes but is not limited to:
  - Pornography
  - Gambling
  - Illegal Content including content deemed illegal in the country of access or use even though not deemed to be so within the United Kingdom
  - Copyrighted material of any nature or description where you do not have written permission to use the material

Mass emailing  
Video hosting or streaming  
Audio hosting or streaming  
General file hosting (files which are not normally considered website files).

**8. Payment - Website design services and Search engine optimisation (SEO) services**

- a. The Fees for Services provided in respect of website design, search engine optimisation will be invoiced immediately upon completion or, in the case of projects extending beyond one month, Services will be invoiced monthly on a percentage completion basis.
- b. Any disputed invoice amounts are to be notified in writing immediately upon receipt of the invoice and the undisputed portion settled without deduction or set off within 14 (fourteen) days of the date of the invoice.

**9. Payment - Website hosting services, email services and domain registration/renewal services**

- a. Website hosting, email services and domain registration/renewal services are provided for a minimum term of 12 months each renewable thereafter for subsequent terms of 12 months duration. Renewal shall take effect automatically subject only to the provision by You of notice to terminate, such notice to be given in writing a minimum of 10 (ten) days prior to the expiry of the then current term.
- b. Payment is to be made annually in advance upon presentation of the invoice. Subject to Our agreement payment may be made by instalments paid monthly in advance, each instalment being made by standing order on the first day of the month the payment is due.

**10. Late Payments**

- a. Websites by Mark shall have the right to charge interest on any amount which is not paid in accordance with the terms of this Agreement. Such interest shall accrue and be calculated in accordance with the rates and terms of the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002 for the period from the due date for payment until the date on which payment is made.
- b. We reserve the right to appoint third party credit collection services at any time to recover overdue payments. In this event You will also be liable for any additional charges resulting from Our use of such third party collection services.
- c. In the event of late payment We reserve the right to suspend the provision of the Services until Your account is brought up to date. In the event of persistent late payments We reserve the right to terminate this Agreement forthwith in which event You shall remain liable for all outstanding amounts whether invoiced or due to be invoiced and for any hosting and email service fees to the end of the current Agreement term.

**11. Termination**

- a. We reserve the right to terminate this Agreement for Our sole convenience on the provision of a minimum of 10 (ten) working days notice.
- b. We reserve the right to terminate this Agreement forthwith and without notice if you are in breach of any of the terms of this Agreement.
- c. Upon termination You shall be relieved of further obligation under this Agreement from the date such termination comes into effect save for the settlement of any outstanding amounts invoiced or due to be invoiced and the provisions of clause 25 (Survival).
- d. Once this Agreement is terminated for any cause whatsoever Hosting by Mark shall have no further liability or obligation to You.

**12. Transfer of Site to an alternative host**

Subject to notice to terminate being given in accordance with 9a Websites by Mark shall provide support in respect of the transfer of the Site to a nominated alternative host, such support being chargeable at the prevailing hourly rates of Websites by Mark or such other fee as may be agreed between the Parties. Websites by Mark shall provide the Customer with a perpetual non-exclusive licence for use of the Site (save for any material owned by third parties) at a cost and terms of use to be agreed at the time of transfer. At the Customer's cost Websites by Mark will use reasonable endeavours to obtain the necessary consents and/or licences to effect the transfer to the new host.

### **13. Intellectual Property Rights**

You agree that the Services constitute and contain valuable trade secrets and confidential information of Websites by Mark and its associates. You agree that all Intellectual Property Rights in the Services including general improvements (to include improvements or changes suggested by You) shall at all times remain exclusively with Websites by Mark.

### **14. Confidentiality**

- a. All drawings, specifications, documents, designs and other incidental data supplied by Websites by Mark relating to the know-how, business, clients, pricing, services, software, the Site, contracts (including this Agreement), website design, architecture and content (including any technical specifications) of Websites by Mark is proprietary and confidential (Confidential Information). The Customer agrees that it will use such Confidential Information solely for the purposes of this Agreement will not at any time during or after the termination of this Contract use or disclose the same either directly or indirectly to any third party without the prior written consent of Websites by Mark.
- b. If so requested by Websites by Mark, the Customer, its employees, consultants and advisers to whom any Confidential Information requires to be disclosed agree to sign a Websites by Mark confidentiality agreement.
- c. With the sole exception of information required strictly for continuity purposes and within seven 7 days of the termination of this Agreement the Customer shall return to Websites by Mark all Confidential Information in its possession or, at the sole option of Websites by Mark, destroy the Confidential Information and warrant in writing its destruction.

### **15. Limitation of Liability**

- a. Websites by Mark shall not be liable for any loss of copy, artwork, photographs or other materials which the Customer warrants that it has retained in sufficient quality and quantity for all purposes.
- b. Websites by Mark shall not be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of or corruption of data or information, or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses, howsoever caused and You agree to indemnify Us in full against such liability.
- c. The maximum aggregate liability of Websites by Mark and that of its officers, employees, contractors, representatives or agents in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall not exceed a sum equal to the fees already paid for the Services during the current Agreement term.

### **16. Independent Operator**

Nothing in this Agreement shall create a partnership or joint venture between the Parties save as expressly provided in this Agreement and neither Party shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind the other Party.

### **17. Force Majeure**

Neither party shall be liable to the other for delay or failure to perform its obligations under this Agreement resulting from war, armed conflict, civil disturbance, act of God, fire, explosion, accident, flood, industrial dispute, or other cause beyond the reasonable control of either party

### **18. Data Protection**

The Parties undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions and obligations of this Agreement.

### **19. Waiver**

A failure or delay by Us to exercise any of our rights under this Agreement shall not be deemed to be a waiver of that right and a waiver by Us of a breach of any provision of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision.

### **20. Third Party Rights**

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

**21. Severability**

If any term of this Agreement is declared void or illegal, it shall be deleted and the remainder of this Agreement shall continue in force, with the substitution of legal terms that approximate as closely as is legitimate to the terms declared void or illegal.

**22. Language**

This Agreement is made in the English language. If there is any conflict in the meaning between the English language version and any translation into another language, the English language version shall prevail.

**23. Amendment**

This Agreement shall not be altered, waived, modified, supplemented or amended except by agreement in writing between the Parties.

**24. Counterparts**

This Agreement may be executed in any number of counterparts each of which when executed by approval of the Parties as set out herein shall constitute an original but all of which shall constitute one and the same instrument.

**25. Survival**

The representations warranties and covenants contained in clauses 4c (Copyright of third party material), 13 (intellectual property), 14 (confidentiality) and 15 (Limitation of liability) of this Agreement, shall survive the Term of this Agreement.

**26. Consumer Rights**

Nothing in this Agreement shall affect the statutory rights of the Customer when entering into this Agreement as a Consumer.

**27. Entire Agreement**

This Agreement represents the final, complete, and exclusive statement of the terms of the understanding and agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements made between the Parties. No other agreements, representations, warranties, inducements or promises made by or on behalf of either Party, whether oral or otherwise shall add to or vary this Agreement or be of any force or effect.

**28. Notices**

Notices under this Agreement must be in writing and will be sufficiently given if sent to either Party at their respective addresses set out in this Agreement or another address or contact which the Parties may specify by notice to the other under this provision. Such notice will be deemed to be received when delivered in person, when delivered by email provided an electronic receipt is produced or on the fourth business day after posting if sent by first class mail.

**29. Governing law and jurisdiction**

The Agreement shall be governed by and construed in accordance with English law and the Parties hereby submit to the exclusive jurisdiction of the English courts.