

**Terms & Conditions of Trade**

**1. Definitions**

- 1.1 "CWS" shall mean Cornerstone Web Solutions Pty Ltd (ABN 70 156 100 828), its successors and assigns or any person acting on behalf of and with the authority of Cornerstone Web Solutions Pty Ltd.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by CWS to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by CWS to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by CWS to the Client.
- 1.5 "Services" shall mean all Services supplied by CWS to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the Price payable for the Goods as agreed between CWS and the Client in accordance with this contract.

**2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

**3. Acceptance**

- 3.1 Any instructions received by CWS from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by CWS shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of CWS.
- 3.4 The Client shall give CWS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by CWS as a result of the Client's failure to comply with this clause.
- 3.5 Goods are supplied by CWS only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

**4. Price and Payment**

- 4.1 At CWS's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by CWS to the Client in respect of Goods supplied; or
  - (b) CWS's quoted Price (subject to clause 4.2) which shall be binding upon CWS provided that the Client shall accept CWS's quotation in writing within seven (7) days.
- 4.2 CWS reserves the right to change the Price in the event of a variation to CWS's quotation.
- 4.3 CWS may submit a detailed payment claim at intervals as agreed between the Client and CWS for work performed up to the end of each agreed interval. The value of work so performed shall include the reasonable value of authorised variations and the value of materials delivered to the site but not yet installed.
- 4.4 At CWS's sole discretion a non-refundable deposit may be required.
- 4.5 At CWS's sole discretion:
  - (a) payment shall be due on delivery of the Goods; or
  - (b) payment shall be due before delivery of the Goods.
- 4.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.7 Payment will be made by cheque, or by bank cheque, or by credit card (plus a surcharge of up to five percent (5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and CWS.
- 4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

**5. Delivery of Goods**

- 5.1 At CWS's sole discretion delivery of the Goods shall take place when:
  - (a) the Client takes possession of the Goods at CWS's address; or
  - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by CWS or CWS's nominated carrier).
- 5.2 At CWS's sole discretion the costs of delivery are included in the Price.
- 5.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then CWS shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.5 CWS may deliver the Goods by separate instalments. Each separate installment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

- 5.6 The failure of CWS to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 CWS shall not be liable for any loss or damage whatsoever due to failure by CWS to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of CWS.

**6. Risk**

- 6.1 If CWS retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, CWS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by CWS is sufficient evidence of CWS's rights to receive the insurance proceeds without the need for any person dealing with CWS to make further enquiries.
- 6.3 Where the Client expressly requests CWS to leave Goods outside CWS's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.

**7. Title**

- 7.1 CWS and the Client agree that ownership of the Goods shall not pass until:
  - (a) the Client has paid CWS all amounts owing for the particular Goods; and
  - (b) the Client has met all other obligations due by the Client to CWS in respect of all contracts between CWS and the Client.
- 7.2 Receipt by CWS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then CWS's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
  - (a) where practicable the Goods shall be kept separate and identifiable until CWS shall have received payment and all other obligations of the Client are met; and
  - (b) until such time as ownership of the Goods shall pass from CWS to the Client CWS may give notice in writing to the Client to return the Goods or any of them to CWS. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
  - (c) CWS shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - (d) if the Client fails to return the Goods to CWS then CWS or CWS's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
  - (e) the Client is only a bailee of the Goods and until such time as CWS has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to CWS for the Goods, on trust for CWS; and
  - (f) the Client shall not deal with the money of CWS in any way which may be adverse to CWS; and
  - (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of CWS; and
  - (h) CWS can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
  - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that CWS will be the owner of the end products.

**8. Defects**

- 8.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify CWS of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford CWS an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which CWS has agreed in writing that the Client is entitled to reject, CWS's liability is limited to either (at CWS's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 8.2 Goods will not be accepted for return other than in accordance with 8.1 above.

**9. Warranty**

- 9.1 For Goods not manufactured by CWS, the warranty shall be the current warranty provided by the manufacturer of the Goods. CWS shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 9.2 To the extent permitted by statute, no warranty is given by CWS as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. CWS shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

**10. Intellectual Property**

- 10.1 Where CWS has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in CWS, and shall only be used by the Client at CWS's discretion.
- 10.2 The Client warrants that all designs or instructions to CWS will not cause CWS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify CWS against any action taken by a third party against CWS in respect of any such infringement.

**11. Default and Consequences of Default**

- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at CWS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 11.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by CWS.
- 11.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify CWS from and against all costs and disbursements incurred by CWS in managing and/or pursuing the debt including legal costs on a solicitor and own client basis and CWS's collection agency costs.
- 11.4 Without prejudice to any other remedies CWS may have, if at any time the Client is in breach of any obligation (including those relating to payment) CWS may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. CWS will not be liable to the Client for any loss or damage the Client suffers because CWS has exercised its rights under this clause.
- 11.5 If any account remains overdue after fourteen (14) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.6 Without prejudice to CWS's other remedies at law CWS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to CWS shall, whether or not due for payment, become immediately payable in the event that:
  - (a) any money payable to CWS becomes overdue, or in CWS's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with its creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

**12. Security and Charge**

- 12.1 Despite anything to the contrary contained herein or any other rights which CWS may have howsoever:
  - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to CWS or CWS's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that CWS (or CWS's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - (b) should CWS elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify CWS from and against all CWS's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint CWS or CWS's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

**13. Cancellation**

- 13.1 CWS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice CWS shall repay to the Client any sums paid in respect of the Price. CWS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by CWS (including, but not limited to, any loss of profits) up to the time of cancellation.
- 13.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

**14. Privacy Act 1988**

- 14.1 The Client and/or the Guarantor/s agree for CWS to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by CWS.
- 14.2 The Client and/or the Guarantor/s agree that CWS may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - (a) to assess an application by Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 14.3 The Client consents to CWS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Client agrees that personal credit information provided may be used and retained by CWS for the following purposes and for other purposes as shall be agreed between the Client and CWS or required by law from time to time:
  - (a) provision of Goods; and/or
  - (b) marketing of Goods by CWS, its agents or distributors in relation to the Goods; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or

## Cornerstone Web Solutions Pty Ltd

### Terms and Conditions of Trade/ Application Development and Hosting Terms and Conditions

- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 14.5 CWS may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 15. Unpaid CWS's Rights**
- 15.1 Where the Client has left any item with CWS for repair, modification, exchange or for CWS to perform any other Service in relation to the item and CWS has not received or been tendered the whole of the Price, or the payment has been dishonoured, CWS shall have:
- (a) a lien on the item;
- (b) the right to retain the item for the Price while CWS is in possession of the item;
- (c) a right to sell the item.
- 15.2 The lien of CWS shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
- 16. General**
- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 16.3 CWS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by CWS of these terms and conditions.
- 16.4 In the event of any breach of this contract by CWS the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 16.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by CWS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.6 CWS may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.7 The Client agrees that CWS may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which CWS notifies the Client of such change.
- 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.9 The failure by CWS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect CWS's right to subsequently enforce that provision.
- 2. Interpretation**
- a) Unless the context indicates otherwise:
- i. reference to the singular includes the plural and vice versa;
- ii. reference to a person includes a corporation and vice versa;
- iii. reference to a party includes that party's executors, administrators, successors and permitted assigns;
- iv. every obligation entered into by two or more parties binds them jointly and each of them severally;
- v. where any word or phrase is defined in this Agreement, any other grammatical form of that word or phrase will have a corresponding meaning;
- 3. Client Warranty**
- a) The Client warrants that all information provided to CWS will be true and accurate at the time of delivery.
- b) The Client acknowledges that CWS is relying on the warranty made by the Client, and that CWS may suffer loss if the warranty is not true. Furthermore the Client will indemnify CWS in relation to any breach of the warranty.
- c) The Client acknowledges that CWS may use third party providers of services.
- 4. Refund Policy**
- a) Refunds will not be given for website design or development services, domain name purchases, search engine optimisation services, monthly web hosting, email protection/filtering services, installations or third-party products and services.
- b) Refunds will be issued upon request for any unused full month portions of prepaid web-hosting accounts, less one month cancellation fee. Notice of cancellation request must be given in writing by the 25<sup>th</sup> of the preceding month.
- c) Any refund given will be reduced by the total amount of any discount given to the Client for subscribing to an annual Service.
- 5. Product Ownership and Code Transferability**
- a) Any images, illustrations and graphical representations associated with the delivery of Code or any other Service under this Agreement shall remain the property of their respective owner.
- b) With the exception of Client-Side Code used under a GNU General Public License or licensed from a third party, CWS shall retain exclusive ownership of all intellectual property rights and interests (including copyright and all other statutory and common law rights and interests) at all times and in all places for all code, data design and any other computer programming language, method or style developed under this Agreement.
- c) Subject to clause 5(b), CWS grants the Client an on-going world-wide license to use all Code developed under this Agreement in the form supplied by CWS to the Client solely for the purposes outlined in this Agreement. The License hereby granted is conditional upon CWS having received payment in full of all fees (together with applicable GST thereon) due to CWS. Furthermore, the Client acknowledges that the License may be suspended until all sums due to CWS have been paid.
- d) The License hereby granted is personal to the Client and the rights may not be assigned or sub-licensed to third parties without the consent in writing of CWS.
- e) Server executable code generated under this Agreement may relate to a specific Programming Environment, and as such, CWS does not guarantee that such code will execute outside of the specific Programming Environment in which it was originally designed to operate.
- 6. Appropriate Use of Hosting Services**
- a) CWS warrants that it shall not edit, control, or restrict the content of data on a Client's Hosting Service other than as necessary to provide these Services and uphold CWS's usage policies.
- b) The Client agrees that it will not distribute, electronically transmit or display any materials to any CWS server where such materials:
- i. violate any state, federal or foreign laws or regulations;
- ii. infringe on any intellectual property rights (e.g. copyright, trademark, patent or other proprietary rights) of CWS or any third party;
- iii. are defamatory, slanderous or trade libellous, threatening or harassing, discriminatory based on gender, race, age or promotes hate
- iv. contain viruses or other computer programming defects that result in damage to CWS or any third party.
- c) The Client acknowledges that they may be liable for additional fees (as published on CWS's websites) for exceeding the disk space and/or network bandwidth allowance of their selected hosting plan.
- d) The Client agrees to use only properly licensed third party software on CWS's servers.
- e) The Client acknowledges that they have the ability to reinstate files which are automatically archived by CWS; However, CWS does not guarantee the existence, accuracy, or regularity of its backup services and, therefore, the Client is responsible for making back-up files in connection with its use of the Hosting Services. Backup capability is available through the Client's Control Panel or through your Content Management System.
- f) CWS reserves the right to refuse service to anyone. CWS, at its sole discretion, may immediately terminate a Hosting Agreement at its sole discretion.
- 7. Acceptable Use (including Adult Content) Policy**
- a) CWS respects that the Internet provides a forum for free and open discussion and dissemination of information.
- b) However, as the provider of specific Services, CWS reserves the right to take certain preventative or corrective actions, including but not limited to, immediate cancellation of account without refund, where any Client or End-User engages in any of the following:
- i. activities that infringes or misappropriates the intellectual property rights of others, including copyrights, trademarks, service marks, trade secrets, software piracy, and patents held by individuals, corporations, or other entities;
- ii. activities that violates privacy, publicity, or other personal rights of others. CWS is required by law to remove or block access to customer content upon receipt of a proper notice of copyright infringement;
- iii. the publication of adult content, or the publication of hyperlinks to sites which publish adult content;
- iv. the publication or transmission of defamatory, harassing, abusive, or threatening language;
- v. the forging or misrepresenting message headers, whether in whole or in part, to mask the origin of the message;
- vi. accessing without authorisation computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another entity's computer system or network, and any activity that might be used as a precursor to an attempted system penetration, including, but not limited to, port/stealth scans, or other information gathering activity;
- vii. the distribution of information regarding the creation of and sending Internet viruses, worms, Trojan horses, ping, flooding, mail-bombing, or denial of service attacks, or activities that disrupt the use of or interfere with the ability of others to effectively use the network or any connected network, system, service, or equipment.
- viii. activities, whether lawful or unlawful, that CWS determines to be harmful to its clients, operations, reputation, goodwill, or customer relations.
- 8. Unsolicited Commercial Email (UCE) or SPAM**
- a) The use of unsolicited commercial e-mail is considered an inconsiderate and improper business practise by CWS, and as such will not be tolerated from any users on our network.
- b) CWS reserves the right to terminate, without warning, any account from which Clients or End-Users are found conducting SPAM campaigns. This applies to any server on the CWS network.
- c) Clients who conduct Unsolicited Commercial Email or whose email account is used to send SPAM may be charged AUD\$1,000.00 (plus GST where applicable) per SPAM complaint that CWS receives and/or per SPAM database listing for the server on which the client's email account resides. Resellers will be charged for any of their resold accounts that generate SPAM complaints. These are non-refundable charges and will be invoiced at the time of complaint notification.
- d) CWS reserves the right to decide what it considers is "SPAM", "UCE", "mail bombing" or "bulk e-mail".
- 9. General Terms and Conditions**
- a) Cancellation of an Agreement by the Client prior to the completion of the Agreement shall render the Client liable to a cancellation fee of 25% of the total cost of the Services to be provided under the Agreement.
- b) Neither CWS nor the Client ("the Affected Party") will not be liable nor deemed to be liable to the other party for failure or delay in meeting any obligation required under this agreement due to Acts of God, war, fire, flood, embargo, litigation, acts of government or any agency instrumentality, strikes, lock-outs or any other cause which is completely beyond the control of, and which could not reasonably have been foreseen, the Affected Party. In such an event, the Affected Party will not be in breach of this agreement and the time for performance of its obligations under this agreement will be extended for a period equal to the diversion of the contingency that occasioned the delay, interruption or prevention.
- c) CWS shall not be liable to the Client in respect of any loss of profits, goodwill or any type of special, indirect or consequential loss (including loss or damage suffered by the Client as a result of any action brought by a third party) arising out of the Services provided or the use by the Client of any reports, results or information provided in pursuance of the Services performed.
- d) If any term of this Agreement is found to be void, or unenforceable at law, that term will not affect any other term of this Agreement, and as far as it is possible, will be read down to the extent required to make it enforceable. If necessary, the parties will, in good faith, negotiate a valid and enforceable replacement term to express their intention.
- e) Except where stated in this Agreement, the terms of this Agreement can only be amended in writing, and must be signed by both parties. Neither party may assign any of its rights, benefits or obligations under the Agreement without the written consent of the other party.
- f) The waiver of a breach of any term of this Agreement will not be a waiver of another breach of that term or the breach of any other terms.
- g) The Agreement will be subject to the Law of New South Wales, Australia, and both CWS and the Client hereby submit to the jurisdiction of the New South Wales Courts.