

Terms and Conditions



Keselmania Website Solutions

These Terms and Conditions (“Terms”) govern your relationship with Keselmania Website Solutions (“KWS”) and form a binding contractual agreement between you and KWS. For this reason, these Terms are important and you should read and understand them.

KWS and the Client agree that:

1. **Outputs / Deliverables** – KWS will provide services to the client as stipulated in writing in the **Supply of Services Agreement**.
2. **Remuneration** – Remuneration will be **on an hourly OR agreed milestone achievement basis**.
 - 2.1. A milestone achieved is the confirmation in writing from the Client as per the Schedule of Fees.
 - 2.2. Each milestone or hourly rate will attract the fees as described in the Schedule of Fees.
 - 2.3. All Fees are payable within two weeks of the milestone/hourly rate being confirmed by the Client, upon issue of an invoice by KWS.
 - 2.4. If KWS is registered for GST, then GST will be payable as stated on the invoice.
3. **Conduct** Both parties will use best endeavours to promote and enhance the interests, welfare, profitability, growth and reputation of KWS and the Client, and all related bodies corporate; and
 - 3.1. Not intentionally do anything which is or may be harmful to KWS, the Client, or its related bodies corporate.
 - 3.2. During the term, devote the necessary time required, together with all reasonable attention, expertise and abilities, towards the delivery of the agreed milestones.
4. **Confidentiality** – KWS and the Client receive or could otherwise have access to Confidential Information. Both parties acknowledge that unauthorised use or disclosure of any Confidential Information is likely to be detrimental to KWS’s or the Client’s interests. KWS and the Client agree that:
 - 4.1. Each will do all things reasonably necessary to preserve and protect the confidentiality of the Confidential Information during the contract and at all times thereafter, and will not without the approval in writing from the other party:
 - 4.1.1. disclose the Confidential Information to any person or entity;
 - 4.1.2. use the Confidential Information for any purpose other than the reasons for which it has been provided;
 - 4.1.3. make any copies, photocopies or extracts of any of the Confidential Information or any part of it which is not otherwise necessary in the ordinary course of duties; or
 - 4.1.4. remove or memorise Confidential Information for later use other than in the normal course of business for which the information has been provided.
 - 4.2. Each will limit the disclosure of Confidential Information to such of the Party’s employees, contractors or business partners who have a legitimate need to receive it;
 - 4.3. When disclosing Confidential Information to legitimate recipients, only disclose such Confidential Information as is necessary for those purposes;
 - 4.4. when disclosing Confidential Information to legitimate recipients, ensure that those recipients are bound by suitable confidentiality obligations;
 - 4.5. safely and securely store the Confidential Information when not in use;
 - 4.6. They will notify the other Party of any actual or suspected disclosure of Confidential Information by a party not in the ordinary course of business;
 - 4.7. They will take due care to observe any document-management, information security and confidentiality-management practices that the Party may adopt from time to time; and

- 4.8. Upon the termination of this Agreement each Party will return all Confidential Information to the Party.
 - 4.9. They acknowledge that any information will be obtained and disclosed on a need-to-know basis.
 - 4.10. They will not obtain or attempt to obtain Confidential Information that they do not require for the purposes of this Agreement.
 - 4.11. They will not disclose to other employees of the Party any Confidential Information that are not required to be disclosed in order to perform their duties.
 - 4.12. For the purposes of this section: "Confidential Information" means all information treated or identified by the Party as confidential and disclosed which the other Party becomes aware regardless of its form or whether awareness occurs before or after the date of your acceptance of this Agreement.
 - 4.13. Confidential Information includes, but is not necessarily limited to:
 - 4.13.1. information concerning business plans and strategies, business relationships, financial plans and projections, product properties and configurations, production processes or materials, machinery
 - 4.13.2. configurations, engineering drawings, and customer and supplier identities and relationships;
 - 4.13.3. any information in which the Party holds a proprietary interest;
 - 4.13.4. any information which a reasonable person would ordinarily regard as confidential;
 - 4.13.5. any copy, extract, note or other record of the Confidential Information made by you or any other person and wherever contained or recorded; and
 - 4.13.6. the information specified in the Schedule.
 - 4.14. "Confidential Information" does not include information or technology already in the public domain, other than as a result of a disclosure of Confidential Information which was not authorised by the Party, nor does it include information which the Company has agreed in writing with you, or any of its employees, may be disclosed to the public.
 - 4.15. This Clause 4 shall survive the termination of this Agreement. For the sake of removing ambiguity confidentiality obligations shall persist despite KWS and the Client no longer having an Agreement.
5. **Intellectual Property** – KWS hereby assign to the Client all existing and future intellectual property, including copyright, in all Material created by KWS or conceived by you, Materials or facilities whether alone or with others.
- 5.1. Both parties will immediately inform the other party of, and provide with, full details relating to any or all processes, inventions, improvements, innovations and discoveries which you may make either alone or jointly with others in relation to or arising during the course of this agreement whether or not the same are capable of being protected by patent, copyright, registered design or otherwise.
 - 5.2. Both parties will do all acts necessary to maintain intellectual property protection for the Material and to vest the ownership of such rights of each party.
6. **Conflict of Interest management** – KWS and the Client may engage in business relationships and engage in other forms of income generation provided that:
- 6.1. No agreement would in any way result in a conflict of interest or performance based on the qualifications on offer and their respective geographic provisions, for example:
 - 6.1.1. KWS may not contract to other Organisations for the supply of similar services with an organisation that is in direct competition with the Client.
7. **Termination of Agreement** – KWS or the Client may wish to terminate the contract at any time, with two weeks written notice, if:
- 7.1. Work methodology and principles are not up to the standard that the Client requires.
 - 7.2. There are unresolvable clashes in work culture with any of the signatories to this Agreement.
 - 7.3. KWS or the Client do not see the feasibility of the Agreement.
8. **Conduct Following Termination** - Upon termination of this Agreement, KWS and the Client will:
- 8.1. At all times act in a manner, which validates and honours KWS, the Client and their customers.
 - 8.2. Acknowledge that the customer is a customer of the Client and hence treated as per the Company's Code of Ethics.
 - 8.3. Acknowledge that the customer is a customer of the Client and shall remain a customer of the Client during the term of this Agreement and beyond, at the discretion of the Client.

- 8.4. Act to ensure it does not promote products or services which might compete with those of KWS unless such activities are first declared and agreed by KWS.
 - 8.5. Promptly bring to the notice of KWS any information received which is likely to be of benefit or use to KWS in marketing KWS's products and services.
 - 8.6. Not make any representation or give any warranties other than those contained in the Client's literature when marketing KWS's products or services.
 - 8.7. Not incur any liability on behalf of KWS or in any way pledge or purport to pledge KWS's or the Client's credit
 - 8.8. Not undertake any advertising of KWS or the Client's products and services without the prior written consent of the other party.
 - 8.9. Contractors and employees of the one Party shall not to be employed or contracted to either Party's associated stakeholders or agencies within 12 months of termination or resignation, unless written permission is obtained from the other Party.
9. **Health, Safety and Environment:** Both Parties acknowledge their obligations as set out in the Occupational Health and Safety ("WHS") legislation. It is a fundamental term of the Agreement that both parties comply with obligations under WHS legislation and the location of work policies and procedures. Any breach of these obligations will be considered serious misconduct and will be subject to termination of this Agreement.
10. **General:**
- 10.1. Any provision of this Agreement which is, or becomes, illegal, void or unenforceable, shall be ineffective to the extent only of such illegality, voidness or unenforceability and shall not invalidate any other or remaining provisions of this agreement.
 - 10.2. This Agreement is governed by and is to be construed in accordance with the laws of Queensland, Australia.
 - 10.3. KWS reserves the right to subcontract some or all of the scope of this Agreement as required. KWS shall ensure that the relevant third party or subcontractor delivers the services on the same terms and conditions as the Agreement herein. KWS will ensure that all information that would normally be available for independent review and regulatory bodies of the Client are accessible from subcontractors in the same manner that KWS is required to do so in support of the Client's operating procedures.
11. **Indemnity:**
- 11.1. The Client agrees to indemnify KWS and keep it indemnified against any claim, including any legal fees and expenses KWS incurs in enforcing its rights pursuant to this Agreement.

This document was last updated on Tuesday, the 26th of July 2016.

