

## Web Design Service Agreement

- 1. Parties.** This agreement is between Gazungle.com (PROVIDER) and the party as specified in the on-line application (CLIENT).
- 2. Web design and software development services only.** This agreement covers the web design, web development and web maintenance services only. Other Internet services by the same PROVIDER are available at [www.gazungle.com](http://www.gazungle.com) and are subject to another agreement.
- 3. Professional design services (flat fee).** Included plans Basic, Starter and Advanced. Those are discounted services based on preliminary designs. CLIENT has the right to choose from any of the preliminary designs on non-exclusive basis. The design service includes customization of the web site with client's name, logo, text, images and colors; however, the discounted price does not include customizations and modification to the initial design.
- 4. Turnaround time.** PROVIDER specifies the approximate turnaround time for each plan at its web site. It starts after the Client submits all of the web site content to Provider. If Provider delays the project, more than 14 business days after specified turnaround time and Client has provided all the content, than Client is entitled to a full refund if he chooses to cancel the order. This is the only remedy to the Client for delay.
- 5. Policies.** CLIENT agrees to abide by PROVIDER'S "Acceptable use policy" and "Copyright infringement policy". PROVIDER reserves the right to change the policies from time to time to reflect the dynamic nature of the Internet. Both policies are available on-line at any time or as a hard copy by request only.
- 6. Limitations.** There are certain limits to each plan. Those include number of pages, number of color schemes, number of coordination steps, number of items in the shopping card etc. PROVIDER has explained the terms and listed the limitations at his web site. Client agrees to abide by those limitations. Client agrees to pay additional fee if he chooses to exceed such limitations. Provider will notify Client about such extra charges and will proceed only with Client's approval.
- 7. Custom design (per hour charge).** Client has the option to order any kind of web design, software design, software programming, logo design on a full custom basis. In this case customer pays per hour. Some custom work carries minimal hours. Client understands that design is not exact science and that results may vary. Client trusts Provider based on his own research, review of previous work etc. Client will be responsible for the payment of the hourly fees regardless how satisfied or unsatisfied with the result he is. Estimates may not be accurate. Client pays per actual hours not per estimate. Client may set limits and the work will stop when the limit is reached.
- 8. "Add on".** Provider offers a number of standard "add on" features at flat rate. Client agrees to pay such flat rate for the feature "as is" . If client requires additional features he agrees to pay for the extras on per hour basis.
- 9. Ownership.** License to use. PROVIDER is the sole owner of all products, web designs and software designed and developed under this agreement (see also Copyright below). Nothing in this agreement should constitute transfer of ownership of any kind. PROVIDER grants to CLIENT one license to use any of the aforementioned products including but not limited to professional designs, custom designs, add on products, software, e-commerce stores, data base designs etc. One license means installation at one domain for the design and installation and use of one instance of the software. PROVIDER reserves the right to license more than one CLIENT for the same product at his sole discretion.
- 10. Maintenance.** Provider is offering and Client has the option to subscribe for web site maintenance services. Maintenance plans vary depending on the needs of the Client. The maintenance plans and the monthly fees are listed at the web site.
- 11. Gazungle.com text link placement.** Client agrees the text "Design by Gazungle.com" to be placed at the bottom of each and every web page designed by Provider.
- 12. Copyright.** Gazungle.com is the owner of the Copyrights of all designs. Client is the copyright owner of the content (text, pictures etc.) unless Client uses someone else's copyrights with permission.
- 13. On-line subscription.** If CLIENT makes an on-line, paperless subscription for the services. CLIENT acknowledges that all the information he submits on-line is true and correct to the best of his knowledge. CLIENT agrees that the act of submitting his subscription form on-line is equivalent to his/her signature.
- 14. Price change.** PROVIDER has the right to change the price of the services to reflect a change in the cost of the service, or other reasons.
- 15. Start of services.** Services will typically start on the next business day after Client submits the content.
- 16. Content submission.** Clients must deliver content through email or any digital format. It is Client's responsibility to provide all the content in a timely manner. Design work will not start before all content is submitted.
- 17. Quality of Services.** Provider will apply the best efforts to provide the best possible quality. As with any design work client's satisfaction can not be guaranteed. Provider will not take returns and refund fees based on quality issues.
- 18. Fees.** CLIENT agrees to pay for the services at the fees specified at the web site.
- 19. Delivery.** PROVIDER will deliver (install) the design to a valid web address specified by Client.

**20. Web hosting services.** Client understands and agrees that he has to have active web hosting in order to be able to accommodate the web design. Gazungle.com provides web hosting services subject to separate agreement.

**21. Acceptance and acceptance by default.** Client agrees to accept the design within 3 business days after the notification of delivery. Mechanical errors could be reasons for non acceptance (rejection). Examples: someone else's web site was delivered by mistake, missing pages, broken links, missing content etc. Design quality cannot be a reason for rejection. Examples: don't like the design, expected something else etc. can not be a reason for rejection. If client does not respond to inquiry for acceptance within 3 business days the work will be considered accepted by default.

**22. Term.** This agreement is terminated upon the acceptance of the design work by the Client, however the obligations of client to pay remain after the termination of this agreement until all fees due are paid in full. This agreement will not terminate if Client has purchased maintenance plan. In this case, the Agreement will remain in full force as long as Client has his maintenance account current.

**23. Payments.** CLIENT agrees to pay in advance for all 'flat fee' services and upon receiving of invoice for all hourly bills via credit card, check or money order. PROVIDER will begin work once funds clear.

**24. Late Payment.** CLIENT agrees to pay additional late fee of 1.5% per month or the maximum permitted by the law of the amount due and non paid.

**25. No refunds.** Provider will not refund collected fees unless such refund is explicitly authorized by this agreement.

**26. Collections.** PROVIDER has the right to disable CLIENT's web site and to block the transfer of web content, software and/or domain name in order to collect money owed from CLIENT to PROVIDER.

**27. No solicitation.** CLIENT agrees not to approach PROVIDER's employees with proposals to hire them as his own employees or contractors. If CLIENT were to hire any of Provider's employees, CLIENT agrees to pay PROVIDER for each employee thus hired customary fees charged by top employment agencies plus 30% surcharge.

**28. LIMITED LIABILITY.** PROVIDER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE PRODUCT, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOSS OF USE, LOST DATA, LOSS OF PRIVACY, DAMAGES TO THIRD PARTY EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER ANY CLAIMS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY OR CONTRIBUTION, THE FAILURE OF ANY LIMITED OR EXCLUSIVE REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE OR OTHERWISE.

FURTHER, PROVIDER WILL NOT CENSOR ANY CONTENT ON THE INTERNET. IT WILL BE CLIENT'S RESPONSIBILITY FOR THE USAGE OF HIS CONTENT AND ANY CONSEQUENCES OF THIS USAGE.

**29. Indemnification.** CLIENT shall indemnify, defend by counsel reasonably accepted by PROVIDER, protect and hold PROVIDER harmless from and against any and all claims, liabilities, losses, costs, damages, expenses, including consultants' and attorneys' fees and court costs, demands, causes of action, or judgments directly or indirectly arising out of or related to the web design and other services provided by PROVIDER to the CLIENT.

**30. Entire Agreement.** This Agreement constitutes the entire understanding and contract between the parties and supersedes any and all prior and contemporaneous, oral or written representations, communications, understandings and agreements between the parties with respect to the subject matter hereof, all of which representations, communications, understandings and agreements are hereby canceled to the extent they are not specifically merged herein. The parties acknowledge and agree that neither of the parties is entering into this Agreement on the basis of any representations or promises not expressly contained herein.

**31. Modification.** This Agreement shall not be modified, amended, canceled or in any way altered, nor may it be modified by custom and usage of trade or course of dealing, except by an instrument in writing and signed by both of the parties hereto.

**32. Waiver.** Performance of any obligation required of a party thereunder may be waived only by a written waiver signed by the other party, which waiver shall be effective only with respect to the specific obligation described therein. The waiver by either party hereto of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach of the same provision or any other provision of this Agreement.

**33. Severability.** If any provision of this Agreement shall be unlawful, void, or for any reason, unenforceable, it shall be deemed severable from, and shall in no way affect the validity or enforceability of, the remaining provisions of this Agreement, which shall remain valid and enforceable according to its terms.

**34. Governing Law.** This Agreement was entered into in the State of Massachusetts and its validity, construction, interpretation and legal effect shall be governed by the laws and judicial decisions of the State

of Massachusetts applicable to contracts entered into and performed entirely within the State of Massachusetts.

**35. Authority to Execute.** Each of the parties to this Agreement represents and warrants that it has full power to enter into this Agreement and that it hasn't assigned, encumbered, or in any manner transferred all or any portion of the claims covered by this Agreement.

**36. Benefit of Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, and except as otherwise provided herein, their respective legal successors and permitted assigns.

**37. Cumulative Remedies.** Except as specifically provided herein, no remedy made available to either party hereunder is intended to be exclusive of any other remedy provided hereunder or available at law or in equity.

**38. No Partnership or Agency.** Nothing in this Agreement shall be construed as creating a joint venture, partnership, agency, employment relationship, franchise relationship or taxable entity between the parties, nor shall either party have the right, power or authority to create any obligations or duty, express or implied, on behalf of the other party hereto, it being understood that the parties are independent contractors vis-à-vis one another.

**39. No Third Party Beneficiaries.** Nothing contained in this Agreement, express or implied, shall be deemed to confer any rights or remedies upon, nor obligate any of the parties hereto, to any person or entity other than such parties, unless so stated to the contrary.

**40. Excused Performances.** Provider shall not be deemed to be in default of or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of the Services, resulting directly or indirectly from acts of God, acts of civil or military authority, civil disturbance, war, strikes or other labor disputes and disturbances, fire, transportation contingencies, shortages of facilities, fuel, energy, labor or materials, or laws, regulations, acts or order of any government agency or official thereof, other catastrophes, or any other circumstances beyond Provider's reasonable control. In the event of any such delay or failure, performance of the Services shall be deferred to a date and time mutually agreeable by the parties.

**41. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**42. Captions.** The section headings and captions contained herein are for reference purposes and convenience only and shall not in any way affect the meaning or interpretation of this Agreement.

**43. Gender.** Where the context so requires, the masculine gender shall include the feminine or neuter, and the singular shall include the plural and the plural the singular.

**44. Recitals.** The recitals above set forth are incorporated herein by reference.

**45. Arbitration.** Any dispute arising under this agreement shall be resolved by binding arbitration in the city of Boston, Massachusetts and under the rules of the American Arbitration Association.

## Templates Terms of Use

### IMPORTANT INFORMATION

You should carefully read the following Terms and Conditions. Your purchase or use of our products implies that you have read and accepted these Terms and Conditions.

**LICENSE.** Our website grants you non-exclusive limited license to use the web templates and other products sold through our web site by independent content providers (the "products") in accordance with these Terms and Conditions (the "license") issued by our company.

**a) LIMITED USAGE GRANTED.** You may use each individual product on a single website only, belonging to either you or your client. You have to purchase the same template once more in order to make another project with the same design. All imagery and fonts used in our templates are royalty-free and are the integral part of our products. Limited-usage License gives you the right to use images and fonts only as a part of the particular website template. Separate usage/distribution is prohibited.

**b) MODIFICATIONS.** You are authorized to make any necessary modification(s) to our products to fit your purposes.

**c) UNAUTHORIZED USE.** You may not place any of our products, modified or unmodified, on a diskette, CD, website or any other medium and offer them for redistribution or resale of any kind without prior written consent from our company.

**d) ASSIGNABILITY.** You may not sub-license, assign, or transfer this license to anyone else without prior written consent from gazungle.com.

**e) OWNERSHIP.** You may not claim intellectual or exclusive ownership to any of our products, modified or unmodified. All products are property of independent content providers. Our products are provided "as is" without warranty of any kind, either expressed or implied. In no event shall our juridical person be liable for

any damages including, but not limited to, direct, indirect, special, incidental or consequential damages or other losses arising out of the use of or inability to use our products.

**OUR REFUND POLICY.** Since Gazungle.com is offering non-tangible irrevocable goods we do not issue refunds after the product is shipped, which you are responsible for understanding upon purchasing any article at our site.

**ANTIFRAUD CHECK.** Customer purchase can be suspended for manual antifraud check for 10-20 minutes as well as it can be suspended for longer term (around 20 hours) for more serious investigation. Antifraud check occurs because of growing number of fraud transactions from persons who are not actual cardholders of the credit cards used during purchase.

Our company reserves the right to change or modify current Terms with no prior notice.