

MIVA 4 to MIVA 5 WEBSITE DESIGN PROJECT AGREEMENTS  
TERMS and CONDITIONS (TOSWD) of hiring  
MIDI-TECH in the creation of a Miva Merchant Web  
Store w/Shopping Cart.

By paying Miditech.com a deposit for a Miva 4 to Miva 5 website design project the customer agrees to the terms and conditions of this agreement. These terms are agreed upon by any customer when hiring Miditech for the project type herein described.

In this document, the customer is variously referred to as "client", "customer," "you," "your," and "yours."

In this document, MIDITECH is variously referred to as "MIDITECH", "us", "we", and "our".

"TOSWD" is defined as Terms and Conditions of Service For Hiring Miditech for a website design/development project.

### **Terms and Conditions**

The purpose of these Terms and Conditions Of Service (herein referred to as TOSWD) is to provide a legal framework under which Miditech and our customers can conduct business in regard to the customer hiring MIDITECH in the creation of a Website. The TOSWD also serves to ensure that customers are using Miditech services in a way that does not infringe on the rights of others and Internet users-at-large, and that no customer uses Miditech's services in a way that is detrimental to MIDITECH.

The customer agrees that by paying the initial deposit Invoice for a website project that you agree to the following terms and conditions.

#### **1. Authorization.**

The customer is engaging MIDITECH as an independent contractor for the specific purpose of designing a World Wide Web site, or updating a World Wide Web Site, (hereinafter referred to as "Web Design Project", "design project") to be published on the customer's account on an Internet Service Provider (ISP) or Web Hosting provider's server, hereinafter refer to as "Hosting Service". The customer hereby authorizes MIDITECH to access this account, and authorizes the Hosting Service to provide MIDITECH and it's subcontractors, with "full access" to the customer's hosting account, and any other programs needed for this Web Design Project that are included as part of the customer's service agreement.

#### **2. Web Hosting Services.**

If The customer is hosting with MIDITECH you agree that our web hosting services are a separate service and not part of this agreement, even if you receive some free Miditech hosting as part of the website design project. You also agree that you are responsible for adhering to our Web Hosting Terms and Conditions Of Service agreement which is posted at our website at <http://miditech.com/support/tos.html>. If purchasing web hosting from MIDITECH along with this website design project contract then you agree to our web hosting terms and conditions and all policies as listed at our website at <http://miditech.com/policies.html>

#### **3. Design and Development.**

MIDITECH makes every effort to ensure that your website is viewable by your website visitors as intended. However, MIDITECH represents and warrants that the web site we design for you will work in: Microsoft® Internet Explorer versions 7 and up and Mozilla Firefox 2.0 and up. Compatibility with all other browsers is on a best effort only basis or extra charges will apply. While MIDITECH will make reasonable efforts to design a fully-functional web site, MIDITECH's warrantee does not cover AOL, text-based browsers or requested special effects that we have advised you against.

#### 4. Website Design Process and Payments.

MIDITECH requires a 50% deposit of the estimated cost of the Miva 4 to Miva 5 website design project at startup. The balance due becomes due at different stages of the website development. MIDITECH follows a design method we call "focussing". This method is based on these stages of development in sequence:

**Stage 1:** We either use your existing website design graphics or create a new graphic file of the website design. If we are redesigning your website or using your existing website design "look" this Stage is the same.

**Stage 2:** We show you the graphic file of the design and ask for approval BEFORE moving to the next stage of development.

**Stage 3:** This stage has two possible outcomes:

1. If in Stage 2 the design is not approved by the customer, we work on the design and start the process over at Stage 1 until you are satisfied, then we move to the next stage of development.
2. If in Stage 2 you agree to the work we have performed and you agree that we should continue with the design, we then move to Stage 4.

**Stage 4:** We convert the graphic files into a HTML web page format, start creating the web pages, setup the website navigation links and integrate the design into the Miva Merchant Shopping Cart Application. Once stage 4 is completed MIDITECH will invoice the customer for 25% of the design cost. This must be paid before we continue to Stage5.

**Stage 5:** It is at this stage that we require The Customer provide us with the text content for each HTML web page. We then place the text content on the web pages and optimize the pages for search engine optimization. We communicate with the customer for further approvals. We complete the admin setup and add up to 10 products to the web store application (customer provides text and images for products). Once the website is completed we invoice for another 25% of the website design project cost and the project is deemed completed.

The customer agrees that if past any stage of development, that you PREVIOUSLY APPROVED, you wish to go back and make changes which cause an unexpected increase in hours earned for the design work, such work will be deemed an additional extra charge based on our hourly rate of \$75/hour. MIDITECH will inform The customer of the extra charges, if such modifications are requested by you, before starting such modifications.

**MIVA MODULES:** *Adding Miva Modules not standard in the Miva Merchant 5 application is NOT included in this project price. If the customer's Miva 4 application already uses Open UI or has any additional modules, then these additional modules/addons must be purchased for Miva Merchant version 5 (most module company have versions of Miva 4 modules for Miva 5) . The customer must purchase such modules. If the customer would like Miditech to install such modules for the Miva Merchant 5 Application, extra costs will be charged at our hourly rate of \$75.00 per hour. Installing modlues does not include administering the features of a module. Administering features of a module will also be chargeable at our hourly rate of \$75.00/hour. Module/Add-On costs are the responsibility of the customer.*

**Adding Products To Miva:** Miditech can export product information and product images from Miva 4 and import them into the Miva 5 application without additional cost. There are some exceptions due to the features of Miva 4 or Miva 5:

- a) Product attribute templates must be manually recreated. This is not included in this project contract price.
- b) Product Attributes: Product Attributes may have to be manually re-entered. This is not included in this project contract price.
- c) Any feature that ultizes a module or add on in your Miva 4 store is not included in this project contract price. This would be deemed as "administering" your module. (see above information on Miva Modules)

Affiliate Information: Affilates cannot be imported into Miva Merchant 5 and have to be recreated. This is not included in this project contract price.

## **Assignment of Web Design Project.**

MIDITECH reserves the right, and you hereby agree, to assign subcontractors to this Web Design Project to insure that the terms of this agreement are met in certain circumstances.

## **5. Copyrights and Trademarks.**

The customer unconditionally guarantees that any elements of text, graphics, photos, trademarks, or other items furnished to MIDITECH for inclusion in the Web Design Project are owned by the customer, or that the customer has permission from the rightful owner to use each of these elements or that the images are legally licensed for such use. You agree to fully defend and indemnify and hold harmless MIDITECH of and from any and all third party claims, causes of action, demands, costs, damages including both direct and consequential damages, specifically including attorneys fees and costs, expert fees and costs and mediation and/or arbitration fees and costs incurred (whether paid or not) as the result of any violation or claimed violation of any copyright or other intellectual property right of any third party which is in any way related to your use of MIDITECH services or any portion thereof. Choice of counsel remains exclusively that of MIDITECH.

## **6. Web Site Maintenance.**

Once this website design project is completed and all fees paid the customer will be given a 15 day grace period of time within which the customer can request minor modifications to the site without extra charge. Minor modifications do NOT include graphic design, color changes of graphic design elements, administrative functions, or web page layout. Any requests for modification not deemed to be minor will be at additional charge billed at our hourly rate of \$75.00 Canadian Currency. Client agrees that MIDITECH, at our sole discretion, will decide what constitutes a minor modification.

## **7. Completion Date.**

MIDITECH and the customer must work together to complete the Web Design Project in a timely manner. We agree to work expeditiously to complete the Web Design Project no later than 40 days after Client has submitted all necessary materials. However, we do not guarantee that the project will be completed within this time frame. The services of MIDITECH are in high demand and MIDITECH has many web design project clients. MIDITECH can only design as fast as the web site content is sent to us. To be fair to all our customers, client agrees to provide the text content and any photos they wish included for the web pages within 10 days. Web design projects are completed on a first come first serve basis. If The customer does not supply MIDITECH complete text and graphics content for all web pages contracted for within 10 days of the date of the initial deposit payment was made, the project may be delayed and an interim payment may be requested of the Customer. In some circumstances, where MIDITECH has a high volume of projects, this could in effect push your project to the back of the list of MIDITECH design customer's projects and cause further delays.

## **8. Project Delivery.**

The final web site design project will be published to the customer's hosting service upon receipt of final payment only. MIDITECH DOES NOT place website files on a diskette or CD or any media other than uploading directly to the customers web hosting account, even if extra payment is offered. This is due to a Canadian Tax Law. You can download your website files and burn them onto a media such as CD if you choose. Web Hosting services require a separate contract with the hosting service of the customer's choice. The customer agrees to select a hosting service which allows MIDITECH full access to the customer's account via FTP. The customer will be solely responsible for any and all hosting service charges.

## **9. Web Design Project Copyright.**

Copyright to the website design and website files are retained by MIDITECH until project completion and final payment have been made to MIDITECH from the customer. Copyright to the finished web design site produced by MIDITECH will be owned by the customer once full payment is received for the completed project. Reselling

the website design to multiple recipients is strictly **not permitted**. Reselling any of the code or web application code is also not permitted without our written consent. MIDITECH and its subcontractors retain the right to display graphics and other Web design elements as examples of their work in their respective portfolios. Since MIDITECH provides you copyright once a project is completed, all Web Design Projects will contain a "Site Design By", or "Site Designed and Hosted By" statement with a link to MIDITECH's Web Site posted at the very bottom of each web page.

## **10. Payments.**

Payments must be made promptly based on the terms of the Web Site Design Project. MIDITECH reserves the right to remove any Web Design Project from viewing on the Internet until final payment is made.

10.1 Statements. MIDITECH does not mail paper invoices or statements. Invoices will be emailed to the email address used upon account signup unless otherwise notified. MIDITECH can email, or mail your Invoices at anytime by calling our sales desk and requesting this.

10.2 Fees Returned (NSF) Checks. MIDITECH charges a \$35.00 fee for returned (NSF) checks. Customers that issue an NSF check will be required to submit future payments with a certified check or money order.

10.3 Payment Schedule. Payment for services provided hereby shall be made in accordance with the Stages of Development in above section 4.

## **11. Conditions and Disclaimers**

### **11.1 Indemnification**

**11.1.1** You will indemnify and hold harmless MIDITECH, its subcontractors, and its agents against any and all actions, claims, proceedings, suits, liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable legal fees and other litigation expenses) incurred by MIDITECH or its subcontractors, relating to:

- Your breach of any term or condition in this agreement, or your breach of any applicable MIDITECH policy or guideline as shown on the Internet at <http://support.miditech.com/policy.html>;
- Your use or inability to use MIDITECH's services;
- Your violation, alleged violation, or misappropriation of any intellectual property right, copyright, non-proprietary right of a third party.

**11.1.2** You agree to fully defend and indemnify and hold harmless MIDITECH of and from any and all third party claims, causes of action, demands, costs, damages including both direct and consequential damages, specifically including attorneys fees and costs, expert fees and costs and mediation and/or arbitration fees and costs incurred (whether paid or not) as the result of any violation or claimed violation of any privacy legislation which is in any way related to your use of the MIDITECH services or any portion thereof. You acknowledge that you are solely responsible for the data stored using the MIDITECH services and solely responsible for ensuring that the MIDITECH services are appropriate for the nature of the data being stored.

**11.1.3** You specifically waive any claim for damages of any kind, whether direct, indirect, special, exemplary, punitive, incidental or consequential, loss of profits, or loss of business as the result of MIDITECH suspending or terminating your project or web host account in response to any claim of copyright infringement even if the material alleged to be infringing is subsequently found not to be infringing.

**11.1.4** Notwithstanding anything in this Agreement, the content of the customer's Website is the sole responsibility of the customer. The customer agrees to indemnify, defend, and hold harmless MIDITECH

and its subcontractors and agents from any and all claims including, but not limited to: misappropriation of any copyright, patent, trademark, trade secret, data, music, image, or other proprietary or property right, false advertising, unfair competition, defamation, business or personal dispute or argument, invasion of privacy or rights of celebrity, violation of any anti-discrimination law or regulation, or any other right of any person or entity, or any personal or business argument or dispute losses, damages, liabilities, judgments, or settlements, including reasonable legal fees, costs, and other expenses incurred by MIDITECH and any third party entities related to MIDITECH, related to or in connection with the content of the customer's website.

**11.1.5** The terms of this section ("Indemnification") will survive any termination of this agreement.

## **11.2 Disclaimer Of Warranties**

### **11.2.1 YOUR USE OF THE MIDITECH WEB DESIGN PROJECT IS AT YOUR SOLE RISK.**

MIDITECH services are provided on an as-is, as-available, basis without warranties of any kind, either express or implied, including, but not limited to, warranties of merchantability, fitness for a particular purpose, or non-infringement. MIDITECH DOES NOT GUARANTEE, NOR IS IT RESPONSIBLE FOR, ANY DELAY OR LOSS OF DATA, LACK OF CONNECTION, SLOW CONNECTIONS, OR ANY OTHER ISSUE, EVEN IF IT IS DUE TO THE NEGLIGENCE OF MIDITECH.

11.2.2 Any information obtained by you from the Internet may be offensive, incorrect, and possibly illegal. Excepting the information on its own Website, MIDITECH has no control over the contents of any other Website on the Internet. MIDITECH makes no warrantee as to the accuracy, suitability, or legality of any information that you acquire from the Internet nor does MIDITECH provides any warrantee for any goods or services that you might acquire over the Internet.

11.2.3 MIDITECH expressly disclaims any representation or warranty that MIDITECH's services will be error-free, secure, or uninterrupted. No oral advice or written information given by MIDITECH, its employees, licensors of the like, or subcontractors will create a warranty; nor may you rely on any such information or advice.

11.2.4 Although MIDITECH, its subcontractors, and its agents will use all reasonable measures to maintain the security of our services, MIDITECH assumes no responsibility for the effectiveness of the security measures provided by MIDITECH or its subcontractors or agents.

11.2.5 The terms of this Section ("Disclaimer of Warranties") will survive any termination of this Agreement.

## **11.3 Limitation of Liability**

11.3.1 Customer agrees that MIDITECH's liability and the customer's and end users' exclusive remedy related to the nonperformance of the website design service shall be:

- (i) repair or adjustment of the service, or
- (ii) where repair or adjustment is not practicable, an equitable credit not to exceed the charges invoiced to the customer for the portion of the service which were non-performing.

For any other claim, MIDITECH's liability, if any, to the customer and end users for damages related to use of the service for any cause whatsoever and regardless of the form of action, shall be limited to those actually proven as directly attributable to MIDITECH, and shall in no event exceed the total charges paid by the customer during the period the said damages were incurred. Under no circumstances will MIDITECH, its agents, suppliers or subcontractors be liable to customer or third party for any indirect incidental, special or consequential damages, expenses, costs, liability, loss, or damage whatsoever, whether arising in negligence, tort, statute, equity, contract, common law, or any other cause of action or legal theory. Customer agrees, acknowledges and confirms that the limitations of liability set out in this section are fair and reasonable in the commercial circumstances of this agreement

and that MIDITECH would not have entered into this agreement but for customer's agreement to limit MIDITECH's, its agents', suppliers' and subcontractors' liability in the manner, and to the extent, provided for herein.

11.3.2 For greater certainty, customer agrees that MIDITECH shall not be liable for any lost profits, anticipated revenue, loss of data, loss of use of any information system, lost business revenue, failure to realize expected savings or any other commercial or economic loss of any kind whatsoever arising out of or in connection with this agreement or the provision of the service, even if MIDITECH has been advised of the possibility of such loss.

11.3.3 MIDITECH assumes no liability arising from (i) the use of the service furnished by MIDITECH in combination with service, products or equipment provided by customer or any third parties and (ii) the failure by the customer to perform its obligations.

11.3.4 MIDITECH's host network or that of its subcontractors may experience periods of unavailability from time to time due to (but not restricted to) normal routine maintenance, utility interruption, equipment failure, natural disaster, acts of God, or human error. In no event shall MIDITECH be liable to the customer for any indirect, special or consequential damages, lost profits, or anticipated loss of profits, arising from, or related to, our hosting services, or the hosting services of our subcontractors.

11.3.5 The terms of this Section ("Limitation of Liability") will survive any termination of this Agreement.

#### **11.4 General Provisions**

11.4.1 Force Majeure Either party to this agreement shall be excused from any delay or failure in performance hereunder caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to, acts of God, earthquake, labor disputes and strikes, riots, war, and governmental requirements. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay.

11.4.2 Severability The invalidity, illegality or unenforceability of any one or more provisions of this Agreement shall not affect or impair any other provisions of this Agreement.

11.4.3 Choice of Law The customer agrees to attempt to resolve any disputes with MIDITECH prior to resorting to litigation. This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada. Any action relating to this Agreement must be brought in the provincial courts located in London, Ontario, Canada.

11.4.4 No Agency Nothing contained herein shall be interpreted as creating an agency, partnership or joint venture between MIDITECH and you.

11.4.5 Termination

- Failure to observe the terms and conditions set forth in this agreement can result in anything from a warning to a suspension of privileges or immediate termination of your project with us.
- If MIDITECH terminates the services being provided to you due to a breach of any terms of this agreement, then such termination shall be without refund.

#### **11.5 This TOSWD Agreement.**

This agreement constitutes the sole agreement between MIDITECH and the customer regarding this Web Design Project. Any additional work not specified in this contract or any other amendment or modification to this contract must be authorized by both the customer and MIDITECH by exchanging emails. Such emails are to be kept as proof of such additional work and are deemed NOT part of this project. All prices specified in this project will be honored for 2 months after the first payment deposit is made. Continued services after that time will require a new agreement.

## **12. Cancellation Of Project By Customer Prior To Completion.**

Customer can cancel this project at any time. There are no refunds on website design project deposits or payments as we have already set time aside for the project. If the customer cancels this project for any reason then the following applies:

12.1 Cancellation request for a website project with Miditech within the first 15 days of the deposit payment. If the customer cancels this project within the first 15 days of the deposit payment to Miditech, then the deposit will be deemed non-refundable. If, at the time of the request for refund within 15 days of deposit payment, work has been completed beyond the amount covered by the initial deposit payment, then the client shall be liable to pay for all work completed at the hourly rate of \$75.00 per hour. Miditech can ftp html files and associated graphics to the customer once all fees have been paid (either the deposit or the deposit plus any earned costs) Miditech is NOT required to provide the customer with any website or graphic files on CD or removeable media.

12.2 Cancellation request for a website project past the first 15 days of the deposit payment. If the customer cancels this project past the first 15 days of the deposit payment to Miditech, then the deposit will be deemed non-refundable. The balance owing on the project which was agreed on the project deposit date (which is the project start date) will become due and payable in full. If, and only if, the entire agreed project price is paid, Miditech can ftp any completed html and associated graphic files to the customer. Miditech retains ownership of the completed work until the full contract price has been paid. Miditech is NOT required to provide the customer with any website or graphic files on CD or removeable media.

**13. Beyond Project Completion.** The customer agrees that it is their responsibility to maintain a backup of their website files and/or database files. Miditech does not guarantee that we will have a backup once project completion has been reached. If the website is being hosted on Miditech servers, we do backup data as part of our hosting services but we cannot guarantee such backups can be successfully restored. Please refer to the web hosting Terms of Service at our website <http://miditech.com> for more information.

## **14. Agreement By Payment and Use**

Use of Miditech's Web site design service for a Miva Merchant 5 web store or website updating services constitutes acceptance of our MIVA-TOSWD located at <http://miditech.com/support/miva45toswd.pdf> and the Website Updating Policy (WUP) located at <http://miditech.com/support/wup.html>.