



**Terms &
Conditions**

Terms & Conditions of Trade

1. INTRODUCTION

- 1.1 Application of these Terms and Conditions
These Terms and Conditions are incorporated into any contract between the Agency and the Client for the supply of goods and/or services by the Agency to the Client.
- 1.2 Interpretation
In these Terms and Conditions:
'Agency' means R&B Creative Communication, ABN 96 110 794 842 or any other trading entity owned or controlled by Circular Concepts Pty Ltd, ABN 96 110 794 842
'Business Day' means a day on which banks are open for general banking business in the State or Territory in which the Agency's premises are located;
'Estimate' means the estimate referred to in sub-clause 2.1 (b) (as amended in accordance with clause 2.4);
'Goods' means the final Goods produced by the Agency by completing the Order;
'Services' means that any service undertaken by the Agency by completing the Order;
'GST' means Goods and Services Tax Act, 1999;
'Interest Rate' means the Reference Rate expressed as a percentage per annum charged by National Australia Bank Limited from time to time;
'Order' means the work required to be done in order to fulfill the Client's instructions;
- 1.3 General
In these Terms and Conditions, unless the context otherwise requires:
the singular includes the plural and vice versa;
a reference to a clause is a reference to a clause of these Terms and Conditions;
a reference to a party to these Terms and Conditions or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
a reference to a period of time (including, without limitation, a year, a quarter, a month and a day) is to a calendar period.
- 1.4 Headings
In these Terms and Conditions, headings are for convenient reference only and do not affect interpretation.
- 1.5 Business Day
If the day on which any act, matter or thing is to be done under this agreement is not a Business Day, that act, matter or thing: if it involves a payment other than a payment which is due on demand, must be done on the preceding Business Day; and in all other cases, may be done on the next Business Day.

2. ESTIMATES

- 2.1 Agency to supply estimate
The Agency may, if requested by the Client, give the Client an estimate specifying:
the work required to be done in order to fulfill the Client's instructions; and
an estimate of the Agency's charge for the performance of such work.
- 2.2 Acceptance by Client
Where the Agency has given the Client an estimate;
the Agency need not commence work until the Estimate has been accepted in writing by the Client.
the Client may accept the Estimate by instructing (returning a signed, and dated estimate or a formal purchase order) the Agency to commence work.
acceptance by the Client of the Estimate will constitute acceptance by the Client of these Terms and Conditions.
- 2.3 Estimate evidence of instructions
If a written Estimate is accepted by the Client, the work outlined in the Estimate shall be carried out and the Client shall pay for the work in accordance with these Terms and Conditions.
- 2.4 Agency may revise Estimate
The Agency may amend any Estimate before the Order has been completed to take into account any rise or fall in the cost of performing the Order and the Agency shall notify the Client of such

amendment as soon as practicable thereafter. Upon the Agency giving the Client notification of such amendment such amended Estimate shall be and be deemed to be the Estimate for the purposes of these Terms and Conditions.

- 2.5 Suspension or cancellation of work
The suspension or cancellation by the Client of any work, for any reason whatsoever, shall entitle the Agency to payment in full for the portion of the work completed and if unreasonably short notice is given of such suspension or cancellation, shall entitle the Agency to compensation for any loss incurred due to the idle capacity arising from the unreasonably short notice.

3. CHARGES

- 3.1 Invoice
Subject to clause 5.3, when the Order has been completed, the Agency will issue an invoice to the Client for the amount of the Estimate or, if no Estimate was made, for an amount representing the Agency's charge for the work done in filling the Order, and for any of the other charges specified in clause 3.2.
- 3.2 Additional Charges
In addition to the amount of the Estimate, or where no Estimate was given, in addition to the amount representing the Agency's charge for the work done, the Agency may charge to the Client:
(a) fees for any preliminary work performed at the Client's request;
(b) fees for additional work required to be done as a result of the Client changing his, her or its instructions;
(c) fees for having to work from poor copy;
(d) fees for work which involves tables, forms or foreign language and which was not notified to the Agency before the Estimate was prepared;
(e) fees for additional work required to be done as a result of author's corrections, including repagination or reformatting;
(f) fees and other charges for work required to be done urgently, including any overtime costs;
(g) fees for handling or sorting material or equipment supplied by the Client for the purposes of the Order;
(h) for changing or correcting, in order to ensure that the Goods are properly produced, any plates, film, bromides, artwork or any document including computer files supplied for the purposes of the Order by the Client;
(i) freight costs and charges;
(j) other charges, fees or disbursements referred to in these Terms and Conditions and not specified in this clause.
- 3.3 For the purpose of these Terms and Conditions: the term 'Agency's charge' refers in each case to the standard or usual fee charged by the Agency from time to time in respect of the Order;
'preliminary work' means all and any work performed by the Agency at the Client's express or implied request, the performance of which work was necessary to enable the Order to be commenced and which work was not within the reasonable contemplation of the Agency at the time when the Agency supplied the Estimate;
'additional work' includes all work undertaken by the Agency as a consequence of the Client's variation, alteration or modification of its instructions in relation to the Order; and
'freight costs and charges' includes all costs and expenses incurred by the Agency in removing the Goods from its premises, whether by way of actual or attempted delivery to the Client or otherwise.
- 3.4 Under/Over Supplies
The Client acknowledges that whilst the Agency will make every endeavor to produce the exact number of items in a print Order, owing to human and/or machine/computer error the number of items actually produced may be 10% over or under the number specified in the Order ('a discrepancy').
Where a discrepancy occurs the Agency will adjust the amount charged to the Client for the Order a pro rata amount to reflect the actual number of items produced.

4. DELIVERY

- 4.1 Notification
The Agency shall notify the Client when the Goods are ready for collection.
- 4.2 Collection
The Client must collect the Goods from the Agency's premises upon being notified by the Agency that the Goods are ready for

collection. If the Agency agrees to deliver the Goods the Client shall bear all freight costs and charges of such delivery unless otherwise mutually agreed.

- 4.3 **Rejection**
Subject to clause 7.1 the Client may only reject the Goods if they do not comply with the Client's instructions. If the Client wishes to reject the Goods, the Client must notify the Agency of the rejection: if the Agency agrees to deliver the Goods to the Client's premises, within 7 days of delivery (or such other time as mutually agreed); otherwise – within 7 days of notification that the Goods are ready for collection (or such other time as is mutually agreed).
- 4.4 **Risk**
The risk in the Goods passes to the Client:
if the Agency delivers the Goods to the Client's premises – at the time of delivery;
otherwise – at the time the Agency notifies the Client that the Goods are ready for collection.
If the Client is entitled to reject the Goods and rejects the Goods in accordance with these Terms and Conditions, risk reverts to the Agency at the time the Client notifies the Agency that the Goods are rejected.
- 4.5 **Errors**
The Client may claim for errors in work, but (as far as the Trade Practices Act allows such limitations):
only if the Client claims in writing within seven (7) days of receiving the Goods; and
only if errors do not appear in the signed off proof view and approved by the Client
the Agency's only obligation is the replacement or correction of the work or the cost of having the work replaced or corrected (whichever the Agency determines). The Agency shall not be liable for any indirect or consequential loss suffered by the Client including (without limitation):
loss arising from disclosure of information confidential to the Client which comes into the Agency's possession in the course of performing work; or
loss arising from third party claims.

5. CREDIT POLICY

- 5.1 **Time for payment**
The Client must pay to the Agency the total amount set out in the invoice within 30 days from the date on which the invoice is raised.
- 5.2 **Interest**
The Agency may charge interest at the Interest Rate on amounts not paid within the time specified in clause 5.1.
- 5.3 **Advance and progress payments**
The Agency may issue an invoice for the amount of the Estimate before commencing the Order where the Agency has not previously carried out work for the Client or where the Agency considers it otherwise prudent to do so;
The Agency may, in the event that the Agency is of the view that completing the Order will take more than a month, at any time before the Order is completed, issue one or more invoices for a proportion of the amount of the Estimate (the proportion of the Estimate to be paid in advance of any further work being done).
If the Order is suspended for more than 30 days at the request of the Client or as a result of something for which the Client is responsible, the Agency may issue an invoice for a particular sum (to be specified by the Agency) for the work already done and for the other costs incurred by the Agency (such as storage costs).
- 5.4 **Damages**
The Client must pay to the Agency any costs expenses or losses incurred by the Agency as a result of the Client's failure to pay to the Agency all sums outstanding from the Client to the Agency (including, without limiting the generality of the obligation set out in this clause, any debt collection and legal costs).

6. NON-PAYMENT

- 6.1 **Retention of ownership**
Until the Client has paid all sums outstanding in relation to the Goods:

Title in the Goods shall not pass from the Agency to the Client.

If the Goods are in the Client's possession, the Client shall hold the Goods as trustee for the Agency and must store the Goods so that they are clearly identifiable as the property of the Agency.

The Agency may call for and recover possession of the Goods (for which purposes the Agency's employees or agents may enter the Client's premises and take possession of the Goods without liability to the Client) and the Client must deliver the Goods to the Agency if so directed by the Agency.

The Client may, in the ordinary course of the Client's business, sell the Goods to a third party but:

the proceeds of sale to the third party shall be held by the Client as trustee for the Agency and the Client shall account to the Agency for those sums; and

if the Agency requires, the Client shall assign to the Agency the Client's claim against the third party and shall execute all documents necessary to effect that assignment.

- 6.2 **General lien**
The Agency shall, in respect of all sums owed by the Client to the Agency hereunder, have a general lien on all property of the Client in the Agency's possession and may, after 14 days' notice to the Client, sell that property and apply the proceeds (net of any sale costs) in satisfaction of all or any part of the sums owed. In the event that any of the Client's property held by the Agency as aforesaid enjoys copyright protection in favor of the Client, the Client hereby grants the Agency a license to exercise the rights conferred on the Agency under this clause.
- 6.3 **Suspension of services**
In the event that the Client is in breach of these Terms and Conditions the agency reserves the right to suspend any ongoing services rendered to the client until payment is made in full. The suspended service will be re-activated in full on payment by the Client. The Agency shall not be liable for any indirect or consequential loss suffered by the Client due to the suspension of these services. These include but are not limited to web hosting, email hosting, media sales.

7. LIABILITY

- 7.1 **Proofs**
If the Agency submits to the Client a proof of the Goods, the Agency will not be responsible for any errors in the Goods which appeared in the proof and which were not corrected by the Client before the Order was completed. The Client is advised that all electronic proofs submitted to Client during the approval process are of low resolution, unless otherwise specified, and there may be some variance in colours, photo quality and other items once professionally printed. Any printed colour proofs provided by R&B Creative Communication are not exact representations of the final professional print quality and some colour variation between these proofs and the final professional printed versions is to be expected. Proofs generated by the print house are highly recommended for maximum accuracy.
- 7.2 **Non-excludable Rights**
The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Client in relation to the provision of the Goods or of services which cannot be excluded, restricted or modified by agreement ('Non-excludable Rights').
- 7.3 **Disclaimer of Liability**
The Agency disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Client, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of the Agency for a breach of a Non-excludable Right is limited, at the Agency's option, to the supplying of the Goods and/or any services again or payment of the cost of having the Goods and/or any services supplied again.
- 7.4 **Indirect losses**
Notwithstanding any other provision of these Terms and Conditions, the Agency is in no circumstance (whatever the cause) liable in contract, tort (including, without limitation, negligence or

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breach of statutory duty) or otherwise to compensate the Client for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or any special, indirect or consequential loss or damage of any nature whatsoever caused by the Agency's failure to complete or delay in completing the Order or to deliver the Goods.
- (d) any failure or non-performance of campaigns, adverts, design, labeling or any perceived damage to reputation or goodwill.

7.5 **Electronic data**
Without limiting the generality of the foregoing clauses, the Agency will not be liable to the Client for loss, however caused, of any data stored on disks, tapes, compact disks or other media supplied by the Client to the Agency.

7.6 **Client's property**
Subject to clause 7.5, the Agency will not be liable for the damage, loss or destruction of any property of the Client in the Agency's possession unless the loss or damage is due to the failure of the Agency to exercise due care and skill in handling or storing the property.

7.7 **Confidentiality**
The Agency will use its best endeavors to maintain the confidentiality of all data and other information supplied by the Client but shall not be liable for any breach of confidentiality which may occur.

7.8 **Force Majeure**
The Agency will have no liability to the Client in relation to any loss, damage or expense caused by the Agency's failure to complete the Order or to deliver the Goods as a result of a fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, war, the inability of the Agency's normal Agencies to supply necessary materials or any other matter beyond the Agency's control.

8. GENERAL MATTERS

8.1 **Periodicals**
If the contract between the Agency and Client relates to more than one issue of a periodical:
each issue will, for the purpose of these Terms and Conditions, be considered to be one Order;
subject to sub-clause (c), a party may not terminate a contract to which these Terms and Conditions apply unless:
in the case of periodicals published weekly or more frequently, that party has given 4 weeks' notice of that party's intention to terminate the contract;
in the case of periodicals published fortnightly or more frequently (but less frequently than weekly), that party has given 8 weeks' notice of that party's intention to terminate the contract;
in the case of periodicals published less frequently than fortnightly, that party has given 13 weeks' notice of that party's intention to terminate the contract.
Notwithstanding sub-clause (b), the Agency may terminate the contract at any time if the Client is in breach of any provision of these Terms and Conditions relating to payment.

8.2 **Alterations to style etc.** If, before the Estimate is prepared, the Client does not give the Agency specific instructions in relation to style, type or layout:
the Agency may use any style, type and layout which, in the Agency's opinion, is appropriate; and
the Agency may charge an additional amount for any additional work required to be done (including the production of additional proofs) as a result of the Client subsequently altering the style, type or layout used by the Agency.

8.3 **Overset**
The Client must pay for overset matter (being matter produced on the Client's instructions but not used in a publication for which it was intended). The Client may instruct the Agency to retain overset matter for future issues of the publication or to discard the overset matter.

8.4 **Design samples**
The Client agrees to supply for free, in addition to fees for service, up to 10 printed samples of every item produced for The Client

by The Agency during the course of this project (quantity to be specified by us).

8.5 **Outside work**
If the Agency has to obtain Goods (including typefaces, bromides, film, plates, ornament or artwork) and/or services not normally stocked or supplied by the Agency from a third party in order to carry out the Client's instructions:

(a) the Agency will not be liable for any breach of these Terms and Conditions if that breach is a result of or is connected with the supply by the third party of such Goods and/or services.

(b) the Agency acquires such Goods and/or services as agent for the Client and not as principal and will have no liability to the Client in relation to the supply of those Goods and/or services. Any claim by the Client in relation to the supply of those Goods and/or services must be made directly against the third party. The Client must pay for such Goods and/or services.

(d) Property in any such Goods obtained from a third party and incorporated into the Goods passes to the Agency at the time of incorporation.

8.6 **Material supplied by Client**
If the Agency and the Client agree that the Client is responsible for supplying materials or equipment for the purposes of the Order: The Client must supply sufficient quantities of materials to allow for spoilage, such quantities to be specified by the Agency. The Agency will not normally count or check the materials and if requested by the Client to do so, may charge for counting or checking.

The Agency will not be responsible for any defects in the Goods which are caused by defects in or the unsuitability of materials or equipment supplied by the Client.

(d) Property in any materials supplied by the Client and incorporated into the Goods passes to the Agency at the time of incorporation.

8.7 **Property left with Agency**
If the Client leaves property in the Agency's possession without specific instructions as to what is to be done with it, the Agency may, 6 months after gaining possession of the property, dispose of or sell the property and retain any proceeds of or sell the property and retain any proceeds of sale as compensation for holding and handling the property.

8.8 **Responsibility to insure**
The Agency has no obligation to insure any property of the Client in the Agency's possession. The Client must pay the cost of any insurance arranged by the Agency at the request of the Client.

8.9 **Ancillary Materials**
All artwork in relation to the work produced will become the property of the Client when payment is received.

8.10 **Copyright**
(a) Copyright in all artistic and literary works authored by the Agency shall be the property of the Agency.
(b) The Client:

(a) warrants that the Client has copyright in or a licence to authorise the Agency to reproduce, all artistic and literary works supplied by the Client to the Agency for the purposes of the Order and the Client hereby expressly authorises the Agency to reproduce all and any of such works for the purposes aforesaid;

(b) hereby indemnifies and agrees to keep indemnified the Agency against all liability, losses or expenses incurred by the Agency in relation to or in any way directly or indirectly connected with any breach of copyright in such literary and artistic works.

The Client is hereby granted a non-exclusive licence to use the copyright in any literary and/or artistic works authored by the Agency of the Order however the exercise of such licence shall be conditional upon the Agency having received all monies due to the Agency under these Terms and Conditions.

This granting of copyright does not extend to the use of design proposals submitted but not approved by The Client for the work outlined in this submission.

8.11 **Ideas**
The Client must keep confidential and not use any ideas communicated by the Agency to the Client without the Agency's written consent.

8.12 **Electronic/magnetic media**
All disks, tapes, compact disks or other media (other than media

supplied by the Client) used by the Agency to store data for the purpose of completing the Order are the property of the Agency. The Client cannot require the Agency to supply to the Client any data so stored. In the event that the Agency does supply any data so stored or created the Agency may charge for supplying such data to the Client.

- 8.13 **Storage or electronic data**
The Agency will not be responsible for storing any data on disks, tapes, compact disk or other media when the Order has been completed. If the Agency agrees to store such data, the Agency may charge for doing so.
- 8.14 **No waiver**
A power or right is not waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.
- 8.15 **Severability**
Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.
- 8.16 **Governing law and jurisdiction**
These Terms and Conditions are governed by the law in force in the State or Territory in which the Agency's premises are located and the parties submit to the non-exclusive jurisdictions of the courts of that State or Territory and any courts which may hear appeals from these courts in respect of any proceedings in connection with these Terms and Conditions.
- 8.17 **Confidentiality**
The information contained in any estimate provided by the Agency is considered highly confidential. The Client shall not disclose this information to any third party without the prior written consent of the Agency unless the information is available to the public generally or the Client is required to disclose it by law.

9. MAILING SERVICES

- 9.1 **Postage**
The Agency will make all necessary arrangements with Australia Post on behalf of the Client but will not be responsible for:
(a) any delay in mailing or any consequential loss or damage;
(b) any loss, costs, damages or expenses suffered by the Client arising from or incidental to the Client's failure or refusal to meet the specified postage payment terms.
- 9.3 **Payment for Postage**
Postage is payable seven (7) days from the date of lodgement.

10. GOODS AND SERVICES TAX

- 10.1 **All amounts are GST exclusive amounts**
All amounts expressed or described in these Terms and Conditions are GST exclusive amounts.
- 10.2 **All amounts to be increased for any GST**
If any GST is payable by the Agency in respect of the supply of any Goods or services to the Client, then the amount expressed or described in these Terms and Conditions ('Original amount') is to be increased so that the Agency receives an amount ('Increased Amount') which, after subtracting the GST liability of the Agency on that Increased Amount, results in the Agency retaining the Original Amount after payment of that GST liability.
- 10.3 **Out of pocket expenses are GST inclusive**
All out of pocket expenses referred to in these Terms and Conditions are GST inclusive out of pocket expenses.
- 10.4 **Agency to assist Client**
The Agency will do all things reasonably available to it to assist the Client to claim on a timely basis any input tax credits (if any) the Client may be entitled to claim for any acquisition of Goods and services from the Agency.

This includes the Agency maintaining its registered status for GST purposes, and issuing tax invoices for supplies made under these Terms and Conditions on a timely basis as reasonably requested by the Client.

11. WEB SERVICES

- 11.1 **The Agency may suspend access to the Services:**
(a) to preserve data and integrity;
(b) if there is a security breach; or
(c) if there is a malfunction in the Services.
- 11.2 **The Agency reserves the right to terminate or suspend the Services to the Client indefinitely and without refund or compensation in the event that:**
(a) the Services are used, or appear to The Agency to be intended to be used, by a Client or a Client of the Client in a manner deemed inappropriate by The Agency;
(b) the provision of the Services is likely to expose The Agency to any liability as a result of a breach of any law or any third party rights; or
(b) the Client otherwise breaches this Agreement.
- 11.3 **Suspension of Services by The Agency will continue until the problem or breach is rectified or until otherwise agreed.**
- 11.4 **The Agency will not be liable to the Client, its employees, contractors, Clients or agents as a result of taking the action referred to in this Clause 7 where such action is taken on a view which is formed on a reasonable basis by The Agency.**
- 11.5 **Server Usage**
Web site hosting service accounts are defined as those facilities provided to support and host the The Client's web site. Accounts are to be used by the Client/account holder only. Account holders are not permitted to resell, store or give away web-hosting services of their web site to other parties. Exceptions to this include links, ad banners, classified ads, and personal ads.
The Agency reserves the right to refuse hosting services to anyone should it decide that the account has been used inappropriately or otherwise. The Agency will not allow any of the following content to be stored on its servers or its hosting partner's servers:
Illegal Material - This includes copyrighted works, commercial audio, video, or music files, and any material in violation of any International, National, or Local Government regulation.
Adult Material - Includes all pornography, erotic images, or otherwise lewd or obscene content. The designation of "adult material" is left entirely to the discretion of The Agency.
WareZ - Includes pirated Website, ROMS, emulators, hacking, password cracking, IP spoofing, etc., and encrypting of any of the above. Also includes any sites which provide "links to" or "how to" information about such material.
- 11.6 **Spam Guidelines**
Unsolicited email (Spam) is considered an unacceptable use of a domain. Whether the unsolicited email originates directly from the client's web-space area or otherwise, abuse reports received concerning a domain may result in suspension or closure of the service without refund.
- 11.7 **Payment Policies**
All accounts are set up on a prepay basis. Although The Agency reserves the right to change prices of accounts or services at any time, pricing is guaranteed for the period of prepayment. Payment is due every 12 months following the date the account was established.
All renewal payments must be received at least 5 working days in advance of the renewal date to ensure that no disruption to the service is incurred. The Agency reserves the right to suspend this and other services until any outstanding debt is cleared. The Agency will not be responsible for any data lost due to non-payment closure of an account. The Client is responsible for all money owed on the account from the time it was established to the time that The Client sends a written cancellation request.
- 11.8 **Cancellation and Refunds**
Fees charged on a prepay basis are non-refundable.
- 11.9 **Disclaimer**
The Agency will not be responsible for any damages your business may suffer. The Agency makes no warranties of any kind expressed or implied for services we provide. The Agency disclaims any

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warranty or merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by The Agency and its employees. The Agency reserves the right to revise its policies at any time.

- 11.10 **Unlimited Use Policy**
High bandwidth usage: The Agency offers a high use policy by maintaining very large ratios of bandwidth per The Client. In rare cases, The Agency may find a The Client to be using server resources to such an extent that he or she may jeopardize server performance and resources for other The Clients. In such instances, The Agency reserves the right to impose the High Resource User Policy clause as stated below in order for The Agency to provide equitable consideration of all its Clients.
- 11.11 **High Resource Policy**
Resources are defined as bandwidth and/or processor utilisation. The Agency may implement the following policy to its sole discretion: If a web site is found to be monopolising all the resources available to the detriment of other clients of The Agency, then The Agency reserves the right to immediately suspend that site. This policy will only be implemented in extreme circumstances. The Clients may be offered an option whereby The Agency continues hosting the website for an additional fee.
- 11.12 **Data Backup**
The Agency will only backup all files necessary to recreate the original web site.

12. LOSS OF WEB BASED DATA

- 12.1 The Agency will take all reasonable steps to safeguard the The Agency Servers and the data contained therein, however The Agency will not be responsible for any loss of Client data stored or intended to be stored on the The Agency Servers or back-up devices and the Client will not be entitled to any form of compensation from The Agency in the event of loss of data including but not limited to web sites and email accounts.

13. INTERRUPTIONS TO WEB SERVICE

- 13.1 The Agency takes no responsibility for any delay, malfunction, non performance, or other degradation of performance of any of the Services caused by or resulting from any alteration, modifications or amendments due to changes and specifications requested or implemented by the Client whether or not beyond the Services already supplied.
- 13.2 In the event of total systems failure resulting in the disruption of service to the Internet from The Agency Servers, The Agency will endeavor to repair and reinstate the service within 24 hours of detection depending on the severity of the failure.
- 13.3 If failure is caused by the Client or any agent or Client of the Client to whom access to The Agency Servers was given, the Client shall pay all costs to reinstate and/or repair the Client server.
- 13.4 The Agency will not be liable to the Client, its employees, contractors, Clients or agents as a result of services interruptions to web sites or email for any period of time. The Agency will endeavor to reinstate services as soon as possible relative to the circumstances.

14. WEB DESIGN

- All web design commissions provided by The Agency to the Client are subject to the following terms and conditions.
- 14.1 **Scope of Work and Price Agreement**
Charges for Services to be provided by The Agency will be defined in the Client's Project Estimate. Under normal trading circumstances, the Project Estimate will be issued by The Agency which shall identify the scope of work intended. The Agency's quotation which will include the Estimate and Site Map for acceptance or comment by the Client. Once the Estimate and site map has been accepted, in writing, by the The Client, this will then be deemed to be the sole document which will specify the scope of work. In addition, prices will be fixed at that time identifying the specific Project Proposal and its revision in order to avoid misunderstanding.

- 14.2 **Payment Clause**
All Services require an advance payment of 30% (thirty percent) of the project quotation total before the work is supplied to the The Client for review. The remaining 70% (seventy percent) will be due upon completion of the work.
- 14.3 **The Client Review**
The Agency will provide the The Client with an opportunity to review the appearance and content of the Web site during the design prototype stage.
- 14.4 **The Client Acceptance**
The Agency will deliver the The Client's Web site by the date specified in the Estimate, unless a delay is specifically requested by one Party and accepted by the other, in writing. At the "sign-off" stage the Client will be presented with the completed design. Such materials will be deemed as acceptable and approved unless the The Client notifies The Agency to the contrary within 10 working days of the date the materials were made available. Invoices will be provided by The Agency upon completion of any work undertaken. Invoices are due upon the terms specified on the invoice. Accounts that remain unpaid beyond thirty (30) days after the date of the invoice will be subject to a finance.
- 14.5 **Default**
Accounts unpaid 30 (thirty) days after the date of invoice will be considered in default. If the The Client in default maintains any information or files on The Agency's Web space, The Agency will, at its discretion, remove all such material from its web space. The Agency is not responsible for any loss of data incurred due to the removal of the service. Removal of such material does not relieve the The Client of the obligation to pay any outstanding charges assessed to the The Client's account.
- 14.6 **Termination**
Termination of services by the The Client must be requested in writing and signed. Termination will be effective on receipt of such notice. The Client will be invoiced for design work completed to the date of first notice of cancellation for payment in full within 30 (thirty) days. The web site design and any associated system coding developed by The Agency remain the intellectual property of The Agency. Any web site content, i.e. text and images provided by, or entered into the system by the Client and/or their clients, remains the property of the Client. If a Client wishes to terminate their account with The Agency and transfer their web site information elsewhere, The Agency will advise and assist with any data extraction and transfer work subject to The Agency's standard hourly rates.
- 14.7 **Access Requirements**
If the The Client's Web site is to be installed on a third-party server, The Agency must be granted temporary read/write access to the The Client's storage directories, and those directories must be accessible via FTP. Depending on the specific nature of the project, other resources might also need to be configured on the server. Where possible and relevant, based upon the information provided by the The Client, such other resources will be identified in the Project Proposal. However, in those circumstances whereby such resources cannot be reasonably identified at the Project Proposal stage, then The Agency reserves the right to issue an amendment to the Project Proposal as soon as it becomes clear that additional resources might be required, which might include a re-evaluation of the costs quoted.
- 14.8 **Post-Placement Alterations**
The Agency cannot accept responsibility for any alterations caused by any other party to the The Client's web site once installed. Such alterations include, but are not limited to additions, modifications or deletions.
- 14.9 **Intellectual or Industrial Property Rights**
(a) All intellectual and industrial property rights to websites, databases, equipment or other materials developed or provided such as analyses, designs, documentation, reports, offers, as well as preparatory materials in that regard, shall be held solely by the Agency, its licensors or its agents.
(b) The Client shall only acquire the rights of use expressly granted in these Terms & Conditions and by law. Any other or more extensive right of the Client to reproduce website, websites, databases or other materials shall be excluded. A right of

- use to which the Client is entitled shall be non-exclusive and non-transferable to third parties. If the Agency is prepared to undertake to transfer an intellectual or industrial property right, such an obligation may only be entered into expressly in writing. If the Parties expressly agree in writing that intellectual or industrial property rights regarding Website, websites, databases, equipment or other materials specifically developed for the Client shall be transferred to the Client, this shall not affect the Agency's right to apply and to use, either for itself or for third parties, the parts, general principles, ideas, designs, documentation, works, programming languages and the like underlying that development, without any limitation on other purposes. Nor shall a transfer of intellectual or industrial property rights affect the Agency's right to undertake developments for itself or third parties which are similar to those done for the Client.
- (c) The Client shall not be allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, trademarks, business names or other intellectual or industrial property rights from the Website, websites, databases, equipment or materials.
- (d) The Agency shall be allowed to take technical measures to protect the website or with a view to agreed restrictions in the duration of the right to use the website. The Client shall not be allowed to remove or evade such a technical measure. If security measures result in the Client being unable to make a back-up copy of Website, the Agency shall provide the Client with a back-up copy upon request. Unless the Agency provides a back-up copy of the Website to the Client, the Client may make one back-up copy of the Website, which may only be used to protect against involuntary loss of possession or damage. The back-up copy may only be installed after involuntary loss of possession or damage. A back-up copy must have the same labels and copyright designations as are present on the original version as above. Subject to the other provisions of these General Terms & Conditions, the Client shall be entitled to correct errors in Website provided to it if that is necessary for the intended use of the Website.
- (e) In these General Terms & Conditions, "errors" shall mean a substantial failure to meet the functional or technical specifications stated in writing by the Agency and, in the case of custom-made websites, the functional or technical specifications expressly agreed between the Parties in writing. An error shall only exist if the Client can prove it and if it can be reproduced. The Client shall be obliged to notify the Agency of errors immediately. The Agency shall indemnify the Client against any third-party cause of action based on the claim that websites, databases, equipment or other materials developed by the Agency itself infringe an intellectual or industrial property right applicable in Australia, on the condition that the Client immediately inform the Agency in writing about the existence and substance of the cause of action and let the Agency handle the matter completely, including with respect to agreeing to any settlements. To that end, the Client shall provide the necessary powers of attorney, information and cooperation to the Agency to defend - if necessary, in the Client's name - against these causes of action. This indemnification obligation shall be extinguished if the alleged infringement relates
- i) to materials provided by the Client to the Agency for use, adaptation, processing or incorporation, or
 - ii) to changes the Client has made or caused third parties to make to the Website, website, databases, equipment or other materials.
- (f) If it has been established in court as an incontrovertible fact that the websites, databases, equipment or other materials developed by the Agency itself infringe any intellectual or industrial property right held by a third party or if, in the Agency's judgment, it is likely that such infringement will occur, the Agency shall, if possible, ensure that the Client can continue to have undisturbed use of the delivered objects, or functionally equivalent to other websites, equipment or the other materials concerned, for example, by modifying the infringing parts or by acquiring a right of use for the Client. If, in its exclusive judgment, the Agency cannot ensure or cannot ensure except in a manner that is unreasonably burdensome (financially or otherwise) for it that the Client can continue to have undisturbed use of the delivered objects, the Agency shall take back the delivered objects, with crediting of the acquisition costs minus a reasonable user's fee. The Agency shall not make its choice in this regard until after the Client has been consulted. Any other or more extensive liability or indemnification obligation on the Agency's part due to the infringement of a third party's intellectual or industrial property rights shall be completely excluded, including liability and indemnification obligations on the Agency's part for infringements caused by using the websites, databases, equipment and/or materials delivered
- i) in any form not modified by the Agency,
 - ii) in connection with objects or Website not delivered or furnished by the Agency or
 - iii) in another manner besides that for which the equipment websites, databases and/or other materials were developed or intended.
- (g) The Client warrants that there are no third-party rights which are inconsistent with providing the Agency with equipment, Website, materials intended for websites (visual material, text, music, domain names, logos etc.), databases, or other materials, including draft material, intended for use, adaptation, installation or incorporation (for example, in a website). The Client shall indemnify the Agency against any action based on the claim that such provision, use, adaptation, installation or incorporation infringes a third party right.



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