

MYSTICS WEBSITE DESIGN SERVICE AGREEMENT - TERMS AND CONDITIONS

This Service Agreement (the "Agreement") is made between Mystics Website Design (ABN 56 391 143 266) ("Mystics"), and the party identified in the signature section of the Agreement as Client ("Client"). For good and valuable consideration, Mystics and Client agree as follows:

1. DEFINITION OF TERMS

MYSTICS – Melanie Henry, 8 Alexander Avenue, Kiama Downs trading as MYSTICS WEBSITE DESIGN, having its principal place of business at the above address, aforesaid

The Client - the entity which enters into a contract with MYSTICS.

Domain Name - the root address of a website, e.g. www.webaddress.com. All such names must be registered with the appropriate naming authority, which will usually charge a fee.

Downtime - time when the website is not accessible via the Internet. This may be because of a technical failure of the Host or because work is being carried out on the site.

Host - the company on whose system the Website physically resides.

Link, Hyperlink - a 'clickable' link embedded on a web page which may take the form of a graphic or text.

Search Engine - a website which contains a directory of websites on the Internet enabling users to find websites by subject matter classification.

Website - a collection of web pages and associated code which forms an integrated presence.

The Work - the subject matter of the contract between the Client and MYSTICS.

2. FEES

2.1 Fee Payable

A non refundable deposit of 30% of the total fee payable under the contract is due immediately upon the signing of the contract. The remaining 70% shall become due when the Work is completed to the reasonable satisfaction of the Client but subject to the terms of Clause 4.3 Approval of Work and Clause 4.4 Rejected Work hereof. MYSTICS reserves the right not to begin the Work until the said deposit has been paid in full. The fee quoted in the contract does not include the cost of domain registration, hosting set up fee or hosting.

2.2 Maintenance Fees

Maintenance, if included in the contract, is for a minimum of 3 months and will then continue on a month to month basis. Cancellation of maintenance plans should be requested via email.

3. DISCLAIMERS

3.1 Third Parties

MYSTICS can take no responsibility for services provided by third parties through us or otherwise, including the Hosting of the Client's Website, although MYSTICS will endeavour to ensure that Website downtime is kept to a minimum.

3.2 Maintenance and Correction of Errors

MYSTICS takes no responsibility for the functionality or maintenance (unless a maintenance contract is in place) of the Website after the Work has been completed. Errors (both technical and typographical) attributable to MYSTICS will be corrected free of charge, but MYSTICS reserves the right to charge a reasonable fee for correction of errors for which MYSTICS is not responsible, including, but not limited to malicious modification of the Website by a third party and typographical errors contained in materials provided to MYSTICS by the Client.

3.3 Extent of Work

Installation on the Internet is limited to the uploading of all necessary files to the Host, and testing of functionality. No registration of the Website with Search Engines will be undertaken unless otherwise agreed with the Client.

3.4 Consequential Loss

Under no circumstances will MYSTICS be responsible or liable for financial or other loss or damage caused by the failure or use or misuse of its software. The Client should ensure that data on their site is regularly backed up and that a contingency plan is in place to minimize possible losses as a result of software failure.

3.5 Status and Duration of Offers

Proposals and offers are valid for a period of one month from the date issued. MYSTICS is not bound to honour offers that have expired. Offers are not legally binding until an acceptable timetable for the work has been agreed by both parties. This timetable must be agreed within the month that the offer is valid. If an acceptable timetable has not been approved by both parties within one month of the offer being made, the offer is deemed to have expired.

3.6 Search Engine Listings

MYSTICS does not guarantee listings on Search Engines and the Client accepts that it is Search Engines and not MYSTICS who determine whom they list and whom they will not. The Client further understands there is no guaranteed placement or rank on the Search Engines and that a new website may never even appear on Search Engines at all. MYSTICS does not control Search Engines' algorithms and huge shifts can appear daily, weekly and even hourly.

4. COMPLETION OF WORK AND PAYMENT

4.1 Completion of Work

MYSTICS warrants completing the Work in accordance with its Standard Terms and Conditions to the specifications previously agreed with the Client. MYSTICS will not charge more than the amount previously agreed unless the Client has varied the specifications of the Work since the agreement. MYSTICS will not undertake changes to the specifications of the Work which would increase the cost, without prior written authorisation from the Client.

4.2 Supply of Materials

The Client is to supply all materials and information required for MYSTICS to complete the Work in accordance with the agreed specification. Such materials may include, but are not limited to, photographs, written-copy, logos and other printed materials. Where the Client's failure to supply such materials leads to a delay in completion of the work, MYSTICS has the right to extend previously agreed deadlines for the completion of the Work by a reasonable amount. Where the Client's failure to supply materials prevents progress on the Work for more than 21 days, MYSTICS has the right to invoice the Client for any part or parts of the Work already completed.

4.3 Approval of Work

On completion of the Work, the Client will be notified and have the opportunity to review it. The Client should notify MYSTICS, in writing, of any unsatisfactory points within 7 days of receipt of such notification. Any of the Work which has not been reported in writing to MYSTICS as unsatisfactory within the 7 day review period will be deemed to have been approved. Once approved, or deemed approved, work cannot subsequently be rejected, and the contract will be deemed to have been completed and the 70% balancing payment under Clause 2.1 Fee Payable will become due. The Contract will remain in effect until all obligations have been completed in terms of this Clause.

4.4 Rejected Work

If the Client rejects the Work within the 7 day review period, or will not approve subsequent Work performed by MYSTICS to remedy any points reported by the Client as unsatisfactory, and MYSTICS considers that the Client is unreasonable in his repeated rejection of the Work, the contract will be deemed to have expired and MYSTICS can take any legal measures to recover both payment for the completed Work and reasonable expenses incurred in recovering payment.

4.5 Payment

Upon completion of 7 day review period, MYSTICS will invoice the Client for the 70% balancing payment in accordance with Clause 2.1 Fee Payable hereof, which, in the absence of agreement to the contrary, is to be paid by the Client within 7 days of the date that the invoice was issued.

4.6 Remedies for Overdue Payment

If payment has not been received by the due date, MYSTICS has the right to suspend ongoing work for Client, until such time that full payment of the outstanding balance has been received. If full payment has still not been received 21 days after the due date, MYSTICS has the right to apply a late payment fee of \$30 as well as replace, modify or remove the Website and revoke the Client's licence of the Work until full payment has been received. By revoking the Client's licence of the Work or removing the web site from the Internet, MYSTICS does not remove the Client's obligation to pay any outstanding monies owing.

5. INTELLECTUAL PROPERTY

5.1 Offers and Proposals

Offers and proposals made by MYSTICS to potential clients should be treated as trade secrets and remain the property of MYSTICS. Such offers and proposals or the information contained within them must not be passed to third parties or publicly disseminated without prior written authorization from MYSTICS. This includes, but is not limited to, technical features, functionality, aspects of the design and pricing information.

5.2 Warranty by Client as to Ownership of Intellectual Property Rights

The Client will obtain all the necessary permissions and authorities in respect of the use of all copy, graphic images, registered company logos, names and trademarks or any other material it supplies to MYSTICS for inclusion on the Website. The conclusion of a contract between MYSTICS and the Client shall be regarded as a guarantee by the Client to MYSTICS that all such permissions and authorities have been obtained and that the inclusion of such material on the Website would not constitute a criminal offence or civil delict. By agreeing to these terms and conditions, the Client removes the legal responsibility of MYSTICS and indemnifies the same from any claims or legal actions however related to the content of the Client's site.

5.3 Domain Name

Any Domain Name obtained will belong to the Client. The Client agrees to indemnify MYSTICS, including any incidental costs, against any claims that a Domain Name applied for, or obtained, violates the intellectual property rights of a third party. The Client warrants that the domain name sought is not a trademark of a third party.

5.4 Licensing

Once MYSTICS has received full payment of all outstanding invoices and the Work has been approved by the Client in accordance with Clause 4.3 hereof, the Client will be granted a licence to use the Website and its contents.

5.5 Trade Secrets

Any code that is not freely accessible to third parties and not in the public domain, and to which MYSTICS or their suppliers owns the copyright, may not be copied, published, distributed or passed to any third parties in any form without prior written consent from MYSTICS. Unless previously agreed otherwise in writing, no modifications may be made by the Client or any third party to code to which MYSTICS or their suppliers owns the copyright. MYSTICS acknowledges the intellectual property rights of the Client. Information passed in written form to MYSTICS, and that the Client has indicated is confidential or a trade secret, will not be published or made available in any other way to third parties without the prior written consent of the Client.

6. RIGHTS AND RESPONSIBILITIES

6.1 Right to Terminate

MYSTICS reserves the right to refuse or break a contract without prior notice, if it is believed that the Client, their Website, or any material is illegal, immoral or otherwise unacceptable.

6.2 Events Beyond the Control of MYSTICS

MYSTICS will not be liable for breach of contract where that breach was due to software, hardware or electrical failure, natural events such as fire or other events beyond the control of MYSTICS.

6.3 Supply and Pricing of Services

MYSTICS reserves the right to use whoever it feels appropriate at the time for third party software and services, and to alter its prices as necessary without prior notice and without affecting existing contractual pricing agreements.

7. INTERPRETATION

7.1 Jurisdiction

This Agreement shall be governed by the laws of Australia which shall claim venue and jurisdiction for any legal action or claim arising from the contract between MYSTICS and the Client. The said contract is void where prohibited by law.

7.2 Survival of Contract

Where one or more terms of the said contract are held to be void or unenforceable for whatever reason, any other terms of the contract not so held will remain valid and enforceable at law.

7.3 Change of Terms and Conditions

MYSTICS reserves the right to change these terms and conditions from time to time.

Standard Terms and Conditions v5 – 19th February 2021