

HOME BUSINESS WEBSITES

TERMS AND CONDITIONS

Covering Custom Website Design & Pre-Installed Website Packages

Services are sold and supplied by Home Business Websites on the following General Terms and Conditions of business unless otherwise expressly agreed in writing between Home Business Websites and the Client.

1. Definitions

- 1.1 "Service Provider" means Home Business Websites.
- 1.2 "Client" means the person or company to whom or to which this document is addressed.
- 1.3 "Services" means web design services supplied by the Service Provider to the Client as indicated. These services include, but are not limited to, website design, HTML code changes and creation of website content.

2. General

- 2.1 These terms form part of any quotation or contract to which they are attached. The Services will be supplied subject to these terms.
- 2.2 If there is any inconsistency or variance between the provisions of any quotation by the Service Provider and these terms then the quote shall prevail. An acceptance by the Client that contains any provision inconsistent with or purporting to vary or reject any of these terms, shall not be binding on the supplier unless the Service Provider expressly agrees in writing to any variation.
- 2.3 If one or more clauses of these terms or any provisions included in any quotation or contract arising between the Service Provider and the Client is declared legally invalid the remainder of these terms and any such provision shall be in no way affected.
- 2.4 Unless otherwise agreed to in writing, email is an acceptable form of communication.
- 2.5 In order for the Service Provider to perform the Services, the Client authorises the Service Provider to have access to the Client's website files to amend or improve html coding.

3. Quotation and acceptance

- 3.1 A binding agreement will not exist until the Client accepts the Service Provider's quotation or Purchases a Pre-Installed Website Package
- 3.2 Prices included in the Service Provider's quotation are based upon the services referred to in the quotation. Should the Client offer to engage the Service Provider to supply additional services which is at variance with the services referred to in the quotation the Service Provider reserves the right to amend the price quoted for such Goods.

4. Suitability for purpose

- 4.1 Unless the Service Provider has specifically been advised in writing by the Client, it has no knowledge of the use to which the Client proposes to put the services supplied by the Service Provider to the Client.

4.2 The Client is responsible for determining the suitability and functionality of the services offered by the Service Provider prior to making an offer to engage the Service Provider to supply services subject to these terms.

4.3 The Client is responsible for conducting due diligence on the products it proposes to offer through the website that is the subject of the services offered by the Service Provider, prior to making an offer to engage the Service Provider to supply services subject to these terms.

5. Time/Date for supply

5.1 Unless stated otherwise in these terms all dates or times quoted for completion or delivery shall be calculated from date of acceptance by the Service Provider of the Client's offer.

5.2 The Service Provider will use reasonable endeavours to meet any delivery or completion date or period quoted but such date or time is a bona fide estimate only and is not to be construed as a fixed date or time unless specifically agreed to by the Service Provider in writing.

5.3 Any contract period shall be extended in respect of any delay relating to either instructions given by, or lack of instructions from, the Client.

5.4 The Service Provider shall not be liable to the Client for any failure to meet any obligation under any contract arising between the Service Provider, and the Client to the extent that such failure is caused by or arises from:

- a) Strikes, lockouts or other industrial disputes, shortages of labour or materials, delay in manufacturing by the Service Provider, its associates or suppliers, riot, civil commotion, fire, flood, earthquake, drought, loss or delay at sea or otherwise, breakdowns or war; or
- b) Any other cause whether arising from natural causes, human agency or anything beyond the reasonable control of the Service Provider.

6. Termination

6.1 This agreement may be terminated by the Service Provider if:

- a) the customer is declared bankrupt or is insolvent;
- b) the customer is in breach of this agreement and fails to rectify or remedy that breach with seven (7) days following notice given by the Service Provider;
- c) The customer fails to provide such information and assistance as may be required by the Service Provider or, fail to accept the Service Provider's advice;

6.2 This agreement will be terminated if the Customer elects to sell the website to which these terms and conditions relate. The Service Provider will cease to provide any services and all aspects of the sale of the website will be the responsibility of the Customer, including but not limited to the transfer of the website and domain name.

6.3 If this agreement is terminated in accordance with clause 6.1 or clause 6.2, the customer will remain liable to the Service Provider for any outstanding fees or expenses.

6.4 All sales and transfers are final.

7. Prices and contract price adjustment

- 7.1 Prices shall be set in accordance with the Service Provider's discretion and shall be either:
- a) As stated in the tax invoice; or
 - b) As set out in the most recent quotation issued by the Service Provider to the Client;

8. Payment for Pre-Installed Websites

- 8.1 Payment for all Pre-Installed Websites (those purchased "as is") is required to be paid "up-front" and "in full" by the Client. There are no payment plans or pay-as-you-go options available for Pre-Installed Websites.

9. Payment for Custom Designed Websites

- 9.1 A non-refundable deposit, to compensate the Service Provider for costs including but not limited to the securing of domain names and other proprietary information, is payable within seven (7) days of the Service Provider's acceptance of the Client's offer in writing.
- 9.2 Unless otherwise agreed in writing by the Service Provider and the Client, payment shall be due as follows:
- a) fees are payable within seven (7) days of receipt by Client of the Service Provider's written invoices or upon completion of the work undertaken by the Service Provider, which ever occurs first;
 - b) The Client is not entitled to withhold payment or make any deduction from the contract price in respect of any set-off or counter claim.
- 9.3 If services, the subject of any contract between the Service Provider and the Client are in whole or in part completed ready for delivery and if delivery of such work is delayed by reasons of instructions given, or lack of instructions by the Client, then full payment of that part of the contract price outstanding shall be due and payable 14 days after notification by the Service Provider to the Client that such services are completed are ready for delivery.

10. Delay or Default in Payment

- 10.1 Should the Client make default in respect of any payment due to the Service Provider then the Service Provider shall have the right, in addition to all other rights to which it is entitled at law:
- a) to charge interest on the overdue amount at two per cent (2%) above the rate charged to the Service Provider by its major banker for overdraft accommodation and calculated from the due date of payment to the actual date of full and final payment. Any payment subsequently made by the Client to the Service Provider shall be credited first against any interest so accrued.
 - b) to withhold any data/files.
 - c) to cancel services
- 10.2 Should the Client make default in respect of any payment due to the Service Provider then the Service Provider shall have the right to recover any legal costs on an indemnity basis incurred by the Service Provider in recovering the overdue amount.

11. Warranties and guarantees

- 11.1 To the fullest extent permitted by applicable law, the Service Provider gives no guarantee or warranty with respect to services provided.
- 11.2 This agreement relates to the supply of services only and the Service Provider makes no representation, guarantee or warranty with respect to the earnings which may be generated by or derived from the services provided under this agreement.
- 11.3 In relation to the Client's website, the Service Provider does not warrant or guarantee that:
- a) the website, or the server that makes the site available on the worldwide web are free of software viruses;
 - b) the functions contained in any software contained on the website will operate uninterrupted or are error-free; and
 - c) errors and defects in the website will be corrected.
- 11.4 The Service Provider is not liable to the Client for:
- a) delays to, or interruptions of, the services provided in the website, or linked sites; and
 - b) defamatory, offensive or illegal conduct of any user of the website,
- whether caused through negligence of the Service Provider, its employees or independent contractors, or through any other cause.
- 11.5 The Client agrees to accept the full cost of any necessary repair, correction and maintenance of any of its computer software or hardware, which may be necessary as a consequence of any virus, whether connected with the Client's website or not.
- 11.6 Any change or modification of the Client's website without the express authority of the Service Provider will void any warranty that exists.

12. Limitation of liability

- 12.1 Subject to the terms of this agreement, the Service Provider shall not in performing the Services under this agreement be liable for any loss, damage or consequential loss or damage suffered by the Client.

13. Confidentiality

- 13.1 A party will not, without the prior written approval of the other party, disclose the other party's confidential information.
- 13.2 Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this agreement, do not make public or disclose the other party's confidential information.
- 13.3 Notwithstanding any other provision of this clause, a party may disclose the terms of this agreement (other than confidential information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.

This clause will survive the termination of this agreement

14. Intellectual Property

14.1 The Client acknowledges that all right, title and interest in:

- a) technology, including software;
- b) documentation and material used in supplying the service;
- c) trademarks, methods or material subject to copyright;

(collectively “the Service Provider’s intellectual property”) is vested in the Service Provider.

14.2 Unless otherwise specifically provided in this agreement, the Client agrees that it has no right, title, claims or interest in or to the Service Provider’s “intellectual property”.

14.3 The Client may not copy, modify or translate any of the Service Provider’s intellectual property or use it other than in connection with the services, or grant any other person or entity the right to do so.

14.4 Unless otherwise specifically permitted by this agreement, the Client is not authorised to distribute or to authorise others to distribute any of the Service Provider’s intellectual property in any manner without the prior written consent of the Service Provider.

14.5 The Client agrees to undertake all necessary enquiries and seek all necessary advice on intellectual property issues in relation to the Client’s website and the provision of services by the Service Provider in relation to the Client’s website. This includes but is not limited to copyright, trademark design, licensing, patent issues, use of images/content, names, domain names, and products being sold.

14.6 The Service Provider shall not be liable or held responsible for any disputes or issues in relation to copyright, trademark, or licensing, in relation to the use of the Client’s registered domain name, website name or images used on the Client’s website. Any dispute between the Client and any other individual or organisation regarding a domain name, website name, or images used on the Client’s website, must be resolved between the parties concerned. The Service Provider will take no part in any such dispute or disagreement.

14.7 Both parties agree to notify the other immediately upon becoming aware of any unauthorised breach or suspected unauthorised breach of copyright, trademark design or any other aspect of intellectual property.

15. Legal Construction

15.1 This agreement is subject to the Laws of the State of New South Wales, Australia and the Service Provider and the Client agree to submit to courts having jurisdiction in that State.

15.2 The Service Provider is authorised to vary these terms at any time by publishing any amendments on the Service Provider’s website.