

Five Rise Design and Communications– Terms & Conditions of Business (1st January 2011)

In these conditions, unless the context requires otherwise: "Buyer" means the company, firm, body or person purchasing the Services from Five Rise Design and Communications. "Contract" means a contract, subject to these conditions, for the provision of the Services between Five Rise Design and Communications and the Buyer. "Five Rise Design and Communications" means Five Rise Design and Communications whose registered office is at Suite 101 Towpath Court, Britannia Wharf, Bingley, BD162NP "Order" means a purchase order in respect of the Services completed or agreed by the Buyer and submitted to Five Rise Design and Communications, together with all documents referred to in it. "Quotation" is an agreed piece of work (incorporating these conditions) provided by Five Rise Design and Communications to the Buyer in respect of the Services. No contract will come into existence until Five Rise Design and Communications written acceptance or order form has been completed and signed on behalf of the Buyer and the order acknowledgement has been signed on behalf of Five Rise Design and Communications. "Services" means the subject matter of each Contract between the Buyer and Five Rise Design and Communications, being the work and/or services or any of them to be performed by Five Rise Design and Communications for the Buyer pursuant to the Order. "Standard Form" means Five Rise Design and Communications standard form of Order.

1. GENERAL

1.1 A Quotation shall not be binding Five Rise Design and Communications and a Contract will only come into being upon acceptance by Five Rise Design and Communications of the Order by signing or counter signing the date of the order and returning it to a customer.

1.2 The Contract will be subject to these conditions. All terms and conditions appearing or referred to in the Order or otherwise stipulated by the Buyer shall have no effect, unless such Order is in the Standard Form. Any variation to the Contract must be confirmed in writing by Five Rise Design and Communications.

1.3 Quotations submitted Five Rise Design and Communications shall remain open for acceptance by the Buyer for a period of 7 (seven) days from the date of the Quotation (unless in the Quotation some other period is specified) or when Five Rise Design and Communications withdraws the Quotation.

1.4 These conditions shall, to the extent applicable, apply to goods and products in the same way as they apply to Services.

1.5 The minimum length of any ongoing website services purchased will be 6 months.

2. PRICES

2.1 Where the Services are sold by reference to Five Rise Design and Communications published price list or tariff structure, the price payable for the Services shall be the ruling price as published in the price list or tariff structure current at the date of purchase.

2.2 In other cases, the price for the Services shall, subject to clause

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2.3 Five Rise Design and Communications shall (if applicable) add to the price of the Services, and the Buyer shall pay, an amount equal to any VAT or other sales tax or duty applicable from time to time to sales or supply of such Services.

2.4 Any price changes will take effect from the 1st day of the month and the customer will be notified in writing 7 (seven) days before any price change takes effect.

3. TERMS OF PAYMENT

3.1 Subject to clause 3.2 the Buyer shall, at the time of submission of an Order to Five Rise Design and Communications, pay to Five Rise Design and Communications a non-refundable deposit for the Services specified on the Order of 50% of the value shown on the Order.

3.2 In respect of web hosting and domain registration full payment is required with order.

3.3 Five Rise Design and Communications shall invoice the Buyer for all Services (less any Deposit) immediately on completion of the web Site and prior to publication on the web.

3.4 Unless otherwise agreed in writing by Five Rise Design and Communications and without prejudice to clauses 3.1 and 4, invoices shall be payable by the Buyer immediately upon completion of the relevant Web Site to which the invoice relates.

3.5 The Buyer shall make all payments due to Five Rise Design and Communications by cheque, cash, by bankers draft, or by telegraphic or electronic transfer direct to the company bank account or by arranged standing order (and in each case in pounds sterling).

3.6 If the Buyer fails to pay any amount due Five Rise Design and Communications under this Agreement on the relevant due date, default interest at the rate specified by the Late Payment of Commercial Debts (Interest) Act 1998 shall be added to such amount for the period from the day after the due date until the date of receipt (whether before or after judgment) together with any reasonable and proper amounts incurred by Five Rise Design and Communications in seeking to recover such late payment from the Buyer (including, without limitation, legal fees).

3.7 If after a period of 28 days, Five Rise Design and Communications have not received sufficient content to complete your website design, the full remaining balance will become payable.

4. WEB SITE DESIGN

4.1 The client unconditionally guarantees that any element of text, graphics photographs or other artwork furnished to Five Rise Design and Communications for inclusion in the web design project are owned by the client, or that the client has permission from the rightful owner to use each of these elements, and will hold harmless, protect and defend Five Rise Design and Communications and its subcontractors from any claim or suit arising from the use of such elements furnished by the client.

4.2 All creation files remain the intellectual property of Five Rise Design and Communications on completion of a web design project.

4.3 Five Rise Design and Communications shall be free to reproduce, use, disclose, display, exhibit, transmit, perform, create derivatives works, and distribute any item from the client's web pages unless specifically agreed to do otherwise. Further, Five Rise Design and Communications shall be free to use any ideas, concepts, know how or techniques acquired in the construction of web sites for any purpose whatsoever including but not limited to developing, manufacturing and marketing products and any other items incorporating such information unless specifically agreed otherwise.

5. SEARCH ENGINE OPTIMISATION

5.1 Whilst Five Rise Design and Communications will try to improve the position of your website in Search Engine results in response to a search request; we do not warrant that this effort is in any way guaranteed.

5.2 Five Rise Design and Communications cannot be held responsible for any changes to the position of your Web Site in the Search Engine results in response to a search.

5.3 Where a page 1 Google listing has been guaranteed (and an SEO Purchase Order has been signed), Five Rise Design and Communications require a period of no less than 16 weeks to achieve this result for a minimum of 1 agreed search term. If after a period of 16 weeks your website is not visible on page 1 of Google for at least 1 of your chosen search terms, and upon receipt of refund invoice, Five Rise Design and Communications will issue a full refund of your initial payment.

5.4 Five Rise Design and Communications cannot physically check your Google position on a daily basis, and therefore require you to inform us should your position fall from page 1 under your chosen search term(s). Once informed, (and subject to your monthly SEO account being paid up to date) you must allow a period of up to 16 weeks for Five Rise Design and Communications to Re-optimize and achieve a page 1 Google position for your chosen search term(s). If for whatever reason Five Rise Design and Communications fail to get your site relisted on page 1 of Google for your chosen search term(s) after this time, you may cancel your monthly Standing Order and close your account with no penalty.

5.5 Where Five Rise Design and Communications have accepted a single payment for SEO (and no ongoing monthly payment is required), we will only guarantee a page 1 Google listing for your chosen search term(s) for a maximum of 1 day, and will not be held responsible for your website dropping from page 1 thereafter.

6. WEB SITE SERVICES

6.1 Five Rise Design and Communications are registered Reseller Partners for domain name registration, website hosting and mailboxes through either Heart Internet or Moonfruit. The registration of a domain name, hosting of a website or registering of mailboxes on behalf of the client is subject to the terms and conditions of these businesses on their individual websites.

6.2 Five Rise Design and Communications will accept no liability for any financial loss resulting from a domain not being renewed.

6.3 Five Rise Design and Communications shall have no liability arising from any financial loss arising from any registered mailbox not being available.

6.4 A charge of one hundred pounds £100 will be charged for any domain transfer. A domain will only be transferred if this has been paid as well as any other outstanding balance owed to Five Rise Design and Communications.

7. E COMMERCE WEB SERVICES

7.1 Five Rise Design and Communications supply E Commerce Services via Heart Internet and Moonfruit, the client is subject to the terms and conditions of this business on their individual websites.

7.2 Five Rise Design and Communications will accept no liability for any financial loss resulting from the use of any E Commerce website.

7.3 Five Rise Design and Communications reserve the right to use any services from third party sources including those listed (7.1) if deemed to be necessary.

8. WARRANTY AND LIMIT OF RESPONSIBILITY

8.1 Five Rise Design and Communications acknowledges and agrees that it shall perform the Services:8.1.1 with reasonable skill and care; and 8.1.2 in accordance with good industry practice.

8.2 The Buyer acknowledges and agrees that Five Rise Design and Communications shall have no liability to the Buyer in respect of the positioning of the Buyer's Web Site.

8.3 The Buyer's remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the Services or Web Site or any workmanship in relation to them (whether or not involving negligence on the part of Five Rise Design and Communications) shall, in all cases, be limited to re-performance of the Services or refund of the relevant purchase price.

8.4 Five Rise Design and Communications shall not in any circumstances be liable to the Buyer for any indirect or consequential losses or any loss of profits purported to have been suffered by the Buyer.

8.5 Five Rise Design and Communications shall not be liable for any failure in the performance of any of its obligations under the agreement caused by factors outside its control.

9. DELIVERY AND COMPLETION DATES

9.1 Five Rise Design and Communications undertakes to use its reasonable endeavours to provide completed Services to the Buyer within 30 days of the date on which Five Rise Design and Communications receives a signed Order from the Buyer.

9.2 The dates for carrying out the Services and delivery of any resultant Web Site are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery or performance.

9.3 Five Rise Design and Communications will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform save where the same is as a result of the negligence of Five Rise Design and Communications.

9.4 No delay (unless material) shall entitle the Buyer to reject any delivery or performance or any other Order from the Buyer or to repudiate the Contract or the Order.

10. RESPONSIBILITY FOR APPROVING WEB SITE

10.1 The Buyer acknowledges and agrees that Five Rise Design and Communications shall produce the Web Site based on information provided to it by the Buyer.

10.2 Notwithstanding clause 8.1, it shall be the responsibility of the Buyer (and not Five Rise Design and Communications) to review and approve the content of the Web Site (including, without limitation, the spelling of names and addresses and the accuracy of telephone numbers) at the time of the completion of such Web Site by Five Rise Design and Communications to the Buyer for approval by the Buyer.

10.3 Five Rise Design and Communications shall have no liability to the Buyer for any inaccuracies in the Web Site if and to the extent that the Buyer has failed to review and/or approve (or require amendment (as the case may be)) provided to the Buyer by Five Rise Design and Communications pursuant to this Agreement.

11. TERMINATION

11.1 Five Rise Design and Communications may terminate the Contract immediately in the event that the Buyer is in breach of its obligations under the Contract and/or the Buyer suffers any event of insolvency or is or becomes unable to pay its debts as they fall due.

11.2 Five Rise Design and Communications may at its discretion suspend or terminate the supply of any goods and services if the buyer fails to make any payment when due or otherwise defaults in any of its obligations under the contract or any other agreement with Five Rise Design and Communications or becomes insolvent, has an administrative receiver appointed of its business or is compulsorily or voluntarily wound up or Five Rise Design and Communications bona fide believes that any of those events may occur and in any case of termination may forfeit any monies paid.

11.3 Five Rise Design and Communications may by written notice terminate the Agreement immediately and without liability for compensation or damages except as mentioned in this agreement if the Buyer fails to make payment as specified above.

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11.5 Any contract cancelled by the customer during the first six (6) months will incur a penalty charge of £150 (one hundred & fifty pounds).

12. THIRD PARTY CLAIMS

The Buyer shall indemnify Five Rise Design and Communications and keep Five Rise Design and Communications indemnified from and against any and all actions, costs (including, without limitation, the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement or alleged infringement by a third party of any patent, registered design, unregistered design, design right, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by Five Rise Design and Communications with the Buyer's instructions, whether express or implied.

13. ASSIGNMENT AND SUBCONTRACTING

13.1 None of the rights or obligations of the Buyer under the Contract may be assigned or transferred in whole or in part without the prior written consent of Five Rise Design and Communications.

13.2 The Web Site shall be for the sole use of the Buyer and shall not be capable of assignment to a third party by the Buyer.

13.3 Five Rise Design and Communications shall be entitled to sub-contract any work relating to the Contract without obtaining the consent of, or giving notice to, the Buyer.

14. NOTICES

14.1 Any notice or other communication to be given under these conditions must be in writing and may be delivered or sent by first class letter post or facsimile transmission.

14.2 Any notice or document shall be deemed served: if delivered, at the time of delivery; if posted, 48 hours after posting; and if sent by facsimile transmission, at the time of transmission.

15. INVALIDITY

The invalidity, illegality or unenforceability of any provision of these conditions should not affect the other conditions.

16. THIRD PARTY RIGHTS

A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

17. LAW AND JURISDICTION

The Contract shall be governed by and construed in all respects in accordance with English and Scottish law and the parties hereby submit to the exclusive jurisdiction of the English and Scottish courts.