

Terms and Conditions

1. Definitions

1.1 “Customweb” shall mean Customweb its successors and assigns or any person acting on behalf of and with the authority of Customweb.

1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Customweb to the Client.

1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.

1.4 “Goods/Services” shall mean Goods/Services supplied by the Customweb to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Customweb to the Client.

1.5 “Services” shall mean all Services supplied by the Customweb to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods/Services as defined above).

1.6 “Price” shall mean the price payable for the Goods/Services as agreed between the Customweb and the Client in accordance with clause 3 of this contract.

2. Acceptance

2.1 Any instructions received by the Customweb from the Client for the supply of Goods/Services/Services and/or the Client’s acceptance of Goods/Services/Services supplied by the Customweb shall constitute acceptance of the terms and conditions contained herein.

2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Customweb.

2.4 The Client shall give the Customweb not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Customweb as a result of the Client’s failure to comply with this clause.

3. Price And Payment

3.1 At the Customweb’s sole discretion the Price shall be either:

(a) as indicated on invoices provided by the Customweb to the Client in respect of Goods/Services/Services supplied; or

(b) the Customweb’s quoted Price (subject to clause 3.2) which shall be binding upon the Customweb provided that the Client shall accept the Customweb’s quotation in writing within thirty (30) days.

3.2 The Customweb reserves the right to change the Price in the event of a variation to the Customweb’s quotation.

3.3 At the Customweb’s sole discretion a deposit may be required.

3.4 At the Customweb’s sole discretion:

(a) Payment shall be due on delivery of the Goods/Services/Services; or

(b) Payment for approved Clients shall be made by installments in accordance with the Customweb’s payment schedule.

3.5 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Customweb.

3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery Of Goods/Services

4.1 At the Customweb's sole discretion delivery of the Goods/Services shall take place when:

(a) the Client takes possession of the Goods/Services at the Customweb's address; or
(b) the Client takes possession of the Goods/Services at the Client's nominated address (in the event that the Goods/Services are delivered by the Customweb or the Customweb's nominated carrier).

4.2 At the Customweb's sole discretion the costs of delivery are:

(a) in addition to the Price; or
(b) for the Client's account.

4.3 The Client shall make all arrangements necessary to take delivery of the Goods/Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Services as arranged then the Customweb shall be entitled to charge a reasonable fee for redelivery.

4.4 Delivery of the Goods/Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

4.5 The failure of the Customweb to deliver shall not entitle either party to treat this contract as repudiated.

4.6 The Customweb shall not be liable for any loss or damage whatever due to failure by the Customweb to deliver the Goods/Services (or any of them) promptly or at all.

5. Content Of Web Pages And Undertakings

5.1 The Client is solely responsible for the content of the web page. The Customweb is not responsible for proofreading any content unless specifically agreed in writing.

5.2 The Customweb makes no representations to the Client on the functionality or content of the Web site.

5.3 The Client is solely responsible for dealings with persons accessing the data or webpage and the Client warrants that they will not refer complaints or inquiries to such data to the Customweb.

6. Web Hosting

6.1 If the Client selects to organise their own web hosting arrangements, final exported sites will be uploaded to your preferred host company or supplied on disc as per the quoted price. Construction files of the site can be supplied on request and at the Customweb's sole discretion may incur a fee.

6.2 The Customweb accepts no responsibility for down times, delays, breakdowns or data loss caused by Internet Service Providers.

7. Risk

7.1 If the Customweb retains ownership of the Goods/Services nonetheless, all

risk for the Goods/Services passes to the Client on delivery.

8. Title

8.1 The Customweb and Client agree that ownership of the Goods/Services shall not pass until:

(a) The Client has paid the Customweb all amounts owing for the particular Goods/Services; and

(b) The Client has met all other obligations due by the Client to the Customweb in respect of all contracts between the Customweb and the Client.

8.2 Receipt by the Customweb of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Customweb's ownership or rights in respect of the Goods/Services shall continue.

8.3 It is further agreed that:

(a) Where practicable the Goods/Services shall be kept separate and identifiable until the Customweb shall have received payment and all other obligations of the Client are met; and

(b) until such time as ownership of the Goods/Services shall pass from the Customweb to the Client the Customweb may give notice in writing to the Client to return the Goods/Services or any of them to the Customweb. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods/Services shall cease; and

(c) the Customweb shall have the right of stopping the Goods/Services in transit whether or not delivery has been made; and

(d) if the Client fails to return the Goods/Services to the Customweb then the Customweb or the Customweb's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods/Services are situated and take possession of the Goods/Services; and

(e) the Client is only a bailee of the Goods/Services and until such time as the Customweb has received payment in full for the Goods/Services then the Client shall hold any proceeds from the sale or disposal of the Goods/Services on trust for the Customweb; and

(f) the Client shall not deal with the money of the Customweb in any way which may be adverse to the Customweb; and

(g) the Client shall not charge the Goods/Services in any way nor grant nor otherwise give any interest in the Goods/Services while they remain the property of the Customweb; and

(h) the Customweb can issue proceedings to recover the Price of the Goods/Services sold notwithstanding that ownership of the Goods/Services may not have passed to the Client; and

(i) until such time that ownership in the Goods/Services passes to the Client, if the Goods/Services are converted into other products, the parties agree that the Customweb will be the owner of the end products.

9. Client's Disclaimer

9.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Customweb or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by the Customweb and the Client acknowledges that the Goods/Services are bought relying solely upon the Client's skill and judgment.

10. Defects

10.1 The Client shall inspect the Goods/Services on delivery and shall within

seven (7) days of delivery (time being of the essence) notify the Customweb of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Customweb an opportunity to inspect the Goods/Services within a reasonable time following delivery if the Client believes the Goods/Services are defective in any way. If the Client shall fail to comply with these provisions the Goods/Services shall be presumed to be free from any defect or damage. For defective Goods/Services, which the Customweb has agreed in writing that the Client is entitled to reject, the Customweb's liability is limited to either (at the Customweb's discretion) replacing the Goods/Services or repairing the Goods/Services. Where the Client is a consumer as defined in the Trade Practices Act 1974 or the Fair Trading Acts, then the Client shall be entitled to either a refund, repair or replacement of the Goods/Services.

10.2 Goods/Services will not be accepted for return other than in accordance with 10.1 above.

11. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")

11.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

12. Warranty

12.1 Subject to the conditions of warranty set out in clause 12.2 the Customweb warrants that if any defect in any workmanship of the web site provided by the Customweb becomes apparent and is reported to the Customweb within one (1) months of the date of delivery (time being of the essence) then the Customweb will either (at the Customweb's sole discretion) replace or remedy the workmanship.

12.2 The conditions applicable to the warranty given by clause are:

(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

- (i)** failure on the part of the Client to properly maintain any Goods/Services; or
- (ii)** failure on the part of the Client to follow any instructions or guidelines provided by the Customweb; or
- (iii)** any use of any Goods/Services otherwise than for any application specified on a quote or order form; or
- (iv)** the continued use of any Goods/Services after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v)** fair wear and tear, any accident or act of God.

(b) the warranty shall cease and the Customweb shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Customweb's consent.

(c) in respect of all claims the Customweb shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

13. Intellectual Property

13.1 Where photos are purchased by Customweb from a third party for the use for either print or web it is the responsibility of the client to alert Customweb when the license falls due/expires and they are responsible for renewing this license and all fees associated with this renewal whether past or future. Customweb takes no responsibility for renewal of these images once they have expired.

13.2 The Client warrants that all designs or instructions to the Customweb will not

cause the Customweb to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Customweb against any action taken by a third party against the Customweb in respect of any such infringement.

13.3 The Client warrants that all designs or instructions to the Customweb will not cause the Customweb to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Customweb against any action taken by a third party against the Customweb in respect of any such infringement.

14. Default & Consequences of Default

14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.

14.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Customweb from and against all costs and disbursements incurred by the Customweb in pursuing the debt including legal costs on a solicitor and own client basis and the Customweb's collection agency costs.

14.3 Without prejudice to any other remedies the Customweb may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Customweb may suspend or terminate the supply of Goods/Services to the Client and any of its other obligations under the terms and conditions. The Customweb will not be liable to the Client for any loss or damage the Client suffers because the Customweb has exercised its rights under this clause.

14.4 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

14.5 Without prejudice to the Customweb's other remedies at law the Customweb shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Customweb shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Customweb becomes overdue, or in the Customweb's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

15. Security And Charge

15.1 Despite anything to the contrary contained herein or any other rights which the Customweb may have howsoever:

- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Customweb or the Customweb's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Customweb (or the Customweb's nominee) shall be entitled to lodge where appropriate a caveat, which

caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

(b) should the Customweb elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Customweb from and against all the Customweb's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Customweb or the Customweb's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

16. Suspension Of Services

16.1 The Customweb reserves the right to suspend services in any case where the Client fails to perform their obligations under this and any associated agreements, including but not limited to the suspension of the Client's websites.

17. Cancellation

17.1 Customweb Designs may discontinue services if an amount payable to Customweb Designs is overdue or take down a website permanently in any case where an amount payable is overdue by more than 7 days. In any such event, you remain liable for the total cost of the contract including all disbursements; unless otherwise agreed between the parties. Furthermore, Customweb Designs will not refund (in part or in whole) any deposits received for the commencement of work, under any circumstances unless agreed firstly in writing by Customweb Designs. Customweb Designs reserves the right to keep all funds from the deposit if work on a job has commenced and is terminated by either party. Customweb Designs shall not be liable for any loss or damage whatever arising from such cancellation.

17.2 In the event that the Client cancels delivery of Goods/Services the Client shall be liable for any loss incurred by the Customweb (including, but not limited to, any loss of profits) up to the time of cancellation.

18. Privacy Act 1988

18.1 The Client and/or the Guarantor/s agree for the Customweb to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Customweb.

18.2 The Client and/or the Guarantor/s agree that the Customweb may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a)** to assess an application by Client; and/or
- (b)** to notify other credit providers of a default by the Client; and/or
- (c)** to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d)** to assess the credit worthiness of Client and/or Guarantor/s.

18.3 The Client consents to the Customweb being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

18.4 The Client agrees that personal credit information provided may be used and retained by the Customweb for the following purposes and for other purposes as shall be agreed between the Client and Customweb or required by law from time to time:

- (a)** provision of Goods/Services; and/or

- (b) marketing of Goods/Services by the Customweb, its agents or distributors in relation to the Goods/Services; and/or
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods/Services; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods/Services.

18.5 The Customweb may give information about the Client to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Client; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

19. General

19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.

19.3 The Customweb shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Customweb of these terms and conditions.

19.4 In the event of any breach of this contract by the Customweb the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Services.

19.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Customweb.

19.6 The Customweb may license or sub-contract all or any part of its rights and obligations without the Client's consent.

19.7 The Customweb reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Customweb notifies the Client of such change.

19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

19.9 The failure by the Customweb to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Customweb's right to subsequently enforce that provision.