



# THE DIGITAL VINEYARD

## General Terms and Conditions

### 1. Indemnity

The Client hereby expressly indemnifies and holds The Digital Vineyard herein after called TDV, its officials, its business associations and its business partners of whatsoever nature, harmless from any loss, liability or expense the Client may incur or suffers, of whatsoever nature and howsoever arising, pursuant to the introductory and/or negotiation and/or facilitation services TDV may provide to the Client in the Client's desire to procure certain, or alternatively, specific corporate resources from sources known or associated to TDV.

### 2. Termination

The Client hereby acknowledges and agrees that TDV may terminate its services or involvement with the Client, at any stage or at any time during the introductory and/or negotiation and/or facilitation process, by giving the Client written notice thereof, without TDV having to provide the Client with any specific explanation or reason, or without TDV having any legal or financial obligation or liability towards the Client of whatsoever nature, under the following conditions:

- Any breach in this contract
- Outstanding payments

### 3. Website Development and Design Quotations

The Client warrants and agrees that TDV has made the Client aware and that the Client has been informed of the following fundamental facts and conditions, which the Client fully understands:

Some items in a quotation document may be dependant on other. Therefore if the Client decides to exclude some items, TDV reserves the right to update the cost of other items, provided TDV has notified the Client before the quoted development commence.

Since there is no unit to measure the quality of a website or design, it is extremely difficult to give any quotation based on quality. Therefore unless clearly specified (for example via benchmarks or ratings), all quotations with respect to quality are only estimations. For example: A quotation for a 5-page website does not have offer unlimited graphical improvement until satisfaction. In general these estimations are based on acceptable professional designs. TDV reserves the right to charge extra for any repeated quality improvements.

In general, unless explicitly specified, work cannot be assumed to be included in any quotation. The following are typical examples:

The Client is expected to supply all content (text information) for your website or design. Unless specified, writing of website or design content (for example articles) or any professional text editing is not included in any quotations.

Taking of photos is not included in quotations, unless specified.

Training is not included by default.

TDV may suggest the best and most efficient process to follow with web development. Although the Client may choose to do it on the Client's own terms, TDV reserve the right to charge extra for such procedure.

## **4. Confidentiality and Proprietary Rights**

As used herein, "Confidential Information" shall mean any and all technical or business information, including third party information, furnished in connection with this Agreement, in whatever tangible form or medium, or disclosed by Client to TDV(including, but not limited to, product/service specifications, prototypes, computer files and programs, models, drawings, marketing plans, financial data and personnel statistics).

Notwithstanding the termination, expiration or cancellation of this Agreement, TDV agrees to treat such Confidential Information as confidential for a period of three years from the date of receipt of same unless otherwise agreed to in writing by Client, and that during such period TDV shall use same solely for the purposes of this Agreement unless otherwise allowed herein or by written permission of Client. In handling the Confidential Information, TDV agrees: (1) not to copy such Confidential Information unless specifically authorized; (2) not to make disclosure of any such Confidential Information to anyone except employees and independent contractors and subcontractors to whom disclosure is necessary for the purposes set forth above; and (3) to appropriately notify such employees and independent contractors and subcontractors that the disclosure is made in confidence and shall be kept in confidence in accordance with this Agreement. The obligations set forth herein shall be satisfied by TDV through the exercise of at least the same degree of care used to restrict disclosure and use of its own information of like importance but not less than a reasonable degree of care. Notwithstanding any other provisions of this Article, Confidential Information may be disclosed as may be required by law, regulation or court or agency order or demand, after prompt prior notification to the Client of such required disclosure.

TDV agrees that in the event permission is granted by Client to copy Confidential Information, or that copying is otherwise permitted hereunder, each such copy shall contain and state the same confidential or proprietary notices or legends, if any, which appear on the original. Nothing herein shall be construed as granting to either party any right or license under any copyrights, inventions, or patents now or hereafter owned or controlled by the other party. Upon termination, cancellation or expiration of this Agreement for any reason or upon request of the disclosing party, all Confidential Information, together with any copies of same as may be authorized herein, shall be returned to the Client.

The obligations imposed in this Article shall not apply to any information that: (1) is already in the possession of or is independently developed by the receiving party; or (2) is or becomes publicly available through no fault of the receiving party; or (3) is obtained by the receiving party from a third person without breach by such third person of an obligation of confidence with respect to the Confidential Information disclosed; or (4) is required to be disclosed pursuant to the lawful order of a government agency or disclosure is required by operation of the law.

The requirements of use and confidentiality set forth herein shall survive the expiration, termination or cancellation of this Agreement.

## **5. Warranty**

Disclaimers: Client represents and warrants to TDV that Client has the power and authority to enter into and perform its obligations under this Agreement

- (i) TDV shall perform all Services in a good and workmanlike manner in accordance with industry standards.
- (ii) TDV hereby warrants that the provision of the Services shall meet the requirements and perform the operations and functions in accordance with and as set forth in the relevant Task Order or Change Order.
- (iii) TDV makes no representations or warranties, express or implied, with respect to the Product described herein, including without limitation, any representations or warranties concerning the design, use or performance of any such Product or any implied warranty of merchantability or fitness for a particular purpose.

(iv) Products are sold "as is" and the Client assumes the entire risk as to their quality, performance or suitability. In no event will TDV be liable to Client under any Order for direct, indirect, special, incidental or consequential damages (such as loss of profits) resulting from any defect in the Services or the Products, their documentation or their installation, even if advised of the possibility of such damage. In particular, TDV does not warrant that the operation or use of the Product will be error free and uninterrupted.

## **6. Limitation of Liability and Disclaimers**

(a) Security: Client is solely responsible for the security, confidentiality and integrity of all messages and the content received, transmitted through or stored on any email/web hosting or server hosting service (the "Hosting Service"). Client is solely responsible for any authorized or unauthorized access to Client's accounts by any person. Client agrees to bear all responsibility for the confidentiality of any passwords and all use or charges incurred from use of the Hosting Service with Client's password.

(b) Privacy: It is the policy of TDV to respect Client's privacy. TDV will not monitor, edit, or disclose any personal information about Client's accounts, including hosted content, without Client's prior consent, unless TDV has a good faith belief that such action is necessary to: (i) comply with legal process or other legal requirements of any relevant authority; (ii) protect and defend the rights or property of TDV; (iii) enforce the terms of a Task Order, this Agreement or these Terms and Conditions; or (iv) protect the interests of users of TDV other than Client or any other person. Client acknowledges and agrees that Client's IP address is transmitted and recorded with each message sent from the Hosting Service.

## **7. Invoicing and Payment**

TDV shall invoice the Client on the basis set forth in the relevant Task Order or Change Order. Unless otherwise indicated on the invoice or in the Task Order, invoices shall be payable upon receipt.

In the event of a default with respect to the payment of an invoice or any part thereof, Client shall be liable for all of TDV's reasonable costs, disbursements and fees, including but not limited to attorneys' fees, incurred in the collection of any amounts due.

## **8. Refund policy**

At TDV we are committed to providing a service of exceptional quality and reliability. In the event you are not satisfied with your order, this document explains our refund policy.

All services are done in good faith. We generally take upfront and subsequent payments. If at any time in the service rendering process you are not satisfied with the quality of work, you may choose not to pay any further payments unless the services are rendered. By paying, you are indicating that you have inspected / tested the product or service and accept it "In Good Order". You pay only up to the point where you are satisfied. Please validate the work with each order to ensure that the services meet your expectations, as payment is considered an implicit acceptance of services rendered.

In general we will not refund payments on services rendered and subsequently accepted by you. No refund is made, if you have accepted any work performed to date. Your payment of billable services indicates your acceptance of quality and functionality.

Refunds are only possible if we are unable to render the services to you and this will be determined by our sole discretion.

You are not entitled to a refund of any of our services if you:

- \*Simply change your mind or no longer want the services;
- \* Realise you can't afford the services;
- \* Found the same services at a cheaper price elsewhere;

- \* Choose the wrong specifications for the service;
- \* Knew about the particular fault prior to purchase; and/or
- \* Were responsible for causing the fault.

If you are entitled to a refund, you can choose between a refund, exchange or we may attempt to correct the problem for you. All refunds must be paid directly into a bank account (no cash or cheque payouts will be done).

## **9. Copyrights**

Unless explicitly specified, the following will be assumed regarding copyright of all software code and media (graphics, animations and video) developed by TDV:

- It will remain the sole intellectual property of TDV
- The Client will have unlimited usage rights
- The Client will have no resell rights
- This excludes any undeveloped data supplied by the Client which will remain the sole property of the Client.