

M. BARTELS WEB DESIGN

Web Services Terms and Conditions

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M Bartels Web Design - Web Services Terms and Conditions

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1. Commencement

- 1.1. The Contract shall commence on the date of the Quotation and shall conclude on the Completion Date.

2. Your Obligations and Acknowledgments

2.1. You must:

- a. provide the content as requested by M Bartels in a reasonable time;
- b. provide any other information, ideas or suggestions as requested by M Bartels in a reasonable time;
- c. make written requests (via email) for all website updates/upgrades/changes;
- d. allow for 48 hours minimum turnaround period, from the time you submit a written request, for it to be posted on the Web Page;
- e. all content must be supplied digitally and electronically. Text must be supplied in "clear text" format and the quality of images and logos supplied must be of a high quality (PNG,GIF,BMP,TIF format) so as to maintain high quality images on the website.
- f. all website content must be provided by you before we can commence any work.
- g. ensure that material you submit to M Bartels for inclusion in the web site through use of the Service is not unlawful or for an improper purpose, including information that is defamatory, misleading or deceptive, in breach of copyright or would otherwise expose M Bartels to any liability, legal proceedings or other sanction;
- h. ensure that you do not make, arrange or authorise the insertion of any reference to M Bartels or M Bartels Web Design in any document (including promotional or merchandising material) or on any web site without our prior written consent;
- i. promptly execute any document, make any arrangement or do anything that is reasonably requested by M Bartels in order to facilitate the provision of the Design Services, including but not to any necessary authorisation, permission or security passwords concerning access to codes, programs or other information in relation to your web site held by any other party (eg. a third party internet service provider that hosts your web site) and any edits to text to be included on your web site;
- j. You represent and warrant that you are authorised to make available the material submitted by you for inclusion in any web site we are to design on your behalf and that you are acting under authority of the proprietors of any related real estate property.
- k. provide written advice, if your organisation has more than one manager/owner, prior to any website content management instructions/requests by your organisation, on what your approvals process is for content management and identify a single individual who is authorised to provide update requests on behalf of your organisation. This must be authorised by all managers of the organisation.
- l. for us to fulfill any content changes you must provide M Bartels full access to all the systems to perform the work. Any additional time spent organising access and getting passwords etc, will be deducted from the total time.

2.2. You acknowledge that:

- a. you have read and agree to be bound by the terms of M Bartels Privacy Policy, Code of Conduct and Copyright notices;
- b. by accepting M Bartels Web Design services, you hereby assign all intellectual property rights in any web site we design on your behalf;
- c. upon payment of the final invoice, we will assign to you all intellectual property rights in any web site we design on your behalf on condition that you grant M Bartels an irrevocable, world-wide, royalty free license to copy and adapt any such web site in order to provide Design Services, to promote the Design Services or for any other reason.
- d. M Bartels is not under any obligation to monitor or censor the material submitted by you but reserves the right to do so;
- e. M Bartels is not responsible for the content of any web site we design on your behalf or for any errors or omissions in any data provided by or on behalf of you;
- f. systems or technological failure may impede or prevent provision of the Design Services;
- g. you are responsible for and must pay the cost of all telecommunications and Internet access charges incurred when hosting or accessing any web site designed by M Bartels on your behalf, whether or not such access has been arranged by us;
- h. if you have not arranged for your web site to be hosted, we shall deliver completed web sites we have designed by way of downloadable file;
- i. you are responsible for the security and integrity of your data; and transmission of data over the Internet can be subject to errors and delays;
- j. unless otherwise agreed, if M Bartels provides a mailing list hosting service this service will be managed confidentially, M Bartels reserves the right to advise the confidential mailing list of a change of admin should service be terminated.

3. Fees

3.1. Calculation of Fees

Fees are calculated based on an hourly rate as stipulated in your agreement letter, payable in increments of 10 minutes, including renegotiation and preparation and management time incurred. This is billed monthly. No advice of costs during the month will be provided unless requested.

3.2. Outlays

You are responsible for paying any additional outlays which may include, but are not limited to:

1. yearly web hosting fee of \$99 every 12 months and
2. domain registration charges as outlined in your initial quotation.

3.3. Revision of Fees & Charges

The revision of fees and charges is subject to an annual adjustment.

3.4. Refunds

Refunds for goods and services rendered are not offered if you change your mind. If a service or product is faulty or cannot be provided as specified at time of purchase a refund may be offered in way of account credit or full refund.

3.5. GST

All rates, charges or expenses, etc referred to in this Agreement or in the Quotation are GST exclusive unless otherwise stated to be inclusive of GST and you will pay M Bartels an additional amount on account of any GST which we are liable to pay as a result of any supply we make to you.

4. Termination of Agreement

4.1. You may terminate this Agreement at any time.

4.2. We may suspend services and terminate this Agreement if:

- a. you fail to pay the tax invoice(s) as required within 7 days;
- b. you fail to provide M Bartels with adequate instructions, fail to respond to M Bartels pursuant to clauses 2.1(a) or (b) or (c) within a reasonable time or otherwise breach the terms of this Agreement;
- c. you give instructions that are deliberately false or intentionally misleading;
- d. you fail to accept advice we give you;
- e. you engage another web designer to advise you on this matter without our consent;
- f. you ask M Bartels to act unethically (see ethical guidelines);
- g. you enter into bankruptcy, liquidation, administration, receivership, a composition of arrangement with your creditors, or appoint a receiver or manager over all or any part of your assets or become or are deemed to become insolvent; or
- h. you die, or if you are in a partnership, are dissolved or an application to dissolve is filed, or if you are a company, are wound up or an application for winding up is filed.
- i. warranted for another just cause.

4.3. Liability of fees

If the agreement is terminated either by you or us, you remain liable for the Fees and outlays payable, if applicable, up until that time.

4.4. If you do not pay monies in accordance with this Agreement, we may:

- a. suspend the Services;
- b. deny you or your customers access to the web site and stop the operation of the website;
- c. charge interest on any overdue amount at an annual rate equal to 5%
- d. demand that you pay for any costs of collecting the overdue amount, including but not to collection of agency fees and legal fees, on an indemnity basis.
- e. On termination, we are entitled to retain possession of any information, contacts, databases, documents, notes, memorandum, computer code, computer files, or software while there is money owing to us, unless and until payment is made by you.
- f. You acknowledge and agree that termination of the Contract pursuant to this clause does not relieve you of your obligations and liabilities pursuant to the Contract and we reserve our right to enforce such obligations and liabilities in any event.

5. Limitation of Liability

5.1. To the extent allowable under the Trade Practices Act 1975 (Cth) or any other applicable law, we:

- a. exclude all conditions and warranties implied into the Contract;
- b. exclude consequential, special or indirect loss or damage (included but not to loss of opportunity, loss of revenue and loss of profits);
- c. limit our liability for breach of any condition or warranty that we cannot exclude to the greater of (at our option):
 - i. Resupplying the Design Services; or
 - ii. Paying the cost of having the Design Services resupplied; and
- d. limit our liability in respect of any other claim in connection with the agreement whether the claim is based in contract, tort (including negligence) or statute to the amount paid to M Bartels by you under the Agreement.

5.2. We will not be liable under the Contract to the extent that liability is caused by:

- a. any breach of your obligations under the Contract; or
- b. any delay in performance or breach of the Contract which arises as a result of any matter beyond our control including but not to viruses, other defects or failure of the server hosting our web site or any web site we design on your behalf.

6. Indemnity

You indemnify M Bartels ("those indemnified") against any direct or consequential liabilities, losses, damages, expenses and costs (including legal expenses on a solicitor and own client basis) incurred or suffered by any of those indemnified as a result of any claim or proceedings brought by a third party against those indemnified in connection with any material generated and submitted by you in connection with the Design Services.

7. Waiver

7.1. No right under this agreement is waived or deemed to be waived except by notice in writing signed by the party waiving the right.

7.2. A waiver by one party under clause 7.1 does not prejudice its rights in respect of any subsequent breach of this agreement by the other party.

7.3. A party does not waive its rights under this agreement because it grants an extension or forbearance to the other party.

9. Entire Contract

These Terms & Conditions, the attached Schedules containing the Quotations, the Project Specification, the Quotation and the Planning Worksheet and any Revised Quotation, if one is agreed between the parties, comprise the entire Contract and supersede all prior understandings, agreements or representations between the parties that concern provision of the Design Services.

11. Severance

If a clause is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this agreement.

12. Review

In addition to reviewing the pricing structure the terms and conditions will be occasionally reviewed. At such time clients will be advised of the new agreements in place.

13. System Administrators' Code of Ethics

As the System Administrator, M Bartels commit to the highest standards of ethical and professional conduct, and agree to be guided by this code of ethics.

13.1. Professionalism

I will maintain professional conduct with my clients, and will not allow personal feelings or beliefs to cause me to treat people unfairly or unprofessionally.

13.2. Personal Integrity

I will be honest in my professional dealings, and forthcoming about my competence and the impact of my mistakes. I will seek assistance from others when required.

I will avoid conflicts of interest and biases whenever possible. When my advice is sought, if I have a conflict of interest or bias, I will declare it if appropriate, and recuse myself if necessary.

13.3. Privacy

I will access private information on the systems I manage only when it is necessary in the course of my technical duties.

I will maintain and protect the confidentiality of any information to which I may have access regardless of the method by which I came into knowledge of it.

This includes the rights of my clients and the users of the systems I administer.

13.4. Laws and Policies

I will educate myself and others on relevant laws, regulations and policies regarding the performance of my duties.

13.5. Communication

I will communicate with clients, users and colleagues about matters of mutual interest. I will strive to listen to and understand the needs of all parties.

13.6. System Integrity

I will strive to ensure the necessary integrity, reliability, and availability of the systems for which I am responsible.

I will design and maintain each system in a manner to support the purpose of the system to the organisation.

13.7. Education

I will continue to update and enhance my technical knowledge and other work-related skills. I will share my knowledge and experience with others.

13.8. Responsibility to IT Community

I will cooperate with the larger IT community to maintain the integrity of network and computing resources.

13.9. Social Responsibility

As an informed professional, I will encourage the writing and adoption of relevant policies and laws consistent with these ethical principles.

13.10.Ethical Responsibility

I will strive to build and maintain a safe, healthy, and productive workplace.

I will do my best to make decisions consistent with the safety, privacy, and well-being of my community and the public, and to disclose promptly factors that might pose unexamined risks or dangers.

I will accept and offer honest criticism of technical work as appropriate and will credit properly the contributions of others.

I will lead by example, maintaining a high ethical standard and degree of professionalism in the performance of all my duties. I will support colleagues and co-workers in following this code of ethics.

13. Definitions & Interpretation

13.1.Definitions

“Completion Date”

“Content” means all data, logos, designs, graphics, content and any related materials to be incorporated in the website.

“Design Services” may be applied to a new or existing website and may include any of the following or a combination thereof:

- Preparation of basic templates for web pages
- Revision and organisation of web site content
- Inclusion and manipulation of formats, images, typefaces, layout, style and overall presentation of web pages
- Facilitation of hosting services
- Arranging applications for domain names and/or re-delegation of domain names; or
- Recording and reporting on website traffic statistics.

“Our web site” refers to: <http://www.mbweb.com.au>

“Planning Worksheet” means the day to day work schedule for the Design & Development Services in the Planning Worksheet

“Project Specifications” means the description of the Design & Development Services.

“Quotation” means the description of the fees and costs payable for the Design & Development Services.

“Quotation Period” is 30 days from the date of the Quotation.

“Revised Quotation” means a subsequent amended quotation agreed between the parties after the commencement of this agreement.

“We”, “Our”, “Us” refers to SURGE MEDIA and its subsidiaries, employees, officers, agents and affiliates.

“Web site” means the location accessible on the internet through the World Wide Web and which provides multimedia content via a graphical user interface

“You”, “Your” or “the Client” refers to you as the owner and/or operator of a website to which our Web Site Design Services (the “Design Services”) are applied.

“Your web site” refers to any web site owned and/or operated by you to which our design or management services are applied.

13.2. Interpretation

In this agreement unless the context otherwise indicates:

- headings are for convenience only and do not affect the interpretation of this agreement;
- reference to the singular includes the plural and vice versa;
- reference to any gender includes the other genders;
- reference to a person includes a corporation and vice versa;
- reference to a party includes that party's executors, administrators, successors and permitted assigns;
- every obligation entered into by two or more parties binds them jointly and each of them severally;
- a reference to a schedule is to a schedule to this agreement; a reference to a part, clause or other sub-clause is a reference to a part, clause or other sub-clause in this agreement;
- any annexes and appendices form part of this agreement;
- any document referred to in this agreement will mean that document as well as any other document in substitution for that document which has been approved in writing by the parties;
- where any word or phrase is defined in this agreement, any other grammatical form of that word or phrase will have a corresponding meaning;
- the words "includes" and "including" or words of similar effect are not words of limitation; and
- a reference to a statute, regulation or other law includes all regulations and instruments made under such law and all consolidations, amendments, re-enactments or replacements of it.