

ERINA DESIGN - GENERAL TERMS & CONDITIONS

Section A: Our services to you:

1. Ellenet Pty. Limited (ABN 33 088 758 196) also trading as Erina Design will provide you with the products and services that you purchase from us from time to time (“Products” and “Services” respectively [including website design and indexing and or domain name registration]) and you agree to purchase and use these Products and Services on these terms and conditions as may be amended by us from time to time.
2. Our agreement will commence on the date that we accept your application for the purchase or contract of any of the Products and Services, or the date you start using any of the Products and Services, which ever occurs first. We may refuse your application in our complete discretion.
3. Our agreement will continue until the end of any fixed term set out in your application, or until this agreement is terminated in accordance with these terms and conditions or as set out in the contract.
4. The details of the content relating to the products and services will be set out within an attached document referred to as the “Contract”, excepting domain name registration, which requires no contract.
5. We reserve the right to require offline verification of your identity or authority.

Section B: Your obligation to pay us:

1. In return for us providing these Products and Services to you, you must pay us the relevant fees, charges and costs notified to you or as stated in your contract. All deposits on website design and or website indexing and or domain registration must be paid prior to any work being commenced on our part.
2. In relation to specific Products and Services, namely website design and or website indexing a full deposit of 50% will be required at the time of contract, whereas with domain name registration 100% of fees will be required in advance.
3. Any additional work requested outside the contract terms will be subject to hourly pro-rata billing at our normal billing rate.
4. Further all balance of payments are due 7 days after all work is completed and must be settled in full, failure to do so could result in us withholding any work we have until such time that the balance is paid or indefinitely.
5. You must pay any taxes, duties, stamp duties, imposts, levies or government charges and or GST relating to this agreement or the supply or usage of the Services or Products.
6. If your account is unpaid in part or in whole for a period of one month from the due date, we reserve the right to terminate your access to the products and/or services at any time in our discretion and to refer your information to a debt collection agency or credit reference agency without notice to you.
7. You are responsible for the cost of any telephone calls or mailings you make to access the Products or Services.

Section C: Your use of our Products or Services:

You agree that you will use the Products and Services in a responsible manner. In particular, you warrant to us that when using the Products or Services, or providing information to us in relation to the Products or Services, you will not, nor will you allow others to;

1. distribute, publish, or provide any material that is defamatory, harassing, obscene or illegal under any applicable law, rule, regulation, standard or code of practice;
 2. distribute, or provide use of material that you have no right to distribute, use, or provide (for example, a third person's intellectual property rights);
 3. cause a nuisance to any person or incite violence or racial hatred or facilitate paedophilia;
 4. commit a crime or facilitate the committing of a crime;
 5. engage in any activity which is in breach of, or fail to comply with, any applicable law, rule, regulation, standard or code of practice;
 6. perform or facilitate the mass distribution of advertising material, except to people who have consented to the receipt of that material, and you must cease the mass distribution of advertising material to those people once that consent is withdrawn;
 7. engage in or fail to engage in any activity in a manner which will expose us to any liability;
 8. fail to comply with any rules imposed by any third party whose content or services you are accessing or using, or any policy adopted by us;
 9. use the Products or Services, or invite or direct persons to use the Products or Services, to access any content which it is illegal to publish;
 10. invade the privacy of others or alter the messages of others;
 11. engage in misleading or deceptive conduct or fraud of any kind;
 12. fail to clearly identify any material which is advertising or adult only material so that third persons can determine whether to access that material or not;
 13. fail to maintain the security and confidentiality of any accounts, identifiers or passwords provided to you to enable you to use the Products or Services, and you must change your account, identifier or password immediately on request to do so from us;
 14. cause or help to cause the security or integrity of any Products or Services or other linked computer systems or sites to be compromised whether by way of hacking, virus introduction or in any other way.
- In addition;
- (i) you indemnify us, our employees, contractors and agents, against any loss, costs or damage we may suffer as a result of the use of your Products or Services (whether or not by you or using your accounts, identifiers or passwords), or as a result of a breach of any of your warranties to us or any other provisions of this agreement;
 - (ii) you acknowledge that we have no control over any content accessible through use of the Products or Services and you have no claim against us in that regard;

(iii) you must promptly provide to us all assistance and information we reasonably require in relation to the supply of the Products or Services to you;

(iv) you warrant that your representative responsible for the purchase of the Products and Services has all authority to do so;

(v) you are responsible for providing any security or privacy you require for your computer networks and any data stored on those networks or hosting servers or accessed using the Products or Services, and you agree that we will not be responsible for any damage caused by your failure to provide same; and

(vi) you must safeguard and not tamper with any equipment we provide to you, and which is not bought by you from us, and which is

(vii) cause or help to cause the security or integrity of any Products or Services or other linked computer systems or sites to be compromised whether by way of hacking, virus introduction or in any other way used by you to access the Products and Services, provide that equipment with a suitable physical environment and only permit us to repair, service, move or disconnect that equipment unless otherwise agreed by us. You bear the risk of loss or damage to that equipment while it is in your possession or control.

Section D: Our rights:

1. We may, at any time and in our absolute discretion, suspend or disconnect your access to the Products or Services, and monitor or intercept your use of the Products or Services, including without limitation any messages you send or receive or data you store or access using those Products or Services if we have reasonable cause to do so.
2. We may delete that data stored using the Products or Services, in our absolute discretion, if we consider that data to be inappropriate, illegal, offensive or otherwise in breach of any law, standard, regulation or code of practice.
3. Without limiting any other clause herein, we may at any time, without notice, suspend your use or access to part or all of the Products or Services:
 - (i) for such time as is necessary for any maintenance determined by us to be necessary from time to time, and where possible, after giving you as much advance notice as is reasonably practicable in the circumstances;
 - (ii) if required to do so, as a result of a direction from any government or other authorities.
 - a) You authorise us to obtain credit information from a credit reporting agency and information about your commercial activities or commercial credit worthiness from a business which provides that information to enable us to apply our credit policy. You also authorise us to obtain from and give to any credit providers information about your credit arrangements. This information may include any information about your credit worthiness, credit standing, credit history, credit capacity or other information that credit providers are allowed to give or receive from each other under the Privacy Act, 1988 (Cth) (as amended from time to time).

b) You acknowledge that we may be obliged to provide assistance to law enforcement agencies in respect of your acquisition or use of the Products and Services and that you will not make any claim against us in relation to that assistance.

Section E: Excluding our liability:

1. Other than in relation to personal injury, to the extent permitted by law we are not liable to you or anyone claiming through you for any loss or damage or costs sustained or incurred by you, your employees, contractors or agents or any third party, arising in any way in connection with this agreement or from your use of, or our provision of the Products or Service or any ancillary product or service, including without limitation, arising from:
 - (i) any failure or delay by us to transmit data;
 - (ii) any failure or delay by you in receiving data;
 - (iii) any transmission or receipt of incorrect data;
 - (iv) any erasure or corruption of any data;
 - (v) any unauthorised access to your Products and Services;
 - (vi) any content accessed using the Products or Services found to be offensive, upsetting, inaccurate, misleading or defamatory.
 - a) To the extent permitted by law, without limiting the above, in no circumstances will we be liable to you for consequential loss including, without limitation, loss of profits or loss of business.
 - b) To the extent permitted by law, we exclude all warranties in relation to the Products or Services or any ancillary product or service. Should we be liable to you, by virtue of any applicable statute, law, rule or regulation, for any loss or damage suffered, sustained or incurred by you under or in connection with this agreement, our total liability for any such loss or damage shall, to the extent permitted by law, be limited, at our option, to the cost of supplying again the goods or services in respect of which the damage was incurred or to providing, replacing or repairing those goods or providing those services again.

Section G: Things beyond our control:

1. It is impossible for us to ensure that the Products or Services are provided to you at all times or at any specific times or will be able to operate at all times error-free. We make no warranties to you in this regard.
2. We will not be liable for any failure to fulfil any term of this agreement where that fulfilment is delayed or prevented, restricted or interfered with for any reason beyond our control, including but not limited to fire, storm, sickness, death, flood earthquake, accident, labour dispute, materials or labour shortage, outages in telecommunications or radio communications networks, law or regulation or an act or omission of any third person.

Section H: Confidentiality and Intellectual Property:

1. You must keep any information we provide to you, which is marked confidential or which you ought reasonably to know is treated by us as confidential, from disclosure to any third party and use that information solely for the purposes of using the Products or Services. You consent to us obtaining urgent interlocutory relief to restrain any breach or anticipated breach by you of these confidentiality obligations.
2. You acknowledge that all intellectual property rights obtained or provided by us and used in the provision of the Products and Services are and shall remain our sole property and you shall do all such things as are necessary to perfect our title to these intellectual property rights. You must return or delete from media, all those intellectual property rights at our request.

Section I: Domain name registration:

1. If requested by you, we will assist you in the registration of a domain name. You acknowledge that we are not responsible for the allocation and administration of domain names and that we cannot guarantee the availability of a domain name or the continued availability same.
2. Where you have requested us to apply to register a domain name on your behalf, you agree that all information you provide to us in this regard will be true and complete, and you will abide by the terms and conditions of the relevant authority that administers that particular sub-domain.
3. You agree to pay all of our fees, charges and expenses in this regard in accordance with any part of this agreement.

Section J: General:

1. These terms and conditions which may apply to particular Products or Services are the entire agreement between us in respect of the Products or Services.
2. You have not relied on any representation made by us in deciding whether to acquire the Products or Services and you have relied on your own judgment in relation thereto.
3. We may change or remove any of these terms and conditions at any time, including, without limitation, if there is a change to any law or regulations. We will use our reasonable commercial endeavours to notify you of these changes when they occur. If you do not agree to the variation of the agreement.
4. If we need to notify you of any matter, we may inform you by mail, facsimile, email or posting a message in the appropriate location on our system, which includes, but is not limited to, posting a message in one of our directories, or on the worldwide web on our home page or any other appropriate means. Once we have posted online the email or other message, you are deemed to have received it. If we fax the message to you, you are deemed to have received it upon confirmation by our fax machine that the facsimile has been successfully sent. If we mail the message to you, you are deemed to have received it two (2) days following the date that mail was delivered to the Australia Post system, correctly addressed and postage paid.
5. Before resorting to any external dispute resolution mechanism, you and we shall attempt to settle any dispute in relation to this agreement within 14 days of that dispute arising.

6. You must not assign or attempt to assign any right or obligation under this agreement without our written consent. We may assign our rights or obligations, or subcontract or obligations without restriction.
7. You agree that you are not our employer or employee, our principal or agent, our partner or joint venturer and you have no right to bind us in contract or otherwise at law.
8. If part or all of any clause in this agreement is illegal or unenforceable, it may be severed from this agreement and this will not affect the continued operation of the remaining provisions of this agreement.
9. These terms and conditions are governed by the law in force in New South Wales, Australia.