

Terms and Conditions

By accessing e-motional web design services you agree and acknowledge to be bound by these Terms of Service. If you do not agree to these Terms and Conditions, please do not use our Web design services. We reserve the right to change these Terms and Conditions at any time. We recommend that you periodically check this Site for changes.

1. DEFINITION OF TERMS

The Client - the entity which enters into a contract with E-MOTIONAL WEB DESIGN

Domain Name – Your www.name.

Downtime - time when the website is not accessible via the Internet. This may be because of a technical failure of the Host or because work is being carried out on the site.

Host - the company on whose system the Website physically resides.

Link, Hyperlink - a 'clickable' link embedded on a web page, which may take the form of a graphic or text.

Search Engine - a website which contains a directory of websites on the Internet enabling users to find websites by subject matter classification.

Website - a collection of web pages and associated code, which forms an integrated presence.

The Work - the subject matter of the contract between the Client and E-MOTIONAL WEB DESIGN.

2. FEES

2.1

Fee Payable

A non-refundable deposit is due immediately upon the signing of the contract. The remaining amount agreed to verbally and stated on the invoice, shall become due when the Work is completed to the reasonable satisfaction of the Client but subject to the terms of Clause 4.3 Approval of Work and Clause 4.4 Rejected Work hereof. E-MOTIONAL WEB DESIGN reserves the right not to begin the Work until the said deposit has been paid in full.

2.2

Maintenance Fees

Maintenance, if included in the contract, shall be on an hourly basis, with a minimum of one hour payable if updating is requested. No fee will be required in if no updating is necessary.

3. DISCLAIMERS

3.1

Third Parties

E-MOTIONAL WEB DESIGN can take no responsibility for services provided by third parties through us or otherwise, including the Hosting of the Client's Website, although E-MOTIONAL WEB DESIGN WILL endeavour to ensure that Website downtime is kept to a minimum.

3.2

Maintenance and Correction of Errors

E-MOTIONAL WEB DESIGN takes no responsibility for the functionality or maintenance (unless a maintenance contract is in place) of the Website after the Work has been completed. Errors (both technical and typographical) attributable to E-MOTIONAL WEB DESIGN will be corrected free of charge, but E-MOTIONAL WEB DESIGN reserves the right to charge the hourly fee for correction of errors for which E-MOTIONAL WEB DESIGN is not responsible, including, but not limited to malicious modification of the Website by a third party and typographical errors contained in materials provided to E-MOTIONAL WEB DESIGN by the Client.

3.3

Extent of Work

Installation on the Internet is limited to the uploading of all necessary files to the Host, and testing of functionality. No registration of the Website with Search Engines will be undertaken unless otherwise agreed with the Client.

3.4

Consequential Loss

Under no circumstances will E-MOTIONAL WEB DESIGN be responsible or liable for financial or other loss or damage caused by the failure or use or misuse of its software. The Client should ensure that data on their site is regularly backed up and that a contingency plan is in place to minimize possible losses as a result of software failure.

3.5

Status and Duration of Offers

Proposals and offers are valid for a period of one month from the date issued. E-MOTIONAL WEB DESIGN IS not bound to honour offers that have expired. Offers are not legally binding until both parties have agreed an acceptable timetable for the work. This timetable must be agreed within the month that the offer is valid. If both parties have not approved an acceptable timetable within one month of the offer being made, the offer is deemed to have expired.

3.6

Search Engine Listings

E-MOTIONAL WEB DESIGN does not guarantee listings on Search Engines and the Client accepts that it is Search Engines and not E-MOTIONAL WEB DESIGN who determine whom they list and whom they will not. The Client further understands there is no guaranteed placement or rank on the Search Engines. E-MOTIONAL WEB DESIGN does not control Search Engines' algorithms and huge shifts can appear daily, weekly and even hourly.

4. COMPLETION OF WORK AND PAYMENT

4.1

Completion of Work

E-MOTIONAL WEB DESIGN warrants completing the Work in accordance with its Standard Terms and Conditions to the specifications previously agreed with the Client. E-MOTIONAL WEB DESIGN will not charge more than the amount previously agreed unless the Client has varied the specifications of the Work since the agreement. E-MOTIONAL WEB DESIGN will not undertake changes to the specifications of the Work, which would increase the cost, without prior written authorisation from the Client.

4.2

Supply of Materials

The Client is to supply all materials and information required for E-MOTIONAL WEB DESIGN to complete the Work in accordance with the agreed specification. Such materials may include, but are not limited to, photographs, written-copy, logos and other printed materials. Where the Client's failure to supply such materials leads to a delay in completion of the work, E-MOTIONAL WEB DESIGN has the right to extend previously agreed deadlines for the completion of the Work by a reasonable amount. Where the Client's failure to supply materials prevents progress on the Work for more than 21 days, E-MOTIONAL WEB DESIGN has the right to invoice the Client for any part or parts of the Work already completed.

4.3

Approval of Work

On completion of the Work, the Client will be notified and have the opportunity to review it. The Client should notify E-MOTIONAL WEB DESIGN, in writing (email), of any unsatisfactory points within 7 days of receipt of such notification. Any of the Work, which has not been reported in writing to E-MOTIONAL WEB DESIGN as unsatisfactory within the 7-day review period, will be deemed to have been approved. Once approved, or deemed approved, work cannot subsequently be rejected, and the contract will be deemed to have been completed and the balancing payment under Clause 2.1 Fee Payable will become due. The Contract will remain in effect until all obligations have been completed in terms of this Clause.

4.4

Rejected Work

If the Client rejects the Work within the 7 day review period, or will not approve subsequent Work performed by E-MOTIONAL WEB DESIGN to remedy any points reported by the Client as unsatisfactory, and E-MOTIONAL WEB DESIGN considers that the Client is unreasonable in his repeated rejection of the Work, the contract will be deemed to have expired and E-MOTIONAL WEB DESIGN can take any legal measures to recover both payment for the completed Work and reasonable expenses incurred in recovering payment.

4.5

Payment

Upon completion of 7-day review period, E-MOTIONAL WEB DESIGN will invoice the Client for the remaining balancing payment in accordance with Clause 2.1 Fee Payable hereof, which, in the absence of agreement to the contrary, is to be paid by the Client within 21 days of the date that the invoice was issued. All completed work must be paid in full before additional work commences.

4.6

Remedies for Overdue Payment

If payment has not been received by the due date, E-MOTIONAL WEB DESIGN has the right to suspend ongoing work for Client, until such time that full payment of the outstanding balance has been received. If full payment has still not been received 21 days after the due date, E-MOTIONAL WEB DESIGN has the right to replace, modify or remove the Website and revokes the Client's licence of the Work until full payment has been received. By revoking the Client's licence of the Work or removing the web site from the Internet, E-MOTIONAL WEB DESIGN does not remove the Client's obligation to pay any outstanding monies owing.

5. INTELLECTUAL PROPERTY

5.1

Offers and Proposals

Offers and proposals made by E-MOTIONAL WEB DESIGN to potential clients should be treated as trade secrets and remain the property of E-MOTIONAL WEB DESIGN. Such offers and proposals or the information contained within them must not be passed to third parties or publicly disseminated without prior written authorization from E-MOTIONAL WEB DESIGN. This includes, but is not limited to, technical features, functionality, aspects of the design and pricing information.

5.2

Warranty by Client as to Ownership of Intellectual Property Rights

The Client will obtain all the necessary permissions and authorities in respect of the use of all copy, graphic images, registered company logos, names and trademarks or any other material it supplies to E-MOTIONAL WEB DESIGN for inclusion on the Website. The Client to E-MOTIONAL WEB DESIGN shall regard the conclusion of a contract between E-MOTIONAL WEB DESIGN and the Client as a guarantee that all such permissions and

authorities have been obtained and that the inclusion of such material on the Website would not constitute a criminal offence or civil offence. By agreeing to these terms and conditions, the Client removes the legal responsibility of E-MOTIONAL WEB DESIGN and indemnifies the same from any claims or legal actions however related to the content of the Client's site.

5.3

Domain Name

Any Domain Name obtained will belong to the Client. The Client agrees to indemnify E-MOTIONAL WEB DESIGN, including any incidental costs, against any claims that a Domain Name applied for, or obtained, violates the intellectual property rights of a third party. The Client warrants that the domain name sought is not a trademark of a third party.

5.4

Licensing

Once E-MOTIONAL WEB DESIGN HAS received full payment of all outstanding invoices and the Client in accordance with Clause 4.3 has approved the Work hereof, the Client will be granted a licence to use the Website and its contents. Art work created for the Website by e-motional web design is subject of copyright and cannot be reproduced without written prior permission from e-motional web design.

5.5

Trade Secrets

Any code that is not freely accessible to third parties and not in the public domain, and to which E-MOTIONAL WEB DESIGN or their suppliers owns the copyright, may not be copied, published, distributed or passed to any third parties in any form without prior written consent from E-MOTIONAL WEB DESIGN. Unless previously agreed otherwise in writing, no modifications may be made by the Client or any third party to code to which E-MOTIONAL WEB DESIGN or their suppliers owns the copyright. E-MOTIONAL WEB DESIGN acknowledges the intellectual property rights of the Client. Information passed in written form to E-MOTIONAL WEB DESIGN, and that the Client has indicated is confidential or a trade secret, will not be published or made available in any other way to third parties without the prior written consent of the Client.

6. RIGHTS AND RESPONSIBILITIES

6.1

Right to Terminate

E-MOTIONAL WEB DESIGN reserves the right to refuse or break a contract without prior notice, if it is believed that the Client, their Website, or any material is illegal, immoral or otherwise unacceptable.

6.2

Events Beyond the Control of E-MOTIONAL WEB DESIGN

E-MOTIONAL WEB DESIGN will not be liable for breach of contract where that breach was due to software, hardware or electrical failure, natural events such as fire or other events beyond the control of E-MOTIONAL WEB DESIGN

6.3

Supply and Pricing of Services

E-MOTIONAL WEB DESIGN reserves the right to use whoever it feels appropriate at the time for third party software and services, and to alter its prices as necessary without prior notice and without affecting existing contractual pricing agreements.

7. INTERPRETATION

7.1

Jurisdiction

This Agreement shall be governed by the laws of Canada, which shall claim venue and jurisdiction for any legal action or claim arising from the contract between E-MOTIONAL WEB DESIGN and the Client. The said contract is void where prohibited by law.

7.2

Survival of Contract

Where one or more terms of the said contract are held to be void or unenforceable for whatever reason, any other terms of the contract not so held will remain valid and enforceable at law.

Standard Terms and Conditions v1 2nd January, 2008

WWW. E-MOTIONALWEBDESIGN.CA

E-MOTIONAL WEB DESIGN