

Introduction

This document defines the terms and conditions of our working relationship. Unless otherwise agreed to in writing by both the parties, the terms of this Agreement will commence on receipt of deposit.

All services that Mackay Web Design may be contracted to produce or provide for our clients (referred to as CLIENT) will be subject to the following:

Our Commitment to you

- i) We respect our CLIENT's confidentiality (Item 7).
- ii) If the CLIENT determines that the website does not comply with the project components agreed to in the proposal, Mackay Web Design agrees to carry out any necessary and reasonable modifications without extra charge (Item 19 & 20).
- iii) If the CLIENT is not happy with our service, the CLIENT is free to move their domain name, website and data in its entirety to another service provider once costs are paid (Item 21.1).

Definitions

As used herein and throughout this Agreement:

"Agreement" means the entire content of this Basic Terms and Conditions document, the Proposal document(s), together with any other Supplements designated in proposal, together with any exhibits, schedules or attachments hereto.

"Content" means all materials, information, photography, writings and other creative content.

"Copyrights" means the property rights in original works of authorship, expressed in a tangible medium of expression, as defined and enforceable under Australian and International Copyright Law.

"Deliverables" means the services and work product specified in the Proposal to be delivered by Mackay Web Design to the Client, in the form and media specified in the Proposal.

"Services" means all services and the work product to be provided to Client by Mackay Web Design as described and otherwise further defined in the Proposal.

"Trademarks" means trade names, words, symbols, designs, logos or other devices or designs used in the Final Deliverables.

"Open Source Software" means computer software that is available in source code form for which the source code and certain other rights normally reserved for copyright holders are provided under a software license that permits users to study, change, and improve the software.

"Ongoing Management" means the ongoing work to keep the website functioning and secure. This includes, but is not limited to: data management, backups, maintenance, upgrades and software patches.

General Terms

1. Authorisation

The CLIENT authorises Mackay Web Design to perform the services outlined in this agreement on the CLIENTS' behalf, which may include, but is not limited to, accessing their hosting account and disk space, creating databases and applications, and submitting the project to search engines.

2. Agreement Scope and Period

Services supplied, costs and rates are limited to what is specifically set forth in the proposal. Any additional services may require further costs, agreed upon before work commences.

3. Costs and Fees

Changes and additions outside of the scope of this document will be quoted and invoiced to the CLIENT. The CLIENT will be advised of all costs, changes and additions before commencement of the additional work. Fees for professional services will be itemised in proposal including but not limited to, software licensing, copyright licensing, printing, photography, color printouts, laminating, illustrations, shipping and handling or courier service. Expenses are itemized on each invoice. Expenses are subject to GST.

4. Production Schedules

Production schedules will be established and adhered to by both the CLIENT and Mackay Web Design. Where production schedules are not adhered to by the CLIENT, final delivery date or dates will be adjusted accordingly. Additional costs may be charged for CLIENT delays, if the delays result in an increase in time to manage or deliver the services.

5. Overtime

Estimates are based on a reasonable time schedule, and may be revised to take into consideration the CLIENT's requested "Priority Scheduling". Requested priority schedules that require overtime and weekend work will be subject to 60% markup at an hourly rate. Overtime is defined as between 6.00pm - 9.00am Monday to Friday, all day Saturday, Sunday and public holidays, unless otherwise agreed.

6. Payment

6.1 The CLIENT agrees to pay Mackay Web Design in accordance with the terms specified in each proposal/quotation. The CLIENT will be required to pay 50% of the project cost before commencement of work. Unless otherwise specified, all subsequent balances due are payable upon completion of the project or 70 days from the project start date.

6.2 If the CLIENT fails to pay any invoice, Mackay Web Design reserves the right to withdraw the website and associated materials or refuse completion and/or delivery of work until past due balances are paid. All materials or property belonging to the CLIENT, as well as work performed, may be retained as security until all just claims against the CLIENT are satisfied. Mackay Web Design will charge a late payment fee of 5% per month on the outstanding amount. The CLIENT is responsible for any debt collection fees which may come due.

6.3 In the event of cancellation of the project prior to completion, the CLIENT must pay Mackay Web Design a fee for work completed, based on the contract price and the expenses already incurred.

7. Confidentiality

Mackay Web Design will not disclose to any third party or use, other than for the purposes of this agreement, any knowledge or information imparted to or obtained by it during or in connection with the fulfillment of this agreement, which is of a secret or confidential nature relating to the business, equipment, processes, products, services or business strategies offered or employed by the CLIENT.

This obligation of confidence will cease to apply in relation to information that Mackay Web Design is required to disclose by any law, or which becomes part of the public domain other than as the result of a breach by Mackay Web Design of its obligations of confidence under this Agreement.

8. Subcontractors

Mackay Web Design reserves the right to assign subcontractors or external suppliers. Any subcontractors or external suppliers will be bound to the terms of this agreement.

9. Promotion

Mackay Web Design is confident that the CLIENT's expectations will be exceeded and as such is notifying the CLIENT that Mackay Web Design reserves the right to use the CLIENT's website, associated graphics and any unused ideas and development in the promotion of Mackay Web Design services. The CLIENT agrees to Mackay Web Design to retain a credit link in the footer of the website.

10. Copyright

10.1 The CLIENT is responsible for all trademark, servicemark, copyright and patent infringement clearances. The CLIENT is also responsible for arranging, prior to publication, any necessary legal clearance of materials Mackay Web Designs uses for this project. The CLIENT indemnifies Mackay Web Design against any loss or damage arising directly or indirectly from any unauthorised use of photographs, text, or other Intellectual Property not under copyright ownership of the CLIENT.

11. Project Copyright

11.1 After acceptance of the website and payment of all sums due by the CLIENT, Mackay Web Design agrees to assign unrestricted copyright to use any materials produced by Mackay Web Design as outlined in this agreement to the CLIENT including exclusive usage rights to unique graphics.

11.2 Mackay Web Design reserves all rights over working and source files. The CLIENT does not have the right to resell, reuse or re-purpose any design or content supplied as part of this agreement unless specified.

11.3 Mackay Web Design reserves all rights to license (open source) and release all software code including website templates developed under this agreement.

12. Open Source Software

12.1 Mackay Web Design makes extensive use of open source software and components to supply websites and services to the CLIENT. Mackay Web Design will not charge additional licensing fees on open source software.

12.2 The CLIENT indemnifies Mackay Web Design against any loss or damage arising directly or indirectly from any failure of software supplied to the CLIENT.

12.3 All software and components not developed by Mackay Web Design retain the original license and terms associated with them. Mackay Web Design cannot assign any rights to the CLIENT and the CLIENT agrees to be bound by the original Author's terms.

13. Force Majeure

Mackay Web Design shall not be deemed in breach of this Agreement if Mackay Web Design is unable to complete the Services or any portion thereof by reason of fire, earthquake, labor dispute, act of God, death, illness or incapacity of Mackay Web Design or any local, state, federal, national or international law, governmental order or regulation or any other event beyond Mackay Web Design's control (collectively, "Force Majeure Event").

Upon occurrence of any Force Majeure Event, Mackay Web Design shall give notice to the CLIENT of its inability to perform or of delay in completing the Services and shall propose revisions to the schedule for completion of the Services.

14. Limitation of Liability

The services and the work product of Mackay Web Design are sold "as is." In all circumstances, the maximum liability of its Designers, Directors, Officers, Employees, Design Agents and Affiliates ("Mackay Web Design parties"), to the CLIENT for damages for any and all causes whatsoever, and the CLIENT's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the net cost of this project as specified in this Agreement. In no event shall Mackay Web Design be liable for any lost data or content, lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the materials or the services provided by Mackay Web Design even if Mackay Web Design has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy.

15. Termination

Either party may terminate this Agreement by giving 30 days written notice to the other of such termination. In the event that work is postponed or terminated at the request of the CLIENT, Mackay Web Design shall have the right to bill pro rata for work completed through to the date of that request, while reserving all rights under this Agreement.

If additional payment is due, this shall be payable within fourteen days of the CLIENT's written notification to stop work. In the event of termination, the CLIENT shall also pay any expenses incurred by Mackay Web Design and Mackay Web Design shall own all rights to the work. The CLIENT shall assume responsibility for collection of all legal fees necessitated by default in payment.

16. Domain Names

16.1 All domain names are legally owned by the CLIENT. All domain name registrations are subject to availability and registration rules. The

CLIENT manages their domain(s) and payment of fees unless the CLIENT requests in writing that Mackay Web Design manage the domain name(s) on behalf of the CLIENT. Mackay Web Design will invoice the CLIENT when fees are due.

16.2 Mackay Web Design uses Crazy Domains (referred to as REGISTRAR) to manage our CLIENTS's domain names. CLIENTS are bound by the REGISTRARS's "Domain name registration terms" which are found on their website: www.crazydomains.com.au

16.3 The CLIENT indemnifies Mackay Web Design against any loss or damage arising directly or indirectly from any failure of services provided by the REGISTRAR.

17. Hosting

17.1 The CLIENT is responsible for contacting the chosen host for support relating to hosting matters. Mackay Web Design will charge for costs incurred liaising with the hosting company and supporting the CLIENT with hosting related issues.

17.2 Mackay Web Design will charge for costs incurred due to differences in hosting environment if installation and management exceeds standard time frames.

18. Browser Variance

Our websites are optimised for XHTML compliant browsers and adjusted to support Internet Explorer (IE). We test using the browsers that are statistically the most commonly used. Layout and aesthetic elements may change or degrade in some browsers.

19. Colours

Website visitors use different monitors with different settings. Colours and image quality of the website including graphics and photography will shift between computers and monitors.

20. Testing and Acceptance of the Website Once the project has, in the opinion of Mackay Web Design been completed, Tamworth Web Design will notify the CLIENT either verbally or in writing, and provide the CLIENT with an opportunity to test and review the website. If the CLIENT determines that the website does not comply with the Project Components agreed to in the proposal, Tamworth Web Design agrees to carry out any necessary and reasonable modifications without extra charge.

Websites are tested on:

- Internet Explorer versions 10 and Over (PC)
- Latest version of Firefox (Mac)
- Latest version of Safari (Mac)
- Latest version of Chrome (Mac)

Mackay Web Design will test and optimise for additional browsers and versions if requested by the CLIENT before commencement of the project.

21. Website, Data and Security

21.1 Upon the end of this agreement, The CLIENT is free to transfer their website management to another service provider. Mackay Web Design will supply the last backup of the site and associated data. Mackay Web Design will take all reasonable actions to transfer the CLIENT'S domain name to a new registrar at a one of fee of \$399 (ex GST)

21.2 Ongoing Management after the first 12 months (see definition) is not included in this agreement and will require an additional agreement.

21.3 If The CLIENT does not proceed with an additional or Ongoing Management agreement, The CLIENT is responsible for Ongoing Management of the website and indemnifies Mackay Web Design against any loss or damage arising directly or indirectly from website downtime or security breaches.

22. Client Responsibilities

If the CLIENT or an agent of The CLIENT other than Mackay Web Design attempts to update, edit or alter the site's pages, infrastructure, source files or hosting management in a way that causes damage to individual pages or the site's architecture, time to repair web pages will be assessed at our STANDARD or OVERTIME hourly rate, and is an additional cost above the costs outlined in this agreement.

23. Errors and Omissions

It is Mackay Web Design's responsibility to check carefully for accuracy in all respects, ranging from spelling to technical illustrations. However Mackay Web Design is not liable for errors or omissions. The CLIENT indemnifies Mackay Web Design against any loss or damage arising directly or indirectly from any errors and omissions.

24. Revisions

Mackay Web Design will provide two rounds of revisions of content after the submission of the content, before the website is completed. Extended revisions outside of this scope will be charged under "Content Management" rates.

25. Copy

All text must be supplied in digital format (TXT, RTF, HTML, MS Word, Open Office, InDesign).

26. Images

Graphics and photographs are to be supplied in digital format to Mackay Web Design.

27. Branding

All logos and branding must be provided in a industry standard vector format (preferences are: EPS, PDF, Illustrator)

Additional fees

Content Management System (unless agreed prior to acceptance and is stated in proposal)

\$399 (ex GST)

Annual Fee - This includes, web hosting, data management, backups, maintenance, upgrades, software patches, quarterly analytics reporting.

\$299 (ex GST)

Website Updates - 3 months from receiving final payment any further requests to make any amendments or revisions to the website will be charged at an hourly rate (min half hour charge)

\$175 p/hour (ex GST)

Transfer Website to 3rd party Host - Hosting is included free for the first 12 months and then on annual basis as part of our annual fee. If you wish to use your own hosting company there is a charge for us to upload to your chosen hosting environment.

\$199 (ex GST)