

Agreement to the following terms and conditions are confirmed automatically when you approve the quotation. I either require your confirmation that these terms and conditions are accepted otherwise if you continue to instruct me to proceed with this project, then that shall be on condition that these terms and conditions are accepted by you.

DEFINITIONS

In these terms and conditions the following terms have the following meanings:

'DWD' (Darwin Web Design) means I, Eva Pettifor the seller/provider of services trading under the name: Darwin Web Design, ABN 50 904 180 613.

'Client' or 'you' means the customer identified on the accompanying quotation.

'CMS' means Content Management System, the online web publishing platform used to create, run and maintain content of a website (and its associated modules). This software is stored remotely on a cloud based web hosting server.

'Intellectual Property Rights' means any form of intellectual property right or form of intellectual property including copyright, names, trademarks, designs, patents, goodwill rights, trade secrets, confidential information relevant in connection with material on your website, the user interface of the website including but not limited to screens, organisations, patents and operation or control features and all software associated with the website.

'Material' means any website content in any medium whatsoever including textual, graphical, audio, video or photographic material, together with any software, which will be incorporated into your website.

'Third Party Material' means any material incorporated into your website over which any third party (being any person or legal entity not a party to these terms and conditions) has any right or entitlement including any Intellectual Property Rights.

TERMS AND CONDITIONS

1. Payments

Invoices are emailed in digital format. DWD accepts payment by direct debit or credit card (via PayPal).

- a) **Design and development:** Pre-payment is required for all design projects and website launch will follow after full payment clears.
Projects \$500 and under : full payment prior to starting
Projects \$501 and over : 50% deposit is required prior to starting, the remaining 50% invoice will be issued when the completed design has been approved – this final invoice is payable before launch or within 7 days (whichever arrives sooner). Once this payment has cleared, one round of simple content related changes are available if needed, this does not include structural design modifications (any such change requests must take place within 1 week of completion). The website will then be launched and training carried out if included in the quote.
- b) **Web hosting service plans** - We have the choice of 2 web hosting options and your quote will reflect the option you chose:
OPTION 1 (DARWIN WEB DESIGN) - As resellers for Adobe Business Catalyst we will invoice you on a yearly basis for your hosting plan. The first year and subsequent renewals are invoiced via email and payments are due in advance because we prepay the supplier on your behalf and that is their billing cycle.
OPTION 2 (ADOBE BUSINESS CATALYST) - Set up and renewals are made directly with Adobe Business Catalyst at the wholesale rate. Yearly or monthly plans are available and are paid in advance, pricing options provided separately to your web design and development quote. Initial payment and renewals are automatically deducted from your nominated credit card and you will be emailed a tax invoice from Adobe, which can then be managed via your online website console (login will be provided). If your card changes or expires, it is important to update your payment details via your online console as soon as possible to prevent website expiry. Adobe BC do not accept direct debit as a payment method.
For both options: Ongoing website technical support is provided locally by Darwin Web Design. If renewals are not paid, unfortunately expired websites cannot be retrieved, Adobe Business Catalyst permanently delete unpaid sites from their servers which is outside of DWD's control.
- c) **Domain name registration:** 2 years prepayment in advance with DWD unless your domain is registered with your own provider in which case invoicing and technical support of domain name issues is your full responsibility.
- d) **Other charges:** You will be responsible for applicable taxes, duties or levies (including GST) in line with running your business

online. This includes third party services such as eCommerce payment gateway charges/online merchant fees, associated bank charges or booking engine fees if these services are added to your website.

2. Material required by you

DWD requires ALL material up front and will confirm that it fits within the quotation prior to sending the deposit invoice and starting any work.

5. Intellectual property

You are responsible to comply with the following conditions:

- g) to obtain all necessary permission, authorisations, licenses and consents in relation to the use of Third Party Material which is incorporated into the website
- h) to ensure that use any Third Party Material incorporated into the website does not infringe the Intellectual Property Rights of any Third Party
- i) to pay for all royalties or licence fees associated with the use of a Third Parties Intellectual Property Rights in connection with any Third Party Material incorporated into the website
- j) if a credit to a Third Parties work is requested (with the exact wording and a link to their website if applicable), I must be notified so I can add this to the website
- k) if people's faces feature in photographs, it is your responsibility to seek permission that their images are published online and keep records of their agreement
- l) if children's faces feature in photographs, it is your responsibility to seek parent or guardian permission to use their image
- m) you must be accountable and the main point of contact if a dispute arises or copyright issues are challenged including providing proof of ownership or agreement to use material that is not your own.

Intellectual Property in the website shall vest in you except for any pre-existing material, other than graphic design, belonging to DWD including software, documents, templates and data which are incorporated into and used in developing the website, and the user interface and source code of the website. You agree to forever release and indemnify DWD and agents against all actions, claims and demands (including the costs of defending any action, claim or demand) which may be instituted against DWD or agents arising from or in any way connected with any breach or non compliance by you with any of the terms and conditions of these terms and conditions under the heading 'Intellectual Property'.

6. Web hosting

SaaS (software as a service) web hosting – The hosting we employ runs on a dedicated server running a centralised version of the CMS software. This type of hosting includes automatic software upgrades, security patches and any new features that are added ensuring your website is always running on the latest version. Because of the structure of the system, these websites and associated services cannot easily be moved to another provider. Third party scripts can not be added to the server.

As a partner with the hosting provider, DWD will provide support for web hosting but not be liable if (in the very unlikely event that) the hosting provider closes down or their service is compromised in any way. Such circumstances beyond the control of DWD include, but are not limited to: major server upgrades, strikes, lockouts, rebellions; fire; acts of God; shortages of raw materials; Government decrees, proclamations or orders; transport difficulties; denial-of-service (DOS) attacks and other circumstances of hacking, and failures or malfunctions of computers or other information technology systems. As all hosting must be prepaid in advance. Refunds will not be provided in the unlikely event of any type of service interruption. Please see the "Payments" section above for billing terms and conditions.

7. Email hosting

As web designers, DWD do not provide or support email hosting but can refer you to an IT company to provide this service if requested. Alternatively if you have your domain based email accounts established, we can assist with the launch of your website without affecting those email accounts. Please discuss your requirements with DWD for a customised solution.

8. Completion date

DWD and the client must work together to complete the web design project in a timely manner, all material is required up front. Both parties agree to work with speed and efficiency to complete the web design project no later than the estimated time.

9. Errors and liabilities

DWD will use all due care to ensure services created by DWD are free of errors. DWD will correct any self-made errors in the course of working on a client's site. DWD does not accept any responsibility for losses or damage arising from errors made by the client during self-editing, and may charge an hourly rate to fix any such errors (if errors can be identified and fixed).

10. Advice and information

DWD does not guarantee any client's success or that any particular results will be achieved in connection with the services provided by DWD. Any advice, recommendation, information, assistance or services given by the DWD is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty of accuracy, appropriateness or reliability and the client does not accept any liability or responsibility for any loss suffered from the client's reliance on such advice, recommendation, information, assistance or service, to the extent available by law.

11. Confidentiality and privacy

Neither party may use or disclose any confidential information other than: (a) to its employees to the extent necessary, (b) with the express prior written consent of the other party and (c) to its professional advisers, on a confidential basis. Each party agrees to implement such security arrangements as may be necessary to ensure that the secrecy of the confidential information is preserved. The client's personal information, such as email address and any other contact details will only be used, as required, to undertake the contracted applications.

12. CMS software

- a. If training is included in the quotation for the use of DWD services, it is assumed that the client has competent general computer skills (browsing internet, use of email, office software and file management), training does not include introductory computer skills
- b. DWD CMS is structured in such a way that the styles and layout source code are secured in inaccessible location providing less risk of accidental damage to the website template layout by the client. Not all visible areas of a web page are accessible for the client to edit via the CMS.
- c. The SAAS based CMS we use has many features but may have some technical limitations if you are seeking something highly customised beyond what the system can provide. Some features and customisation requests may not be possible (or may need additional services of a web programmer beyond the scope of this quotation). Please ask DWD if you are expecting a certain feature for confirmation before this project commences.

14. Search engines

It can take up to several months for the major search engines to index a client's website. Due to external factors, such as changes to the way search engines rank websites, DWD cannot offer any guarantees regarding the position achieved for websites although we have provided success for many clients. We cannot accept liability for any change in rankings, or drop off in the position of your website due to changes in the algorithms of the search engines or the factors that they use to rank websites.

15. Browsers

DWD will endeavour to ensure that any website or application will function correctly on the server it is initially installed on and that it will function correctly when viewed with current versions of popular web browsing software and mobile devices. DWD can offer no guarantees of correct function with future browser software as they constantly change.

16. Acceptable use policy

DWD services may not be used in any manner that is illegal, discriminatory, abusive, insulting, threatening, obscene, harassing, racist, or otherwise inappropriate.

17. Cancellations / refunds

- a. Domain name registration and web hosting: These services are prepaid in advance with the respective service provider and therefore are non-refundable.
- b. Website design and other online services: The client must advise DWD by in writing of the cancellation request. DWD will invoice the client for any work completed to date plus any prepaid fees to suppliers or contractors if applicable. The client agrees to pay this invoice within the 7 day term.