



## Basic Terms & Conditions

### 1. DEFINITIONS

*The Client:* The company or individual requesting the services of INQUE Design.

*INQUE Design:* Primary designer/site owner & employees or affiliates.

### 2. UPDATES TO THE TERMS AND CONDITIONS

These terms and conditions were last updated or amended on Jan 1st 2010. INQUE Design reserves the right to update and alter these terms at any point.

### 3. GENERAL

INQUE Design will carry out work only where an agreement is provided either by email, telephone, mail or fax.

INQUE Design will carry out work only for clients who are 16 years of age or above. An 'order' is deemed to be a written order or written or verbal contract between INQUE Design and the client, this can include telephone and email agreements and agreements made using private PM systems or Instant Messaging services.

### 4. WEBSITE DESIGN / DEVELOPMENT

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

The website, graphics and any programming code remain the property of INQUE Design until all outstanding accounts are paid in full.

*In situations where a PSD design is provided to us, the customer does, of course, retain all rights and ownership to their design or any supplied code.*

Any scripts, php scripts, or other coding, (unless specifically agreed) written by INQUE Design remain the copyright of INQUE Design and may only be commercially reproduced or resold with the permission of INQUE Design.

INQUE Design also reserves the right to include a "backlink" in the footer of any web design or web development work which is undertaken. Removal of this backlink is not permitted unless specifically agreed with INQUE Design.

INQUE Design 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.

Any changes or alterations made to the project scope after our quotation has been accepted and/or work has begun, may result in an additional charge. In all situations, the client will be notified of this extra charge before the work is carried out / continued.

The client agrees to make available as soon as is reasonably possible to INQUE Design all materials required to complete the site to the agreed standard and within the set deadline. If there is a delay in providing project materials, we reserve the right to exceed the deadline.

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

INQUE Design will not be liable or become involved in any disputes between the site owner and their clients and cannot be held responsible for any wrongdoing on the part of a site owner. eg. Any disputes re content/images that have been provided to us for inclusion on the site.

INQUE Design 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 its agents.

## **5. FEES, CHARGES AND DEPOSITS**

**5.1 Fees.** In consideration of the Services to be performed by INQUE Design, Client shall pay to INQUE Design fees in the amounts and according to the payment protocol below in the Proposal (5. , 5.1, 5.2, 5.3, 5.4, 5.5), and all applicable sales, use or value added taxes, even if calculated or assessed subsequent to the payment protocol.

**5.2 Expenses.** Client shall pay INQUE Design's expenses incurred in connection with this Agreement as follows: (a) incidental and out-of-pocket expenses including but not limited to costs for telephone calls, postage, shipping, overnight courier, service bureaus, typesetting, blueprints, models, presentation materials, photocopies, computer expenses, parking fees and tolls, and taxis at cost plus INQUE Design's standard markup of ten percent (10 %), and, if applicable, a mileage reimbursement at 0.25 per km; and (b) travel expenses; including transportation, meals, and lodging, incurred by INQUE Design with Client's prior approval OR clients agree to pay INQUE Design for the services provided under this agreement at the respective hourly rate of the individual providing the services. The rates fall within the following ranges: 60 CAD to 120 CAD per hour. INQUE Design will charge in increments of one tenth of an hour, rounded off for each particular activity to the nearest one tenth of an hour. The minimum time charged for any particular activity will be one tenth of an hour.

**5.3 Additional Costs.** The Project pricing includes INQUE Design's fee only. Any and all outside costs including, but not limited to, equipment rental, photographer's costs and fees, photography and/or artwork licenses, prototype production costs, talent fees, music licenses, and online access or hosting fees, will be billed to Client unless specifically otherwise provided for in the Proposal.

**5.4 Invoices.** All invoices are payable within seven (7) days of receipt. A 1.5 percent monthly service charge is payable on all overdue balances after seven (7) days. Payments will be credited first to late payment charges and next to the unpaid balance. Client shall be responsible for all collection or legal fees necessitated by late or default in payment. INQUE Design reserves the right to withhold delivery and any transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full. All grants of any license to use or transfer of ownership of any intellectual property rights under this Agreement are conditioned upon receipt of payment in full which shall be inclusive of any and all outstanding Additional Costs, Taxes, Expenses and Fees, Charges or the costs of Changes.

**5.5** A deposit of 30% is required with any standard project and 50% for database driven projects before any design work will be carried out. This figure may be higher for websites of an adult nature and is non-refundable. Clients with which INQUE Design works with on a regular basis may have the deposit waived or reduced, at the discretion of INQUE Design.

After a deposit is received, the work will commence, or in cases where a deposit is waived, work will commence immediately. Once the work is 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.

**Please note** *Once an agreement has been entered into and the work undertaken or completed, the client will remain contractually obligated to pay for the work in full, regardless of "change of mind" or any other related issues. Deletion or "non-use" of the work by the client is not a suitable or acceptable reason for non-payment.*

If accounts are not settled or INQUE Design have not been contacted regarding the delay within four weeks of project completion, access to the related website may be denied and web pages removed. We will then pass such cases to the Small Claims Court or relevant judicial body for your country, to pursue payment. In some cases, debt collectors may be employed to collect payment. All solicitor/collection fees will be added to the outstanding amount.

Following consistent non payment of an invoice our Solicitors will contact the client in question, with a view to taking the matter further and if need be to seek payment through legal procedures, and if necessary court summons.

**Please note** *that for all payments made via PayPal, we require a 7% addition to the final amount to cover PayPal fees.*

## **6. DATABASE, APPLICATION AND E-COMMERCE DEVELOPMENT**

INQUE Design 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.

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

Where applications or sites are developed on servers not recommended by INQUE Design, 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.

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

## **7. COMPATIBILITY**

INQUE Design will endeavor 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 the web browsing software Microsoft Internet Explorer Version 7 and Mozilla Firefox 3 - and to an acceptable level with older Mozilla Browsers and other mainstream browsers. INQUE Design can offer no guarantees of correct function with all browser software.

## **8. WEBSITE HOSTING**

Whilst INQUE Design recommends hosting companies to host websites, no guarantees can be made as to the availability or interruption of this service by INQUE Design 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.

INQUE Design 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 the free hosting service should the necessity arise.

## **9. WEBSITE OPTIMIZATION**

Due to external factors, such as changes to the way search engines rank websites, we cannot offer any guarantees regarding the position we will achieve for websites. The process of optimizing websites itself will bring in more traffic and hits and you'll see visits increase to your site naturally. We cannot accept liability for any change in rankings, or drop off in the position of your website due to changes in the algorithms of the search engines or the factors that they use to rank websites.

We use 'white hat techniques' when optimizing websites and always aim to achieve a top ten ranking for your website within six months of undertaking the optimization process. Due to the work involved payment is generally required in advance and we are unable to offer a refund of any monies to clients in relation to this type of work.

INQUE Design reserve the right to refuse to handle in any way, material which may be deemed offensive, illegal or in

any way controversial.

## 10. OUR PRIVACY

We do not share or sell any of your details with third party companies, without your express permission and we will only email you or contact you about work related matters.

## 11. RELATIONSHIP OF THE PARTIES

**11.1 *Independent Contractor.*** INQUE Design is an independent contractor, not an employee of Client or any company affiliated with Client. INQUE Design shall provide the Services under the general direction of Client, but INQUE Design shall determine, in INQUE Design's sole discretion, the manner and means by which the Services are accomplished. This Agreement does not create a partnership or joint venture and neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. INQUE Design and the work product or Deliverables prepared by INQUE Design shall not be deemed a work for hire as that term is defined under Copyright Law. All rights, if any, granted to Client are contractual in nature and are wholly defined by the express written agreement of the parties and the various terms and conditions of this Agreement.

**11.2 *INQUE Design Agents.*** INQUE Design shall be permitted to engage and/or use third party designers or other service providers as independent contractors in connection with the Services ("Design Agents"). Notwithstanding, INQUE Design shall remain fully responsible for such Design Agents' compliance with the various terms and conditions of this Agreement.

**11.3 *No Solicitation.*** During the term of this Agreement, and for a period of six (6) months after expiration or termination of this Agreement, Client agrees not to solicit, recruit, engage, or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire, or any other kind of basis, any Designer, employee or Design Agent of Designer, whether or not said person has been assigned to perform tasks under this Agreement. In the event such employment, consultation or work-for-hire event occurs, Client agrees that INQUE Design shall be entitled to an agency commission to be the greater of, either (a) 25 percent of said person's starting salary with Client, or (b) 25 percent of fees paid to said person if engaged by Client as an independent contractor. In the event of (a) above, payment of the commission will be due within 30 days of the employment starting date. In the event of (b) above, payment will be due at the end of any month during which the independent contractor performed services for Client. INQUE Design, in the event of nonpayment and in connection with this section, shall be entitled to seek all remedies under law and equity.

**11.4 *No Exclusivity.*** The parties expressly acknowledge that this Agreement does not create an exclusive relationship between the parties. Client is free to engage others to perform services of the same or similar nature to those provided by INQUE Design, and INQUE Design shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by INQUE Design.

**12. CLIENT RESPONSIBILITIES**

Client acknowledges that it shall be responsible for performing the following in a reasonable and timely manner:

- (a)** coordination of any decision-making with parties other than the INQUE Design
- (b)** provision of Client Content in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the Proposal
- (c)** final proofreading and in the event that Client has approved Deliverables but errors, such as, by way of example, not limitation, typographic errors or misspellings, remain in the finished product

Client shall incur the cost of correcting such errors.

**13. COMPLAINTS PROCEDURE**

**13.1. Informal procedure**

Anyone who experiences a problem with their web service provided by INQUE Design should raise the matter directly using our our online contact form to do so, giving sufficient information to locate the material (such as an url) and clearly outlining the grounds for complaint.

INQUE Design will approach the individual responsible for the material in question with a view to resolving the matter to the satisfaction of the complainant.

**13.2. Formal complaints procedure**

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.

A formal complaint should be made in writing to INQUE Design, who will acknowledge receipt and ensure that the matter is looked into as soon as possible.

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.

**14. TERM AND TERMINATION**

**14.1** This Agreement shall commence upon the Effective Date and shall remain effective until the Services are completed and delivered.

**14.2** This Agreement may be terminated at any time by either party effective immediately upon notice, or the mutual agreement of the parties, or if any party: (a) becomes insolvent, files a petition in bankruptcy, makes an assignment for the benefit of its creditors; or (b) breaches any of its material responsibilities or obligations under this Agreement, which breach is not remedied within ten (10) days from receipt of written notice of such breach.

**14.3** In the event of termination, INQUE Design shall be compensated for the Services performed through the date of termination in the amount of (a) any advance payment, (b) a prorated portion of the fees due, or (c) hourly fees for work performed by INQUE Design or INQUE Design's agents as of the date of termination, whichever is greater; and Client shall pay all Expenses, fees, out of pockets together with any Additional Costs incurred through and up to, the date of cancellation.

**14.4** In the event of termination by Client and upon full payment of compensation as provided herein, INQUE Design grants to Client such right and title as provided for in Schedule A of this Agreement with respect to those Deliverables provided to, and accepted by Client as of the date of termination.

**14.5** Upon expiration or termination of this Agreement: (a) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party, and (b) other than as provided herein, all rights and obligations of each party under this Agreement, exclusive of the Services, shall survive.

## **AGREEMENT**

The client who hereby agrees to work with INQUE accepts the above Terms and Conditions.