

TERMS OF TRADE AND POLICIES

DEFINITIONS

1. In these terms of trade:
 - 1.1 “**services**” and “**goods**” mean all the services and goods provided to you by WebShot™, WebShot.co.nz and WebShot Designs Limited and includes where applicable website design, website hosting, domain registration and advertising services.
 - 1.2 “**Terms of Trade**” means these terms of trade.
 - 1.3 “**WebShot**” means WebShot Designs Limited (a company at Christchurch) and its trading name WebShot and WebShot.co.nz, WebShotDesigns.com.au, WebShotDesigns.com
 - 1.4 “**WebShot Forms**” means the order forms and tax invoice used by WebShot. If there is a conflict between the WebShot Forms and these Terms of Trade, the WebShot Forms prevail.
 - 1.5 “**you**” and “**customer**” mean the customer stated on the WebShot Forms.

AGREEMENT

2. WebShot agrees to sell and you agree to buy the services referred to in the WebShot Forms at the price and upon the terms stated in the WebShot Forms and these Terms of Trade, for which payment is to be made in accordance with the WebShot Forms and as set forth in these Terms of Trade.
 - 2.1 Your order must be made in accordance with the WebShot Forms.
 - 2.2 You and WebShot are bound to an order made by you when WebShot notifies you in writing of acceptance by WebShot.

PRICES

3. The price of the goods and services will be the price quoted by WebShot at the date of acceptance by WebShot of your order. You should not assume that quoted prices will apply to variations.
 - 3.1 Once we have accepted your order, we will not change any prices that apply to the goods and services in your order for the twelve month period commencing from the date of acceptance of your order.

- 3.2 WebShot may change the quoted prices for the goods and services from time to time and we do not provide any notice of those changes.
- 3.3 All prices are plus Goods and Services Tax and other taxes: GST & taxes are additional to the price and must be paid by the customer.

PAYMENT

- 4. Payment is due in cash on or before services are made available.
 - 4.1 If WebShot consents in writing to credit terms on the WebShot Forms, then subject to written notification to the contrary and subject to the WebShot Forms, payment is due for goods and services before 5pm upon the 20th of the month following the invoice date.
 - 4.2 For renewals, WebShot will invoice you annually for the renewal, prior to the anniversary of the commencement date of the services.
- 5. Overdue accounts may be terminated or suspended at WebShot discretion. Domain names may also be lost if payment is not made promptly.
 - 5.1 Time for payment is of the essence. If you fail to make any payment on the due date then without prejudice to any of WebShot's other rights WebShot may:
 - 5.1.1 suspend or cancel provision of all goods and services to the customer without notice and / or treat this agreement as repudiated by the customer; and/or
 - 5.1.2 Revoke any licence granted to use the WebShot services. WebShot may elect to sell to another party any domain names which were used by you as part of the services.
 - 5.1.3 appropriate any payment made by the customer to such of the goods and services (or goods and services supplied under any other agreement with the customer) as WebShot may in WebShot's sole discretion think fit. WebShot may at its sole discretion apply payments made by the customer first in payment of default interest and secondly in reduction of invoiced amounts. WebShot is entitled to recover from the customer any discount given to the customer for any services for which the customer is in default.
 - 5.2 Events of default for the purposes of section 109 of the Personal Property Securities Act include: failure to pay amounts due, failure of the customer to comply with any other obligation owed to WebShot, or in WebShot's opinion the customer is likely to be unable to meet its obligations to WebShot, or the customer becomes insolvent or has a receiver appointed in respect of all or some of the customer's assets, or makes or is likely to make an arrangement with the customer's creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory management.

- 5.3 In the event of a default, all amounts outstanding under all of the then current contracts between the customer and WebShot will, whether or not due for payment, immediately become due and payable.
- 5.4 All sums due from the customer to WebShot that are not paid on the due date (without prejudice to the rights of WebShot under this agreement) will bear interest from day to day at the annual rate of 18 % charged at 1.5% per month or part thereof. The customer must pay all amounts due without deduction or setoff.
- 5.5 The customer indemnifies WebShot for full solicitor/ client and other recovery costs relating to any default of the customer under this agreement.
- 5.6 Work will not commence on new projects until full payment has cleared. You can cancel at anytime and will be invoiced an amount that WebShot judges to be proportional to the amount of work completed on the project.
- 5.7 Failed payments including but not limited to bounced cheques, direct debit failures, automatic-payment reversals, credit card charge-backs incur a \$50 fee.

ANNUAL LICENCE

6. WebShot grants you a non-exclusive, non-transferable, limited use licence to use the services upon the terms set out in the WebShot Forms and these Terms of Trade.
7. Upon payment of a renewal fee specified by WebShot at the time an annual renewal is due, the services will be renewed for a further year.
8. All online sites (including the website design, content and images) provided as part of the services remain the property of WebShot.
- 8.1 You authorise WebShot to register your selected domain name. You certify that you have the legal right to use this domain name and will be solely responsible for any legal proceedings or fees if the domain registered contains any trademarked or copyrighted term, and you indemnify WebShot accordingly.
- 8.2 The base code package used to display and run any website (if provided by WebShot as part of the services) remains the sole ownership of WebShot and you may only use the software to the extent granted in the WebShot Forms.
- 8.3 To further protect ownership by WebShot, your licence to use the goods and services is subject to you granting a security interest in favour of WebShot in the goods and services as mentioned below (see PPSR Security clauses).
9. Your continued use of any service is on a pay as you go licence arrangement as further specified in the WebShot Forms.

10. Although it is intended that your licence is an annual licence, due to the fact that the internet is a rapidly evolving environment, WebShot reserves the right to permanently discontinue the services at any time, without notice, at the sole discretion of WebShot. Subject to the WebShot Forms and subject to any material breach of this agreement by you, in the event of early termination by WebShot, you will be refunded for any unused portion of your licence fee you have pre-paid.
11. Any images supplied by WebShot in the design of your website may be protected under International Copyright law and you must not be onsell, reuse, reproduce without the written permission of WebShot.
12. At WebShot's sole discretion payments may be made monthly. If payments are made monthly a minimum 12 month contract term applies.
13. If a cancellation notice is received from you, WebShot reserves the right to immediately suspend all services rendered.
14. If you are participating in any trial period offer, you must notify WebShot via email that you wish to cancel. This must be received within 7 days of the end of the trial period. If applicable cancellation fees may apply. If a cancellation notice is not received the service supplied will automatically revert to an annual licence and you authorise WebShot to charge you for the Service.

ADVERTISING

15. Where WebShot provides you with advertising services, WebShot does not guarantee the effectiveness of the advertising services.

LIMITATION OF LIABILITY

16. WebShot excludes all liability whatsoever to the customer and all others for any loss or damage arising directly or indirectly in connection with the goods and services. If any limitation of liability or provision contained in this agreement is held to be invalid for any reason and WebShot becomes liable for loss or damage that would otherwise have been excluded, it is agreed that such liability is limited to the amount of the annual licence fee for the relevant goods and services.
17. In accordance with the exclusion of liability mentioned above, and to ensure clarity, WebShot excludes any warranty or representation as to the suitability of goods and services for any purpose. The use of the goods and services are entirely at the customer's own risk. WebShot excludes any liability whatsoever for:
 - loss or corruption of data, including that resulting from delays, non-deliveries, miss-deliveries, service interruptions or hardware failure.
 - the accuracy or quality of information obtained through its services.
 - Loss of data: it is your responsibility to back up your data.

LIMITS ON USE OF SERVICES BY CUSTOMER

18. You will not use any service provided by WebShot for any unlawful purpose. This includes, but is not limited to: sending spam; storing or transmitting any obscene / indecent material, copyrighted material, material protected by trade secret or other statute, defamatory speech or any harmful files.
- 18.1 You agree to indemnify and hold harmless WebShot from any claims resulting from your use of the service that damages your service or any other party's service resulting from your illegal use.
- 18.2 You must comply with all relevant laws relating to your use of the goods and services.
19. You acknowledge that the software provided as part of the services, some content and images may have been released under GNU GENERAL PUBLIC LICENSE Version 2, June 1991, and/or Creative Commons Licenses.
20. Although resources are not always actively monitored, there is a fair-usage policy that applies to all the services. WebShot's unlimited hosting packages are designed to offer unlimited hosting for an average small online business, allowing you the freedom to host your website without worrying about the cost of hosting. WebShot will start checking your usage when you reach 30,000 visitors per month. At WebShot's discretion, we may charge you for additional usage beyond the 30,000 visitors level, which we will do at our standard rates and / or move your site to an alternative hosting provider.

PPSR SECURITY

21. You (the customer) grants a security interest to WebShot (the secured party), and WebShot may register the security interest:
 - 21.1 In all goods, documents of title and intangibles supplied by WebShot (the secured party) to you from time to time, together with all proceeds (including, without limitation, accounts receivable, chattel paper, negotiable instruments, investment securities and inventory), to secure payment of the purchase price; and
 - 21.2 In all goods, documents of title and intangibles supplied by WebShot (the secured party) to the customer (you) from time to time, together with all proceeds (including, without limitation, accounts receivable, chattel paper, negotiable instruments, investment securities and inventory) to secure any sums owing to WebShot.
 - 21.3 Words herein have the same meaning as that which is given to them in Section 16 of the Personal Property Securities Act ("the PPSA"). WebShot does not have to

provide a Verification Statement to the customer. The customer agrees that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these terms and conditions. The customer agrees that its rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA shall not apply to these terms and conditions.

- 21.4 The customer will immediately notify WebShot in writing of any change in the customer's name or other material identifying characteristics of either the customer or the collateral subject to this security.
- 21.5 The customer must reimburse WebShot for all costs, expenses and other charges incurred, expended or payable by WebShot in relation for registration of a financing statement or financing change statement.
- 21.6 The customer agrees that if at any relevant time, the secured party does not have priority over all other secured parties in relation to any collateral, then the customer and WebShot will, for the purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and for the purposes of this security agreement and the operation and application of the PPSA, that section 109(1) (but amended only by the deletion of the words "with priority over all other secured parties") is reinstated and contracted back into.

INTERPRETATION

- 22. Headings are inserted for convenience and reference only and shall not affect the meaning or interpretation of this agreement.
- 22.1 References to any statute, regulations or other statutory instrument or by-law ("legislation") shall be deemed to be references to a statute, regulations, instrument or by-law of New Zealand as from time to time amended and includes substitute provisions (whether in an amendment of existing legislation or in new legislation) that substantially correspond to those referred to.
- 22.2 A reference to a person or persons includes a reference to a body corporate, to a governmental agency and to an unincorporated body of persons.
- 22.3 References to any party to this agreement includes the successors and any permitted assigns of the party and party means them collectively.
- 22.4 Expressions referring to writing shall be construed as including reference to words printed, typewritten, transmitted by facsimile, recorded electronically (including an email from WebShot to the email address provided by you), or otherwise traced, copied or reproduced.

GENERAL

23. WebShot reserves the right to vary the Terms and Conditions by written notice to the customer whereupon such variations will thereafter apply to subsequently supplied services.
24. If any term of this agreement is illegal, invalid or unenforceable for any reason whatsoever including, but without limitation, legislation or other provisions having the force of law or any decision of any court or other body or authority having jurisdiction, such term will be deemed to be deleted from this agreement on condition that if either party (acting reasonably) considers that any such deletion substantially affects or alters the commercial basis of this agreement it may give notice in writing to the other to terminate this agreement immediately.
25. Any notice, document, request, demand or other communication ("notices") to be given for the purposes of this agreement must be in writing. WebShot may give written notices by email. Time is of the essence.
26. WebShot may delay delivery of services or goods and is not liable for failure to perform its obligations under this agreement due to force majeure conditions including an act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labour disputes of whatever nature and any other reason beyond the control of WebShot.
27. If WebShot grants the customer any time, release or other indulgence, WebShot reserves the right to later enforce that obligation or any other term or condition.
28. The law of New Zealand will apply to this agreement except to the extent expressly negated or varied by this agreement.
29. **Privacy:** The customer authorises and directs WebShot to seek and obtain from and supply any information concerning the credit or business standing of the customer to any other person whether trader, merchant, firm, organisation, company, or any agency of source whatever including any credit agency or association or the like and directs any such person to supply or receive and record such information to and from WebShot. While the customer continues to be a customer or an amount is due from the customer to WebShot, WebShot is authorized to obtain repeat credit checks from time to time.
- 29.1 You agree to indemnify, defend and hold harmless all Webshot's directors, officers, agents, employees, contractors, successors and assigns from any and all third party claims, suits, proceedings, judgments, damages, and costs (including reasonable attorneys' fees and expenses) based on the gross negligence or willful misconduct in the performance of this Agreement.

Consumer Guarantees Act 1993

30. If the customer is acquiring goods or services from WebShot for the purposes of a business, as defined in the Consumer Guarantees Act 1993, then WebShot excludes the guarantees contained in the Consumer Guarantees Act.
31. The customer warrants that it will advise its customers as to the purposes for which the goods or services can be used correctly and that the customer will effectively and in writing contract out of the Consumer Guarantees Act 1993 whenever the customer agrees to supply goods or services to a customer for the purposes of that customer's business.

Resolution of disputes

32. This agreement contains an arbitration agreement:
 - 32.1 You, if purchasing as a consumer as defined in the Arbitration Act 1996, certify that: having read and understood the arbitration agreement, and the variation of the default rules in the 2nd Schedule to the Arbitration Act 1996, you agree to be bound by the arbitration agreement.
 - 32.2 If the parties are unable to resolve any question, dispute of difference arising under this agreement, by discussion and negotiation, the dispute must be submitted to the arbitration of a single arbitrator agreed on between the parties, or in default of agreement, to be nominated by the president of the New Zealand Law Society PROVIDED HOWEVER that WebShot has the right to refer any dispute to the Disputes Tribunal for determination in which case the total amount in respect of which an order of the Tribunal is sought will not exceed \$15,000.00.