

# Terms & conditions

# Services contract

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Thank you for considering Mark Swadkins Design. The following terms and conditions of service apply to all products and services provided by Mark Swadkins Design. Please read through them carefully and retain for your records. If you have any questions, just ask.

All work is carried out by Mark Swadkins Design on the understanding that the customer has agreed to Mark Swadkins Design's terms and conditions.

Copyright is retained by Mark Swadkins Design on all design work including words, illustrations, ideas and visuals unless specifically released in writing and after all costs have been settled.

If a choice of design is presented, only one solution is deemed to be given by Mark Swadkins Design as fulfilling the contract. All other designs remain the property of Mark Swadkins Design, unless agreed in writing that this arrangement has been changed.

## **Project proposal and charges**

At the time of proposal, Mark Swadkins Design will provide the customer with a written estimate or quotation. Charges for design services and payment terms to be provided by Mark Swadkins Design and set out in the written estimate or quotation that is provided to the customer.

At the time of the customer's acceptance of this estimate or quotation, indicating acceptance of the terms and conditions, a non-refundable deposit of 50% of the quoted fee will become immediately due, depending on project size and scope. Work on the project will not begin until Mark Swadkins Design has received this amount. Complimentary artwork is limited to a set number of given revisions. Mark Swadkins Design has the right to refuse additional artwork/revisions.

## **Charges for extra service**

For website projects, there will be a 2-week period post-launch where the customer may request basic text and image updates free of charge. Charges for any additional services over and above the estimated design will become fully payable (100% of the quoted amount) at the time of estimate or quotation acceptance.

## **Project payment**

The customer will be provided with a full review of the work carried out along with the final invoice prior to final publication. At this time, any remainder of the amount due will become payable. Payments may be made via electronic bank transfer or cheque. Once payment has been made, there will be no reimbursement of funds unless agreed by Mark Swadkins Design in writing.

## **Default**

An account shall be considered default if it remains unpaid for 30 days from the date of invoice, or following a returned cheque. Mark Swadkins Design shall be considered entitled to remove Mark Swadkins Design and/or the customer's material from any and all computer systems, until the amount due has been fully paid. This includes any and all unpaid monies due for services, including, but not limited to, business cards, flyers, pamphlets, hosting, website design and development, domain registration, search engine work, design and maintenance, sub-contractors, printers, photographers and libraries. Removal of such materials does not relieve the customer of its obligation to pay the due amount.

## **Copyrights and trademarks**

By supplying text, images and other data to Mark Swadkins Design for inclusion in the customer's business cards, flyers, pamphlets, website or other medium, the customer declares that it holds the appropriate copyright and/or trademark permissions. The ownership of such materials will remain with the customer, or rightful copyright or trademark owner.

Any artwork, images, or text supplied and/or designed by Mark Swadkins Design on behalf of the customer will remain the property of Mark Swadkins Design and/or its suppliers.

The customer may request in writing from Mark Swadkins Design the necessary permission to use materials (for which Mark Swadkins Design holds the copyright) in forms other than for which it was originally supplied, and Mark Swadkins Design may, at its discretion, grant this. Such permission must be obtained in writing before it will allow any of the aforesaid artwork, images, text, or other data to be used.

Should Mark Swadkins Design or the customer supply an image, text, audio clip or any other file for use in a business cards, flyers, pamphlets, website, multimedia presentation, print item, exhibition, advertisement or any other medium believing it to be copyright and royalty free, which subsequently emerges to have such copyright or royalty usage limitations, the customer will agree to allow Mark Swadkins Design to remove and/or replace the file on the site.

The customer agrees to fully indemnify and hold Mark Swadkins Design free from harm in any and all claims resulting from the customer in not having obtained all the required copyright, and/or any other necessary permissions.

## **Alterations**

The customer agrees that changes required over and above the estimated work or required to be carried out after acceptance of the draft design will be liable to a separate charge.

The customer also agrees that Mark Swadkins Design holds no responsibility for any amendments made by any third party, before or after a design is published.

## **Licensing**

Any design, copywriting, drawing, idea or code created for the customer by Mark Swadkins Design, or any of its contractors, is licensed for use by the customer on a one-time only basis and may not be modified, re-used, or re-distributed in any way or form without the written consent of Mark Swadkins Design and any of its relevant sub-contractors.

## **Data formats**

The customer agrees to Mark Swadkins Design's definition of acceptable means of supplying data and content to the company. Text/copy is to be supplied to Mark Swadkins Design in electronic format as standard text (.txt), MS Word (.doc), CD-ROM, or via email.

Images which are supplied in an electronic format, are to be provided in a format as prescribed by Mark Swadkins Design. Images must be of a quality suitable for use without any subsequent image processing, and Mark Swadkins Design will not be held responsible for any image quality which the customer later deems to be unacceptable. Mark Swadkins Design cannot be held responsible for the quality of any images which the customer wishes to be scanned from printed materials.

Additional expenses may be incurred for any necessary action, including, but not limited to, photography and art direction, photography searches, media conversion, digital image processing, or data entry services.

## **Design project duration**

Any indication given by Mark Swadkins Design of a project's duration is to be considered by the customer to be an estimation. Mark Swadkins Design cannot be held responsible for any project over-runs as a result of waiting for the customer to review or supply content, copy or images pertinent to the completion of the project. Estimated project duration should be deemed to be from the date that the project quote is accepted and/or initial payment has been received by Mark Swadkins Design.

## **Website access rights**

The customer agrees to allow Mark Swadkins Design all necessary access to computer systems and other locations, as required, in order to complete a website project and until all due funds are cleared, including the necessary read/write permissions, usernames and passwords. The customer also agrees to allow Mark Swadkins Design access to any computer systems, usernames and passwords required to remove data and/or sites for failure to comply with these terms and conditions.

The customer agrees to supply Mark Swadkins Design with all necessary materials, electronic, or otherwise, required to create and complete the project, and to supply them in a timely manner.

## **Design project completion**

Mark Swadkins Design considers the design project complete upon receipt of the customer's review and approval or emailed statement accepting approval. Once a project has been designed, accepted and supplied, there will be no refunds.

## **Project abandonment**

If after repeated attempts to begin, continue, or finalise the delivery of services, customer fails to participate, or becomes otherwise unresponsive to Mark Swadkins Design's requests for a period of 45 days, the project may be considered abandoned, and Mark Swadkins Design may reduce any refund the customer may otherwise be entitled to hereunder to zero, and customer will have forfeited all rights to receive any refund for services purchased or as described in the original invoice. Mark Swadkins Design may issue customer credit for future services at its discretion.

## **Website hosting**

Mark Swadkins Design provides website hosting services through third-party providers. Mark Swadkins Design does not guarantee continuous service and will accept no liability for loss of service, whatever the cause, as a result of a direct hosting-related issue.

## **Domain registration**

Mark Swadkins Design cannot guarantee the availability of any domain name. Where Mark Swadkins Design is to register a domain name on behalf of a customer, it will endeavour to do so, but the customer should not assume a successful registration.

## **Search engine submission**

Any site created by Mark Swadkins Design will be designed and built with the best SEO practice in mind. However, due to the infinite number of considerations that search engines use when determining a site's ranking, Mark Swadkins Design cannot guarantee any particular placement. Acceptance by any search engine cannot be guaranteed and when a site is accepted, the time it takes to appear in search results varies from one search engine to another. Rankings will also vary as new sites are added.

## **Design credits**

The customer agrees to allow Mark Swadkins Design to place a small credit and/or a link to Mark Swadkins Design's own website on the customer's website. This will usually be in the form of a small, unobtrusive line of text placed in the footer of the website.

The customer also agrees to allow Mark Swadkins Design to feature the customer's project along with a link to the customer's site on Mark Swadkins Design's own website for the purpose of portfolio showcasing and publicity.

## **Refusal rights**

Mark Swadkins Design will not include in its designs any text, images or other data which it deems to be immoral, offensive, obscene or illegal. All advertising material must conform to all standards laid down by all relevant advertising standards authorities. Any images and/or data that Mark Swadkins Design does include in all good faith, and then finds out that it contravenes these terms and conditions, the customer is obliged to allow Mark Swadkins Design to remove the contravention without hindrance, or penalty, being held in no way responsible.

## **Cancellation**

Cancellation of orders may be made by telephone contact, or email, but following this, Mark Swadkins Design will need formal notification in writing. The customer will then be invoiced for all work completed over and above the non-refundable deposit that will have been made at the time of first ordering. The balance of monies due must be paid within 30 days.

## **Disclaimer**

Mark Swadkins Design makes no warranties of any kind, express or implied, for any and all products and/or services that it supplies. Mark Swadkins Design will not be held responsible for any and all damages resulting from products and/or services it supplies. Mark Swadkins Design is not responsible for any loss, or consequential loss of data, or non-delivery of products or services, of whatever cause. While Mark Swadkins Design takes reasonable steps to investigate the materials it recommends, it accepts no responsibility for the performance or quality of materials or any consequential loss arising from their failure. The customer agrees not to hold Mark Swadkins Design responsible for any such loss or damage. Any claim against Mark Swadkins Design shall be limited to the relevant fee(s) paid by the customer.

Mark Swadkins Design reserves the right to use the services of sub-contractors, agents and suppliers and any work, content, services and usage is bound by their terms and conditions. Mark Swadkins Design will not knowingly perform any actions to contravene these and the customer also agrees to be so bound.

## **Binding arbitration**

The parties to this contract agree that any and all disputes that cannot be settled in good faith by the parties shall be resolved through binding arbitration. It is further agreed that the cost of binding arbitration shall be shared equally by Mark Swadkins Design and the Customer. It shall be clearly understood that any disputes that may arise are confidential with no public comment permitted in any form by either party relating to the dispute. The results of any arbitration proceeding shall also be confidential with no public comment by either party permitted in any form relating to any award. The parties agree that any breach of this provision shall constitute a wilful breach of contract.

## **General**

These Terms And Conditions supersede any previous terms and conditions distributed in any form. Mark Swadkins Design reserves the right to change any rates and any of the terms and conditions at any time and without prior notice.

**Acceptance of quotation and terms and conditions**

The placement of an order for design and/or any other services offered by Mark Swadkins Design and validated by the customer's signature on the estimate or quotation form, constitutes acceptance of the estimate or quotation and agreement to comply fully with all the terms and conditions and forms a Contract for Business between the signatory and Mark Swadkins Design.

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# Thank you