

# **Ellis Mayes and Partners - (also trading as iKLIK)**

## **Terms & Conditions of Business (26th February 2016)**

In these conditions, unless the context requires otherwise: "Buyer" means the company, firm, body or person purchasing the Services from Ellis Mayes and Partners. "Contract" means a contract, subject to these conditions, for the provision of the Services between Ellis Mayes and Partners and the Buyer. "Ellis Mayes and Partners" means Ellis Mayes and Partners whose registered office is at 5A Chapel Lane, Bingley, West Yorkshire, BD16 2NG. "Order" means a purchase order in respect of the Services completed or agreed by the Buyer and submitted to Ellis Mayes and Partners, together with all documents referred to in it. "Quotation" is an agreed piece of work (incorporating these conditions) provided by Ellis Mayes and Partners to the Buyer in respect of the services. No contract will come into existence until Ellis Mayes and Partners written acceptance or order form has been completed and signed on behalf of the Buyer and the order acknowledgement has been signed on behalf of Ellis Mayes and Partners or by written acceptance via email from one of the partners. "Services" means the subject matter of each Contract between the Buyer and Ellis Mayes and Partners, being the work and/or services or any of them to be performed by Ellis Mayes and Partners for the Buyer pursuant to the Order. "Standard Form" means Ellis Mayes and Partners standard form of Order.

### **1. GENERAL**

1.1 A Quotation shall not be binding Ellis Mayes and Partners and a Contract will only come into being upon acceptance by Ellis Mayes and Partners of the Order by signing or counter signing the date of the order or by written acceptance via email from one of the partners.

1.2 The Contract will be subject to these conditions. All terms and conditions appearing or referred to in the Order or otherwise stipulated by the Buyer shall have no effect, unless such Order is in the Standard Form. Any variation to the Contract must be confirmed in writing by Ellis Mayes and Partners.

1.3 Quotations submitted by Ellis Mayes and Partners shall remain open for acceptance by the Buyer for a period of 7 (seven) days from the date of the Quotation (unless in the Quotation some other period is specified) or when Ellis Mayes and Partners withdraws the Quotation.

1.4 These conditions shall, to the extent applicable, apply to goods and products in the same way as they apply to Services.

1.5 The minimum length of any ongoing website services purchased will be 12 months (unless otherwise stated in writing from Ellis Mayes and Partners).

1.6 Any item given as a "free gift" or "gift with purchase" shall have no cash value alternative.

1.7 Any guarantee on "free gift" or "gift with purchase" shall be subject to the manufacturer's terms and conditions of use.

### **2. PRICES**

2.1 Where the Services are sold by reference to Ellis Mayes and Partners published price list or tariff structure, the price payable for the Services shall be the ruling price as published in the price list or tariff structure current at the date of purchase. Any price agreed and signed for on a purchase order will override any published price or quotation.

2.2 In other cases, the price for the Services shall, subject to clause 1.3 be agreed at the time of purchase and be signed for on the appropriate purchase order.

2.3 Ellis Mayes and Partners shall (if applicable) add to the price of the Services, and the Buyer shall pay, an amount equal to any VAT or other sales tax or duty applicable from time to time to sales or supply of such Services.

2.4 Any price changes will take effect from the 1st day of the month and the customer will be notified in writing (by email or post) 7 (seven) days before any price change takes effect.

### **3. TERMS OF PAYMENT**

3.1 Subject to clause 3.2 the Buyer shall, at the time of submission of an Order to Ellis Mayes and Partners, pay to Ellis Mayes and Partners a non-refundable deposit for the Services specified on the order of 50% of the value shown on the order (or any other amount agreed and written on the purchase order).

3.2 In respect of domain registration full payment is required with order.

3.25 In respect of web hosting, either full payment for 12 months is payable at the commencement of the hosting period or monthly payments shall commence no later than 60 days from the date of the original order (web hosting is payable even if we have not assigned a permanent domain to your website).

3.3 Ellis Mayes and Partners shall invoice the Buyer for all Services (less any Deposit) immediately on completion of the Website and prior to publication on the web.

3.4 Unless otherwise agreed in writing by Ellis Mayes and Partners and without prejudice to clauses 3.1 and 3.7, invoices shall be payable by the Buyer immediately upon completion of the relevant Website to which the invoice relates.

3.5 The Buyer shall make all payments due to Ellis Mayes and Partners by cheque, cash, by bankers draft, or by telegraphic or electronic transfer direct to the company bank account or by arranged standing order (and in each case in pounds sterling).

3.6 If the Buyer fails to pay any amount due Ellis Mayes and Partners under this Agreement on the relevant due date, default interest at the rate specified by the Late Payment of Commercial Debts (Interest) Act 1998 shall be added to such amount for the period from the day after the due date until the date of receipt (whether before or after judgment) together with any reasonable and proper amounts incurred by Ellis Mayes and Partners in seeking to recover such late payment from the Buyer (including, without limitation, legal fees).

3.7 If your website is not complete after a period of 28 days from the date of any purchase order, the full remaining balance will become payable (unless otherwise stated on the purchase order).

3.8 Ellis Mayes and Partners reserve the right to add a "late payment charge" of £40.00 to any outstanding invoice if not settled in full within 14 days of the original invoice date.

3.9 Unless otherwise stated on the original order form, by opting to pay by monthly standing order you are agreeing to enter into a 12 month contract. Should you decide to cancel this contract during the first 12 months, the full remaining balance will become payable immediately. After the first 12 months you will then enter a 3 month rolling contract which is cancellable at any time by giving Ellis Mayes and Partners 3 months notice in writing or by confirmed email.

3.95 If a payment is received into the Ellis Mayes and Partners bank account it will be assumed that the client wishes to purchase services and the work will commence. No refund will be given against payment received once work has commenced.

## **4. WEBSITE DESIGN**

4.1 The client unconditionally guarantees that any element of text, graphics photographs or other artwork furnished to Ellis Mayes and Partners for inclusion in the web design project are owned by the client, or that the client has permission from the rightful owner to use each of these elements, and will hold harmless, protect and defend Ellis Mayes and Partners and its subcontractors from any claim or suit arising from the use of such elements furnished by the client.

4.2 All creation files remain the intellectual property of Ellis Mayes and Partners on completion of a web design project.

4.3 Ellis Mayes and Partners shall be free to reproduce, use, disclose, display, exhibit, transmit, perform, create derivatives works, and distribute any item from the client's web pages unless specifically agreed to do otherwise. Further, Ellis Mayes and Partners shall be free to use any ideas, concepts, know how or techniques acquired in the construction of Websites for any purpose whatsoever including but not limited to developing, manufacturing and marketing products and any other items incorporating such information unless specifically agreed otherwise.

4.4 All websites designed by Ellis Mayes and Partners are built on an online platform and as such cannot be transferred or hosted elsewhere. In the event of you wishing to cancel your services with Ellis Mayes and Partners, you can either create your own account with the online platform providers we have used for your website (and pay any fee's associated with this) or your website will be removed from the servers – no other options are available.

## **5. SEARCH ENGINE OPTIMISATION**

5.1 Whilst Ellis Mayes and Partners will try to improve the position of your website in Search Engine results in response to a search request, we do not warrant that this effort is in any way guaranteed.

5.2 Ellis Mayes and Partners cannot be held responsible for any changes to the position of your Website in the Search Engine results in response to a search.

5.3 If, whilst under contract with Ellis Mayes and Partners you have anyone else optimising your site (either on-page or off-page) this may affect your search engine position. Ellis Mayes and Partners will not accept any responsibility for this and will enforce full payment of the remaining contract.

5.4 Ellis Mayes and Partners cannot physically check your Website position on a daily basis, and therefore require you to inform us should your position dramatically change for your chosen search term(s).

5.5 Where Ellis Mayes and Partners have accepted a single payment for SEO (and no ongoing monthly payment is agreed), we will not guarantee any improvement in response to a search for any of your chosen search terms.

5.6 If deemed necessary by Ellis Mayes and Partners you may be asked to make changes to your website. If your website has been built and is hosted by Ellis Mayes and Partners, these changes will be made by us. If however, your website has been built or is hosted by another company, it is your responsibility to arrange any changes Ellis Mayes and Partners may request and cover any costs associated with these changes.

5.7 If Ellis Mayes and Partners have requested changes to be made to your website and for whatever reason the requested changes have not been made, Ellis Mayes and Partners will not issue a refund should your website not achieve improved listing positions for your chosen search terms.

5.8 Ellis Mayes and Partners will not guarantee a page 1 listing on any search engine for any search terms unless said guarantee forms part of a money back promotion, in which case said guarantee must be written on the purchase order at the time of signing.

5.9 If part of a money back promotion, and subject to clause 5.6 and 5.7 Ellis Mayes and Partners will guarantee to achieve a page 1 listing for at least one of the search terms purchased for a minimum of 24 hours within the

first 12 calendar months of any contract. If we fail to achieve this, we will refund 50% of all monthly payments received under said contract.

5.95 Any guarantee of page 1 results will only apply to contracts of at least 12 months.

## **6. WEBSITE SERVICES**

6.1 Ellis Mayes and Partners are registered Reseller Partners for domain name registration, website hosting and mailboxes through Heart Internet. The registration of a domain name, hosting of a website or registering of mailboxes on behalf of the client is subject to the terms and conditions of these businesses on their individual websites.

6.2 Ellis Mayes and Partners will accept no liability for any financial loss resulting from a domain not being renewed.

6.3 Ellis Mayes and Partners shall have no liability arising from any financial loss arising from any registered mailbox not being available.

6.4 A charge of twenty-five pounds (£25) will be charged for any domain transfer. A domain will only be transferred once this has been paid as well as any other outstanding balance owed to Ellis Mayes and Partners.

## **7. E COMMERCE WEB SERVICES**

7.1 Ellis Mayes and Partners supply E Commerce Services via Heart Internet, Freewebstore and Moonfruit, the client is subject to the terms and conditions of these businesses on their individual websites.

7.2 Ellis Mayes and Partners will accept no liability for any financial loss resulting from the use of any E Commerce website.

7.3 Ellis Mayes and Partners reserve the right to use any services from third party sources including those listed (7.1) if deemed to be necessary.

## **8. WARRANTY AND LIMIT OF RESPONSIBILITY**

8.1 Ellis Mayes and Partners acknowledge and agree that it shall perform the Services with reasonable skill and care and in accordance with good industry practice.

8.2 The Buyer acknowledges and agrees that Ellis Mayes and Partners shall have no liability to the Buyer in respect of the positioning of the Buyer's Website.

8.3 The Buyer's remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the Services or Website or any workmanship in relation to them (whether or not involving negligence on the part of Ellis Mayes and Partners) shall, in all cases, be limited to re-performance of the Services or refund of the relevant purchase price.

8.4 Ellis Mayes and Partners shall not in any circumstances be liable to the Buyer for any indirect or consequential losses or any loss of profits purported to have been suffered by the Buyer.

8.5 Ellis Mayes and Partners shall not be liable for any failure in the performance of any of its obligations under the agreement caused by factors outside its control.

## **9. DELIVERY AND COMPLETION DATES**

9.1 Ellis Mayes and Partners undertakes to use its reasonable endeavours to provide completed web design services to the Buyer within 28 days of the date on which Ellis Mayes and Partners receives a signed order from the Buyer.

9.2 The dates for carrying out the Services and delivery of any resultant Website are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery or performance.

9.3 Ellis Mayes and Partners will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform save where the same is as a result of the negligence of Ellis Mayes and Partners.

9.4 No delay (unless material) shall entitle the Buyer to reject any delivery or performance or any other Order from the Buyer or to repudiate the Contract or the Order.

## **10. RESPONSIBILITY FOR APPROVING WEBSITE**

10.1 The Buyer acknowledges and agrees that Ellis Mayes and Partners shall produce the Website based on information provided to it by the Buyer.

10.2 Notwithstanding clause 8.1, it shall be the responsibility of the Buyer (and not Ellis Mayes and Partners) to review and approve the content of the Website (including, without limitation, the spelling of names and addresses and the accuracy of telephone numbers) at the time of the completion of such Website by Ellis Mayes and Partners to the Buyer for approval by the Buyer.

10.3 Ellis Mayes and Partners shall have no liability to the Buyer for any inaccuracies in the Website if and to the extent that the Buyer has failed to review and/or approve (or require amendment (as the case may be)) provided to the Buyer by Ellis Mayes and Partners pursuant to this Agreement.

## **11. TERMINATION**

11.1 Ellis Mayes and Partners may terminate the Contract immediately in the event that the Buyer is in breach of its obligations under the Contract and/or the Buyer suffers any event of insolvency or is/becomes unable to pay its debts as they fall due.

11.2 Ellis Mayes and Partners may at its discretion suspend or terminate the supply of any goods and services if the buyer fails to make any payment when due or otherwise defaults in any of its obligations under the contract or any other agreement with Ellis Mayes and Partners or becomes insolvent, has an administrative receiver appointed of its business or is compulsorily or voluntarily wound up or Ellis Mayes and Partners bona fide believes that any of those events may occur and in any case of termination may forfeit any monies paid.

11.3 Ellis Mayes and Partners may by written notice terminate the Agreement immediately and without liability for compensation or damages except as mentioned in this agreement if the Buyer fails to make payment as specified above.

11.4 Ellis Mayes and Partners may by written notice terminate the Agreement immediately and without liability for compensation or damages except as mentioned in this agreement if it is deemed no longer financially viable to continue.

11.5 Any contract cancelled by the customer during the first twelve (12) months will incur a penalty charge equal to the remaining contract balance or one hundred & fifty pounds (£150.00), whichever is the greater.

## **12. THIRD PARTY CLAIMS**

The Buyer shall indemnify Ellis Mayes and Partners and keep Ellis Mayes and Partners indemnified from and against any and all actions, costs (including, without limitation, the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement or alleged infringement by a third party of any patent, registered design, unregistered design, design right, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by Ellis Mayes and Partners with the Buyer's instructions, whether express or implied.

## **13. ASSIGNMENT AND SUBCONTRACTING**

13.1 None of the rights or obligations of the Buyer under the Contract may be assigned or transferred in whole or in part without the prior written consent of Ellis Mayes and Partners.

13.2 The Website shall be for the sole use of the Buyer and shall not be capable of assignment to a third party by the Buyer.

13.3 Ellis Mayes and Partners shall be entitled to sub-contract any work relating to the Contract without obtaining the consent of, or giving notice to, the Buyer.

## **14. NOTICES**

14.1 Any notice or other communication to be given under these conditions must be in writing and may be delivered or sent by first class letter post.

14.2 Any notice or document shall be deemed served: if delivered, at the time of delivery; if posted, 48 hours after posting.

## **15. INVALIDITY**

The invalidity, illegality or unenforceability of any provision of these conditions should not affect the other conditions.

## **16. THIRD PARTY RIGHTS**

A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **17. SUBJECT TO CHANGE**

Please read these terms and conditions carefully. By signing a purchase order you agree to be bound by the terms and conditions contained in this document. These terms and conditions are subject to change without notice, from time to time at our sole discretion. We will notify you of amendments to these terms and conditions

by posting them to this website. If you do not agree with these terms and conditions, please do not sign the purchase order.

## **18. LAW AND JURISDICTION**

The Contract shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.