

Maffey.com Limited Terms & Conditions

1. Definitions

<i>Confidential Information</i>	means all information, data and programming code disclosed by one party to the other relating to the Services and which is not in the public domain.
<i>Products</i>	means computer hardware, peripherals, accessories and associated software.
<i>Services</i>	means services performed by us at your request (verbal or written), including the website development and hosting, and provision of necessary products and software.
<i>Software</i>	includes all relevant documentation, manuals, printed and written matter.
<i>Terms</i>	means these terms and conditions, which may be varied by us from time to time.
<i>We or Us</i>	means maffey.com limited.
<i>You</i>	means the customer to whom we provide the Services.

2. Performance of Services

2.1	<i>These Terms Prevail</i>	We will perform the Services only subject to these Terms. If there is any dispute or conflict between any of these Terms and any provision in any form used by you to order or request services, these Terms shall prevail.
2.2	<i>Acceptance of Terms</i>	On receipt of a verbal or written order for Services from you, and acceptance by us, a contract for the provision of Services shall be deemed to have been agreed incorporating these Terms.
2.3	<i>Consideration for Services</i>	We agree to provide the Services in consideration of your making payment as specified in clause 3 and observing clause 7.

3. Charges and Payment

3.1	<i>Estimate Only</i>	Any price given by us for provision of the Services is an estimate only, not a firm quote, unless otherwise specified in writing. You will be liable if the amount payable exceeds the estimate.
3.2	<i>Charge-out Rates</i>	Out hourly rates vary between \$75 – \$150 depending on the Services required, and are plus GST. We will specify rates when giving estimates, and you agree to be bound by those rates.
3.3	<i>Billing and Payment</i>	We invoice by email by the 5 th of each month for the previous month's work. Payment is due by the 20 th of the month in which the invoice is emailed.
3.4	<i>Late Payment</i>	You agree to pay penalty interest at the rate for time to time charged by ASB Bank Ltd for unsecured overdrafts on all amounts not paid by due date, from date payment is due until actual payment. You are liable for any collection costs incurred by us in recovering overdue payments.
3.5	<i>Suspension of Services</i>	We reserve the right to suspend the provision of Services while any invoice remains unpaid.

4. Source Code

- 4.1 *Source Code* Source code created or used by us for performance of the Services comprises:
- (a) our own software framework, to make development faster, easier and more consistent;
 - (b) code from open source libraries;
 - (c) code from the public domain; and
 - (d) customer code specific to the Services performed for each individual Customer, which subject to 4.2 is your property.
- 4.2 *Ownership* Ownership of the code is as follows:
- (a) we retain ownership of our own software framework, and license you under the MIT licence royalty-free to use, modify and on-sell this;
 - (b) so far as we are aware, open source and public domain code is available for common use according to their licences. While we believe we are using this code legitimately and within industry norms, we do not guarantee compliance with all licences. We advise you to see <https://opensource.org/licenses> for licence details. We do not have any ownership of this code and are unable to pass ownership in them to you;
 - (c) property and ownership in Products and Software supplied or created by us to meet your requirements and all development work and source code, will remain with us until you have paid for them in full. Thereafter, all software written by us for you, and copyright in that software, becomes your property.
- 4.3 *Disputes over Source Code Licences* If any dispute over source code or any part of them, including open source and public domain licences arises, we and you shall discuss the matter and attempt to reach resolution. If we are unable to do so, we and you agree to refer the matter for resolution to Electronic Frontier Foundation (www.eff.org) whose decision will be final. We shall not be liable to you for any reason should our interpretation of ownership or licensing of any code lies or be determined to be incorrect.

5. Hosting

- 5.1 *Basic Hosting Package* If you agree to have your website hosted by us, our basic hosting package includes:
- (a) monthly charges of \$20, plus GST, billed annually in advance;
 - (b) 100Mb of storage space and 1Gb of data transfer.
- 5.2 *Extras* Hosting extras are available for \$10 + GST per month for each of the following:
- (a) each additional gigabyte of storage;

(b) each additional gigabyte of data transfer;

5.3 *Uptime* We aim to achieve server uptime of over 99.9%, but do not guarantee that this will be achieved at all times or that there will not be disruptions to service. We will not be liable to you for any disruption to you or losses incurred by you for failure to meet this uptime target.

5.4 *Inappropriate Material* We reserve the right to delete any inappropriate or offensive material from your website, or to suspend or terminate your account if your website is used for spamming.

6. Support

6.1 *Best Intentions* We do not provide a support desk as such, but will use our best endeavours to assist you if you strike problems with your website.

6.2 *Charges* For minor issues, we provide informal assistance at no charge. However, we reserve the right to determine which issues fall under free support and which fall under development work and will therefore incur a charge.

7. Confidentiality & Non Solicitation

7.1 *Non-Disclosure* Any Confidential Information supplied by one party to the other remains the property of that party. Neither party shall disclose the other's Confidential Information to a third party. The operation of this clause shall survive during and after the performance of the Services.

7.2 *No Solicitation* You agree that you will not solicit or initiate any offer to employ or contract with any of my present employees or contractors, both during and after the provision of the Services by us.

8. Warranties and Exclusions

8.1 *Consumer Guarantees Act Excluded* You acknowledge the Services are being acquired for a business transaction for the purposes of section 43 of the Consumer Guarantees Act 1993 and that Act shall not apply to any such contract or the provision of Services under it.

8.2 *No Representations* You acknowledge that you have not relied on any representation made by us which is not expressly recorded in these Terms.

8.3 *No Liability for Indirect Damages* We will perform the Services with due care and diligence. However, we will not be liable for indirect or consequential damage or for any loss of business, property, profit or data, however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the Products or Services or the failure or omission on our part to comply with our obligations under these Terms, even if we have been advised of the possibility of such damages or loss, and whether such claim is made in contract, negligence or under any other legal claim.

8.4 *Limit on Damages* Our total liability for damages under this agreement whether in contract, negligence or under any other claim shall be limited at our option to either of the following, as may be appropriate:

(a) supply and/or performance of the Services again;

- (b) refund of any payments made by you to us in relation to the Services.
- 8.5 *Time limit for claims* Any claim for damages must be notified to us within 2 months of the alleged cause of action arising.
- 8.6 *Severability* If any provision of these Terms is held to be unenforceable, illegal or void, the remaining provisions shall nevertheless remain in full force and effect.
- 8.7 *Governing Law* Subject only to clause 4.3, these Terms are subject to New Zealand law and the exclusive jurisdiction of the New Zealand courts sitting in New Zealand.