

# TERMS & CONDITIONS

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## 1. DEFINITIONS

The following terms and conditions document is a legal agreement between Distill Design, division of Alpha & Monica Designs Inc. and the Client for the purposes of Website Design, Graphic Design, Email Campaign and/or Printing and/or other related services. These Terms and Conditions set forth the provisions under which the Client may use the services supplied.

Distill Design is a Multi Media Design provider offering the Client Flash, HTML5, CSS, ASP Programming, PHP Programming, CMS Systems, Adobe CS5 Design Premium and other related computer programming languages.

## 2. ACCEPTANCE OF WORK

Quotations are valid for 30 days from date of issue.

Developer/Designer will carry out work only where an invoice has been paid by the Client for 50% of the work, unless otherwise agreed at Developer's/Designer's discretion.

When the Client places an order to purchase services set out by Distill Design, the order represents an offer to Distill Design to purchase those specified services which is accepted by Distill Design only when an invoice is sent to the Client. No contract for the supply of services exists between the Client and Distill Design until Distill Design sends an invoice to the Client for payment. The invoice equals acceptance by Distill Design of Clients' offer to purchase services from Distill Design and this acceptance of work is a valid contract between Client and Distill Design regardless of whether Client receives the invoice.

Any other services on the order which have not been included in the invoice do not form part of the contract. The Client agrees to check the details of the invoice are correct and should print and keep a copy for their records.

Distill Design is liable to withdraw from contract at any time prior to acceptance.

Additional work requested by the Client which is not specified in the agreed quotation is subject to an additional quotation by Distill Design on receipt of specification. If the work is needed as part of an existing project then this may effect time scale and overall delivery time of the project. Client agrees to provide any needed information and content required by Distill Design in good time to enable Distill Design to complete the services as part of an agreed project.

## 3. PERMISSION AND COPYRIGHT

All pages, images, text and code on the Distill Design website at <http://www.distilldesign.ca/> is copyrighted material.

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Client and any visitors to the Distill Design website at <http://www.distilldesign.ca/> may not use any of the pages, images, text or code on the website for use on Client's or visitor's own website or to create a website or templates without prior written permission from Distill Design.

Copyright of the completed web designs, images, pages, code and source files created by Distill Design for the project shall be with the Client upon final payment only by prior written agreement. Without agreement, ownership of designs and all code is with Distill Design.

Client agrees that resale or distribution of the completed files is forbidden unless prior written agreement is made between the Client and Distill Design.

Client hereby agrees that all media and content made available to Distill Design for use in the project are either owned by the Client or used with full permission of the original authors. The Client agrees to hold harmless, protect and defend Distill Design from any claim or suit that may arise as a result of using the supplied media and content.

**Client agrees that Distill Design may include development credits and links within any code Distill Design fabricates, designs or amends.** If Distill Design creates a website for a Client then Client agrees that Distill Design may include a development credit and link displayed on the Clients website. If Distill Design builds or amends a website for a Client then Client agrees that Distill Design may include a development credit and link displayed on the Clients web page, which may be within the code but not displayed on a web browser if requested by Client. Client agrees that Distill Design may include development credits and links on the templates Distill Design may offer for sale on the website at <http://www.distilldesign.ca/>.

Client agrees that Distill Design reserves the right to include any work done for the Client in a portfolio of work, on any website or print material, showcasing Distill Design.

#### 4. MATERIAL

Distill Design reserves the right to refuse to handle:

- a) Any media which is unlawful or inappropriate;
- b) Any media which contains a virus or hostile program;
- c) Any media which constitutes harassment, racism, violence, obscenity, harmful intent or spamming;
- d) Any media which constitutes a criminal offence, infringes privacy or copyright.

#### 5. DOMAIN NAMES AND HOSTING

For website or other online url design work; when Client purchases Web Hosting and Domain Name with a third party, the Client is responsible for ensuring they have due title to the domain name. The Developer holds no liability and the Client hereby agrees to indemnify and hold harmless the Developer from any claim resulting from the Client's registration of a domain name.

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The Client should be aware that when Domain Name and Hosting is registered with a third party, the Client shall agree to fully abide by the terms and conditions set out by the third party for such services. Client agrees to take all legal responsibility for use of third party domain name and hosting services and supplies truthful details to the third party services.

Client agrees to be liable for their use of the domain name, hosting and email services with the third party and hereby agrees to indemnify and hold harmless the Developer/Designer from any claim resulting from the Client's publication of material and use of the domain name, hosting and email services.

Any support relating to the Domain Name, Hosting and Email services are to be made between the Client and the third party service.

Any other Domain Name and Hosting services or costs provided by the third party including, but not limited to, further domain name registration fees, domain name transfer charges, yearly domain name renewals, hosting charges, yearly hosting renewals, hosting upgrade, extra disk space, bandwidth and any other related or hidden charges are to be paid by the Client to the third party services.

The Client agrees to pay the domain and hosting fees as soon as required by the third party. Any modifications needed to the domain name or hosting services are to be made between the Client and third party service.

The Client agrees that if at any time their contact details including email address change, it is their responsibility to contact the third party and update their contact details. Failure to do so may mean that renewal invoices for the domain and hosting services are not received by the Client.

The Client is liable to pay Distill Design for any Domain Name and Hosting registrations and the initial set up of the Domain Name & Hosting if included as part of the website build.

If Domain Name and Hosting is purchased with Distill Design any support relating to the Domain Name, Hosting and Email services are to be made between the Client and Distill Design until these accounts are handed over to the Client for takeover.

Payment for Domain and Hosting services are to be made immediately on receipt of invoice from Distill Design. Failure to comply with the payment terms may result in the Client's Domain Name becoming available to another party and/or the website and email services becoming unavailable.

Client agrees to pass on FTP details and any other access details relating to their Domain Name and Hosting account which Distill Design requires to upload the Website if required as part of a project. Distill Design reserves the right without notice to cancel, reject or refuse work with Domain Names or Hosting services without reason for such rejection or refusal.

Client agrees to take full responsibility for all usage of the Domain Name, Hosting and email services and to fully abide by the Terms and Conditions set out by Distill Design for such services.

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### 6. WEBSITE DESIGN

For website design set out by Distill Design, Distill Design will design a layout of the site based on specifications made by the Client via e-mail, phone, Skype or other and as agreed by Distill Design.

Client must provide all text and graphics in digital format (ie. e-mail, PDF, Word, CD, DVD or other related digital format agreed upon by both Distill Design and Client) prior to design of the composition, and any final text and graphics must be provided at time of approval of composition. If not provided by client, additional costs will apply, with a minimum charge of \$115. If not provided by Client, generic stock images can be used by Distill Design. If Client has a logo, they can provide it to Distill Design for use in the design layout, or Distill Design will create a simple website logo for an additional cost.

Distill Design will make available to the Client a password protected version of the design layout for approval.

It is important that Client communicates information to Distill Design to achieve the required result. Client agrees that they are permitted up to 3 hours of alterations to the layout. All alterations are to be requested in writing either by email or postal mail by the Client. After the 3 hours of alterations have been completed, Distill Design reserves the right to advise the Client of such and send a separate quotation to the Client and to request payment for any further alterations. Distill Design reserves the right to request payment be received for further alterations before continuing work. Upon completion of agreed design the Client is asked to confirm in writing by email or postal mail that the design is signed off as complete and agree that any further design alterations are chargeable.

Distill Design reserves the right to charge an additional cost for typing out hard copy or scanning content or photographs for image creation. Once the site is built, Client agrees that they are permitted up to 3 hours of alterations to images and text content. All alterations are to be requested in writing either by email or postal mail by the Client. After the 3 hours of alterations have been completed, Distill Design reserves the right to advise the Client of such and send a separate quotation to the Client and to request payment for any further alterations. Distill Design reserves the right to request payment to be received for further alterations before continuing work.

### 7. PROJECTS

Client agrees that an HTML page or other program language built from a graphic design may not exactly match the original design because of the difference between the display in design software and the rendering of HTML code by internet browser software. Developer/Designer agrees to try and match the design as closely as is possible when building the code.

During a website project it is important that Client communicates information to the Developer/Designer to achieve the required result.

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Client agrees that for graphic design work they are permitted up to 3 hours of alterations and for coding work they are permitted up to 3 hours of alterations. All alterations are to be requested in writing either by email or postal mail by the Client. After the 3 hours of alterations have been completed either in graphic design or coding, Developer/Designer reserves the right to advise the Client of such and send a separate quotation to the Client and to request payment for any further alterations. Developer/Designer reserves the right to request payment to be received for further alterations before continuing work. Upon completion of agreed design the Client is asked to confirm in writing by email or postal mail that the design is signed off as complete and agree that any further design alterations are chargeable.

If the Client requests design or content alterations to pages that have already been completed, new pages or different functionality other than that specified in the original quotation, Developer/Designer reserves the right to quote separately for these alterations. Examples of alterations include, but are not limited to:

Altering the design layout template which surrounds the centre content to the top, left, right and bottom of the page

Altering the logo

Altering layers, tables, data, graphics, images and text

Addition of a new table or layer to redesign the whole or part of a page

Altering colours and font styles

Changing the widths and heights of objects on the page

Altering the design and structure of navigational menus, links, buttons

Altering or adding new functionality to the page, navigation, FLASH, etc.

For site builds, the navigation will be hard coded as per the design. However if the navigation requires Javascript, drop down layers or other functionality which require further coding work this may be quoted for separately.

If optimised pages are included as part of the project, Developer/Designer will optimise the Client's web pages which already make up part of the project; optimised pages is not creation of new pages. The optimisation of the web pages can include the meta tags, keywords, description, title, alt tags and text provided by the Client.

If the Client does not provide keyword information needed by Developer/Designer, then Developer/Designer will include it to it's best judgement.

Developer/Designer endeavours to create pages that can be crawled by search engine spiders. However, Developer/Designer gives no guarantee that the site will become listed with search engines. This is often achieved through various methods such as page layout, content and cross linking with other websites, or the use of third party companies sought out by the Client. The Client may wish to enquire about specialist web marketing.

If an error or issue with the design or code arises during the project which does not allow the design or code to match the original specification, then Client agrees that Developer/Designer can apply a nearest available alternative solution.

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Developer/Designer at all times applies reasonable skill and care in provision of services.

On request, the Developer/Designer can create a copy of the website on one CD to be posted to the Client on project completion; a charge will be billed to Client to cover the cost of this.

Once the project is completed, and invoice is paid, Developer/Designer will upload the website to the Client's live web address if included as part of a project.

After site completion, a Client or a third party of their choosing may wish to edit their website code themselves to make updates. However, the Client agrees that in doing so, they assume full responsibility for any issues which occur as a result of changing the code themselves. If Client or a third party of their choosing edits the website code and this results in functionality errors or the page displaying incorrectly, then Developer/Designer reserves the right to quote for work to repair the website.

Developer/Designer reserves the right to assign subcontractors in whole or as part of a project if needed. Developer/Designer will keep a copy of the site and design source files when a website project is being worked on. However, the Client agrees that it is their responsibility to have regular backups made by themselves or the third party hosting services in case of a software or hardware failure at the third party hosting servers.

All communications between Developer/Designer and Client shall be by telephone, email, Skype or postal mail, except where agreed at Developer's/Designer's discretion.

### 8. ACCESSIBILITY & WEB STANDARDS

Developer/Designer shall make every effort to ensure sites are designed to be viewed by the majority of visitors. Sites are designed to work with the main browsers Internet Explorer and Mozilla Firefox latest releases. New layouts are tested with older browsers to ensure as much compatibility as possible. Client agrees that Developer/Designer cannot guarantee correct functionality with all browser software across different operating systems.

Client agrees that after handover of files any updated software versions of the main browsers Internet Explorer and Mozilla Firefox, or other, domain name setup changes or hosting setup changes thereafter may affect the functionality and display of their website. As such, Developer reserves the right to quote for any work involved in changing the website design or website code for it to work with updated browser software, domain name or hosting changes.

Client agrees that more advanced applications on a website page may require a newer browser version or Plugin.

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### 9. PAYMENT TERMS

Prices are subject to change without notice.

For any work, Developer/Designer requires a payment to be received in advance for the work being carried out and before hand over of files, except where agreed at Developer's/Designer's own discretion.

The Client chooses either to pay the full cost in one payment once the composition is approved by client, or split the cost into 2 payments to be agreed with the Developer/Designer. Should the cost be split into 2 payments then the first half of the payment is to be received before work commences and the second payment to be received when requested by Developer/Designer at the end of the project before hand over and/or upload of final work. Once the final payment has been received and the work finished, the files will be handed over to the Client or uploaded if included as part of a project.

Once an invoice is sent to the Client it must be paid either by cheque made payable to 'Distill Design' or paid online via PayPal secure online payment on our website using a major credit card or PayPal account, or via bank email transfer to 'distillme@distilldesign.ca'.

All invoices must be paid in full within 7 days of the invoice date, except where agreed at Developer's/Designer's own discretion. There will be a 3% late charge of the total amount per each month late. If payment is not made by 60 days of the invoice date, invoice will go to collections. Developer/Designer reserves the right to decline further work on a project if there are invoices outstanding with the Client.

Client may request that the Developer/Designer cancel a project in writing by email or postal mail to Developer and the project is cancelled only if Developer/Designer confirms work has not been started on the project. If Developer/Designer has begun or completed the work and the Client no longer requires the files but have agreed to the work, they are still obliged to pay Developer/Designer for the work that has been carried out.

All invoices are submitted by email except where required otherwise by regulations or agreed at Developer's/Designer's discretion.

Developer/Designer reserves the right to remove it's work for Client from the Internet if payments are not received.

Rush charge of \$250.00 applies to all Website work required by Client prior to lead times set out and described by Distill Design via estimate provided via email or other.

### 10. LIABILITY AND WARRANTY DISCLAIMER

Developer/Designer provides their website and the contents thereof on an "as is" basis and makes no warranties with regard to the site and it's contents, or fitness of services offered for a particular purpose. Developer/Designer cannot guarantee the functionality or operations of their website or that it will be uninterrupted

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ed or error free, nor does it warrant that the contents are current, accurate or complete.

Developer/Designer endeavors to provide a website within given delivery time scales to the best of it's ability. However, the Client agrees that Developer/Designer is not liable for any claims, losses, costs incurred or compensation due to any failure to carry out services within a given delivery time scale. The Client agrees Developer/Designer is not liable for absence of service as a result of illness or holiday time. Developer/Designer has a third party associate who may be able to take on work should there be the need to.

The Client agrees Developer/Designer is not liable for any failure to carry out services for reasons beyond it's control including but not limited to acts of God, telecommunication problems, software failure, hardware failure, third party interference, Government, emergency on major scale or any social disturbance of extreme nature such as industrial strike, riot, terrorism and war or any act or omission of any third party services. Developer/Designer is not liable for any consequences or financial losses such as, but not limited to, loss of business, profit, revenue, contract, data or potential savings, relating to services provided.

On hand over of files from Developer/Designer to Client, the Client shall assume entire responsibility in ensuring that all files are functioning correctly before use. Whilst every effort is made to make sure files are error free, Developer/Designer cannot guarantee that the display or functionality of the web design or the website will be uninterrupted or error free. If after hand over of files errors are found in code the Developer/Designer has created and the main browsers Internet Explorer and Mozilla Firefox, domain name setup and hosting setup are the same as when work began, then Developer/Designer can correct these errors for the Client free of charge. If after hand over of files errors are found in code the Developer/Designer has created and the main browsers Internet Explorer and Mozilla Firefox have released an updated software version, or the domain name setup or hosting setup has been changed, Developer/Designer can correct errors for the Client free of charge and reserves the right to quote separately for any additional work needed as a result of changes to the browser software, domain name setup or hosting setup.

Should Client go into compulsory or involuntary liquidation or cannot pay its debts in the normal course of business, Developer/Designer reserves the right to cancel forthwith any projects and invoice Client for any work completed.

Developer/Designer shall have no liability to the Client or any third parties for any damages, including but not limited to, claims, losses, lost profits, lost savings, or other incidental, consequential, or special damages arising out of the operation of or inability to operate these web pages or web site, even if Developer/Designer has been advised of the possibility of such damages.

There are sometimes laws and taxes which affect Internet ecommerce. Client agrees that it is their responsibility to comply with such laws and will hold harmless, protect, and defend Developer/Designer and its subcontractors from any claim, suit, penalty, tax, or tariff arising from the Client's exercise of Internet ecommerce.

Developer/Designer may from time to time recommend to the Client that updates are needed to their site to comply with, including but not limited to, new legislations, software releases and web standards. Developer/Designer reserves the right to quote for any updates as separate work.

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Client agrees Developer/Designer is not liable for any failure to inform or implement these updates to their site. Client agrees that it shall defend, indemnify, save and hold Developer/Designer harmless from any and all demands, liabilities, costs, losses and claims arising from omission to inform or implement these updates.

### 11. INDEMNIFICATION

Client agrees to use all Developer/Designer services and facilities at their own risk and agree to defend, indemnify, save and hold Developer/Designer harmless from any and all demands, liabilities, costs, losses and claims including but not limited to attorney's fees against Developer/Designer or it's associates that may arise directly or indirectly from any service provided or agreed to be provided or any product or service sold by the Client or its third parties. Client agrees this indemnification extends to all aspects of the project, including but not limited to web site content and choice of domain name.

Client also agrees to defend, indemnify and hold harmless Developer/Designer against any liabilities arising out of injury to person or property caused by any service provided or agreed to be provided or any product or service sold by the Client or third parties, including but not limited to, infringement of copyright, infringement of proprietary rights, misinformation, delivery of defective products or services which is harmful to any person, business, company or organization.

### 12. NONDISCLOSURE

Developer/Designer and any third party associates agrees that, except if directed by the Client, it will not at any time during or after the term of this agreement disclose any confidential information. Likewise, the Client agrees that it will not convey any confidential information about Developer/Designer to another party.

### 13. PRIVACY POLICY

Developer/Designer and any third party associates shall use information provided by the Client in relation to this agreement in accordance with the Data Protection Act Canada 1980 and also for the following purposes 1) to identify the Client in communications with them 2) to contact the Client from time to time to offer them services or products or news from Distill Design which may be of interest to or benefit the Client.

Distill Design will not share any confidential information of the Client with third party companies, such as passwords and other login info, unless otherwise specified or requested by the Client and agreed upon by Client and Developer/Designer.

### 14. INTERPRETATION

Developer/Designer reserves the right to terminate a project with a Client at any time without prior notification if it finds the Client in breach of these terms and conditions. Developer/Designer shall be the sole arbiter

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in deciding what constitutes a breach. No refunds are given in such a situation.

This agreement shall be governed by the laws of Ontario which shall claim venue and jurisdiction for any legal motion or claim arising from this agreement. This agreement is void where prohibited by law.

Where one or more terms of this 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.

Any and all matters pursuant to this agreement are governed by Ontario Law and are under exclusive jurisdiction of the Ontario Courts.

Developer/Designer reserves the right to alter these Terms and Conditions at any time without prior notice.

### **Check periodically for latest Terms & Conditions.**

By accepting a quotation or making a payment of invoice to use the services supplied, the Client acknowledges to have read, understand, and accept the Terms and Conditions of this Agreement, and agrees to be legally binded by these Terms and Conditions

Updated 06/12/13.