

guavadesign^o

Terms & Conditions of Business



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These terms and conditions set out the agreement between you (the customer) and us GUAVA DESIGN LTD ('GUAVA DESIGN', 'THE COMPANY')

1. Services/Background

GUAVA DESIGN provides services in Hosting and Web Design, Web Marketing, purchase of Domain Names, acquisition of Digital Imagery, use of E-Commerce and non-internet based projects ('THE SERVICE'). These services and requirements are set out in the schedule to these terms and conditions.

2. Payment Terms

2.1 Our Fees

All fees for web sites, email and FTP sites are payable yearly in advance. Notice may be given up to 1 month before the anniversary of the hosting otherwise it will be deemed that the hosting will continue for another year at the prevailing rate. We will be fully entitled to turn off a service if an account is more than 30 days overdue without any further notice. Consequences of the site and email being unavailable are the full responsibility of the customer. In the event of termination of the contract the unused portion of the fees paid for the year will not be refunded by GUAVA DESIGN.

2.2 Stage Payment

For web site packages, a non-refundable stage payment of 50% of the total fee is required when ordering services, with the balance payment required at completion (at which point your web site will be made live). Where site maintenance or re-registration is required, payment of fees is required before the maintenance work or re-registration is carried out. A reminder will be sent for yearly maintenance charges and re-registration fees.

All other services require pre-payment in full unless agreed otherwise in writing prior to commencement of work.

We reserve the right to deactivate a client web site where relevant payment has not been received and to charge interest on late payments.

2.3 Taxes

All payments mentioned are net of applicable taxes.

3. Delivery and Approval

3.1 Completion Dates

We will use our best endeavours to meet completion dates agreed, although any such dates are estimates only. We will not be held liable for any loss or damage as a result of a failure to meet these dates.

3.2 Approval

At one or more stages within a web site project, materials we create for a client are published to a password protected area on the World Wide Web ('WWW') or sent on disk for the client's approval. Once all stages are approved, the materials are then published to the client's web space and the project is complete.

3.3 The Customer Agrees

The information that you give to us, and make available on the WWW both now and in the future is accurate and not in any way false, defamatory, libellous, indecent, obscene, misleading or offensive. We retain the right to amend or remove any information which we consider not accurate and in any way false, defamatory, libellous, indecent, obscene, misleading or offensive.

Your business and any other materials or information you provide to us do not infringe any law, regulations or rights including IPR of other people or organisations.

To comply with our reasonable operating instructions including without limitation instructions to modify your software and hardware for Internet connection in order to receive our services.

Not to use products for any illegal or improper purpose nor allow others to do so.

To notify us and assist in providing a forecast of traffic likely to be directed to any web site. If the traffic volume more than doubles over a one month period without prior agreement we shall be within our rights to disconnect your site to protect the rest of our network from saturation and negotiate a new contract for such a service.

If any campaigns such as television or mass advertising are to be initiated we need to be informed in writing a minimum of 8 weeks in advance and agreement made on the capacity for specified volumes of traffic and the costs associated with this. If traffic volumes exceed the estimated amount we shall exercise the right to disconnect the service.

The systems and pages designed to a customer's specification must comply with various differing country regulations. The customer indemnifies us against any action that may be brought because of infringement of regulations of another country.

Where information is taken from other sources or databases it is the responsibility of the customer to ensure that there is an agreement for supply

of this information with the owner.

The customer is responsible for any final checking of content and user functionality before systems go live. GUAVA DESIGN can in no way be held responsible for any consequence of a site not being checked before announcement. It is the responsibility of the customer to check adequately the site to their own satisfaction.

4. Copyright

4.1 For The Web

All intellectual property rights in any design work specifically produced for the customer are the property of GUAVA DESIGN but will be transferred to the customer on payment of final invoice. This includes digital copies of all source files and database schema where applicable. A license is issued to the customer for use of the systems and any applications produced for the hosting period on payment of the invoices for the project. As all systems are designed for GUAVA DESIGN's specific hosting environment, email, security, e-commerce and other systems, the systems will only be warranted to work on GUAVA DESIGN's hosting. On agreement and on further work some systems may be available on external hosts. In no circumstances will GUAVA DESIGN allow its package modules be hosted on external system unless under the control of GUAVA DESIGN in order to protect its IPR from copying.

All data stored on a web site is owned by the customer. This includes and databases of customers, suppliers, advertisements and documents. It is the responsibility of the customer to manage the rights under data protection of all data on the web site.

4.2 For Printed Material

When designs, photographs and copy are produced for use in printed material, the IPR will be assigned to the customer for that particular project on payment of invoice.

5. Warranties and Limitations

5.1 Whereas GUAVA DESIGN makes every effort to make web sites hosted by them available for the maximum amount of time, the servers will be down from time to time because of both routine maintenance and failure of operating and systems software. GUAVA DESIGN does not guarantee that the web systems will be available at any particular time.

5.2 Any deviations from or additions (present and future) to the original agreed brief will need to be quoted for separately and will not be included in the original agreement.

6. Liability

In no event (death or personal injury excepted) will the Company be liable to the Customer for any indirect, incidental or consequential damages arising out of the Hosting Services or any products provided under this Agreement, even if the Company has been advised of the possibility of such damages.

7. Confidentiality

7.1 GUAVA DESIGN acknowledge that its relationship with Customer is one of high trust and confidence and that in the course of Services to Customer it will have access to and contact with Proprietary Information. GUAVA DESIGN will not, at any time disclose to others or use for its benefit or the benefit of others, any Proprietary Information.

7.2 GUAVA DESIGN's obligation under this section shall not apply to any information that (i) is or becomes known to the general public under circumstances involving no wrongful act or omission by or attributable to GUAVA DESIGN or other of the terms of this section, (ii) is made available to GUAVA DESIGN as a right by any third party, is independently developed by GUAVA DESIGN, or is disclosed under judicial or governmental process, (iii) is generally disclosed to third parties by Customer without restriction on such third parties, or (iv) is approved for release by written authorisation from Customer.

7.3 At any other time, upon request by Customer, GUAVA DESIGN shall promptly deliver to Customer all records, files and documentation relating to the business of Customer. Customer agrees to hold GUAVA DESIGN harmless from, and to indemnify GUAVA DESIGN against, any and all losses, claims, damages, liabilities or expenses (including reasonable lawyers fees) which GUAVA DESIGN may incur based on (a) any information or data concerning customer or customer's products to the extent such material is furnished or prepared by or at the request of customer for use by GUAVA DESIGN, and (b) any defect or alleged defect in any product manufactured by the customer.

8. Termination Of Services

8.1 The service may be terminated or suspended by GUAVA DESIGN at any time where:

- The customer is in breach of any of the conditions of this agreement
- The customer becomes insolvent
- Invoices are more than 30 days overdue

8.2 The service may be terminated by the customer:

- Immediately, if GUAVA DESIGN is in breach of any of the conditions of this agreement.

- up to 1 month before the anniversary of the hosting, by sending a notice (without any reason to be provided).
- If GUAVA DESIGN becomes insolvent

8.3 All terminations of services by Customer or GUAVA DESIGN must also be communicated by 30 days notice in writing.

9. Force Majeure

Neither party shall be liable to the other if its performance of its obligations under this Agreement (other than an obligation to pay money) is prevented or hindered due to any circumstances outside its control.

10. General

10.1 Non-Disclosure Of Terms

Except pursuant to court order or as otherwise required under judicial or regulatory proceedings, neither party shall disclose the existence or the terms and conditions of this Agreement without prior written consent to the other party.

10.2 Data Protection Act

It is the responsibility of the customer to register under the data protection act if necessary for the storage and transmission of data. Any data collected and transmitted on via the web site is the sole ownership of the customer and as such the customer is responsible for the legal use of that data.

10.3 Non-Poaching of Staff

Customers will not approach or offer any of GUAVA DESIGN employees or contractors any work or employment other than via GUAVA DESIGN for a period of at least 6 months after their final contract or employment with GUAVA DESIGN and at no time while they are working with GUAVA DESIGN.

10.4 Unsolicited Communications

Where email or FTP services are provided the customer agrees to not use or attempt to use the account to send unsolicited email or "spam" in any way. Use of such email will result in immediate termination of all services.

11. Construction

11.1 Should any part of this Agreement, for any reason, be declared invalid by a court of competent jurisdiction, such determination shall not affect the validity of any remaining portion and such remaining portion shall remain in full force and effect.

11.2 This Agreement is governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdictions of the courts of England and Wales.

11.3 This Agreement shall be binding upon an inure to the benefit of each party and their respective heirs, successors and assigns.

Schedule to Clause 1.

1.1 Hosting and Web Design

GUAVA DESIGN hosts web sites for customers in accordance with our particular set of services set out in our attached proposal or schedule of services and extra agreements. In the absence of a proposal the terms and conditions of hosting (web space) are specified in this agreement.

We will host your site and make best efforts for it to be available on the WWW. The WWW is comprised of many networks and connections outside of GUAVA DESIGN's control and we can in no way guarantee availability of a site at any time.

GUAVA DESIGN offer one level of service:

- Normal business hours in the UK (9.00-17.00, Monday-Friday, excluding national holidays). This is our normal level of service.

GUAVA DESIGN will back up a customer's site on a weekly basis.

In the case of failure of equipment or networks, we will make best efforts to restore the connection to the web as soon as possible.

GUAVA DESIGN can in no way be held responsible for any damage to a company's business by a web site or services such as email or FTP being unavailable.

Access to a web site, email or FTP is via an ISP (Internet Services Provider). GUAVA DESIGN cannot be held responsible for any of the policies or actions of an ISP and the customer must be prepared to change ISP if the service of their current supplier no longer works with GUAVA DESIGN systems.

GUAVA DESIGN will hold a domain name on behalf of a customer and will direct that domain name to web space, email and FTP accounts. The domain name may be transferred to another company at any time at the standard charge prevailing at the time, providing all payments of outstanding accounts are complete.

All code whether it be HTML, CSS, PHP, Flash, Actionscript, JavaScript for display of web pages will be designed for:

Primary Support - everything works

- IE6+ Windows
- Firefox 2+ Mac/Windows
- Safari 1.2+ Mac
- Platforms: Mac OSX, Windows XP, Windows Vista

Secondary Support - possible layout issues due to age/standards of browsers

- IE5 Windows
- Netscape 6 Mac/Windows
- Opera 7+ Mac/Windows
- Platforms: Windows 2000

Tertiary Support

- Content will be visible (generally unformatted) to all other users of earlier browser versions and alternative platforms - modern PDA's will often use their own CSS adaptation to make a CSS-based site work surprisingly well on a small screen.

1.2 Web Marketing

GUAVA DESIGN provides a number of services to submit web sites to search engines. This agreement recognises that the nature of search engine acceptance changes on a weekly basis. GUAVA DESIGN shall not give any guarantees on the outcome of promotion of a domain name and web site to search engines. If a web site does not appear in a search engine for any reason the company will in no way be held responsible.

1.3 Domain Names

Domain names can be purchased on behalf of customers. The hosting of these domain names can also be performed by us both with and without a web site attached. It is the responsibility of the customer to ensure that a domain name does not infringe any trademarks or copyrights and the Customer indemnifies us against any action that may be taken to recover a domain name. Transfer of a domain name and any cost ensuing including legal cost will be the responsibility of the customer. Ownership of a domain name will not be passed to the customer until all outstanding payments are made.

The ownership of a domain name passes to GUAVA DESIGN if all undisputed debts are overdue by more than 120 days.

For any domains bought on behalf of customers but held in GUAVA DESIGN's name, the customer must have a signed document from GUAVA DESIGN to prove ownership. No transfers can be made without sufficient proof of ownership and written request.

1.4 Digital Imagery

Images on a web site must have the correct rights to be used. Images can be sourced in a number of ways.

From the customer. In this case the images will be assumed to be owned by the customer or they have acquired the rights to use them on the web. It is the responsibility of the customer to ensure they have the correct rights to use an image.

GUAVA DESIGN use the following sorts of images:

- i) Royalty Free. This is where GUAVA DESIGN have acquired the rights to use the images on web sites. This is typically by purchasing a disc. These images are sold to the customer as part of the digital images charge in the web site build.
- ii) Rights Managed Images. These images have a specific set of terms and conditions for each image. Typically an image is bought for a particular purpose e.g. a web site (use in a brochure would be extra). These images tend to have a time charge ie for use over 1 year. These images need to be bought directly by the customer as they will need to manage the use of the image over the duration of existence of the web site and this may be longer than the relationship with GUAVA DESIGN.

Sourcing of imagery, Royalty Free or Rights Managed, may incur additional charges.

1.5 E Commerce special considerations

E-Commerce systems have special considerations in redundancy and storage of data. The normal backup of your data is implemented by uploading a copy of the system every evening to a dedicated FTP server. In the case of server failure including the disk the system is restored to the last available backup usually (but not always) 24hrs previous.

All GUAVA DESIGN systems duplicate the data on at least 2 disks which makes the instance outlined rare however failure of the disk controller can wipe both disks.

With normal backup and the failure outlined above there is the potential to lose 24hrs or more data. This could include transaction records.

To remedy the above, GUAVA DESIGN recommend the customer build a transaction log file into your application that journals all transactions for re inputting in the case of failure.

GUAVA DESIGN cannot be held responsible for loss or damage to your business as a result.

1.6 Non internet based projects, Printing, CD production, Software hosted on a client PC

For projects not based on delivering an application via the Internet the following extra terms and conditions apply. For print based work where GUAVA DESIGN delivers print ready copy for delivery to a printer, it is the customer's responsibility of the customer to check the layout, copy and design and authorise it as finished product before sending to a printer. If a mistake is discovered in the final printed product it is the responsibility of the customer to pay for any reworking and reprinting.

For CD based projects the application will be made available either via the internet or test CD for proofing. It is the responsibility of the customer to test the CD and sign off that the application is ready for a release copy to be made. Once a release copy is made it is the customers' responsibility for any reworking or reprinting of media that will be needed if a bug is found in the software. For CD projects it is the customers' responsibility to warn a customer that the software must be installed with caution and that any data loss that occurs because of the installation process or because of the actions of any Third party software involved is their responsibility. Disclaimers must be made in the terms and conditions of any products sold onto further customers. GUAVA DESIGN liabilities are limited where not covered by other terms and conditions to the cost paid for a project and is under no circumstances extended to consequential liabilities or costs.

GUAVA DESIGN can not be held responsible in any way for any of the functionality correct or otherwise of any Third party software used in projects this extends to all Third party software and includes Microsoft and CD production software.