



## Terms & Conditions v5 22/07/2008

Yes, we hate the small print too, but our relationship with our customers is important and it is vital that we all know where we stand. Of necessity the following does not make bedtime reading but is, we hope, comprehensive!

### Preamble

All work carried out by Hotscot is deemed to be carried out under the following terms and conditions which are also publicly available on the company website. These apply to the exclusion of all other terms and conditions unless stated otherwise in any covering correspondence. These terms and conditions do not affect your statutory rights. It is not necessary for any Client to have signed an acceptance of these terms and conditions for them to apply. If a Client allows work to proceed and makes the initial payment then the Client will be deemed to have satisfied themselves as to the terms applying and have accepted these terms and conditions in full.

### Definitions

In these terms “we/us/our” means Creative Magma Ltd, trading as HotScot, Company Registration Number: SC303324, registered office: Suite 3, North Road, Fort William, PH33 6PP

“you” means the Client, whose details appear on this proposal.

The “Contract” means the agreement between you and us based on this and supporting documentation.

The “Website” and “Software” means the services to be provided under this Contract.

A copy of these terms and Conditions can be downloaded in pdf format. [Click Here](#)

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## Terms and Conditions

### 1) Variation

- 1.1 These terms will remain valid for acceptance for 28 days from the date of issue.
- 1.2 After acceptance HotScot reserves the right to amend these terms on each anniversary of the agreement subject to giving you 28 days' notice.
- 1.3 If you have any uncertainties about these conditions as they might apply to you or your project, it is your responsibility to clarify the situation by contacting us before the project gets under way.

### 2) Content

- 2.1 It is your responsibility to provide us with the required information about your business. HotScot take no responsibility for errors in content supplied by you for the web site. Any changes thus occasioned may be chargeable.
- 2.2 Unless specified otherwise, it is your responsibility to provide all necessary text and graphic materials that make up the content of the site. No refund will be made in the event that you fail to provide sufficient content to complete the web site.
- 2.3 All content must be supplied in a suitable digital format unless agreed otherwise beforehand. Images should be supplied as jpeg, gif or Photoshop format. Text should be supplied as a Microsoft Word or ASCII text file. Failure to supply material in digital format may result in extra charges being made for processing content for use on your web site. Where the content which is provided is in a form where a sizeable amount of copywriting is required, a further charge may be made.
- 2.4 You grant HotScot permission to utilize logos and any other company identity for the purposes of creating the website.
- 2.5 You agree to indemnify HotScot from any and all claims arising from your negligence or inability to obtain proper copyright permissions for all content supplied.
- 2.6 A design credit with a link to the HotScot website will appear on your web site.
- 2.7 You should provide HotScot with copies of your terms and conditions and any privacy statement that you wish to be incorporated into the design.
- 2.8 In the event that a website is unable to be completed by Hotscot because of lack of text and/or pictures, then text will be added using "lorum ipsum" filler text and pictures using appropriate library pictures. At this point the website will be considered completed and invoiced accordingly under our standard payment terms. Final text and pictures will be added when these are produced by the Client at no additional cost

### 3) Design

3.1 We will provide you with our estimated timescale for progress and completion of the project and will use reasonable endeavors to meet those timescales (as long as you perform your obligations promptly)

3.2 Any quoted dates are our best estimates only and we cannot guarantee 100% that they will be met.

3.3 We shall have no liability to you nor be deemed to be in breach of this Contract if we are delayed in performing or unable to perform any of our obligations under it due to circumstances beyond our reasonable control.

3.4 Any design issues will be assessed against the standard of PC based internet viewing at 800 by 600 and 1280 by 1024 screen resolutions viewed in both Internet Explorer 6 and Firefox 1.01 unless we agree otherwise in writing.

3.5 HotScot will use the most appropriate technology in the development of the site.

### 4) Acceptance

4.1 Acceptance procedure will be as follows:

- The timescale for the development of this project is indicated in the testing milestones/payment/sign off schedule attached.
- A URL will be provided for the Client to examine and test the website and software to make sure it functions as anticipated and in accordance with this Agreement
- The Client is required to complete the acceptance test schedule attached, Sign Off and accept at each milestone within 7 working days of being notified that the milestone has been reached.
- An electronic version of the Acceptance test schedule will be provided for the Client to complete and email to HotScot, receipt of this will comprise sign off.
- The Client is expected to have tested that the website and software is performing to their own satisfaction and checked the source data before authorising the project to go live
- The project will not be made live until the final payment has been received
- After launch, a 90 day warranty is provided to allow for further comprehensive testing under operating conditions
- Any further changes other than of a minor nature are then chargeable.

### 5) Changes Requested

5.1 If the Client requires any changes to be made to the original design and specification they must notify HotScot by email or letter

5.2 HotScot will notify the Client in a formal Change Request if there will be any charge for the additional work

5.3 If the Client accepts the terms of the Change Request they should notify HotScot by email or letter

## 6) Payment

6.1 An initial deposit payment will be required for the delivery of the Website Services Agreement document covering the agreed Specification, Scope of Works, timescale, acceptance testing and terms and conditions. No work will commence until this initial payment has been made, and this payment is normally non-refundable unless there are extenuating circumstances, in which case a partial refund may be made at Hotscot's discretion.

6.2 The balance of all fees will be invoiced at agreed stages during the project on payment "due now" terms.

6.3 All fees must be paid before the design and development work is handed over.

6.4 Subsequent annual subscription or licence payments will be in advance on the anniversary of the initial payment.

6.5 All fees referred to in the proposal and these terms are exclusive of Value Added Tax which will be added and payable by you where appropriate.

6.6 If payments are not received by the due date for payment (as stated in these terms and/or order form) you may be asked to pay us interest on the amount unpaid at the annual rate of 4% above Bank of England base rate from time to time (without prejudice to any other remedy available to us).

6.7 If payments are not received by us on the due date we reserve the right to suspend the our services until such time as payment is received in full (without prejudice to any other remedy available to us) with suitable allowances then being made to any timescales.

## 7) Ownership and Intellectual Property Issues.

7.1 You will retain ownership of copyright, trademarks and other intellectual property rights in materials that you provide to us for use in the design of your website.

7.2 All copyright, trade marks, patents created, developed, subsisting or used in or in connection with the design or development of your website will be transferred to you on settlement of all outstanding sums due to us.

7.3 All screen displays, graphics, domain names, content and the Look and feel of the site developed shall be transferred to you on settlement of all outstanding sums due to us.

7.4 HotScot retains the rights to use any software, object code, digital programming, source code and the like developed during the course of the project. However you will be granted a perpetual, irrevocable, worldwide and royalty free transferable license for the use of this facility. This may be subject to the continuing payment of any fees agreed as part of the services to be provided under this agreement

7.5 If HotScot is bundling or using any prior intellectual property that it owns and of which it wishes to retain ownership you will be granted a perpetual, irrevocable, worldwide and royalty free transferable license for the use of this facility. This may be subject to the continuing payment any fees agreed as part of the services to be provided under this agreement.

7.6 HotScot will not transfer rights in any design or software work owned by a third party.

## 8) *Hosting and Domain names*

8.1 HotScot will normally arrange hosting for the website and the annual subscription for this will be included in the initial quotation for the design.

8.2 FTP access details to your website files can be issued on request.

8.3 HotScot accepts no responsibility for web server downtime or interruptions to service caused by circumstances beyond our control.

8.4 HotScot will advise Clients on selecting domain names and register these for them as requested at current rates, but cannot guarantee a certain name will be available.

8.5 HotScot may make a charge of £50 for any administrative work associated with hosting or domain name transfers into or out of our facilities.

8.6 Renewals are made automatically unless we are notified in writing 28 days in advance, but please note we accept no responsibility if a domain fails to be re-registered.

8.7 Website hosting is payable annually, in advance. Hosting will be invoiced one month in advance and is due in the first month of each annual hosting period.

8.8 Where payment for hosting is not made by the due date, Hotscot reserves the right to remove the website from the internet. Alternatively Hotscot may discretionally leave the website in place but with Google Adsense running on the home and other pages until such time as payment is received or Hotscot is requested to remove the website from the internet.

## 9) *Email*

9.1 If HotScot are responsible for arranging hosting then a POP3 email account with five addresses will be provided on the domain within the quoted costs (As an alternative forwarding to an existing email account elsewhere can be arranged).

9.2 You will be given the appropriate user name and password details for each account and the incoming mail server name, along with written instructions for setting up the account in Outlook or Outlook Express.

9.3 HotScot will not keep records of passwords

9.4 Requests for changes to user/password combinations may be made by email or telephone and will be actioned within 24 hours.

9.4 HotScot accepts no responsibility for email server downtime or interruptions to service.

9.5 Email accounts must not be used for “spam” emailing operations.

9.6 Once initially set up and operational, HotScot is not responsible for subsequent problems caused by the operating system of your computer. If you need to contact HotScot for such support this is normally chargeable at £1.00 per minute.

## 10) *Promotion.*

Where HotScot undertakes promotion of the website through Search Engine placement no guarantee is given that rankings can be achieved on particular Engines. Resubmission will take place as and when we deem appropriate and may vary in frequency depending on the level of maintenance updates undertaken.

## *11) Warranties.*

11.1 HotScot warrants that commencing from the date of acceptance by the Client and continuing for a period of ninety (90) days that the website and software substantially conforms to the Specification and the Scope of Works and is substantially suitable for the purposes for which it was designed. The terms of the Warranty are that during this period any errors or omissions will be rectified by HotScot at no cost to the Client. The Warranty does not apply if the website and software has not been operated in accordance with the instructions given by HotScot.

11.2 HotScot makes no warranty that the website and software is totally error free or that the Client will be able to operate the website and software without any problems or interruptions caused by unforeseen problems or untested scenarios.

11.3 HotScot makes no further warranties of any kind, whether express or implied, for the services it provides. HotScot also disclaims any warranty of merchantability or fitness for any particular purpose other than that covered by the 90 day Warranty.

11.4 Due to the continual development of new techniques for intruding upon and attacking Internet based systems, HotScot cannot warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack. No liability will be accepted for the loss, corruption or theft of personal or financial information caused by deliberate and malicious intrusion or attack.

11.5 HotScot will not be responsible for any direct, indirect or consequential damages that may result from the use of its services, including loss of data resulting from delays, non-delivery or interruption in service. You acknowledge and agree that HotScot cannot guarantee the absence of service interruptions caused by Acts of God or other circumstances beyond our control.

## *12) Support.*

12.1 HotScot will provide telephone and email support for services we provide to you during normal office hours. Outwith these times support by email only is available with a 24 hour response.

12.2 Problems with the operating system and software on your own computer and your Internet connection are specifically excluded from this agreement.

## *13) Reservations.*

13.1 HotScot reserves the right to withdraw services at any time without prior notice. In such circumstances HotScot will arrange alternative hosting and support services to ensure the ongoing hosting and functionality of the Client's website.

13.2 HotScot also reserves the right to feature customer websites and testimonials in future promotions without seeking prior consent.

## **14) Covenants**

14.1 HotScot will not during development or thereafter use the Client's trademarks, logos or service marks without the Client's express approval

14.2 HotScot will comply with all applicable laws in connection with its activities

14.3 HotScot will maintain satisfactory insurance and will provide proof of these policies if requested by the Client.

## **15) Disputes**

15.1 In the event of a dispute it shall be determined by an arbiter appointed by joint agreement between HotScot and the Client or, failing agreement, to be nominated by the President of the Law Society of Scotland.

15.2 The decision of the said arbiter shall be final and binding on the Client and HotScot and no appeal shall be competent under the Administration of Justice (Scotland) Act 1972.

15.3 This Agreement is subject to the laws of Scotland

## **16) Indemnity**

All services may be used for lawful purposes only. You agree to indemnify and hold HotScot harmless from any claims resulting from your use of our service that damages you or any other party.

## **17) Liability.**

17.1 Our total liability to you in contract or in tort arising in connection with this Contract shall not exceed the total price paid by you.

17.2 We shall have no liability for loss of profits, business, revenue, goodwill or anticipated savings or for any other indirect or consequential loss.

## **18) Standard charges**

In the absence of agreed rates the following will apply for additional work:

- Clerical or data entry activity £400 per day per person
- Design or development activity £500 per day per person
- Senior management/programmer £600 per day per person
- Travelling and subsistence on a costs as incurred basis

## *19) Cancellation*

If you wish to cancel your contract you are required to do so by registered post giving 60 days notice and cancellation will only be effective on receipt of such notice. If the design is not complete you will be required to pay the balance of our costs to date and loss of profit for the entire design. No refunds will be made for any part of any annual hosting and maintenance subscription remaining.

In the event of cancelling your contract, your website will be taken offline the day after the contract expires. Once all sums due have been settled, HotScot will cooperate with the smooth transfer of hosting of the domain and pass over ownership of any website files as requested.