

Standard Terms & Conditions for Website/Graphic Design, Hosting and Consulting

Amended 15th July 2010

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1. Notes

a) All work carried out by Wintercorn is deemed to be carried out under the following terms and conditions which are publicly available on our website located at:

www.wintercorn.com/legal

b) These apply to the exclusion of all other terms and conditions unless stated otherwise in any covering correspondence. These terms and conditions do not affect your statutory rights. It is not necessary for any Client to have signed an acceptance of these terms and conditions for them to apply. If a Client allows work to proceed or makes an initial payment then the Client will be deemed to have satisfied themselves as to the terms applying and have accepted these terms and conditions in full.

c) By placing an order with Wintercorn, you confirm that you are in agreement with and bound by the terms and conditions below.

2. Definitions

a) **Wintercorn:** Primary designer & employees or affiliates, subcontractors and associated companies.

b) **The Client:** The company, organisation or individual requesting the services of Wintercorn.

c) **Proposal / Quick Quote:** The document proposing the project to be undertaken. Once signed off by The Client, this document becomes the primary specification for the project.

d) **Live:** The site is considered Live when it is available to its intended audience.

3. General

a) Wintercorn will carry out work only where an agreement is provided either by email, telephone, mail or fax. Wintercorn will carry out work only for clients who are 18 years of age or above. An 'order' is deemed to be a written or verbal contract between Wintercorn and the Client, this includes telephone and email agreements.

4. Website Design

a) Whilst every endeavour will be made to ensure that the website and any scripts or programs are free of errors, Wintercorn cannot accept responsibility for any losses incurred due to malfunction, the website or any part of it.

b) The website, graphics and any custom code remain the property of Wintercorn until all outstanding accounts are paid in full. Once the final balance is paid copyright will be assigned to the Client.

c) Master / Admin usernames and passwords for the site, server, email, Cpanel and FTP accounts will only be supplied to The Client when all outstanding accounts are paid in full.

d) All custom images, custom scripts, cgi applications, php scripts, or other software written by Wintercorn will be released to the client, subject to any prior licence, after all outstanding accounts are paid in full unless specifically agreed otherwise in the Project Proposal.

e) Wintercorn cannot take responsibility for any copyright infringements caused by materials submitted by The Client. We reserve the right to refuse any material of a copyrighted nature unless adequate proof is given of permission to use such material.

f) Any additions to the Project Proposal will be carried out at the discretion of Wintercorn and where no charge is made by Wintercorn for such additions, Wintercorn accept no responsibility to ensure such additions are error free and reserve the right to charge an according amount for any correction to these or further additions.

g) Wintercorn reserves the right to assign approved subcontractors to a project to ensure the right skills resource for the project as well as timely completion. Wintercorn warrants all work completed by subcontractors for the project.

h) The Client agrees to make available as soon as is reasonably possible to Wintercorn all materials required to complete the site to the agreed standard and within the set deadline.

i) Wintercorn will not be liable for costs incurred, compensation or loss of earnings due to the failure to meet agreed deadlines.

j) The Client shall inspect the works regularly, and shall inform Wintercorn immediately if it wishes to reject any part of the works because such do not comply with the Project Proposal, or are defective in material and workmanship.

k) Wintercorn will not be liable or become involved in any disputes between The Client and

their clients/users and cannot be held responsible for any wrongdoing on the part of The Client.

l) Wintercorn will not be liable for any costs incurred, compensation or loss of earnings due to the work carried out on behalf of The Client or any of The Clients appointed agents.

m) Wintercorn will not be liable for any costs incurred, compensation or loss of earnings due to the unavailability of the site, its servers, software or any material provided by itself or its agents.

n) A deposit of 33% is required with any project before any work will be carried out. This must be paid in full before work will commence. Further payments on the same project are subject to our 14 day payment period.

o) Once a website has been designed and completed the final balance of payment is then due in accordance with our payment terms. There are no exceptions to this, *i.e* If a client decides they no longer want the site, as they have commissioned the work and paid a deposit they are still obliged to pay for the work that has been done.

p) Non payment will result in legal action being taken. Please see **section 10** for further details.

5. Consulting

a) Wintercorn agrees to assist The Client in connection with their project, as more fully described in the Project Proposal. In the event the Client requests additional services related to the Project not detailed in the Project Proposal, the scope of such additional services shall be as agreed by the parties and shall be governed by this agreement.

b) Our fees which include our expenses are invoiced weekly and are payable weekly. If for any reason our fees are not paid within seven days after the date of our invoice we reserve the right to stop work on the project or charge 2% above bank base rate for the period of the outstanding payments.

c) You have the right to terminate the project at the end of any week by giving us 5 working days notice in writing. If you do give such notice our fees will be due until the end of the notice period. If however, notice is given to expire within the last two weeks of the project you will still have to pay all fees outstanding for the remaining period to the end of the project.

d) Throughout the project Wintercorn will carry out the work with all reasonable skill, care and diligence. It is the joint responsibility of The Client and Wintercorn to implement the agreed changes and activities during the period of working together. The project will be managed through a key event schedule with review meetings held each week either on or offline. Both parties are charged with attending these meetings and to signing off the review summary to demonstrate joint agreement with the progress to date and to the actions planned for the following weeks.

e) Wintercorn reserves the right to assign approved subcontractors to a project to ensure the right skills resource for the project as well as timely completion. Wintercorn warrants all work completed by subcontractors for the project.

f) The Client shall inspect the works regularly, and shall inform Wintercorn immediately if it wishes to reject any part of the works because such do not comply with the Project Proposal, or are defective in material and workmanship.

g) Should you terminate the project before its full term and if you then use the services of a consultant who was involved in the project within one year, you will be liable to pay to us on demand the full balance of the fees which would have been payable had the project been completed by us in accordance with the engagement letter.

h) We value our good reputation and for that reason we reserve the right to withdraw our services at any time without notice in the event that information comes to our attention which in our opinion casts doubt on the integrity and legality of your operations or any part thereof.

i) In the event of a dispute arising which cannot be resolved through discussion with the Directors of Wintercorn, or should there be a claim for proven negligence against Wintercorn the limit of the claim will be the return of fees paid by The Client from the date of written notification of the claim to the point of resolution or termination of the project.

6. Database, Custom Application and E-Commerce Development

a) Wintercorn cannot take responsibility for any losses incurred by the use of any software created for The Client. Whilst every care has been taken to ensure products are problem free and accurate, the ultimate responsibility lies with The Client in ensuring that all software is functioning correctly before use.

b) Any scripts, applications or software (unless specifically agreed) written by Wintercorn remain the copyright of Wintercorn and may only be commercially reproduced or resold with the permission of Wintercorn.

c) Where applications or sites are developed on servers not recommended by Wintercorn, The Client is expected to provide or seek any information, additional software, support or co-operation pertaining to the server required in order for the application to be correctly developed. Where large applications are to be developed, it is The Clients responsibility to provide a suitable testing environment which is identical to the final production environment.

d) The Client is expected to test fully any application or programming relating to a site developed by Wintercorn before being made generally available for use. Where "bugs", errors or other issues are found after the site is live, Wintercorn will endeavor (but is not obliged to) to correct these issues to meet the standards of functionality outlined in the Project Proposal.

7. Compatibility

a) Wintercorn will endeavour to ensure that any developed/designed site or application will function correctly on the server it is initially installed in and that it will function correctly when viewed with Microsoft Internet Explorer Version 7 onwards and to an similarly acceptable level with Mozilla based browsers such as Firefox. Wintercorn can offer no guarantee of complete functionality with all browser software or hardware configurations.

b) Compatibility with Microsoft Internet Explorer 6 can no longer be guaranteed and if compatibility with this browser is required it should be specifically brought to our attention before the production of any proposal or commencement of any project.

8. Images / Text

a) Wintercorn may use stock photographs as filler on a client website pending supply of the correct images. These images are usually subject to copyright and payment for commercial use. If The Client wishes to use the images a fee to the copyright owner/agent will be payable in addition to any expenses Wintercorn incurs in securing usage of the images. We may also use 'Lorem Ipsum' text to fill out pages in the absence of client supplied content.

9. Hosting

a) Whilst Wintercorn uses its own servers and those of its specialist hosting service JoomlaPipe.com to host websites, no guarantees can be made as to the availability or interruption of this service and Wintercorn cannot accept liability for losses caused by the unavailability, malfunction or interruption of this service, or for loss of turnover, sales, revenue, profits or indirect, consequential or special loss. We may, at our discretion, use a third-party hosting provider.

b) Further information on our Service Level Agreement can be found at www.wintercorn.com/legal.

c) Wintercorn reserve the right to refuse to handle in any way, material which may be deemed offensive, illegal or in any way controversial, and also to terminate any hosting service without notice should the necessity arise, although we would always attempt notification where possible.

10. Payment of Accounts

a) Wintercorn are a small company. We work hard to ensure that your project is completed within the proposed timeframe, budget and agreed functionality standards. Prompt payment of accounts helps us to work this way.

b) A deposit is required from any client before any work is carried out. It is Wintercorn policy that any outstanding accounts for work carried out by Wintercorn or its affiliates are required to be paid in full, no later than 14 days from the date of the invoice unless by prior arrangement with Wintercorn. We do not offer credit.

c) Once a deposit is paid and work completed you are obliged to pay the balance of payment in full. We will contact clients via email and telephone to remind them of such payments if they are not received when due.

d) Our policy is that when sites go live the final payment is due, or total outstanding payments if more than one. If The Client considers that the final payment is not yet due, then the site is not ready to go live.

e) Until all accounts are settled in full, Wintercorn retain the copyright to any graphics or custom code created for the project. Upon receipt of full, cleared funds we relinquish our rights to the copyrighted items and assign them to The Client.

f) Non-payment of accounts may affect access to all of The Clients sites under our control and may affect the pricing and/or acceptance of future projects.

g) Our non-payment process is to:

- 1) Restrict client admin and user access to the site
- 2) Take the site offline with a notice to contact the billing department
- 3) Backup the site and database to our office and remove the site files completely
- 4) Issue a copyright infringement notice to The Client and any third-party site host
- 5) Terminate the hosting/mail account if hosted on our servers
- 6) Commence legal action

11. Jurisdiction

a) These conditions of contract shall be governed by and construed in accordance with English Law. Any dispute arising between us that cannot be resolved with goodwill shall be submitted to the exclusive jurisdiction of the English Courts.

12. Working Hours

a) Wintercorn work from 9am to 5.30pm, Monday to Friday, excepting statutory holidays. Unless specifically stated otherwise, any quote or proposal prepared assumes work will only be carried out during these hours. Work required to be carried out outside these hours is charged at 1.5 times our standard hourly rate. We may work outside our core hours at no extra charge at our discretion only.

b) Wintercorn will notify you if your project is likely to exceed the quoted hours due to feature requests, missing or late content from yourselves or any other reason which may adversely impact the project completion date.

c) Requests for urgent or time sensitive work should be noted at the outset of a project and will be charged accordingly.

14. Backups

a) Whilst a site is under development we will automatically backup the MySQL database each day to our file-server from the Joomla! administration panel and keep the backup for 30 days. This is to ensure we can restore the site if required.

b) We do not generally provide ongoing database or full site backups unless otherwise requested and paid for. Backups of the site and database are a clients responsibility unless a Managed Hosting Plan has been purchased.

c) If the automatic backup is still functional after a client site leaves our control, then disabling or redirecting the backup plugin is the responsibility of The Client.

15. Support

a) Free support is only available for the 30 days following the site going Live. Support after this date will require a paid support package.

16. Affiliate Scheme

- a) The Wintercorn Affiliate Scheme is designed to allow selected partners to earn commission on the qualified leads they supply. Qualified leads are leads which result in Wintercorn starting a paid project with a new client who has been introduced through an affiliate link from the affiliate advertiser.
- b) Wintercorn pay a total fee of 10% for qualified leads of which 10% is paid upon commencement of the project and the balance on completion.
- c) Affiliate leads and commissions can be tracked through the Affiliate Centre available from a users 'My Wintercorn' dashboard.
- d) Payments are made either by cheque or bank transfer only.
- e) The unique affiliate URL can be used both online and offline as either a text or image based advert. If the advert is to be used with anchor text or an image not supplied by Wintercorn, it must be cleared with Wintercorn before publication.

17. Complaints Procedure

Informal Procedure

- a) Anyone who experiences a problem with the service provided by Wintercorn should raise the matter directly using our contact form to do so, giving sufficient information to locate the material (such as a URL) and clearly outlining the grounds for complaint.
- b) Wintercorn will investigate the information supplied with a view to resolving the matter to the satisfaction of the complainant. If a reply is required, please ensure you have provided your contact details.

Formal Procedure

- c) The formal complaints procedure should only be used where the complainant feels that the nature of the complaint is too serious to be dealt with informally, or where a satisfactory conclusion has not been reached after following the informal procedure. Formal complaints should be notified to us via Registered Post.
- d) A formal complaint should be made in writing to Wintercorn, who will acknowledge receipt and ensure that the matter is looked into as soon as possible.
- e) An initial response to any complaint can be expected within seven days of its receipt; a full and considered response to the complaint should be completed within 30 days and any subsequent remedy implemented with the minimum of delay.



Acceptance of the above terms and conditions dated / / 2010.

Wintercorn Director		Date	___/___/_____
Client		Date	___/___/_____

This acceptance sheet may be returned by email or post to:

Wintercorn Consulting Limited
30 Cattle Market Street
Norwich
Norfolk
NR1 3DY

Telephone : 01603 619 344

Email : hello@wintercorn.com