

# Terms of Business

webtech

**webtech**  
Creative Agency

**Prepared by:**

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# Terms of Business

## Kia Ora, Welcome to Webtech

**We look forward to working with you**

All services and work provided by Webtech are subject to these terms of business.

### 1. DEFINITIONS

1.1 **Contract** means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.

1.2 **Webtech** means Webtech Evolution Ltd T/A Webtech, its successors and assigns or any person acting on behalf of and with the authority of Webtech Evolution Ltd T/A Webtech.

1.3 **Client** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Webtech to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:

- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
- (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (d) includes the Client's executors, administrators, successors and permitted assigns

## 1. DEFINITIONS (Continued)

1.4 **Services** means all Goods (which includes any content, files, information, printed or virtual material, data, hardware, software or applications (whether supplied from a third party software development company or where custom developed or programmed for the Client), brands, designs, images, graphics, pictures, trademarks, manuals, and other associated documentation and/or goods, accessories or parts) or Services (which includes any advice or recommendations, consultancy, hosting (which includes virtual server hosting, website hosting, e-mail hosting, etc.), monitoring, data back-up or storage, design and/or website maintenance, brands, designs, project management work, brand integration, strategising and analytical services, technical service, support and training, repairs, or installation of Goods, etc.) supplied by Webtech to the Client, at the Client's request, from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

1.5 **Web Site** means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.

1.6 **Prohibited Content** means any content on any advertising media that:

(a) is, or could reasonably be considered to be, in breach of the Broadcasting Act 1989; the Fair Trading Act 1986; or any other applicable law or applicable industry code; or

(b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or

(c) is, or could reasonably be considered to be, in breach of any person's Intellectual Property Rights (including, but not limited to, the distribution of music files or any other material in which the Client does not own the copyright).

1.7 **Confidential Information** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

1.8 **Cookies** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer.

If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods or Services via the website

## 1. DEFINITIONS (Continued)

1.9 **Charges** means the Charges payable (including any Goods and Services Tax (“GST”) where applicable) for the Services as agreed between Webtech and the Client in accordance with clause 5 below and shall be in New Zealand dollars (\$NZ), unless otherwise specified.

## 2. ACCEPTANCE

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by Webtech

2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties

2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Webtech and it has been approved with a credit limit established for the account.

2.5 In the event that the supply of Goods request exceeds the Clients credit limit and/or the account exceeds the payment terms, Webtech reserves the right to refuse delivery.

2.6 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on Webtech’s website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

2.7 None of Webtech’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Webtech in writing nor is Webtech bound by any such unauthorised statements.

2.8 Once accepted by the Client, Webtech’s quotation shall be deemed to interpret correctly the Client’s instructions, whether written or verbal. Where verbal instructions only are received from the Client, Webtech shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.

## 2. ACCEPTANCE (Continued)

2.9 Any advice, recommendations, information, assistance or service provided by Webtech in relation to Services provided is given in good faith, is based on information provided to Webtech, and Webtech's own knowledge, and experience. Whilst it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Services, human error is possible under these circumstances, and Webtech shall make all effort to offer the best solution to the Client.

2.10 The Client accepts and acknowledges that copyright is retained by Webtech on all design work and other Services provided by Webtech including text, images, ideas, visuals and illustrations unless specifically released in writing and after all costs have been settled.

2.11 This Contract constitutes the entire Contract between Webtech and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by Webtech, but not embodied in this Contract.

2.12 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

2.13 These terms and conditions may be meant to be read in conjunction with Webtech's Hire Form, and:

(a) where the context so permits, the terms 'Goods or 'Services shall include any supply of Equipment, as defined therein; and

(b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

## 3. CHARGE IN CONTROL

3.1 The Client shall give Webtech not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by Webtech as a result of the Client's failure to comply with this clause.

## 4. CHARGES & PAYMENT

4.1 At Webtech's sole discretion the Charges shall be either:

- (a) as indicated on any invoice provided by Webtech to the Client; or
- (b) Webtech's current price at the date of provision of the Services as indicated on Webtech's pricelist; or
- (c) Webtech's quoted price (subject to clause 4.3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days;
- (d) as per Webtech's set non-refundable monthly Charges for the Services ("Plan"), which will be as stipulated (including when due and payable) by Webtech in the Plan.

4.2 A copy of the written estimate or quotation is to be signed and dated by the Client to indicate acceptance and should be returned to Webtech. As an alternative, the Client may send an official order for the Services via email in reply to the estimate or quotation which will imply the Client's acceptance of Webtech's terms and conditions. The Client accepts that no work will be commenced until acceptance has been supplied to Webtech as per this clause.

### 4.3 **Additional and/or Varied Services:**

(a) Webtech agrees that there will be no charge in the preparation of the initial quotation, which may include Client discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned services may be charged to the Client additionally (at Webtech's sole discretion).

In the event the Client requires proofs, mock-ups, layouts, samples or dummies or printed, typewritten or other good copy and/or edits, this shall be invoiced at Webtech's hourly rate unless specified otherwise in the initial quotation, therefore, this variation shall be detailed on the invoice as per sub-clause (g);

(b) All work carried out whether experimentally or otherwise at the Client's request will be charged to the Client;

(c) Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Client and shown as extras on the invoice;

(d) Unless otherwise agreed, the Client shall bear the cost of fonts, or colour proofs, or artwork, specially bought at the Client's request for the job;

(e) Where the performance of any Contract with the Client requires Webtech to obtain products and/or services from a third party, the Contract between Webtech and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to Webtech, and the Client shall be liable for the cost in full including Webtech's margin of such products and/or services;

(f) Whilst every effort will be taken by Webtech to match virtual colours with physical colours, Webtech will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Client's computer and/or the final product.

Should a physical sample be required this will be provided on request by the Client and will be charged for as an extra and charged contra against final invoice;

(g) Webtech reserves the right to amend the Charges where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of Webtech's standard hourly rates (and double such rate for any Services provided outside Webtech's normal business hours) and will be shown as variations on the invoice.

Payment for all variations must be made in full at their time of completion;

(h) As a result of increases beyond Webtech's reasonable control in the cost of materials or labour (e.g. third-party network operator or Webtech's costs (e.g. google) or fluctuations in currency exchange rates, etc.). Where the Client is on a Plan, Webtech will provide one (1) month's written notice to the Client of any variation to the Charges thereof;

(i) The Client acknowledges that all Services and support for email are chargeable in addition to the Charges;

(j) Webtech shall not be held responsible for any amendments made by any third party before or after a design is published.

4.4 At Webtech's sole discretion a non-refundable deposit of fifty percent (50%) is required prior to any project work commences.

4.5 Time for payment for the Services being of the essence, the Charges will be payable by the Client on the date/s determined by Webtech, which may be:

- (a) on completion of the Services;
- (b) by way of instalments/progress payments in accordance with Webtech's payment schedule;
- (c) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Webtech.

4.6 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by Webtech nor to withhold payment of any invoice because part of that invoice is in dispute.

## 4. CHARGES & PAYMENT (Continued)

4.7 GST and other taxes and duties that may be applicable shall be added to the Charges except when they are expressly included in the Charges.

## 5. PROVISION OF THE SERVICES

5.1 Each project is unique to a Client and the costings of a project are estimated and based on the requirements as defined by the Client at the initial meeting and shall include the hours and timeframe that Webtech envisages it will take to complete, (subject to variations as per clause 4.3).

The estimate covers the following:

- (a) all technical, mandatory requirements and assumptions clearly itemised and disclosed by the Client prior to the initiation of the project to ensure all expected features and functionality have been correctly estimated;
- (b) any additional work requested or required outside of the original estimate/scope needs to be agreed that Webtech is entitled to re-estimate the charges and time-frame without prejudice;
- (c) amendments which is to be expected should be kept to a minimum by receiving the styling, text or content updates in batches in-line with the stage of the project, however, if in the opinion Webtech there is the need for more than one round of amendments, then the agreed number of changes must be established, prior to the commencement of the project.

5.2 Any time specified by Webtech for provision of the Services is an estimate only and Webtech will not be liable for any loss or damage incurred by the Client as a result of provision being late. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties.

In the event that Webtech is unable to provide the Services as agreed solely due to any action or inaction of the Client, then Webtech shall be entitled to:

- (a) charge the Client additionally for re-providing the Services at a later time and date; or
- (b) subject to clause 22.3, terminate the Contract.



- (e) Webtech will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Web Site which is attributable to:
  - (i) incorrect information provided by the Client, either pursuant to this clause or otherwise; or
  - (ii) failure by the Client to provide relevant information, either pursuant to this clause or otherwise; or
  - (iii) any third-party products and/or services used by Webtech in creation of the Web Site.

### 8.3 Proof Reading

- (a) Whilst every care is taken by Webtech to carry out the instructions of the Client, it is the Client's responsibility to undertake proof reading and provide feedback (where necessary). Webtech shall be under no liability whatsoever for any errors not corrected by the Client during the proof reading stages, should the Client's alterations require additional proofs, this shall be invoiced as an extra;
- (b) When style, type or layout is left to Webtech's judgement and the Client makes further alterations, this will be invoiced as an extra.
- (c) Webtech will make one (1) set of minor changes at no extra cost within fourteen (14) days of the review period. Minor changes include small text changes and small adjustments to placement of items on the artwork. It does not include changes to images, colour schemes, or any navigation features. Any minor changes need to be notified to Webtech via email.
- (d) Should the Client fail to notify Webtech in writing of any amendments within fourteen (14) days from the commencement of the review period, Webtech shall deem that the original draft as being acceptable.

### 8.4 Client's Property and Materials:

- (a) Graphic files should be supplied in an editable, vector digital format and photographs in a high resolution digital format. If the Client chooses to purchase stock photographs, Webtech can suggest stock libraries.
- (b) In the case of property and materials left with Webtech without specific instructions, Webtech shall be free to dispose of them at the end of twelve (12) months after their receiving them and to accept and retain the proceeds, if any, to cover their own costs in holding and handling them.
- (c) Where materials or equipment are supplied by the Client, Webtech accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.

## 6. PRODUCT SPECIFICATIONS

6.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Webtech's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only.

The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Webtech.

6.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

## 7. DESIGN CONCEPTS & PROJECTS

7.1 Webtech shall provide a maximum of three (3) designs will be offered as initial concepts for branding a business for the Client's consideration. Additional designs can be offered by Webtech which would be at an extra cost to the Client.

7.2 Any indication provided by Webtech as to the duration of the project shall be considered as an estimate and shall commence from the date that cleared deposit funds are received by Webtech.

7.3 Webtech shall not be responsible for any project over-runs regardless of the cause.

7.4 Webtech considers that the design project is accepted upon receipt of the Client's signed estimate or quotation form.

Any associated services such as printing, display panel production, film work, Web Site design and development, publishing, etc. to be provided by Webtech or contracted on the Client's behalf shall constitute a separate project and can be treated as a separate charge.

## 8. WEB SITE DEVELOPMENT

### 8.1 **Webtech's Responsibilities:**

- (a) Upon acceptance of Webtech's quotation, and in accordance with this Contract, Webtech will:
  - (i) use its best endeavours to develop the Web Site in accordance with the Client's instructions and specifications; and
  - (ii) to the extent specified in the Client's instructions and specifications, negotiate and procure any third-party agreements on behalf of the Client.

(b) The Client acknowledges that the development of the Web Site by Webtech is based upon current technology platforms (e.g. internet browsers, mobile, android, etc.), and therefore Webtech cannot guarantee that Web Site features and /or content will display correctly, and that the overall visual experience will be the same, for use by either superseded or presently undeveloped technology.

## 8.2 Client's Responsibilities:

- (a) The Client will, in addition to any other obligations expressed in this Contract, have the following responsibilities:
- (i) provision of all content (including data, logos, designs and/or graphic and related materials) to be incorporated into the Web Site;
  - (ii) provision of any other information, ideas or suggestions which are to be expressly considered by Webtech in developing the Web Site; and
  - (iii) that once approval is given for the Website to "Go Live" on the internet it shall be deemed completion of the project and any and all work ongoing from that point is considered ongoing maintenance subject to clause 8.5, unless otherwise agreed in advance and will be duly charged on a time-taken basis as per Webtech's currently hourly rate.
- (b) The Client will ensure that Webtech is given such information and assistance (including access to computer systems and other locations to complete a branding project) as Webtech reasonably requires to enable Webtech to construct and maintain the Web Site.
- (c) Subject to clause 21.3, the Client shall supply access to any computer system, usernames and passwords required to remove data and/or sites for failure to comply with these terms and conditions.
- (d) It shall be the Client's responsibility to ensure that any specific requirements they may have for mobile web browsers is included in the brief, as, unless otherwise specified therein, the choice of web browsers and technology used in the development of the Web Site shall be at the sole discretion of Webtech.

In the event that additional Services are requested, or required (as per clause 8.1(b)), in order to meet any specific requirements for mobile web browsers, after Webtech has commenced work on the Web Site, shall be treated as a variation to the Charges, and a strict estimation of further work required shall be submitted to the Client for approval before proceeding with the variation work.

## 8 . WEB SITE DEVELOPMENT (Continued)

### 8.5 Maintenance

- (a) Subject to sub-clause (b), Webtech will provide the Maintenance Services in accordance with the maintenance terms set out in Webtech's maintenance schedule.
- (b) The Client will procure all necessary authorisations, licences and consents to enable Webtech to have access to the Web Site in order to provide the Maintenance Services.

## 9 . HOSTING SERVICES

- 9.1 "Live Date" means the date in which Webtech provides the Hosting Services as per initial acceptance of Webtech's quotation.
- 9.2 Hosting Services shall only be used by the Client for lawful purposes. Any use which violates any applicable national or international laws is strictly prohibited (e.g. posting or transmitting any unlawful, threatening, abusive, libellous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind – including, but not limited to, any transmission constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability).
- 9.3 Hosting Services exclude domain registrations and SSL Certificates, and where the Client is changing from another hosting provider the install and set-up of the Web Site on Webtech's web servers, which shall be charged to the Client additionally.
- 9.4 **Webtech will, at its sole cost and expense:**
  - (a) host the Web Site on Webtech's web servers;
  - (b) ensure that from the Live Date:
    - (i) sufficient capacity is maintained on Webtech's web server to enable users access to the Web Site in a timely manner;
    - (ii) the Web Site is accessible to users in accordance with the agreed service levels (subject to reasonable downtime for server maintenance which has been notified to the Client prior to the commencement of the downtime or (where applicable) Maintenance in accordance with clause 9.8);
  - (c) provide the Client with reasonable access to the Web Site to perform maintenance services.

9.5 **Webtech will not**

- (a) alter or amend, or permit any person to alter or amend the Web Site without the written consent of the Client;
- (b) post or display on the Web Site any advertisement, sponsorship or promotion without the written consent of the Client;
- (c) use any user data for marketing, referral or other purposes except as expressly authorised by this Contract;
- (d) sub-licence, rent, time-share, lease, lend or grant any rights to use the Web Site; or
- (e) assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this Contract.

9.6 Webtech will make best efforts to ensure that the Client receives continual and uninterrupted Services (including network or hosting servers) during the term of this Contract, however Webtech does not in any way warrant or otherwise guarantee the availability of the Services, which shall be subject to regularly scheduled maintenance cycles, and many events/circumstances beyond the control of Webtech.

In no event though, shall Webtech be liable to the Client for damages (including loss of income) resulting from or in relation to any failure or delay (including server downtime, programming errors, lack of connection or slow connection) of Webtech to provide Services under this Contract, or any loss of data, if such delays or failures are due to circumstances beyond our control.

Such a failure or delay shall not constitute a default under this Contract.

9.7 Webtech may, at their sole discretion, limit or deny access to the Services is, in the judgement of Webtech, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network.

9.8 **Web Site Maintenance Services:**

- (a) Subject to clause (b), Webtech will provide the Web Site Maintenance Services in accordance with the maintenance terms set out in Webtech's maintenance schedule.
- (b) The Client will procure all necessary authorisations, licences and consents to enable Webtech to have access to the Web Site in order to provide the Maintenance Services.

9.9 **Client's Obligations**

- (a) The Client will, at its sole cost and expense:
- (i) subject to any Contract with Webtech for Web Site Development, develop and maintain the Web Site;
  - (ii) provide the content to Webtech, in such form as reasonably prescribed by Webtech from time to time, and hereby grants Webtech a non-exclusive, worldwide, irrevocable licence to use such content for the purposes of hosting the Web Site;
  - (iii) do all things reasonably necessary to enable Webtech to host the Web Site on Webtech's webserver;
  - (iv) change the type of hosting account used if that account is deemed by Webtech to be unacceptable because of poor service, lack of bandwidth or in any other way insufficient to support the Web Site;
  - (v) is responsible for any fees payable and due to previous hosting organisations engaged by the Client;
  - (vi) ensure that content supplied to Webtech do not contain Prohibited Content, a link to any web site that contains Prohibited Content, or any viruses, trojan horses, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the Hosting Services.
- (b) **The Client will not:**
- (i) logon to an account that the Client is not authorised to access;
  - (ii) access data or take any action to obtain services not intended for the Client;
  - (iii) attempt to probe, scan or test the vulnerability of any system, subsystem or network;
  - (iv) tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation;
  - (v) transmit any material outlined in clause 9.9(a)(vi);
  - (vi) do anything that prevents or hinders Webtech from providing Hosting Services to any other person.
- (c) The Client acknowledges that spamming (i.e. the sending of unsolicited email), email address cultivation, or any unauthorised collecting of email addresses without prior notification of the email address owner is strictly prohibited.

9.10 **Network Traffic:**

- (a) Network traffic shall be measured by Webtech and may include all forms of traffic to and from the Web Site. Webtech reserve the right to suspend Hosting Services (at any time and without notice to the Client) for what it deems to be excessive traffic usage.

## 9 . HOSTING SERVICES (Continued)

### 9.11 Limitation of Liability for Hosting Services

- (a) in consideration of clause 28.3, in the event the Hosting Services provided to the Client are disrupted or malfunction for any reason, Webtech's liability shall be limited to damages which under no circumstances shall exceed the amount due and payable by the Client to Webtech for the Hosting Services during the period of disruption or malfunction.

## 10. SEARCH ENGINE OPTIMISATION (SEO)

- 10.1 Although Webtech shall use their knowledge and experience to gain the best results possible, Webtech gives no guarantee of the quality of visitor or the position / page rank or volume of visits to the Web Site, or warranty that the Web Site will be effective in promoting the Client's business or result in any increase in sales of the products/services of the Client.

Periodic reporting will be sent to the Client's nominated email address, at the sole discretion of Webtech.

## 11. DOMAIN REGISTRATION

- 11.1 Where Webtech is to register a domain name on the Client's behalf, Webtech cannot guarantee the availability of the domain name, nor assume a successful registration or such a name.

## 12. RISK AND LIMITATION OF LIABILITY FOR CLIENT DATA

### 12.1 The Client shall provide Webtech with data in the following formats:

- (a) for text, files shall be in an electronic format as standard text (.txt) or Work (.doc) on a USB, CD-ROM or via email;
- (b) for imaged, in an electronic format as prescribed by Webtech on a USB, CD-ROM or via email with the images of a suitable quality applicable for the use intended and without any subsequent image processing being required. Webtech shall not be responsible for the quality of images scanned from printed materials;
- (c) additional expenses may be charged to the Client for any necessary action, including, but not limited to, photography and art direction, photography searches, media conversion, digital image processing or data entry services.

12.2 **The Client acknowledges and agrees that Webtech shall not be held responsible or liable for:**

- (a) anything related to the Web Site, Hosting Services or any other Services provided;
- (b) any supplied content breaching any Acts, legislation or regulations, unless due to the negligence of Webtech;
- (c) any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from illegal hacking or Services provided by Webtech. Whilst Webtech will endeavour to restore the Web Site, files or data (at the Client's cost), it is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to Webtech providing the Services.

The Client accepts full responsibility for the Client's software and data and Webtech is not required to advise or remind the Client of appropriate backup procedures (unless included as part of the Services);

12.3 Webtech, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the Services by Webtech to the Client.

12.4 The Services are provided on an "as is, as available" basis. Webtech specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.

12.5 **Public Access:**

- (a) The Client understands that by placing information on the Web Site, such information may be accessible to all internet users. Webtech does not (unless expressly requested by the Client) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity.

The Client assumes full responsibility for their use of the Services, and it is the Client's sole responsibility to evaluate the accuracy, completeness and usefulness of all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by Webtech, or on the internet generally.



### 13. DEFECTS, ERRORS, OMISSIONS AND WARRANTY

- 13.1 The Client shall inspect the Goods on delivery and shall within five (5) days of delivery (time being of the essence) notify Webtech of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Webtech 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 Webtech has agreed in writing that the Client is entitled to reject, Webtech's liability is limited to either (at Webtech's discretion) replacing the Goods or repairing the Goods.
13. Goods will not be accepted for return other than in accordance with 13.1 above, and provided that:
- (a) Webtech has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Client's cost within ten (10) days of the delivery date; and
  - (c) Webtech will not be liable for Goods which have not been stored or used in a proper manner; and
  - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 13.3 Webtech will not accept the return of Goods for credit.
- 13.4 For defective Services, which Webtech has agreed in writing that the Client is entitled to reject, Webtech's liability is limited to either (at Webtech's discretion) replacing the Services or rectifying the Services, provided that the Client has complied with the provisions of clause 13.1.
- 13.5 For Goods not manufactured by Webtech, the warranty shall be the current warranty provided by the manufacturer of the Goods. Webtech 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.

## 14. PROTECTION OF REPUTATION

- 14.1 Any misuse, misrepresentation or any other action that negatively impacts Webtech's brand which is deemed to damage and/or tarnish the reputation of Webtech's brand, the Client must cease and desist from such misuse, misrepresentation or other action immediately on receipt of a written notice from Webtech to this effect.

## 15. TITLE

- 15.1 Webtech and the Client agree that the Client's obligations to Webtech for the supply of Services shall not cease (and ownership of any Goods shall not pass) until:
- (a) the Client has paid Webtech all amounts owing to Webtech for the Services; and
  - (b) the Client has met all other obligations due by the Client to Webtech in respect of all contracts between Webtech and the Client.
- 15.2 Receipt by Webtech 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 Webtech's ownership or rights in respect of the Services, and this Contract, shall continue.
- 15.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 15.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Webtech on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Webtech and must pay to Webtech the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Webtech and must pay or deliver the proceeds to Webtech on demand.
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Webtech and must sell, dispose of or return the resulting product to Webtech as it so directs.

## 15. TITLE (Continued)

- (e) the Client irrevocably authorises Webtech to enter any premises where Webtech believes the Goods are kept and recover possession of the Goods.
- (f) Webtech may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Webtech.
- (h) Webtech may commence proceedings to recover the Charges notwithstanding that ownership of the Goods has not passed to the Client.

## 16. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- 16.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods and/or all collateral (account) – being a monetary obligation of the Client for the Services – that have previously been provided, and that will be provided in the future, by Webtech to the Client.
- 16.2 The Client undertakes to:
  - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Webtech may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Webtech for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of Webtech.
- 16.3 Webtech and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 16.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

## 16. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA") (Continued)

- 16.5 Unless otherwise agreed to in writing by Webtech, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 16.6 The Client shall unconditionally ratify any actions taken by Webtech under clauses 16.1 to 16.5.

## 17. SECURITY & CHARGE

- 17.1 In consideration of Webtech agreeing to provide the Goods/Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 17.2 The Client indemnifies Webtech from and against all Webtech's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Webtech's rights under this clause.
- 17.3 The Client irrevocably appoints Webtech and each director of Webtech as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.

## 18. INTELLECTUAL PROPERTY & CONFIDENTIALITY

- 18.1 Where Webtech has designed, drawn or developed Services (including the Web Site) for the Client, Webtech retains full intellectual property ownership of the Services, including the copyright in any designs and drawings and documents, and Webtech hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use the Services solely in relation to the operation of the Client's own business, conditional upon the Client fulfilling their obligations under this Contract (including, but not limited to, the full payment of the Charges).
- 18.2 Subject to the Copyright Act 1994 and the conditions therein, where Webtech or their subcontractor has provided the Client with a licence for use on any design, copy, writing, drawing, image, illustration, idea or code created for the Client, the licence shall be for use by the Client on a one-time only basis and may not be modified, re-used, or re-distributed in any way or form without the express permission of Webtech and any of its relevant subcontractors.

- 18.3 All design work where there is a risk that another party makes a claim, should be registered by the Client with the appropriate authorities prior to publishing or first use or searches and legal advice sought as to its use. Webtech shall not be held responsible for any or all damages resulting from such claims.
- 18.4 The Client hereby authorises Webtech to utilise images of the Services created by Webtech in advertising, marketing, or competition material by Webtech including, but not limited to:
- (a) the Client permitting Webtech to place a small credit on printed material, exhibition displays, advertisement and/or link to Webtech's own web site on the Client's Web Site, which shall usually be in the form of a small logo or line of text placed towards the bottom of the page;
  - (b) allowing Webtech to place web sites and other designs, along with a link to the Client's Web Site on Webtech's own web site for demonstration purposes and to use any designs in Webtech's own publicity.
- 18.5 The Client shall indemnify Webtech against any claims by third parties for patent, trademark, design or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, or use of the Services or any other deficiency therein. Where the Client has supplied drawings, sketches, files or logo's to Webtech, the Client warrants that the drawings, sketches, files or logo's do not breach any patent, trademark, design or copyright, and the Client agrees to indemnify Webtech against any action taken by a third party against Webtech.
- 18.6 Notwithstanding anything herein, the Intellectual Property Rights in Webtech's Services do not vest in the Client and there is no assignment of these Intellectual Property Rights to the Client. Webtech hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use and reproduce the Services for the purposes of this Contract only, and solely for the operation of the Client's business however, the Client shall not use nor make copies of such Intellectual Property in connection with any work or business other than the work or business specified in writing to Webtech unless express approval is given in advance by Webtech. Such license shall terminate on default of payment or any other terms of this Contract by the Client.
- 18.7 All Flash, PHP, Java Script, HTML and Dynamic HTML coding and other supplied code (if any) remains the intellectual property of Webtech. Copying or disseminating the code for any purpose whatsoever is strictly forbidden and will be a breach of copyright.
- 18.8 Each party agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.

## 19. CONSUMER GUARANTEES ACT 1993

- 19.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by Webtech to the Client.

## 20. REPAIR NOTICE - 31713

- 20.1 If the Client is a consumer within the meaning of the Consumer Guarantees Act 1993, this clause constitutes a Repair Notice given under this legislation and the Client acknowledges that:
- (a) the repair of equipment may result in the loss of any files stored on the hard drive, etc. ("User-Generated Data"). It is the sole responsibility of the Client to back-up any User-Generated Data which they believe to be important, valuable, or irreplaceable prior to submitting the equipment for repair; and
  - (b) equipment presented for repair may be replaced by, or repaired with, refurbished Goods of the same type rather than being repaired.

## 21. DEFAULT & CONSEQUENCES OF DEFAULT

- 21.1 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 Webtech's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes Webtech any money the Client shall indemnify Webtech from and against all costs and disbursements incurred by Webtech in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Webtech's collection agency fees, and bank dishonour fees).
- 21.3 Further to any other rights or remedies Webtech may have under this contract, if a Client has made payment to Webtech, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Webtech under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

## 21. DEFAULT & CONSEQUENCES OF DEFAULT (Continued)

- 21.4 Without prejudice to any other remedies Webtech may have, if at any time the Client is in breach of any obligation (including those relating to payment, whether or not the payment is due to Webtech) Webtech may suspend or terminate the provision of Services to the Client, (this includes but is not restricted to, withholding domain codes, passwords and Goods, and/or blocking or restricting public and Client access to the Web Site, or removing the Web Site from the web completely) and any of its other obligations under the terms and conditions. Webtech will not be liable to the Client for any loss or damage the Client suffers because Webtech has exercised its rights under this clause.
- 21.5 Without prejudice to Webtech's other remedies at law Webtech shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Webtech shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Webtech becomes overdue, or in Webtech's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by Webtech;
  - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## 22. CANCELLATION AND TERMINATION

- 22.1 Webtech may cancel these terms and conditions or cancel provision of the Services at any time before the Services are provided by giving written notice. Webtech shall not be liable for any loss or damage whatever arising from such cancellation.
- 22.2 In the event that the Client may cancel provision of the Services. In the event that the Client cancels provision of the Services the Client shall be liable for any costs incurred by Webtech (including, but not limited to, loss of profit) up to the time of cancellation.
- 22.3 Where the Client cancels an order:
- (a) the initial notification may be by telephone or email but must be confirmed in writing within fourteen (14) days;

- (b) the Client shall be invoiced for all work completed over and above the non-refundable deposit as per clause 4.4;
  - (c) where failure clause 22.3(a) occurs, the Client shall be required to pay the full quoted cost of the Services.
- 22.4 Should the Client, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this Contract will be terminated by Webtech (at their sole discretion) and all Services completed, but not billed or paid, will be payable in full within fourteen (14) days from the date of the submitted invoice.
- 22.5 If the Client fails to comply with any of the provisions of this Contract and does not rectify such non-compliance within seven (7) days of Webtech giving notice either in writing, via fax or email, then Webtech may without prejudice to any other rights or remedies, and without being liable to the Client for any loss or damage that may result, give notice to the Client terminating their right to use the Web Site, Software and Services. Upon termination of the Contract, the Client shall lose all right to use the Web Site and products, and shall forthwith deliver the Goods to Webtech and destroy all copies made. The Client shall certify in writing that the copies have been destroyed.
- 22.6 Upon termination of this Contract, Webtech will immediately delete all files and content relating to the Client and the Services provided thereto.
- 22.7 It is the Client responsibility to make arrangements for the transfer of their data prior to the termination date. Webtech accepts no liability for any loss or damage incurred by the Client as a result of the deletion of such data.
- 22.8 In the event the Services are terminated as per clauses 22.3 or 22.5, the Services can be re-instated under a new contract at the prevailing rates; however no credits or discounts will be granted and reinstatement costs shall apply.
- 22.9 **Fixed Term Contracts.**
- a) Where this contract relates to a fixed term contract, all payments shall fall due as per the payment schedule. To terminate the fixed term contract on, or after, the current annual term, the Client must give Webtech not less than twenty (20) working days' notice prior to the current anniversary date of this Contract. The Services will then terminate at the end of the then current annual term. If the Client does not terminate the Services on expiry of the current annual term, the Services shall revert to a month-by-month basis charge until otherwise agreed by both parties. Any additional Services shall become due and payable until notice (as herein) is received.



23.1 All emails, documents, images or other recorded information held or used by Webtech is Personal Information as defined and referred to in clause 23.3 and therefore considered confidential. Webtech acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 (“the Act”) including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area “EEA” then the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”).

Webtech acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by Webtech that may result in serious harm to the Client, Webtech will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

23.2 Notwithstanding clause 23.1, privacy limitations will extend to Webtech in respect of Cookies where transactions for purchases/orders transpire directly from Webtech’s website. Webtech agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client’s:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to Webtech when Webtech sends an email to the Client, so Webtech may collect and review that information (“collectively Personal Information”) In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Webtech’s website.

23.3 The Client authorises Webtech or Webtech’s agent to:

- (a) access, collect, retain and use any Personal Information about the Client;
- (i) (including, name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client’s creditworthiness; or

## 23. PRIVACY POLICY (Continued)

- (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
  - (ii) for the purpose of marketing products and services to the Client.
- (b) disclose Personal Information about the Client, whether collected by Webtech from the Client directly or obtained by Webtech from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.5 The Client shall have the right to request Webtech for a copy of the Personal Information about the Client retained by Webtech and the right to request Webtech to correct any incorrect Personal Information about the Client held by Webtech

## 24. SERVICES OF NOTICES

- 24.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

## 25. TRUSTS

- 25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Webtech may have notice of the Trust, the Client covenants with Webtech as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) the Client will not without consent in writing of Webtech (Webtech will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.

## 26. UNPAID SELLER'S RIGHTS

- 26.1 Where the Client has left any item with Webtech for repair, modification, exchange or for Webtech to perform any other service in relation to the item and Webtech has not received or been tendered the whole of any monies owing to it by the Client, Webtech shall have, until all monies owing to Webtech are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 26.2 The lien of Webtech shall continue despite the commencement of proceedings, or judgment for any monies owing to Webtech having been obtained against the Client.

## 27. DISPUTE RESOLUTION

- 27.1 Webtech and the Client will negotiate in good faith and use their reasonable efforts to settle any dispute that may arise out of, or relate to, this Contract, or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations, the dispute shall be referred to the representatives nominated by each party who will meet in good faith in order to attempt to resolve the dispute. Nothing shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right.

## 28. GENERAL

- 28.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.
- 28.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Palmerston North Courts in Palmerston North.
- 28.3 Webtech shall be under no liability whatsoever to the Client for any expenses, claims, costs (including but not limited to legal fees and commissions), damages suffered or incurred by Webtech, or indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Webtech of these terms and conditions, caused by any failure by the Client to comply with their obligations under this Contract, or that arise from any claim relating to the Services by any person that the Client authorises to use the Services, or where due to server downtime or programming errors (alternatively Webtech's liability shall be limited to damages which under no circumstances shall exceed the Charges).
- 28.4 Webtech may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 28.5 The Client cannot licence or assign without the written approval of Webtech.
- 28.6 Webtech may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Webtech's sub-contractors without the authority of Webtech.

## 28. GENERAL (Continued)

- 28.7 The Client agrees that Webtech may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Webtech to provide Goods and/or Services to the Client.
- 28.8 Neither party shall be liable for any default due to fires, explosions, severe weather, industrial disputes, insurrection, requirements or regulations, or any civil or military authority, acts of war (whether declared or not), civil unrest, acts of God, earthquake, flood, riot, embargo, government act, strike, lock-out, storm, terrorism, or failure or outage of any telecommunications links or other connections forming part of the Internet which are beyond the reasonable control of either party.
- 28.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

## 28. APPROVAL

I/we agree to Webtech's Terms of business

Company name:

Your name:

Signature:

Date: