

Website Development Contracts



An introduction.
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Overview

- Briefly discuss why we need contracts.
- Present a typical contract.
- Provide some references.

Disclaimers:

- I am not a lawyer.
 - I am not a designer.
 - This is not power point: It's Open Office Impress.
 - Contracts should be customized for your own situation.
 - Contracts must be reviewed by a contract lawyer.
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But I don't need a contract!

- Reasons *not* to have a contract:
 - Booring!
 - “I trust my customers”
 - My work is so good that my customers will be to pay me. 😊
- Reasons *to* have a contract.
 - To help ensure that you get paid in a timely manner.
 - To keep control of assets that you develop.
 - Because things DO go wrong.

Seriously - Why do we need contracts?

- Contracts define the rights and obligations of *both* interested parties.
 - Contracts make ownership of assets explicit.
 - Contracts provide an “exit strategy” in the event of problems.
 - A contract is *required* for enforceability in the event of a lawsuit for work over \$500.
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Contract Contents (1 of 3)

- ➔ **Who:** A simple overview of who is hiring who & what the relationship is: Employee or contractor.
 - ➔ **What:** Description of work: A brief statement of what the work is - Artwork, CSS design, full site.
 - ➔ **What II:** Scope of work: What is and is NOT included. What to do when client wants changes.
 - ➔ **When:** Deadlines and delivery dates
 - ➔ **Where:** Jurisdiction:
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Contract Contents (2 of 3)

- ➔ Copyright: Statement of who owns work output.
 - Client: Business specific assets
 - Developer: Generic assets. (CSS, generic scripts)
 - Assets (e.g. Stock images) must be licensed
 - Who pays for expenses and acquisition of assets. (Fonts, Images, Programs.)
 - ➔ Confidentiality agreement.
 - ➔ Termination Conditions: What to do if either party wants to terminate the contract.
 - ➔ Indemnification - “hold harmless” - (CYA)
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Contract Contents (3 of 3)

- ➔ Term or Length of Contract
- ➔ Fees and payment schedule. (hourly or Milestone)
- ➔ Acceptance Criteria:
 - Conditions for work to be considered complete.
 - Responsibilities of client (promptly test/notify).
- ➔ Independent Parties
 - Assignment of work-right to use subcontractors.

References

- A fun, informative Intro:
Andy Clarke – CSS Author – Blogger: 24 Ways.org
<http://24ways.org/2008/contract-killer>
 - A Simple Contract Example: Zenful Creations
http://www.zenfulcreations.com/resources/worksheets/design_contract.htm
 - A complex contract: AIGA Standard Form of Agreement for Design Services.
<http://www.aiga.org/content.cfm/standard-agreement>
 - Others:
<http://www.sitepoint.com/article/written-website-contract/>
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Who: Interested Parties



This Agreement (the Agreement) between (client company/contact), having the business address of (Client Address), hereinafter referred to as "Client" and (Generic Websites LLC), a California Limited Liability Company having the principal mailing address of 1234 Easy Street, Sacramento, CA 95814, hereinafter referred to as "Developer" is entered into upon the terms set forth below on _____ (the "Effective Date").

What (Informal)



We will create designs for the look-and-feel, layout and functionality of your web site. This contract includes one main design plus the opportunity for you to make up to two rounds of revisions. If you're not happy with the designs at this stage, you will pay us in full for all of the work that we have produced until that point and you may either cancel this contract or continue to commission us to make further design revisions at the daily rate set out in our original estimate. (Source:24 ways)

What II: Scope and Changes



General Changes. Unless otherwise provided in the Proposal, and except as otherwise provided for herein, Client shall pay additional charges for changes requested by Client which are outside the scope of the Services on a time and materials basis, at Designer's standard hourly rate of _____ per hour. Such charges shall be in addition to all other amounts payable under the Proposal, despite any maximum budget, contract price or final price identified therein. Designer may extend or modify any delivery schedule or deadlines in the Proposal and Deliverables as may be required by such Changes. (Source: AGA)

When: Deadlines



Consultant agrees to deliver samples of design on dates as agreed upon in the Proposal. Consultant will make every effort to meet agreed upon due dates.

The Client should be aware that failure to submit required information or materials may cause subsequent delays in the production. Client delays could result in significant delays in delivery of finished work. (Source: zenfulcreations.com)

Where: Jurisdiction



Governing Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable therein.

Copyright



You guarantee to us that any elements of text, graphics, photos, designs, trademarks, or other artwork that you provide us for inclusion in the web site are either owned by your good selfs, or that you have permission to use them. When we receive your final payment, copyright is automatically assigned as follows:

You own the graphics and other visual elements that we create for you for this project. We will give you a copy of all files and you should store them really safely as we are not required to keep them or provide any native source files that we used in making them.

You also own text content, photographs and other data you provided, unless someone else owns them. We own the XHTML markup, CSS and other code and we license it to you for use on only this project. (Source: 24 Ways)

Confidentiality



The Client and Developer may disclose confidential information from one to the other to facilitate work under this Agreement.

Such information shall be so identified in writing at the time of its transmittal, and shall be safeguarded and not disclosed to third parties by the receiving party.

Confidential information shall include without limitation descriptions of or knowledge of Client's business, procedures, operations, systems, inventions, customers, and financial condition which was obtained by virtue of this agreement.

Confidential information shall not include information that:

- Is already known to the party to which it is disclosed;
- Is or becomes part of the public domain without breach of this Agreement
- Is obtained from third parties, which have no obligations to keep confidential to the parties to this Agreement.

Termination



Either party may terminate this Agreement by giving 30 days written notice to the other of such termination. In the event that Work is postponed or terminated at the request of the Client, Consultant shall have the right to bill pro rata for work completed through the date of that request, while reserving all rights under this Agreement.

If additional payment is due, this shall be payable within thirty days of the Client's written notification to stop work.

In the event of termination, the Client shall also pay any expenses incurred by Consultant and the Consultant shall own all rights to the Work.

The Client shall assume responsibility for all collection of legal fees necessitated by default in payment.

Indemnification



Indemnity: Client agrees to indemnify, defend and hold harmless (including costs and attorney's fees) Developer and Developer's other agents from and against any and all claims by any third party resulting from the Client's acts, omissions, or misrepresentations.

In the event any action, proceeding or claim (collectively "Claim") is brought against developer or any Developer's agent, which Claim, if determined adversely would entitle Developer or Developer's agent to indemnity, Developer will provide Client with notice of Claim specifying in detail the basics for the Claim and the facts pertaining thereto, Client will Vigorously defend such Claim and indemnify and hold harmless Developer and Developer's agents from and against all liability, loss, damage, cost or expense arising there from.

Developer and Developer's agent, as applicable, will have right to employ counsel separate from counsel employed by Client's agent in any such action and to participate in the defense thereof, and the fees and expense of such counsel will be paid by Client.

Length of Contract



Example 1:

The full length of this contract is as follows: *This Agreement shall commence upon the receipt by Developer of a signed copy of this contract, and shall remain effective for ninety (90) days after the completion of the Warranty period described below.*

Example 2:

The full length of this contract is as follows: Starting date is _____ day of _____, _____ and estimated completion date is _____ day of _____, _____*

Payment Schedule



Client shall pay Consultant \$_____, as a deposit for project commencement.

The balance of \$_____ is due on completion date, and prior to file relinquishment, or upload and/or assembly of website on Client's web server.

Acceptance



Acceptance of Deliverables: The Client shall accept or reject each deliverable of the Development services within ten (10) business days of such deliverables being tendered to Client for approval. Each deliverable of the Development Services tendered by Developer to Client shall be deemed accepted if not rejected by Client within 10 business days of tender by Developer. Rejection may be accomplished via a Confirmed Communication describing the conditions of rejection.

Rejection of Deliverables. If Client rejects any deliverable under this Agreement, Client shall provide sufficiently detailed information for the reason for the rejection via a Confirmed Communication. Developer shall promptly correct such deliverable and resubmit the same to Client for acceptance. Client will then have an additional ten (10) business days to accept or reject as per paragraph , above.

Independent Parties



The Client and Consultant are independent parties and nothing in this Agreement shall constitute either party as the employer, principal or partner of or joint venture with the other party. Neither the Client nor Consultant has any authority to assume or create any obligation or liability, either express or implied, on behalf of the other.

(Source: zenfulcreations)