



## **General Terms and Conditions**

These Terms and Conditions are effective from the date of acceptance of the proposal or quotation by the Client and may be amended or superseded from time to time by notice given by the Company by any means.

### **1. Interpretations**

“Company” shall mean the supplier of products and/or services to the Client: The Mity Group Pty Ltd (trading as Mity Digital) and all its divisions.

“Client” shall mean the client purchasing the products and/or services from the Company.

“Price” shall mean the cost of the Goods and Services as agreed between the Company and the Client.

“Goods and Services” shall mean all goods and/or services supplied by the Company to the Client, or ordered by the Client, but not yet supplied and includes goods described on any proposal, quotation, invoice, purchase order or any other document including any recommendations and advice.

“Proposal” shall mean all proposals, quotations, offers, agreements or invitation to do business submitted by the Company to the Client.

### **2. Jurisdiction**

2.1. This agreement shall be construed in accordance with laws of the State of Victoria and, where applicable, The Commonwealth of Australia and the Client submit to the non-exclusive jurisdiction of the courts of Victoria.

2.2. The Company shall have exclusive right to nominate the Court in which any legal action is to be commenced and conducted.

### **3. Offer and Acceptance**

Signing by the Client of any agreement, proposal and/or payment of invoice will constitute acceptance of the proposed project and these terms and conditions.

#### **4. Authorisation**

The Client authorises The Company to perform the services outlined in the agreement/proposal 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.

#### **5. Agreement Scope, Period and Price**

- 5.1. Any projects, services and rates supplied are limited to what is specifically set forth in the proposal and based on a set number of hours. Any additional services will require a proposal, or a quotation based on additional hours. The Company reserve the right to adjust hourly rates at any time.
- 5.2. Changes and additions outside of the scope of the proposal will be quoted and invoiced to the Client separately. The Client will be advised of all costs, changes and additions before commencement of the additional work. Fees for professional services do not include outside purchases such as, but not limited to, software licensing, copyright licensing, photography, stock images, illustrations, shipping and handling or courier service. Expenses are itemised on each invoice and subject to GST (Goods and Service Tax).
- 5.3. Where a project includes integration with 3<sup>rd</sup> party systems and that 3<sup>rd</sup> party provides documentation that is incomplete or inaccurate, and that causes additional work to resolve, The Company reserves the right to invoice Client for additional project time at the hourly rate stated in the proposal.

#### **6. Production Schedules**

- 6.1. Projects will be scheduled, and work able to begin, upon payment of the first project invoice and adhered to by both the Client and The Company. Where production and payment 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.
- 6.2. The Company will notify the client in writing of any delays in the project. The Company is not held liable for any losses or damages caused by delays. Neither is the client entitled to a refund due to delays.

## **7. Ownership**

- 7.1. The Client has ownership of the website supplied by the Company once it is fully paid.
- 7.2. The Company will at all times be and remain the sole and exclusive owner of any custom web development or software created in any format used in or made part of the website or software which is not provided by the Client or a Third Party (open source), unless otherwise agreed. Except as expressly authorised by the Company, The Client will not copy, modify, distribute or transfer (by any means), display, sublicense, rent, reverse engineer, decompile or disassemble the Company's intellectual properties.

## **8. Overtime and Travel**

The proposals 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 100% mark-up 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.

## **9. Exit and Termination**

- 9.1. Either party may exit or terminate the agreement by giving 30 days written notice to the other of such termination. In the event that the work is postponed or terminated at the request of the Client, The Company shall have the right to bill pro rata for work completed through to the date of that request, while reserving all right under this Agreement.
- 9.2. In the event of cancellation or exit of the project prior to completion by any of the parties, the Company will retain the entire amount paid by the Client up to date and provide a copy of the codes and files for work completed within 7 days of the termination.
- 9.3. The Company may cancel the delivery of goods or services at any time by giving notice to the Client in writing.
- 9.4. The Company shall not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation. In the event of the project termination, cancellation of exit, both parties release and forever discharge each other from all claims, demands, suits, actions and proceedings related to the proposal and project.
- 9.5. If additional payment is due, this shall be payable within fourteen days of the Client's written notification to stop work.
- 9.6. If the project is terminated no payments made by Client will be refunded.

## 10. Payment Terms

- 10.1. The Client agrees to pay The Company in accordance with the payment terms specified in each proposal, quotation or invoice. When not specified in the proposal, quotation or invoice, the Client will be required to pay 30% of the project cost before commencement of work. Unless otherwise specified, all subsequent balance due is payable within 7 days of the invoice date. Where Mity Digital do not host the website payment of the final invoice is required before the site will be made live. In all situations administrator access to your site will not be granted until the final invoice payment has been made. At the Company's sole discretion, payment may be required prior to the supply of any goods and services. Credit Terms may be granted at the Company sole discretion.
- 10.2. If the Client fails to pay any invoice, The Company reserves the right without notice to withdraw the website and associated materials or refuse completion and/or delivery of work until overdue balances are fully 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.
- 10.3. The Company may charge a late payment fee of 5% per month on the outstanding amount.
- 10.4. In the event of a dispute, the complete undisputed portion of the account must be paid in accordance with the Payment Terms. Should it be considered necessary by the Company to incur legal and/or any other expenses, including any such expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Client, the Client shall be liable for all such expenses. The Client acknowledges that those expenses may be calculated on a commission basis at a percentage rate of up to 25% of the amount due and expressly agrees to pay those expenses irrespective of the amount of work actually performed by the debt collection agency.
- 10.5. Any Client having an overdue account will be precluded from participating in any special deals, discounts, bonus payments, redemptions, rebates and other incentive programs until their account is no longer overdue.
- 10.6. Any payment made by or on behalf of a Client which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Client's indebtedness and, in such an event, the parties are to be restored to rights which each respectively would have had if the payment had not been made.

- 10.7. The Client shall be liable for, and expressly undertakes to pay, all fees (including an Administration Fee in an amount to be set from time to time by the Company) for all costs incurred for any cheque being dishonoured for whatever reason.
- 10.8. Should the client delay the project with no contact for 60 days, a project restart fee will be charged on re-commencement. The project restart fee is 10% of the total project investment. All other invoices payments will still apply.

## **11. Statement of Debt**

An invoice, proposal and/or certificate signed by a Director, Secretary, Financial Controller or Credit Manager of the Company shall be prima facie evidence of the amount of indebtedness of the Client to the Company.

## **12. Confidentiality**

- 12.1. The Company will not disclose to any third party or use, other than for the purposes of the proposal, 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.
- 12.2. This obligation of confidence will cease to apply in relation to information that The Company is required to disclose by any law, or which becomes part of the public domain other than as the result of a breach by The Company of its obligations of confidence under this agreement.

## **13. Subcontractors**

- 13.1. The Company reserves the right to assign subcontractors or external suppliers. Any subcontractors or external suppliers will be bound to the terms of this agreement.
- 13.2. The Client must not in any situation contact or engage in a business relationship with any The Company employee, contractor or subcontractor without strict Company authorisation.

## **14.Promotion**

The Company is confident that the Client's expectations will be exceeded and as such is notifying the Client that The Company reserves the right to use the Client's website, associated graphics and any unused ideas and development in the promotion of The Company services. The Client agrees to allow The Company to retain a credit and link from the footer or the website, unless otherwise agreed.

## **15.Copyright**

The Client is responsible for all trademarks, service mark, copyright and patent infringement clearances. The Client is also responsible for arranging, prior to publication, any necessary legal clearance of materials The Company uses for this project. The Client indemnifies The Company against any loss or damage arising directly or indirectly from any unauthorized use of photographs, text, or other Intellectual Property not under copyright ownership of the Client.

## **16.Limitation of Liability**

The services and the work product of The Company are sold "as is." and shall be fit for the purpose as outlined in the agreed Project Brief. In all circumstances, the maximum liability of it Designers, Directors, Officers, Employees, design Agents and Affiliates, 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 the Agreement, except as permitted under Australian Consumer Law. The Company shall not 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 the Company even when The Company has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy, except to the extent that such damages are directly caused by the services provided by or negligence of The Company.

## **17.Domain Names**

17.1. The Client legally owns all its domain names. All domain name registrations are subject to availability and registration rules. The Company will invoice the Client when fees are due. Failure to pay for the domain registration fee may result in loss of domain name. Payment for domain name registration and renewal is required before the registration or renewal will be processed.

17.2. In the event the Client does not pay for domain name renewals before the expiry date any additional costs in renewing or recovering the domain will be payable by the Client.

## 18. Hosting

- 18.1. The Service is provided on an "as is, as available" basis. The Company gives no warranty, express or implied, for the Web Hosting Services provided.
- 18.2. The Company will not be held liable for reimbursement for losses of income due to disruption of services by The Company or its providers beyond the fees paid by the Client to The Company for services.
- 18.3. While The Company shall make every reasonable effort to protect data stored on our Server(s), The Company is not responsible for Customer's data, files, or directories residing on The Company's equipment. The Customer is solely responsible for maintaining data, file, and directory structure backups unless otherwise agreed.
- 18.4. The Company will archive your data onto backup mechanisms on a regular basis for the purposes of disaster recovery. In the event of equipment failure or data corruption, we will restore from the last known good archive. You must maintain a recent copy of your data at your premises at all times. We will not be liable for incomplete, out-of-date, corrupt or otherwise deficient Customer data recovered from our backups.
- 18.5. The Company must perform scheduled maintenance to servers from time to time. We will attempt to perform all scheduled maintenance at times which will affect the fewest customers. If scheduled maintenance requires the service to be offline for more than 60 minutes, we will post details of the scheduled maintenance on our website at least 24 hours before commencement of the maintenance.
- 18.6. The Company may need to perform unscheduled maintenance. If unscheduled maintenance requires the Service to be offline for more than 30 minutes, we will post details on our web site after the maintenance has been completed.
- 18.7. The Service is provided by The Company from 3rd party data centres in Australia. The Company may from time to time use alternative service providers located within Australia. The Company reserves the right to migrate your web site to a new server or platform if our service supplier ceases to provide support or server that meets our requirements. The Company will use reasonable endeavours to notify The Client via the contact details in our database but does not take any responsibility for web site failure if The Client has failed to keep your contact details up-to-date or if The Client has not checked the operation of your web site post-migration and notified us of any required changes to the web site configuration.

- 18.8. Invoices will be automatically sent via email no less than 14 days prior to expiration date of the service. Where payment of the invoice is not received by the day of expiry, customers account will automatically be deactivated. Where payments for the invoice have not been received 14 days after deactivation, The Company will delete the clients account and all files, documents, data and other content from our servers.
- 18.9. It is the Clients sole responsibility to cancel any hosting services provided by other 3<sup>rd</sup> party companies when/if required.

## **19. Customer Warranties and Indemnities**

19.1. You warrant that:

- (a) At the time of entering into this agreement you are not relying on any representation made by us which has not been stated expressly in this agreement;
- (b) You will keep secure any passwords used with the service;
- (c) You hold and will continue to hold the copyright in the Customer Data or that you are licensed and will continue to be licensed to use the Customer data; and,
- (d) You will conduct such tests and virus scanning as may be necessary to ensure data uploaded by you onto or downloaded by you from the Server does not contain any computer virus and will not in any way, corrupt the data or systems of any person.

19.2. You indemnify us against all costs, expenses, loss or liability that we may suffer (directly or indirectly) resulting from:

- (a) Your breach of these terms;
- (b) The use or misuse of the Service by any person using your account; and
- (c) Publication of defamatory, offensive or otherwise unlawful material on any website forming part of your service.

## **20. Mity Digital Warranties and Liabilities**

20.1. We do not warrant that:

- (a) the services provided under this agreement will be uninterrupted or error free;
- (b) the services will meet your requirements, other than as expressly stated in this agreement; or
- (c) the services will be free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to the services or systems of Mity Digital.



- 20.2. Except as expressly provided to the contrary in this agreement, we exclude all liability for indirect and consequential loss or damage of any kind, loss or corruption of data, loss of revenue, loss of profits, failure to realise expected profits or savings and any other commercial or economic loss of any kind, in contract, tort (including negligence), under any statute or otherwise arising from or relating in any way to this agreement and/or its subject matter.

## **21. Browser Variance**

- 21.1. The Company develops and tests websites on current and standard HTML compliant browsers. Layout and aesthetic elements may change or degrade in some browsers. Websites are tested and work on: Microsoft Edge (PC), Latest version of Mozilla Firefox (PC and MAC), Apple Safari (MAC), Google Chrome (PC and MAC), IOS phone and tablets, Android devices and Windows mobile devices.
- 21.2. Should the Client require support for older versions of browsers, including Internet Explorer 11 and below, additional costs may be charged.
- 21.3. 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.

## **22. Testing and Acceptance of the Website**

- 22.1. Once the project has been completed, as determined by The Company the Client will be notified in writing and provide the Client with an opportunity to test and review the website. The Company provides 2 months of free bug fixing. The Company is not liable for fixing existing bugs on third party software, plugins and extensions (such as Joomla, Wordpress, Magento, Drupal, etc), nor is the company liable for coding done by another developer.
- 22.2. If the Client determines that the website/project does not comply with the proposal scope agreed, The Company agrees to perform the corrections of errors free of charge to the system (website, software, web application) the Company has developed.

## **23. Ongoing Maintenance**

- 23.1. Ongoing management is not included in this agreement and will require an additional proposal and may incur additional charge.
- 23.2. If the Client does not proceed with an additional or Ongoing Management agreement, The Client is responsible for the ongoing management of the website and indemnifies The Company against any loss or damage arising directly or indirectly from website downtime, hack or security breaches.

## **24. Warranty**

The company provides a period of 60 days warranty from the completion date, for new websites designed and developed by the company, unless otherwise specified on the proposal/quotation.

## **25. Client Responsibilities**

- 25.1. If the Client or an agent of the Client other than The Company 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 hourly rate. The repair rate is an additional cost on top of the costs outlined in the proposal.
- 25.2. It is The Clients responsibility to check carefully for accuracy in all design and development respects. However, The Company is not liable for errors or omissions from content submitted by the Client. The Client indemnifies The Company against any loss or damage arising directly or indirectly from any errors and omissions.
- 25.3. It is The Clients responsibility to be aware of any privacy regulations the need to meet in Australia or overseas, including and GDPR requirements for Europe.

## **26. Content / Copy**

All text must be supplied in Microsoft Word format.

## **27. Images**

Graphics and photographs are to be supplied in digital format to the Company. The Company is not liable if the client breaches any copyright laws due to the use of copyright images and text.



## **28.Branding**

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

## **29.Retention of Title and Risk**

29.1. Property in all the goods and services (including websites) supplied shall remain vested in the Company and shall not pass to the Client until all monies owing to the Company by the Client together with all collection, repossession and / or legal costs incurred, have been paid in full.

29.2. Notwithstanding Retention of Title provisions as per clause 29.1 hereof, the risk in goods and services purchased shall pass to the Client upon delivery to the Client or its agent or a carrier nominated by the Client.

## **30.Limitation of Liability**

The liability of the Company to the Client for any reason related to the performance of goods under this agreement shall be limited to the replacement of the goods or the amount paid or payable by the Client in respect of the particular goods.

## **31.The Commonwealth Trade Practices Act 1974**

The warranties, rights and remedies of the Client as outlined in the Commonwealth Trade Practices Act 1974 are not intended to be compromised as a result of anything contained in these terms and conditions, except to the degree permitted by the Act.

## **32.Client Ownership**

32.1. This agreement is made in respect of the owners and/or Directors of the Client as at the date of the proposal. The Client agrees to notify the Company in writing within seven (7) days of any change whatsoever in ownership structure and, further, indemnifies the Company against any loss or damage that may result from the Client's failure to notify the Company of any such change.

32.2. Should the Client sell their business or website then this agreement transfers in whole to the new owners.

### **33. General**

- 33.1. The Company accepts no responsibility for changes in any law, which may affect the supply of goods and services.
- 33.2. Neither the Company nor the Client shall be liable for any breach of any provision of any contract between them arising from an act of their respective God, natural disaster, terrorism, war, telecommunication infrastructural downtime and/or any other occurrence beyond the control of either party.
- 33.3. The invalidity or unenforceability of any provision of these General Terms and Conditions shall not affect the validity or enforceability of the remaining provisions.
- 33.4. Clerical errors are subject to correction and do not bind the Company.
- 33.5. Headings are for ease of reference only and do not form part, or affect the interpretation, of these general terms and Conditions.

### **34. Privacy Policy**

The Company is committed to protecting your privacy. Its policy is to comply with the National Privacy Principles for the handling of personal information as set out in the Privacy Act, 1988. In accordance with those principles, and with the Company's Privacy Policy, persons will be given access to their personal information upon request. The Company uses the types of personal information collected, including considering and assessing applications for employment, enabling it to supply Clients with its products and services and for assessing Applications for Commercial Credit, managing accounts and, if necessary, assessing its risk in collecting debts. This information may be disclosed to the Company's associated or related entities, parties related to the Client's employment (e.g. referees and others as set out in the Privacy Policy) contractors, other credit providers, whether or not an account is overdue and, if necessary, its risk insurers, debt collectors and credit reporting agencies. If all or part of the information requested is not provided, the Company may not be able to consider any application or to provide credit facilities. Clients who have any concerns about the Privacy Policy are requested to direct them to the Mity Digital, PO Box 6167, Point Cook VIC 3030.