

## **HOME BUSINESS WEBSITES PTY LTD TERMS AND CONDITIONS**

### **Covering Custom Website Design & Ready-Made 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 Pty Ltd.

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, web design, graphic 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. Email can be used by the Client to confirm acceptance of a Quotation and to agree to terms and conditions.

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 for a Custom Designed Website will not exist until the Client accepts the Service Provider's quotation, and/or purchases and pays for a Custom Designed Website online, thereby agreeing to the terms and conditions outlined herewith and as detailed on the quotation.

3.2 A binding agreement for a Ready-Made Website will exist immediately upon purchase..

3.3 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.

## **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 every reasonable endeavour to meet any delivery or completion date or period quoted.

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, delays caused by the Service Providers associates or suppliers, fire, flood, earthquake, drought

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, fails 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 support or 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 This agreement 'may' be terminated if the Client elects to transfer their Hosting service to another Provider that does not meet the requirements of the website. The Service Provider 'may' cease to provide support or services. The transfer of website to an alternate Hosting provider will be the responsibility of the Client, including but not limited to the transfer of the website, data and files.

6.5 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; or

c) As outlined on the Service Provider's website.

## **8. Payment for Ready-Made Websites**

8.1 Payment for all Ready-Made Websites (those purchased "as is") is required to be paid "up-front" and "in full" by the Client.

## **9. Payment for Custom Designed Websites**

9.1 A non-refundable deposit of 20%, to compensate the Service Provider for costs including but not limited to the registration of domain name, setup of hosting, purchase of images, and other proprietary information, is payable within seven (7) days of the Client's acceptance of the Service Providers Quotation.

9.2 Unless otherwise agreed in writing by the Service Provider and the Client, payment shall be due as follows:

a) All fees are payable within seven (7) days of receipt by Client of the Service Provider's written invoice or upon completion of the work undertaken by the Service Provider,

whichever occurs first;

b) The Client is not entitled to withhold payment or make any deduction from the agreed contract price.

9.3 If services, the subject of any contract between the Service Provider and the Client are in whole or in part completed and ready for delivery, and delivery of such work is delayed by reasons of instructions given, or lack of instructions provided 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.

9.4 Full payment for Custom Designed Websites can also be made 'up front' and 'in full' by the Client to the Service Provider. In this instance a quote will not be provided.

## **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 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.

11.2 The Service Provider gives no guarantee or warranty with respect to third party services that are provided by, but not limited to;- Hosting Servers, Hosting Services, local Internet Service Providers and other services that are outside of the Service Providers control.

11.3 In relation to the Client's website, the Service Provider does not warrant or guarantee that:

- a) the server that makes the site available on the worldwide web will remain free of malicious software or viruses;
- b) the functions contained in any software contained on the server will operate uninterrupted;
- c) that any software contained on the server will remain error-free

The above elements are provided by third party service providers and are not within the control of the Service Provider.

11.4 The Service Provider is not liable to the Client for:

- a) delays to, or interruptions of, the hosting service, hosting servers, or any website services that are dependent upon the hosting system, or linked sites;
- and

11.5 The Client agrees to accept the full cost of any necessary repair, correction and maintenance to any his/hers 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. Indemnification**

15.1 The Client agrees that it shall defend, indemnify, save and hold the Service Provider *harmless* from any and all demands, liabilities, losses, costs and claims, including attorney's fees asserted against the Service Provider, its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed

to be performed or any product sold by the Service Provider, its agents, employees or assignees. The Client agrees to defend, indemnify and hold harmless any liabilities arising out of; (1) any injury to person or property caused by any products sold or otherwise distributed in connection with the Service Provider; (2) any material supplied infringing or allegedly infringing on the proprietary rights of a third party; (3) copyright infringement and (4) any defective products sold to customers by the Service Provider.

15.2 The Service Provider will not be responsible for any damages your business may suffer. The Service Provider makes no warranties of any kind, expressed or implied for services provided. The Service Provider disclaims any warranty or merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, no deliveries, wrong delivery, and any and all service interruptions caused by the Service Provider and its employees.

15.3 The Service Provider reserves the right to revise these policies at any time without notice.

## **16. Legal Construction**

16.1 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.

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