

# ***Terms & Conditions***

# Terms and conditions of trade

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As at 1 December 2015

Please sign and return these terms and conditions to PO Box 798, Blenheim 7240 – New Zealand or scan and email them to your account manager or [info@webtek.co.nz](mailto:info@webtek.co.nz) If you wish - you can alternatively view our Terms and Conditions online, just visit [www.webtek.co.nz/terms.pdf](http://www.webtek.co.nz/terms.pdf)

Thanks again, we'll be in touch soon!

## 1. General

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The Terms and Conditions set out below are designed to provide certainty to both WebTek Limited trading as WebTek ("us") and the Client ("you") to avoid any misunderstanding and particularly in the case of a dispute arising. Please carefully read through these Terms and Conditions and seek clarification either from us or a solicitor if you are unclear on any points. These terms shall prevail over any other.

These Terms and Conditions shall apply to the provision of all of our services including those of any of our sub brands and or any of our subsidiary companies.

## 2. Interpretation

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In these Terms and Conditions and in any Contract to which these terms and conditions apply, unless the context otherwise requires:

- a. Company means WebTek Limited;
- b. Conditions means these Terms and Conditions to be read and construed with each Estimate/Quotation provided by the Company;
- c. Client or Customer means the purchaser of products and/or services from the Company;

- d. Contract means an agreement between the Client and the Company comprising of the Estimate/Quotation and the Conditions;
- e. Products and services means the products sold by the Company to the client;
- f. Unless the Company and the Client otherwise agree in writing:
  - i. In the event of any conflict arising between these Conditions and any agreement or contract these Terms and Conditions shall prevail; and
  - ii. Estimates/Quotations by the Company remain open for acceptance within 30 days from the date of the Estimate or Quotation.

### 2a. Formation of the contract

No contract shall come into existence until the Client's order has been accepted by the Company. The Client may place an order by either:

- a. Accepting the Estimate or Quotation via phone, email, in person or in writing; or
- b. Paying the deposit (if any) referred to in the Estimate or Quotation; or
- c. Communicating its order to the Company in a manner otherwise than in accordance with (a) above.

The Client cannot cancel a contract after an order has been accepted by the Company and are bound to pay the estimated or quoted price.

## 3. Prices

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- a. The Company will invoice the Client upon completion of the work which you have retained us to complete unless the work is ongoing (past the end of any month) in which case the Company will invoice the Client on a monthly time-taken basis. Invoices are payable within ten working days of the date of that invoice.
- b. Prices are estimated and quoted in New Zealand Currency and shall be exclusive of GST.
- c. If the Client does not pay their account by the due date and has not entered into any payment arrangement (which is at our sole discretion, as we do not provide credit facilities), the Company reserves the right to stop working for the Client immediately and will not be liable to the Client for any loss that they may suffer as a result of such discontinuance.
- d. The Company reserves the right to correct any typographical or clerical errors contained in the prices or specifications.

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## 4. Payment

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- a. Payment of the products and services shall be made within 10 working days following the date of invoice. The Company reserves the right to require the Client to pay for Products and/or Services prior to their supply.
- b. Due to covenants set by the Company's bankers and the volume of payments received, overpayments by the Client in error shall not be notified, rectified or remediated. Nonetheless, in extenuating circumstances:
  - i. The Company reserve the right to issue the Client with a credit for the amount overpaid
  - ii. The Company reserve the right Refund the Client the overpaid amount whilst deducting remediation costs from the amount paid
- c. Time for payment is of the essence and, without prejudice to any other rights of the Company, if the Client fails to pay any sum payable pursuant to any Contract when due:
  - i. The Company may treat the Contract as repudiated by the Customer or may until payment in full is made, suspend delivery of products without incurring any liability whatsoever to the Company;
  - ii. The Client shall (if so required by the Company) pay interest to the Company at the default interest rate of five percent (5%) per annum above the current base lending rate set from time to time by the Company's bankers. Interest shall be payable daily until the date when the payment is received; and
  - iii. The Client shall be liable for all the expenses and costs (including legal costs) in relation to the Company enforcing or attempting to enforce a Contract or these Terms and Conditions.

## 5. Default

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- a. In the event that:
  - i. The amounts payable by the Client to the Company are overdue, or the Client fails to meet any other obligation to the Company, under this or any

other Contract or agreement or in the Company's opinion the Client is likely to be unable to meet any payment or other obligations to the Company; or

- ii. The Client becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management; or
- iii. The Client no longer carries on business or threatens to cease carrying on business; or
- iv. The ownership or effective control of the Client is transferred or the nature of the Client's business is materially altered; then

The Company shall be entitled to cancel all or any part of any Contract with the Client which remains unperformed, in addition to and without prejudice to its other remedies; and all amounts outstanding under this Contract or any other Contract shall, whether or not due for payment, immediately become due and payable.

## 6. Copyright

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- a. Unless otherwise agreed, the Company shall retain copyright and intellectual property rights in all documents, reports, records, media, electronic files, drawings and designs prepared for and on the Client's behalf.
- b. The Client will be entitled to use the documents and any copies for the purposes for which they were intended however you (or any other person or entity) are not permitted to make use of, or modify any such

document for any other purpose without our agreement in writing. Concepts not chosen will remain the property of the Company.

- c. On completion and full payment of branding projects the intellectual property rights of the Client's logo design will transfer to the Client.
- d. Trademarking is the sole responsibility of the Client.

## 7. Privacy

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- a. I/We acknowledge that WebTek Limited will collect, use and securely hold information set out in an application for credit for the purpose of providing products or services to me/us, and/or in developing and running WebTek Limited, and/or providing me/us with information on products and services that WebTek Limited thinks might be of interest to me/us. If I/we ask WebTek Limited not to provide me/us with this information, WebTek Limited will comply with my/our request. I/We may ask WebTek Limited to show me/us the information it holds about me/us and to make corrections to it.
- b. I/We agree that WebTek Limited or any authorized agent of WebTek Limited may collect information about me/us from any person who can provide WebTek Limited with information that is of relevance to it. I/We consent to WebTek Limited giving my/our information to any person who can assist it with providing products or services to me/us and/or in developing or running its business.
- c. I/We understand that the Company will conduct a credit check on me/us. As part of that credit check,

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WebTek Limited will give my/our information to credit reporting agencies. Credit reporting agencies will use the information provided by WebTek Limited to update their credit reporting databases. When other parties use the credit reporting agencies' services, they will be provided my/our updated information. WebTek Limited might use credit reporting agencies' services in the future for purposes related to the provision of credit to me/us. For example, WebTek Limited may use credit reporting agencies' monitoring services to receive updates (if any) of the information held about me/us. If I/ we default in my/our payment obligations.

- d. Default information may be listed on the credit reporting agencies' databases and will therefore be disclosed to other parties when they use the credit reporting agencies' services.
- e. I/we agree that WebTek Limited can use any artwork for their portfolio, including draft concepts, unless requested to be kept confidential.

## 8. Websites

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- a. Prior to any website which the Company has created "going live" on the internet the Client must make payment for all work completed. Should payment not be made and in the event your website is already live and in relation to any work which we have undertaken to maintain or update that website then we reserve the right to shut down that website until such time as we receive full payment.
- b. If the Client has retained the Company to host your website, the

Company will charge monthly fees, and if the Client falls into arrears in relation to those monthly payments, the Company reserves the right to pull the website down and will not be liable for any consequences which might arise in the event of such a situation arising.

- c. Work requested, outside of the scope of the estimate/ quote and the approved design, will be charged for. After going live, updates or changes the Client wishes to make to the website will also be chargeable.
- d. Packaging and supplying website files for transfer or taking a website down will incur a cost and will be payable by the Client.

## 9. Email marketing

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- a. I/We agree that we will not send any unsolicited emails and to comply to New Zealand's Anti- Spam Policy legislation.
  - i. WebTek Limited will not be liable for the result or recourse of any emails sent through its email systems.
- b. After development, any updates or changes the Client wishes to make to email marketing templates will be chargeable at a time-taken basis.

## 10. Proofing

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- a. Proofs of all work may be submitted for Client's approval and the Company shall incur no liability for any errors not corrected by the Client in proofs submitted. Additional charges shall be made for any additional proofs that are required as a result of alterations required by the Client.

## 11. Guarantee

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- a. In consideration of the Company entering into a Contract to supply Products and/or Services to the Client, the Guarantor:
  - i. Guarantees payment of all monies owed by the Client to the Company, and
  - ii. Guarantees the performance by the Client of all obligations, responsibilities and covenants under the Contract.
- b. The Guarantor agrees that in the event of default by the Client in any payment, obligation, responsibility or covenant under the estimate or quotation, these Terms and Conditions or a Contract, the Guarantor may for all purposes be treated as the Client by the Company who shall be under no obligation to take proceedings against the Client before taking proceedings against the Guarantor, and the Guarantor will execute a mortgage over his/her or its property to secure payment of all monies owed and outstanding by the Client to the Company if requested by the Company.
- c. Should there be more than one Guarantor then their liability as Guarantors under this Guarantee shall be joint and several.

## 12. Miscellaneous

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- a. If any Condition or part of any Condition is held to be invalid or unenforceable the invalidity or unenforceability shall be deemed eliminated or modified to the minimum possible extent necessary to make the remainder of the Conditions enforceable.
- b. Failure by the Company to insist upon strict performance by the

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Client of any of the Conditions shall not be a waiver of any rights of the Company on any subsequent occasion.

- c. These Terms and Conditions and the Contract may only be varied by the Company in writing at its discretion.
- d. The Client may not assign or transfer any of its rights or obligations under or in connection with the Contract to any other person whatsoever.
- e. The Company reserves the right to sub-contract the performance of the Contract or any part of the Contract to any other party or person.

- f. Neither party shall be liable for any delay, alteration or failure to perform any of its obligations under a Contract where occasioned by an event beyond that party's reasonable control ("force majeure") and such party shall be entitled to a reasonable extension of time for the performance of any such obligations.
- g. The Client shall pay the costs and expenses including legal fees incurred by the Company in exercising any of its rights or remedies or enforcing any of the Conditions. All Contracts made between the Company and the Client shall be governed by and construed in accordance with the laws of New Zealand and the Client agrees to submit to the non-exclusive jurisdiction of the New Zealand Courts.

- h. Any notice given by one party to the other shall be deemed to have been delivered 48 hours after posting to the recipients registered office or last known address and immediately if forwarded by facsimile or email. Packaging and supplying files will incur a cost and will be payable by the Client in advance of files being supplied.
- i. Whereby pricing is not specified by a Contract or Service Level Agreement the Company shall charge its time per hour according to the following Schedule:
  - i. Administration - \$180
  - ii. Support - \$185
  - iii. Jr Developer - \$200
  - iv. Systems Manager - \$275
  - v. Sr Developer - \$320
  - vi. Client Services Executive - \$325
  - vii. Executive Director - \$390

## 13. Law

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These Terms and Conditions shall be governed by the laws of New Zealand and shall be construed in all respects as a New Zealand contract.

### Approval

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I/we agree to WebTek Limited's Terms and Conditions:

Company

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Name

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Signature

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Date

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WebTek Limited

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**T** 0800 555 852

**E** [info@webtek.co.nz](mailto:info@webtek.co.nz)

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***[www.webtek.co.nz](http://www.webtek.co.nz)***