

"We" "Us" and "Our" refer to Graham and Lynn Cullimore trading as pinkdylan (a partnership). "You" "Yourself" and "Your" refers to the client with whom we have a contract.

Our contact details are: pinkdylan, Badgers Rest, Lower Farm Court, Kinnersley, Worcester, WR8 9JR. Tel 01905 371041. [www.pinkdylan.co.uk](http://www.pinkdylan.co.uk)

1) Revision to Terms and Conditions.

pinkdylan shall be entitled to revise these terms and conditions from time to time. Current terms are available at [www.pinkdylan.co.uk/terms](http://www.pinkdylan.co.uk/terms). If we do revise terms and conditions we will email all clients with whom we have ongoing monthly or annual (or any other regular interval) contracts at [info@domainname](mailto:info@domainname) where "domainname" is the clients domain name based on our records. Clients with multiple domain names known to us will receive one advice per domain name. It is not always possible for us to be aware of what email addresses a client uses (even when hosted on our servers), it is essential that clients do accept emails at [info@](mailto:info@) and that this address is received by a responsible official entitled to commit you to entering a contract. We shall be entitled to assume that clients have received emails sent to this address. Clients who do not wish to accept mail at [info@](mailto:info@) should frequently check our web site for updated terms. We will supply a copy of current terms to clients and potential clients any time on request. In the event that you are not happy with any changes in terms that we impose you must notify us within 30 days of us publishing revised terms and us sending advice emails out to your [info@](mailto:info@) address(es) (whichever is later). In this event we shall have the option of allowing you to continue under the previously published terms or terminating the contract with 30 days notice at our absolute discretion.

2) Contract Terms

a. Pinkdylan terms and conditions

pinkdylan only supply goods or services in accordance with the terms and conditions contained herein unless we specifically state otherwise in writing directly to the client. All quotations will refer to these terms and you understand that if you accept our quotation and this is evidenced by you issuing a purchase order (verbal or otherwise) (or by you paying any deposit due under terms of quotation) then you agree to our terms and accept that any contradictory terms quoted on any purchase order you may raise are waived by mutual agreement no matter what else is contained therein. By issuing a purchase order based on our quotation you accept that the fact your purchase order is raised at a later date than our quotation does in no way entitle terms thereon to take precedence over terms herein. On occasions our quotations may include terms in addition to the terms contained herein, and where this is the case these terms shall apply as if they were contained herein. On occasions we may include terms on our quotation that contradict terms contained herein; where this is the case then, errors excepted, the terms stated in our signed quotation shall take precedence over the relevant terms herein but the remainder of terms contained herein shall still apply.

b. Third party terms and conditions

The provision of services to you necessarily involves us entering contracts with third parties. This includes (but is not limited to) the provision of domain names, broadband and hosting facilities together with software licenses and third party copyright and similar. These terms may impose limitations or obligations on us and you will be bound by these obligations and limitations (and rights) in the same way as if you had entered the contract directly with the third party. There may also be rights, obligations and restrictions under legislation, and both parties may be compelled to comply with current legislation.

Where legislation or third party terms have legal precedence over our terms then such legislation or third party terms will take priority over any contradictory terms contained herein (and may impose additional rights, responsibilities and exclusions not referred to herein at all), but all other terms contained herein shall still apply.

3) Waived or Agreed Variation of Terms

From time to time pinkdylan may at its absolute discretion waive or agree to vary terms in writing, or we may not impose all terms that we are entitled to impose. Where this is the case any such action or lack of action shall not prevent us from fully imposing terms contained herein on another occasion not specifically covered by any variations agreed in writing.

4) Transfer of Rights and Obligations

a. Transfer of our rights and obligations

The partners of pinkdylan also own pinkdylan limited which at the date these terms were written is dormant. At some point in the future a decision may be taken to transfer part or all of the business of pinkdylan (partnership) to pinkdylan limited and in this event pinkdylan (partnership) may transfer all rights and obligations under pinkdylan contracts to pinkdylan limited. We may only do this if we transfer all of our sales/service contracts within one or more of our main categories of business (Design and Programming, Hosting, Broadband and Search Engine Consultancy) to pinkdylan limited. Should we transfer contracts in this way then the partners shall have no further personal liability under contracts that have been transferred. In this event we will publish revised terms in the new business name to the web site and advise all clients with whom we have ongoing contracts by email to "[info@](mailto:info@)" [as in 1) above].

In the event of the death or incapacity of one of our partners all rights and responsibilities under this contract shall be automatically transferred to the remaining partner on a sole trader basis, and the remaining partner shall have the right to enter a new partnership with one or more other people as yet unknown (or to transfer business to a limited company).

We have the right to sell or otherwise transfer our business or any part of it to other individual, partnership or company and to take on additional partners, and our rights and obligations will be transferred with ownership.

We must advise you in writing to your last known address as soon as reasonably possible of any such changes. This must be in advance of such change where such changes is planned. Where such change is not planned (such as the death or incapacity of a partner) you must allow reasonable time under the circumstances.

b. Transfer of your rights and responsibilities

You have fundamentally the same rights (and obligations) to transfer your rights and obligations under this contract as we do as in 4 a. above.

Notice (retrospective where circumstances dictate such as death of proprietor/owner/partner) must be sent to BOTH our head office address as then shown on our web site at [www.pinkdylan.co.uk](http://www.pinkdylan.co.uk) and ALSO by email to [info@pinkdylan.co.uk](mailto:info@pinkdylan.co.uk).

c. Neither party may transfer any rights and obligations (as 4.a or 4.b above) where the prime aim or significant consequence is to avoid liability, or where the new party transferred to fails to fully meet any or all obligations under the contract for a period of at least 3 months after the transfer. Any contractual obligations that are not fully honoured within this timescale shall render the original party jointly liable for the breach.

5) Existence of a Contract

pinkdylan will usually formally quote in writing, and where this is the case no contract shall exist until you accept our quotation and we also confirm the acceptance of your order. You may verbally accept our order or accept in writing (including email) with or without a purchase order, or by simply paying any deposit due. We will accept your order by raising an invoice for the deposit (or banking any deposit received if received before a related invoice is raised), or if no deposit due by confirmation email. We shall not be under any obligation to commence work until any deposit due has been received and cleared.

Where formal fixed quotations are not provided (typically sundry web updates to be charged at an hourly rate or registration of domain names and similar sundry tasks typically dealt with over the phone including pay per click (ppc) advertising and changes to ppc schemes) we will provide verbal or casual email prices or hourly rates and your verbal instructions to proceed shall be sufficient commit you to a contract.

You understand that once a contract exists you are liable to pay all fees chargeable under it and shall not be entitled to cancel the contract or receive refund of any deposit paid unless there is a fundamental and major breach of contract on our part. If you do consider that we are not meeting our obligations under a contract you must advise us as such in writing and give us a reasonable time to rectify the situation (the timescale will vary depending on the nature of the work in question).

6) Limit of Liability

a. Our Limit Of Liability

Under no circumstances whatsoever (excepting personal injury or death as a direct and exclusive result of our actions or as otherwise stated herein) shall pinkdylan have any liability over and above potential refund of any fees received from you for goods or services that we have fundamentally and totally failed to provide (or that contain catastrophic and genuine bugs that we are unable to fix) regardless of reason for such failure.

i. Total Failure to Supply Goods or Services:

Should we totally fail to deliver goods or services contracted for, our maximum liability is to refund fees received in respect of the goods or services we have totally failed to supply.

We shall not be financially liable to refund you for failure of services we provide where such failure is due to failure of a supplier/provider further "upstream" from ourselves, and where we ourselves are unable to receive appropriate compensation for such third party failures (whether technical or financial).

ii. Bugs and programming errors (e-commerce, database and other programming work):

Our maximum liability in the event of programming errors or omissions (including mathematical, logic or reporting errors) shall be to fix such errors (or refund the fees received for the job at our discretion). We shall not be liable for any consequential losses resulting from such errors or omissions.

It is ESSENTIAL that you fully understand that programming and mathematical errors (and similar) could potentially have significant financial implications for you. Whilst pinkdylan undertake reasonable levels of testing on all programming and mathematical logic, it is ESSENTIAL (and a condition of contract) that you also perform comprehensive tests on the final installation of all aspects of any work we have undertaken for you (with special care for anything with potential financial or legal implications) under all combinations of situations you will encounter with your precise needs (some solutions are based on core programming provided as the basis of applications delivered to many clients, and as such may have virtually infinite combinations of possibilities and it may well be impractical for us to establish and test every possible combination of events and features, whereas it is relatively straightforward for you to test the combination of features and settings that you intend to use from the features available to you) and satisfy yourself that all is correct before this work is made available to the outside world for live orders etc.

You must advise us of any problems you discover during these tests even if you feel they are of no significant consequence. Any genuine bugs or errors reported to us immediately following these tests (but in no event later than 60 days from date we deliver the site to you) will be rectified free of charge (or a refund / partial refund provided at our discretion).

With e-commerce sites and any other site with potential financial or legal implications, you must perform adequate and regular full audit checks at frequent intervals designed to ensure that all calculations and functionality continue to perform as they should. Any correction work necessary after your initial tests and more than 60 days after the site was delivered to you may be chargeable at our discretion.

It is ESSENTIAL that where e-commerce payments are processed using a third party payment provider that you do not rely entirely on the payment status message as displayed within your site admin. You should confirm that all payments you believe to have been received have in fact been correctly credited to your account and not subject to a chargeback – before you dispatch goods. You must perform regular reconciliations between orders received and payments actually received.

Owners of e-commerce sites must be aware of the fact that fraudulent orders are not uncommon, and the fact a card payment is recorded as "approved" (or similar) is no proof that the card is valid and has not been stolen. You must take adequate fraud and security precautions with all orders and extreme caution with "unusual" orders including those with delivery addresses that differ from the card holders address, deliveries outside the UK, or orders for unusually large values or multiples of the same item including repeat orders.

iii. Partial Failure to Provide Services Contracted For:

Where we have partially failed to provide a service then any potential refund shall be limited to the proportion of fees received equivalent to the proportion of contracted services we have failed to provide (e.g. if you have paid for a service for 30 days and we fail to provide that service on 3 of those days, then our maximum liability shall be one tenth of the fee paid for the 30 days).

We shall not be financially liable to refund you for failure of services we provide where such failure is due to failure of a supplier/provider further "upstream" from ourselves, and where we ourselves are unable to receive appropriate compensation for such third party failures (whether technical or financial).

iv. Agreed Value of Goods and Services and Consequential Loss:

The services we provide shall not be deemed to have any greater value to you than the fees paid to us in respect of such services and we shall not be liable for any consequential loss following our failure to supply.

b. Your Limit Of Liability

Under normal circumstances you have no liability to us over and above paying for goods services we provide you with (including any third party services). However there are certain specific exceptions as follows:

- i. If we incur costs (including time costs or loss of business as a consequence of us being unable to provide contracted services to other clients for whatever reason) as a result of you using our servers other than in accordance with permitted use defined herein, or other than accepted good practice, you shall be liable to compensate us in full for such costs including consequential loss and loss of business.
- ii. If you copy, duplicate, resell or otherwise distribute pinkdylan work (or any part of our work) including admin and database systems made available to you for your own use only in any way other than that specifically permitted herein (or you allow to be copied etc. through negligence or otherwise) then you shall be liable to pay us a fee equivalent to the fee we would charge to re-create from scratch all work that has been illegally copied (including any admin systems and databases), plus a surcharge of 100% and that this fee (including surcharge) shall be payable for each and every copy made whether by yourself or by someone you have directly or indirectly passed our work on to (or that have obtained copies of our work through your negligence).
- iii. If any action (or lack of) on your part renders us liable to pay any additional fees or costs to third parties properly contracted or subcontracted to provide your services or software licenses then you shall be liable to compensate us in full.

7) Third Party Copyright

pinkdylan will never knowingly infringe third party copyright when undertaking work for you, however in the event that we unknowingly do so our maximum liability shall be to remove such material from the work we have undertaken.

You will provide us with material necessary to design and populate your web site (if that is the service we are providing you with). We are entitled to assume that you have the right to use such text, images and other material and in the event that this is not the case we will be entitled to charge you based on our standard hourly rates for removing offending material. Furthermore, in the event that our using such material supplied by you causes us to incur additional costs (financial or time) then you agree to pay us such costs in full.

8) Copyright on pinkdylan work

Copyright - Web Site (and associated programming, database and admin systems): The position relating to copyright depends on the nature of the web site we have created as follows:

a. **Applicable to ALL web sites:**

Content supplied by you, the client, (logos, text copy and images): Copyright of this material as supplied to us will remain with you in full to the extent that you own copyright in the first place. Copyright on any material we create from your original material will remain with pinkdylan until such time as full payment is received by us from you for all work undertaken on your site, after which you are free to use individual files (such as web optimised logos and images) we have created directly and exclusively from your copyright material for your own use.

Third Party material: Copyright and licensing terms on any images or third party software (including Actinic e-commerce software) we have sourced for you from image libraries or third party developers/distributors will be subject to the license terms purchased by us on your behalf.

Updates: should you ask us to undertake updates to your site then the updated site will be regarded as a new site from a copyright point of view and any rights (as the initial site) will only pass to you upon us receiving full payment for such updates. If you fail to pay for updates you shall still be entitled to use a version of the site as backed up prior to the unpaid updates (subject to any other applicable terms).

pinkdylan credit: We are entitled to include a discreet credit at the foot of each web page with our name and a link to our web site. Any design copyright that we do pass on to you is subject to this credit and link remaining in place unless we specifically ask you to remove it in which case it must be removed. Pinkdylan may also use any site we develop as a featured site on our own web site including a small screenshot and possibly title, description with or without a link to the site in question.

b. **Fully Bespoke Sites.**

This category includes: "Fully Bespoke Design" Web Sites which may (or may not) include e-commerce, database applications and content management systems where such is designed and coded ENTIRELY from scratch in all respects (but also including Actinic based sites) exclusively for you, but **EXCLUDING** all sites that use one or more existing pinkdylan design and functionality packages in the "Start", "Pro" and "Xtra" (or "Extra") ranges (such as 'cmsStart', 'cmsXtra' 'cartStart' 'cartXtra', 'cartPro', 'pageStart' 'webStart' and 'sslXtra').

Once you have paid for our work in full, our copyright in respect of the complete overall site design as applied to all pages shall pass to you strictly on a single site basis and you are free to move your site to non pinkdylan servers and update/expand the site based around our design as you require (using your own software and skills or by employing pinkdylan or others). Pinkdylan retain copyright on all individual elements of design and coding (as opposed to the complete overall design) and shall be free to re-use any individual elements of design and coding as we wish, but not to create a cosmetically identical site for another client. We may recreate broadly identical functionality for another client.

Similarly, once full payment has been received by us you are free to copy the entire site contents (including contents of individual pages and navigation system, any flash movies and image montages) and if you wish publish on a different server.

Copyright in respect of all programming and database structure relating to FULLY BESPOKE e-commerce, database or other functionality shall formally remain with pinkdylan at all times, but you are granted a lifetime single site single copy license to use such functionality. You are free, once ALL work we have undertaken has been paid for in full, to move your site to non-pinkdylan servers on a single site license basis but you will be responsible for any additional work needed to effect a server transfer.

Any copyright that we do pass on to you as above is on a "single site original owner" basis. You may not create additional web sites based on any element of our design, coding or database structure, and you may not re-sell our work other than as part of a complete sale of your business, and where there is a transfer of business ownership you may not transfer ownership of the web site unless all of our work on the site including any updates, search engine optimisation and any hosting has been paid for in full, and the new owner must agree to our then current terms and conditions before they can receive any rights of use.

c. **Starter "Start" solutions**

This category includes Template based "Start" pinkdylan hosted solutions including cmsStart, cartStart, pageStart and webStart:

All copyright relating to the cosmetic and functional design of the site including all coding and database structure necessary for the site and the site admin shall remain with pinkdylan at all times.

These solutions require hosting on pinkdylan servers, you purchase a single site single copy license to use the site and its associated management/admin systems and your continued use of this license is subject to purchasing suitable pinkdylan hosting for the life of the site. You may not publish any element of the site or its underlying coding or database structure to a server not provided by pinkdylan.

You may not copy any element of the site (other than the portion of page content provided wholly and exclusively by yourselves) for any purposes whatsoever other than to make use of the pinkdylan backup facility provided within the admin system, and such backup files may not be used other than to provide pinkdylan with a backup of the site data should the need arise.

You may transfer your license to use the site to any third party of your choice as long as your account is up to date and the new user agrees to our then current terms and conditions and employs a pinkdylan hosting contract suitable for the site.

Our quotation will make it clear if the proposed solution is to use any "Start" (by referring to the solution name which will always end "Start"). If any element of the proposed solution is based on a "Start" package then the entire solution is regarded as a "Start" solution.

If you require full single site copyright over site design and a lifetime single site license to use functionality without the need to purchase pinkdylan hosting, you should ask for a quotation for a "Fully Bespoke" site.

d. **Extended "Xtra" (or "Extra" and "Pro") solutions**

This category includes Bespoke Design Web Sites (where the overall cosmetic design of the site is bespoke rather than based on a template), but where functionality and/or admin is provided by standard pinkdylan "Xtra" packages (which may include content management, any e-commerce functionality, and associated admin systems). Bespoke Designs utilising one or more of: "cmsXtra", "cartXtra" "cartPro" and sslXtra (or "Extra" in place of "Xtra") are included here.

These solutions require hosting on pinkdylan servers, you purchase a single site single copy license to use the site and its associated management/admin systems and your continued use of this license is subject to purchasing suitable pinkdylan hosting for the life of the site. You may not publish any element of the site or its underlying coding or database structure to a server not provided by pinkdylan

Once you have paid for our work in full, our copyright in respect of the overall cosmetic site design as a single unit and as applied to all pages shall pass to you for your own use (including requesting other web designers to replicate cosmetically if you so wish). This does not extend to individual page content (which varies from page to page) other than any such content uploaded by or provided entirely by yourself.

Pinkdylan retain copyright on all individual elements of design and coding (as opposed to the complete overall design) and shall be free to re-use any individual elements of design and coding as we wish, but not to create a cosmetically identical site for another client. The functionality provided by the "Xtra" solution will however be similar or identical from one site to another.

Cosmetic design of certain page elements created directly by our "Xtra" management systems (such as product details pages, search results pages, search bars and the like) will routinely be the same or similar from site to site, and no element of this content may be copied by you for use on another site.

You may not copy any element of the sites functionality (programming and database structure) for any purposes whatsoever other than to make use of the pinkdylan backup facility provided within the admin system, and such backup files may not be used other than to provide pinkdylan with a backup of the site data should the need arise.

You may transfer your license to use the site to any third party of your choice as long as your account is up to date and the new user agrees to our then current terms and conditions and employs a pinkdylan hosting contract suitable for the site.

Our quotation will make it clear if the proposed solution is to use any "Xtra" (by referring to the solution name which will always end "Xtra"). If any element of the proposed solution is based on a "Xtra" package then the entire solution is regarded as a "Xtra" solution.

If you require full single site copyright over site design and a lifetime single site license to use functionality without the need to purchase pinkdylan hosting, you should ask for a quotation for a "Fully Bespoke" site.

9) **Service Specific Terms:**

a. **Web Sites**

i. Copyright depends on the solution provided, and is dealt with in 8) above.

ii. **Browser Compatibility:**

All sites developed by pinkdylan are optimised for the versions of Microsoft Internet Explorer and Microsoft Windows in most common use as at date site initially developed (simply because this combination covers the significant majority of users, should this situation change then our policy will evolve as necessary). In practice there will normally (but not necessarily always) be only minor cosmetic issues (if indeed there are any issues at all) with any other major up to date browser or platform in common use as at that date. Certain desirable features may require modern browsers, but we never use these features (unless there is no alternative in order to achieve essential functionality) where not supported by the then current most commonly used browser/platform. We are obviously unable to guarantee compatibility with future browsers/platforms (although historically this has not been a significant problem in practice) and any work needed to update a site for future hardware/software would be chargeable.

iii. **W3C (World Wide Web Consortium) Compliance:**

pinkdylan are able to develop sites that fully comply with the latest W3C standards, both for HTML and CSS, however this is not regarded an essential requirement and is not included in our quotations as standard. If you do require full compliance you must advise us in advance of quotation and ensure that our quotation does specifically cover this. (Ask for a re-quote if necessary.) You should be aware that any site that meets strict compliance when

we deliver it may lose compliance as additional content is added (through content management tools for example).

iv. Screen Resolution

You should be aware that how a web site looks on the screen will vary depending on the resolution of the screen in use. Unless otherwise agreed in writing we will develop all sites such that (assuming a full size window in use, and standard settings in all other respects) there is no need for "horizontal scrolling" when viewed at a resolution of 1024 wide or less. Users on a lower resolution will need to scroll sideways to see the full width of the site, and users on a higher resolution will observe blank unused space (other than possible background colour/image) either side of the site. This is "normal" and should not be considered a fault. The minimum resolution we design to may increase over time as screen trends change. Clients wishing us to design to an alternative resolution must advise us in advance and ensure our quote reflects their requirements.

v. Fonts

Clients should be aware that there are only a very small number of fonts that are Internet Safe. We always use Internet Safe fonts unless requested to do otherwise. If non "safe" fonts are used then users without the chosen font installed will see something completely different, and we shall have no liability in respect of this.

vi. Intended Audience and Legal Issues

pinkdylan will never develop a site that, at time of development, fails already established tests which have resulted in the creation of established, well publicised and generally accepted case law determining that similar sites (in terms of functionality, size, intended audience and level of technology) fail to meet essential legal requirements and where this has also resulted in the site owners being fined. If we do, then our liability is limited to making your site comply with established case law that existed at date of first delivery, or refunding/part refunding at our discretion. However, certain areas of law may be unclear or not fully tested or not adequately publicised and if you have any concern regarding this you must discuss this with us and ensure that our written quotation clearly and specifically satisfies you in this respect. The law requires that limited companies now include their registered office, country of registration, registration number and VAT number (if registered). If we are aware of the fact you are a limited company we will ensure these details are included (or add them later at no cost if omitted). Should law after site first published or delivered to you (either new law or new case law based on previously existing law) dictate any changes or additions to your site then these updates or re-designs are chargeable.

b. Domain Names:

i. Applicable Terms:

If we register, or take over administration of, a domain name for you then you are bound by the terms of the issuing Registry as well as the terms herein (as are we). Should these be mutually exclusive then the terms of the Registry shall prevail.

ii. Assumed Renewal:

We are entitled to assume that you wish to renew your name(s) at each renewal without reference to you and you are obliged to pay for domain renewals at our then current rate even if you no longer require the name unless you have advised us in writing at least TWO MONTHS before the name is due to expire that you wish to cancel the name (some names auto renew a month before expiry and we are unable to claim a refund past that time). We will confirm receipt of your request to cancel in writing and you must ensure you receive such confirmation at least six weeks before renewal is due.

iii. Renewal Invoicing:

We will usually invoice forthcoming domain renewals 6 to 8 weeks before renewal is due. PAYMENT DUE BY RETURN. If we do not receive payment at least 35 days before renewal then despite ii above we shall not be obliged to renew the domain name and shall have no liability whatsoever if we do not do so. Note that all domain names are chargeable, no domain names are included in hosting packages (as may have been the case prior to January 2009).

iv. Renewal Term:

We usually (but not necessarily) invoice domain name renewals two years at a time, this at time of terms written is the only renewal period available for .co.uk domain names and wherever reasonably possible consistency is our policy. You should note that with some names we invoice 2 years at a time but the name is renewed for one year at a time. In these cases the second year renewal is performed for you free of charge at the due date. (This is due to certain automated renewal systems, not because of policy.)

v. Your Awareness:

You must make yourself aware of all of your domain names and the dates they are due to expire. If you do not receive an invoice from us for renewal at least 6 weeks before a name expires you must contact us and query why. (We can give you information on expiry dates if you enquire).

vi. Loss of a Domain Name:

In the event of the loss of a domain name that you have paid for on time through a failure on our part we will attempt to retrieve the name for you but you must advise us immediately you become aware of the problem. Our absolute maximum liability in respect of the total and permanent loss of a domain name solely through our negligence alone shall be limited to an absolute maximum of £500.00 (in respect of perceived values of the name itself together with any consequential losses).

vii. Transferring a Domain Name away from pinkdylan:

Any domain name registered in your name is available to you for transfer to an alternative registrar. If you wish us to transfer a name you must advise us in writing on a letter heading of the registrant ("owner" - usually you) and signed by either the individual recorded as registrant (where this is an individual) or an authorised official (where this is a company or organisation). You must give precise instructions as to what action you wish us to take and you understand that once we have followed your instructions we may no longer have any control over your name and have no liability in the event of following incorrect instructions. We do not normally charge for transferring your name although reserve the right to if you would be charged for transferring the name in the opposite direction (roles reversed). We will not perform any work for you if your account in respect of the domain name or hosting thereof includes outstanding invoices.

viii. Services Provided Within Cost of a Domain Name:

Domain name registrations and renewals do not include hosting or email facilities on our servers, but do include running DNS if required (which could facilitate provision of hosting and email on a third parties server) and you provide us with the required DNS Settings (where you optionally purchase hosting from ourselves you will not need to provide us with information in order for us to provide services).

ix. Pricing Variation:

Prices for domain name renewals may be updated from time to time to reflect any changes in costs (from suppliers, time and any other). Example rates as at 1<sup>st</sup> May 2009 are £30+vat per 2 years for .co.uk, £35.00+vat per 2 years for .com. Exchange rates may also affect costs from time to time, current prices are based on exchange rates 1<sup>st</sup> August 2008.

x. Payment terms:

Domain name registrations and renewals are payable in advance (major credit cards may be accepted where immediate registration requested subject to a 5% surcharge).

c. Hosting and/or E-mail

- i. Facilities:

Facilities available and bandwidth/disk allowance will be detailed in our quotation – but packages are upgraded from time to time or amended as dictated by security or similar issues. Depending on the package you are on (and the facilities you actually need), your package may be upgraded or downgraded at any time at your request without affecting the current term, contact us for details.
- ii. Term:

All hosting and/or email contracts are annual contracts running from 1<sup>st</sup> January to 31<sup>st</sup> December. The first term will run from the Start Date (see iii below) up to the 31<sup>st</sup> December of the same year. For convenience we invoice monthly and you pay monthly, but the contract is annual in the same way as if it were invoiced annually. You may request us to invoice you annually (or to the end of the current calendar year in the case of the first year) if you prefer, but there will be no discount for paying annually. The contract term may be extended to 13 month if notice to cancel is not received – as detailed below.
- iii. Start Date:

Where the start of service provision starts other than on the 1<sup>st</sup> of a month, the contract term, invoicing and payment will be the same as had the service provision commenced on the 1<sup>st</sup> of month during which services were first made available to you.
- iv. Automatic Renewal:

Your hosting and/or email contract will be automatically renewed each 31<sup>st</sup> December for a further year unless terminated in line with vi, vii or viii below:
- v. Payment Terms and Invoicing:

All prices quoted are subject to VAT. We will invoice you monthly in advance at the end of each calendar month to cover the forthcoming month (unless you have requested annual in advance). Monthly hosting/email fees must be paid to us monthly in advance (annual if you prefer). Monthly payment must be made by standing order, with payments being made on (or around depending on weekends and bank holidays) the 23<sup>rd</sup> of each month to cover services for the forthcoming month.
- vi. Termination at end of Term:

Either party may terminate the contract at the end of the current term (next 31<sup>st</sup> December) by sending written notice by recorded delivery post to the last known address of the other party and this notice to be delivered on the 30<sup>th</sup> November or earlier. Email and faxed notice is NOT acceptable (original signature required). If no such notice is received then the contract is automatically extended for a further 12 months and therefore during the month of December the current contract term will extend to the end of the following December (i.e. up to 13 months).
- vii. Termination or Suspension by pinkdylan:

pinkdylan shall also be entitled to suspend or terminate the contract as follows:

  1. Suspension following Non Payment/Late Payment:

We shall be entitled to suspend our services in the event we do not receive a payment by the due date and you fail to rectify this situation within 7 days of us sending you a reminder (by post, email, fax or over the phone). If we do suspend an account in line with the above, a "Suspended or Terminated" message will replace your web site and email facilities will not be available.
  2. Re-activation Following Suspension:

If your account is suspended in accordance with these terms then the account will only be re-activated on receipt of payment to cover up to the end of the current contracted term (which will usually be the forthcoming 31<sup>st</sup> December, although in the event of suspension after the 30<sup>th</sup> November in any year – i.e. the latest date for receipt of notice of termination at the end of the current calendar year - this will be to the end of the forthcoming calendar year), plus a re-activation fee of £75.00+vat. These may be paid by credit card subject to a 5% surcharge.
  3. Termination Following Suspension:

Should we suspend your services as 8.b.vi.2. above, then should we not receive payment for re-activation (as detailed above) within 14 days we shall be entitled (but not obliged) to permanently terminate your account. Should we terminate your account in this way then any material you may have on our server will be permanently deleted and it will not be possible to recover such material.
  4. Suspension and Termination following Change in your trading or legal status:
    - a. If you cease trading or enter receivership:

Cessation of trading or entering receivership shall be regarded as a fundamental and catastrophic breach of contract. We shall be entitled to suspend or terminate (or first suspend and later terminate) your hosting and email facilities without notice or compensation (even if you have paid in advance) and you must have taken safe backup of any material on our servers that belongs to you immediately prior to your change in status.

In the event that you cease trading or enter receivership and we opt to suspend rather than terminate your account then we may at our discretion re-activate facilities on receipt of payment for the remainder of the current contracted term (which will usually be the forthcoming 31<sup>st</sup> December, although in the event of suspension after the 30<sup>th</sup> November in any year – i.e. the latest date for receipt of notice of termination at the end of the current calendar year - this will be to the end of the forthcoming calendar year), in addition to full payment of any other invoices outstanding for other pinkdylan services and an equitable payment for any work undertaken but not yet completed or invoiced.
    - b. If you enter administration:

If you are a limited company and you enter administration then this shall be regarded as a fundamental and catastrophic breach of contract. We shall be entitled to suspend your account without notice unless you have paid in full up to the end of the current contract term and also that there are no other outstanding pinkdylan invoices for other goods or services and that there is no current work in progress yet to be invoiced. We shall be entitled to allocate any prepayment on your hosting account as at date of entering administration against any outstanding invoices for other pinkdylan goods or services and/or the value of any work in progress as yet not invoiced.

If we do suspend your hosting and email account as above, then we will advise you by post within 4 working days of suspension full details of your current account status (including hosting fees up to the end of the current contracted period and the value of any work in progress). If you pay in full all outstanding invoices, contract commitments and the value of work in progress within 7 days of receiving these details from us we will re-activate your account up to the end of the current contracted period. If we do not receive such payment within this time frame your account will be permanently terminated. If the account is terminated as such then this shall not affect in any way our rights as an unsecured creditor.
  5. Your abuse of server:

We may terminate the hosting contract immediately without notice and without refund of any pre-paid fee should you use the server other than in accordance with the permitted use as in ix below.

6. If we cease trading:  
We may terminate the hosting contract if we cease trading, where this is planned then we must give at least 30 days notice in writing to your last known address, where this is not planned (for example sudden death of all partners or shareholders) no notice need be given, but we shall be liable to refund any prepaid element in respect of services paid for but not provided (you would be an unsecured creditor).

viii. Termination by yourselves:

In addition to termination at the end of the contract term as detailed above you shall also be entitled to terminate the contract immediately if:

1. pinkdylan cease trading
2. pinkdylan totally fail to provide usable hosting/mail services contracted for for a period of 20 consecutive days or longer measured from the date you formally advise us of a problem and where such failure is due to a failure of our services, not a failure (technical or business) of data centre or infrastructure further "upline" from us.
3. we fail to renew a domain name on which the hosting contract relies, and are unable to recover it within 20 days.

ix. Permitted Use, and expressly Prohibited Use (only facilities provided within the package purchased will be available to you):

We may suspend or terminate accounts without notice or compensation should they in our opinion breach our Permitted and Prohibited usage policy.

1. Web Site (and associated databases and programming)

a. Pinkdylan developed Web Sites

You are free to use (on pinkdylan servers) all functionality provided by pinkdylan developed websites including all associated admin facilities.

All page content created by pinkdylan may also be used on our servers as long as where such content is based on material you have supplied to us, such material is accurate, can be substantiated and is your copyright (or you have express permission to use it).

You may not add content to your site that is illegal, immoral or promotes any political or religious belief or viewpoint unless we have given express permission in writing. Similarly you may not add content that is designed to offend, criticise or otherwise harm any individual, organisation or political or religious viewpoint or belief without first receiving written approval from us.

We may remove, or require to be removed content that does not, in our opinion, conform to these requirements.

b. Third Party developed Web Sites and programming/scripts and data.

You may publish web sites and data created by third parties to our servers but you may not include content to your site that is illegal, immoral or promotes any political or religious belief or viewpoint unless we have given express permission in writing. Similarly you may not include content that is designed to offend, criticise or otherwise harm any individual, organisation or political or religious viewpoint or belief without first receiving written approval from us. All information published must be accurate and able to be substantiated.

You may run scripts necessary to provide required functionality as long as such scripts do not, in our opinion, present potential security issues and as long as such scripts are efficient and do not cause performance degradations to other users or otherwise compromise the server in any way. Our opinion on whether any functionality breaches this rule shall be final.

We may remove, or require to be removed content that does not, in our opinion, conform to these requirements.

2. Email

a. Incoming Email

You may use our server to receive all normal email addressed to email addresses based on domain names hosted by us. We do not formally and consciously limit the size of any email attachments that you may receive, but it is possible that systems utilised on our servers may from time to time impose such limits.

You must not use our servers to receive email containing or discussing any illegal or immoral content, and you must advise us immediately should you find that you are receiving such material from unsolicited sources.

You must NOT set our server or any internal systems "your end" to automatically return any undeliverable mail to the sender. Mail addressed to a user (name@) that you have not set up must either be discarded or delivered to a valid mail box (spam often uses fake "from" addresses, and returning such mail to the sender, for example because it is addressed to invalidnam@yourdomain.com, simply forwards the spam to an innocent party who uses/owns the "faked" address. This results in our servers being blacklisted and potentially prevents other clients from sending valid email).

b. Outgoing Mail

You should normally use an outgoing mail server provided by your Broadband provider. If we do not supply your broadband then we may still permit you (on request) to use our server as an outgoing server (as long as your chosen broadband provider does not actively prevent you from using third party outgoing servers – which some of the cheaper "home" providers may well do).

You may use our server to send all "normal" business and personal email, including attachments (a size limit may apply from time to time as dictated by software and security settings in use).

All mail sent out through our server MUST have a "return address" that is itself hosted on our servers, and that arrives in a mail box that you read.

All email sent out through our server must meet all current legal requirements for email.

No email containing illegal or immoral content may be sent from our servers.

You are permitted to send out reasonable volumes of marketing email at sensible intervals (and where legal) to specifically targeted (i.e. relevant) recipients as long as each and every such email is specifically addressed to its intended recipient and the recipient can see their email address in the "to" field. In addition you must include an "unsubscribe" facility which must be honoured, and you must remove any "undeliverable" addresses from your mailing list before its next use.

When sending out bulk or large emails you must ensure that sending is "throttled back" to avoid your mailing job placing such a demand on the server that performance for other users could be jeopardised.

Should it be established that your actions result in our server being listed on any recognised blacklist, then you must fully indemnify us for all costs (including our time) necessary to re-instate services (without blacklist) to all other clients at the soonest possible opportunity together with any claims from other clients and loss of clients resulting from us being unable to provide services as a result of your actions.

You may use scripts on your web site to send emails (such as form replies, password reminders, etc) as long as such scripts present no security or performance issues. If these scripts are not provided by us as part of a job then you may need to contact us to enable such script to be given appropriate permissions and tested, and there would normally be a charge for this.

x. Bandwidth and Disk Usage

1. Bandwidth

All hosting packages include a monthly Bandwidth Allowance (dependent on the package purchased). This represents the total amount of data that can be transferred (in and out combined) inclusive of web site traffic, email and any file transfers. Your account will not normally stop working should you exceed the allocated bandwidth limit, however should you regularly exceed the limit then we will be entitled to bill you for the excess usage based on our then current rates.

2. Disk Usage

All hosting packages include an allocated area of the servers hard drive for use by your web suite, email and any other files on your account. The size of this area is usually ample for your needs (as long as good housekeeping measures are in place, for example you do not leave old email on the server indefinitely). If your disk allowance is full then services such as email may stop. We are usually automatically notified when a clients allowance is nearing full, and in this event increase your allowance before services are affected. Should you need more disk space than your allowance on an ongoing basis then we will invoice you at then current prices based on the next package up.

xi. Support

We will provide you with email and telephone support 24x7 (subject to mobile coverage outside normal business hours and at certain other times). Should a problem occur that requires third party intervention then certain third parties may only be available during normal business hours. Support issues should normally be addressed to support@pinkdylan.co.uk where possible, where this is not possible or in an emergency dial our usual number (01905 371041). Out of hours a menu system provides access/transfer to a mobile. Should our phone system be down then you should still get automatically diverted to mobile.

d. Broadband

We supply broadband via a third party, and all contracts are subject to the terms of the third party together with other parties further "upstream" (such as BT who provide the exchange and lines). You agree to be bound by such third party terms.

i. Term:

Unless stated otherwise in writing all broadband contracts are subject to a minimum term of 3 months, thereafter notice may be given that terminates the contract on the last day of the month following the month during which we receive your written notice of termination (or you receive notice from us). Notice sent recorded delivery (and recorded as delivered) to last know address will suffice. Commencement date is deemed to be the 1<sup>st</sup> of the month during which your connection goes live (regardless of if that is the 1<sup>st</sup> or the 31<sup>st</sup>).

ii. Setup Fee

In addition to a monthly connection fee (which may cover less than a month during the calendar month of first connection), if your connection is a "new connection" (i.e you are not moving to us from another supplier, but obtaining broadband for the first time – or after a period without connection - on a line) Then an initial connection fee is payable (£50+vat at date of terms).

iii. Payment:

We invoice monthly on the first of each month to cover your connection for that month (or on date of order for new orders). Payment is due on the same day (1<sup>st</sup>) by Standing Order.

iv. Non Payment

Should you miss a payment then we may terminate the account without notice and a £50+vat re-activation fee would be payable.

v. Change of Provider:

Subject to the Term above, you may move your broadband to another provider by requesting a MAC code from us. You will still be charged up to the end of the forthcoming month. Should you not use your MAC code then your

contract will continue until such time as you give new notice (and that notice expires).

- vi. **Outgoing Mail:**  
Will provide outgoing mail facilities (in line with b, Hosting and/or E-mail above) if you also host a domain name with us. If you do not host a domain name with us we will (if required) provide an email address `your.name@cleanmail.org.uk` for use with both incoming and outgoing email.
- vii. **Bandwidth:**  
Depending on the package you have (details on request) you will have a predefined monthly bandwidth allowance (or unlimited). Should you exceed your allowance in any month then you must pay for the excess bandwidth (rounded up to the nearest gigabyte) based on our then current rates.
- viii. **Support:**  
We have access to suppliers support lines during normal business hours. Most problems can be resolved by rebooting both your PC and Router – please perform these reboots before contacting us to report a problem. Should a visit by BT be arranged and the fault ends up being with your equipment (i.e. not BT's responsibility) then you will be responsible for paying a fee (£150 at date of terms being written).
- ix. **Permitted Usage**  
You may not use our broadband connection to view or send any illegal material. Should you be convicted of viewing and/or downloading child pornography whilst using a connection provided by us, then you agree to be contractually bound to pay us a "unauthorised usage fine" of £25000 (Twenty Five Thousand Pounds).

#### 10) Delivery Dates and Development Timescales

All dates and timescales quoted to you are sensible estimates based on predicted number of hours required to complete the work together with general workload and planned holiday breaks and the like. These dates and timescales are NOT regarded as fundamental to the contract, and you understand that not only will we from time to time over or under estimate the number of hours required to complete a job (which could be your job or another job which has been used as part of our basis for estimating when we can work on your job, but that delays in us being supplied with material and answers to queries by yourselves or other clients for whom we are undertaking work can substantially upset our planned workflow, as can unforeseeable events such as illness. If we quote you a fixed price for a job then any difference between estimated and actual number of hours to complete the job will not affect the price to be invoiced.

#### 11) Your Terms and Conditions

You must ensure, where potentially relevant, that your site includes full and adequate terms and conditions that totally eliminate to the fullest extent legally possible any liability you may otherwise have resulting from errors of any kind on your web site including but not limited provision of incorrect information of any nature and regardless of how caused (including the inclusion of incorrect pricing, incorrect calculations, incorrect tax and shipping, or any other mathematical and functionality errors of due to programming errors, other technical issues, including data corruption, or incorrect management of the site). It is not our responsibility to ensure that you publish such terms, or to check the validity of such terms.

#### 12) Invoicing – All Services

We will send all invoices for regular monthly or annual fees by email. You may advise us of which email address you wish us to use. It is your responsibility to ensure you receive all invoices due (non payment may interrupt or terminate services). Should you have problems receiving or opening emailed invoices then you may request paper invoices by post subject to a surcharge (£3.00+v at per invoice at date of terms). There is no charge for sending copies by email on request.

Invoicing for one off and non-recurring fees will be sent hardcopy by post.

#### 13) Privacy

We will not divulge any information you provide us with to any third parties whatsoever without your consent other than as fundamentally necessary in order to provide the services and support we are contracted to provide you with, other than where required to do so by law.

We may be required to keep copies of emails sent and received or to store other data and where we are legally required to do as such we need not seek permission from you.

You should be aware that from time to time we may see the contents of email you send or receive (typically if dealing server problems). We guarantee to never needlessly read your private mail but you must understand that there are circumstances relating to general server administration or support where contents of email may be visible to us.

#### 14) Law

All pinkdylan contracts take place in England and are subject to English Law. Certain third party supplies (such as domain names) are subject to terms imposed by suppliers and these terms may be subject to alternative jurisdictions.