

Terms & Conditions

You (the "Client" which includes references to "you" and "your") have requested Lightway Design (being Lightway Design Pty Ltd ACN 108 954 436 which includes references to "us", "our" and "we") to create a Website Project and/or Graphic Design Project and/or Video Production Project for you based on information and material provided by you ("Content"). The following terms and conditions govern your agreement with Lightway Design:

1. WEB DEVELOPMENT, GRAPHIC DESIGN AND VIDEO PRODUCTION PROJECTS

- 1.1. You shall provide us with the exact Content that is to be developed into your project electronically, in the formats we specify. This may include part or all of your existing website or material should you have authority to do so and ownership of any intellectual property subsisting in such website or material. Where Content cannot be provided in the specified formats, additional fees may apply.
- 1.2. Subject to availability, we will register the domains (web addresses) of your choice at additional cost to you. Payment and renewal of those domain names is then charged and paid by you to us. The loss, cancellation or otherwise of the domain brought about by non or late payment is not our responsibility.
- 1.3. Where it is agreed by both parties that additional materials such as stock library images are to be used, you agree to pay any amounts for associated licensing fees in addition to the final project cost, which must be paid to us before we acquire any such materials.
- 1.4. We shall use reasonable endeavours to develop the Content you provide into a Website, Graphic Design Project or Video Production in the estimated development time set out in the quotation and accompanying emails or other written messages, but shall not be bound by the estimated development time. By providing information or Content to us you are expressly consenting to it being freely published on the internet or any other means.
- 1.5. For the period of this agreement, we grant you a limited license to use our Content Management System (where Content Management System option is chosen).
- 1.6. We will not check, proof, correct or verify any of the Content you submit for inclusion in your Project.
- 1.7. Where the whole or any part of your Project is provided to you and you agree to the design concept, your acceptance shall be immediately binding and it shall also be deemed to conform and be accepted by you if you do not advise us to the contrary within 2 days of the provision of the whole or that part of your project as the case may be.
- 1.8. You give us permission to use your Project in our promotional material.

- 1.9. Our logo will appear at the bottom of your Website Project linking to our website.

- 1.10. Any variations to the Project concept after your approval shall be at additional cost, due and payable in accordance with clause 4.1(c).

2. INTELLECTUAL PROPERTY, LIABILITY AND INDEMNIFICATION

- 2.1. You warrant to us that you are the owner of any intellectual property including, but not limited to, moral rights, copyrighted works, trade marks and service marks (the "intellectual property") subsisting in any Content which you provide to us. Where you provide Content in the form of an existing material, be it electronic or otherwise, you specifically warrant to us that you have the authority to do so and that its reproduction will not infringe copyright or any other rights of any third party.
- 2.2. By uploading or using any material which is intellectual property, you are granting us a perpetual, non-exclusive and payment-free license throughout the world to reproduce, use and exploit the intellectual property, as part of your Project, to the full extent permitted by law in any jurisdiction in which your Project is available to users.
- 2.3. You agree to defend, indemnify and hold us harmless against any and all demands, liabilities, losses, costs and claims, including legal costs claimed or asserted against us arising out of any content supplied to us, included on, or linked from your Project, which infringes or allegedly infringes on the proprietary rights of any third party, infringes copyright, is defamatory, illicit or pornographic. You agree to defend, indemnify and hold us harmless from any and all demands, liabilities, losses, costs and claims, including legal costs claimed or asserted against us and our customers, that may arise as a result (directly or indirectly) of our hosting of your website or any other service performed or omitted to be performed by us. In addition you agree to indemnify us and hold us harmless for any errors that may arise in any Project which may be made by us or you.
- 2.4. During the term of this Agreement and after the expiry of this Agreement, we retain copyright and the right to retain any proprietary code of your website.

- 2.5. Any source files for Projects remain our property and may be made available to you at additional cost, as determined by us.
- 2.6. We will not be responsible for any loss, damage or liability to you or any third party as a result of any hosting services outages, viruses, errors, bugs, delays, non-deliveries, wrong deliveries or any other service interruptions whether caused by us (negligently or otherwise) or any third party.
- 2.7. Our liability to you under this Agreement and in any other way is limited to the resupply of the services provided for under this Agreement, or at our discretion, the refund of any amounts paid by you under this Agreement.

3. SERVER USE AND HOSTING

- 3.1. If, in our reasonable opinion your website contains or contains links to:
 - (a) Defamatory or allegedly defamatory material;
 - (b) Pornographic or illicit images, text or other material;
 - (c) Scripts which create excess load on our servers;
 - (d) Spiders, robots, worms, warez, programs or scripts which may be used for password cracking, IP spoofing, phishing, viruses or any other malicious activities;

or if you:

 - (a) Exceed your allocated bandwidth;
 - (b) Exceed your allocated storage or data amounts;
 - (c) Fail to make any payment under this Agreement (or such payment is declined or dishonoured); or
 - (d) Disclose or allow anyone else to use your customer login and password;

We may suspend or terminate your website immediately without notice to you.
- 3.2. Nothing in this Agreement obligates us to review, check or ensure that your website does not contain any material which may breach this Agreement or the law.

4. PAYMENT

- 4.1. The total cost of the preparation and establishment of your Project as set out in the quotation provided by us to you or as described on our website. Payment including GST is payable as follows:
 - (a) 50% on signing of this Agreement for project values up to \$800;
 - (b) 25% on signing of this Agreement for project values above \$800;
 - (c) The balance upon completion of your project, or it being published on the Internet, or by progress payment as described in a quotation provided to you by us, or the expiration of a time period considered reasonable by us for you to provide us the Content or any such thing required to complete the project, whichever is earlier.
 - (d) Any additional fees charged to us in association with your credit card payments will be applicable.

- 4.2. The hosting of your website, including GST commencing the date of Account setup, is as per our quotation to you or as described on our website.
- 4.3. Where agreed to in writing by both parties, we may provide additional products and services to you on the terms of this Agreement at an additional charge.
- 4.4. Should you cancel the hosting of your website or this Agreement for any reason, the whole amount set out in clauses 4.1 and 4.2 shall at our discretion, become immediately due and payable.
- 4.5. Payment of hosting charges must be made by credit card or direct debit from your nominated bank account and may be charged on the date of initial payment. You agree and authorise to the amounts set out in clause 4.1 and agree to any additional credit card and debit fees where applicable.
- 4.6. A payment of an advance fee, deposit fee or payment online is deemed an acceptance of our terms and conditions, a copy of which is available via our website, with all quotes and at any time by request.
- 4.7. You authorise us or our authorised agent to charge all payments set out in this Agreement from your nominated credit card or bank account as due. If any payment is declined, dishonoured or charged back ("amounts declined") then you agree to immediately provide us with the details and authority to charge another account which you are authorised to use, the amounts declined and any fees or charges incurred because of the amounts declined.
- 4.8. We reserve the right to vary hosting charges and packages at any time and will notify you no less than seven (7) days before commencement of changes.

5. MISCELLANEOUS

- 5.1. This Agreement is made in New South Wales and the parties irrevocably submit to the jurisdiction of the Courts of New South Wales.
- 5.2. If any part of this Agreement is held invalid, unenforceable, or illegal for any reason, the Agreement will remain otherwise in full force apart from such provision/s which will be deemed deleted.
- 5.3. We reserve the right to change any of the Terms and Conditions at any time and without prior notice. The latest version of these Terms and Conditions can be found on our website: <http://www.lightwaydesign.com>.
- 5.4. This Agreement embodies the entire agreement of the parties as to its subject matter and supersedes and cancels all prior agreements, understandings and negotiations in connection with it. No oral explanation or information provided by any party to another affects the meaning or interpretation of this document or constitutes any collateral agreement, warranty or understanding between the parties.
- 5.5. You authorise us to contact you by email for the purposes of advising you of product changes, promotions and in relation to other goods and services provided by us.