

Terms of Trade - MadeSimple Online Limited

1 General

- 1.1 These terms of trade apply to all orders made to and Services supplied by Us.
- 1.2 Definitions
In these terms:
"Claims" means all damages, losses, expenses and costs (including solicitor own client costs);
"Services" means all goods and services provided by Us to You or at Your request including without limitation those services detailed in schedule A;
"We", "Our" & "Us" means MadeSimple Online Limited. "Website" means Your domain;
"You" and "Your" means the person, firm, company or entity purchasing goods and/or Services from Us (and were applicable includes your permitted assigns).
- 1.3 We may modify these terms from time to time, without prior notice to You, by posting modified terms on Our website and the modified terms shall then apply to all goods and Services provided to You.

2 These Terms Prevail

- 2.1 Except as expressly agreed in writing by Us these terms shall apply to and govern all dealings between Us and You.
- 2.2 Where there is any conflict between any provision in these terms and any provision in any order or other document We shall determine, at Our absolute discretion, which provision shall prevail.
- 2.3 You acknowledge that these terms prevail over any terms or conditions provided by You (if any).

3 Price and Orders

- 3.1 Prices are those set out in Schedule A. If no prices are listed, the price shall be the applicable prices listed on our website (which are subject to alteration without notice).
- 3.2 All prices are exclusive of GST and are in NZ dollars, unless specified otherwise.
- 3.3 No order is binding on Us until we have accepted the order in writing.

4 Ownership

- 4.1 You own and have full copyright in the content that You create (the words and images on your pages) and Your Domain Name.
- 4.2 We own and have full copyright in the customised website template and design (the HTML and CSS), the customised graphics that We create for You including the original PSD and FLA files and the source code of any customised programming we have carried out specifically for You, until such time as we have received payment in full for the Services, at which time title and copyright shall pass to You on the basis that we retain an irrevocable worldwide royalty free licence to use all customised source codend.
- 4.3 We own and have full copyright in: The Jaijaz CMS powered by Jojo, subscription services, the shopping cart technology and any source code created by Us (other than customised source code which is dealt with in accordance with clause 4.2). We grant to You a limited licence to use such, during the time that We host Your Website. . We may revoke this limited licence at any time.

- 4.4 Subject to Your not being in breach of these terms We will provide a copy of the customised source code to You on request.

5 **Content**

- 5.1 You may not use our Services for: Copyright or trade mark material that is not Yours, or that is used without permission; objectionable material, such as abusive, threatening, malicious, slanderous, obscene or racist content; pornography or sex related merchandising; spamming using a Service or domain name associated with Us.
- 5.2 You indemnify Us from and against any Claims we incur as a result of any third party Claim against Us arising out of Your content or use of the Website or Your breach of any of these terms. You shall pay the amount claimed under this indemnity to Us upon demand.
- 5.3 If You breach clause 5.1 then without prejudice to Our rights available under these terms, at law or in equity We may: remove the content, stop the Service(s), cancel Your account and/or recover from You any losses We may incur as a result.
- 5.4 We will be the final decision-maker on what is objectionable material.

6 **Confidentiality/Personal Information**

- 6.1 All information supplied by You to Us will be held by us in accordance with these terms.
- 6.2 You agree that we may collect and use such personal information (as supplied by You or as collected via our website or compiled by Us), in accordance with these terms and as permitted by law. We will not sell, rent or give away Your personal information unless required to do so by law. You authorise Us to make credit enquires about You. You authorise all third parties to respond fully to all credit enquires made by Us and to provide all information about You as requested. You waive any claims against those third parties for provision of such information.
- 6.3 You authorise Us to hold, collect and use information about You for the purposes of providing Services to You, assessing Your credit worthiness, enforcing any rights against You, marketing Our goods and services and to supply that information to any credit reporting agency or to any person to facilitate collection of debts from You.
- 6.4 The information collected by Us will be held securely at the Our office. The information will be accessible to any of the Our employees and agents who need access to it for the administration of Our business.
- 6.5 You may request access to and correction of any information about You held by Us at any time. We may charge reasonable costs for providing access to that information.

7 **Provision of Services**

- 7.1 We undertake to provide Services with reasonable care and skill and to use all reasonable efforts to ensure the reliability of Services at all times. Notwithstanding this, You acknowledge that down times and/or delays may occur and We are not responsible for any Claims arising in relation to those down times or delays.

8 **Email Marketing**

- 8.1 You consent to receiving emails from Us with details of promotions and/or other marketing material which We believe may be of interest to You. You can unsubscribe from these emails at any time.

9 Payment for Services

- 9.1 Payment for Services shall be made by You on the payment due dates set out in Schedule A. Where no payment due dates are listed, website hosting fees are payable monthly in advance on the first of the month and all other Services are payable on the 20th of the month following the date of the invoice.
- 9.2 Payment is to be made without set off or deduction to the account directed by Us from time to time.
- 9.3 In the event that payment is not received by the due date default interest may be charged by Us at a rate equivalent to 5% per month and calculated on a daily basis on all moneys outstanding for the period during which the payment has been overdue until all moneys including default interest have been paid in full. We reserve the right to apply any payment received first in payment of default interest (if any).
- 9.4 Without prejudice to our rights and remedies under these terms, where Your account has been suspended due to late payment a reactivation fee of \$25 exclusive of GST may be charged to cover the reactivation of the Services.
- 9.5 We may at Our discretion apply any payments we receive from You in and towards the satisfaction of any of Your indebtedness to Us and we shall not be bound by any conditions or qualifications that You may make in relation to any payment.
- 9.6 Default:
- 9.6.1 If You fail to pay any amount owed to Us by the due date, then without prejudice to any of our other rights, remedies and powers we have under these terms or by law we may (notwithstanding that we may have waived any previous default by You) cancel any contract and/or suspend provision of Services to You.
- 9.6.2 You will upon demand pay to Us all costs, charges and expenses (including, but not limited to collection charges and/or commissions and legal costs on a solicitor and own client basis) incurred by Us in collecting or taking action to collect any amount owed by You or in connection with the exercise, enforcement or preservation of any of Our rights, powers or interests arising under these terms.

10 Liability

- 10.1 We shall in no way be liable to You or any third party for any Claims, (including without limitation consequential losses, loss in profits or any other loss howsoever arising), resulting from or related to any failure or delay in providing Services. Such delays or failures may include without limitation failures or delays caused by acts of God, strikes, labour disputes, riots, civil commotion, intervention of a government, inability to obtain labour, materials or manufacturing facilities, computer hardware or software failure, data corruption, fire, inclement weather, accidents, terrorism, sickness, theft or vandalism, interruptions of, or delay in, transportation, or any other causes beyond our control.
- 10.2 We shall have no liability in respect of any defect arising from misuse, willful damage, negligence, failure to follow instructions, unauthorised alteration or modification, abnormal working conditions or fair wear and tear.
- 10.3 Nothing in these terms and conditions shall affect Your rights under the Consumer Guarantees Act 1993 provided that where You are acquiring the Services for the purposes of a business then the guarantees under the Consumer Guarantees Act 1993 are excluded.
- 10.4 We are not liable for the protection or privacy of electronic mail or other information transferred through the Internet or any other network provider.
- 10.5 We are not liable for any updates of your Website if you are not under the maintenance contract.

- 10.6 All Services provided by Us are provided in good faith on the basis of the information provided by You. Where We are requested by You to provide casual advice in conjunction with Services then we shall have no liability whatsoever in relation to any such advice given and You shall rely solely on You own judgment in connection with all such matters.
- 10.7 We shall have no liability arising from, and may correct at any time, any typographical, clerical or other error or omission in any sales literature, price list, quotation, invoice, communication or other document or information issued by Us.
- 10.8 You acknowledge that, other than as expressly set out in these terms, We make no representation and give no assurance, condition or warranty of any kind to You (including any assurance, condition or warranty implied by law to the extent that the assurance, condition or warranty can be excluded) in relation to the Services and accept no liability for any assurance, condition, warranty, representation, statement or term not expressly set out in these terms.
- 10.9 Notwithstanding how Our liability may arise, You agree that our maximum liability to You is limited to a sum not exceeding the invoiced value of the Services to which the claim relates.

11 Waiver and Variation

- 11.1 We shall not be deemed to have waived or varied any provision of these terms or any right or remedy which We may have under these terms or at law or in equity or otherwise unless the waiver or variation is in writing signed by Us. No wavier of a breach shall be deemed to be a wavier of any other breach or any further breach.

12 Termination

- 12.1 You agree that you must give no less than one month notice in writing of termination of Website Hosting. No refunds will be given on prepaid hosting fees.

13 Jurisdiction

- 13.1 The law of New Zealand applies to these terms and the parties agree to submit to the exclusive jurisdiction of the New Zealand Courts.