



Blue Water Digital Pty Ltd

ABN: 88 635 523 358

PO Box 165

Glenbrook, NSW, 2773

P: 1300 242 079

Terms and Conditions

These are the BLUE WATER DIGITAL Standard Terms and Conditions for the Supply of Goods and/or Services. It applies to you if you are a BLUE WATER DIGITAL subscriber or user ("you"). It is intended to ensure that you know your rights and obligations when using BLUE WATER DIGITAL's services.

Please read it carefully. It is a condition of your use of our service that you comply with the terms of these terms and conditions.

Please look out for any amendments to the Terms and Conditions that BLUE WATER DIGITAL ("we") might make in the future. From time to time we will make amendments to them by giving you notice of the change and you will then be obliged to comply with the policy as amended.

Blue Water Digital Pty Ltd - ('BLUE WATER DIGITAL')

Standard Terms and Conditions for the Supply of Goods and/or Services

1. Definitions

a. 'BLUE WATER DIGITAL' is Blue Water Digital Pty Ltd trading as 'Blue Water Digital' and 'Rate My Website' and its employees, officers, agents and affiliates.

b. The 'Agreement' means Terms and Conditions and the details on the Application forms for BLUE WATER DIGITAL services.

c. The 'Customer' refers to all other persons, companies, or other entities identified on the Application forms BLUE WATER DIGITAL services.

d. The 'Service' means work undertaken by Blue Water Digital on the clients behalf in the area of technical consultation, advice or development of web, software or related projects, as modified from time to time.

2. Application and Variation of these Terms

These terms and conditions are the terms on which BLUE WATER DIGITAL provides services or goods to its customers, modified by any written contract between BLUE WATER DIGITAL and its customers in any particular case. The terms so modified constitute the agreement in its entirety and supersede prior agreements. BLUE WATER DIGITAL may modify these terms as applying to any agreement, the pricing structure for any Service or the terms of the operation by general notice on a page of the Internet referred to on the BLUE WATER DIGITAL web site, and any use after that publication will constitute an acceptance of that modification.

3. Charges

The customer must pay for all goods and services as agreed from time to time. In particular the Customer must pay all Service data charges, minimum charges and other amounts incurred by the Customer or its designated Users or incurred as a result of any use of the Customer's password (whether authorised or not) in accordance with the billing option selected. These charges include but are not limited to charges for any purchase made through any Service and any



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surcharges incurred while using any supplementary networks or Services other than the Service. Data charges are charged to the next mega byte in mega byte increments. Prepaid data charges which are not used within a month will not be carried forward to the following month.

4. Customer Costs

In addition the Customer must provide and pay for:-

- a.the installation and use of telephone lines and all other equipment needed to access the Service at their own cost;
- b.all government taxes, duties and levies (if any) imposed on the customer or BLUE WATER DIGITAL in respect of any Services or goods supplied.

5. Payment of Accounts

The Customer must pay all amounts billed in accordance with the billing option that they are on. No credit terms are given to Credit Card accounts. Upon registration of a Credit Card account, the Customer gives BLUE WATER DIGITAL authorisation to debit their credit card for all charges. Billing period is generally on a monthly cycle beginning on the 1st days of each month.

Accounts are pre-paid for the billing cycle with invoices being generated by the 1st of the month. Payments are due by the 21st of the month. Accounts may be adjusted on a pro rata basis in the initial month. The billing period may vary depending on the product or service being offered.

Blue Water Digital reserves the right to suspend ALL services should payment of any invoice for any service exceed the period specified. (see Suspension of Services below) A late payment fee of \$50 per month may be applied to overdue accounts.

6. Security Deposit

BLUE WATER DIGITAL may require the payment of a security deposit before providing the service, or as a condition of continuing any Service, and may use the security deposit to meet any costs, loss or liability incurred by the Customer. When the Customer has fully performed his or her obligations, BLUE WATER DIGITAL shall return the outstanding balance of the security deposit, without interest, to the Customer.

7. Project Deposits and Progress Payments

Projects may be subject to an initial deposit and progress payments. The Client agrees to pay a 50% deposit of the quoted amount to commence the project. Once research, resources allocated or design work has commenced on a project, this deposit is non-refundable. In the case of a change of mind by "The Client" this deposit is non-refundable if work has commenced on the project.

A further payment of 50% will be due when Blue Water Digital has completed the work required on a project. If a system is deemed not ready for production by the Client, and Blue Water Digital has completed the work required, the balance is due notwithstanding.

Any additions or updates that are outside the original specifications are to be treated as a new project.

If the project is not complete due to delays in receiving information or material from the client and Blue Water Digital can no longer progress the project, a 40% payment is required after 60 days from the commencement date of the project. The remaining 10% is due when the information and material has been received and actioned.

8. Credit Checks - Privacy Consent

The Customer consents to BLUE WATER DIGITAL obtaining a credit reporting agency containing personal information (as well as information concerning commercial creditworthiness and activities) for the purpose of assessment by BLUE WATER DIGITAL of an application for credit (whether commercial or personal) or for the purpose of the collection of payments which are overdue.

9. Publication at Customer's Risk

The Customer accepts responsibility for all information and material issued by the Customer over any Service, and indemnifies BLUE WATER DIGITAL against any liability in relation thereto. In particular the Customer undertakes that it shall not publish or issue any information which is illegal. The Customer also acknowledges that BLUE WATER DIGITAL does not vet or approve any information or material available through any service and that BLUE WATER DIGITAL does not accept any liability. To the full extent permitted by law the Customer accesses and uses such information and material at his or her own risk.

10. Acceptable Use

The Customer agrees to abide by BLUE WATER DIGITAL's Acceptable Use policy as outlined on a separate document.

11. Provision of Service

The Service provided to the Customer is not fault free and relies on factors outside the control of BLUE WATER DIGITAL. The Service is provided to the customer at such times and by means as BLUE WATER DIGITAL decides from time to time.

12. Exclusion of Liability

Except as provided in clause 12. BLUE WATER DIGITAL is not liable to the Customer or any other person for:-

- a. any cost, loss or liability (including loss of profit, data or other consequential damage) arising from BLUE WATER DIGITAL's supply or failure or delay in supplying any goods or Services;
- b. the content, context or confidentiality of any communications made using any Service. BLUE WATER DIGITAL is not able to provide support for software not supplied by BLUE WATER DIGITAL, this includes software downloaded from the Internet.

13. Limitation of Liability

Except as provided below all terms, warranties, undertakings, inducements and representations relating to the provision of any Service or goods are excluded and BLUE WATER DIGITAL will not be liable for any loss or damage (including consequential loss or damage) however caused (whether by negligence or otherwise) in respect of any Service or goods. However, BLUE WATER DIGITAL's liability for any breach of such implied term or warranty will be limited at BLUE WATER DIGITAL's option in any way permitted by the legislation including where so permitted:-

If the breach relates to goods

- the replacement of the goods; or
- the repair of such goods; or
- the payment of the costs of replacing the goods; or
- the payment of the costs of repairing the goods;

If the breach relates to Services

- the supplying of those Services again; or
- the payment of the costs of having those Services supplied again.

14. Breaches

The Customer shall indemnify BLUE WATER DIGITAL against any loss (including any loss of profit) incurred by BLUE WATER DIGITAL as a result of any breach of the terms of any agreement with BLUE WATER DIGITAL including damages in respect of any period between the date of actual termination (including termination under clause 14.) and the date on which the Customer was entitled to terminate such agreement in accordance with its terms.

15. Termination

BLUE WATER DIGITAL may immediately terminate any agreement or the provision of any Service if:-

- a. the Customer breaches any term of any agreement (including terms relating to payment or use);
- b. BLUE WATER DIGITAL forms the opinion in good faith that the Customer is or may be insolvent. All deposits paid to BLUE WATER DIGITAL will be non-refundable if at any time the order is cancelled by the customer. All outstanding charges become immediately payable on giving of such notice and in no circumstances shall the Customer be entitled to any refund of payments made under this Agreement.
- c. BLUE WATER DIGITAL services are paid in advance. The Customer may terminate services by advising BLUE WATER DIGITAL in writing with 30 days notice. Cancellation of the service will end at the end of the pre-paid period.

16. Refunds. Refunds will be subject to evaluation and may incur an administration fee. Customers must apply for refunds to BLUE WATER DIGITAL by completion of the appropriate forms or a written letter to the same effect.

As per ACCC guidelines, BLUE WATER DIGITAL reserves the right to refuse refunds claims, credit or exchanges if Customers: - simply change their minds, decide they do not like the goods or services or have no use for them - have discovered they can buy the goods or services more cheaply elsewhere

17. Suspension of Services

BLUE WATER DIGITAL may from time to time without notice suspend any Service or disconnect or deny the Customer access to any Service:-

- a. during any technical failure, modification or maintenance involved in the Service provided that BLUE WATER DIGITAL will use reasonable endeavours to procure the resumption of the Services as reasonably practicable; or
- b. if the Customer fails to comply with any agreement (including failure to pay charges due) until the breach (if capable of remedy) is remedied, or does, or allows to be done, anything which in BLUE WATER DIGITAL's opinion may have the affect of jeopardising the operation of any Service.
- c. if the Customer fails to make payment in full for accounts in excess of 45 day past the due date, Blue Water Digital reserves the right to suspend all services should payment of any invoice for any service exceed the above period. Notwithstanding any suspension of any Service under this clause the Customer shall remain liable for all charges due throughout the period of suspension.

18. Information Received

Except as otherwise expressly permitted in writing, no person may reproduce, redistribute, retransmit, publish or otherwise transfer or commercially exploit any information which they receive through the Service in any way which is competitive to the Service.



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19. Assignment

The Customer cannot assign its rights under any agreement with BLUE WATER DIGITAL without the prior written consent of BLUE WATER DIGITAL (which may not be unreasonably refused).

20. Governing Law This Agreement is governed by the laws of Australia and the parties submit to the jurisdiction of the Australian Courts.