

General Terms and Conditions

1.1 Agreement

Each party warrants its power to enter into this agreement and has obtained all necessary approvals to do so.

These Terms and Conditions contained in this document supersede any previous Terms and Conditions. Damue Pty Ltd may at any time revise these Terms and Conditions by sending a Notice of Amendment to those bound by these terms. These Terms and Conditions are to be governed by and construed in accordance with the laws of New South Wales, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

1.2 Limited Liability

1. In no event shall Damue Pty Ltd or its suppliers be liable for any accidental, consequential, incidental or indirect damages of any kind (including without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss) arising out of the use of or from an the inability to use the goods or services. In no event shall Damue Pty Ltd's liability for any claims whether in contract, tort or other theory of liability exceed the purchase price of the subject goods or services, unless such limitation of liability is otherwise prohibited by law.

2. Damue Pty Ltd will use the best of its knowledge, ability and take all due care in providing the goods and services, however Damue Pty Ltd makes no warranties or representations as to accuracy or completeness of the goods and services. Damue Pty Ltd specifically disclaims any liability or responsibility for any errors or omissions whether Damue Pty Ltd is aware of such errors or omissions or not except in the case of gross negligence. Neither Damue Pty Ltd nor any other party involved in creating, producing, or delivering the goods or services is liable for any direct, incidental, consequential, indirect, special, punitive or exemplary damages or any loss of business, interest, revenue or profit arising out of your access to, or use of, or inability to use the goods or services. Without limiting the foregoing, all goods and services are provided to you "AS IS" [WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.] Please note that the Trade Practices Act and similar State and Territory legislation in Australia may confer rights and remedies on you in relation to the provision by Damue Pty Ltd of goods or services which cannot be excluded, restricted or modified ("Non-excludable Rights"). Notwithstanding the foregoing paragraph, Damue Pty Ltd does not exclude any Non-excludable Rights but does exclude all other conditions and warranties implied by custom, law or statute. Please note that the Trade Practices Act and similar State and Territory legislation in Australia may confer rights and remedies on you in relation to the provision by Damue Pty Ltd of goods or services in which cannot be excluded, restricted or modified ("Non-excludable Rights"). Notwithstanding the foregoing paragraph, Damue Pty Ltd does not exclude any Non-excludable Rights but does exclude all other conditions and warranties implied by custom, law or statute.

3. Subject to the Non-Excludable Rights (above), Damue Pty Ltd disclaims all warranties, express and implied, as to the accuracy, validity, legality or otherwise of any materials or information contained in the document.

4. To the fullest extent permitted by law, Damue Pty Ltd's liability for breach of any implied warranty or condition which cannot be excluded is limited, at the option of Damue Pty Ltd, to: (a) in the case of services, the supply of the services again or the payment of the cost of having services supplied again; and (b) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of such goods, the payment of the cost of replacing the goods or acquiring equivalent goods, or the payment of the cost of having the goods repaired.

5. Damue Pty Ltd assumes no responsibility and shall not be liable for any damages to, or viruses that may infect, your computer equipment or other property on account of your access to or use of electronic material distributed to you by Damue Pty Ltd or your downloading of any materials, data, text, images, video, or audio from our website.

1.3 Copyright

The intellectual property rights, copyright and company trade secrets of Damue Pty Ltd vested in all software products, upgrades, dual-media software, hard-copy or electronic manuals and documentation are vested in Damue Pty Ltd, which has the right to use the software or material, or any part of it in other applications and for its own use. The software or material or any part of it shall not be used, reproduced, or disclosed to any person except in accordance with either an authorisation or a licence, both in writing, first obtained from Damue Pty Ltd. No part of any software or publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, (electronic, mechanical photocopying, recording or otherwise) without the prior written permission of Damue Pty Ltd.

Materials displayed on our website or sent in electronic communications are either the property of, or are used with permission by, Damue Pty Ltd. The use of these materials by you, or anyone else authorised by you, is prohibited unless expressly permitted by these Terms and Conditions or express permission is provided elsewhere on the Site. Any unauthorised use of the images may violate copyright laws, trademark laws, the laws of privacy and publicity, and civil and criminal statutes.

1.4 Communications

Unless a signed agreement states otherwise, any communication or material sent or given to Damue Pty Ltd by electronic mail or any other form, including any data, questions, comments, suggestions, or the like, will be treated as, non-confidential and non-proprietary. Anything you transmit or post may be used by Damue Pty Ltd or its affiliates for any purpose, including, but not limited to, reproduction, disclosure, transmission, publication, broadcast, and posting. Furthermore, Damue Pty Ltd is free to use, without any compensation to you, any ideas, concepts, know-how, or techniques contained in any communication you send to Damue Pty Ltd for any purpose whatsoever, including, but not limited to, software solutions using such information.

1.5 Products and Services

Features and specifications of goods and services described are subject to change without notice. The reference to any such goods or services offered by Damue Pty Ltd does not imply or warrant that these goods or services will be available at all times.

Project Terms and Conditions

1.6 Requests for Work

Work requested by the Customer (including employees or representatives of the Customer), in written, electronic, or verbal form, is authorised by the Customer.

1.7 Fixed Price Work

Damue Pty Ltd may agree to perform certain work or provide a software product for a fixed price in accordance with the proposal. In this case, the specification is binding and additional or previously unspecified work will be to the customer's cost. Damue Pty Ltd, at its discretion, may decide to include minor changes requested by the customer as part of the fixed price agreement.

1.8 Hourly Work

Damue Pty Ltd may agree to undertake work on an hourly rate basis and may provide an estimated time to complete this work. Such estimates are not absolute or binding and all hours designated as performed will be charged at the rate in the proposal. If during the course of such work Damue Pty Ltd determines that the project will require substantially more hours than estimated Damue Pty Ltd will advise the customer who may then choose not to complete the task. In this case, all hours spent will be charged to the customer.

1.9 Rates

The hourly rate specified in the proposal will only be valid for a period of 6 months unless otherwise stated.

1.10 Prepaid Work

Damue Pty Ltd may offer a competitive rate to those customers pre-paying time in blocks of 40 hours per person on the project. Pre-paid rates become effective upon the day of payment. Rates revert to standard if pre-payment is not maintained. For continuing work a new invoice will be issued when more than 20 hours of the previous invoice have been completed. We recommend that you are able to process payment within 24 hours of receiving invoice to maintain pre-payment. For pre-paid work we only accept Direct Deposits.

1.11 Deadlines

Damue Pty Ltd will only endeavour to meet deadlines agreed to by Damue Pty Ltd.

1.12 Equipment

Damue Pty Ltd is not liable for any equipment failures be it Damue Pty Ltd's equipment or equipment on the customer's site.

1.13 Delays

Delays resulting from other software, hardware or settings on the customer's equipment or variations will be charged at the standard hourly rate unless otherwise agreed.

1.14 Warranty

A 30 day warranty begins upon delivery of any fixed price project. No warranty applies to work done on an hourly basis, this includes bug fixing. Damue Pty Ltd and its suppliers disclaim all other warranties, either express or implied, including, but not limited to implied warranties or merchantability and fitness for a particular purpose, with regard to the software, the accompanying written materials, and any accompanying hardware.

1.15 Definition of a Bug

A bug is defined as a coding error that causes an unexpected defect, fault, flaw, or imperfection in a software application. In other words, if any Damue Pty Ltd software does not perform as the developers intended it to. Any unspecified feature or modification is not a bug, and will be reviewed as additional work and be charged at the standard hourly rate unless otherwise agreed.

1.16 Training and Documentation

Training is charged in half day or full day sessions. Documentation, if required, is at additional cost. All custom documentation, including additions, deletions, and amendments is to the customer's cost.

1.17 Support

Software may be supported either under an hourly basis rate, maintenance support agreement or on a per issue basis.

1.18 Cancellations by Customer

If any hourly project is cancelled by the customer after commencement, Damue Pty Ltd will charge for all hours up to that point in time. Any pre-paid work not fully completed will not be refunded, however the remaining balance will be credited to the customer's account for future utilisation.

If any fixed price project is cancelled by the customer, the total hours spent working on the project will be multiplied by the hourly rate and any payments made to Damue Pty Ltd subtracted from this total. Any credits will be credited to the customer's account for future utilisation. In the case where the work spent exceeded the customer's total payments the customer will be issued with an invoice for the difference.

1.19 Cancellations by Damue Pty Ltd

Damue Pty Ltd has the right to terminate any fixed price work without prior notice. Damue Pty Ltd will charge on a pro-rata basis for any work completed. Damue Pty Ltd has the right to terminate any previously purchased pre-paid work blocks without prior notice. In this case, the customer will be refunded for hours not completed as a proportion of the pre-paid block's purchase value. Damue Pty Ltd has the right to terminate any ongoing service contract including, but not limited to hosting and database updates, with fourteen days notice. In this case, any paid unexecuted services will be refunded as a proportion of the charged price based on percentage of specified project completed.

1.20 Payments

Damue Pty Ltd only accepts payments in the form of cash, direct deposits or company cheques. Any fees incurred by Damue Pty Ltd due to cheques that when presented do not have adequate funds in the customer's accounts will be charged to the customer with an hourly handling charge rate. Damue Pty Ltd does not accept credit card payments.

1.21 Goods and Services Tax (GST)

All prices quoted whether on an hourly basis or a fixed price basis are exclusive of GST unless otherwise stated.

1.22 Expenses

Damue Pty Ltd will travel to work on-site. Based on an 8 hour working day, travel inside the Sydney Metropolitan area will be a chargeable part of this 8 hour working day. Travel is chargeable at the standard hourly rate. All other expenses incurred by Damue Pty Ltd in carrying out the project will be at the customer's cost.

1.23 Payment Terms

Unless otherwise agreed, payment terms are strictly 14 days from date of invoice. Damue Pty Ltd has the right to take legal action to recover debt. Any expenses incurred by Damue Pty Ltd in recovering the debt will be charged to the customer. The customer has 7 (seven) days from date of receipt of an invoice to query the invoice.

1.24 Title of Goods

Title of goods remains the property of Damue Pty Ltd until payment is received in full. Damue Pty Ltd has the right to withhold source code and shall not carry out any further work from the expiry of the payment terms until all outstanding invoices are paid in full.

1.25 Interest

Damue Pty Ltd reserves the right to charge interest on all overdue accounts at a rate of 10% per annum calculated daily. Overdue accounts are deemed to be those accounts that remain unpaid after fourteen days from the date of invoice for services or products provided by Damue Pty Ltd.

1.26 Source Code Ownership

In conjunction with the copyright clause, Damue Pty Ltd owns all the source code developed and the right to retain and reuse all source code. Any source code supplied to the customer will be upon request and otherwise subject to the copyright clause and the following qualification. Some projects contain Damue Pty Ltd framework code that is common to other projects. This source code will not be provided, but the use of such code libraries is included in these terms.

1.27 Solicitation

The customer agrees not to solicit directly or indirectly any Damue Pty Ltd employee or contractor to Damue Pty Ltd to perform work for the customer which is work that Damue Pty Ltd could perform. Should such work be performed, the customer agrees that it shall be liable to pay damages to Damue Pty Ltd in a sum calculated as the higher of the amount paid to the employee or contractor for the work, or an estimate (arrived at on a reasonable basis with due care) of the cost of such work if it had been performed by Damue Pty Ltd at the time it was performed by the employee or contractor.