



Terms of Trade

iConcept Enterprises Ltd
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1. Definition of Terms

- a. The contract for services shall be between iConcept Enterprises Ltd (Contractor) and the Customer, being the person/entity to whom the quotation is addressed. In the event that no quotation is provided, the Customer shall be the person/entity who instructed the Contractor to undertake the work or provide the services.
- b. Software in this document means: intangible personal property consisting of mathematical codes, programmes, routines, and other functions that control the functioning and operation of a computer's hardware and all associated documentation, including but not limited to working papers, and other instructions.

2. Services

- a. All goods and services supplied by the Contractor to the Customer are supplied on these Terms of Trade, unless otherwise agreed in writing
- b. This Service Agreement (Agreement) applies to the purchase of all services, including but not limited to, web design, web hosting, programming, and technical support services (collectively, the Services) provided by the Contractor. The Contractor reserves the right to amend its web hosting and related Service offerings at any time and to determine whether and when any such changes apply to both existing or future customers.

3. Obligations

- a. The Contractor will:
 - i. provide the Services in a timely and efficient manner; and
 - ii. will not be liable for any delay or non-performance in providing the Services if the delay or non-performance is attributable, either directly or indirectly, to circumstances beyond the control of the Contractor.
- b. The Customer will pay all amounts due and payable to the Contractor.
- c. In each and every respect, time shall be of the essence, in the performance of a party's obligations under these Terms of Trade.

4. Quoting and Pricing

The price for the Services will be as quoted by the Contractor in writing to the Customer. If

the Contractor has not provided a written quote, the Contractor's standard charges will apply.

- a. All prices are exclusive of GST.
- b. The Contractor may withdraw a quote for the provision of Services at any time before it is accepted by the Customer.

5. Billing and Payment

- a. Payment must be received by the Contractor on the 20th day of the month following the Contractor's invoice, unless the Contractor has requested payment earlier than that date.
- b. All amounts outstanding after the due date will be subject to a late payment interest charge of up to 2% per month, compounding. The Contractor may also recover from the Customer all legal and debt collection costs, including legal costs on a solicitor/client basis, incurred by the Contractor in enforcing or attempting to enforce its rights under these Terms of Trade.
- c. The Contractor reserves the right to change web hosting rates by notifying the Customer thirty (30) days in advance of the effective date of the change.
- d. For web hosting accounts, unless requested by the Customer to cancel the account, the Contractor will automatically renew the customer's web hosting account on its renewal date. To cancel the contract, the customer must email mail@iConcept.co.nz requesting account termination.

6. Termination

- a. The Customer may give notice to the Contractor at any time that it no longer wishes to receive Services from the Contractor. If this occurs, the Customer must pay the Contractor's fees for work done, and any other charges incurred, up until the date of termination.
- b. Without prejudice to any of the Contractor's other remedies, if any amount payable by the Customer to the Contractor is overdue or the Customer becomes insolvent, commits an act of bankruptcy, enters into or is likely to enter in any arrangement with its creditors or in the case of a Contractor does any act that would render it liable to be liquidated, or if a resolution is passed or proceedings commenced for the liquidation or voluntary administration of the Customer or if a receiver is appointed in respect of all or part of the Customer's assets, then:
 - i. the Contractor may cancel any outstanding order or arrangement with the Customer; and
 - ii. any moneys payable by the Customer to the Contractor whether due for payment or not will become immediately due and payable.

7. Intellectual Property

- a. All software specifically developed or written by the Contractor (hereafter, "Developed Software") for the Customer and the copyright and all other intellectual property rights in the Developed Software shall belong to and vest in the Contractor.
- b. The Contractor, for such consideration as agreed between the Contractor and the Customer, shall grant the Customer an exclusive, perpetual licence free of further charge to use the Developed Software on the following conditions:
 - (i) The Customer is entitled to use the Developed Software for the purpose(s) for which the Developed Software was commissioned and no other purpose(s) without the prior written consent of the Contractor which shall not be unreasonably withheld; and
 - (ii) The Customer is entitled to analyse the Developed Software subject to and according to the relevant provisions of the Copyright Act 1994 (or as that statute may be amended or replaced) relating, without limitation, to computer programs.
- c. The Contractor shall assert no proprietary right in any material provided by or produced by the Customer and held in a website hosted by the Contractor, or the website's associated database.
- d. The Customer shall immediately notify the Contractor if it becomes aware of any material it is using on its website or associated database which may infringe another person's legal rights in that material.
- e. The Customer shall indemnify the Contractor from any and all liability that may arise by virtue of the Customer's unlawful use, intentional or otherwise, of any material provided by or produced by the Customer and held by the Contractor in accordance with clause 7(c) above.
- f. The Contractor shall be the owner of any and all intellectual property rights, including but not limited to copyright rights, in any improvements or modifications made to the Developed Software by the Contractor at the Customer's request or otherwise.
- g. If the Customer wants to improve or modify the Developed Software as part of its use of the Developed Software it shall not do so without the prior written consent of the Contractor which shall not be unreasonably withheld. In consideration for any consent given the Customer shall offer the Contractor a non-exclusive license to use the subject improvements or modifications for itself and no other person's use or benefit.
- h. The Contractor is entitled to use, analyse, share and develop the non-confidential knowledge, experience and skills of general application it may gain through working with the Customer.

8. Confidential Information

a. In this clause:

- i. "Confidential Information" means information relating to the technology, technical processes, business affairs or finances of the other or of any affiliate of the other or of any suppliers, agents, distributors, licensees or customers of the other where such Confidential Information was received during the period of this Agreement. In the case of Customer, it includes the Customer's Data; and
- ii. "recipient party" means the party receiving such Confidential Information under this Agreement.

b. Each party, in its capacity as recipient party, undertakes and agrees to treat as secret and confidential and not at any time for any reason whatsoever to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any of the other party's Confidential Information.

c. The obligations of confidence referred to in this clause 1 do not extend to any Confidential Information which:

- i. is or becomes generally available to the public otherwise than by reason of a breach by the recipient party of the provisions of this subclause;
- ii. is known to the recipient party and is at its free disposal prior to its receipt from the other party; or
- iii. is subsequently disclosed to the recipient party without obligation or confidence by a third party owing no such obligations to the other party in respect of such information;

provided that if the recipient party is legally required to disclose any Confidential Information the recipient party will:

- iv. immediately notify the other party of such requirement;
- v. fully co-operate, at the other party's cost, with all legal actions taken by the other party to avoid or limit such disclosures; and
- vi. if the recipient party cannot avoid such disclosure, the recipient party will:
 - (i) only disclose such portions of the Confidential Information as is legally required; and
 - (ii) use its reasonable endeavours to obtain assurances that such information will be treated as confidential by any person to whom it is disclosed.

d. The obligations of the parties under this clause survive the expiry or the termination of this Agreement for whatever reason.

9. Acknowledgement of Design and/or Hosting by Contractor

The Customer shall permit the Contractor to display a discrete notice on its website or software advising viewers that the website or software was designed by and/or is hosted by the Contractor.

10. Email Services

We may make e-mail services available to users of our Services, either directly or through a third-party provider. We will not inspect or disclose the contents of private email messages except with the consent of the sender or the recipient or as otherwise required by law or by court or governmental order. We may employ automated monitoring devices or techniques to protect our users from mass unsolicited mailings (also known as "spam") and/or other types of electronic communications that we deem inconsistent with our business purposes. However, such devices or techniques are not perfect and we will not be responsible for any legitimate communication that is blocked or for any unsolicited communication that is not blocked.

Mailboxes may have a limited storage capacity. If the Customer exceeds the maximum permitted storage space, the Contractor may employ automated devices that delete or block e-mail messages that exceed the limit. The Contractor will not be responsible for such deleted or blocked messages.

11. Data and Privacy

In order to access some of the Contractor's Services, the Customer may be required to complete an online registration form, which requests certain information and data ("Registration Data"). By registering, the Customer agrees that all information provided in the Registration Data is true and accurate and that they will maintain and update this information as required in order to keep it current, complete and accurate.

iConcept Enterprises Ltd will never disclose Customers' information to third parties.

12. Limitation of Liability and Indemnity

- a. Except as required by law, the Contractor gives no express warranty in relation to any goods or services supplied to the Customer. The Customer acknowledges that it has not relied on any representation or warranty made on behalf of the Contractor.
- b. Certain legislation may imply conditions and warranties into these Terms of Trade. To the extent that such conditions and warranties may lawfully be excluded, all such conditions and warranties are expressly excluded.
- c. The Customer acknowledges that if it acquires the goods and services for a business purpose, then the statutory guarantees and implied terms, covenants and conditions contained in the Consumer Guarantees Act 1993 are excluded.
- d. Notwithstanding any other clause in these Terms of Trade, under no circumstances shall the Contractor be responsible to the Customer for any injurious act or default of the Contractor, nor, in any event, shall the Contractor be held responsible for any loss, injury or damage suffered by the Customer.
- e. While all care is taken by the Contractor, its directors, sub-contractors, and employees, liability in tort (including negligence) or otherwise is limited to the price of the Services provided. In particular, and without limiting the generality of this clause, the Contractor and its directors, sub-contractors and employees shall in no circumstances be liable for economic or consequential losses.
- f. The Customer indemnifies the Contractor from any claims, losses, liabilities and expenses related to, or arising out of, the services provided by the Contractor including,

without limitation, claims made by third parties (including the customer's customers) related to any false advertising claims, liability claims for products or services sold by the customer, claims for patent, copyright or trademark infringement, claims due to disruption or malfunction of Services provided or for any content submitted by the Customer for publication by the Contractor.

- g. The Contractor shall not be responsible for any economic or consequential losses which may arise from the Contractor's Services going off-line or being unavailable for any reason, or resulting from the corruption or deletion of any web site or web application hosted with the Contractor.
- h. The Contractor does not represent or warrant that the customer will receive continual and uninterrupted web service.
- i. The Customer is responsible for all activity originating from their use of a website hosted by the Contractor unless proven to be a victim of outside hacking or address forgery.
- j. The Contractor is not responsible for the Customer's files residing on servers under the control of the Contractor, servers sub-contracted to, or leased by, the Contractor, or any server of a sub-contractor of the Contractor. The customer is solely responsible for independent backup of data stored or published.
- k. The Contractor is not liable for protection or privacy of electronic mail or other information transferred through the internet of any other network provider the Customer may utilise.
- l. The Customer is solely responsible for maintaining the confidentiality of their password and account when using any of the Contractor's Services and for any and all statements made, and acts or omissions that occur through the use of their password and account, including any mail sent and any charges incurred. The Customer must take steps to ensure that others do not gain access to their password and account. iConcept Enterprises Ltd personnel will never ask Customers for their password. Customers may not transfer or share their account with anyone and we reserve the right to immediately terminate an account in the event of any unauthorised transfer or sharing thereof.

13. Acceptable Use

In using the Contractor's Services, the customer agrees to abide by the Contractor's Guidelines for Acceptable Use. The Contractor shall be the sole arbiter of what is and is not acceptable use and reserves the right to:

- a. terminate without notice, any web hosting account considered to be engaged in unacceptable activity or that causes harm to any of the Contractor's customers' web sites;
- b. delete all content and files of a terminated account;
- c. withhold any pre-paid funds for any site removed for engaging in unacceptable activity;
- d. refuse, cancel, or suspend Services at our sole discretion.

14. Guidelines for Acceptable Use

- a. The Contractor's Services may be used for lawful purposes only. Any illegal use of our services or use that may subject us to liability is unacceptable.
- b. Pornography and sex-related merchandising, or links to such material, even if legal, is not acceptable use of our services unless prior consent to a customer has been given. Consent can only be granted to a customer by the Contractor. You must contact us if you intend to use our Services for this purpose.
- c. Running programs in the background without the Contractor's prior written authorisation, or running chat rooms, Internet Relay Chat, IRC bots, and the like are not acceptable uses of the Contractor's Services.

15. General

a. No Waiver

No waiver of any breach of, or failure to enforce, any provision of these Terms of Trade at any time by any party in any way affects, limits or waives the right of such party thereafter to enforce compliance with these Terms of Trade.

b. Entire Agreement

These Terms of Trade record the entire agreement between the parties and prevails over any earlier agreement, written or oral, which are of no further effect.

c. Amendments

We reserve the right to change these Terms of Trade from time to time without notice to you. You acknowledge and agree that it is your responsibility to review our website iConcept.co.nz and these Terms of Trade periodically and to be aware of any modifications. Your continued use of the Contractor's Services after such modifications will constitute your acknowledgment of the modified Terms of Trade and agreement to abide and be bound by the modified Terms of Trade.

d. Further assurance

Each party will promptly do everything reasonably required to give effect to these Terms of Trade.

e. Partial invalidity

If any part of these Terms of Trade is held to be invalid or unenforceable by any judicial or other competent authority but would be valid or enforceable if some part of the provision were modified or deleted, the provision in question will apply with the minimum modification or deletion necessary to make it valid and enforceable, and the other provisions in these Terms of Trade will be unimpaired and will remain in full force and effect.

f. Governing Law

These Terms of Trade are governed by and will be construed in accordance with the laws of New Zealand. Any dispute will be determined by the exclusive jurisdiction of the New Zealand Courts.

16. Use of the Contractor's Services constitutes acceptance and agreement to these Terms of Trade.

I/We confirm I/we have read and accept these Terms of Trade for the provision of Services by iConcept Enterprises Ltd.

Name

Signature

Date