

# Terms & Conditions of Service

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**Innoweb Pty Ltd, ABN: 69 151 746 717**

In order to become a user of any Innoweb Pty Ltd product or service You must agree to the following Terms and Conditions of Service. Your acceptance of these terms will be indicated to Us by sending to Us an application, duly completed confirmation (if requested), use or payment of any Innoweb Pty Ltd product or service, whichever occurs first.

## A. INTERPRETATION

### A.1 Brief and Quotation Process

After initial consultation, We will email to You a breakdown of the interpretation of the brief and a quotation to complete the brief. If You feel the brief is not in line with Your ideas, goals, etc. You must contact Us to make the necessary changes. If the brief is correct, You must provide in writing a confirmation to proceed, at which the initial part payment is to be paid.

### A.2 Definitions

“**Agreement**” means the entire content of this Terms and Conditions of Service document, the Proposal/Quotation document(s), together with any other supplements designated below, schedules or attachments hereto.

“**Client**” means the company or individual who has agreed to take out work with Hive.net.au Pty Ltd.

“**Final Deliverables**” means the final versions of work provided by Innoweb Pty Ltd and accepted by the Client.

“**Search Engine Optimisation**” means any Service which is designed to assist Your Website gain a higher listing in the search engine results.

“**Server**” means the computer server equipment operated by Us or Our partners in connection with the provision of the Services.

“**Services**” means all services and the work product to be provided to You by Innoweb Pty Ltd as described and otherwise further defined in the Proposal/Quotation documents.

“**Third Party Materials**” means proprietary third party materials which are incorporated into the Final Deliverables, including without limitation stock photography or illustration.

“**Web Design**” means any Web design or technical development services carried out by Innoweb Pty Ltd to a new Website or current live Website.

“**Website**” means the area on the Server allocated by Innoweb Pty Ltd to You for use by You as a site on the Internet.

“**We, Us and Our**” means Innoweb Pty Ltd, ABN 69 151 746 717, and includes Our successors in title and/or assigns.

“**You, Your, Yours and Yourself**” means any person who registers for or uses any of Our Services.

## B. SPECIAL TERMS AND CONDITIONS

### B.1 Graphic Design (Print and Web) Special Terms

B.1.1 You agree that in the provision of graphic design Services by Us We may utilise the services of third party contractors, and that We may pass on to such contractors any information or materials, including design brief and content, provided to Us by You.

B.1.2 All services provided by Us under this Agreement shall be for the exclusive use of the Client. Upon full payment of all fees and expenses, reproduction rights for all approved final designs created by Us, for this project shall be granted. All original artwork/files created by Us, or parts contained therein, whether preliminary concepts or final visual presentation remains the property of Innoweb Pty Ltd and may not be used by the Client without the written permission of Innoweb Pty Ltd.

B.1.3 We may use Third Party Materials (photography, motion clips and sound), whether royalty-free or rights-managed, to provide or achieve a certain look and feel in the project. You have the right to refuse to purchase any stock components. It's agreed by both Us and You that all approved stock components must be purchased by You before the project is completed for print production, delivery or Web publishing.

B.1.4 While We will make every effort to ensure the final artwork is free of any grammatical and spelling errors, it is Your responsibility to ensure that there are no spelling or grammatical errors contained within the Final Deliverables. When the project is confirmed by You to go to print, You are stating the project is 'OK as is' for final production/delivery.

B.1.5 You agree to allow Us to place a small credit on printed material, exhibition displays, and/or advertisements.

### B.2 Web Design Services Special Terms

B.2.1 You agree that in the provision of Web Design Services by Us We may utilise the Services of third party contractors, and that We may pass on to such contractors any information or materials, including design brief and content, provided to Us by You.

B.2.2 You are responsible to keep a copy of any existing Website which We may replace pursuant to the provision of Web Design Services including all databases and hosted files.

B.2.3 We are not responsible for the contents of any Website We design for You, and upon publication You must satisfy Yourself that the Website will comply with all applicable laws, and codes of practice governing the use of Websites and related Services. This includes the intellectual property and copyright ownership of all material that You have provided to Us. We are similarly not responsible for Your

subsequent use of the Website and Your compliance of various Commonwealth and State legislations.

- B.2.4 All Website content must be provided by You within one (1) calendar month of initial invoice (project commencement). If Your data is not supplied within one (1) calendar month, We reserve the right to place Your project on Administrative Hold. If no data is supplied within two (2) calendar months of invoice, the project will be cancelled and subject to cancellation fees.
- B.2.5 You must provide complete feedback within seven (7) calendar days during design concept and production review. If no feedback is provided within this time, We reserve the right to move forward with the project, assuming no changes have been requested and that work is accepted in its current form. Any changes requested past this time are subject to Our standard commercial rate per hour or part thereof.
- B.2.6 You may request an Administrative Hold of Your project for up to six (6) months at a cost of \$110.00. We will stop working on the project until You advise Us that You are ready to move forward. If You exceed six (6) months of the project being held, We will terminate the project and all monies paid by You to Us will be forfeited, with no refunds available.
- B.2.7 Changes requested that are outside the scope of the original brief and quote will be charged at Our standard commercial rate per hour or part thereof.
- B.2.8 If You are unhappy with Your Website design (beyond the specified 3 minor changes that do not drastically alter the original brief), You may request additional layout concepts, at Our standard graphic Web design rate per hour or part thereof.
- B.2.9 You are responsible for the digital rights to any image that You supply to Us in the course of a project.
- B.2.10 Once Your Website has been published, We will review and repair any pre-existing code errors and/or bugs in the Website if reported within 30 days of publishing. Any cosmetic changes or alterations, or code errors reported outside of this time period will be subject to additional charges at Our standard commercial rate per hour or part thereof.
- B.2.11 This warranty period does not cover adding any additional content, inserting or moving images, adding additional functionality or changing the layout. The warranty period covers technical issues that may arise from the functionality that We added to the Website and/or content management system.
- B.2.12 We warrant the software used as stable and secure at the time of delivery. Post-delivery maintenance of the security of the Website is the responsibility of the Client or their agent, and not of Innoweb Pty Ltd.
- B.2.13 The SilverStripe CMS software is continually being developed and updated by its global community of users and developers. As the software is improved SilverStripe releases new versions. We recommend updating the core

software on major version releases (i.e. a version update from 2.3.3 to 2.4). Such major updates occur approximately twice a year and We will contact You to advise of such updates and determine whether You wish to have Your Website updated (approximately 1 hour of time at Our standard commercial charge out rate, depending on the changes made on the core software).

- B.2.14 While providing assistance in the obtaining of a merchant facility, We provide no guarantee that a bank will provide a merchant facility for Your online store.
- B.2.15 You agree to allow Us to place a small link to Our own Website, on Your Website. This will usually be in the form of a small logo or line of text placed towards the bottom of the page.
- B.2.16 You also agree to allow Us to place Your Website along with a link to the Your Website on Our own Website for demonstration purposes, and to use any designs in Our own publicity.

### **B.3 Website Hosting (including Email, Secure Webpage and Virus Protection) Special Terms**

- B.3.1 We specifically exclude any warranty as to the accuracy or quality of information received by any person via the Server and in no event will We be liable for any loss or damage to any data stored on the Server. You are responsible for maintaining insurance cover in respect of any loss or damage to data stored on the Server. You warrant to Us that You will only use Your assigned Website for lawful purposes. In particular, You further warrant and undertake to Us that:
- B.3.1.1 You will not, nor will You authorise or permit any other person to, use the Server in violation of any law or regulation;
- B.3.1.2 You will not knowingly or recklessly post, link to or transmit any material:
- B.3.1.2.1. that is unlawful, threatening, abusive, harmful, malicious, defamatory, violent or teaching violence, obscene, pornographic, profane or otherwise objectionable in any way; or
- B.3.1.2.2. containing a virus or other hostile computer program; or
- B.3.1.2.3. that shall constitute or encourage a criminal offence, give rise to civil liability or that violates or infringes any trade mark, copyright, other intellectual property rights or similar rights of any person under the laws of any jurisdiction; and
- B.3.1.3 You will conform to the standards made available by Us from time to time and will not Yourself, and will ensure that none of Your end users, make excessive or wasteful use of the Server to Our detriment or that of Our other customers.
- B.3.1.4 You are responsible for sending mail in accordance with any relevant legislation, including but not limited to the Commonwealth Spam Act (2003) and for sending the

same in a secure manner. We will take all reasonable steps to ensure accurate and prompt routing of messages but We will not accept any liability for non-receipt or misrouting or any other failure of email. In the event of deliberate transmission of unsolicited commercial email (UCE), We reserve the right to terminate services without prior notification.

B.3.2 You warrant, undertake and agree that:

B.3.2.1 any transactions within Your Website which are contracts for the sale of goods or services will be between You as the merchant and Your end-user customer and You agree that We may include an exclusion of Our liability in respect of such purchases and transactions in such form as We deem appropriate;

B.3.2.2 the information contained within Your Website will comply with all applicable laws, and codes of practice governing the Use of Websites and related Services, including, without limitation, those laws and/or codes of practice governing distance selling and data protection from time to time in force;

B.3.2.3 You will keep secure any identification, password and other confidential information relating to Your account and You will notify Us immediately of any known or suspected unauthorised use of Your account, or any known or suspected breach of security, including loss, theft or unauthorised disclosure of Your password information. Notwithstanding such notification You will be liable for any and all uses of Your account (and Website) notwithstanding any fraudulent or improper use of Your password or any other access to any of the facilities We offer which is not unauthorised use or access by Us.

B.3.3 Whilst We shall use reasonable endeavours to ensure the integrity and security of the Server, We do not guarantee that the Server will be free from unauthorised users or hackers.

B.3.4 We do not warrant whatsoever that Our virus protection services will stop every virus from reaching Your computer network. We make no warranty that the Service will be error free or free from interruption of failure, and We expressly disclaim any express or implied warranty regarding Our system and/or Service availability, accessibility, or performance.

B.3.5 You agree to accept additional charges for the transit of IP traffic above and beyond the amount specified in the Service. All excess data will be charged at the rate of \$0.022/MB to the nearest whole MB. These charges will fall due at the completion of the calendar month on normal trading terms of 7 days from invoice. We will provide authorised users Website data traffic reports on request.

## B.4 Search Engine Marketing Special Terms

B.4.1 Whilst We will try to improve the position of Your Website in the search engine results in response to a search

request, We do not warrant that this effort will be successful.

B.4.2 We cannot be held responsible for any changes to the position of Your Website in the search engine results pursuant to the provision of Search Engine Optimisation (SEO) Services by Us.

B.4.3 Whilst We will try to improve Your business exposure, We cannot be responsible for nor do We warrant that the provision of search engine advertising services will either increase third party traffic to Your Website or that such traffic will increase business sales or enquiries.

## C. GENERAL TERMS AND CONDITIONS

The following terms and conditions apply to provision of Services to Our Clients contracts:

### C.1 Service Availability

C.1.1 We shall use reasonable endeavours to provide continuing availability of the Server and the Services but We shall not, in any event, be liable for Service interruptions or down time of the Server.

### C.2 Intellectual Property Rights and Other Consents

C.2.1 You are solely responsible for obtaining any and all necessary intellectual property rights clearances and/or other consents and authorisations, including without limitation, clearances and/or consents in respect of Your proposed domain name and merchant services agreements between You and the relevant financial institutions.

### C.3 Indemnity

C.3.1 You agree to indemnify and keep indemnified and hold Us harmless from and against any claim brought against Us by a third party resulting from the provision of Services by Us to You and Your use of the Server, and in respect of all losses, costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and expenses), or liabilities, whatsoever suffered and howsoever incurred by Us in consequence of Your breach or non-observance of these terms.

### C.4 Termination

C.4.1 We may terminate this Agreement forthwith if You fail to pay any sums due to Us as they fall due.

C.4.2 We may terminate this Agreement immediately if You breach any of these terms and conditions, or if You are a company and You go into insolvent liquidation, or if You are a person You are declared bankrupt.

C.4.3 On termination of this Agreement We shall be entitled immediately to block Your Website and to remove all data located on it. We will hold such data for a period of 14 days and allow You to collect it, at Your expense (Our commercial charge out rate per hour or part thereof), failing which We shall be entitled to delete all such data. We shall further be entitled to post such notice in respect of the non-availability of Your Website as We think fit.

- C.4.4 If You wish to terminate Your account with Us, You must do so by notifying Us in writing, otherwise Your account will be automatically renewed for the same subscription period and You will be liable for, such additional subscription period. You will be invoiced one (1) calendar month prior to the commencement of the additional subscription term, with payment required as per Our terms and conditions. Specifically, We will not accept verbal instructions to terminate an account.
- C.4.5 On receipt of Your cancellation request, We will cancel Your Service at the first available opportunity.
- C.4.6 There are no refunds or credits, once an invoice is generated, unless an invoice for a Service is generated after a cancellation requested is submitted.

## C.5 Payment Schedule

- C.5.1 All charges payable by You to Us for the Services shall be in accordance with the relevant scale of charges and rates published from time to time by Us on Our Website and shall be due and payable within ten (10) days of receipt of Our invoice.
- C.5.2 We invoice clients via email to Your nominated email account on the date the invoice is created. The invoice is attached to the email as PDF file.
- C.5.3 It is Your responsibility to ensure We have current and valid contact details (email, phone and postal address) for You.
- C.5.4 It is Your responsibility to ensure You have software installed for viewing and printing of PDF files.
- C.5.5 The provision by Us of the Services is contingent upon Our having received payment in full from You in respect of the relevant Services. Without prejudice to Our other rights and remedies under this Agreement, if any sum payable is not paid on or before the due date, We reserve the right, forthwith and at Our sole discretion, to suspend the provision of Services to You.
- C.5.6 If You fail to make payment within the terms of this Agreement, You will become liable for the cost of collection. Overdue account reminders are sent on the 8th, 15th and then 22nd days from the date of the invoice. Should clear funds of the full payable sum not be received by the 29th day, interest on any overdue amount will be calculated at the daily rate of 12% per annum, from the due date of the payment, until the time when the invoice is paid in full.
- C.5.7 The following payment terms apply to Website Hosting Services:
- C.5.7.1 Payment of the Hosting fees is required in advance;
- C.5.7.2 Hosting fees are invoiced per calendar year or remaining part thereof; and
- C.5.7.3 If cancellation occurs before the end of the calendar year, a Cancellation Fee of one (1) months Hosting Fee will apply.
- C.5.8 The following payment terms apply to Website Development and Graphic Design:

- C.5.8.1 50% part payment of the total quote (fixed price or cost estimate) must be made before the job commences. This payment confirms the project to commence;
- C.5.8.2 For fixed price projects the balance 50% payment is due on the delivery of the completed project;
- C.5.8.3 For variable price projects the incurred costs are calculated at Our standard commercial rate per hour or part thereof and payment is due at the end of every calendar month once the costs exceed the amount of the first part payment;
- C.5.8.4 If cancellation occurs before the design is selected and/or the site is put into production, the cancellation fee will be 100% of project cost to date and no refunds will be available; and
- C.5.8.5 Once a site is placed into production, the cancellation fee will be 100% of project cost to date and no refunds will be available.
- C.5.9 If You nominate to be invoiced through paper based correspondence (opposed to Our standard email invoicing) You will be charged a \$5.00 account fee per invoice issued.
- C.5.10 If Your account is still outstanding on the 18th day from the date of invoice (eight days overdue) You will be charged a \$15.00 late payment fee. A revised invoice will be sent to Your nominated email address on the 18th day, or the next business day should this day fall on the Weekend.

## C.6 EXCLUSION AND LIMITATION OF LIABILITY

- C.6.1 TO THE FULL EXTENT PERMITTED BY LAW WE HEREBY EXCLUDE ALL CONDITIONS AND WARRANTIES NOT EXPRESSLY SET OUT HEREIN. EXCEPT AS SPECIFICALLY SET FORTH ELSEWHERE IN THIS AGREEMENT, WE MAKE OR GIVE NO EXPRESS OR IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, WITH RESPECT TO ANY GOODS OR SERVICES PROVIDED UNDER OR INCIDENTAL TO THIS AGREEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY US, OUR RESELLERS, AGENTS, REPRESENTATIVES OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE EXPRESS WARRANTIES HEREBY GIVEN, AND YOU MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.
- C.6.2 Our total aggregate liability to You for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by You in respect of the Services which are the subject of any such claim and provided that You notify Us of any such claim within one year of it arising.
- C.6.3 In no event shall We be liable to You for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

## D. IMPORTANT NOTE

In the event that this Agreement constitutes a supply of goods or services to a consumer as defined in the Trade Practices Act 1974 (Cth) or any other national, State or Territory legislation (the Acts) nothing contained in this Agreement excludes, restricts or modifies any condition, warranty or other obligation in relation to this Agreement. To the full extent permitted by law, where the benefit of any such condition, warranty or other obligation is conferred upon You pursuant to any of the Acts, Our sole liability for breach of any such condition, warranty or other obligation, including any consequential loss which You may sustain or incur, shall be limited (except as otherwise specifically set forth herein) to:

- a) In relation to goods:
  - i. The replacement of the goods or the supply of equivalent goods or payment of the cost of replacing the goods or acquiring equivalent goods; or
  - ii. The repair of the goods or payment of the cost of having the goods repaired;
- b) In relation to services:
  - i. the supplying of the services again; or
  - ii. the payment of the cost of having the services supplied again as in each case We may elect.

## NOTICES

Except where expressly provided otherwise, any notice to be given by either party to the other may be sent by either email, fax, post or courier to the address of the other party as appearing in this Agreement or ancillary application forms or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by post or courier shall be deemed to be served two days following the date of posting.

## SEVERABILITY

If any clause of these Terms and Conditions of Service is held to be invalid or unenforceable in whole or in part, the invalid or unenforceable wording shall be deemed to be omitted.

## ASSIGNMENT

The benefit of this Agreement may be assigned by Us, but not Our obligations to You. To do that, You agree that We may give notice to You in writing and Your failure to respond will be deemed acceptance. You may transfer this Agreement provided that You give Us notice in the form We require (setting out the details of the assignee) accompanied by payment of any transfer fee specified by Us. No other method of transfer by You is permitted.

## CHANGE TO TERMS ON RENEWAL

We may change the terms and conditions of this Agreement at any time.

## ENTIRE AGREEMENT

These terms and conditions constitute the entire Agreement between Innoweb Pty Ltd and You, and supersede all prior agreements, understandings and representations whether oral or written. No oral explanation or oral information given by any party shall alter the interpretation of these Terms and Conditions of Service. Except as provided above, no variation may be made to the contract unless it is in writing and signed by authorised representatives of You and Innoweb Pty Ltd.

## ENTIRE AGREEMENT GOVERNING LAW

This Agreement shall be governed by the laws in force in the State of New South Wales. Both parties hereby submit to the exclusive jurisdiction of the Courts of that State.

## NOTIFICATIONS & COMMUNICATIONS

In addition to general Account, Billing and Service communications, We will, from time to time, issue email notifications relating to Our Services, including, but not limited to newsletters, announcements, promotional and seasonal offers, and surveys. By entering into Agreement with these Terms and Conditions of Service, You agree to receive email communications by inferred consent until such time as You decide to opt-out of such communications. You may opt out of Our mailing list at any time by following 'unsubscribe' instructions contained within the communications.

You will not be able to opt-out of Critical Service Notifications, Renewal, Billing and Account Notifications, Scheduled Downtime Notifications or any other communications deemed to be an essential part of Our service to You.

## ACCEPTANCE OF TERMS & CONDITIONS

By agreeing to the Quotation provided, You accept the Terms & Conditions of Service stated herein.