

SIMPLY GOOD WEBSITES LIMITED
("the Company")
TERMS AND CONDITIONS OF TRADE

1. GENERAL

- (a) The Company and the customer enter into the contract for goods and/or services subject to these terms and conditions and together the contract and these terms and conditions constitute the entire agreement between the Company and the customer (except to the extent that such are modified in writing and signed by both parties) and it is expressly agreed that there are no other understandings, representations or warranties of any kind (express or implied) forming part of the contract.
- (b) Any variation, waiver or cancellation of the customer's contract for goods and/or services shall be of no effect unless accepted in writing by the Company.
- (c) If any of these terms and conditions or part thereof are held to be invalid, illegal, unenforceable or void for any reason or reasons, all of the remaining terms and conditions (or part thereof) shall remain in full force and effect.
- (d) The customer agrees that in the event of default of settlement of any account due, the customer shall pay upon demand, all reasonable costs, charges and legal expenses (including costs between solicitor and own client and any collection costs) incurred by the Company in recovering the outstanding account from the customer. Any person signing on behalf of the customer represents and warrants that they have legal authority to do so; and further that they shall be personally liable for any breach by the customer of the contract and these terms and conditions.

2. PRICE AND TERMS OF PAYMENT

- (a) The Company's prices to the customer for the goods and/or services to be provided are recorded in the contract. By signing the contract the customer agrees to the prices stated, and to paying all invoices received from the Company on or before the due date.
- (b) The Company's prices referred to in each contract are exclusive of Goods and Services Tax ("GST") unless stated otherwise. The customer shall pay GST on the goods and/or services the subject of the contract, as invoiced by the Company.
- (c) All accounts are payable by way of a 50% non-refundable deposit at the time of entry into the contract, with the balance due upon the earlier of delivery, final client approval, or three (3) months from the date the contract is entered into unless stated otherwise in the contract ("the due date").
- (d) Without prejudice to its rights to sue for payment or exercise any other remedy where any payment is not made on the due date the Company may:
 - (i) Charge the customer interest on the amount outstanding at the rate equal to 2% per month (from the due date of payment until payment is received by the Company) but the charging of interest does not extend the time for payment nor imply any forbearance to sue or otherwise recover overdue monies.
 - (ii) Demand payment of the arrears as well as payment in advance for any other goods and/or services required before proceeding to provide any further goods and/or services.
 - (iii) Suspend all services to the customer until payment is received by the Company
 - (iv) Rescind the contract and the customer shall not be entitled to demand or enforce delivery of any goods and/or services under the contract.
- (e) If the customer wishes to cancel the contract for any reason, and the Company agrees to such cancellation, the customer shall immediately pay to the Company such proportion of the contract price as the Company calculates has been incurred to the date of termination PLUS reasonable contract cancellation costs.
- (f) Third party service providers may update their services, processors and products from time to time affecting the functionality of the customer's complete Internet solution post-completion. Any such changes would be beyond the Company's control and the Company shall not be responsible or liable in any way to upgrade or modify the customer's Internet solution to comply with such updates. Any updates required would be the subject of a new contract with applicable prices.
- (g) The Company reserves the right to change monthly fees payable by the customer for ongoing services provided upon thirty (30) days written notice.
- (h) Any travel required of the Company pursuant to the contract will be at a cost to the customer of \$100.00 plus GST per hour which is additional to the contract price.

3. DELIVERY

- (a) The Company may withhold delivery in terms of clause 2 above.
- (b) If the customer fails or refuses or indicates to the Company that the customer will fail or refuse to take or accept delivery, then the goods shall be deemed to have been delivered when the Company was willing to deliver them.
- (c) Any quotations of delivery times by the Company are made in good faith but as estimates and not commitments. The Company shall not be bound by such estimates.

4. RISK

- (a) Risk (including, without limitation, insurance responsibility) of any loss, damage or deterioration of or to the goods and/or services shall pass to the customer on delivery to the customer.

5. DISPUTES

- (a) In the event that any part of an invoice is disputed the amount not under question shall be paid according to applicable payment terms.
- (b) Any claim or dispute arising hereunder shall be first discussed between the parties in good faith with the intention that the claim or dispute is resolved without the need for external assistance. If the parties are unable to resolve the claim or dispute within thirty (30) days of it being notified by one party to the other, then the claim or dispute shall be subject to arbitration in accordance with the Arbitration Act (1996) or any amendment thereto.

6. OWNERSHIP

- (a) Ownership of all goods supplied by the Company is retained by the Company until full payment is received for all amounts owing (including any default interest pursuant to clause 2(d) and enforcement and legal costs pursuant to clause 1(d)) in respect of all goods supplied. This provision is designed to protect the Company in respect of any event where the customer defaults in payment of the goods or any other goods sold by the Company to the customer or any event occurs which would entitle a debenture holder of the customer to appoint a receiver of the customer or the customer is served with a notice under the Companies Act 1993 or any event occurs which would entitle a creditor to petition for winding up or bankruptcy or a petition for winding up or bankruptcy of the customer is filed or a receiver is appointed of any of the customer's assets or a resolution for voluntary winding up is passed by the customer (except for the purposes of reconstruction) or any approaches made by the customer to creditors to extend time for or otherwise compromise payment of the customer's debts. Such events and the filing of legal proceedings in connection with any such event are subsequently referred to as "the events".
 - (b) Until payment is made the customer agrees to:
 - (i) Use reasonable endeavours to enable the goods to be readily identifiable as the property of the Company.
 - (ii) Maintain the goods so supplied in good order and condition and return the goods immediately if called upon to do so by the Company.
 - (c) The customer hereby agrees to meet all costs of and any incidentals in the recovery of the goods as well as any shortfalls between the amount owing and the value of the goods recovered.
- (d) The Company shall be entitled to cancel the contract (and any other contract between the Company and the customer) forthwith by notice to the customer if the customer defaults in payment on the due date, time for which is strictly of the essence, or fails to comply with any of these terms and conditions or any specific terms of contract, or if the Company receives any information which, in the opinion of the Company, indicates uncertainty as to the customer's ability to meet its financial commitments. The right of cancellation under this clause is in addition to any other right of cancellation the Company may have whether pursuant to these general conditions or any particular contract of sale, or any statute or at common law or in equity.
- (e) If any one or more of the events occurs, or upon cancellation under clause 6(d), or upon cancellation pursuant to any other right, the customer hereby gives the Company irrevocable authority, without prejudice to any other rights or remedies of the Company, to:
 - (i) Recover possession of all goods in respect of which the Company has retained title whether or not such goods are "mixed goods", either by removing the goods from the possession or control of the customer, or the duly appointed liquidator or receiver of the customer.
 - (ii) Enter any premises, and if need be forcibly, for the purposes of repossession or impounding any goods whether or not such goods are "mixed goods", and, in such event the customer shall indemnify the Company against all claims that may be made upon the Company as a consequence of the Company's exercising such power of entry and removal.
 - (iii) Employ the services of any person or enter upon and remain upon any premises occupied by or controlled by the customer to exercise any of the preceding rights;
 - (iv) Give notice to any third party of the Company's rights pursuant to these terms and conditions and of the exercise of any of the Company's rights or remedies and the customer shall have no claim against the Company for any loss, direct or indirect, suffered by the customer as a consequence of such notice being given by the Company.

7. PERSONAL PROPERTY SECURITIES ACT 1999

7.1 It is agreed and acknowledged that by these terms and conditions:

- (a) A Purchase Money Security Interest ("PMSI") pursuant to the Personal Property Securities Act 1999 ("PPSA") is granted in priority to all other creditors by the customer in favour of the Company in all goods from time to time supplied.
- (b) The Company may at the customer's cost register the PMSI interest under the PPSA by registering a financing statement and if at some later date additional or different property is supplied, to provide if necessary for registration a new collateral description by registering a financing change statement. This will not affect the Company's right to register subsequent financing statements, and to register subsequent financing change statements in respect of any other amendments.

- (c) The customer agrees to provide the Company with such information as it may need to enable registration of the PMSI under the PPSA and shall promptly execute any documents to ensure that the security interest under these terms and conditions is a first ranking perfected security interest and waive the right to receive a copy of the verification statement issued upon registration of the financing statement or of any financing change statement.
 - (d) That the customer has received valuable consideration from the Company and agrees that it is sufficient.
 - (e) The customer shall not under any circumstances initiate any change to the registered financing statement.
- 7.2 Where the customer is a consumer as that term is defined by the Consumer Guarantees Act 1993 it acknowledges that its right to undisturbed possession to the goods is subject to full payment of the goods and other costs and charges as stipulated in these terms and conditions and by the customer's signature they acknowledge in writing such provision and their understanding of the affects and implications of it.**

8. COMPANY'S LIABILITY

- (a) The customer shall ensure that any goods ordered are fit and suitable for the purpose for which they are required and the Company is under no liability if they are not.
- (b) In lieu of any warranty, condition or liability implied by law, the Company's liability in respect of any defect in or failure of the goods and/or services supplied or for any loss, injury or damage attributable thereto is limited to making good the defect or refunding the contract price (at the Company's sole discretion).
- (c) This warranty does not cover damage from misuse, accident, neglect, installation, modification, adjustment or maintenance.
- (d) Any advice, recommendation, information, assistance or service ("customer information") provided by the Company in relation to the good's use or application is given in good faith and is believed to be appropriate and reliable. Any customer information provided and any statements or representations made by the Company in relation to any goods supplied by the Company is provided or is made without liability or responsibility on the part of the Company and this provision precludes any court from enquiring or determining the questions referred to in Section 4 of the Contractual Remedies Act 1979.
- (e) The Company's liability under the contract and the warranty in this clause is limited to the customer named in this contract it being agreed that the Company has no liability to any assignee of the goods from the customer in that the customer's rights under this contract are not assignable without the prior written consent of the Company.
- (f) The Company shall in no circumstances be liable for any lost profits, lost opportunities, indirect or consequential damages suffered by the customer.

9. FORCE MAJEURE

The Company shall not be liable to the customer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods or failure to perform any term of the contract where such delay or failure is caused directly or indirectly by an act of God, fire, 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 the Company's control.

10. INTERNET SOLUTION DEVELOPMENT, CONSULTING SERVICES AND MAINTENANCE

- (a) The customer acknowledges and agrees that the Company may provide websites to other customers including those in the same or similar line of business as the customer.
- (b) Website production timelines may vary due to many dependencies including but not exclusive to, delay of customer input and approvals at each stage of the development process. Customer changes during the development process will also delay timelines and will be subject to additional charges not outlined in the contract. The Company reserves the right to restrict all changes to the contract until after the contract works have been fulfilled in order to deliver the contract works to the customer in a timely manner.
- (c) In no event shall the Company or its agents be liable to the customer for any damages, whether direct, indirect, consequential, exemplary, punitive or otherwise, arising out of any service provided or arranged by the Company. The Company shall not be liable for any error, omission, defect or deficiency in any service or solution, which may result from, but not be exclusive to, the customer's failure to provide complete, accurate and current information to the Company.
- (d) With the exception of trademarked, copyrighted or other proprietary information regarding pictures, images or logos that directly identify the customer, the customer grants to the Company an indefinite, irrevocable, royalty-free, unrestricted right to use, transfer, modify and maintain content prepared by the Company on the customer's website while hosted with the Company.
- (e) Although the Company shall have the right to approve the design, content and links to and from the customer's website, the Company assumes no responsibility to do so. The customer agrees to be solely responsible for the content of its website and accuracy of all information provided. The customer agrees that the Company has fulfilled the Internet solution outlined in the contract upon final customer sign off.
- (f) The customer agrees to hold no ownership rights to web development code of leased or subscription solutions or proprietary code or licensed products or any other web solution developed.

11. HOSTING AND ASP SERVICES TERMS

- (a) Hosting costs, whether invoiced monthly, quarterly or annually, are applicable and become due for payment on the date of acceptance of the contract by the company.
- (b) Under no circumstances shall the Company or its agents be liable to the customer for any network interruptions beyond the Company's control, including without limitation, any downtime regarding computer servers or interruption of Internet Service Providers.
- (b) The Company reserves the right to control and restrict any content on the customer's website and shall have sole discretion to terminate hosting and or other services, without advance notice due to any information deemed by the Company as illegal, tortuous, false, misleading, fraudulent, libellous, immoral, offensive or otherwise not in conformity with the policies and style of the Company or are unlawful or violate any applicable national or international law, ordinance or regulation having the force of law. The customer acknowledges that the Company may unilaterally write or re-write reasonable rules and regulations necessary for the orderly operation of the Company and that the customer will be bound accordingly to those terms.
- (c) The Company will provide reasonable levels of hosting resources, including disk storage and bandwidth to the customer. In the event that the Company deems that resource utilization by the customer is in excess of what the Company deems reasonable, the Company reserves the right to terminate the hosting services component of the contract or levy such additional hosting fees, as it deems appropriate upon providing the customer with 30 days written notice.
- (d) The customer agrees to provide the Company 30 (thirty) days written notice to terminate hosting or other services.
- (e) The customer agrees that the Company reserves the right to terminate hosting and or other services without advance notice if the customer's web solution is detrimental to the hosting environment including acts of spam or if the web solution negatively affects server performance or other web solutions on the hosting environment.

12. CUSTOMER WARRANTIES AND INDEMNITIES

12.1 The customer hereby warrants and represents that:

- (a) the use, as contemplated by the contract, of material supplied by the customer to the Company shall not infringe any copyright, trademark, trade secret or other third party proprietary right and the customer has the right to use such material in the manner contemplated;
- (b) there is no impediment to the customer's performance of its obligations hereunder;
- (c) the Company is granted an unlimited licence by the customer to use all material provided for the purposes contemplated in the contract;
- (d) it has no copyright or any other claim nor any rights, title or interest in or to the web development (or other) code of any leased or subscription solutions provided by the Company, or in or to any other works or materials provided by the Company including, but not limited to any web solution developed by the Company for the customer. For its part, the Company shall have no right, interest or claim whatsoever in or to the customer's trade name, trademark, or logo, or to the external graphic design of any web site specifically designed for the customer by the Company;
- (e) it shall correspond with the Company by email, telephone, facsimile and/or post as necessary to enable the Company to complete the contract works in the contemplated time frame;
- (f) it shall provide the Company with all of its required content to be included in the website development in standard electronic format acceptable to the Company. If there is any graphic design to be included, the customer is to promptly approve the specifications for the template design or request variations thereto (two reasonable variations are permitted at no additional cost to the contract price);
- (g) if the customer does not respond to any request by the Company within one month, the customer may be deemed to have consented to the request and the Company may proceed with the contract works on that basis.

12.2 The customer hereby indemnifies the Company (including its directors, employees and agents) from and against any loss, claim, cost or damages whatsoever (including but not limited to solicitor-client costs) incurred as a result of a breach of contract (which includes these terms and conditions) by the customer.

13. PRIVACY ACT 1993

The customer hereby agrees and authorises any person to provide the Company with such information as the Company may require to satisfy its credit enquiries. The customer further authorises the Company to supply information to third parties as reasonably determined by the Company from time to time.

14. JURISDICTION

These terms and conditions and the contract shall be interpreted and construed pursuant to the laws of New Zealand and any claim brought by either party against the other shall be brought in New Zealand.