



WEBGOPHERS

Terms and Conditions

1. DEFINITIONS

1.1 “WebGophers” shall mean WebGophers Ltd, or any agents or employees thereof.

1.2 “Client” shall mean the Client, any person acting on behalf of and with the authority of the Client, or any person purchasing products and services from WebGophers.

1.3 “Products” shall mean:

1.3.1 All Products of the general description specified on the front of this agreement and supplied by WebGophers to the Client; and

1.3.2 All Products supplied by WebGophers to the Client; and

1.3.3 All inventory of the Client that is supplied by WebGophers; and

1.3.4 all Products supplied by WebGophers and further identified in any invoice issued by WebGophers to the Client, which invoices are deemed to be incorporated into and form part of this agreement; and

1.3.5 All Products that are marked as having been supplied by WebGophers or that are stored by the Client in a manner that enables them to be identified as having been supplied by WebGophers ; and

1.3.6 All of the Client’s present and after-acquired Products that WebGophers has performed work on or to or in which goods or materials supplied or financed by WebGophers have been attached or incorporated.

1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.

1.4 “Products and Services” shall mean all goods, products, services and advice provided by WebGophers to the Client and shall include without limitation the provision of information technology services including the development and supply of hardware and software, website development, graphic design, hosting services, installations, upgrades and maintenance and all consulting services and all charges for time and attendances, hire charges, insurance charges, or any fee or charge associated with the supply of Products and Services by WebGophers to the Client.

1.5 “Price” shall mean the cost of the Products and Services as agreed between WebGophers and the Client and includes all disbursements e.g. charges WebGophers pay to others on the Client’s behalf subject to clause 4 of this contract.

2. ACCEPTANCE

2.1 Any instructions received by WebGophers from the Client for the supply of Products and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

3.1 The Client authorises WebGophers to collect, retain and use any information about the Client, for the purpose of assessing the Client’s credit worthiness, enforcing any rights under this contract, or marketing any Products and Services provided by WebGophers to any other party.

3.2 The Client authorises WebGophers to disclose any information obtained to any person for the purposes set out in clause 3.1.



3.3 Where the Client is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRODUCTS AND SERVICES PROVISION

4.1 When you select to subscribe to any of our products and services it is with your understanding of what each service is, what you can expect to receive, what the costs are, and the payment terms.

4.2 We retain the right to refuse service to anyone at any time.

5. PRICE

5.1 Price includes travel time which is charged out at normal hourly rate.

5.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products and Services that is beyond the control of WebGophers between the date of the contract and delivery of the Products and Services.

6. PAYMENT

6.1 Payment for Products and Services shall be made as stipulated by WebGophers as follows:

6.1.1 In full on or before the 7th day following the date of the invoice (“the due date”); or

6.2 Automatic notification will be sent to you by email if payments are overdue.

6.3 All our hosting services all operate on a pre-paid basis. This means you must pay for all hosting and related services in advance.

6.4 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.

6.5 You have the option to receive invoices by post, or email, or both.

6.6 Failure to make payment by the due date may incur a 10% penalty on your account.

6.7 If you fail to make payment within 1 month we may suspend or restrict the services on your account. If you choose to make payment on the outstanding amounts a 10% reconnection fee may apply, as well as costs we may have incurred to recover the debt.

6.8 Any expenses, disbursements and legal costs incurred by WebGophers in the enforcement of any rights contained in this contract shall be paid by the Client, including any reasonable solicitor’s fees or debt collection agency fees.

6.9 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6.10 A deposit is required upon agreeing to commencement of work.

7. COST ESTIMATE

7.1 Where a cost estimate is given by WebGophers for Products and Services:

7.1.1 Unless otherwise agreed the cost estimate shall be valid for twenty-eight (28) days from the date of issue; and

7.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;



7.1.3 WebGophers reserve the right to alter the cost estimate because of circumstances beyond its control.

7.2 Where Products and Services are required in addition to the cost estimate the Client agrees to pay for the additional cost of such Products and Services.

8. CANCELLATION OF SERVICES

8.1 You agree to give at least 30 days notice of cancellation of services (excluding Domain registration).

8.2 Notice must be made by post on your company letterhead, and either signed by the account holder (the contact person listed in our records) or a company director.

9. RISK

9.1 The Products and Services remain at WebGophers risk until delivery to the Client.

9.2 Delivery of Products and Services shall be deemed complete when WebGophers gives possession of the Products and Services directly to the Client or possession of the Products and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Client.

9.3 The time agreed for delivery shall not be an essential term of this contract unless the Client gives written notice to WebGophers making time of the essence.

9.4 Where WebGophers delivers Products and Services to the Client by instalments and WebGophers fails to deliver or supply one or more instalments the Client shall not have the right to cancel the contract but shall have the right to claim compensation as a severable breach.

10. AGENCY

10.1 The Client authorises WebGophers to contract either as principal or agent for the provision of Products and Services that are the matter of this contract.

10.2 Where WebGophers enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the Client agrees to pay any amounts due under that contract.

11. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

11.1 Title in any Products and Services supplied by WebGophers passes to the Client only when the Client has made payment in full for all Products and Services provided by WebGophers and of all other sums due to WebGophers by the Client on any account whatsoever. Until all sums due to WebGophers by the Client have been paid in full, WebGophers has a security interest in all Products and Services.

11.2 If the Products and Services are attached, fixed, or incorporated into any property of the Client, by way of any manufacturing or assembly process by the Client or any third party, title in the Products and Services shall remain with WebGophers until the Client has made payment for all Products and Services, and where those Products and Services are mixed with other property so as to be part of or a constituent of any new Products and Services, title to these new Products and Services shall be deemed to be assigned to WebGophers as security for the full satisfaction by the Client of the full amount owing between WebGophers and Client.

11.3 The Client gives irrevocable authority to WebGophers to enter any premises occupied by the Client or on which Products and Services are situated at any reasonable time after default by the Client or before default if WebGophers believes a default is likely and to remove and repossess any Products and Services and any other property to which Products and Services are attached or in which Products and Services are incorporated. WebGophers shall not be liable for any costs, damages, expenses or losses incurred by the Client or any third party as a result of this action, nor liable in contract or in tort or



otherwise in any way whatsoever unless by statute such liability cannot be excluded. WebGophers may either resell any repossessed Products and Services and credit the Client's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and Services and credit the Client's account with the invoice value thereof less such sum as WebGophers reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

11.4 Where Products and Services are retained by WebGophers pursuant to clause 9.3 the Client waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

11.5 The following shall constitute defaults by the Client:

11.5.1 Non payment of any sum by the due date.

11.5.2 The Client intimates that it will not pay any sum by the due date.

11.5.3 Any Products and Services are seized by any other creditor of the Client or any other creditor intimates that it intends to seize Products and Services.

11.5.4 Any Products and Services in the possession of the Client are materially damaged while any sum due from the Client to WebGophers remains unpaid.

11.5.5 The Client is bankrupted or put into liquidation or a receiver is appointed to any of the Client's assets or a landlord distains against any of the Client's assets.

11.5.6 A Court judgment is entered against the Client and remains unsatisfied for seven (7) days.

11.5.7 Any material adverse change in the financial position of the Client.

11.6 If the Credit Repossession Act applies to any transaction between the Client and WebGophers, the Client has the rights provided in that Act despite anything contained in these terms and conditions of trade.

12. SECURITY INTEREST FOR SERVICE PROVIDERS

12.1 The Client gives WebGophers a security interest in all of the Client's present and after-acquired Property that WebGophers has performed services on or to or in which goods or materials supplied or financed by WebGophers have been attached or incorporated.

13. PAYMENT ALLOCATION

13.1 WebGophers may in its discretion allocate any payment received from the Client towards any invoice that WebGophers determines and may do so at the time of receipt or at any time afterwards and on default by the Client may reallocate any payments previously received and allocated. In the absence of any payment allocation by WebGophers, payment shall be deemed to be allocated in such manner as preserves the maximum value of WebGophers purchase money security interest in the Products and Services.

14. DISPUTES AND RETURN OF PRODUCTS

14.1 No claim relating to Products and Services will be considered unless made within seven (7) days of delivery.

14.2 No Products will be accepted for return without the prior approval of WebGophers. There will be no returns on special or indent orders or software. A 15% restocking fee applies. Products must be returned unused, undamaged and in original packaging and in resaleable condition. The client is liable for all costs associated with returns.



15. LIABILITY

15.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon WebGophers which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on WebGophers, WebGophers liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

15.2 Except as otherwise provided by clause 13.1 WebGophers shall not be liable for:

15.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Client or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products and Services provided by WebGophers to the Client; and

15.2.2 The Client shall indemnify WebGophers against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of WebGophers or otherwise, brought by any person in connection with any matter, act, omission, or error by WebGophers its agents or employees in connection with the Products and Services.

15.3 Under no circumstances is WebGophers responsible for loss of or compromise to Client's data. The Client is responsible for back up of all data.

16. COPYRIGHT AND INTELLECTUAL PROPERTY

16.1. All intellectual property rights in any data, details, specifications, designs, information, statements, opinions, software programmes, generic buttons, web design components or any other material used by us in the course of our business or construction of your web site remains our property and no rights pass to you. All such intellectual property and any that we use in constructing your site is regarded as confidential information and you agree that you will not disclose any such confidential information to any other party nor use any of the information at any time.

16.2. Any intellectual property (including copyright) in the material designed or created by us specifically for you pursuant to this Agreement will become your property upon payment to us in full all monies owing to us by you under this agreement. Until payments have been made under this agreement we retain all intellectual property rights (including copyright) in the material designed or created by us for you. However, such property relates solely to the material designed or created by us specifically for you.

16.3. You warrant to WebGophers that any artistic, graphic or literary work which is supplied by you for inclusion in a website does not infringe any third party's intellectual property rights. You agree to indemnify WebGophers against any claim, loss, proceeding or expense arising out of a breach of this warranty.

16.4. WebGophers accepts no liability for the incorrect or wrongful use of materials provided by you when following your instructions.

17. CONSUMER GUARANTEES ACT

17.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires Products and Services from WebGophers for the purposes of a business in terms of section 2 and 43 of that Act.

18. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

18.1 If the Client is a company or trust, the director(s) or trustee(s) accepts this contract, in consideration for WebGophers agreeing to supply Products and Services and grant credit to the Client at



their request, also accept this contract in their personal capacity and jointly and severally personally undertake as principal debtors to WebGophers the payment of any and all monies now or hereafter owed by the Client to WebGophers and indemnify WebGophers against non-payment by the Client. Any personal liability of a signatory hereto shall not exclude the Client in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Client shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

19. MISCELLANEOUS

19.1 WebGophers shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control including suppliers not supplying on time.

19.2 Failure by WebGophers to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations WebGophers has under this contract.

19.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

19.4 The client agrees to allow WebGophers to display their logo on any Products and Services of the client's that WebGophers has performed work on.

19.5 The client agrees to allow WebGophers to include their completed Product in WebGophers' work portfolio by print or by online.

19.6 The client shall not assign all or any of its rights or obligations under this contract without the written consent of WebGophers.