



## Web Design/Development Terms & Conditions

### TERMS & CONDITIONS OF TRADE

#### 1. Provision of Services

- 1.1 Discount Domain Name Services Pty Ltd. Mailing address PO Box 887 Hawthorn, VIC 3122 - ABN 76 088 607 265 will provide you with the services set out in your confirmed quotation. Only those services mentioned will be provided by DISCOUNT DOMAIN NAME SERVICES PTY LTD and any amendments, add ons or schedule changes must be agreed to in writing. This and the following clauses are the General terms and conditions on which those services are supplied and together with the signed quotation and Fee Schedule form the total agreement between us.

#### 2. Costs and Payments

- 2.1 You must pay all charges as set out in the quotation. As prices quoted on DISCOUNT DOMAIN NAME SERVICES PTY LTD material may change at any time without notice, please check the price on your quotation before confirmation. Cost estimates are only valid for a period of 30 days.
- 2.2 You will remain liable for all fees during any period when Services have been discontinued or suspended due to a failure on your part to comply with these terms and conditions
- 2.3 You will be invoiced as agreed in your quotation. All accounts are payable within 10 days of invoice.
- 2.4 You are liable to pay overdue interest at 5%/week on any amounts not paid within 10 days of invoice, 10%/week in case of web hosting. All intellectual property rights remain with DISCOUNT DOMAIN NAME SERVICES PTY LTD until payment.
- 2.5 You must pay DISCOUNT DOMAIN NAME SERVICES PTY LTD charges without any set off, counter claim or deduction unless same is agreed in writing between us.
- 2.6 DISCOUNT DOMAIN NAME SERVICES PTY LTD reserves the right to prioritize early paying clients and to charge urgency fees for turnaround within 3 working days. (VIP status)

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2.7 Agreed Costing is conditional on your supplying data required for a Website Stage or completion deadline agreed within 10 working days of confirmation of Order. DISCOUNT DOMAIN NAME SERVICES PTY LTD reserves the right to revise costings if that condition is not met in line with charges applying at the relevant time.

2.8 No final artwork or files will be delivered until final invoices are paid in full. Payment by cheque will entail waiting for clearance before supply of files. Delivery being :Supply of final artwork digital files to printer, on disk, via email or uploaded to nominated ISP.

Construction files remain the property of DISCOUNT DOMAIN NAME SERVICES PTY LTD unless arranged otherwise.

2.9 Printer or ISP Liaison is charged at our current rate per hour.

### 3. **Limitation of Liability**

3.1 All terms conditions, warranties, undertakings inducements and representations, whether express or implied, statutory or otherwise relating to the provision of services by DISCOUNT DOMAIN NAME SERVICES PTY LTD not contained in the Agreement are excluded and DISCOUNT DOMAIN NAME SERVICES PTY LTD WILL NOT ACCEPT LIABILITY FOR ANY LOSS OR DAMAGE (INCLUDING CONSEQUENTIAL LOSS OR DAMAGE) HOWEVER CAUSED (WHETHER BY NEGLIGENCE OR OTHERWISE) WHICH MAY BE SUFFERED OR INCURRED OR WHICH MAY ARISE DIRECTLY OR INDIRECTLY with respect to the service.

3.2 Where any applicable legislation implies any term, condition or warranty into the Agreement or in respect of DISCOUNT DOMAIN NAME SERVICES PTY LTD's relationship with you, or otherwise gives you a particular remedy against DISCOUNT DOMAIN NAME SERVICES PTY LTD and the legislation or any other legislation renders void or prohibits provisions excluding or modifying the application of, exercise of, or liability under such implied term, condition, warranty or remedy will be deemed to be included in the Agreement or as the case may require apply to the relationship between DISCOUNT DOMAIN NAME SERVICES PTY LTD and you. However, DISCOUNT DOMAIN NAME SERVICES PTY LTD's liability for any such breach of such implied term, condition or warranty or under such remedy, will be limited, at DISCOUNT DOMAIN NAME SERVICES PTY LTD's option, in any one or more of the ways permitted in that legislation, including, where so permitted if the breach relates to Services the supplying of those services again or the payment of the cost of having those Services supplied again.

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- 3.3 You acknowledge that web sites cannot be guaranteed to be 100% error free in construction and/or 100% secure, and acknowledge that the existence of errors falling short of a complete failure of consideration in the site shall not constitute a reason to terminate this agreement.

## 4. Suspension of Services

- 4.1 DISCOUNT DOMAIN NAME SERVICES PTY LTD reserves the right to suspend services in any case where you fail to perform your obligations under this agreement. If payment for services is not received within the terms of payment stipulated by us websites may be taken down until payment is confirmed.
- 4.2 DISCOUNT DOMAIN NAME SERVICES PTY LTD may from time to time and without notice or liability to you suspend any of the services if the reason for doing same is an event beyond the reasonable control of DISCOUNT DOMAIN NAME SERVICES PTY LTD.

## 5. Termination

- 5.1 DISCOUNT DOMAIN NAME SERVICES PTY LTD may discontinue services if an amount payable to DISCOUNT DOMAIN NAME SERVICES PTY LTD is overdue or take down a website permanently in any case where an amount payable is overdue by more than 10 days. In any such event, you remain liable for the total cost of the contract including all disbursements; unless otherwise agreed between the parties.

## 6. Contents of Web Pages and Undertakings

- 6.1 You will be solely responsible for the content of your Web Page/undertakings. DISCOUNT DOMAIN NAME SERVICES PTY LTD is not responsible for proofreading any content unless specifically agreed.
- 6.2 DISCOUNT DOMAIN NAME SERVICES PTY LTD makes no representations to you concerning the content or functionality of your Web Site. This is your responsibility to ensure that it meets your requirements.

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- 6.3 If you provide DISCOUNT DOMAIN NAME SERVICES PTY LTD with goods, material, photographs, film, data or information to be used in any form, you hereby warrant that these do not infringe the rights of third parties and indemnify DISCOUNT DOMAIN NAME SERVICES PTY LTD against any action taken against DISCOUNT DOMAIN NAME SERVICES PTY LTD by any such third party.
- 6.4 Without limiting the generality of the foregoing, you agree not to infringe the copyright trademark, privacy or personal or proprietary rights of third parties, supply libellous, abusive, obscene material or disparage the products or services of any third party.
- 6.5 DISCOUNT DOMAIN NAME SERVICES PTY LTD for its part hereby undertakes not to knowingly infringe the rights of third parties in activities conducted on your behalf.
- 6.6 You are solely responsible for dealing with persons who access your data or webpage and warrant that you will not refer complaints or inquiries in relation to such data to us.

## 7. Technical Support, Changes and Maintenance

- 7.1 Technical assistance via telephone or email will be offered.  
  
Extensive queries taking more than 15 minutes to deal with or site maintenance will be charged at hourly rates. See particulars of hourly rates in our Fee Schedule.
- 7.2 Technical assistance on-site will be offered and will be charged at hourly rate. Transportation fees will also be charged on hourly rate where applicable, otherwise as agreed. See particulars of hourly rates in our Fee Schedule.

## 8. Web Hosting

- 8.1 Web hosting is done in-house for all material developed by DISCOUNT DOMAIN NAME SERVICES PTY LTD only.
- 8.2 Please note that DISCOUNT DOMAIN NAME SERVICES PTY LTD accepts no responsibility for delays or down time, breakdowns or data loss caused by Internet Service Providers (ISPs)

## 9. Dispute Resolution

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9.1 The parties agree that if any dispute should arise under this agreement, attempts in good faith by both parties will be made to resolve the matter fairly before resorting to court procedures. In doing so, each party agrees to use its best endeavours to:

- Clearly communicate in writing the background facts leading to or causing the dispute
- Set out clearly what action is required to settle the dispute
- Select a way of resolving the dispute and explain why that way of resolving the dispute can be said to be a fair resolution
- Discuss specific means of avoiding such disputes in the future

9.2 Attempts to resolve the dispute must follow the following procedure:

1. The person complaining shall set out in writing the background, the issues and the outcome desired.
2. The person to whom the complaint is addressed will reply in writing within 10 business days to each issue in dispute setting out its perspective on the issue and the outcome desired.
3. If the dispute is not resolved in accordance with this exchange of written issues and outcomes, then the complainant will raise the matter with a neutral professional adviser or Alternative Dispute Resolution.

(ADR) provider listed in a relevant publication of the Department of Workplace Relations and Small Business or similar government department within 10 business days.

4. If the dispute is not resolved in accordance with such reference, the matter shall be referred to a single agreed arbitrator within 10 business days; whose decision shall be final.
5. In the case of disagreement on the appointment of a single arbitrator, then the parties shall be entitled to nominate one independent arbitrator with 10 days of disagreement and a coin will be tossed by an independent person to decide which will act as arbitrator of the dispute.
6. Action taken to settle the dispute at each stage must be undertaken promptly and the parties shall equally share the costs associated with the dispute settlement procedure.

## 10. Intellectual Property

10.1 All creation files remain the property of DISCOUNT DOMAIN NAME SERVICES PTY LTD.

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- 10.2 DISCOUNT DOMAIN NAME SERVICES PTY LTD retains the Copyright in and the right to use all artwork created in advancing the profile of DISCOUNT DOMAIN NAME SERVICES PTY LTD and to be recognized for artwork created by DISCOUNT DOMAIN NAME SERVICES PTY LTD.
- 10.3 DISCOUNT DOMAIN NAME SERVICES PTY LTD shall be free to reproduce, use, disclose display exhibit, transmit, perform, create derivative works, and distribute any item from your Web Page unless specifically agreed otherwise. Further, DISCOUNT DOMAIN NAME SERVICES PTY LTD shall be free to use any ideas concepts know-how or techniques acquired in construction of sites for any purpose whatsoever, including but not limited to developing, manufacturing and marketing products and other items incorporating such information unless specifically agreed otherwise.
- 10.4 DISCOUNT DOMAIN NAME SERVICES PTY LTD observes Privacy Laws and Guidelines relating to personal data.
- 10.5 Any code or original artworks or graphics developed by DISCOUNT DOMAIN NAME SERVICES PTY LTD or our contractors including HTML mark-up, Flash and multimedia including audio and video, database design and development, data collection and web based administration are licensed to the client for use in their own single website. It cannot be copied, reused or resold without the written permission of DISCOUNT DOMAIN NAME SERVICES PTY LTD. Original graphics created for use in the proposed website cannot be re-used in any other website or for other promotional media including brochures, press or other advertisements without our express written permission and/or additional fees.

The licensing for any server side programs and scripts including those written in PHP, Java, CGI requires the program, scripts and data to be held on a web server run by DISCOUNT DOMAIN NAME SERVICES PTY LTD. Such scripts are strictly the copyright of DISCOUNT DOMAIN NAME SERVICES PTY LTD and all rights are reserved. They must not be edited, copied or transferred to another server without the express written permission of DISCOUNT DOMAIN NAME SERVICES PTY LTD.

## 11. General

- 11.1 If any of these terms and conditions (or part of them) is void or unenforceable, it is taken to be removed and no longer forms part of the Agreement between us. The remaining terms and conditions remain in full force and effect.
- 11.2 Written communications between us may take the form of letters, formal documents, faxes or emails.

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