

# Website Terms & Conditions

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## Background

This agreement covers the supply of all website design services and website design packages ordered by the Client from Web Matters Ltd and lists the contractual obligations of both parties, even in the absence of a specific written contract.

### 1. Commencement of Website Design Services

Web Matters will commence the supply of website design services only after receiving the following from the Client:

- i) written or email confirmation of the order by the Client; and
- ii) final contents for the website, including logo, graphics, and website copy; and
- iii) if requested by Web Matters, any deposit payment;

### 2. Obligations and Responsibilities

The Client and Web Matters agree to the following:

#### (i) Web Matters Obligations

Web Matters will provide website design services in a fair and reasonable manner and will endeavour to develop an excellent working relationship with the Client. Web Matters will:

- i) Consult with the client as to their specific website design requirements
- ii) Prepare and supply to the client, website design concept proofs for the client to review and sign-off
- iii) Supply the client with a website and website pages that match the website design visual signed off by the client
- iv) Set up website hosting if hosting has been ordered by the Client
- v) Keep the client well informed of the design process and provide the client with regular updates throughout the website design process

#### (ii) Client Obligations

The client will:

- a) Provide clear and unambiguous instructions to Web Matters as to their website design requirements
- b) Provide the contents for the website in a timely manner
- c) Sign off the website deliverables in a timely manner and prior to the website going live
- d) Inform Web Matters of any issues that may impact on the delivery of the website
- e) Respond to requests for information from Web Matters in a timely manner

### 3. Testing, sign off & requirements in addition to the chosen website design package

Web Matters will request that the Client signs off the website design concept and the final website. If the Client is not satisfied with the design concept or the final website, Web Matters will make the necessary changes so long as the changes are within the scope of the chosen website design package. This process will continue until the design concept or final website is accepted and signed off in writing (or via email) by the Client. If the Client requests additional or changed functionality or content that falls outside of the website package ordered by the Client Web Matters will charge for these additional requirements on an hourly basis.

### 4. Payment terms

- i) A non-refundable deposit is due on ordering of the website
- ii) If the website development extends beyond 40 days, Web Matters may at its discretion invoice the Client progress payments
- iii) All invoices are due within 7 days from the date of invoicing
- iv) Web Matters will only put the website live once all invoices have been paid for in full

### 5. Overdue accounts

- i) Any debt collection costs incurred by Web Matters for recovery of any monies owed to Web Matters by the Client will be paid for by the Client
- ii) Web Matters reserves the right to charge 12% interest on any overdue amount
- iii) Web Matters may at its sole discretion refuse to provide further services to the Client due to overdue accounts or poor payment history
- iv) Web Matters may suspend any website it hosts without notice due to unpaid accounts, website hacks or website instability
- v) Web Matters may suspend any developer licensing it has provided to the client for commercial plugins used on the client's website due to unpaid accounts

**6. Pricing & GST**

The price for the website will be the price advertised at the time of the order for the chosen website package or service, plus any additional charges incurred for requests over and above the scope of the chosen website package or service. Additional work will be charged out at Web Matters' normal hourly rate. Web Matters may change its hourly rate at any time and without notice to the Client. GST is payable by all New Zealand residents but does not apply to overseas orders.

**7. Copyright**

The Client must have permission to use any artwork, imagery or content they supply to Web Matters. The Client will indemnify Web Matters against any legal proceedings that may arise due to any breach of Copyright caused by material provided by the Client to Web Matters for use in the website design.

**8. Ownership of Website**

Web Matters will provide a finished website to the Client in the form of source code and asset files. These files become the exclusive property of the Client upon acceptance of delivery, however these files are partially based on a non-exclusive code base created and maintained by Web Matters and in some cases existing code was used to help create the deliverables. Such code and other underlying technologies do NOT become the property of the Client, only the finished website. In addition, the website may depend on code, objects and other third party utilities that are the property of their respective owners. No rights to these dependencies is expressed or implied. Additional licensing may be required with third party assets. In the case where Open Source software or premium WordPress software has been used in the development of the website, the licensing and intellectual property rights will be those that are attached to the software and copyright of that software and will be retained by the original software developer(s).

**9. Client agrees to receive electronic messages from Web Matters**

The client agrees to receive electronic commercial messages from Web Matters. Web Matters will not send messages to the Client should the Client opt out of receiving electronic messages from Web Matters.

**10. Maintenance after the Website is Live**

Any website changes or updates requested by the Client after the website has gone live, will incur additional fees and will be charged out by Web Matters at their normal hourly rate as published on their website.

**11. Search Engine Optimisation (SEO)**

The website pages will be accessible to the search engines; however, Web Matters does not provide any guarantee of any improvement in your search engine rankings or that your website will rank for any specific keyword or keyword phrase. SEO is a specialist skill and you may need to engage the services of an SEO specialist to achieve the desired search engine rankings.

**12. Browser Testing**

Web Matters will test the final website in the most commonly used modern web browsers. Web Matters cannot guarantee that the website will look identical on all web browsers, but it will look to be an approximation of the design concept signed off by the client.

**13. Mobile Testing**

The website will be mobile phone 'friendly' and responsive in design so that it 'adapts' to the size of the device accessing the website. The mobile website will not look identical to the desktop website but will be in keeping with branding and logo identity. Web Matters will test the website in multiple devices, but due to the large number of mobile devices and display resolutions, we cannot guarantee that the website will look the same across all devices. The mobile adaptations made by Web Matters will be at their sole discretion and in line with industry standards and will be for two mobile device break points (small and medium devices), any requirements for coding for a specific device or break point will be an additional charge and fall outside of the website package.

**14. 3rd Party Hosting**

If the Client does not host the website with Web Matters, the Client will be responsible for choosing, paying for, and maintaining their Hosting solutions and associated services. As a courtesy, Web Matters may offer suggestions, however, Web Matters is NOT responsible for down time, poor performance, or loss of data. Additionally, Web Matters is not responsible for any bug caused by changes on the Host after the website has gone live or during development of the website, including but not limited to updates to operating system, compile systems, code libraries and languages, or any changes resulting from security violations or settings.

**15. Security & Updates to WordPress**

Due to the nature of rapidly advancing technology and the open source nature of WordPress and WordPress themes and plugins, Web Matters cannot guarantee that the website will be safe from security breaches, unauthorised access, or hacking. Web Matters recommends the use of strong passwords and the observance of standard security practices. In order to minimise the chances of security violations, WordPress and its plugins and themes must be kept up to date. The Client is solely responsible for tracking software updates unless there is a separate agreement with Web Matters for providing these maintenance updates. Any updates during the life of or after the expiration of the Contract can be negotiated as an addendum to this Contract or as an additional support Contract.

**16. Hacked websites**

Web Matters will not be responsible for any security breach or hacking of the website and the Client will need to cover the costs of repairing and restoring the website as a 3<sup>rd</sup> party service provider may need to be hired to clean and restore the website.

**17. Cancellation**

Either party may terminate the agreement on 7 working days' written notice to the other party. If Web Matters has commenced work for the client prior to the cancellation the client will be liable for any hours worked at Web Matters' normal hourly rates. Web Matters may terminate this contract should the Client go into liquidation or bankruptcy.

**18. Right to Sub-Contract**

Web Matters may subcontract the performance of any of their responsibilities under this contract to another party.

**19. Guarantees & Warranties**

The website comes with a 30-day warranty against any website bugs or errors, and Web Matters will correct any errors introduced to the site by Web Matters including copy errors. Web Matters does not provide any guarantee or warranty whatsoever on any third party software that is used in the construction of the website including the code used in Open Source content management systems or plugins or commercial premium WordPress plugins or themes.

If the client is not satisfied with the website design service provided, they must inform Web Matters in writing of the specific issues they have within 30 days of the website going live. Web Matters may at its discretion supply additional services as a remedy.

**20. Liabilities**

The Client agrees that Web Matters will not be liable for any indirect or consequential damages, loss of profits or for any claim made on the client by any other party, even though Web Matters may have been notified of such damage or claims.

Web Matters will not be liable for any loss or damage arising directly or indirectly out of delay in the supply of the deliverables or failure to perform its obligations under this agreement where the delay is caused directly or indirectly by an act of God, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour, materials or manufacturing facilities, accidents, interruptions of, or delay in, transportation or any other cause beyond their control.

The Client agrees to indemnify Web Matters against any false advertising claims, liability claims for products or services sold by the Client, claims for patent, copyright or trademark infringement, claims due to disruption or malfunction of services provided by Web Matters to the Client under this agreement, claims related to any malfunction of the website, or for any content submitted by the Client for publication by Web Matters.

Web Matters publication of material submitted by the Client does not create any express or implied approval by Web Matters of such material, nor does it indicate that such material complies with the terms of this agreement.

**21. Applicable law**

This agreement shall be interpreted in accordance with the laws of New Zealand. If the Client acquires the services for the purpose of a business, they agree that the provisions of the Consumers Guarantee Act 1993 do not apply to the service provided.

**22. Severability**

In the event that any one or more of the provisions of this agreement shall be held to be invalid, illegal or unenforceable; the remaining provisions of this agreement shall not be void for this reason alone. The invalid, illegal, or unenforceable provision shall be replaced by a mutually acceptable provision which reflects the original intention of the parties.

**23. Force Majeure**

Neither party is liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labour disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.