

Clarke Design – WEB DESIGN SERVICES AGREEMENT

This Web Design Services Agreement (the “Agreement”) is entered into by and between Clarke Design with its principal office at Drayton Court, Drayton Road, Shirley, Solihull, West Midlands B90 4NG (hereinafter referred to as “Clarke Design”), and the recipient client (hereinafter referred to as “Client”).

ARTICLE 1 CONSIDERATION, INVOICING AND PAYMENT

- 1.1 Services Client shall pay Clarke Design for all hours worked at the rates set forth in the corresponding Proposal / Task Order. Each Proposal / Task Order shall set forth an estimated total price to perform the Services.
- 1.2 Invoicing All invoices will be sent directly to customers by either email or regular mail shortly as instructed in the associated Proposal / Task Order. All payments and invoices are in UK sterling.
- 1.3 Payment Terms Client shall pay Clarke Design the amount of each invoice in U.K. sterling, within thirty (30) days of the date of each invoice. In the event that Client fails to pay any amount due under this Agreement within the above period, Client shall pay Clarke Design interest on the amount due at the rate of ten percent (10%) of the total invoice per calendar month or part calendar month (or the maximum amount allowable under any applicable law if such amount is less than ten percent (10%) per calendar month).
- 1.4 Non payment Clarke Design reserves the right to suspend web design services until an outstanding debt is cleared. The customer is responsible for all money owed on the account from the time it was established to the time that the customer sends a written termination request.
- 1.5 Remittance Address Client shall remit all payments to the following address:
Payment by Cheque:
Clarke Design, *Cheques to be made payable to*
Drayton Court, *Clarke Design*
Drayton Road,
Shirley, Solihull,
West Midlands B90 4NG

ARTICLE 2 TERMINATION

- 2.1 Termination Either party may terminate this Agreement upon giving at least thirty (30) days prior written notice to the other party of its intent to terminate this Agreement. Notwithstanding the foregoing, Client may not terminate this Agreement while any Proposal / Task Order is incomplete or outstanding or whilst any invoices remaining outstanding or unpaid.
- 2.2 Payment after Termination In the event of termination pursuant to Section 2.1 above, Client shall pay Clarke Design pursuant to ARTICLE 1 for all amounts due through the date of termination. If this Agreement is terminated prior to the completion of any Proposal / Task Order, Clarke Design shall (i) immediately cease such work as directed in the notice of termination, (ii) inform Client as to the current state of performance of the services under such Proposal / Task Order; and (iii) deliver to Client an invoice for the services actually performed along with all Client proprietary information in its possession and all deliverables in whatever state of development they may exist on the date of termination.

ARTICLE 3 DISPUTES AND ARBITRATION

- 3.1 Arbitration The parties agree to exercise their best efforts to settle all disputes arising from or relating to this Agreement by mutual Agreement (“disputes”). In the event that a dispute is not settled within thirty (30) days from the date that a party notifies the other party of a dispute, below, such unsettled dispute shall be settled by binding arbitration under the commercial arbitration laws of the United Kingdom; Any unsettled dispute shall be submitted to one (1) arbitrator. Each party shall bear its own costs of the arbitration and shall bear one-half of the arbitrators’ costs.

ARTICLE 4 MISCELLANEOUS

- 4.1 Independent Contractor Clarke Design shall, for all purposes of this Agreement, be an independent contractor, and not an agent, partner, or joint venturer of Client. Clarke Design shall not act or represent itself as having power to bind Client, or create any obligation on behalf of Client, except as expressly set forth in this Agreement.
- 4.2 Indemnification Customer agrees that it shall defend, indemnify, save and hold Clarke Design harmless from any and all demands, liabilities, losses, costs and claims, including reasonable legal fees asserted against Clarke Design, its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by customer, its agents, employees or assigns. Customer agrees to defend, indemnify and hold harmless Clarke Design against liabilities arising out of; (1) any injury to person or property caused by any products sold or otherwise distributed in connection with Clarke Design’s web design services; (2) any material supplied by customer infringing or allegedly infringing on the proprietary rights of a third party; (3) copyright infringement and (4) any defective products sold to customer from Clarke Design’s web design package.
- 4.3 Notices All notices pertaining to or required by the Agreement shall be in writing, signed by an authorised representative and delivered by hand or mail to the principal office of Clarke Design.
- 4.4 Amendments This Agreement may be modified only by a written amendment executed by a duly authorised representative of each party.
- 4.5 Credit Clarke Design may add text on an associated web site, detailing that the site has been designed and authored by Clarke Design and provide an appropriate hyperlink to the Clarke Design website at www.clarkedesign.co.uk
- 4.6 Construction This Agreement shall be construed in accordance with the plain meaning of the language contained in this Agreement, and it shall not be construed either for or against the drafting party.
- 4.7 No Waiver None of the provisions of this Agreement shall be considered waived by either party hereto unless such waiver is given in writing to the other party. The failure of either party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of either party hereto. A waiver by either party of any of the obligations to be performed by the other party or any breach thereof will not be construed to be a waiver of any succeeding breach thereof or of any other obligation contained in this Agreement.
- 4.8 Limitation of Liability Notwithstanding anything contained in this Agreement to the contrary, in no event shall Clarke Design be liable for lost profits of Client, or incidental, consequential, indirect, exemplary, or special damages (even if Clarke Design has been advised of the possibility of such damages) arising from this Agreement, the use of a Deliverable, or from any claim by any third party. Clarke Design’s total liability to Client under this Agreement for damages, costs, and expenses, regardless of cause, shall not exceed the total amount of fees paid to Clarke Design by Client under the associated Proposal / Task Order.
- 4.9 Entire Agreement The Parties acknowledge that this Agreement and its exhibits sets forth the entire Agreement and understanding of the parties as to the subject matter contained in this Agreement, and shall not be subject to any change or modification except by a written amendment executed by an authorised representative of each party. This Agreement supersedes any and all prior conditions, commitments, and Agreements, either oral or written.