

# Development Terms and Conditions

**Icit ptyltd (icit)** Internet/website development is carried out under the following terms and conditions. These apply to the exclusion of all other terms and conditions unless stated otherwise in any official correspondence. These terms and conditions do not affect your statutory rights.

Definitions: In these terms "we/us/our" means **icit** and "you" means the Client, whose name appears on the **icit** proposal/quotation. The "Contract" means the agreement between you and us based on correspondence indicating acceptance of our proposal/quotation. The "project" and/or "development" means the work to be carried out as specified in the **icit** proposal/quotation.

## 1. Variation

These terms and conditions may be subject to amendment from time to time, please check our website regular. If you have any uncertainties about these conditions as they might apply to you or your project, it is your responsibility to clarify the situation by contacting us before your project commences.

## 2. Content

- a. Unless otherwise agreed in your proposal/quotation or covering correspondence it is your responsibility to provide us with the required information about your business. **icit** takes no responsibility for errors in content supplied by you.
- b. You grant **icit** permission to utilise logos and any other company identity for the purposes of the development.
- c. You agree to indemnify **icit** from any and all claims arising from your negligence or inability to obtain proper copyright permissions for any and all content supplied by you to us.
- d. In the event that **icit** is unable to complete a Website because of a lack of content (text and/or pictures) to be supplied by you, then 'holding text' will be added using industry standard "lorum ipsum" text and appropriate library pictures. At this point the Website will be considered completed and invoiced accordingly under our standard payment terms.

## 3 .Design and development.

- a. **Design and content of our projects is property of the customer**
- b. We will provide you with our estimated timescale for progress and completion of the project and will use reasonable endeavours to meet those timescales.
- c. We shall have no liability to you nor be deemed to be in breach of this Contract if we are delayed in performing or unable to perform any of our obligations due to circumstances beyond our reasonable control. This includes delays incurred by slow or failed communication.
- d. The price quoted in your proposal/quotation is a fixed price for the works as specified in the proposal/quotation. If no additional features are requested during development the quoted price is the price you will pay. However, if additional features are requested additional charges may be made at our discretion.
- e. If additional charges are deemed necessary at any stage in the development process we will always notify you beforehand and give you the option of either incurring the fees or declining the feature/work.
- f. The client must recognize that at times there may be unforeseen circumstances that will

delay the development process, particularly with reference to the integration of third party software. We will try our best to complete the project as agreed in the proposal. As long as it is within a reasonable period, the client agrees not to penalize us for any genuine delay, when every effort to keep the project on the proposed schedule is taken.

- g.** **icit** takes no responsibility of any of the third party products, software or components used on the website development such as payment gateway, SSL certificates etc. We suggest you to make regular back-ups to avoid any disruptions.

Domain registration charges are not included as a part of the proposal unless mentioned otherwise. Hosting charges are not included in the quotations unless mentioned otherwise.

**icit** can provide an appropriate hosting solution if required.

- h.** Where clients decide to organise their own hosting, we should be consulted before finalising the type of hosting and database, as it should meet the requirements of the technology used for the development. Please note that we'll require full access with hosting support for testing and deploying the application, if our labour for this task exceeds 1 hour in total the time will be charged at hourly standard rate. **icit** will not be liable for any delays or errors caused by direct or indirect actions of the hosting company.

## **5. Maintenance**

**icit** can provide a content maintenance service if required. This is billed at our standard hourly rate or an agreed monthly/annual content maintenance contract.

**icit** guarantees that each project will be compatible with current versions of the following software platforms and browsers. Current release refers to software versions current at the time the website goes live, versions released after this date are not included.

### **Platforms:**

- Windows (XP to current full version) language: English
- Macintosh (OS 10.1 up to current full release version) language: English

### **Browsers:**

- Internet Explorer- version 7 up to current full release language: English
- Firefox 3 up to current full release language: English
- Apple Safari- version 3.1 up to current full release language: English

Optional we can quote and optimize each project to additional platforms, languages, browsers and devices.

## **6. Hosting**

### **Service Level Agreement**

Other than in circumstances beyond the control of [icit.com.au](http://icit.com.au), if network uptime during any calendar month falls below 99.9% (unscheduled downtime exceeds 43 minutes) the customer may claim and be entitled to an abatement of the Service Fees, calculated proportionately for the whole period of such a failure. Other than in circumstances beyond the control of AussieHQ, if network downtime during any calendar month exceeds 1440 minutes the customer may claim and be entitled to a 50% credit of the Service Fees for the month in question.

### **Customer's Warranties, Liabilities and Undertakings**

You agree to indemnify and keep indemnified and hold us harmless from and against any claim brought against us by a third party resulting from the provision of Services by us to you and your use of our servers and services, and in respect of all losses, costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and expenses), or liabilities, whatsoever suffered and howsoever incurred by us in consequence of your breach or non-observance of these terms.

You warrant that you will keep secure any passwords used with Services and that you hold and will continue to hold the copyright in your data or that you are licensed and will continue to be licensed to use the data.

You further warrant you are not relying on any representation made by us which has not been stated expressly in this agreement, or on any descriptions or specifications contained in any other document, including any catalogues or publicity material which we have produced

You also agree that you are solely responsible for dealing with persons who access your data and that you will not refer complaints or inquiries in relation to such data to us.

You indemnify us against all claims arising out of your registration and use and renewal of registration of your chosen domain name, unless and to the extent that the claim arises out of our breach of this agreement, or our negligent act or omission.

## **7. icit Warranties and Liabilities**

We accept liability for the supply of Services to the extent provided in this document. We do not warrant that:

- a. Services provided under this agreement will be uninterrupted or error free;
- b. Services will meet your requirements, other than as expressly set out in this agreement; or
- c. Services will be free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to Services or systems of icit.com.au.

Except as expressly provided to the contrary in this agreement, we exclude all liability for indirect and consequential loss or damage of any kind, loss or corruption of data, loss of revenue, loss of profits, failure to realise expected profits or savings and any other commercial or economic loss of any kind, in contract, tort (including negligence), under any statute or otherwise arising from or relating in any way to this agreement and/or its subject matter.

We make or give no express or implied warranties including, without limitation, the warranties of merchantability or fitness for a particular purpose, or arising from a course of dealing, usage or trade practice, with respect to any goods or services provided under or incidental to this agreement. No oral or written information or advice given by us, our resellers, agents, representatives or employees shall create a warranty or in any way increase the scope of the express warranties hereby given, and you may not rely on any such information or advice.

Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of Services will be limited to the charges paid by you in respect of Services which are the subject of any such claim and provided that you notify us of any such claim within one year of it arising.

In no event will we be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

In the event that this agreement constitutes a supply of goods or services to a consumer as defined in the Trade Practices Act 1974 (Cth) nothing contained in this agreement excludes, restricts or modifies any condition, warranty or other obligation in relation to this agreement, where to do so is unlawful. To the full extent permitted by law, where the benefit of any such condition, warranty or

other obligation is conferred upon you pursuant to the Act, our sole liability for breach of any such condition, warranty or other obligation, including any consequential loss which you may sustain or incur, shall be limited (except as otherwise specified in this agreement) to:

- a. replacement of the goods or the supply of equivalent goods or payment of the cost of replacing
- b. the goods or acquiring equivalent goods;
- c. or repair of the goods or payment of the cost of having the goods repaired;
- d. supplying of Services again; or
- e. payment of the cost of having Services supplied again.

We specifically exclude any warranty as to the accuracy or quality of information received by any person via your website and/or rented part of our server (s9 and in no event will we be liable for any loss or damage to any data stored on the Server. You are responsible for maintaining insurance cover in respect of any loss or damage to your data stored on the Server.

You acknowledge and agree that **icit.com.au** cannot guarantee the absence of service interruptions caused by Acts of God or other circumstances beyond our control.

### **8. Suspension and Termination of Services**

We may suspend or terminate your account if you breach any of these terms and conditions, or if you become insolvent or you are declared bankrupt.

If your account has been suspended or terminated due to your breach, reactivation of your account will be completely at our discretion. If we agree to reactivate your account, we will require payment in full of all outstanding amounts and payment of a reactivation fee.

We are under no obligation to provide you with a copy of your data if we have suspended or terminated your access to Services for your breaching our agreement. If we provide you with a copy of your data in such circumstances, we are entitled to charge a fee for service.

### **9. Archiving and Backup of your data**

You are required to maintain your own data backups. In the event of corruption of all of our archives, or in the event that an old archive is used to restore data, you should be prepared to upload your data to your server(s).

You must maintain a recent copy of your data at your premises at all times. We will not be liable for incomplete, out-of-date, corrupt or otherwise deficient data recovered from our backups.

### **10. Operating Platform**

Unless otherwise agreed, Services are provided by us from our data centre in Australia. We reserve the right to migrate your web site to a new operating system platform if our operating system supplier ceases to provide appropriate support or your particular server fails or becomes unreliable. We will advise you of such a change but we will not take any responsibility for web site failure if you have failed to keep your contact details up-to-date or if you have not checked the operation of your web site post-migration and notified us of any required changes to the web site configuration.

### **11. Ownership of server equipment**

Unless otherwise agreed, you obtain no rights to the hardware and other infrastructure and facilities used by us to deliver the Services

### **12. Payment**

- a. Payment for development projects with proposed costs of over AU\$800 will be on the basis

of a 50% deposit payment with order. This deposit must be received before project commencement. The balance of fees will be invoiced either on completion of the project or in accordance to the payment terms specified in your proposal/quotation.

- b. Subsequent Annual Service Agreement payments will be invoiced thirty days in advance of the anniversary of the initial payment.
- c. All fees referred to in the proposal and these terms are exclusive of Tax (GST) or its International equivalent.
- d. If payments are not received by the due date for payment (7 days from date of invoice unless other terms are stated on your invoice) you will be asked to pay us interest on the amount unpaid and a compensation fee.
- e. If payments and late payment interest/compensation are not received by us by the due date(s) we reserve the right to suspend your Service Agreement and/or other services until such time as payment is received in full (without prejudice to any other remedy available to us).

### **13. Rights**

- a. You retain ownership of copyright, trademarks and other intellectual property rights in materials that you provide to us for use in the development.
- b. All copyright, trade marks, patents created, developed, subsisting or used in or in connection with the design and development of the project will be transferred to you on settlement of all outstanding sums due.
- c. Ownership of the Intellectual Property Rights of the development/programming code/design will remain with **icit.com.au** until all outstanding sums due to **icit.com.au** have been paid in full, whereupon ownership will transfer to you.
- d. Intellectual Property Rights of the development/programming code/design are not transferable to any third parties and furthermore, any associated software/systems may not be re-distributed, sold or rented unless otherwise agreed by **icit.com.au** in writing.

### **14. Cancellation**

If you wish to cancel your project you are required to do so in writing giving 5 working days notice. Cancellation will only be effective on receipt of such notice. If the development is not complete at the time of cancellation you will be required to pay the balance of our costs to date. Any payments already paid to **icit** are non-refundable.

### **15. Reservations**

**icit** reserves the right to withdraw services at any time subject to 14 days written notice.

### **16. Indemnity**

All services may be used for lawful purposes only. You agree to indemnify and hold **icit** harmless from any claims resulting from your use of our service that damages you or any other party.

### **17. Liability**

Our total liability to you in contract or in tort arising in connection with this Contract shall not exceed the total price paid by you. We shall have no liability for loss of profits, business, revenue, goodwill or anticipated savings nor for any other indirect or consequential loss.

### **18. Standard charges**

In the absence of agreed rates our standard hourly rates will apply plus travelling and subsistence on a cost as incurred basis.

**19. Severability**

If any clause of these terms and conditions is held to be invalid or unenforceable in whole or in part, the invalid or unenforceable wording shall be deemed to be omitted.