

# terms + conditions

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## Rhiannon Elizabeth Design (RED)

### Terms & conditions

(Last updated October 2008)

'RED'

*-Rhiannon Elizabeth Design, 2 Glen View, Middle Dimson, Gunnislake, Cornwall, PL18 9NQ;*

'the customer', 'you'

*-The person, firm or company who instructs RED to perform the services*

'preferred hosting provider'

*-The 3<sup>rd</sup> party hosting provider of the customer's choice*

'goods and services'

*-Web site and/or graphic design, related coding and database coding*

'contract'

*-Terms and Conditions*

#### 1. GENERAL

Any contract made with RED does not affect the consumers' statutory rights. Your order with us constitutes your acceptance of our terms and conditions. All services, web site design, graphics, databases and code will remain the property of RED until paid for in full. RED transfer ownership of the web site design and all intellectual property rights over to the customer upon final payment. Any hosting space for the web site, reserved for the customer, will remain the property of RED until paid for in full by the customer. Any domain names registered on behalf of the customer will remain the property of RED until paid for in full.

#### 2. QUOTES

The initial quote we give you is based on the initial information you supply us. If the project is completed with no changes to this initial brief, then you are only liable to pay the initial quoted price. If, however, during the project, you, the customer, request various changes to the design brief, RED will reserve the right to charge additional fees for the extra work, set out in our current price list. We will inform you of any estimated additional costs involved in any changes you request.

All prices quoted in any proposal are valid for 30 days from the date of proposal.

#### 3. HOSTING, DOMAIN REGISTRATION AND EMAIL ACCOUNTS

RED do not personally provide web hosting, domain name registration and email account services. These are provided by UNITED HOSTING LTD or HOSTWAY LTD. RED merely act as agents who set up hosting accounts, email accounts and purchase domain names (domain names are subject to availability) on behalf of their customers, collecting the customer's hosting fees through our design package fees. RED will take no responsibility for any problems that arise with UNITED HOSTING'S or HOSTWAY'S web server, email or domain name, or if UNITED HOSTING OR HOSTWAY upgrade their software on the web server.

Near the end of the respective registration period, we will contact you to see if you wish to extend your contract further.

If the customer's web hosting or email data transfer limit is exceeded before the end of their registration period, the customer accepts that s/he will need to purchase an additional data transfer quota from your preferred web hosting provider in order for their account(s) to be re-activated.

#### 4. BUGS, WORMS, TROJAN HORSES AND VIRUSES

All software created or used by RED is checked for viruses, worms and trojan horses using Symantec Norton and RED accepts no responsibility for and bears no liability for any bugs, worms, trojan-horses or viruses discovered subsequent to RED's delivery of the Final Version to the Client or uploaded to the UNITED HOSTING or HOSTWAY server.

RED will use it's reasonable endeavours to check for any bugs, worms, trojan-horses or viruses provided only that this is provided for in the Budget but accepts no responsibility for and bears no liability for any bugs, worms, trojan-horses or viruses discovered subsequent to RED's delivery of the Final Version to the Client.

RED bears no liability for any hacking attempts by 3<sup>rd</sup> parties subsequent to RED's delivery of the Final Version to the Client or uploaded to the UNITED HOSTING or HOSTWAY server. Any subsequent damage or loss of business caused by 3<sup>rd</sup> party hackers or viruses is the sole responsibility of the Client.

#### 5. WEBSITE CONTENT

RED are based in Gunnislake, UK and are bound by UK law. If we deem that any content you wish to include on your site is highly pornographic, meant to cause extreme offence or considered illegal in any way according to UK law, we reserve the right to refuse to continue with the project. It is imperative that you discuss these matters with us before the commencement of the project.

All content provided by the customer is the sole responsibility of that customer and RED shall not be liable for any legal issues, offence and disputes that may arise from this content now or in the future.

RED ask that we are allowed to include a small, subtle text link to our site from your website.

RED reserve the right to display or exhibit any final product(s) to other potential Customers except where doing so may violate any confidentiality agreements which may be in force.

#### 6. STANDARD MEDIA DELIVERY

Unless otherwise specified in the project quotation, RED assumes that any text will be provided by the Customer in electronic format (ASCII text files delivered on floppy disk or via e-mail or FTP) and that all photographs and other graphics will be provided physically in high quality print suitable for scanning or electronically in .gif, .jpeg, .png or .tiff format.

#### 7. DESIGN PROCEDURE

After our initial consultation(s), RED will provide a design checklist, as an overview of the design process from start to finish. The customer is asked forward initial materials we require, such as company logos, promotional leaflets, photographs etc – anything that will aid us in designing the look and colour scheme of your site.

We reserve the right to make minor changes to the web site design elements in the interest of issues such as browser incompatibility, coding 'quirks' and other unforeseen problems. We will, however, contact the customer in the case of major changes that may unfortunately be necessary.

The customer's web site design is initially uploaded to RED 's personal web server where the customer may view the site in progress and inform us of any changes that need to be made.

RED will inform the customer when the final finished design has been uploaded. The customer can then suggest minor changes. These could be due to typography errors, change of details, etc. This will not include (in most cases) graphic design changes. Once these have been rectified, we request the balancing payment from the customer.

More detailed changes to the existing web site will incur additional fees set out in our Price List. Upon receipt of funds, we upload your web site to your personal web server and re-test the site.

Please note that once you, the customer, accept the web site design as seen on RED's personal web space, your design is considered final. Upon uploading to the customer's personal web space on either UNITED HOSTING OR HOSTWAY'S server, any changes the customer requests be made to the web site can be considered (at our discretion) as part of the updating service (or if no updating service is included in the package, this will incur additional fees, refer to #14).

#### 8. SEARCH ENGINE OPTIMISATION AND SUBMISSION

If your package includes search engine optimisation, please note the following:

RED will optimise pages on your site using the keywords and phrases that we have researched and found to be the most likely to attract traffic to your site. You, the customer, have the final say on the actual text used on your site, but must be aware that changes to our recommended text may affect your eventual search engine ranking. Please note that we cannot write the initial copy for your page - you must write this yourself and we shall adapt it for the sake of search engines.

RED agree to submit your web site to the leading search engines, but cannot guarantee inclusion and/or a particular ranking with any of these engines. We carry these submissions out one time only.

The customer understands that a good search engine ranking can take time to build and involves other factors apart from page optimisation.

The customer understands that we do not guarantee any particular search engine ranking, and that search engines frequently change their working algorithms which can drastically affect a customers' ranking. RED can accept no responsibility or liability if any search engine, online directory or search site, submitted to as part of a web site promotion commission, chooses not to list a customer's web site

#### 9. DYNAMIC WEBSITE

If you have purchased a dynamic database driven website, such as a content management website, or searchable website, the customer is responsible for undertaking any data back up programs, database, web files or other digital material. RED will

accept no responsibility for backing up data from the your web site, unless a formal ongoing management contract has been expressly agreed (please refer to #14).

#### 10. E-COMMERCE WEBSITES / CONTENT MANAGEMENT WEBSITES (CMS)

If you have purchased an e-commerce or content management database driven website, the customer is responsible for undertaking any data back up programs, database, web files or other digital material. You the customer are also responsible for managing your online transactions, product lines, prices and security issues relating to use of the website, and dealings with any other 3<sup>rd</sup> party merchant account or internet gateway payment providers. RED will accept no responsibility for backing up data from the your web site, unless a formal ongoing management contract has been expressly agreed (please refer to #14).

#### 11. INTELLECTUAL PROPERTY RIGHTS

Any intellectual property rights generated for a RED customer, including, but not limited to trademarks, drawings, diagrams, design, artwork, photographs, digital photographs, work manipulated on behalf of a RED customer, work commissioned by a RED customer, passwords, access codes, and flash code specific to the RED customer's web site, will all be passed over to the customer upon full payment being received by RED .

RED retains the right to use any:

HTML code, ASP, PHP, MySQL code, Access code, any other database coding and Javascript on other customers projects.

All web site content is to be provided by the customer, and no responsibility is taken by RED for any images or text displayed on the web site, that subsequently has existing copyright associated with it, that may cause grievance with the original owner.

Upon transfer of the web site to the web server (uploading the web site online), and subsequent transfer of ownership of design rights, the customer accepts full responsibility for the whole content of the web site, and any grievances, arising as result of this content, either in the United Kingdom, or any other countries, will be the sole responsibility of the customer. Additionally RED will take no responsibility, what so ever, for the content of third party web sites where links have been placed on the customers web site, to link off to these web sites

RED owns all right, title and interest in RED's trade names, service marks, inventions, copyrights, trade secrets, patents, and know-how relating to the design, function, or operation of Services and of the hardware and software systems and resources necessary to provide the individual service elements of which they consist. This agreement does not constitute a license to the Customer to use RED 's trade names or service marks. All license and copyright deriving from the product(s) or service(s) shall stay with RED.

#### 12. PAYMENT

All projects require an initial 50% deposit before we can commence work. This is to cover the initial costs incurred in setting up the project, including domain name registration fees. This deposit is non-refundable. All prices quoted are exactly what you pay with no hidden charges. Final payment is due after the final web site has been uploaded to the customers web server. Invoices should be paid within 7 days of the date on the invoice.

#### 13. CANCELLATION

Once RED have received the initial payment and confirmation from the customer, we consider the project to be active. All initial payments are non-refundable. If the customer wishes to cancel the project they need to do so by calling +44 (0)870 803 4954. The customer will be liable to pay for all work already completed on the project, and any other additional expenses that RED have incurred to this point in time due to this project, including any reasonable costs involved in ceasing the project. A full invoice will be sent to the customer detailing all these costs.

Once RED have set up your preferred web hosting provider account (web hosting, email and domain name), your right to a refund on these accounts is solely at the discretion of your preferred web hosting provider and is out of our hands.

#### 14. ONGOING MANAGEMENT

RED does not undertake to maintain or update a client's website as part of the design commission. If a client wishes RED to maintain or update a web site as a separate commission, RED will negotiate with the client a maintenance contract appropriate to the amount of work required. Web site maintenance may also be undertaken on a time and materials basis if the client so wishes. The ongoing management contract may include continued search engine optimisation or database management and backup. This is a separate agreement, and terms are negotiated with each individual customer. An ongoing management service is not included automatically with the purchase of a web site design from RED.

#### 15. OUR GUARANTEE

If there are any errors on your site that are due directly to a mistake on our part, we agree to fix this error. Email support@red-esign.com with a description of the error, and we will send confirmation of our receipt of your email and will begin to look into the matter.

What is not covered:

- Errors that have occurred as a direct result of changes made to your site by you or a third party
- Web server faults that are due to UNITED HOSTING or HOSTWAY.
- Errors that have arisen due to unforeseen changes in internet software or hardware – such as new browsers or operating systems
- Changes to web hosting, email and domain names

16. WARRANTY AND LIMITATION OF LIABILITY

RED undertakes to use reasonable skill and care in delivering the Goods or performing the Services. RED shall not be liable in any way for any losses, damages, costs or expenses, or for any loss of revenue, profit, goodwill or any consequential or indirect or special loss or damage arising out of the provision of the Goods or Services, or of any error or defect therein, or of the delivery, delayed delivery or non-delivery of the Goods or the performance, delayed performance or non-performance of the Services. Nothing in this clause shall exclude liability for death or personal injury arising from the negligence of RED or its employees or agents, or any other liability which it is prohibited from excluding at law. If RED is required to act as an agent of the Customer, the Customer will fully indemnify RED if any losses or claims result.

17. ASSIGNMENT AND SUB-CONTRACTING

The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of RED. RED may assign or sub-contract the Contract or any part of it to any person, firm or company and shall give notice to the Customer at the time of such assignment or sub-contract.

18. CONFIDENTIALITY

Each party agrees and undertakes that it will keep confidential, and will not use for its own purposes nor without the prior written consent of the other, disclose to any third party, any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party unless such information is public knowledge or already known to such party at the time of disclosure or subsequently becomes public knowledge other than by breach of these terms or comes lawfully into the possession of such party from a third party.

19. FORCE MAJEURE

RED shall not be liable to the customer if it is prevented from or delayed in the delivery of the Goods or performance of the Services due to circumstances beyond the reasonable control of RED including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, riot, civic commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.