

## DEFINITIONS

As used herein and throughout these terms and conditions:

**SED, the designer, we** - means SHOUT Electronic Design

**You, the client, the user, the customer** - means you

**Services** - means all work to be conducted by SED as described or as written in the quote/contract

**Design, project, job, service** - means work to be undertaken by SED

## GENERAL

Upon signing the Shout Electronic Design Work Commencement Contract you acknowledge that you are in agreement with and bound by the terms and conditions detailed below.

## WORK COMMENCEMENT

SED will begin work only once the Work Commencement Contract has been signed and the 25% deposit has been received in full. This deposit is non-refundable and is required to cover all initial start-up costs for work undertaken.

## QUOTES, PRICING & PAYMENT

Quotes are provided as an estimate only. Although SED will make every attempt to provide an accurate estimate, all work or services undertaken are subject to a price variation based on any additional work the customer may request or variations to the project ongoing. In the event this does occur, the customer will be notified before any additional work is undertaken and an additional purchase agreement negotiated. All quotes are valid for 30 calendar days only.

All pricing and payments shall be outlined to the customer prior to any work being undertaken and payments will vary depending on the scope of the work, service or project requested. All prices quoted exclude GST unless otherwise stated.

Larger projects may require a progress payment of up to an additional 25% unless otherwise agreed. This will be outlined to the customer prior to work commencement.

If client does not supply all material as agreed upon or the project is delayed due to the client not having all the required information submitted to SED in due time then the client may be required to make a further 25% payment before SED continues any further with the project.

Once a project has been completed and handed over to the client, the final balance of payment is then due within 1 calendar month from the date of handover unless otherwise arranged with SED. If payment is not received within this period, SED reserves the right to revoke any and/or all design materials, uploads and resources created in relation to the defaulted account, until it is paid in full. Failure to finalise an account will result in debt collection.

As stated on the SHOUT Electronic Design website and SHOUT Electronic Design marketing materials, SED offers its services as low as 10% of competitor's rates. This is based on an average market figure collected by SED in 2013.

Prices are subject to change and also fluctuate depending on design criteria.

Unpaid accounts will incur an appropriate rate of interest (5% per annum) and will result in legal action.

## TERMINATION

Either the client or SED may agree to terminate the Work Commencement Contract by giving 14 days' notice in writing. If the cancellation has occurred by request of the client and work has already commenced then SED reserves the right to retain the 25% deposit and will charge the client any monies required to cover any outstanding losses or costs involved with the project up until the date of cancellation.

If at any time the client does not meet the requirements (eg. Due payment, correspondence, website related materials or information) of the contract within the period of 14 days SED reserves to cancel the contract and retain any payments made in relation to any work that has already commenced.

Termination cannot be a result of the client or SED simply changing their mind in any way in relation to the project during the period of the contract.

Unpaid accounts will incur an appropriate rate of interest (5% per annum) and will result in legal action.

### **LIMITATION OF LIABILITY**

All terms and conditions, guarantees, undertakings, inducements and representations, whether express or implied, statutory or otherwise relating to the provision of services by SED not contained in the Work Commencement Contract are excluded and SED will not accept liability for any loss or damage (including consequential loss or damage) by negligence or otherwise which may be suffered or incurred or which may arise directly or indirectly with respect to the service or services provided.

All work and materials provided for the Client by SED will be free and clear of all liens and encumbrances and may be lawfully used by the client without infringing upon the rights of others including, and without limiting the generality of the foregoing, any copyright trade secret patent or trade mark rights of any third party.

It is expected that all work and materials provided by the Client for SED will be free and clear of all liens and encumbrances and may be lawfully used by SED without infringing upon the rights of others including, and without limiting the generality of the foregoing, any copyright trade secret patent or trade mark rights of any third party. SED will not be held liable for any files, pictures, images or associated information provided by the client and or any breaches of the copyright act arising or existing.

Under no circumstances shall SED be liable to the client or its associates for an indirect or consequential loss suffered by the client in relation to the information or services provided or prepared by SED including (without limitation) loss of profit, loss of contracts and or pure economic loss. Any liability is strictly limited to the direct losses associated with remedial costs of the supplies only, not to include claims for delays, out of sequence working, non-productive overtime, award of costs, etc. Liability to any third party for any reason is specifically excluded unless separately agreed in writing.

SED will not be held liable or in breach of these terms and conditions if any losses or damages are incurred by the inability to complete any form of service by the reason of death, fire, incapacity, illness, floods, earthquake, cyclone, extreme weather of any kind or any other event deemed an act of God. This also include any local, state, federal or international law, order or regulation or any other circumstance outside of SED's control.

In the event of any of these circumstances, SED will, within its best capabilities, notify the client of a delay in or ceasing of services as soon as possible.

### **PASSING OF RIGHTS**

Only when all outstanding payments have been paid in full by the client and receipted by SED will the client be assigned the rights to use and or rights to possession of projects, artwork, software, hard copies or any other item specified on the work commencement contract, as applicable.

Upon completion of the job, the client gives SED the permission, for SED marketing, portfolio and design gallery purposes only, to use all design work, imagery, photographs and code intended for client use, without copyright infringement.

In accordance with the terms and conditions herein, unless specifically written agreement in the contract, all project material, including; interfaces, navigational devices, menus, menu structures or arrangements, icons, help, all operational instructions, scripts, cgi applications, software, source code, and all other components of any source or object computer code that comprises the website or project, all literal and non-literal expressions of ideas that operate, cause, create, direct, manipulate, access, or otherwise affect the Content and design elements used or developed and all software, and our products and results of our services remain our property and we retain full ownership rights and all intellectual property rights.

You specifically agree not do anything that may in any way infringe upon or undermine our rights, title, or interest in the Website or our products and services. This includes, but is not limited to, any sale, transfer or gift of the whole or of any part of any item, data or anything whatsoever that we own. You fully understand that we may reproduce, reuse, develop and use in any other way we choose, anything within our ownership.

### **PAYMENT PLAN**

When the client has signed the payment plan contract, if they so choose to, they are entitled to pay for the design project in 4 payments of 25%. These payments will consist of a 25% deposit to be paid prior to work commencement, a 25% payment prior to final design handover or website launch, a 25% payment exactly two weeks after the project is complete and the fourth 25% payment to be made exactly four weeks after the project is complete. Payment dates will vary, pending on the dates outlined in the payment plan contract.

If the client feels as though payment cannot be met by the due date for any one of these four payments, excluding the deposit, then ample notice must be made to SED so that a payment extension can be made. Approval of payment extensions is at the discretion of SED and cannot be guaranteed. If a late payment occurs without correspondence from the client then all design work will cease until payment is made. Unpaid accounts will incur an appropriate rate of interest (5% per annum) and will result in legal action.

## WEB CONTENT, COPYRIGHTS, MATERIALS AND IMAGES

All work and materials provided for the Client by SED will be free and clear of all liens and encumbrances and may be lawfully used by the client without infringing upon the rights of others including, and without limiting the generality of the foregoing, any copyright trade secret patent or trade mark rights of any third party.

It is expected that all work and materials provided by the Client for SED will be free and clear of all liens and encumbrances and may be lawfully used by SED without infringing upon the rights of others including, and without limiting the generality of the foregoing, any copyright trade secret patent or trade mark rights of any third party. SED will not be held liable for any files, pictures, images or associated information provided by the client and or any breaches of the copyright act arising or existing.

Images supplied to SED by the client will be altered in size or tone, without major alteration to the visual context itself, by SED without notice, to suit application. A maximum size of images intended for website content must not exceed 4MB.

If the client requires SED to source stock images for website content, this will be done via 123rf.com, to ensure the distribution of these images is commercially legal. If the client insists on using an alternative image library source then an additional cost may occur. This image library source must contain images that can be legally redistributed and SED reserves its rights to refuse any image source it feels is not abiding by the law. The sourcing of images from 123rf.com will be free of charge up for up to 10 images ONLY. Any image sourcing exceeding this figure will incur an additional cost.

SED reserves its right to decline any design process requested and insisted on by the client if SED deems it unprofessional and not in the best interests for the client or for SED's professional image.

The rights to photographs, graphics and any third party items such as source code, always remain the property of their respective owners.

## GUARANTEES

Website designs outputted by SED are as up-to-date in code and functionality as the current version of Internet browsers released at the time of design. SED offers no guarantee that any elements of the website design will retain complete functionality with a new browser released after the design completion.

Website designs outputted by SED are as up-to-date in code and functionality as the current standard in code at the time of design. SED offers no guarantee that any elements of the website design will retain complete functionality with the evolution of web code.

SED offers no guarantee that any designed website will function as intended during design in respect of the client's Internet and browsing settings, such as disabling of certain website elements, eg. Javascript.

## CONDITIONS OF FREE PRODUCTS & SERVICES

SED will ONLY provide business card design, business card printing, logo design, 12 months web hosting and 12 months domain registration free of charge with the purchase of a website design.

Free business card designs will be limited to 2 client design reviews ONLY. Extra design reviews and amendments will incur an extra cost at the rate of \$100 per hour. Free business card design service is FOR ONE DESIGN ONLY.

Free business card prints apply to ONE DESIGN ONLY and will ONLY be printed to the following specifications:

- Double sided, full colour print (if required)
- Printed on 350gsm paper
- Matt or gloss laminated finish
- 90x40mm, 90x45mm, 90x54mm or 90x55mm in size
- Print quantity: 500 prints ONLY

Free logo designs will be limited to 2 design reviews ONLY. Extra design reviews and amendments will incur an extra cost at the rate of \$100 per hour.

Free web hosting is for 12 months ONLY. The webhost supplier will be chosen at SED's discretion unless prior arrangements have been made by the client, where upon the client must inform SED of this arrangement prior to work commencement. If a specific web host criteria or specific web host is requested by the client, any additional features or alternative web host required within the web host will result in an extra cost to be determined by SED.

Free domain registration will be arranged for the period of 12 months ONLY. Once the 12 months of domain registration has expired it is the client's responsibility to arrange renewal of the domain registration with either the domain provider, or through SED. The domain registrar will be chosen at the discretion of SED. Domain names are subject to availability. The domain registered by SED will remain the property of SED until the project is paid for in FULL. Once the contract has been paid in FULL the domain becomes the property and responsibility of the client.

SED is responsible for registering ONE domain free of charge, for the first 12 MONTHS only. Any additional domain registrations requested by the client will incur an extra cost to be specified by the domain supplier.

SED will not be held liable for any costs incurred, compensation, loss of earnings or other consequence that unfolds from pursuing services with the chosen webhost & domain supplier. In the event such services were to go out of business or for any other circumstance out of SED's control SED will not be held liable.

#### OMISSIONS AND ERRORS

During the client review stage it is the client's responsibility to check for all aspects ranging from design elements to spelling when approving all designs. If errors are detected, it is also the client's responsibility to contact SED immediately to request amendment. SED is indemnified by the client against any damage or loss arising indirectly or directly from any omission or errors.

SED cannot take responsibility for any losses incurred by the use of any software created for the client. Whilst every care has been taken to ensure projects are problem free and accurate, the ultimate responsibility lies with the client in ensuring that all software is functioning correctly before use. Any bugs, errors or invalid web code detected in result of this reviewing stage must be reported to SED by the client, during this review stage, or within 6 months of the project handover, in order for SED to rectify any reasonable bugs, errors or invalid web code. If after the 6 month period has ended, any remedial services in relation to the unreported design bugs, errors or invalid web code will be charged out at \$100 per hour.

Any web design support, repairs or fixes undertaken by SED as a result of the client's actions or fault will incur a charge of \$100 per hour.

#### TESTING AND CLIENT ACCEPTANCE

SED cannot take responsibility for any losses incurred by the use of any software created for the client. Whilst every care has been taken to ensure projects are problem free and accurate, the ultimate responsibility lies with the client in ensuring that all software is functioning correctly before use. Any bugs, errors or invalid web code detected in result of this reviewing stage must be reported to SED by the client, during this review stage, or within 6 months of the project handover, in order for SED to rectify any reasonable bugs, errors or invalid web code. If after the 6 month period has ended, any remedial services in relation to the unreported design bugs, errors or invalid web code will be charged out at \$100 per hour.

Once SED determines that the project is completed SED will notify the client and provide the client with an opportunity to review and test the website. If the client deems that the website doesn't comply with the services agreed to in the work commencement contract, SED will without charge fix any **reasonable** modifications.

Any design changes or removal of requirements due the client changing their mind will be charged out at \$100 per hour.

Any web design support, repairs or fixes undertaken by SED as a result of the client's actions or fault will incur a charge of \$100 per hour.

Two stages of content revision are on offer to the client, free of charge, for any graphic design project. Extra revisions requested by the client will incur an extra cost at the rate of \$100 per hour.

#### DESIGN REVISIONS

ONLY two stages of content revision are on offer to the client, free of charge, for any graphic design project. Extra revisions requested by the client will incur an extra cost at the rate of \$100 per hour.

#### SUPPORT

Ongoing support will be provided to all web design clients for a period of 6 months upon completion of the website design, free of charge, via phone, email, Skype or live support chat. After this 6 month period has expired all support methods will be charged at a rate of \$100 per hour. If the client has enlisted our ongoing maintenance services, then support via phone, email, Skype or live support chat will remain ongoing and free until the maintenance contract has been terminated.

Upon the completion of the project, one hour of in-person support will be provided to the client free of charge. Any additional time after the initial free hour will be charged at a rate of \$100 per hour.

SED will ensure adequate support is provided in relation to the client's specific design via online tutorials and video support guides.

#### MEETINGS

SED offers up to two in-person meetings for each contract free of charge plus one hour of in-person support after the project is completed. SED will come to your place of choosing within 100kms of the Adelaide CBD. Any additional in-person meetings, on-site support or on-site amendments to any designs will incur an additional cost to be determined by SED. SED will inform the client of these associated costs prior to actuating the meeting.

## COMPLAINTS

Any client who experiences a problem with any form of work completed or service provided by SED should raise the matter informally and directly and immediately with SED. SED will make every attempt where possible to rectify the complaint or problem in a timely manner.

Following an initial complaint, if the complainant feels that a satisfactory conclusion has not been reached or the nature of the complaint is too serious to be dealt with informally, a formal complaint should be made in writing to SED management. An initial response to any complaint can be expected within five days of its receipt and a full and considered response to the complaint shall be completed within 10 days. Any subsequent remedy will be implemented with minimal delay.

## COMPATABILITY

### Platforms:

- Windows (version 98 up to latest version)
- Macintosh (OS 10.1 up to latest version)

### Browsers:

- Internet Explorer - version 8 up to latest release (we do not support IE6 & IE7)
- Google Chrome - up to latest release
- Firefox 2 - up to latest release
- Apple Safari- version 5 (PC & MAC)

\* SED will test on other browsers other than the above specified but ONLY if requested by the client. It is the client's responsibility to read these terms and conditions and notify SED prior to project commencement of design compatibility for any other browsers.

### Plug-ins:

- Current version of Flash Player
- Windows Media Player
- QuickTime

### AutoCAD:

- AutoCAD/AutoCAD LT 2004 - 2012

## GRAPHIC DESIGN, WEBPAGE DESIGN & ARTWORK

SED agrees to provide drafts on all work before official project handover to the client (logos, graphics and website / code).

Any additions to the initially quoted design criteria will be carried out at the discretion of SED and will be charged at \$100 per hour. SED accept no responsibility to ensure such additions are error free and reserve the right to charge an according amount for any correction to these or further additions.

The client agrees to make available as soon as is reasonably possible to SED all materials required to complete projects to the agreed standard and within the set deadline. SED will not be liable for costs incurred, compensation or loss of earnings due to the failure to meet agreed deadlines. SED will not be held liable for any delays in the project deadline due to the client failing to submit all materials related to the project within the due time. SED reserves the right to terminate the work commencement contract if the client fails to deliver any materials required for the project within 21 days of the time of the information request by SED.

SED will not be liable for any costs incurred, compensation or loss of earnings due to the unavailability of the site, its servers, software or any material provided by its agents.

The client acknowledges that web sites cannot be guaranteed to be 100% error free in construction and acknowledge that the existence of errors falling short of a complete failure of consideration in the site shall not constitute a reason to terminate this agreement.

## DATABASE, APPLICATION AND E-COMMERCE

SED cannot take responsibility for any losses incurred by the use of any software created for the client. Whilst every care has been taken to ensure projects are problem free and accurate, the ultimate responsibility lies with the client in ensuring that all software is functioning correctly before use. Any bugs, errors or invalid web code detected in result of this reviewing stage must be reported to SED by the client, during this review stage, or within 6 months of the project handover, in order for SED to rectify any reasonable bugs, errors or invalid web code. If after the 6 month period has ended, any remedial services in relation to the unreported design bugs, errors or invalid web code will be charged out at \$100 per hour.

Any scripts, applications or software (unless specifically agreed) written by SED remain the copyright of SED and may only be commercially reproduced or resold with the strict permission of SED. Any scripts, applications or software sold to the client is restricted to the use within the client's website designed by SED.

Where applications or sites are developed on servers not recommended by SED, the client is expected to provide or seek any information, additional software, support or co-operation pertaining to the server required in order for the application to be correctly developed. In this instance where large applications are to be developed, it is the responsibility of the client to ensure a suitable environment is available for the final upload. SED will not be held liable for losses incurred due to the unavailability of a suitable environment and or loss of software functionality as a result.

The conditions of the budget E-commerce setup include the addition of no more than 25 products to the client's E-commerce catalogue. Any products exceeding this number will either be administered by the client themselves or by SED at an additional cost to be determined by SED and agreed upon by both parties.

The conditions of the advanced OpenCart E-commerce setup including supplying SED with all the information required including business operations information, payment information, pricing information, product information, product imagery and all other business related information, prior to the setup of the E-commerce system. If any delays or errors occur as a result of missing information SED will not be held liable and any changes as a result of this will be charged at an additional cost of \$100 per hour.

#### **CODING & SCRIPTS**

All coding and script developed, implemented and maintained by SED in the production of any client's website remains the property of SED. Through the job contract the client has permission to continue using code and scripting developed by SED within the website constructed for the client by SED. Reproduction, redistribution, copying or alterations of the code and script is not permissible outside of the client's website.

SED will not be liable for any costs incurred, compensation or loss of earnings due to the unavailability of the site, rare errors in code or any consequence extended from inappropriate use of code and script.

#### **AUTOCAD**

In the event SED is enlisted by the client to undertake drafting at an hourly rate, SED will endeavour to turn work over as efficiently as practicable. The client acknowledges that errors in the operation of AutoCAD can happen and this may temporarily delay the drafting process.

It should also be acknowledged by the client that is the client's responsibility to supply all effective support files (ctb settings, layer types, title sheet templates and design profiles) prior to work commencement.

Recognition of industry standards is mandatory. Drafting errors may still exist even in third revision which is up to the responsibility of the supervising engineer to acknowledge and recommend amendment.

Unexpected or extensive ongoing design amendments (outside of contract conditions) will be charged out at an hourly rate of \$50 per hour.

SED will not be liable for any costs incurred, compensation or loss of earnings due to any errors in drafting not recognised by supervising engineers prior to final revision stages of drawings.

#### **SEARCH ENGINE OPTIMISATION (SEO)**

SED will endeavour to ensure your website is optimised for search engines during the design process. In order to rank well on major search engines ongoing search engine optimisation needs to be implemented to maintain a positive result.

Ongoing SEO services are to be charged on a monthly basis. Prices start from \$190 per month and will vary according to scale of work required for individual results. Individual results on a client by client basis will vary in respect of existing market and business services. Most search engine results will take up to approximately 3 months to index effectively.

Although all attempts will be made in respect of the SEO campaign you have enlisted for, SED offers no guarantees that a page 1 result be achieved for your website.

#### **WEB HOSTING, DOMAIN REGISTRATION & APP STORE REGISTRATION**

Upon the client signing a contract for a web design package, SED will source and finance up to 12 months of web hosting and domain registration in the client's name. It is the responsibility of the client to maintain on-going payments for the webhosting and domain account after the 12 months have expired, unless it has been arranged by the client for SED to maintain and manage their website and all associated technologies.

The webhost and domain supplier will be chosen at SED's discretion unless prior arrangements have been made by the client, where upon the client must inform SED of this arrangement prior to work commencement. If a specific web host or domain criteria or specific web host or domain is requested by the client, any additional features or alternative web host or domain required within the web host or domain will result in an extra cost to be determined by SED.

SED is responsible for registering ONE domain free of charge, for the first 12 MONTHS only. Any additional domain registrations requested by the client will incur an extra cost to be specified by the domain supplier.

SED will not be held liable for any costs incurred, compensation, loss of earnings or other consequence that unfolds from pursuing services with the chosen webhost & domain supplier. In the event such services were to go out of business or for any other circumstance out of SED's control SED will not be held liable.

The domain registered by SED will remain the property of SED until the project is paid for in FULL. Once the contract has been paid in FULL the domain becomes the property and responsibility of the client.

Cost of registration to Google Play, Apple iTunes and Windows app for the uploading of mobile apps will be covered by SED for the first month. The registration and management of the app on these libraries becomes the responsibility of the client after this first month has expired.

#### **WEB MANAGEMENT**

SED offers the services of web host management, domain management, content management system administration, general website maintenance, website support and other web related ongoing services. These services will incur a monthly fee to be arranged on a job by job basis starting from \$40 per month. Payment is due 1 month in advance, on the first day of each month.

This service can be terminated at any time by the client by giving written notice to SED within 30 days of the next due payment. If due notice is given within 30 days, the next payment will be overlooked and all web management services will cease.