

CUSTARDFISH[™]

WEB DESIGN & BUILD - TERMS AND CONDITIONS v1.1

General Working Agreement

This document defines the terms and conditions of custardfish. Signing a contract, payment of an advance fee or 'deposit' or an oral request of our services is an acceptance of our terms and conditions.

Definitions

"Agreement" means any agreement made subject to these Terms and Conditions, which shall incorporate or be subject to these Terms and Conditions. In this Service Agreement the party who is to receive the Services provided, shall be referred to as the "Client" and the party providing the Services shall be referred to as "custardfish." "Services" means web site design and construction, domain name registration, web site hosting and email facilities, web site maintenance, Internet training, consultation and any other service or facility provided by custardfish to the Client. "Server" means any computer server equipment operated by or contracted to custardfish in connection with the provision of the Services. "Web Site" means the area on a Server allocated by custardfish (or any other Hosting Company) to the Client for use by the Client as a site on the World Wide Web or Internet. "Web Site Design" means web page design, custom HTML, custom programming and associated construction which may include web page layout, graphics, photographs of materials and/or products that the Client wishes to display on the web site, including the redesign of existing web sites. "Web Traffic" means data transferred from a web site. "Search Engine Registration" means submission of the Client's URL, or domain name, to Internet Search Engines to assist in the effort of gaining recognition for the Client's web site. "Domain Name Registration" means the registration with the appropriate authorities of the desired domain name on behalf of the Client. "Web Site Hosting" means providing World Wide Web page hosting on a server with email message facilities.

Web Design Project Scope

custardfish do not undertake to maintain or update a Client's website as part of the standard design commission. If a Client wishes custardfish to maintain or update a web site as a separate commission, custardfish will negotiate with the Client a maintenance contract appropriate to the amount of work required.

Search Engine Submission

custardfish will submit a Client's website to several major search engines as part of the design commission and on a monthly basis for sites that are hosted on custardfish servers. custardfish will make every reasonable effort to promote the website effectively but cannot guarantee how or where search engines will rank the Client's web site, nor how long an individual search engine or directory may take to catalogue the submission. custardfish can also accept no responsibility or liability if a search engine, online directory or search site, submitted to as part of a web site promotion commission, chooses not to list a Client's site.

Domain Name Registration

custardfish may purchase domain names on behalf of the Client. The Client should not assume registration of a requested domain name(s) until receiving notification. The registration and use of the Client's domain name is subject to the terms and conditions of use applied by the relevant naming authority; the Client shall ensure that they are aware of those terms and conditions and that they comply with them. Registration is normally done so on a 2 year basis and charged in advance. Unless receiving prior cancellation in writing custardfish will re-invoice for future domain renewals prior to domain expiry dates and then proceed with re-registering of the domain(s). Unless a cancellation notice was received the Client is fully liable for these costs and custardfish hold no responsibility or liability for the charges.

custardfish shall have no liability in respect of the use by the Client of any domain name; any dispute between the Client and any other person must be resolved between the parties concerned in such a dispute. If any such dispute arises, custardfish shall be entitled, and at their discretion without giving any reason, to withhold, suspend or cancel the domain name. custardfish shall also be entitled to make representations to the relevant naming authority but will not be obliged to take part in any such dispute. custardfish gives no warranty that the Domain Name requested will not infringe the rights of any third party and the Client indemnifies custardfish in respect of any such infringement. custardfish shall not release any domain name to another provider unless full payment for that domain name has been received by custardfish.

Design Credit

Web sites which have been designed and/or constructed by custardfish shall have a small indiscreet link to the custardfish web site, appearing at the bottom of the site.

Post Placement Alterations

custardfish cannot accept responsibility for any alterations caused by a third party to the Client's web site pages once placed on a server. Such alterations include, but are not limited to additions, modifications, or deletions.

Permissions And Copyright

The Client will obtain all the necessary permissions and authorities in respect of the use of all copy, graphics, registered company logos, names and trademarks or any other material supplied to custardfish by the Client for the design and construction of any web pages. Acceptance of this Agreement shall be regarded as a guarantee by the Client that all such permissions and authorities have been obtained. No responsibility will be accepted by custardfish for damages to or losses incurred by the Client from the use of material for which the required permission or authority has not been properly obtained. The Client is required to ensure that the content of their web site pages meets all the current UK government legislation regarding publications. The Client shall further indemnify custardfish in respect of any claims, costs or expenses that may arise from any material included in the Client's web site pages.

Client Review Of Web Site Designs

During the design process custardfish will provide the Client with opportunities to review the design concepts before construction of the web site begins. Requests for design alterations should be made at this time, as any alterations requested after custardfish have begun the actual site build will be charged for as extras, in addition to charges for any work completed up to the date such a request was received by custardfish.

custardfish will also provide the Client with an opportunity to review the appearance and content of the web site once they are scripted and laid out. Any request for alterations in functionality should be made at this time. Such scripted materials will be deemed to be accepted and approved at the time of presentation, unless the Client notifies custardfish to the contrary. Alterations requested after this time will be charged for as extras, in addition to charges for any work completed up to the date such a request was received by custardfish.

Website Performance

Whilst every endeavor will be made to ensure that the website and any scripts or programs are free of errors, custardfish cannot accept responsibility for any losses incurred due to malfunction, the website or any part of it.

custardfish will endeavor to ensure that any developed site or application will function correctly on the server it is initially installed on and that it will function correctly when viewed with the web browsing software Microsoft Internet Explorer Version 6 & 7 and the Mozilla suite of browsers such as Firefox. custardfish can offer no guarantees of correct function with all browser software. The website is provided to and accepted by the Client as a fully functioning, completed work. custardfish is not responsible for future support with regards to un-released browsers, operating systems or server upgrades out of its control.

Work Product Ownership

The website, graphics, HTML and CSS remain the property of custardfish until all outstanding accounts are paid in full and which point they become the property of the Client. Any javascripts, cgi applications, php scripts, or software including but not limited to back end Content Management Software (unless specifically agreed) written by custardfish remain the copyright of custardfish and may only be commercially reproduced or resold with the permission of custardfish. Charges for web design work does not cover the release of any source files including but not limited to png, tiff, psd or fla files.

Billing Terms

All work carried out, whether experimentally or otherwise, at Client's request shall be charged. We will begin work upon Client's approval of the estimate. Client approval (Written or oral) will constitute an agreement between us. For each project, Clients will receive a proposal/estimate outlining the project specifications and our proposed scope of services and working/billing phases. Each proposal/estimate will contain a project budget, which includes estimated fees for professional services and separate itemised costs for anticipated out-of-pocket expenses. Estimates are valid for only 30 days.

Payment Terms

Clients agree to pay custardfish in accordance with the terms specified in each proposal/estimate. All projects require a deposit of 25% prior to commencement. A further interim payment of 25% will be due on acceptance of design visuals, prior to the programming and build of the site or application. Balances are due and invoices sent upon website upload to our servers. Invoices are normally sent via email; however, the Client may elect to receive hard copy invoices. If a payment cheque from the Client is returned by the bank as unpaid for any reason, the Client will be liable for a "returned cheque" charge of £25. All web site hosting, registration and web site maintenance accounts are set up on a prepay basis. No partial refund will be given for any pre-paid service including but not limited to hosting, registration and SEO packages cancelled during the current agreements period. We reserve the right to refuse completion or delivery of work until past due balances are paid.

Cancellation

Cancelled projects are billed only for phases and/or portions of phases that were actually completed by custardfish. This includes any services provided by custardfish, including but not limited to all consultation, planning, design and build phases. The Client agrees to pay, and will be invoiced, for work completed to the date of first notice of cancellation. The Client will also be liable for any third party costs and/or cancellation fees for services they have requested we book or undertake on their behalf.

Revisions And Alterations

New work requested by Client and performed by custardfish after a proposal/estimate has been approved is considered a revision or alteration. If the job changes to an extent that substantially alters the specifications described in the original estimate, we will submit a proposal revision memo to you, and a revised additional fee must be agreed to by both parties before further work proceeds.

Confidentiality

custardfish will not at any time or in any manner, either directly or indirectly, use for the personal benefit of custardfish, or divulge, disclose, or communicate in any manner, any information that is proprietary to the Client. custardfish will act reasonably to protect such information and treat it as strictly confidential. This provision shall continue to be effective after the termination of this Agreement. Upon request, custardfish will return to the Client all notes, records, documentation or other items belonging to the Client that were used for the Services of this Agreement.

Default Accounts

Accounts unpaid fourteen (14) days after the date of invoice will be considered in default. If the Client in default maintains any information or files on custardfish Web space, custardfish reserve the right, at its discretion, to remove all such material from its web space. custardfish is not responsible for any loss of data incurred due to the removal of the service. Removal of such material does not relieve the Client of the obligation to pay any outstanding charges assessed to the Client's account. Interest on past due balances is 18% per annum or 1.5% per month.

Out-of-pocket Expenses

Fees for professional services do not include outside purchases such as, but not limited to, domain registration, hosting, copy-writing, photography, colour printouts, illustrations. Expenses are itemised on each invoice. Expenses are subject to VAT. If consultant or research services are required we will bill lodgings, meals, and transportation at cost. Reimbursement for mileage is currently calculated at 45p/mile.

Client Delays

At certain stages custardfish will require the Client to provide approval and/or content so that the site may be designed, built and propagated with valid content. If content and/or approvals are not provided within eight (8) weeks from the original email request then custardfish reserve the right to terminate the project and send a final invoice for total work completed for immediate payment. custardfish will agree, at its discretion, to recommence the commission after agreement is reached on a new quotation document and once the original fees have been paid.

Hosting Service Availability And Performance

custardfish shall use all reasonable endeavours to make available to the Client at all times the Server and the other associated Services. custardfish shall not, in any event, be liable for interruptions of Service or downtime of the Server, or any losses associated with such interruptions. The Client acknowledges and agrees that custardfish cannot guarantee the absence of service interruptions caused by Acts of God or other circumstances beyond custardfish's control, including, but not limited to, telecommunications problems. The Client also understands and agrees that interruptions of Web Hosting Services may occur due to scheduled maintenance and repair. Unfortunately malicious software, spyware, viruses and website hacking are facts of life on today's Internet. Whilst it is highly unlikely that these will affect your website, custardfish will endeavour to protect it from this as much as we can during its creation and hosting, but custardfish does not accept any liability for losses or damages incurred as a result of this.

Server Use

The following content is strictly PROHIBITED on any custardfish server: Pornography, erotic images, lewd or obscene content. Illegal material including but not limited to copyrighted works, commercial video, music files and any material in violation of any regulation. Pirated software, ROMS, emulators, phreaking, hacking, password cracking. IP spoofing, etc. This also includes providing "links to" or "how to" information about such material.

Bandwidth/Server Usage

custardfish reserves the right to make extra charges for additional Web Site traffic or data transfer from the Client's web site above the standard levels of 20gb per month. High bandwidth or server CPU usage accounts may create a need to upgrade the network to cope with the traffic in order to maintain a reasonable level of service to all users. custardfish will therefore contact the Client should such usage become apparent. If no arrangement can be reached, custardfish reserves the right to terminate the account giving two week's notice to the Client.

Third Party Servers

Where applications or sites are developed and hosted on servers not recommended by custardfish, the Client is expected to provide or seek any information, additional software, support or co-operation pertaining to the server required in order for the application to be correctly developed. It is the Client's responsibility to provide a suitable testing environment which is identical to the final production environment. Due to the vast difference in server technology and hosting environments custardfish reserve the right to make additional charges for time spent during the familiarisation and set up of third party hosting environments.

Email

Spamming, or the sending of unsolicited email or using an email address that is maintained on a custardfish server is STRICTLY PROHIBITED. custardfish reserves the right to suspend or cancel a Client's access to any or all services provided if custardfish decides that an account has been inappropriately used. While custardfish will use every reasonable endeavour to ensure the integrity and security of the mail Server, custardfish do not guarantee that the Server will be free from unauthorised users or hackers and custardfish shall be under no liability for non-receipt or misrouting of email or for any other failure of email.

custardfish make no representation and give no warranty as to the accuracy or quality of information received by any person via the Server, and custardfish shall have no liability for any loss or damage to any data stored on the Server. The Client shall effect and maintain adequate insurance cover in respect of any loss or damage to data stored on the Server. Under no circumstances shall custardfish be held liable for claims arising from the content of the Client's web site.

Changes To The Services

If any Network Operator shall discontinue the provision of telecommunications services to custardfish or shall alter by modification, expansion, improvement, maintenance or repair of the telecommunications services or any part thereof provided to custardfish, then custardfish shall be entitled to discontinue, alter, modify, expand, improve, maintain, repair, suspend, disconnect or otherwise make necessary changes in order to maintain Services provided to the Client.

Third Party Suppliers

The Client will accept that custardfish will act as merely a broker between third party suppliers and themselves and as such will not hold custardfish liable for any disputes arising due to any matter including but not limited to the quality of the supplied product or service provided.

Errors And Liabilities

custardfish will use its best endeavours to ensure the Services are free of errors. custardfish may not be held responsible for any errors that may arise in the course of performing the Services. Such errors include but are not limited to: grammatical or spelling errors on web pages; misplacement of text or graphics on web pages; malfunctioning of interactive elements included in the web site pages. custardfish does not accept any liability for losses or damages arising from errors within the Services.

Invalidity

If this Service Agreement or any part thereof shall be adjudged for any reason to be void, unenforceable or ineffective, but would be adjudged to be valid effective and enforceable if part of the wording were deleted or a provision were limited in scope, then this Agreement shall continue with such modifications deemed to be written, construed and enforced as so limited, so as to make its provisions (or if such be the case its remaining provisions) valid effective and enforceable.

Term And Termination

The term of this agreement will continue for work in progress until terminated by either of us upon thirty (30) days written notice. If you should direct us at any time to cancel, terminate or "put on hold" any previously authorised purchase, we will promptly do so, provided you hold us harmless for any cost incurred as a result. Client will indemnify and hold custardfish harmless for any loss or expense (including solicitors fees), and agree to defend custardfish in any actual law suit, claim or action arising in any way from our working relationship. This includes, but is not limited to assertions made against Client and any of its products and services arising from the publication of materials that we prepare and you approve before publication. In the event of cancellation of the assignment, ownership of all copyrights and the original artwork and disks shall be retained by custardfish.

Limitation Of Liability

The Client acknowledges and agrees that custardfish's total aggregate liability to the Client for any claim in contract, tort, negligence or otherwise arising out of, or in connection with, the provision of the Services shall be limited to the charges paid by the Client in respect of the Services which are the subject of any such claim. In any event no claim shall be brought unless the Client has notified custardfish of the claim within one year of it arising. In no event shall custardfish be liable to the Client for any loss of business, contracts, profits or anticipated savings, or for any other indirect or consequential or economic loss whatsoever. custardfish will not be held liable for any service that it provides which is totally reliant upon a third party over which custardfish has no administrative control.

Notices

Any notice (including but not limited to Suspension notices) to be given by either party to the other must be in writing and may be sent by either email, fax or Royal Mail post to the address of the other party as appearing in this Agreement, or to such other address as such party may from time to time have communicated to the other in writing; and if sent by email shall unless the contrary is proved, be deemed to be received on the day it was sent; or if sent by fax shall be deemed to be served on receipt of an error free transmission report; or if sent by Royal Mail post shall be deemed to be served two days following the date of posting. In proving such service it shall be sufficient to prove that delivery was made or that the envelope containing such communication was properly addressed and posted as a prepaid first class letter.

Enforcement Expenses

The Client shall pay to custardfish all reasonable costs and expenses incurred by custardfish in enforcing any of these Conditions, or exercising any of its other rights and remedies under the agreement, including (without prejudice to the generality) all costs incurred in tracing the Client in the event that legal processes cannot be enforced at the address last notified to custardfish.

Non-waiver

The allowance of time to pay or any other indulgence by custardfish in respect of payments due to it shall in no manner affect or prejudice its right to payment together with interest provided under these Conditions. The failure of either party to enforce any provision of this agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this agreement.

Law

This Agreement shall be governed by and construed in accordance with English law and the Client hereby submits to the non-exclusive jurisdiction of the English courts, and any alteration to part of the agreement shall not invalidate the remainder.

Entire Agreement

These Terms and Conditions together with any documents expressly referred to in them contain the entire Agreement between custardfish and the Client relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral, between custardfish and the Client in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these Terms and Conditions.

Variation

custardfish reserves the right to vary these Terms and Conditions as a result of changes required by its insurers, operation or administration problems, new legislation, statutory instruments, Government regulations or licences.

The latest version of these Term & Conditions will always be made available at the following web address. <http://www.custardfish.com/terms/website-terms.pdf>