



TERMS of SERVICE

Website Design and Hosting Services

1 Where the Supplier's Website Design Service is required by the Customer, the Supplier will provide the following services to the Customer :

1.1.1 The Supplier will create a Website for the Customer in accordance with the Scope of Work which is appropriate for the Customer's Business which will include the following: ("the Customer's Website")

1.1.1.1 The name, address, and contact details for the Customer as specified by the Customer; and

1.1.1.2 Internet links to Websites owned by the Customer, as specified by the Customer; and

1.1.1.3 The Customer's logo and branding, as provided by the Customer; and

1.1.1.4 A description of the Customer's Business and content relevant to the Customer's Business, including images, video, and an offer (if required), as provided by the Customer; and

1.1.1.5 Privacy Statements and Disclaimers that comply with the Privacy Act 1993.

1.1.2 Hosting for the Customer's Website, being the provision of the following Services by the Supplier to the Customer during the Website Hosting Period: ("the Website Hosting Services")

1.1.2.1 The Supplier will provide the Customer with a login to the content management system, so that the Customer can maintain the content of the Customer's Website;

1.1.2.2 The Supplier will maintain the Customer's Website and ensure that it is available through the internet at all times (except for periods of necessary maintenance and repair and excluding internet outages or unavailability or other events beyond the Supplier's control);

1.1.2.3 The Supplier will ensure that the Customer's Website is updated with new security patches and software updates within 30 days of release of said patch or update;

1.1.2.4 The Supplier will host the Customer's Website on the Supplier's server or on the computer server of a third party contracted for the purpose by the Supplier; and

1.1.2.5 The Supplier will provide additional Website design services to the Customer at the Supplier's usual charges for providing such services and at the Supplier's usual hourly rate.

The Customer's Obligations

2.1 The Customer will:

2.1.1 Specify the Customer's Business that is to be advertised through the Customer's Listing and/ or the Customer's Website

2.1.2 Specify the Customer's Business Category for which the Customer's Listing is to be Optimised; and

2.1.3 Specify the Customer's Location for which the Customer's Listing is to be Optimised; and

2.1.4 Provide the Supplier with access and write permission for any existing Website owned or used by the Customer and any associated directories and databases.

- 2.1.5 Provide the Customer's name, address, and contact details; and
- 2.1.6 Provide the Customer's logo and branding; and
- 2.1.7 Provide images of premises, team, fleet and products for use in the Customer's Listing, videos and Customer's Website or engage a photographer in a timely manner (within 10 working days) to photograph and deliver same; and
- 2.1.8 Provide any testimonials or links to other Websites that the Customer wishes to be included in the Customer's Website.
- 2.1.9 Comply with any Privacy Statements and Disclaimers on the Customer's Website and with all applicable laws and legislation relating to the Customer's Website, including but not limited to the Privacy Act 1993 and the Unsolicited Electronic Messages Act 2007.

2.2 The Customer acknowledges that the purpose of the Customer's Website is defined in the scope section of the Proposal. The Supplier will only be required to spend up to the time indicated in the Quote in terms of clause 1.1.1 above, and any additional content or design or other services in relation to the Customer's Website required by the Customer will either be completed by the Supplier at the Supplier's usual charges for providing such services or by the Customer through the content management system.

2.4 The Customer acknowledges that the provision of the Services by the Supplier is at all times subject to the Customer performing its obligations under this Agreement.

2.5 The Customer acknowledges that in order for the Supplier to perform the Services, the Customer must cooperate with the Supplier and provide the access and information deemed necessary by the Supplier and that the failure of the Customer to cooperate and provide access and information could have a direct result in the success of the Supplier's efforts and timeliness in completing the Services.

2.6 The Supplier may terminate this agreement at any time if, in the Supplier's sole opinion the Customer is not granting the access or information needed by the Supplier to fully perform the Services. Upon such termination, the Customer shall pay the Supplier for all Services performed up to and including the date of termination at the Supplier's usual charges for providing such services and at the Supplier's usual hourly rate.

Ownership of Website and Data

3.1 The Customer shall at all times remain the sole and absolute legal and beneficial owner of the content of the Customer's Website.

3.2 The Customer shall at all times remain the sole and absolute legal and beneficial owner of the Customer's name, logo, and branding. The Customer grants the Supplier a licence to use the Customer's name, logo, branding and any content supplied by the Customer in connection with and for the purpose of producing and maintaining the Customer's Website during the term of this Agreement.

3.3 The Customer shall at all times remain the sole and absolute legal and beneficial owner of all Purchaser Data.

3.4 The Supplier grants the Customer a licence to use the design of inherent in the Customer's Website, however the Customer may not sub-licence or re-sell that design to any third party without the prior written consent of the Supplier.

Website Design Service Fee and Monthly Hosting Fees

4.1 The Customer shall pay:

4.1.1 A Website Design Fee, being the Website Design Fee quoted by the Supplier, which shall be payable as follows:

4.1.1.1 The Customer shall pay 60% of the Website Design Fee to the Supplier immediately upon acceptance of the quote for the Website Design Services or entry into this agreement; and

4.1.1.2 The Customer shall pay the balance of the Website Design Fee (including any additional charges) upon invoice and prior to the Customer's Website going live and being available for indexing by the Search Engine;

4.1.2 A Monthly Website Hosting Fee for the ongoing hosting and maintenance of the Customer's Website in accordance with clause 4, being the Monthly Website Hosting Fee quoted by the Supplier which shall be payable monthly during the term of this Agreement in advance, the first such payment being due on the Website Hosting Period Commencement Date.

4.1.3 The Supplier's fees and charges for any additional Website design services requested by the Customer within 7 days' of the date of the Supplier's invoice for such services.

4.2 Notwithstanding clause 4.1.2, if there is a delay between acceptance of the quote for the Website Design Services and completion of the Customer's Website (as determined by the Supplier) of more than 30 days, the Supplier may elect to charge the Customer for the balance of the Website Design Fee (including any additional charges) on a monthly basis by issuing monthly invoices for work completed on the Customer's Website during that monthly period at the Supplier's usual hourly rate, in which case payment shall be made within 7 days of the date of each such monthly invoice.

4.3 The minimum Website Hosting Period is twelve months from the Website Hosting Period Commencement Date. Notwithstanding anything to the contrary, the Customer shall not be entitled to terminate the Website Hosting Service before the expiry of twelve months from the Website Hosting Period Commencement Date

4.4 The Supplier shall be entitled to review the Monthly Website Hosting Fee by giving notice in writing to the Customer setting out the new Monthly Website Hosting Fee ("Website Hosting Fee Review Notice"). The new Monthly Website Hosting Fee shall be payable from the date that is 20 working days after the date that the Website Hosting Fee Review Notice is given. If the Customer does not accept the new Monthly Website Hosting Fee detailed in the Website Hosting Fee Review Notice, subject to clause 4.3 above the Customer shall be entitled to terminate the Website Hosting Service by giving notice in writing to the Supplier within 20 working days of the date that the Website Hosting Fee Review Notice is given (time being of the essence).

4.5 The Supplier shall not be under any obligation to make the Customer's Website live until the Website Design Fee (including any additional charges) has been paid in full.

Payment and Default

5.1 All payments to the Supplier must be made by direct debit from the Customer's credit card or bank account or otherwise as the Supplier may from time to time direct.

5.2 All fees and prices as quoted are exclusive of goods and services tax unless otherwise stated.

5.3 If full payment is not made by the Customer to the Supplier in accordance with this Agreement above then:

- 5.3.1 The Customer will be in default under this Agreement and the Supplier may exercise all of the rights and remedies set out in this Agreement and otherwise available at law; and
- 5.3.2 The Customer will pay a late payment fee being 10% of the amount invoiced or \$15.00 whichever is the greater. The interest rate for default monies is 2.5% per month payable on a daily basis from the due date until the date of payment, to the Supplier; and
- 5.3.3 The Customer will be liable for all expenses (including, without limitation, legal costs on a solicitor and own client basis) incurred by the Supplier as a result of the default; and
- 5.3.4 The Supplier may withhold, suspend, or terminate the further supply of services, including but not limited to the ongoing maintenance and Optimisation of the Customer's Listing and hosting of the Customer's Website, under this Agreement.

5.4 The Customer acknowledges that all payments made to the Customer's account with the Supplier are in the ordinary course of the Customer's business and are received by the Supplier on the reasonably held belief that those payments are valid (unless the Customer advises otherwise in writing), and that by accepting any payments on or after the due date for payment the Supplier has altered its position in reliance on the validity of those payments.

Liability on Claims

6.1 The total liability of the Supplier for any loss arising from any defect or non-compliance of the Services or any other breach by the Supplier of its obligations under this Agreement will not in any circumstances exceed an amount equivalent to the Monthly Subscription Fee (at the rate current at the time of such defect, non-compliance, or breach) multiplied by twelve.

6.2 The Supplier will not be liable for any consequential indirect or special damage or loss of any kind, or any loss caused by the Customer's employees, contractors, agents or any other persons whatsoever. The Customer will indemnify the Supplier against any claim by the Customer's employees, contractors, agents or other persons in respect of any loss arising from any defect in or non-compliance of the Services.

6.3 No warranty, condition or guarantee either express or implied is given by the Supplier as to the quality, state, condition or content or fitness for any particular purpose of the Services.

Consumer Guarantees Act

7.1 The Supplier is supplying the Services to the Customer for business purposes within the meaning of the Consumer Guarantees Act 1993, and accordingly pursuant to Section 43 of the Consumer Guarantees Act 1993, the provisions of the Consumer Guarantees Act 1993 will not apply to this Agreement.

Information and Privacy Act

8.1 For the purpose of facilitating the efficient running of the Supplier's business, the Customer authorises the Supplier:

- 8.1.1 To collect all information about the Customer that the Supplier may require from any third parties and authorises those third parties to release that information to the Supplier; and
- 8.1.2 To hold all information given by the Customer or any third parties to the Supplier; and
- 8.1.3 To use that information, including giving information to any other person to facilitate collection of debts from the Customer.
- 8.1.4 To collect, hold, use, give and assign the Purchaser Data.

8.2 The information referred to in clause 4.1 will be collected, held and used on the condition that:

- 8.2.1 It will be held securely at the Supplier's registered office; and
- 8.2.2 It will be accessible to any of the Supplier's employees and agents who need access to it for the efficient running of the Supplier's business; and
- 8.2.3 The Customer may request access to and correction of it at any time.

Waiver and Forbearance

9.1 All the Supplier's rights will remain in full force despite any delay in enforcement. The Supplier will not be deemed to have waived any condition unless that waiver is in writing and signed by a duly authorised officer of the Supplier. Any waiver will apply only to the particular matter in respect of which it is given.

Assignment

10.1 The Supplier is entitled at any time to assign its rights under this Agreement. The assignee will be entitled to claim full rights of set off or counter claim against the Customer, its charge holders or successors in respect of any debt or part of a debt which is assigned.

10.2 The Customer is not entitled to assign its rights under this Agreement.

Entire Contract

11.1 The Supplier and the Customer agree that these terms express the complete agreement between them. There has been no representation made by either party to the other except as expressly set out in this document. There is no inconsistency with the terms of any order for Services that may be lodged by the Customer, and if there is any inconsistency then any such order will be of no effect.

11.2 The Supplier may from time to time amend these terms and condition whereupon the Customer shall be deemed to have agreed to the amended terms and conditions, which shall at the Supplier's election prevail over any previous terms and conditions, to the maximum extent permitted by law consistent with the existence of a contract. The Customer agrees that it shall have been sufficiently notified of any such amendment by virtue of the amended terms and conditions being posted on the Supplier's website, the homepage for which is <http://whitelabel.kiwi>.

Notices

12.1 Any notice to be given pursuant to the terms of this Agreement shall be in writing addressed to the party to whom it is given and left at or sent by e-mail, facsimile transmission or pre-paid airmail post to the address of such party as it may from time to time notify to the other and shall be deemed to be served on the day so left or transmitted by e-mail or facsimile machine or on the fifth working day after it is so posted.

Termination

13.1 This Agreement (including any unperformed obligations of the Supplier) may be terminated by the Supplier giving written notice to the Customer that this Agreement is terminated in the event that:

13.1.1 The Customer is in default under this Agreement (including without limitation, in accordance with clause 2.5); or

13.1.2 The Customer becomes insolvent, subject to the appointment of a receiver, manager, liquidator, or statutory manager, commits an act of bankruptcy, makes a scheme of arrangement with its creditors, or becomes unlikely to be able to meet its obligations to the Supplier (in the opinion of the Supplier).

13.2 Either the Supplier or the Customer may terminate this Agreement at any time without reason by giving the other party no less than 20 working days' notice in writing, provided that the Customer may not terminate the Subscription before the expiry of the minimum Subscription Period.

13.3 Termination of this Agreement will not affect any accrued rights or claims of the Supplier against the Customer, and (without prejudice to the Supplier's rights or claims against the Customer) the Customer will pay all expenses, fees and obligations for time spent by the Supplier up to the date of termination of this Agreement immediately following termination of this Agreement for any reason.