



Thomas Cole
Digital

Thomas Cole Digital Ltd
Standard Terms and Conditions

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1. Website Design and Development

- a. After commencement of this Agreement we will, if required, agree with you a "Project Plan" setting out certain activities and timescales. We will then design a web site for you in accordance with the details as agreed. It is important that you consider carefully your right to use material you wish to place on the web site. Accordingly, you are responsible for obtaining all consents, permissions and clearances in relation to the use of all materials you supply to us for use in the web site. You shall be responsible for complying with all relevant legislation and regulations in relation to the web design and content and the ongoing use of and access to the web site including but not limited to data protection regulations. You shall be responsible for ensuring none of the materials you supply is defamatory, indecent or in breach of copyright and you will thus indemnify us against all and any losses incurred by us in relation to the use of any such materials or arising out of our providing the Services to your specific requirements or instructions
- b. Where there is a "Project Plan" and it contains a timetable, whilst we will use our reasonable endeavours to meet the relevant dates time will not be of the essence in relation to this timetable and we shall be entitled to amend the timetable where failure to meet the due dates is due to your actions (or lack of them) or due to third parties or due to other circumstances beyond our reasonable control.
- c. The performance of our work in relation to the web site is subject to you providing all materials (this shall include text, graphics, photographs and any other content) and all other necessary data, information, input and decisions as are required of you. You agree to provide these promptly and accurately and will nominate a contact for us to deal with who will act on your behalf and will be authorised to make decisions on your behalf. To avoid any doubt, we will not be liable for any loss arising from material, data, information, input or instructions supplied by you or on your behalf which is incomplete, inaccurate, illegible, out of sequence or in the wrong form.
- d. Text supplied by you shall be typed up in a word processing application and supplied in a recognised and commonly used electronic format. Graphics shall be provided in a commonly used format to be mutually agreed. Photographs shall be provided on prints or such other commonly used format to be mutually agreed. Any other media or content shall be provided in a commonly used format as mutually agreed. All copy/text for the website shall be provided fully proofed and signed off at the appropriate level within the business and deemed correct before submission to Thomas Cole. For any additions of new products/services or new content to the website once the copy/text as agreed in the proposal has been submitted for the new website, this additional work will need to be priced accordingly and submitted using the process above for addition to the new website.
- e. On receipt of all materials and others required in terms of Clause 1(c) we shall prepare the site which shall be as detailed in the Proposal/Brief previously agreed.

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- f. On completion of the draft site (or the draft section of the site where the contract between us provides for staged completion by sections) it shall be posted to a test site on the Web (on a server selected by Thomas Cole Digital Ltd) for testing and approval and you shall have a period of seven days following our intimation of such posting to request any corrections or alterations required in terms of the contract to be implemented and which failing or following any reasonably required correction and alterations the site or section shall be deemed to be completed and accepted by you. You undertake to act reasonably and in good faith in requesting such corrections or alterations. We will take all reasonable care to ensure that site content is typographically correct. However the final responsibility for checking the content of the site lies with you. On completion of the site or section and subject to all other conditions being met it shall be posted live on the web server unless otherwise agreed between us or provided for in the contract between us.
- g. Upon payment of all outstanding sums in relation to our design of the web site, we will be deemed to have assigned to you copyright and related rights in relation to all material specifically created for you in relation to such web site. To avoid any doubt, this will include rights in any bespoke software specifically written for you for the web site but shall not include any third party materials nor any rights in general designs, layouts, structures, methodologies, techniques, coding, HTML, database structures or configurations or other materials which were in existence prior to commencement of the site or were not created for exclusive use by you.
- h. Whilst we use our best endeavours to ensure the site can be viewed across a spectrum of available World Wide Web platforms or viewers we currently design sites to a specification to be viewed by all current major web browsers at completion date of web site being made live.. We carry out our design in accordance with a combination of criteria including W3C Standards; Browser manufacturers published data and Good/Common practice.
- i. Handover: On completion of the project you will accept handover of the site meaning that we have completed our contractual obligations and you accept responsibility for the management and maintenance of the website (unless a maintenance arrangement has previously been agreed. From the date of handover you will have a time period of up to 2 weeks (10 working days) to report any minor defects. Thomas Cole Digital Ltd will undertake to correct these minor defects within a reasonable timescale. Prior to the site being launched 'live' payment in full is required.
- j. Where the content is to be added to the web site by the client, once this functionality has been developed, the web site is deemed to be completed for invoicing purposes irrespective of the web site being made live.

2. Search Engine Optimisation

- a. Whilst we endeavour to ensure your positions on search engines remain as high as possible through our work, we cannot be responsible for any search engine's re-indexing and any effects this may have on a web site's page ranking, and or subsequent effect financially on your business.
- b. Reports of our activity are evidenced via Google Analytics. As a matter of course we do not provide any other form of reporting e.g. ranking reports, link building reports or any other relevant search engine optimisation techniques which are deemed to be intellectual property of Thomas Cole Digital Ltd.
- c. We do not provide training for our clients, their staff or their representatives, in the use of search engine related software products or techniques.
- d. The Client understands that the data provided by the Client for registration with the search engines (key terms, descriptions) will be transmitted on the Internet and generally accessible after acceptance by a search engine. The Client is therefore liable for any violation of existing rights by such data (e.g. protection of title, trademark rights, etc.) and shall indemnify Thomas Cole Digital Ltd, its affiliated companies and service providers and agents engaged by Thomas Cole Digital Ltd within the scope of this agreement from all third party claims in connection with data provided and published, as well as from any liability for the content of the Web pages that are created, modified, publicized or marketed in the course of Thomas Cole Digital Ltd services for the Client.
- e. Thomas Cole Digital Ltd is entitled to engage third party service providers and agents to provide some or all of its range of services and change the same at any time without specific notice insofar as the Client does not suffer any disadvantage therefrom.
- f. In providing services and in the course of technical progress, Thomas Cole Digital Ltd is free to use new or different technology, systems, processes or standards than those originally offered insofar as the Client does not suffer any disadvantage therefrom.
- g. Any SEO work you perform out with our recommendations, including link building, changes to your website or anything else that negatively affects your rankings or your conversions will not be deemed the responsibility of Thomas Cole Digital Ltd.
- h. Any external influences that affect your site negatively through hosting services, domain registration or any others will not be held as the responsibility of Thomas Cole Digital Ltd.
- i. You agree to our 'Fair Use Policy' in regards to our 'additional email and telephone support, reporting, additional meetings'.

Fair Use Policy (based on monthly spend values):

- £500-£999: up to 1 hour per month

- £1000-£1499: up to 2 hours per month
- £1500-£1999: up to 3 hours per month
- £2000+: up to 4 hours per month

Any additional support out with your allocated time may be subject to further charges.
Invoiced at an hourly rate.

- j. All Google Analytics usage is in line with Google Analytics terms of service.

3. Social Media Management

- a. Thomas Cole Digital Ltd has no control over the policies of Facebook, Twitter, YouTube, LinkedIn and all other social media channels being utilized for campaigns. Thomas Cole Digital Ltd has no say with respect to the type of content that social media channels accept now or in the future.
- b. You acknowledge that Thomas Cole Digital Ltd makes no warranty that the Social Media Campaign will generate any increase in sales, business activity, profits or any other form of improvement for your business or any other purpose.
- c. You guarantee any elements of text, graphics, photos, designs, trademarks, or other artwork provided to Thomas Cole Digital Ltd for inclusion in any campaigns are owned by you, or that you have received permission from the rightful owner(s) to use each of the elements.
- d. Initial term of any service is of a fixed period to be mutually agreed. Cancellations of any ongoing Social Media Services must be made in writing by mail, fax or email providing 30 days notice before the end of the agreed fixed period. If Thomas Cole Digital Ltd does not receive notification that the campaign should be stopped after the initial fixed period in writing, you agree that Thomas Cole Digital Ltd will continue working and payments will continue to be made.
- e. There are no refunds available on services provided by the Thomas Cole Digital Ltd.
- f. No liability whatsoever (except as provided by law) will be accepted by Thomas Cole Digital Ltd for any damages or losses arising from or as a consequence of the provision of the Services or any other act or default on the part of Thomas Cole Digital Ltd or of any servant, agent or contractor of Thomas Cole Digital Ltd in relation to this agreement and the Services unless the same occurs because of the negligence of Thomas Cole Digital Ltd, its servants, agents or contractors in which case liability is limited to resupplying the Services again or a refund of the fees paid by you in the previous 1 month as elected by Thomas Cole Digital Ltd.

- g. Nothing in this agreement is intended to limit or exclude any liability on the part of Thomas Cole Digital Ltd where and to the extent that applicable law prohibits such exclusion or limitation.
- h. Thomas Cole Digital Ltd reserves the right to reject or discontinue the social media services where we are unable to provide the services due to technical, ethical, legal, or other matters. Where applicable, Thomas Cole Digital Ltd will refund your money for any services not yet rendered.
- i. A Thomas Cole Digital Ltd social media marketing account requires your valid email address and full name, you must then provide your legal full name, a valid email address, and any requested information in order to complete the account sign-up process.

4. **Registration of Domain Names**

Where we register domain names on your behalf (whether directly or by using any service provider), this is subject to the following conditions:-

- a. Whilst Thomas Cole Digital Ltd may offer some guidance on the availability of domain names at a given point in time the confirmation of all domain names is entirely your responsibility and we accept no liability for infringement of third party rights through your selection and use of such names. You warrant that you are entitled to use all names selected by you and will indemnify us in this respect.
- b. You will comply with all the relevant terms and conditions of the relevant domain name registration companies and registries (for whom we are a reseller). Please note that we cannot guarantee that any name requested will be available or approved for use.
- c. We reserve the right to suspend the availability of any of the names used by you (and any relevant services or e-mail accounts) if in our reasonable opinion there are grounds to believe that your choice of domain name is likely to be in breach of conditions of 4 (a) above.
- d. If you wish to cancel any domain names after they have been renewed for the current year you will need to pay for these in full. However should you cancel them before they renew for the following year there will be no charge providing 2 months notice is given before the renewal date, or on receipt of your renewal invoice, whichever is earlier.

5. **Hosting:**

Where we provide hosting services to you in relation to your web site (whether directly or by using any service provider including Fasthosts Ltd for whom we are a reseller, you agree that whilst we will take reasonable steps to ensure that the web site is available at all reasonable times, availability of your site may be subject to down time for maintenance, upgrading, network faults and/or other faults beyond our reasonable control such that permanent access cannot be guaranteed. By accepting these conditions, you also recognise and agree that access by third parties to your web site will at all times be subject to the availability of other networks whether

forming part of the internet or otherwise. If you choose not to renew your hosting services we will keep a copy of your site for 30 days after which we will destroy all materials, software and data related to the site.

- a. If payment is not made for either hosting or any other services purchased, you will be deemed to be in material breach and we will be entitled but not bound to terminate the contract between us if at any time you fail to pay any sums due within 14 days of the due date or if you are subject to insolvency proceedings of any nature. We also reserve the right to cease the hosting service for your web site until such monies have been paid in full.
- b. Should you wish to cancel hosting at any time your account must be up to date i.e. paid in full in advance for use of this service for that year. You will be charged a £50 ex vat administration charge in order to cancel or move your hosting to another provider. No credit will be given for unused hosting at the time of transfer out.
- c. It is the responsibility of the client to ensure they have the appropriate insurance cover in place to cover any financial losses incurred due to down time of hosting for maintenance, upgrading, network faults and/or other faults.
- d. Quotations/Proposals provided are for building web projects/software using specified types of servers. Even where suitable, transfer to alternate type hosting will occur additional charges than those originally quoted for.

6. Services Generally

In relation to all the services to be provided by us as detailed in the Proposal including the services detailed above (the "Services"), the following conditions shall apply:-

- a. All prices detailed in the Proposal are exclusive of value added taxes and any other relevant government imposed duties. You shall pay these in addition at the prevailing rate at the relevant time.
- b. Prices detailed in the Proposal remain valid for a period of 45 days only from the date of issue of the Proposal. However, we shall be entitled following your acceptance to vary our prices to reflect any change in third party dependent costs which are imposed on us, by giving written notice to you, such variations to take effect from the date such revised costs are imposed on us. In relation to any periodic costs detailed in the Proposal or Process Plan (such as hosting fees).
- c. The payment terms are as detailed in Section 8 below (or in the Proposal and/or "Plan to Completion". However, where prices set out in the Proposal include items to be purchased by us on your behalf (such as domain name registration, hosting services) it is understood such sums shall be payable by you immediately on your acceptance of the Proposal. You will not be entitled to set off any claims against us or make any other deductions in relation

to any payment due and all sums shall be payable within 7 days of the date of the invoice requesting payment.

- d. If payment for items per clause 2.c is not made by the due date specified in Clause 2(c), we shall be entitled (without affecting any other rights we may have) to charge interest on the outstanding amount (notwithstanding any court decree obtained) at the rate of 5% above the base rate from time to time charged by NatWest Plc from the due date until the payment in full.
- e. Where training/coaching is to be provided, payment in full for such training shall be made by you at least 7 working days prior to the commencement of such training/coaching failing which we shall be entitled to withhold such training/coaching until payment is made.
- f. At all times you must specify a communication address and a recognised format by which we may send messages in relation to the provision of the services (particularly in an emergency). Should you fail to do so then, to avoid any doubt, we shall not be responsible for any loss arising as a result.
- g. If at any time we require access to your premises to provide the Services, you will provide this at all reasonable times and be responsible for the health and safety of our personnel whilst on your premises.
- h. Where the Proposal confirms that any of the Services will run for a stated fixed period of time, subject to termination by us or by you by giving 30 days notice to the other to expire at the end of such period of one year, then to avoid doubt such services shall be deemed to be renewed for a further fixed period of the same duration, or such other period as shall be mutually agreed between us in advance of the expiry date of the previous period. If at termination of the services as specified in the contract between us or any renewal period you wish to transfer your web site to any third party host, we will provide reasonable co-operation to you in doing so but reserve the right to make a £50 ex vat transfer fee plus any other reasonable charges for the work or expenses (if any) reasonably incurred in such transfer.

7. Ownership Rights

The client, on payment will have ownership rights to the following parts of a Design/Web Development/Software Project. You own your visual design, text content, photography (if taken by client), HTML/CSS/Javascript used to create your web site, any website data and content stored in the database (if authored by Client):

- a. Visual Design; The combination of layout and presentable graphical assets like colours, photography and typography to create the user interface, images and videos, and readable content of the website. The HTML/CSS/Javascript will contain the information to display these assets so the browser can render the website on your screen.
 - The website creator *should* provide an agreement giving website visual design ownership to you upon completion and final payment of the project.
 - Otherwise, unless you or your employee created the designs, it is owned by the creator and licensed to you.
- b. Text Content; The formatted, readable, search engine indexable, copy and pastable website text that is rendered in the browser.
 - You will own your website text content if you or your employee authors the content.
 - Otherwise, the creator of the website is the legal “author” of the website text content.
- c. Photography (Taken by Client); The Client owns the photography If the client has taken the pictures, the entire or part of a digitized photograph used on a website as either part of the logo, user interface, slideshow, gallery, video or other visual design asset.
 - You will own your website photography if you, the Client or your employee captures the photographs
 - Otherwise, you are only given a license to others’ photography. Keep a record of that license.
- d. HTML/CSS/Javascript; HTML and CSS are the building blocks of almost all websites. It is a language that browsers understand. The Javascript is programming that may alter the HTML and CSS as one interacts with the website. The website HTML/CSS/Javascript ownership will transfer to the client upon completion and final payment of the project.

Third Party Ownership Rights

- e. Web Server; The computer running the Web Server Platform that hosts your website. For most of our hosting services, the data centre owns the web server which is leased to Thomas Cole Digital on your behalf.

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- f. Web Server Platform; This is the system software running on the server. Common examples Thomas Cole Digital Ltd uses include LAMP (Linux Apache MySql PHP), Windows IIS + ASP.NET, and Microsoft SQL Server.
 - g. Database Software used For Development; Common examples include MySql, Oracle, Microsoft SQL Server, Microsoft Access. You will never own the actual database. (You own your website data and content stored in the database if you author it)
 - h. Content Management System (CMS); A Web Application that is used to manage the administration of content for your website. Examples include WordPress, Drupal, Joomla
 - i. Browser; A browser is the computer software we use to look at websites. Examples are Internet Explorer, Safari, Chrome, Firefox and Opera. A browser will display the rendered website which includes the HTML/CSS/Javascript and all visual design assets.
 - j. Domain Name; The Domain Name appears in the address bar of the browser, the website URL that is indexed by search engines, displayed in most marketing, and remembered as part of the brand.
 - You do not actually own a domain name even though you are a registered domain owner.
 - You have a contract with the domain registrar giving you “ownership” of the domain much like a contract with a telephone company for a phone number.
 - A domain name registration with a registrar does not confer any legal ownership of the domain name, only an exclusive right of use.”
 - k. Photography; If either the client or Thomas Cole Digital Ltd has provided pictures bought from a third party provider then any photography used is owned/maintained/licensed to that appropriate provider. We would recommend keeping a record of that license.

Thomas Cole Digital Ltd maintains ownership of the following aspects of a Web Development/Software Project

- l. Content Management System (CMS); A Web Application that is used to manage the administration of content for your website. Examples include CloudCMS
 - You only own your CMS if you author your own source code and wrote it yourself. This is common to all software. Unless you’re a software company, you don’t own any software on any computer.
 - The CMS (and all software) is owned by Thomas Cole Digital Ltd (the creators) and licensed to you.

- Custom programming written on top of the Content Management System/ Website Platform
- m. Source Code (custom programming); The programmed code created in the language of the Web Server Platform that contains the logic and connectors to other software running on the server. Source code may also communicate with outside integrated system servers. The source code will generate the HTML/CSS/Javascript for the browser to render to your screen. This is owned by Thomas Cole Digital Ltd (the creator) and licensed to you.

If a web/software project is to be transferred from Thomas Cole Digital Ltd to another provider which is within a software product owned by Thomas Cole Digital Ltd then a downloadable copy of the HTML/CSS/Javascript for the web software/project will be provided to the Client. The fee for providing this is £50 ex vat.

8. Terms of Payment

The following are our standard Terms of Payment which can be changed within either the Quotation, Proposal of Project/Marketing/Maintenance Agreements.

a. Web Site Design and Development

Unless otherwise defined in the proposal our standard terms of payment for web site design and development will apply as follows. Percentages are of total contract value for the web development (ex VAT) excluding Domain name registration and hosting and related services

Payments shall be staged as follows:

On acceptance of proposal, prior to commencement of project	50%
Prior to 'launch' of site	50%

Payment would be due strictly within 7 days of receipt of the invoice. Prior to the site being launched 'live' final payment in full is required. If Thomas Cole have completed their part of the agreement and built the website as stated in the agreed proposal and the customer for whatever reason have not completed their agreed element i.e. have not completed addition of their products, the final invoice is still due as per the payment terms stated on the invoice. Where the content is to be added to the web site by the client, once this functionality has been developed, the web site is deemed to be completed for invoicing purposes irrespective of the web site being made live.

b. Domain Name Registration

All domain names registered shall be paid in full in advance. Thomas Cole Digital Ltd will not undertake to register any domain name until appropriate payment has been made in full.

c. Hosting

Payment for hosting and related services (eg provision of graphical statistics, virus

protection, SSL Certificates) shall be made in full prior to the services being activated as detailed in Clause 2(c). Hosting is invoiced on an annual basis and no credit is provided if the Client transfers the web site to another provider. If Dedicated Hosting is chosen there is a minimum contract of 1 year which can be paid via monthly payments.

d. Pay Per Click Banner Advertising/Google Adwords

Unless otherwise defined in the proposal our standard terms of payment for Pay Per Click Banner Advertising will apply as follows:

Before commencement of Banner ad Campaign an invoice will be sent for payment as follows:

Banner Ad Set Up	100%
Banner Ad Maintenance	100%
Banner Ad Budget is paid directly to Google via direct debits up to a budget agreed by yourselves in advance.	100%

At the same invoice date an additional invoice will be sent for the above services for the following month to be paid on 30 days credit terms.

e. Search Engine Optimisation

Unless otherwise defined in the proposal our standard terms of payment for web site design and development will apply as follows:

Before commencement of Search Engine Optimisation Campaign an invoice will be sent for payment as follows:

Initial Period as agreed, as per the signed service agreement, 3/6/12 months, payable monthly in advance	100%
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Agreed in advance, following monthly payments in advance should be paid by standing order either

Along with this you will receive a standing order to be completed for the following 2/5/12 month payments as specified in Proposal/Service Agreement (monthly in advance for provision of this service)

Termination of Search Engine Optimisation service by yourselves at

the end of the initial agreed period requires 30 days notice in writing. If no such notice is received by yourselves it will be assumed that you require the service to continue for another fixed period and an invoice will be issued accordingly.

f. E-Mail Marketing

Unless otherwise defined in the proposal our standard terms of payment for E-Mail Marketing will apply as follows:

Before commencement of E-Mail Marketing Tool an invoice will be raised for payment as follows:

E-Newsletter Set Up	100%
1 Months E-Mail Send in advance	100%

Along with this you will receive a standing order to be completed for the following monthly payments (monthly in advance for us of this service).

Minimum Contract Term: 6 Months Cancellation thereafter on 30 days notice

Our email marketing packages are banded, calculated on usage. In the event of the client exceeding their agreed cumulative monthly usage, we will notify you as soon as we become aware of this, advise and agree a recalculation of your package, and invoice accordingly.

9. Confidentiality

Both we and you undertake to maintain the confidentiality of all information provide by one to the other (including in your case information relating to your customers). In particular:

- a. We undertake to use your confidential information solely for the purposes of providing the services to you and
- b. You will not disclose any technical information obtained from us to any other persons without our prior written consent except in each case insofar as such information enters the public domain (other than through unauthorised disclosure under this Agreement).

10. Liability

- a. You will indemnify us against all and any losses incurred by us whether arising directly or indirectly from any act, omission, lack of compliance, breach or failure on your part in relation to any materials supplied by you in terms of Clause 1(a) or otherwise arising out of our providing the Services to your specific requirements or instructions
- b. Whilst we undertake to provide the Services with reasonable skill and care no other warranty express or implied is given and all implied warranties of any nature on our part are expressly excluded.
- c. We also expressly exclude liability of any kind in relation to the following:
 - i. the transmission or acceptance of information of any nature on your behalf and your acts and omissions in relation to the use or misuse of the Services;
 - ii. the acts or omissions of other providers of hardware, software or telecommunications services for faults in or failures of their equipment programmes processes or apparatus;
 - iii. liability for consequential loss of any nature howsoever arising including but not limited to loss of profit and opportunity;
 - iv. any delay, malfunction, non performance or other degradation of any of the Services caused by or resulting from any alteration and/or modifications and/or amendments made by you or due to changes of specifications requested or implemented by you
- d. In any event, our liability for the Services shall be limited to the total price paid for the services in aggregate in relation to all claims under this Agreement. To avoid any doubt, as required by law, nothing in these Conditions attempts to restrict or exclude our liability for death or personal injury arising directly out of our negligence.

11. Termination

- a. Either party will be entitled to terminate the contract between us by written notice effective immediately if the other is in material breach of contract. To avoid any doubt, a breach arising under this contract shall be deemed to be a material breach if not remedied within 14 days of written notice requiring the breach be remedied issued by the party not in breach to the other.
- b. You will be deemed to be in material breach and we will be entitled but not bound to terminate the contract between us if at any time you fail to pay any sums due within 14 days of the due date (as specified in Clause 2(c)) or if you are subject to insolvency proceedings of any nature.
- c. Termination will be without prejudice to any accrued rights or liabilities of either party or any other rights or obligations, which due to their nature are intended to survive

termination. Where termination occurs and work has been carried out by us and not paid for because the due date has not been reached, we reserve the right to charge you for such work and you shall pay such charges within 14 days of the date of invoice.

- d. If appropriate, we reserve the right at our sole discretion to elect to suspend any or all of the services in the circumstances set out in conditions 5(a) and 5(b) but this will not affect our right to terminate at any time after such suspension.
- e. Within 7 days of the termination of the contract between us for any reason you will return or destroy (at our option) all copies of our software and any and all materials provided by us to you in connection with the provision of the Services and shall purge/expunge all magnetic media forms of such materials and (on request) give us a certificate certifying that you have complied with these terms. This does not affect your rights under condition 1(g) if applicable