

# Standard Terms

For provision of creative services (**Services**) by the Designer (**we/us/our**).

These Standard Terms (**Terms**) and our work proposal (**Proposal**) form the basis of our agreement with you (**Agreement**) and is our offer of Services to you.

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## 1. Acceptance

You accept our offer if you:

- (a) confirm your acceptance of our Proposal; or
- (b) continue to request (either orally or in writing) that we perform work or provide information to you, whether or not you confirm acceptance.

*Please note that even if you indicate that you wish for us to start providing our Services, we may still require you to accept our Proposal before we continue. We may also withdraw our offer to provide Services if you do not accept the offer within 14 days.*

*These Terms apply to our relationship from the point that you first consulted us (whether by post, telephone, email or other form of communication) even if the Proposal is signed at a later date or not signed at all.*

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## 2. Proposal

- (a) Our Proposal may take a number of different forms and may be issued as a hard copy or by electronic means. Our Proposal may also be made up of different parts, which are to be taken as joined and to form one single instrument.
- (b) You should tell us immediately if you disagree with anything contained in our Proposal or if you think we have misunderstood your instructions. If you do not let us know, we will proceed with carrying out your work in the manner described in our Proposal.
- (c) If there is any inconsistency between these Terms and our Proposal, our Proposal will prevail to the extent of that inconsistency.

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## 3. Services

We will perform our Services in accordance with these Terms and as set out in our Proposal, use our best endeavours to provide the Services in accordance with agreed time frames and will provide updates on our progress promptly on request.

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## 4. Scope

Our Proposal will describe the Services that we will undertake for you and will, if relevant, detail any Services which we specifically will not be undertaking. Unless otherwise specified in our Proposal, our scope of work will include two rounds of minor amendments to a draft concept.

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## 5. Variations

- (a) You may request variations to the scope, or that we undertake additional or excluded Services.
- (b) If you do not request an updated proposal we will commence work at our usual hourly rate. If you

request an updated proposal we will prepare a revised proposal detailing the work we believe to be involved and the fees that will be due.

- (c) If we cannot reach an agreement with you on the work and fees, we will not be obligated to carry out the varied work.
- (d) If both parties agree on the terms of the variation and the fees, this Agreement will be deemed to automatically incorporate the variation.
- (e) If you continue to provide instructions or directions for us to proceed with the work relating to the variation after you have received our variation proposal, you will be deemed to have agreed to all terms contained in the variation proposal including the fees.

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## 6. Contacts

Our Proposal will detail who will be responsible for the delivery of our Services and their contact information.

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## 7. Subcontracting

### 7.1 We may subcontract

We may in our sole discretion subcontract any part of our works to a third party without notice to you and without your consent.

### 7.2 Standards for subcontractor

We will use our best endeavours to ensure that subcontractors engaged in the performance of the Services:

- (a) are competent and professional;
- (b) are bound by the intellectual property and confidentiality provisions of this Agreement or otherwise to provisions equivalent in effect;
- (c) have the qualifications and experience necessary to ensure full and proper performance of the duties allocated to them in accordance with this Agreement; and
- (d) do not breach or cause us to breach any of our obligations under this Agreement.

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## 8. Intellectual property

### 8.1 Background IP

Nothing in this Agreement transfers intellectual property rights belonging to a party that were created prior to the parties entering into this Agreement. You acknowledge and agree that we are not required to provide you with source materials or files used in the delivery of the Services.

### 8.2 Materials you supply

- (a) Unless you otherwise provide us with notice in writing:
  - (i) you warrant that all material or ideas you supply to us are owned by you or if owned by another party, do not infringe that third party's IP rights; and
  - (ii) you grant us an irrevocable, royalty free, transferable, worldwide licence to use and to sub-license any intellectual property rights

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in the material that you have supplied to us for the purpose of delivering our Services.

- (b) Where you are supplying material or ideas owned by a third party, you warrant that you have obtained all authorities, licences and permissions that are required for us to deal with such materials and ideas as you have directly or indirectly indicated.

### 8.3 Ownership

- (a) If ownership of the intellectual property rights in the works we produce is not specified in the Proposal then:

- (i) we retain ownership of all intellectual property rights in those works;
- (ii) subject to paragraph 8.3(a)(iii) and receipt of all of our outstanding fees, we grant you an exclusive licence to the intellectual property rights in the works, strictly for the purpose that has been agreed; and
- (iii) we may alter, reproduce or use the works in any new works we have created, provided the new works are not deceptively similar to the works created for you and in our opinion, acting reasonably, likely to give rise to any consumer confusion between you and a third party.

- (b) If it is expressly stated in the Proposal that ownership of the intellectual property rights in the works we produce is to be assigned to you then:

- (i) subject to 8.3(b)(ii), we assign all right, title and interest in the intellectual property rights in the completed works free from encumbrances from the date payment of all our outstanding fees is received; and
- (ii) you grant us an irrevocable, royalty free, transferable, worldwide licence to use and to sub-licence any intellectual property rights in the works that have been transferred to you pursuant to paragraph 8.3(b)(i) for the purpose of creating alterations and reproductions of the new works, provided the new works are not deceptively similar to the works created for you and in our opinion, acting reasonably, likely to give rise to any consumer confusion between you and another third party.

### 8.4 Moral rights

- (a) Where we have provided you with a licence to use the works under sub-clause 8.3(a)(ii) and the works were:

- (i) created by us, we irrevocably and genuinely consent, as the author of the works, to any acts or omissions of any person, including you, in connection with the works after the date of licence, which might otherwise infringe our moral rights provided such actions are strictly in line with the purpose; and
- (ii) created by a third party, we will use our best endeavours to obtain and provide to you irrevocably and genuinely given consents from the authors of the works in the same terms as required under sub-clause 8.4(a)(i).

- (b) Where we have assigned our intellectual property rights in the works to you under sub-clause 8.3(b)(i) and the works were:

- (i) created by us, we irrevocably and genuinely consent, as the author of the works, to any acts or omissions of any person, including you, in connection with the works after the assignment, which might otherwise infringe our moral rights;
- (ii) created by a third party, we will use our best endeavours to obtain and provide to you irrevocably and genuinely given consents from the authors of the works in the same terms as required under sub-clause 8.4(b)(i).

- (c) Without limiting sub-clauses (a) and (b) above, if you request consent in relation to a specific act or omission relating to the intellectual property rights in the works which would interfere with the moral rights of the author, we will use our best endeavours to ensure that you are given genuine consent to that act or omission by the author provided such consent is to be provided to you under either sub-clause (a) and (b) above (whichever applies).

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## 9. Searching

- (a) We will use our best efforts when providing our Services to ensure the completed works do not use, incorporate or reproduce the intellectual property rights of a third party. However we do not provide any guarantee, representation or warranty that the works are unique or that the works do not infringe the trade mark rights of a third party.
- (b) If specified in the Proposal, we will engage the services of a specialist intellectual property legal professional to perform a concept search for determining whether the completed works infringe a third party's trade mark rights.
- (c) To the greatest extent permissible by law, we disclaim and will not be held liable or responsible for any claim, loss, damage, liability, cost or expense that you suffer whether directly or indirectly as a result of the completed works infringing any third party trade mark rights.

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## 10. Protecting the works

- (a) Other than facilitating a concept search, if required under clause 9, we will not be involved in:
  - (i) trade marking the completed works; or
  - (ii) providing you with any advice or recommendations with respect to relevant intellectual property protections that you may have available to you.
- (b) We strongly recommend that you obtain legal advice from a specialist intellectual property law firm.
- (c) You acknowledge and agree that you:
  - (i) take full and complete responsibility for determining what intellectual property protections you have available to you; and
  - (ii) release us and hold us harmless from any claim, loss, damage, liability, cost or expense suffered as a consequence of you failing to properly undertake investigations of your available intellectual property

rights or take all actions available to you to protect your rights following the completion of our works.

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## **11. Fees, charges and payments**

### **11.1 Initial deposit**

We may require you to make payment of an initial deposit, in accordance with our Proposal, before we commence the provision of our Services. The initial deposit will be applied by us to Services rendered, following the issue of our invoice/s to you.

### **11.2 Hourly rates**

Services we provide on a time basis, or work required outside scope, will be charged in accordance with our hourly charge out rates as specified in our Proposal. All design work conducted on a time basis will be charged in a minimum of 15 minute blocks.

### **11.3 Fixed fee**

Services we provide on a fixed fee basis will be provided strictly in accordance with the scope detailed in our Proposal as reasonably determined by us in our sole discretion.

### **11.4 Additional work**

Any additional work that has not been specifically quoted will be charged in accordance with sub-clause 11.2. Subject to a varied proposal being agreed to under clause 5, additional work that is considered by us to be new work (does not relate to the original scope), unless we otherwise agree, will amount to a minimum charge of 1 hour.

### **11.5 Urgent work and your delay**

We may:

- (a) uplift our hourly rate by up to 25% where you have indicated that work is of an urgent or pressing nature which will require completion during non-business hours; and
- (b) reasonably change our fee and time estimates outlined in our Proposal, where you have caused unreasonable delay.

### **11.6 Expenses**

Any costs and reasonable out-of-pocket expenses which are necessary to provide our Services (**Expenses**) will be paid or reimbursed (as the case may be) by you where we have received prior written approval from you regarding the incurring of the Expense. We will submit documentation and evidence as is reasonably required by you to verify the Expenses that have been incurred.

### **11.7 Invoicing**

We will deliver an invoice to you in accordance with the payment timing detailed in our Proposal or, where not specified, at each point in time we reasonably determine. We will ensure the invoice contains sufficient detail to enable you to identify the Services provided and corresponding fees, is emailed to your nominated email address and complies with applicable GST laws.

### **11.8 Payment**

- (a) You must pay us all fees outlined in our invoice in the manner reasonably nominated in our invoice without set-off, counter-claim, holding or deduction.
- (b) If you fail to pay any of our fees in accordance with sub-clause 11.8(a), we may charge you for all costs

and expenses incurred by us in recovering our outstanding fees from you and charge 10% simple interest on the overdue amount which will begin accruing on the first day that payment is overdue.

### **11.9 Disputed fee**

- (a) If you dispute the whole or any portion of the amount claimed in an invoice, you must pay the portion of the invoice which is not in dispute in accordance with sub-clause 11.8 and provide notice to us within seven (7) days of receipt of the invoice your reasons for disputing the invoice.
- (b) Upon receipt of your disputed invoice notice, we will within a reasonable time provide you with evidence substantiating the invoice and addressing your reasons of dispute, to enable a prompt and amicable resolution.
- (c) If the dispute cannot be resolved within seven (7) days of us providing evidence under sub-clause (b), the dispute must be referred to the dispute resolution procedure in clause 13.

### **11.10 GST**

- (a) Unless otherwise expressly stated in our Proposal, all amounts stated to be payable under this Agreement are exclusive of GST.
- (b) If GST is imposed on any supply made under or in accordance with this engagement and GST has not been accounted for in determining the consideration payable for the supply, then we may recover from you an amount on account of GST. That amount is equal to the value of the supply calculated in accordance with the *A New Tax System (Goods and services Tax) Act 1999* (Cth) multiplied by the prevailing GST rate and payable at the same time that we are required to pay for the related supply subject to the provision of a tax invoice to you.

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## **12. Confidentiality**

### **12.1 Definitions**

In this clause:

**Confidential Information** means information that is by its nature confidential and:

- (a) is designated by a party as confidential;
- (b) is described in the Proposal as confidential; or
- (c) a party knows or ought to know is confidential,

but does not include:

- (d) information which is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation.

### **12.2 Recipient must keep Confidential Information confidential**

Each party must:

- (a) keep confidential all Confidential Information;
- (b) only use any Confidential Information for the purpose of providing or receiving (as the case may be) the Services; and
- (c) procure that its contractors, agents, staff and related parties comply with sub-clauses (a) and (b).

### 12.3 Disclosure exceptions

The obligations in sub-clause 12.2 do not apply:

- (a) to the extent necessary to enable a party to make any disclosure required by law;
- (b) to the extent necessary to enable a party to perform its obligations under this Agreement;
- (c) to any disclosure agreed in writing between the parties; or
- (d) in respect of any portion of the Confidential Information which has entered the public domain other than as a result of a breach of this Agreement.

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### 13. Disputes

- (a) If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach of termination of the Agreement or as to any claim in tort, in equity or pursuant to any statute) (**Dispute**) a party to the Agreement may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following paragraphs of this clause except where the party seeks urgent interlocutory relief.
- (b) A party to this Agreement claiming that a Dispute has arisen under or in relation to this Agreement must give notice to the other party or parties to this Agreement specifying the nature of the Dispute.
- (c) On receipt of that notice by that other party or parties, the parties to this Agreement must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed to by them.
- (d) If the parties do not agree within seven (7) days of receipt of the notice (or such further period as agreed in writing by them) as to:
  - (i) the dispute resolution technique and procedures to be adopted;
  - (ii) the timetable for all steps in those procedures; and
  - (iii) the selection and compensation of the independent person required for such technique,then the Dispute must be referred to mediation by a mediator nominated by the President or the nominee of the President for the time being of the Queensland Law Society Incorporated on the terms of the standard mediation agreement approved by that Society or if there is not one at the time, then on the terms nominated by the mediator.
- (e) The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing.
- (f) Each party must bear its own costs of complying with this clause and the parties must bear equally the costs of any mediator engaged.
- (g) Any information or documents disclosed by a party under this clause must be kept confidential and may

not be used against the other except for the purposes of resolving the Dispute by way of alternative dispute resolution.

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### 14. Use of client's details

You agree that we may publish your details on our website or other advertising medium representing you as our client for the purposes of advancing our own publicity and marketing provided we comply with the confidentiality obligations contained in clause 12.

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### 15. Liability

#### 15.1 Exclusion of other Terms

- (a) Subject to sub-clause (b), any condition, guarantee or warranty which would otherwise be implied in this Agreement is hereby excluded.
- (b) Liability for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by ss 51 to 53 of the Australian Consumer Law) is limited (at our election) to the provision of the Services again (including providing the Service deliverables again) or the payment of the cost of having the Services supplied again.

#### 15.2 Limit of liability

- (a) Unless otherwise required by law, our liability for damages arising from any breach of this Agreement or any issue with the Services we have provided in relation to it, in contract, tort or equity is limited to the amount paid by you to us under this Agreement.
- (b) To the maximum extent permitted by law, we will not be liable for any loss of profit, loss of goodwill, loss of opportunity and/or any special, punitive, indirect or consequential loss or damage incurred by you or any other person whether directly or indirectly related to our engagement under this Agreement.
- (c) We are not liable for any loss or damage caused by reason of any delay, lack of supply, industrial action, fire, riot, war, embargo, civil commotion, act of God or any other event which is beyond our immediate control.

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### 16. Indemnity

You agree to indemnify us and keep us indemnified against any claim, loss, damage, liability, cost or expense that may be incurred by us arising from or in connection with:

- (a) any breach or default by you of these Terms;
- (b) any breach of a warranty provided by you under these Terms;
- (c) a negligent act or omission by you or by a party you are responsible for;
- (d) your failure to comply with any law; and/or
- (e) the failure of a party you are responsible for in complying with any law.

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### 17. Term and termination

#### 17.1 Termination without cause

These Terms commence on the date of your acceptance (or deemed acceptance) and continue until our Services are completed and all payments owed to us are received or until either party gives 14 days' written notice to the other.

## 17.2 Termination for breach

- (a) If either party breaches any of these Terms and such a breach is capable of rectification, the other party must give the defaulting party written notice requesting that the breach be rectified within 5 business days (**Breach Notice**).
- (b) If a breach has not been rectified within 5 business days of the giving of a Breach Notice, the party giving the Breach Notice may terminate this Agreement immediately by notice in writing to the other.
- (c) If any party breaches a material term and the breach is not capable of rectification, the other party may terminate this engagement immediately by notice in writing to the party in breach.

## 17.3 Consequences of termination

- (a) Following termination you must:
  - (i) promptly pay all expenses that have been incurred by us relating to the provision of the Services to date and our reasonable fees for the provision of our Services to date; and
  - (ii) return or delete all files and fonts that have been provided to you during the provision of our Services, excluding any completed works that have been paid for in full.
- (b) Following termination we must:
  - (i) ensure you are granted a licence or an assignment in accordance with clause 8; and
  - (ii) refund you the balance of any money that you have paid in advance once we have set-off all of our outstanding fees and expenses.

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## 18. Notices

Any notice given under or in connection with this engagement:

- (a) must be in legible writing and in English;
- (b) must be addressed to a party's contact address as shown on the Proposal or as otherwise notified by a party to the other party from time to time;
- (c) must be:
  - (i) delivered to that party's address;
  - (ii) sent by pre-paid mail to that party's address;
  - (iii) transmitted by facsimile to that party's address; or
  - (iv) sent by email to that party's email address; and
- (d) will be deemed to be received by the addressee:
  - (i) if delivered by hand, at the time of delivery;
  - (ii) if sent by post, on the third Business Day after the day on which it is posted, the first Business Day being the day of posting;
  - (iii) if sent by facsimile, on the Business Day on which the notice is received by the recipient's facsimile receiving facility, and a correct and complete transmission report is received; or

- (iv) if sent by email, at the time that would be the time of receipt under the Electronic Transactions Act 1999 (Cth).

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## 19. General matters

### 19.1 Survival

Clauses 11, 12, 13, 14, 15 and 16 are taken to survive this Agreement.

### 19.2 Amendments

Any amendments to these Terms must be made in writing or if agreed verbally between us, must be confirmed in writing within a reasonable time after such verbal agreement.

### 19.3 Assignment

- (a) Subject to sub-clause 19.3(b), a party cannot assign, novate or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of the other party.
- (b) You agree that if we merge or amalgamate with another company, business or otherwise, we may transfer your matter, including all materials, personal information, confidential information and ideas supplied by you, to that other company, business or otherwise provided they agree to be bound on terms equivalent to those contained in this Agreement
- (c) You hereby consent to us assigning, novating or otherwise transferring any of our rights or obligations under these Terms.

### 19.4 Further assurances

Each party must promptly do all further acts and execute and deliver all further documentation reasonably requested by the other party to give effect to the contemplations of this Agreement.

### 19.5 Consents

Unless these Terms expressly state otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under these Terms. To be effective any consent under these Terms must be in writing.

### 19.6 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this Agreement by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Agreement.
- (b) Any waiver or consent given by any party under this Agreement will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

### 19.7 Jurisdiction

This engagement is governed by the law in force in the State of Queensland and each of us submit to the non-exclusive jurisdiction of the courts of Queensland.

#### **19.8 Severability**

Any provision of these Terms and Conditions that is illegal, void or unenforceable will be severed without prejudice to the balance of the conditions which shall remain in force.

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#### **20. Personal responsibility**

- (a) In consideration of our provision of Services, each person who signs our Proposal acknowledges and agrees that they are jointly and severally liable for the payment of our fees and expenses in performing the Services as if they were the engaging party named in our Proposal and referred to in these Terms.
- (b) Each person agrees to indemnify us for any loss we suffer because the party engaging us does not pay our fees for any reason.

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#### **21. Acknowledgement**

You acknowledge that:

- (a) you have read, understood and agreed to be bound by the terms of these Terms;
- (b) you have received and will retain your own copies of these Terms and our Proposal;
- (c) you have been informed by us that you should seek independent advice in relation to these Terms prior to signing; and
- (d) by accepting these Terms under clause 1 you agree that you:
  - (i) obtained legal advice in relation to these terms; or
  - (ii) were afforded ample opportunity to obtain advice but declined.