

# Terms & Conditions

## Web Design and Development



Revised: 26 May 2015

### 1. STANDARD TERMS AND CONDITIONS

These are our standard terms and conditions for **Website Design and Development** and apply to all contracts and all work undertaken by APM for its clients.

### 2. FEES AND DEPOSITS

A 50% deposit of the total fee payable under our proposal is due immediately upon you instructing us to proceed with the website design and development work. The remaining 50% shall become due when the work is completed to your satisfaction, subject to the terms of the "approval of work" and "rejected work" clauses. We reserve the right not to commence any work until the deposit has been paid in full.

The deposit is not refundable if the design or development work has been started and you terminate the contract through no fault of ours.

### 3. SUPPLY OF MATERIALS

You must supply all materials and information required by us to complete the work in accordance with any agreed specification. Such materials may include, but is not limited to: photographs; written copy; logos; illustrations; and any other digital media. All materials must be supplied in a format and of a quality suitable for use. Any delay in supplying these materials to us may lead to a delay in the completion of work and in that circumstance we reserve the right to extend any previously agreed deadlines by a reasonable duration.

If a failure to supply materials prevents the progress of work for more than 30 days, we reserve the right to invoice you for any part or parts of the work already completed.

### 4. AUTHORISATION

You are engaging APM Graphics as an authorised independent contractor to perform work on your website. This may necessitate, but is not restricted to granting APM access to: website account login details, hosting account details, website database access and CMS login details.

### 5. PERSONAL INFORMATION

APM Graphics may require certain personal information to effectively perform work on your website. This information may be used to:

- administer your website
- personalise your website
- enable access to website services
- Supply services that have been purchased
- Contact and work with third parties on your behalf

APM Graphics will never sell or distribute your personal information.

### 6. REVISIONS

Our website design and development phases are flexible and we are pleased to allow you the opportunity to make a number of revisions. The number of revisions is specified in our proposal document. Any additional revisions will be charged at our standard hourly rate.

### 7. PROJECT DELAYS AND CLIENT LIABILITY

Any time frames or estimates that we give are contingent upon your full co-operation and supply of complete and final content and information. During all stages of the project there is a certain amount of feedback required to progress at a reasonable rate. It is required that a single point of contact be appointed from your company to be available on a regular basis in order to expedite the feedback process.

### 8. APPROVAL OF WORK

On completion of the work there will be a review period of 7 days, unless otherwise agreed. During this time you will have the opportunity to review the complete website. Any unsatisfactory points should be communicated to APM in writing within this review period. Any of the work which has not been reported in writing to us as unsatisfactory within the 7 day review period will be deemed to have been approved. Once approved, or deemed approved, work cannot subsequently be rejected and the contract will be deemed to have been completed and the 50% balance of the project price will become due.

### 9. WARRANTY

Once approved, or deemed approved, we offer a further 14 days warranty (unless otherwise agreed) during which time any issues that we are notified of in writing will be rectified free of charge, providing such issues fall under the terms of the original proposal.

### 10. REJECTED WORK

If you reject any of our work within the 7-day review period, or not approve subsequent work performed by us to remedy any points recorded as being unsatisfactory, and we, acting reasonably, consider that you have been unreasonable in any rejection of the work, we can elect to treat the contract as fulfilled and take measures to recover payment for the completed work.

### 11. PAYMENT

Upon completion of the 7-day review period, we will invoice you for the 50% balance of the project.

### 12. GUARANTEE BY YOU AS TO OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

You must obtain all necessary permissions and authorities in respect of the use of all copy, graphic images, registered company logos, names and trade marks, or any other material that you supply to us to include in your website or web applications.

You indemnify us and hold us harmless from any claims or legal actions related to the content of your website.

### 13. APM SUPPORT SERVICES

#### 13.1 CONTRACTED SUPPORT TIME

An APM Support Contract entitles you to a certain number of hours per month spent working on your website, according to the plan purchased. A certain amount of time is deducted from this entitlement to allow APM to perform necessary security checks, backup verification and website updates. The remaining hours can be redeemed by contacting us with the work you would like performed - if the work is likely to exceed the amount of time remaining on your plan, we will contact you before any work is undertaken.

# Terms & Conditions continued



## 13.2 PLUGIN AND THEME UPDATES

Where possible, updates to your website are performed within 30 days of release, with priority given to essential security updates. APM is not liable for the quality of the released updates, and if an update should cause a failure in the website, will restore the site from the last available backup. Further, APM is not liable for downtime due to performing updates or restoring your site from backup.

## 13.3 BACKUPS

Website backups are performed according to your specified service plan, and are kept in a cloud-based storage system. APM will restore your site from its backup service when required, but is not liable for the accuracy, security or timeliness of said backups.

## 13.4 MALICIOUS ATTACKS

APM Graphics runs periodic security checks to ensure that your website remains free of malicious threats, but makes no guarantee of preventing such threats. APM is not liable for any losses of bandwidth, data, income, business or otherwise, arising from malicious attacks against your website or its host.

## 13.5 DOWNTIME

APM seeks to maintain your website with minimal disruptions to service, but maintains no liability for website downtime arising from events outside its direct control.

## 14. SERVICE REFUSAL

APM Graphics reserves the right to refuse service to any website or individual. We do not accept material that APM deems to be pornographic, offensive, hateful or malicious.

## 15. LICENSING

Once you have paid us in full for our work we grant to you a license to use the website for the purposes outlined in the original proposal. Third party software and design source files used in the development of your site will have different licensing terms and conditions and as such do not form part of this agreement.

## 16. SEARCH ENGINES

We do not guarantee any specific position in search engine results for your website. We perform basic search engine optimisation according to current best practice.

## 17. CONSEQUENTIAL LOSS

We shall not be liable for any loss or damage which you may suffer which is in any way attributable to any delay in performance or completion of our contract, however that delay arises.

## 18. DISCLAIMER

To the full extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise (other than the express provisions of these terms and conditions) relating in any way to the services we provide to you are excluded. Without limiting the above, to the extent permitted by law, any liability of APM under any term, condition, warranty or representation that by law cannot be excluded is, where permitted by law, limited at our option to the replacement, re-repair or re-supply of the services or the payment of the cost of the services that we were contracted to perform.

## 19. SUBCONTRACTING

We reserve the right to subcontract any services that we have agreed to perform for you as we see fit.

## 20. NON-DISCLOSURE

We (and any subcontractors we engage) will not, at any time, disclose any of your confidential information to any third party.

## 21. ADDITIONAL EXPENSES

You agree to reimburse us for any requested expenses which do not form part of our proposal including but not limited to the purchase of templates, third party software, stock photographs, fonts, domain name registration, web hosting or comparable expenses.

## 22. BACKUPS

Unless a support contract is undertaken with APM, you are responsible for maintaining your own backups with respect to your website and we will not be responsible or liable for restoring any client data or client websites.

## 23. OWNERSHIP OF DOMAIN NAMES AND WEB HOSTING

We will supply to you account credentials for domain name registration and/or web hosting that we purchased on your behalf when you reimburse us for any expenses that we have incurred.

## 24. GOVERNING LAW

The agreement constituted by these terms and conditions and any proposal will be construed according to and is governed by the laws of Australia. You and APM submit to the non-exclusive jurisdiction of the courts in and of Australia in relation to any dispute arising under these terms and conditions or in relation to any services we perform for you.

## 25. CROSS BROWSER COMPATIBILITY

By using current versions of well supported content management systems, we endeavour to ensure that the web sites we create are compatible with all current modern web browsers. Although we test using the most popular browsers we cannot guarantee an identical user experience across all browsers and devices. Third party extensions, where used, may not have the same level of support for all browsers. Where appropriate we will substitute alternative extensions or implement other solutions, as is deemed to be reasonable, where any incompatibilities are found.

## 26. E-COMMERCE

You are responsible for complying with all relevant laws relating to e-commerce, and to the full extent permitted by law will hold harmless, protect, and defend and indemnify APM and its subcontractors from any claim, penalty, tax, tariff loss or damage arising from your or your clients' use of Internet electronic commerce.

## 27. FORCE MAJEURE

27.1 The definition in this clause applies in this Agreement. Force Majeure Event: any event arising which is beyond reasonable control of the affected party (including any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot, war, internet interruption).

27.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue. The affected party shall take reasonable steps to mitigate the effect of the Force Majeure Event.