

Design Workx Terms & Conditions

It is important to carefully read these Terms and Conditions of the services provided by Design Workx prior to confirming any work orders or projects.

DEFINITIONS

The Terms and Conditions set out below explain the terms of service provided by Design Workx and or any other associated company to which it acts for or on behalf of, is hereby referred to as the "service provider" as set out in these terms and conditions. Any written terms (other than the following) which relate to the services provided will apply.

Where such other terms are different to these Terms and Conditions, these Terms and Conditions will take precedence. These Terms and Conditions form the contract between you as a customer and or your/their authorised representative hereby referred to as the "client" as set out in these terms and conditions and the "service provider", as a provider of the services stipulated or requested.

By using the services provided by the "service provider", you acknowledge the acceptance of these Terms and Conditions. Any new product or service introduced, used or provisioned by the "service provider", may require new acceptance of Terms and Conditions whereas we may ask you to confirm that you accept any changes to these Terms and Conditions necessitated by the new products and services, such acceptance will be binding.

ACCEPTANCE OF WORK

Any quotations are valid for 14 days from date of issue.

When the "client" places an order for services to be undertaken by the "service provider" the order represents a part contractual agreement by the "client" for the "service provider" to undertake the required services. The contract for the supply of services will become binding between "client" and "service provider" once the "service provider" has actioned an invoice to the "client" for part or full payment whichever is applicable (see payment terms). The invoice equals acceptance by the "service provider" whereas this acceptance of work is a binding contract between "service provider" and "client" regardless of whether the "client" accepts the invoice (see payment terms).

Any other services after the order has been placed and which have not been included in the invoice does not form part of the contract (see payment terms). The "client" agrees to check that the details of the invoice are correct and should print and keep a copy for their records.

The "service provider" reserves the right to decline any order, or parts of an order prior to final acceptance.

PERMISSION AND COPYRIGHT

All design, images, text and code developed or provided by the "service provider" shall remain the property of the "service provider" until full payment has been settled.

The "service provider" reserves the right to delete, remove, re-assign or make transparent any design, images, text or code developed or provided by the "service provider" due to failure of payment in any reasonable period of time or as allocated by the "service provider" at the allocation of invoice (see payment terms).

The "service provider" reserves the right to release design files, images, pages, code and source files created by the "service provider" for the project or work undertaken, request for release shall be provided in writing (email requests are acceptable) to the "service provider" by the "client". In the acceptance of release the "client" understands that ownership of all designs, images, text and code remains with the "service provider".

In the case of web design and development the terms of use grant a non-exclusive limited license so that the "client" can use the design on one web site on one domain name only. The "client" shall not be permitted to use a design for more than one website without prior written permission.

The "client" agrees that resale or distribution of files in full or in part is forbidden unless prior written agreement (email is acceptable) is made to the "service provider" by the "client".

The "client" hereby acknowledges that all or any media and content made available to the "service provider" for use in the project are either owned by the "client" or has been provided with full permission of the original author/s. The "client" agrees to indemnify the "service provider" from any claim or law suit that may arise as a result of using supplied media and content.

The "client" agrees that the "service provider" may include credits and or links within any work undertaken, designed or developed to which the "service provider" produces, builds or amends.

The "client" agrees that the "service provider" reserves the right to include any work done for the "client" in a portfolio of work.

MATERIAL

The "service provider" reserves the right to refuse, accept or design;

- Any project, design or development which is unlawful or inappropriate;
- Any project, design or development which contains viruses, malware or hostile programs;
- Any project, design or development which constitutes harassment, racism, violence, obscenity, harmful intent or spamming
- Any project, design or development which constitutes a criminal offence, infringes privacy or copyright
- Any other questionable project, design or development at the "service providers" own discretion

WORK ORDERS / PROJECTS

All new and or existing work orders/projects, alterations and or upgrades are to be requested in writing (email correspondence is acceptable). After the specified work order/project and or alteration or upgrade has been completed, the "service provider" reserves the right to advise the "client" as such and send a separate quotation or invoice to the "client" and to request payment for any work orders/projects and or alterations or upgrades that were not previously quoted. The "service provider" reserves the right to request payment be received for previous work orders/projects and or alterations or upgrades before continuing work.

Upon completion of a work order/project the "client" will be asked to confirm that the specified work order/project and alterations or upgrades be signed off as complete and agree that any further design alterations are chargeable.

The "client" agrees to provide any information and content required by the "service provider" in good time to enable the "service provider" to complete the work required.

The "client" shall accept that work or projects undertaken and or produced from a previous order outside of the "service providers" own provisions may not exactly match the original and accepts that there may be differences between the display in design software and the rendering of code by internet browser software. The "service provider" agrees to try to match original design or development work as closely as possible.

If an error or issue with a design or code arises during the project which does not allow the design or code to match the original specification, the "client" agrees that the "service provider" can apply an alternative solution.

In the case of web design and development the "service provider" endeavours to create pages that are search engine friendly, however, the "service provider" gives no guarantee that the site will become listed with search engines or of certain search results. In no event shall the "service provider" be held liable for any changes in search engine rankings as a result of using the "service providers" code.

In the case of web design and development once a site has been completed a "client" or a third party of their choosing may wish to edit the contents or code themselves to make updates. However, the "client" agrees that in so doing they assume full responsibility for any issues which occur as a result of changing the contents and or the code themselves. If a "client" or a third party of their choosing edits the content or code and this results in functionality errors or the page displaying incorrectly, the "service provider" reserves the right to quote and or charge for work to repair alterations.

In the case of marketing, advertising or promotional services where the "client" agrees to undertake the recommendations provided by the "supplier" and unless cost provisions have been allocated or quoted for shall be liable for any additional costs outside of the services provided by the "service provider". The "service provider" shall have no liability to the "client" or any third parties for any damages, including but not limited to, claims, losses, lost profits, lost savings, or other incidental, consequential, or special damages arising out of the operation of or inability to operate or administer the work undertaken.

The "service provider" reserves the right to assign subcontractors in whole or as part of a project if needed.

The "client" agrees that it is their responsibility to have regular backups of their website and software made by themselves or third party services in case of a software or hardware failure.

HOSTING & DOMAINS

In the case of web design and development the "client" agrees to take all legal responsibility for use of third party domain name, hosting and email services and hereby agrees to indemnify and hold harmless the "service provider" from any claim resulting from "client" publication of material and use of the domain name, hosting and email services. Any support or payment due relating to the domain name, hosting and email services are to be made between the "client" and their hosting and or domain service providers. If in the case the "client" is using a hosting or domain service provider that is affiliated and or accredited by the "service provider" the "service provider" will act on or represent on "client" behalf.

In the case of web design and development the "client" agrees to pass on any access details relating to their domain name and or hosting account which the "service provider" requires to upload necessary files or images to the web site.

In the case of web design and development the "service provider" reserves the right without notice to refuse work with domain names or hosting and email services without reason for such rejection or refusal.

PRICING AND PAYMENT

All or any prices listed in or on the "service providers" website are exclusive of GST.

All or any quotes supplied will be excluding GST however the "service provider" will detail quotes which will include a GST inclusive figure.

Upon receiving confirmation of work orders/projects and or alterations or upgrades the "service provider" will require a 50% deposit prior to the order/project starting, the "service provider" will provide the "client" with a part deposit invoice. The "service provider" reserves the right to cancel the order within 7 (seven) days of the date the invoice was created if payment has not been received within the allocated due date.

At the completion of a work order/project the "service provider" will provide the "client" with an invoice if not already supplied requesting the balance of payment plus any additional costs to meet the requirements of the completed work order/project. The completed work order/project will not be released, uploaded or provided until full payment has been received.

Additional work requested by the "client" which is not specified in the agreed quotation is subject to a separate quotation and the "service provider" reserves the right whether to quote or accept additional work. If additional work is accepted by the "service provider" this may affect time schedules and overall delivery time of the work order/project. See our PAYMENT TERMS for additional information

LIABILITY AND WARRANTY DISCLAIMER

The "service provider" provides their web site and the contents thereof on an "as is" basis and makes no warranties with regard to the site and its contents, or services offered for a particular purpose. The "service provider" cannot guarantee the functionality or operations of their web site or that it will be uninterrupted or error free, nor does it warrant that the contents are current, accurate or complete.

The "service provider" endeavours to provide a work order/project within a practicable time frame and to the best of its ability. However, the "client" agrees that the "service provider" is not liable for any claims, losses, costs incurred or compensation due to any failure to carry out services within a practicable time frame or the time frame allocated by the "service provider" whichever is applicable.

The "client" agrees the "service provider" is not liable for absence of service as a result of illness or holiday.

The "client" agrees the "service provider" is not liable for any failure to carry out services for reasons beyond its control including but not limited to acts of God, telecommunication problems, software failure, hardware failure, third party interference, Government, emergency on major scale or any social disturbance of extreme nature such as industrial strike, riot, terrorism and war or any act or omission of any third party services.

The "service provider" is not liable for any consequences or financial losses such as, but not limited to, loss of business, profit, revenue, contract, data or potential savings, relating to services provided.

Where applicable the handover of files from the "service provider" to the "client", the "client" shall assume entire responsibility in ensuring that all files are functioning correctly before use.

In the case of web design and development, if after handover of files errors are found in code the "service provider" has created and main internet browsers have released an updated software version, or the domain name setup or hosting setup has been changed, the "service provider" reserves the right to correct errors for the "client" either free of charge or chargeable and may quote on or quote separately for changes made or any additional work needed as a result of changes to the browser software, domain name setup or hosting setup.

Should a "client" go into compulsory or involuntary liquidation or cannot pay its debts in the normal course of business, the "service provider" reserves the right to cancel forthwith any projects and invoice the "client" for any work undertaken at the time.

The "service provider" shall have no liability to the "client" or any third parties for any damages, including but not limited to, claims, losses, lost profits, lost savings, or other incidental, consequential, or special damages arising out of the operation of or inability to operate or administer the work undertaken, even if the "service provider" has been advised of the possibility of such damages.

In the case of e-commerce development there may be laws and taxes which affect the use of e-commerce services in business. The "client" agrees that it is their responsibility to comply with such laws and will indemnify the "service provider" and or its subcontractors from any claim, suit, penalty, tax, or tariff arising from "client" exercise of e-commerce provisions or business.

The "service provider" may from time to time recommend to the "client" that updates are needed to their site to comply with, including but not limited to, new legislations, software releases and web standards. The "service provider" reserves the right to quote for any updates as separate work. The client agrees the "service provider" is not liable for any failure to inform or implement these updates to their site. The client agrees that it shall indemnify the "service provider" harmless from any and all demands, liabilities, costs, losses and claims arising from omission to inform or implement these updates.

INDEMNIFICATION

The "client" agrees to use all "service providers" services and facilities at their own risk and agree to indemnify the "service provider" harmless from any and all demands, liabilities, costs, losses and claims including but not limited to legal fees against the "service provider" and or its associated company to which it acts for or on behalf of, that may arise directly or indirectly from any service provided or agreed to be provided or any product or service sold by the "client" or its third parties. The "client" agrees this indemnification extends to all aspects of work orders/projects undertaken.

The "client" also agrees to indemnify and hold harmless the "service provider" against any liabilities arising out of injury to person or property caused by any service provided or agreed to be provided or any product or service sold by the "client" or third parties, including but not limited to, infringement of copyright, infringement of proprietary rights, misinformation, delivery of defective products or services which is harmful to any person, business, company or organisation.

NONDISCLOSURE

The "service provider" and or any other associated company to which it acts for or on behalf of agrees that, except if directed by the "client", it will not at any time during or after the term of this agreement disclose any confidential information. Likewise, the "client" agrees that it will not convey any confidential information about the "service provider" to another party unless express permission is sought by either party.

INTERPRETATION

The "service provider" reserves the right to terminate a project with a "client" at any time without prior notification if it finds the "client" in breach of these terms and conditions. The "service provider" shall be the sole arbiter in deciding what constitutes a breach. No refunds are given in such a situation.

This agreement shall be governed by the laws of New Zealand which shall claim jurisdiction for any legal motion or claim arising from this agreement. This agreement is void where prohibited by law.

Where one or more terms of this contract are held to be void or unenforceable for whatever reason, any other terms of the contract not so held will remain valid and enforceable at law.

Any and all matters pursuant to this agreement are governed by New Zealand law and are under exclusive jurisdiction of the New Zealand justice system.

The "service provider" reserves the right to alter these Terms and Conditions at any time without prior notice, however the "service provider will endeavour to update these terms and condition wherever and whenever practicable.

By accepting a quotation or making a payment of invoice to use the services supplied, the "client" acknowledges to have read, understand, and accept the Terms and Conditions of this Agreement, and agrees to be legally binding by these Terms and Conditions.