

FLIPPA WEBSITE SALE AGREEMENT

This Agreement relates to the sale and transfer of a Website from a Seller to a Buyer via Flippa.com.

When a Seller agrees to sell and a Buyer agrees to buy the Seller's Website, the Seller and the Buyer will be deemed to enter into a legally binding agreement in relation to that sale. The Buyer and Seller may together elect that the terms and conditions of this Agreement apply to that sale.

PARTIES

The parties to this Agreement are the Buyer and the Seller. This Agreement will apply to you in your capacity as either a Seller or a Buyer in respect of the sale and transfer of a Website.

DATE OF THIS AGREEMENT

If the Buyer and Seller elect that this Agreement applies, then this Agreement will be entered into between the Seller and the Buyer at the time that (a) the Seller accepts the Buyer's offer to purchase the Website as part of a Private Sale or (b) the Buyer is declared the Winning Bidder in an Auction for the Seller's Website.

FLIPPA.COM SERVICES AGREEMENT

By using Flippa.com, you have agreed to be bound by our Flippa.com User Agreement ("**Services Agreement**"). A copy of that agreement may be found here:

<http://flippa.com/termsandconditions>

To the extent that there is any inconsistency between the terms of this Agreement, any other agreement between you and another Buyer or Seller, and the Services Agreement, then those documents will be read in the following order of precedence:

- (a) first, the Services Agreement will take precedence over all other documents; and
- (b) second, any separate agreement between you and another Buyer or Seller will take precedence over this Agreement (apart from **clauses c** and **10** of this Agreement which will take precedence over that separate agreement).

NOT LEGAL ADVICE

You acknowledge that if you choose to use the terms and conditions of this Agreement in relation to the sale of a Seller's Website that:

- (a) The terms and conditions of this Agreement have been provided by Flippa as a suggested set of terms and conditions for Buyers and Sellers to use in relation to the sale and purchase of a Website. It is not mandatory for Buyers and Sellers to choose to be bound by these terms and conditions.
- (b) You have had the opportunity to obtain legal advice in relation to the use of these terms and conditions and their suitability for your purposes.

- (c) By providing these terms and conditions to you, Flippa does not warrant that they are suitable for your needs nor is Flippa providing you with legal advice in relation to them.

TERMS

If you agree to be bound by this Agreement, then, in addition to the above terms and conditions, the following terms and conditions will apply to you in your capacity as either a Buyer or as a Seller in relation to the sale of a Website.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, words and phrases defined in the Services Agreement will have the same meaning in this Agreement and in addition, the following words will have the following meaning, unless the context otherwise requires:

- (a) **"Assets"** means the following assets and property to be sold as part of the sale of the Website by the Seller to the Buyer:
 - (i) all files, data and other works contained in the Website;
 - (ii) all of the Seller's Intellectual Property Rights in the Website;
 - (iii) the Brand;
 - (iv) the Records;
 - (v) all of the Seller's rights to the Domain Names;
 - (vi) all of the Seller's rights under the Third Party Agreements; and
 - (vii) any other assets of the Seller which the Seller specifies in its Listing that it is selling as part of the Website;
- (b) **"Brand"** means the brand name associated with the Website including any registered trade marks specified in the Seller's Listing on Flippa.com;
- (c) **"Closing"** means the completion of the transfer of the Assets from the Seller to the Buyer undertaken in accordance with **clause 4**;
- (d) **"Closing Date"** means the date that Closing occurs as specified by the Seller in its Listing or as separately agreed between the Buyer and the Seller;
- (e) **"Domain Names"** means the domain names to be transferred together with the Website which are specified in the Seller's Listing;
- (f) **"Encumbrance"** means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention or conditional sales agreement, hire purchase agreement, option, restriction as to the transfer, use or possession, easement subordination to any right of any other person any other encumbrance or security interest whatsoever;

- (g) **"Loss"** means any loss, cost, expense or damage (including legal costs on a full indemnity basis);
- (h) **"Records"** means originals and copies, in any material form, of all books, files, reports, records, correspondence, documents, supplier lists and contact details, customer lists and contact details, price lists, calculations, costings and associated documentation and other material of or relating to or used in connection with the Assets;

1.2 **Interpretation**

The rules set out in the Services Agreement in relation to the interpretation of that agreement will equally apply to this Agreement.

2. **SALE OF THE WEBSITE**

- (a) The Seller hereby agrees to sell the Website and the Assets to the Buyer, and the Buyer agrees to buy the Website and the Assets, in accordance with the Seller's obligations set out in the Services Agreement and in this Agreement.
- (b) Subject to Closing taking place, possession of and title to, the Assets, shall pass from the Seller to the Buyer at Closing.

3. **PAYMENT OF THE PURCHASE PRICE**

Subject to the Seller fulfilling its obligations under **clause 4.3**, the Buyer agrees to pay the Purchase Price to the Seller on the Closing Date.

4. **CLOSING**

4.1 **Time and place of Closing**

Closing will take place on the Closing Date. Closing will be deemed to have taken place at the premises of the Seller, even if Closing occurs electronically.

4.2 **Conduct of the Website pre-Closing**

The Seller will ensure that between the date of this Agreement and Closing, the Seller:

- (a) carries on the business of the Website in a normal, proper and efficient manner and manages and conducts that business in the ordinary and usual course, consistent with past practice;
- (b) does not make any material changes to the Website, its content or form (other than changes it would ordinarily make in the usual course of its business);
- (c) uses all reasonable endeavours to preserve the goodwill of the Website;
- (d) maintains the Assets and any other assets at normal levels;
- (e) does not enter into any transaction with a third party which would have the effect of:
 - (i) substantially affecting the value or quality of the Assets;

- (ii) granting any exclusive licence over any of the Assets; or
- (iii) assigning any part of the Assets to the third party.

4.3 Seller's obligations

At Closing, the Seller must cause to be delivered to the Buyer:

- (a) actual possession of the Assets (including any passwords or other authorities needed to access any of the Assets held or hosted by a third party);
- (b) the Records (although the Seller may keep a copy of the Records for its own compliance purposes); and
- (c) duly executed instruments of transfer, assignment, notices of transfer or assignment or disposal consents and other documents in a form and substance satisfactory to the Buyer (and any required registration, filings or approvals in respect thereof) as the Buyer may reasonably require to complete the transfer, assignment and conveyance of the Assets (free from Encumbrances).

4.4 Buyer's obligations

At Closing, the Buyer must pay the Purchase Price to the Seller in accordance **clause 3** but only if the Seller complies with **clause 4.3**.

4.5 Simultaneous actions at Closing

In respect of Closing:

- (a) the obligations of the parties under this Agreement are interdependent and conditional on the other party performing their respective obligations at Closing; and
- (b) all actions required to be performed are taken to have occurred simultaneously on the Closing Date.

4.6 Post-Closing obligations

If the Buyer has fulfilled its obligations arising under **clause 4.4** and:

- (a) the parties have at the Closing Date in good faith formed the view that Closing has occurred and it is subsequently later found that the Seller has not in fact met one or more of its obligations under **clause 4.3**; or
- (b) the Buyer has agreed in writing to permit an obligation of the Seller required at Closing to be performed after Closing,

then

- (c) Closing will be deemed to have still occurred; and
- (d) the obligations of the Seller which have not been met at Closing will, unless expressly waived by the Buyer, be deemed to be obligations of the Seller that must be met as soon as practicable after Closing.

5. OWNERSHIP OF THE ASSETS

5.1 Ownership

- (a) Subject to Closing taking place, the legal and beneficial ownership of the Assets shall pass from the Seller to the Buyer at Closing, free from all Encumbrances.
- (b) If for any reason title to any of the Assets is not effectively vested in the Buyer at Closing, the Seller acknowledges that it will account to the Buyer for any benefits it receives in relation to the Assets until title is effectively vested in the Buyer, unless otherwise provided in this Agreement.

5.2 Risk of loss

Subject to Closing taking place, risk of loss of the Assets shall pass to the Buyer from Closing and remain with the Seller until that time.

6. TRANSFER OF THIRD PARTY AGREEMENTS

6.1 Which Third Party Agreements will transfer

The Third Party Agreements which the Seller will transfer to the Buyer under this clause are those Third Party Agreements specified in the Seller's Listing. However the Buyer and the Seller may separately agree that a particular Third Party Agreement will not be transferred pursuant to this Agreement in which case the Seller will continue to remain responsible for the ongoing performance of its obligations under that Third Party Agreement.

6.2 Buyer to take benefit of Third Party Agreements

- (a) Subject to Closing, but with effect from the Closing Date, the Seller assigns and the Buyer accepts an assignment of all the Seller's rights under, benefit of and interests in ("**Benefits**") and assumes the burden of the Third Party Agreements in accordance with this **clause 6**.
- (b) This Agreement does not constitute an assignment or an attempted assignment of a Third Party Agreement if an assignment or attempted assignment requires the consent of the counterparty to the Third Party Agreement and would constitute a breach of that Third Party Agreement if an assignment were made without that consent.

6.3 What happens if you need a third party's consent to the transfer?

If the consent of a third party is required for the transfer of a Third Party Agreement to the Buyer under **clause 6.2** then:

- (a) the Seller and the Buyer must use their reasonable endeavours to obtain that consent by or as soon as reasonably practicable before Closing; and
- (b) if such consent cannot be obtained, then the Seller must terminate the Third Party Agreement and must use best endeavours to assist the Buyer to enter into a new agreement with the relevant third party on terms similar to those of the Third Party Agreement.

6.4 What happens in relation to the performance of the Third Party Agreement until it is transferred?

From the Closing Date until each Third Party Agreement to which **clause 6.2** applies has been novated or effectively assigned to the Buyer:

- (a) the Buyer shall to the extent that it lawfully can, as a subcontractor to the Seller, perform at its expense all the obligations of the Seller to be performed under each such Third Party Agreement in respect of the period following Closing and the Seller shall account to the Buyer for any amounts paid in respect of that Third Party Agreement to the Seller after Closing; and
- (b) the Seller must, at the request and expense of and with the assistance of the Buyer, use its reasonable endeavours to perform any obligation of it under any Third Party Agreement which arises (or relates to the period) from Closing which the Buyer cannot lawfully assume, perform or observe.

6.5 Who is liable for breaches of the third party Agreements between Closing and their transfer to the Buyer?

Until such time as a Third Party Agreement is assigned and novated to a Buyer under this **clause 6**:

- (a) if the Buyer is performing the obligations of the Seller under the Third Party Agreement, then the Buyer will indemnify the Seller against any Loss which the Seller suffers as a result of a breach of the Third Party Agreement caused by the Buyer; and
- (b) the Seller will indemnify the Buyer against any breach of the Third Party Agreement caused by the Seller.

7. TRANSFERRING INTELLECTUAL PROPERTY RIGHTS OWNED BY A THIRD PARTY

- (a) The Seller warrants that prior to supplying the Assets to the Buyer, the Seller has disclosed to the Buyer any Intellectual Property Rights in the Assets which may be held by a third party.
- (b) If the Assets incorporate the Intellectual Property Rights of a third party, then:
 - (i) the Seller warrants that it has obtained a licence from the relevant third party to incorporate the Intellectual Property Rights of that third party in the Assets ("**Third Party Licence**");
 - (ii) if the Third Party Licence is capable of assignment to the Buyer, then the Seller will transfer that Third Party Licence pursuant to **clause 6**;
 - (iii) if the Third Party Licence is not capable of assignment to the Buyer, then:
 - (1) the Seller must disclose this fact to the Buyer prior to the parties entering into this Agreement;

- (2) the Seller warrants that the Buyer may obtain a Third Party Licence in its own name; and
 - (3) prior to Closing, the Seller must provide the Buyer with details of where to obtain the Third Party Licence in its own name and the cost of doing so; and
 - (iv) the Seller warrants that unless expressly stated to the contrary by the Seller in its Listing, the Third Party Licence provides the Buyer with a worldwide, royalty free, perpetual right to display, distribute and reproduce (in any form) the Intellectual Property Rights of the third party contained in the Website.
- (c) The Seller hereby indemnifies and keeps indemnified the Buyer, Flippa and Flippa's third party providers ("**Indemnified Parties**") against any Loss which the Indemnified Parties may suffer or incur as a result of a breach by the Seller of any of the provisions of this **clause 7**.

8. TRADING RESPONSIBILITIES

8.1 Profits and Losses

- (a) Subject to Closing occurring, all revenues, profits and losses relating to the conduct of the Website:
 - (i) in the period up to and including the Closing Date, belong to the Seller; and
 - (ii) in the period from the Closing Date, belong to the Buyer.
- (b) Any amounts received by the Seller after the Closing Date which are stated to belong to the Buyer pursuant to this clause will be promptly paid to the Buyer (and in any event within 2 Business Days following receipt).

8.2 Liabilities

- (a) Subject to Closing occurring:
 - (i) all liabilities relating to the Assets in the period up to and including the Closing Date, are the responsibility of the Seller and the Seller indemnifies the Buyer from and against those liabilities (irrespective of whether the liability arises before or after the Closing Date); and
 - (ii) all liabilities relating to the Assets in the period from the Closing Date, are the responsibility of the Buyer and the Buyer indemnifies the Seller from and against those liabilities.
- (b) The Seller acknowledges that apart from where expressly provided in **clauses 6, 7 and ii** the Buyer will not assume any liabilities in relation to the Business or the Assets.

9. WARRANTIES

9.1 Warranties

The Seller represents and warrants to the Buyer that:

- (a) it is the owner of the Assets and has the right to transfer the Assets to the Buyer, free from all Encumbrances;
- (b) as a result of this Agreement and at Closing, the Buyer will receive full title to the Assets free from all Encumbrances;
- (c) the transfer of the Assets from the Seller to the Buyer will not cause the Buyer to breach any law;
- (d) it has disclosed, in its Listing, all Third Party Agreements and all Third Party Licences which it has entered into in relation to the Website and which the Buyer will require to operate the Website following Closing in the way the Website was operated prior to Closing; and
- (e) apart from where expressly stated in its Listing, each of the Third Party Agreements and Third Party Licences described in its Listing may be novated and/or assigned to the Buyer pursuant to **clauses 6 and 7**.

9.2 Indemnity

The Seller indemnifies the Buyer against any Loss which the Buyer suffers or incurs as a result of a breach of a warranty contained in **clause 9.1**. Apart from a breach of **clause c**:

- (a) this indemnity will however be limited to the value of the Purchase Price; and
- (b) any claim under this indemnity, or otherwise in respect of a breach of **clause 9.1**, will only be valid if made within 6 months following the date of this Agreement.

10. LIABILITY OF FLIPPA AND ITS THIRD PARTY PROVIDERS

- (a) The Buyer and Seller each acknowledge and agree:
 - (i) Flippa and its third party providers are not parties to this Agreement; and
 - (ii) Flippa and its third party providers shall each not be liable or responsible for any breach of this Agreement by any party to this Agreement.
- (b) Notwithstanding **clause a**, the Buyer and Seller each agree that Flippa and its third party providers may rely on and benefit from the indemnity set out in **clause c**.

11. MISCELLANEOUS

- (a) Any notice given under this Agreement must be in writing and must be signed by the party or its agent giving the notice. A notice is taken to be received:
 - (i) in the case of a notice delivered by hand, when so delivered;

- (ii) in the case of a notice sent by pre-paid post, on the third day after the date of posting;
 - (iii) in the case of a notice sent by facsimile, upon the receipt by the sender of a transmission report from the despatching facsimile machine which confirms that the facsimile has been successfully sent; or
 - (iv) in the case of a notice sent by email, upon the receipt by the sender of a confirmation from the recipient or the recipient's email server that the email has been received by the recipient.
- (b) A right under this Agreement may only be waived by a notice in writing given by the party who takes the benefit of that right.
 - (c) If any provision of this Agreement is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of this Agreement to the intent that the invalid or unenforceable provision will be treated as severed from this Agreement.
 - (d) This agreement is governed by, and must be construed in accordance with, the laws of the State of Victoria, Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Victoria, Australia and their Courts of Appeal.