



Last Updated: 10th Feb 2015

Terms and Conditions

A Deposit of or more than ½ the total must be paid to Mbsites.com.au ABN: 78279166832 prior to the start of any works. The balance is to be paid at the end of the project.

Terms and Conditions

Contract terms may change without notice. A copy of the terms can be made available for the client upon request. A living copy of our terms are available from the footer of our website.

Payments 1

1.1 A Deposit of or more than ½ the total must be paid to Mbsites.com.au ABN: 78279166832 prior to the start of any works. The balance is to be paid at the end of the project in full and without delay.

1.2 Payment is to be made by Direct Debt, B-Pay, Cash, Cheque, Paypal, Clear funds by International transfer, Bitcoin (on approval only).

1.3 Additional purchased items must be paid in full within 7 days of completing/setup.

1.4 Upon presenting the first draft the full amount of the contract is due.

1.5 Hosting and email accounts hosted by Mbsites are refundable minus time used and any setup costs.

1.5.1 Domain names, SSL Certificates and any services or product provided by a third party are not refundable. Additional the cost of these items will be additional to a funds paid in the event of a cancellation.

1.6 Work/or timeline does not start until funds are cleared. An example would be; if the contract and timeline was signed off on the 1st and the estimated finish date was 20th if the payment didn't clear or arrive until the 10th another 10 days would automatically be added to the timeline.

1.7 If an instalment, payment, deposit is late or takes more than 24hrs to clear. Work may stop on your project. You may also lose your place in the work queue, which may delay or extend your project.

1.8 Changes to original build may incur additional costs.

1.8.1 Projects are billed on an hourly basis. If changes, revisions, alterations exceed the total quoted hours the client will be required to either pay per hour for additional time (\$65 p/hr) or re-negotiate a new contract. Example: Project cost \$6500 / \$65 = 100hrs for the total project including revisions.

1.9 A stage payment constitutes a sign off stage of the previous stage. It is the client's responsibility to make sure the stage is in keeping with their expectations.

1.9.1 Final payment due upon final draft, not after completed revisions. Unless explicitly stated elsewhere in the contract.

Timelines 2

2.1 Timelines are guides only.

2.2 Timelines are based upon a best case scenario, not allowing for troubleshooting, revisions, late content, changes, remakes, additions, undisclosed issues, debugging, server or hardware changes, OS updates or conflict resolutions.

2.3 Timeline stages are based on hours worked per stage. A stages payment is based on an hourly rate of \$65 p/hr. Example \$6500 instalment is equal to 100 hours of work @ \$65 p/hr this sometimes means an instalment may need to be paid before a stages work is completed.

- 2.4 Unless explicitly stated timelines are guides only.
- 2.5 Adding any additional work, changing the scope, mid build revision voids any commitment to the timeline explicit or otherwise.

Work specifications and brief 3

- 3.1 A client will have a basic specification list provided before work commences.
- 3.2 It is the client's responsibility to ensure the specification list is in keeping with what they expect.
- 3.3 Mbsites will provide a brief of the project outline to the client. This will be the guide for the work to be done. Any deviation from this document needs to be signed off by Mbsites senior staff.
- 3.3 Changes to the specification and/or brief may require additional payments, extension of budget or further increase in time to complete. All changes to the contract, spec sheet, brief need to be submitted in writing and approved by both parties in writing.
- 3.4 Once a design is approved that is the theme for the website or design work. Any further changes are considered revisions.
- 3.5 Once a design is approved it is final. Further changes are revision. A re-design is considered a new project and may be charged accordingly.
- 3.6 Changes to the spec, scope or brief require a new contract.

Face to face meetings and consultation 4

- 4.1 Face to face meetings are part of the total project cost and are chargeable at \$75 p/hr
- 4.2 Phone consultations and support outside the contract are chargeable, this includes; General I.T work, PC software setup, PC backups, email setup, website training, design ideas, marketing idea, business practice and techniques, accounting software setup.
- 4.3 Mbsites is under no obligation to provide direct access to any staff member, whether by phone, email or chat.
- 4.4 Mbsites must be given at least 7 working days notice of any required meetings by phone, in person or other location. A topic/agenda and scope of the meeting must be provided in writing 7 working days before.
- 4.5 Client may have to pay all travel costs if the meeting is more than 150 kilometres from Mbsites Australian Gold Coast office.

Client responsibilities 4

- 4.1 CLIENT must provide Mbsites all requested information regarding project within 3 days of signing this contract, to keep the same timeline.
- 4.2 Mbsites responsibility to follow up the client after the 1 week and 3 attempted calls or emails ends after that point. Delays to follow-up will extend any deadline and may incur further costs.
- 4.3 Client will have up to 3 days to come back with the next round of revisions for project (if any)
- 4.4 Any deviation from the original quote may incur additional costs, this may include, but is not limited to additional hosting, artwork, design or further SEO works. Payment schedules are available, but must be agreed upon by both parties in writing before commencement. Website design is quite dynamic for us and our customers and we are understanding to changes and growth to projects as they evolve, but changes may incur further costs.
- 4.5 Additional Changes / Revisions - Pricing does not include any updates after the project is completed. Client will have 3 full rounds of revisions based off the initial draft. Additional revisions or substantial changes to a current project or future updates on already completed projects will require a new contract/agreement. Mbsites.com.au may charge a CLIENT at a rate of \$75 per hour for any content, design, framework, features or changes after completion.
- 4.6 It is the client's responsibility to ensure content is organised, matches the design and brief, spelling and grammar checked, Picture files are named correctly and suitable for use, Product content and images are copyright free, All product information is supplied in a format useable for the purpose,
- 4.6.1 Content that requires additional work will be charged out at \$65 p/hr for skilled technical work and \$35 p/hr for data entry
- 4.7 A client must advise Mbsites whenever any third party or especially any third party with any possible conflict of interest may review or have access to the product of any work, Intellectual property

or web, design, hardware associated with the project. Failure to do so will enable Mebsites too; terminate the project without notice, demand payment for the current stage and the following stage, whether completed or not, Retain all Intellectual property rights for product related to the contract until such time as payments are made.

4.7.1 If Mebsites believes a third party has had or is trying to gain access to website, Intellectual property, design, product related to this contract Mebsites reserves the right to shut down all access to said works until current stage and the following stage payments have been made.

Early Termination 5

5.1 Early Termination - If the CLIENT decides to back out of the project after designing, provisioning, coding has begun, they will forfeit their entire deposit. They will also forfeit any copyrights to artwork or Intellectual property that has already been sent, seen or discussed with the client for review.

5.2 If a project draft has been submitted for feedback or revision and the project is cancelled the client is liable for the full project cost and final payment of the project.

5.2.1 If a stage has been started and the client cancels the project. The client is liable for the full cost of the current stage, new and/or next stage.

5.3 If a project is cancelled, but paid in full the client has the right to have a copy of their project and any work created for it.

5.4 A client cannot use any part of a project, work, design, concept, code, pictures, framework, architecture or anything generate by or in partnership/collaboration with Mebsites unless they make the final payment of the project. Any such product will remain the property of Mebsites and protected Intellectual property and be considered under copyright.

5.4.1 Any breach of clause 5.4 may result in legal action at the clients cost to recover compensation, which may be equal to or higher than the project cost.

5.4.2 The client will be liable to immediately pay the cost of the current stage and the cost of the next following stage if an item/work product is shown to a competing third party during development, without explicit written permission to do so from Mebsites.

5.4.2.1 Mebsites must be given 14 days to seek legal advice in this instance and mebsites has the right to refuse if they feel their Intellectual property maybe at risk.

5.5 Clients who have material created by Mebsites must delete or hand back everything connected to the project or pay the final balance in full.

5.6 If a client fails to pay their final account within 7 days of receiving their final account Mebsites can suspend any and all services attached to the clients account until full payment is received. Mebsites can also block access to domain, hosting, social media accounts, SEO management, Webmaster accounts, analytic accounts and email accounts and services until a full and cleared payment is received.

Mebsites is not liable for any losses incurred for suspension.

Non-payment 6

6.1 If the CLIENT cannot or will not pay after the project is completed. The client will be liable for all costs incurred in the recovery of the final payment this includes but is not limited to; Legal costs, debt recovery costs, Court Costs, Travel costs, Local and international recovery costs, debt registry costs, interest. All discounts will be forfeited. Once the final payment is recovered all IP rights will transfer to the client.

6.2 Client/s using or retain product from Mebsites work is covered under 5.4, 5.4.1, 5.5

6.3 Mebsites reserves the right to suspend websites, email, SSL certificates, backups and withhold material, domain name access, backups, SSL certificates, cpanel access upon non-payment, without liability of loss from client.

6.4 Staged payments - Works will stop until the staged payment is paid and cleared funds are in Mebsites account. Delays to pay a stage may extend the deadline in some cases Mebsites will not be liable for these delays.

6.5 If a client doesn't make the final payment they forfeit all rights to all intellectual property or any copyright or licenced items.

6.6 If a client fails to pay within 7 days of receiving the final account Mebsites can suspend any and all services attached to the clients account until full payment is received. Mebsites can also block access to domain, hosting and email accounts and services until a full and cleared payment is received.

6.7 If the account remains unpaid for longer than 14 days Mebsites can take ownership of any domains, email accounts, hosting accounts, websites and their contents in their possession and re-seller or repurposes them.

6.8 Mebsites may lodge the debt with State and Country wide debt registers until the debt is paid in full plus costs incurred.

Branding and logos 7

7.1 A website development does not by default include branding and logo development, unless discussed otherwise. Branding and logo development packages are available, but will be listed explicitly when included.

7.2 Logos are not by default trademark-able. Having a trademark-able logo or design requires research by a trademark lawyer as is well out of scope for a development company.

Revisions 8

8.1 Revision rounds – There are three revision rounds per contract, unless explicitly state in the contract. All items for change must be provided in writing within three days of the first draft and 3 days from each subsequent draft.

8.2 Revision are part of the final finishing process.

8.3 Revisions need to be ordered and detailed, with reference to the page and heading that they apply to when being submitted to mebsites.

8.3.1 Revisions need to be submitted in writing or by email. One submission is counted as one round.

8.3.1 Mebsites will reply with a receipt of the revision and its suitability to the project and whether there will be an additional costs associated with it.

8.4 Revisions beyond the scope of the build are chargeable

8.5 Revisions beyond the 3 provided and/or the total allotted hours for the project are chargeable at \$65 per hour.

8.6 One mockup artist render and three revisions per project is the maximum number. Revisions or new designs are an additional cost to the client, unless stated in the contract. Hourly rate is \$65 p/hr for revisions and \$600+ per page mockup of website.

8.7 Once a design is signed off, revisions, new designs, changes are an additional cost.

8.8 Revisions must be provided in a clear and detailed manner. At the least they must include the page link, page name, the content in question, screenshot of what is to be changed, content to be add/swapped, Clear details and illustrations of what the final product should look like.

8.9 Total revision work cannot exceed 10% of the total allotted hours for the total project or stage being signed. Time of the 10 allowance is chargeable at \$65 per hour.

Hosting 9

9.0 Hosting inclusive of the project cost is only valid for 12 months from the start of the project.

Additional hosting costs will be required after that date.

9.1 Clients do not have to host with Mebsites. However additional hours required to setup external hosting accounts are chargeable.

9.2 We do not guarantee the performance of the website if we are not part of the hosting consultation process and setup.

9.3 Ignoring hosting requirements can lead to poor performance

9.3.1 Sometimes projects require larger more powerful hosting systems, clients are liable for these costs in full.

9.4 Mebsites is not liable for costs to migrate a project or website away from our services, this extends to changes of hosting during development and any possible operating software conflicts.

9.4.1 Migrating a site may incur additional charges above the quoted prices in the contract. The client will be liable for all these costs of hosting and migration when the costs exceeds the cost or specification quoted in the contract.

- 9.5 Mebsites is not liable for costs to migrate a project or website to our services.
- 9.6 Clients are responsible for paying their accounts on time. Failure to pay on time may result in suspension or possible deletion of data retained.
- 9.7 Mebsites is not liable for losses incurred from a loss of hosting services, either external or internally provided.
- 9.8 Support is on a first come first served basis.
- 9.9 Clients are required to email support@mebsites.com.au for support outside normal business hours and days. Additionally they can call the office line 1300 MEB WEB 07 5539 8227 and leave a message with the call centre. We also have a support ticketing system which is manned 24/7. Clients should not call staff directly after hours unless they are on a current urgent response service contract.

Email Hosting 10

- 10.1 Your email is your responsibility
- 10.2 Mebsites is not required to setup or make office or home visits to configure email. There are support guides in the email service, support email service and remote access service.
- 10.3 Mebsites is not liable for an email loss or interruption of service, on standard accounts.
- 10.4 Mebsites is not liable for any loss connected to our email service or interruption of services.
- 10.5 Mebsites is not liable for costs for migrating away from its services.
- 10.6 Failure to pay an account on time can result in a suspension of services and/or possible account deletion.
- 10.7 It is the client's responsibility to make the account payment on time.
- 10.8 It is the client's responsibility to insure they take steps to back up contacts and emails.
- 10.9 Mebsites does not provide technical support for non Zimbra email services.

SSL Certification 11

- 11.1 SSL Certificates are not guaranteed by Mebsites they are supplied via third party services. Any warranties expressed or implied are through the third party issuer.
- 11.2 Up keep and renewal of SSL Certificates are the client's responsibility.
- 11.3 If SSL certs need to be renewed it is the clients responsibility to do so at their cost.

Website maintenance 12

- 12.1 Website maintenance is not free or covered by warranty
- 12.2 Websites frameworks often need updates from the software developer. These updates are at the clients cost.
- 12.3 Service contracts guarantee priority 24/7 hr service for the contract hours specified. If additionally work is required it is billable at hour standard rates of \$65 p/hr
- 12.4 Mebsites is not liable for errors created by other third parties.

Warranty 13

- 13.1 The warranty covers coding errors only related to the components created by Mebsites for a period of 12 months. This does not include conflicts from core code updates by third parties.
- 13.2 The warranty covers coding performance errors for 12 months.
- 13.2 The warranty doesn't cover errors in changed configuration.
- 13.3 The warranty does not cover any changes made by other parties or client
- 13.4 The warranty is void if the website is altered by any third party or client.
- 13.5 The warranty doesn't cover traffic performance issues due to expansion.
- 13.6 The warranty does not cover traffic growth above the scope of the build.

Promotion 14

- 14.1 Mebsites reserves the right to promote the clients website or design work in their portfolio, website, facebook or other social media medium.
- 14.2 Mebsites reserves the right to install at least a simple footer link displaying they designed, developed the website. Unless explicitly written in the contract.

14.3 Mebsites is not liable for what the client considers negative promotion of their material limited to section 14.1

14.4 Mebsites does not have control over third parties, such as; media, google search, bing search, torrent sites, dark/deep websites, who may use material and therefore is not liable for anything negative coming from them.

SEO 15

15.1 SEO in regards to the development of the site refers to the technical search engine optimising of site setup only. It is not a guarantee of an undefined number one ranking nor is it any promise to continue working on SEO indefinitely until an undefined number one ranking is achieved.

15.2 Mebsites has never and does not ever guarantee number one ranking in Google.

15.3 Mebsites is not liable for costs, loss, or misrepresentation of a client or business in adwords or other social media.

15.4 Mebsites provide technical assistance for SEO and general marketing advice only. We do not make success claims or provide warranties for the level of success a client may achieve.

Signoff 15

15.1 Sign off does not have to be an official signed document. Email acknowledgement, online acceptance, acceptance via phone, txt payment for the stage or following stage are all equal means of acceptance.

15.2 Making a stage payment is acknowledgement and acceptance of that stage being complete and that it has been completed to an acceptable level.

15.3 Final project sign off takes place on handover or going live/beta.

Code quality, origins of code and open source code 16

16.1 Mebsites can use open source code or licenced code were suitable, unless explicitly stated elsewhere in the contract.

16.2 Mebsites doesn't not provide any warranty for third party code.

16.3 Mebsites reserves the right to use third party code either licensed or open source at Mebsites discretion.

Stock artwork, photography and artwork 17

17.1 Mebsites will use or sample licenced stock artwork or photography at its discretion.

17.2 Mebsites by default will not use original photography or artwork by default. Unless explicitly stated in the contract.

17.3 Photography is an additional cost and a service Mebsites does not directly provide.

17.4 Creating original icons and artwork may require additional expense or budget if it is outside the original scope of the project.

17.5 All Mebsites artwork or photography that we use is either licenced or created internally.

17.6 Mebsites provides no warranty for total originality of work. We also make no warranty for any products suitability for trademarking.

17.7 Revisions and changes over the 3 provided in the contract will attract an additional cost to create at \$35 per hour.

17.7.1 A Revision is defined as an adjustment on the main focus of the project, not a rework of the whole project.

Transfer of Intellectual property 18

18.1 No transfer of intellectual property will take place until all accounts, bills are paid in full with cleared funds.

18.2 The client is not entitled to use any intellectual property until the account is paid in full, without the written permission from Mebsites.

18.3 Full control of domains, emails, hosting, website admin access, social media accounts will remain with Mebsites until all final accounts are paid in full cleared funds.

18.4 In the event of non-payment the client must destroy or hand over all intellectual property surrounding the project back to Mbsites

18.5 Mbsites reserves the right to obfuscate code that is not directly covered by the brief permanently.

18.6 Mbsites can insist on remote access only to protect intellectual property, when a stage has not been paid for and Mbsite is looking for sign off, third party review, threat of Intellectual property loss or dispute about deliverables.

Recovery of bad debts 19

19.1 All recovery of unpaid debts will be at the client's expense

19.2 All legal fees to recover unpaid debts will be at the client's expense

19.3 Unpaid debts may be registered against the company and directors, sole trader, partnership or any other part involved. These registers maybe local and/or internationally based.

19.4 Interest on the outstanding amount will be charged from the day of being invoice issue. It will be charged per day at 2% more than the official cash rate at the time the invoice was issued.

Root or Full access 20

20.1 Root access to a project requires a full stage payment or complete project payment first.

20.1.1 Any access to full services which allows for download of intellectual property also requires full payment of either stage or total project.

20.2 Mbsites can refuse direct access to any part of the project, to protect its intellectual property, unless the full payment of the project has been made.

20.3

Security and hacking 21

21.1 Mbsites is not liable for any damage resulting from hacking. This includes, but is not limited to; Denial of service attacks (DDOS), MySQL injection, Errors, malware, password breaches, man in the middle attacks, SSL breaks.

21.2 Damage resulting from attacks or hacks are at the client's expense.

21.3 Mbsites is not liable for losses resulting from hacking.

21.4 Mbsites is not responsible for client's password security

21.5 Mbsites reserves the right to take action or suspend any webhosting account that is under attack.

21.5.1 Mbsites can also demand the website owner/s take sufficient steps to stop DDOS, googlebot attacks.

21.6 Mbsites can enforce password complexity on users at risk of hacking, who have been hacked or without notice. This can be before email, websites, hosting account any of mbsites services or connected to mbsites services.

21.7 Mbsites can insist some websites are to run under CDN caching service at their cost, for security and traffic management purposes.

21.8 Mbsites will take all reasonable steps to keep clients material, IP, customers secure.

21.9 Clients must adhere to Mbsites suggested security measures, which include but aren't limited to; Password configuration to current good practices, not sharing access logins, using a password manager, not using the same or similar passwords, not using names or top 1000 common passwords. Mbsites reserves the right to enforce their use when a breach has happened.

Backups 22

22.1 Backups are ultimately a client's responsibility. All clients need to take sufficient measure to keep their own backup outside the services offered by Mbsites.

Threats, insults and rudeness 23

23.1 Mbsites will not tolerate any threat, insult or rudeness to its staff, premise, equipment or services doing so will result in instant cancellation of all services, without liability for loss.

23.1.1 Mbsites has a strict good manners policy

23.1.2 We have a zero tolerance policy for racial slurs, discriminator behaviour or sexual harassment or discrimination. Your account will be cancelled without notice.

Privacy 23

23.1 All emails sent to Mbsites can and may be viewed by all staff at Mbsites unless explicitly stated we are not allowed to.

23.2 We are not responsible for the privacy between parties to emails CC or Bcc. If the information is not to be shared or viewed with all parties in the email it should not be shared with us.

23.3 If you cc or bcc other parties in your emails they may or could also be included in any replies from us willingly or by accident, we are not responsible for this. If you do not wish other parties to be replied to do not cc or bcc them into conversations. The privacy breach is upon the first sender.

23.4 For password resets you will be required to authenticate your ID at our discretion.

23.5 Unless we can be sure of your identity we will by default restrict access.

23.6 Any client Non-disclosure agreement will also allow Mbsites staff, contractors, outsourcers and connected third parties to share information without risk of litigation or breach.

23.7 All conversations may be recorded and kept for evidence later; extending to; IM chat, email, txt, social media, screenshots. In accordance with State and Australian law Mbsites does not record phone conversations without explicitly stating so.

Force Majeure 24

24.1 Mbsites systems (Hosting, email, domains, dns, datacenters, websites, phone systems) may experience outages beyond its control caused by reason of failure of services provided by third parties upon which Mbsites systems relies to provide its services, act of God, or the consequence thereof including, but not limited to fire, flood, typhoon, earthquakes or by reason of riots, wars, invasions, acts of hostilities, civil wars, rebellion, terrorist activities, government restrictions, trade embargoes, strikes, lockouts, labour disputes, boycotting or other causes beyond mbsites' control. You agree to release Mbsites from any claim or potential claim with respect to outages and any loss or damage suffered by you or any third party.

Access 25

25.1 Mbsites is not required to give any client access to datacentres, offices, accounts, servers.

25.3 Access to hosting accounts, email accounts, Full or Partial access to website administration panels, SSH access to hosting accounts or servers, is not allowed until a project is paid in full.

25.3 Mbsites reserves the right to track all access and to and from the website and hosting panel and the activity they do while the project is in development or work is under way by mbsites.

25.4 Access can be withheld to third parties or competing companies or persons at Mbsites discretion due to the propriety nature of many projects.

25.5 Access while under development to; hosting, website admin panels, designs, mockups, web pages can be withheld when; Full payment has not been made, Threat of Intellectual property theft has been made, Mbsites feels their Intellectual property is at risk, If unusual activity has been detected, such as; unauthorised backups, downloading, new ftp accounts, installation of file managers, Request from competing third parties, requests from any third parties not on the contract.

25.5 Access can be limited and withdrawn without prior notice to hosting, website admin panels when; Full payment has not been made, Threat of Intellectual property theft has been made, Mbsites feels their Intellectual property is at risk, If unusual activity has been detected, such as; unauthorised backups, downloading, new ftp accounts, installation of file managers, Request from competing third parties, requests from any third parties not on the contract.

25.6 Complete lockout: As a matter of last resort or when risk as perceived as high Mbsites reserves the right to shut down total access to hosting accounts when when; Full payment has not been made, Threat of Intellectual property theft has been made, Mbsites feels their Intellectual property is at risk, If unusual activity has been detected, such as; unauthorised backups, downloading, new ftp accounts, installation of file managers, Request from competing third parties, requests from any third parties not on the contract.

Obfuscation 26

26.1 Mbsites reserves the right to obfuscate code where intellectual property maybe at risk.

26.2 Mbsites is under no obligation to remove any obfuscation.

26.3 Mebsites reserves the right to obfuscate any and all code while projects are being reviewed for sign off, unless specifically specified, but not when at risk of intellectual property theft via competing third parties.

Moonlighting 27

27.1 Mebsites' Employees are restricted from moonlighting for current mebsites clients.

27.2 Any attempt by a client to directly hire an employee or former employee of Mebsites may result in an instant cancellation of any project or service without a refund.

Governing Law and Jurisdiction 28

28.1 These terms and conditions are governed by the law of the State of Queensland and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Queensland. Any matters are to be heard in the closest presiding court to the fecundity of Mebsites.

Repair, updates and changes 29

29.1 Work conducted on projects we did not create is done on a strictly hourly rate basis.

29.2 Estimates will be provided, however they are a guide only.

29.3 When a job is completed in less time than quoted and the client has paid in advance the balance will be refunded, unless it is a set price job.

29.4 Mebsites will withhold or remove any work done which has not been paid for without repercussion.

Projects lasting longer than 3 months 30

30.1 Projects lasting longer than 3 months can be subject to substantial timeline extension due to unforeseen circumstances. Clients will not be able to claim or be entitled to dispensation, rebate, partial refund or full refund.

30.2 Terms and conditions may change without notice and clients should refer to the latest version of terms and conditions which is published in the footer of our website mebsites.com