



GENERAL TERMS AND CONDITIONS

*These General Terms apply to all Goods and Services provided by Umbrellar Limited t/a Web Drive (**Web Drive**) to any person (each a **Customer**).*

1. SERVICES - GENERAL

- 1.1 **Agreement:** All Goods and Services will be supplied by Web Drive upon the specific terms applicable to those Goods or Services (**specific service terms**) and these General Terms (together the **Agreement**).
- 1.2 **Conflict:** If there is any conflict between these General Terms and the specific service terms, the specific service terms will prevail.
- 1.3 **Service confirmation:** Web Drive will give the Customer an order, a set up email or other written confirmation detailing the Services to be supplied and the commencement date. The Customer is deemed to have accepted, and be bound by, the Agreement from the commencement date.
- 1.4 **Fixed term arrangements:** If the Goods or Services are to be provided for a fixed term, then, upon the expiry of the term, Goods and Services will continue to be provided on a monthly basis at the fee applying during the fixed term. Clause 8.1 will apply in regard to termination.
- 1.5 **Commencement of Services:** Web Drive will use its reasonable endeavours to commence the Services on the commencement date, provided that Web Drive will not be liable for any delay in doing so resulting from any act or omission of the Customer or any other person, including any failure by the Customer or any other person to supply information, inputs, hardware, software or other systems necessary to commence the Services.
- 1.6 **Variations:** If the Customer wishes to change the Services, Web Drive will provide a further written confirmation pursuant to clause 1.3, which will supersede any previous written confirmation.
- 1.7 **Service level:** Where applicable, Web Drive will use its reasonable endeavours to supply the Services to the applicable service level specified in the specific service terms.

2. CHARGES

- 2.1 **Payment:** The Customer will pay (in New Zealand currency) all applicable fees and charges (without deduction or set off) in the manner specified in the specific service terms, or if no payment method is specified, then as follows:
- (a) for Goods or Services to which a monthly fee applies, the fee must be paid in advance before the first day of the month for which it applies. If Services commence intra month, the fees for that month will be added to the fees payable for the following calendar month; and
 - (b) for Goods or Services to which a one off fee applies, including fees payable for support and other services that are not included in any set charges, payment must be made within 20 days after supply, unless Web Drive requires otherwise.
- 2.2 **Credit card payments:** Payments by credit card will incur a surcharge.
- 2.3 **GST/taxes:** The Customer will pay goods and services tax (**GST**) and all other applicable duties and taxes. Web Drive will advise the Customer of the GST payable on its invoices.

- 2.4 **Variations:** Web Drive may, other than in regard to fixed term contracts, change its charges and fees, or any pricing structure, at any time upon written notice to the Customer, provided that such change will not take effect until one month after Web Drive gives notice. If the Customer does not accept the change, it may terminate the Agreement pursuant to clause 8.1.
- 2.5 **Interest:** The Customer will pay interest at a rate of 2% above Web Drive's bank's commercial overdraft rate on any overdue amount, from the date payment was due to the date Web Drive receives payment in cleared funds.
- 2.6 **Withholding payment:** The Customer shall not withhold or set off any amount payable to Web Drive.
- 2.7 **Third party charges:** Unless Web Drive agrees otherwise in writing, the Customer must pay all fees and other charges of those third parties engaged by the Customer or Web Drive in relation to the performance of the Services, including services relating to the installation of telephone lines, internet or any equipment.
- 2.8 **Enforcement costs:** The Customer is liable for all costs and expenses (including all legal costs and expenses incurred on a solicitor/client basis) incurred by Web Drive in the enforcement of any of its rights under the Agreement.
- 1.8 **Deposit:** Web Drive may require the Customer to pay a security deposit of an amount specified by Web Drive before providing any Goods or Services. Web Drive may keep all or any of the deposit as compensation for any costs, losses or liability suffered or incurred by Web Drive due to the acts or omissions of the Customer, or any of its employees, agents, contractors or any other person for whom the Customer is responsible. Web Drive will return the balance once it is satisfied the Customer has complied with all its obligations under the Agreement.

3. ACCEPTABLE USE POLICY

3.1 **Compliance:** The Customer must at all times:

- (a) comply with all laws applicable to the use of the Goods and Services;
- (b) ensure the Customer holds, maintains and complies with all software licenses relating to the use of the Goods and Services;
- (c) refrain from transferring, storing or using offensive, unlawful or objectionable materials or images;
- (d) refrain from engaging in spamming, attacking or any other form of malicious or unlawful conduct; and
- (e) refrain from engaging in any other conduct, which in Web Drive's view, affects, or may affect, Web Drive's ability to provide Goods or Services to the Customer or to any other person, or causes, or may cause, harm or loss to Web Drive or any other person.

3.2 **Prohibited publications:** Without limiting clause 3.1(a), the Customer must not publish or file the following content on its servers (including pictures, links and texts):

- (a) any material, which in Web Drive's view, breaches or infringes, or may breach or infringe, Web Drive or any other person's copyright, or trademark, patent, design or other rights;
- (b) any material that is defamatory;
- (c) any material which, in Web Drive's view, is or contains anything obscene, pornographic or offensive, including links to any such material;
- (d) distribution lists to be used via unsolicited email or other mass electronic mailing; or
- (e) IRC clients, bots, servers.

4. INFORMATION

- 4.1 **Ownership:** The Customer shall at all times retain ownership of the Customer Information and Web Drive shall at all times retain ownership of the Web Drive Information, including for the avoidance of doubt, Web Drive's Intellectual Property.
- 4.2 **Use:** Subject to clause 9.4, the Customer and Web Drive may only use each others Confidential Information in relation to the use, provision and performance of the Goods and Services. Each party must use their best endeavours to keep the other party's Confidential Information secure and at all times confidential.
- 4.3 **Disclosure:**
- (a) No party shall disclose any of the other party's Confidential Information to any person, and must also ensure their employees, agents, and contractors do not disclose such information, except as required for the proper use and performance of the Goods and Services, and then on a confidential basis.
 - (b) The parties will immediately inform the other if they become aware or suspect there has or could be an unauthorised disclosure of Confidential Information, or they are required by law to disclose it.
- 4.4 **Expiry/termination:** Upon the expiry or termination of the Agreement, the parties will either return or destroy each others Confidential Information (at the option of the owner) and all copies of it, other than information to be retained for audit or regulatory purposes.
- 4.5 **Publication of information:**
- (a) The Customer is responsible for all information and material transmitted, distributed or accessed by them.
 - (b) Web Drive does not check, monitor or vet any information transmitted, distributed or made available through the servers and networks provided or access as part of the Services. The Customer engages in these activities at its own risk.
- 4.6 **Joint promotion:** Subject to clause 9.4, the Customer permits Web Drive to publicise the business relationship between it and Web Drive for marketing and promotional purposes, excluding confidential and commercial terms relating to the particular Goods and Services provided to the Customer.
- 4.7 **IP addresses:** Web Drive retains control and ownership of all IP numbers and addresses that may be assigned to the Customer, and Web Drive may at any time change or remove any IP numbers or addresses.
- 4.8 **Security:**
- (a) Payment Security is managed through DPS for mutual security. Encryption protection is managed with an SSL (Secure Socket Layer) certificate, industry standard 128bit encryption software.
 - (b) Customers' personal information provided when purchasing goods online, will not be shared with third parties without customer approval to do so. Payments are processed through the secure DPS Payment Express system. Payment Security is managed through DPS for mutual security. Encryption protection is managed with an SSL (Secure Socket Layer) certificate, industry standard 128bit encryption software. Any credit card details stored for payments are done so on the DPS system. We do not hold customers credit or debit card details on file.

5. LIABILITY

- 5.1 **Provision of Services:** Web Drive shall not be liable for any interruption or delay in the provision of any Goods or Services as a consequence of:
- (a) any act or omission of the Customer or any third party, including any of the Customer's employees, contractors or agents, any internet service provider or any other utility provider (such as power and telephone companies); or
 - (b) any cause reasonably beyond Web Drive's control (**Force Majeure**) including without limitation fire, earthquake, volcanic eruption, tornado, lightening, flood, storm, any other act god, burglary or vandalism.

5.2 **Limitation on liability:**

- (a) Web Drive shall not be liable to the Customer, whether in contract, tort (including negligence) or otherwise, for loss of profits, business, revenue, goodwill, opportunity, loss of data or any other form of indirect or consequential loss or damage.
- (b) To the maximum extent permitted by law, Web Drive's total liability under the Agreement whether in contract, tort (including negligence) or otherwise, is limited to an amount equal to the total fees and charges paid or payable for the applicable Goods or Service giving rise to such liability, in the first 6 month period of the Agreement.

5.3 **Implied warranties:**

- (a) The Customer acknowledges that where the Goods or Services are being provided for business purposes or in trade, the provisions of the Consumer Guarantees Act 1993 are expressly excluded.
- (b) All terms, conditions, guarantees or warranties (including implied warranties as to merchantable quality and fitness for purpose), which may be implied into the Agreement are excluded to the maximum extent permitted by law. If legislation implies any such term, condition, guarantee or warranty into the Agreement, and such legislation does not permit the exclusion or modification of it, Web Drive's liability for any breach is limited, to the maximum extent permitted by law, and at its option, to:
 - (i) replacing the Goods or paying another person acceptable to Web Drive to provide similar Goods; or
 - (i) repairing the Goods;
 - (ii) re-performing the Services; or
 - (iii) paying another person acceptable to Web Drive to re-perform the Services.

6. **INDEMNITY**

6.1 The Customer indemnifies and holds Web Drive harmless, to the fullest extent permitted by law, against all costs, expenses (including all legal costs and expenses on a solicitor/own client basis and Taxes), losses and other liability sustained or incurred by Web Drive, and against any claims made or proceedings brought against Web Drive as a result of:

- (a) a breach of these General Terms, any specific service terms or any software license by the Customer, or any of the Customer's employees, agents, contractors, customers, clients, or any other person for whom the Customer is responsible;
- (b) any security breach, attack or error caused or made by the Customer or its employees, agents, contractors, customers, clients, or any other person for whom the Customer is responsible;
- (c) any other act or omission by the Customer, or by any of the Customer's employees, agents, contractors, customers or clients, or any other person for whom the Customer is responsible, including any breach or violation of any law; and
- (d) any fault or failure of, or damage to, any of the Customer's property located at Web Drive's premises.

The Customer shall pay to Web Drive upon demand, the amount (including all legal costs and expenses on a solicitor/own client basis) which Web Drive certifies as being required to compensate Web Drive for the cost, loss, expense or liability it has incurred.

7. **SUSPENSION**

7.1 **Suspension:** Web Drive may from time to time, without notice, suspend a Service, or disconnect or deny the Customer access to any Goods or Services if:

- (a) the Customer fails to comply with any provision of the Agreement or any software licence, including any failure to pay any charge or other amount payable to Web Drive within 10 Business Days after the due date for payment, until the breach or failure is remedied to Web Drive's satisfaction. The Customer shall continue to pay all charges and other amounts payable for the Goods and Services during the period of suspension;
- (b) Web Drive believes suspension is necessary to preserve or protect any person or property, including the information or property of another customer; or
- (c) suspension is required by law.

7.2 **Notice:** Web Drive will endeavour to give the Customer at least two Business Days prior notice by email if it intends suspending the Goods or Services due to charges or other amount being overdue.

8. TERMINATION

8.1 **Notice:** Unless the Goods and Services are to be provided for a fixed term, the Agreement may be terminated by either the Customer or Web Drive giving the other at least 30 days prior written notice.

8.2 **Termination for breach:** Web Drive may terminate the Agreement immediately upon written notice to the Customer if:

- (a) the Customer fails to pay any amount owing to Web Drive on the due date for payment;
- (b) the Customer breaches any provision of the Agreement or any software license, and in Web Drive's opinion such breach is not capable of remedy, or if in Web Drive's opinion it is capable of remedy, the Customer fails to remedy the breach within seven Business Days after receiving written notice of the breach from Web Drive;
- (c) Web Drive is instructed to do so by any law enforcement or government agency;
- (d) the Customer ceases or threatens to cease to conduct its business, or disposes of, or threatens, or agrees to dispose of, all or a substantial part its assets;
- (e) A receiver, administrator or similar official is appointed in respect of the Customer or its assets;
- (f) the Customer is unable to pay its debts as they fall due or is deemed to be so under any law;
- (g) the Customer stops or suspends payment of any of its indebtedness or threatens to do so, or begins negotiations or takes proceedings to reschedule any of its indebtedness;
- (h) Web Drive is unable to provide the Services for a period exceeding one week due to a Force Majeure; or
- (i) any other event occurs which, in Web Drive's opinion, may have a material adverse affect on the Customer's ability or willingness to comply with the Agreement.

8.3 **Consequences of termination:** Upon termination pursuant to this clause 8, the Customer will:

- (a) immediately pay to Web Drive all outstanding amounts, and all other amounts payable by the Customer under the Agreement, including interest and Web Drive's enforcement costs and expenses (including legal costs and expenses on a solicitor/own client basis);
- (b) where Goods or Services were to be supplied to the Customer for a specified period, the Customer will immediately pay to Web Drive all amounts that would have been payable by the Customer up to the expiry of that period; and
- (c) immediately return to Web Drive, all of Web Drive's equipment, property and all Web Drive Information.

8.4 **Return of Customer property:** If applicable, and if requested by the Customer, Web Drive will return all the Customer's property, equipment and Customer Information in Web Drive's possession or control to the Customer.

9. GENERAL

9.1 **Variation:** Web Drive may change, amend or replace these General Terms at any time, provided that such changed, amended or new General Terms will not take effect until one month after Web Drive gives the Customer written notice of it.

9.2 **Survival:** Clauses 2.1, 2.5, 2.8, 4, 5, 6 and 9.4 survive the termination or expiry of the Agreement.

9.3 **Notices:** Each party will give any required notice to the other party at the physical or email address last known to the party giving notice. Each notice will be deemed to be effective if, delivered by hand, immediately, if delivered by post, 3 days after it was posted, and if sent by email, when successfully sent from the sender's email.

9.4 **Privacy/use of information:** Notwithstanding clause 4, Web Drive may collect and disclose personal and credit information about the Customer (including the Customer's account information and information about any Customer defaults) to debt collection agencies, credit reporting agencies, Web Drive's lawyers and accountants, and to any person with which Web Drive does business, for the following purposes:

- (a) if Web Drive is required to disclose such information to any government or law enforcement agency, or otherwise by law;
- (b) obtaining a credit report or other information about the Customer to decide whether to provide Goods or Services to them, to manage the Customer's account with Web Drive, and/or to recover any amounts payable by the Customer, including in relation to any enforcement or Court action or proceedings;
- (c) to provide the Customer with offers or information of other goods or services Web Drive, or any of those above persons may be able to provide to the Customer, or for other marketing purposes, unless the Customer tells Web Drive not to in writing,

and the Customer authorises those persons to provide such information to Web Drive.

9.5 The Customer acknowledges that information disclosed to credit reporting agencies may be disclosed by them to other third parties as part of their collection and credit reporting services to help those third parties to decide whether to provide goods, services or credit to the Customer or to recover money the Customer owes them.

9.6 **Assignment:**

- (a) The Customer must not assign any of its rights or obligations under the Agreement without the prior written consent of Web Drive. Web Drive may assign its rights and obligations under the Agreement without the Customer's consent.
- (b) Any change in the effective control or management of the Customer or any parent company of the Customer, shall be deemed to be an assignment requiring the prior written consent of Web Drive, which consent will not be unreasonably withheld.

9.7 **Waiver:** No waiver or breach of, or failure to enforce, any provision of, the Agreement will in any way limit the right of Web Drive to enforce and compel strict compliance with the provisions of such Agreement.

9.8 **Entire agreement:** The Agreement constitutes the entire agreement between the parties as to its subject matter, and to the maximum extent permitted by law, supersedes all previous agreements and understandings on the subject matter.

9.9 **Governing law:** The laws of New Zealand govern the Agreement.

10. DEFINITIONS AND INTERPRETATION

10.1 **Definitions:**

Business Hours

8.30 am to 5.30 pm from Monday to Friday, but excludes statutory public holidays in Auckland, New Zealand.

Business Day	any day that is not a Saturday, Sunday or statutory public holiday in Auckland, New Zealand.
Customer Information	all information, content and data about the Customer, its business and its clients which is disclosed to, or acquired by, Web Drive in the performance of the Services, and includes all data stored on Web Drive's servers.
Confidential Information	Customer Information and Web Drive Information other than information that is or becomes: <ul style="list-style-type: none"> (a) part of the public domain (other than through any breach of confidentiality by a party); (b) lawfully known to the recipient on a non-confidential basis before being disclosed; (c) available to the recipient from another person who is in possession of it lawfully and can disclose it on a non- confidential basis; or (d) required to be disclosed by law.
General Terms	these general terms and conditions as amended from time to time, and includes any replacement terms.
Web Drive Information	all information, content and data about Web Drive, its business and its other customers, all information content and data about the business and clients of Web Drive's other customers, Web Drive's Intellectual Property, and all information, content and data that is developed by Web Drive while providing the Goods and Services.
Web Drive's Intellectual Property	all intellectual property in and associated with the business of Web Drive and its other customers, including all trade names, trade and service marks, discoveries, improvements, systems, specifications, manuals, trade secrets, know-how, procedures, computer software and programs (whether denominated software, firmware or otherwise), formulae, designs, writings, diagrams, logos, domain names, websites, drawings, copyright materials and the benefit of any applications or registrations in respect of the above and any other intellectual property and industrial property whatsoever and howsoever recorded or stored (if at all).

10.2 **Interpretation:** In the interpretation of these General Terms, unless the context otherwise requires:

- (a) references to the parties include their respective executors, administrators, successors and permitted assigns;
- (b) references to a person includes any form of entity including an individual, company, partnership, firm, trust, any central or local government department, and any other entity, or any other association or persons, either incorporated or unincorporated;
- (c) words in the singular include the plural and vice versa;
- (d) words importing one gender include the other genders;
- (e) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- (f) headings have been inserted for convenience only and will not affect the construction of the Agreement.