

## **Amped Marketing Agency – Terms and Conditions**

### **1. Definitions**

1.1 “Contractor” shall mean Amped Marketing Agency and/or any related companies of the Contractor and/or agents, employees, successors or assignees thereof.

1.2 “Client” shall mean the entity or person named on any form provided by the Contractor to the Client (or any person acting on behalf of and with the authority of such entity or person) who buys or agrees to buy services. If the Client includes two or more persons, those persons liability is joint and several.

1.3 “Guarantor” means that person (or persons or entity) who agrees to be liable for the debts of the Client on a principle debtor basis.

1.4 “Services” shall mean all Services and/or Deliverables (including but, not limited any advice or recommendations given regarding the Services) and shall mean all services provided by the Contractor to the Client and shall include, without limitation, digital marketing strategy, local area marketing strategy and implementation, website design, website development, content marketing, social media account management, website hosting, Google tracking and reporting systems. Or any fee or charge associated with the supply of services by the Contractor to the Client and as described on any Invoice, Quotation or any other forms provided by the Contractor to the Client.

1.5 Works shall mean all Works, Services and/or Deliverables undertaken by the Contractor (including but, not limited to any advice or recommendations given regarding the Works) and are as described on any Invoice, Quotation or any other forms provided by the Contractor to the Client.

1.6 “Deliverables” shall mean all Deliverables, Services and/or Works undertaken by the Contractor (including but, not limited to any advice or recommendations given regarding the Deliverables) and are as described on any Invoice, Quotation or any other forms provided by the Contractor to the Client.

1.7 “Additional Services” shall mean any additional services described in the Fees Schedule.

1.8 “Client Materials” shall mean any materials provided by the Client to the Contractor for incorporation in the Services and/or Deliverables including but, not limited to any images, artwork, photographs, graphics, audio clips, video clips or text and any other materials that are created by the Contractor specifically and uniquely for the Client and contained in the final Works delivered to the Client under these terms and conditions (Contract) including licensed software, hosting services, code, data and technical components.

1.9 “Design Concept” shall mean the design concept, including any information architecture, design and static website image designed or provided by the Client.

1.10 “Design Product” shall mean any web ready page(s) or production ready files designed by the Contractor in accordance with these terms and conditions (Contract).

1.11 “Design Specifications” shall mean the design specifications of the Services agreed between the Contractor and the Client. Also known as the Scope of Works.

1.12 “Design Materials” means any designs, design materials, software, routines, know-how, methodologies, user interface conventions or design patterns, interfaces to third-party services and other development and design tools (and all enhancements and derivatives thereto) which the Contractor (i) developed prior to or otherwise than in the course of any Contract or (ii) develops during the course of any Contract but, which are developed either at the Contractors Design cost or which are not uniquely applicable to the particular specification, characteristics or functions of the Deliverables.

1.13 “Intellectual Property” means, in respect of any person, all intellectual property and industrial property rights and interests (including common law rights and interests) owned to held by that person, or lawfully used by that person, including, without limitation:

a) patents, trademarks, service marks, copyright, registered designs, trade names, symbols and logos; and/or

b) patent applications and applications to register trademarks, service marks and designs; and/or

c) all formulae, methods, plans, data, drawings, specifications, characteristics, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, trade secrets, price lists, castings, brochures and other information used by that person.

1.14 “CMS” means any content management software provide by the Contractor under this agreement (where applicable) and includes any enhancement, modification, update, correction or upgrade relating to the software.

1.15 “CMS User Manal” means any documentation or video clip provided by the Contractor, which contains instructions on the use of the CMS.

1.16 “Fee Schedule” shall mean the schedule of fees agreed between the Contractor and the Client and specified in or calculated by reference in respect to the Contract and any Quotation or other forms provided by the Contractor to the Client.

1.17 “Price” shall mean the cost of the Services, Works and/or Deliverables as determined by the Contractor and any other amounts owing to the Contractor by the Client.

1.18 “GST” shall mean Services and services tax payable under the Services and Services Tax Act 1999.

1.19. “PPSA” shall mean the Personal Properties Securities Act 2009.

## **2. Acceptance**

2.1 Any instructions, written or verbal, received by the Contractor from the Client for the supply of Services, Works and/or Deliverables and/or the Clients acceptance of Services, Works and/or Deliverables supplied by the Contractor shall constitute your assent by conduct to acceptance of this Contract. Written instructions will refer to the terms and conditions disclosed on the Invoice, Quotation and/or Estimate plus any other disclosure forms supplied by the Contractor to the Client.

2.2 The Contractor shall only supply Services, Works and/or Deliverables subject to the Contractors terms and conditions and no other terms and conditions of trade relating to the Clients and/or any other entity shall over-ride the Contractors terms and conditions, unless agreed otherwise in writing.

2.3 These terms and conditions along with the Contractors invoice, quotations, estimates or any other documents issued by the Contractor, together, form the Contract and are the full agreement between the parties.

2.4 No agents and/or representatives of the Contractor are authorised to make any representations, statements, conditions and/or agreements not expressed directly by a Director or Shareholder of the Contractor company in writing and the Contractor will not be bound by any such unauthorised statements.

### **3. General**

3.1 Headings are inserted for convenience and shall not affect the construction of this Contract. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words referring to one gender include the other.

3.2 If any provision of this Contract shall be invalid or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.

3.3 This Contract shall be subject to the laws and statutes of Queensland and NSW Australia and subject to the jurisdiction of the court geographically closest to the physical address of the Contractor.

3.4 The Contractor may sub-contract any part of this Contract. No sub-contractor has any authority to agree to variation of this Contract on behalf of the Contractor.

3.5 The Contractors failure or delay in exercising or enforcing any right it has under this Contract shall not operate as a waiver of the Contractors rights to exercise or enforce such rights or any other rights in the future.

3.6 The Contractor reserves the right to review these terms and conditions at any time. The Contractor may and the Client may not, vary or replace this Contract and it will be a condition of the Contractor continuing to supply Services, Works and/or Deliverables to the Client that the Client agrees to sign any variation or replacement of this Contract.

3.7 Any waiver of these terms and conditions by the Contractor must be made in writing.

3.8 The Client may not assign all or any of the Clients rights or obligations under this Contract without written permission of the Contractor.

3.9 The Contractor shall not be bound by any error or omission made by the Contractor on any invoice, quotation and/or estimate, or any other document issued by the Contractor.

3.10 the Client shall notify the Contractor of any intention to cease trading and/or of any change in the Clients name and/or contact details by giving at least seven (7) days' notice in writing prior to any such events taking effect.

## **4. Cancellation**

4.1 Under this clause, the Contractor may suspend the Contract at any given time. The Client will be notified of such suspension in writing.

4.2 The Contractor shall not be liable for any loss or damage whatsoever arising from such suspension or cancellation.

4.3 If the Client serves the Contractor with a cancellation notice at any time, the Client shall be liable for full costs of the Services, Works and/or Deliverables provided by the Contractor, including any Services, Works and/or Deliverables ordered and/or purchased, up to the date of cancellation.

## **5. Compliance with Laws and Acts**

5.1 The Client and the Contractor shall comply with the provisions of the Commonwealth Trade Practices Act / Australian Consumer Law (ACL) and Legislation, Fair Trading Acts in each of the States and territories of Australia and applicable statutes, regulations and bylaws of government, local and other public authorities and/or governed by the laws of Queensland and NSW that may be applicable to the Services, Works and/or Deliverables.

## **6. Personal Property Securities Act 2009**

6.1 The Client acknowledges that this Contract creates a security interest in the Services, Works and/or Deliverables, for avoidance of doubt, the proceeds of the sale of the Services, Works and/or Deliverables. The Client will if requested by the Contractor, sign any documents, provide all necessary information and do anything else required by the Contractor to ensure that the security interest is a perfected purchase money security interest.

6.2 Until payment of the Price has been made in full the Client acknowledges and agrees that in relation to Services, Works and/or Deliverables that are inventory, the Client will not allow any non-purchase money security interest to arise in respect of the Services, Works and/or Deliverables unless the Contractor has perfected the Contractors purchase money security interest prior to the Client taking possession of the Services, Works and/or Deliverables.

## **7. Design Concept**

7.1 Upon agreement of the design specifications of the Design Product (website) and upon receipt of any Client Materials and any fees payable as set out in the Scope of Works, we will commence work to develop the Design Concept (website).

7.2 The Client shall have ten (10) business days, or other such time as Contractor and Client agree in writing, from the date of notification to completion of the Design Concept. The Contractor shall use commercially reasonable efforts to implement such revision request that are within the scope of and consistent with, the Design Specifications.

7.3 If the Client chooses to depart in any material respect from the Design Specifications, the parties will, in good faith, agree to additional fees to cover those revisions.

7.4 If the Client does not make any requests for revisions by the end of ten (10) business days from the date of written notice of completion of the Design Concept from the Contractor and/or upon completion and implementation of such request, the Client and the Contractor have mutually agreed upon with the revised Design Specifications under clause 7.1, then the Design Concept shall be deemed to be accepted by the Client.

7.5 After the Design Concept has been accepted by The Client, any further requests from the Client for revisions or alterations will be subject to further charges at the Contractors standard rates set out in the Fees schedule or as mutually agreed in writing.

## **8. Design Product**

8.1 The Client will provide the Contractor with any Client Materials required by the Design Specifications in an electronic format specified and accessible by the Contractor and/or as otherwise specified in the Design Specifications. Any services required to convert, or input Client Materials not set forth in the Design Specifications shall be charged as Additional Services.

8.2 Upon acceptance of the Design Concept under clause 6 and provision of any required Client Materials, the Contractor will commence work to develop the Design Product. The Contractor will notify the Client of the URL (Uniform Resource Locator) or other address of any Design Product comprising a website. The Contractor may use combinations of technology, as the Contractor, in consultation with the Client, deem appropriate to develop any Design Product comprising a website.

8.3 The Client will have ten (10) business days, or such other time as the Contractor and the Client agree in writing, from the date of notification of completion of the Design Product from the Contractor, to review and request in writing from the Client revisions to the Design Product. The shall use commercially reasonable efforts to implement such revision request that are within the scope of and consistent with, the Design Specifications.

8.4 If the Client implements any revisions to the Design Product that depart in any material respect from the Design Specifications, the Client and the Contractor will, in good faith, agree to additional fees to cover those revisions.

8.5 If the Client has not made any requests for revisions by the end of ten (10) business days from the date of written notice of completion of the Design Product from the Contractor and/or by such time is otherwise agreed by the Client and the Contractor in writing, or upon completion of implementation of such request which were mutually agreed upon by the Client and the Contractor under the revised Design Specifications and as per clause 7.4, the Design Product shall be deemed to be accepted by the Client.

8.6 After the Design Product has been accepted by the Client, any further requests from the Client for revisions or alterations will be subject to further charges at the Contractors standard rates set out in the Fees schedule or as mutually agreed in writing in addition to the Price.

8.7 Upon acceptance of the Design Product, the Contractor shall provide access to any Design Product comprising a website to the Client or to the Clients designated third party contractor.

8.8 If the Contractor registers a domain for the Client, the domain will be registered in the Clients name, granting the Client full ownership and control of the domain as the registered owner.

## **9. Intellectual Property Rights**

9.1 The Client Materials the Client provides to the Contractor in order for the Contractor to carry out the Contractors obligations under this agreement are owned by Th Client. The Client will grant the Contractor a license to modify, reproduce, create derivative works from and otherwise use such Intellectual Property to provide any Services in connection with this agreement.

9.2 All materials including but, not limited to any computer software (in object code and source code form) script, programming code, data, information or HTML script developed or provided by the Contractor under this agreement and any trade secrets, know-how, methodologies and processes related the Contractors Services, Works and/or Deliverables, shall remain the Contractors sole and exclusive property, including, without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent in the Contractors Design Materials. To the extent, if any, that ownership of the Contractors Design Materials does not automatically vest in the Contractor by virtue of this agreement or otherwise, the Client hereby will transfer and assign to the Contractor all rights, title and interest which the Client may have in and/or to the Contractors Design Materials.

9.3 The Contractor will have no liability for any claim of infringement based on the use of a superseded or altered release of the CMS if the infringement would have been avoided by the use of a current or unaltered release of the CMS, which the Contractor provided to the Client; the unauthorised modification of the CMS; or the use of the CMS other than in accordance with the CMS User Manual or video clip.

9.4 The Client acknowledges and agrees that the Contractor is the sole and exclusive owner of all Intellectual Property in and relating to the Deliverables and that the Client has no rights in and/or relating to the Deliverables, other than are expressly provided for in this agreement.

9.5 The provisions of clause 9.4 shall survive the expiry or termination of this agreement.

## **10. Software License**

10.1 The Contractor will grant the Client and the Client will accept form the Contractor, an exclusive, non-transferrable, perpetual license to use the Deliverables that are created by the Contractors Design Materials in the Deliverables for use a and/or incorporation into, a website on the internet. The Contractor will also grant the Client a non-exclusive, non-transferrable, perpetual license to use the Contractors Design Materials in the Deliverables. Any portrayal or use of the Deliverables that does not take place on a website that is operated by the Client for the Clients own business purposes shall be in breach of this clause.

10.2 In consideration of the license to use the Client Materials and the Contractors Design Materials in the Deliverables the Client will agree to pay the Contractor the fees specified in the Fee Schedule.

10.3 Where the CMS is included in the Deliverables, the Contractor will also grant to the Client and the Client will accept, a non-exclusive, non-transferrable license to use the CMS solely in connection with the Design Product for the term specified. The license may be renewed for any subsequent periods where both the Contractor and Client expressly agree. In consideration of the license to use the CMS the Client will agree to pay the Contractor the fees specified in the Fees schedule.

10.4 The Client acknowledges that any license granted by the Contractor under this clause is granted subject to third party licensors (if any).

10.5 The Client is not entitled to any raw video or photo footage and the Contractor retains ownership of such footage at all times.

## **11. Contractor Obligations**

11.1 We make the following warranties to you in respect of the Services provided under this agreement: a) we have the right to grant licenses in respect of the Deliverables under this agreement to the Client without violating any rights of any third party; b) the Deliverables will, in all substantial respects, conform with the Design Specifications, or as otherwise agreed in writing by the Contractor and the Client; c) we will use reasonable means to ensure the Deliverables comprising a website do not contain any known virus or computer software code, routines or devices (other than as provided for in the Design Specifications) designed to disable or impair the Deliverables, or other software or data; any services provided under this agreement shall be performed in a workmanlike manner.

11.2 The Contractors representations in clause 11.1 will not apply where the Client has used the Deliverables in a manner and/or for a purpose not reasonably contemplated, or not authorised by the Contractor, or in combination with other services not specifically approved by the Contractor, or where the Client has made any adaptations, extensions or modifications to the Deliverables.

11.3 The Clients sole remedy in the event of a representation in clause 11.1 being breached, at the Contractors option, is replacement of the defective Deliverables or refund of the license fee paid for the Deliverables.

## **12. Clients Obligations**

12.1 The Client acknowledges that the Client will not transfer any ownership rights in the Deliverables and that the Contractor will reserve all rights not expressly granted.

12.2 The Client will be responsible for the use and management of the CMS and will agree not to copy, alter, modify or reproduce the CMS. The Client will also agree not to sell, transfer, publish, disclose, display or otherwise make available the CMS to others.

12.3 The Client will agree not to reverse engineer, decompile, disassemble, vary, modify, adapt, create derivative works, or otherwise attempt to drive the source code of any Design Product comprising a website or CMS.

12.4 The Client acknowledges that the Contractor is in the business of Digital Marketing, including designing websites, developing websites, digital marketing strategy, local area

marketing strategy, content marketing and social media account management and that the Contractor shall have the right to provide to third parties, services which are the same or similar to the services the Contractor provides to the Client and to use or otherwise exploit any Design Materials in providing such services.

12.5 The Client is responsible for any faults, which occur, in the Clients computer or communication equipment.



12.6 The Client acknowledges that the Deliverables comprising a website, are not warranted to operate on computer systems and networks, which do not meet any minimum specifications, set out in the relevant Design Specifications.

12.7 The Client warrants that to the best of the Clients knowledge the Client owns and/or is validly licensed to provide under this agreement, all copyright and all other intellectual property rights in and/or to the Clients Client Materials and the Contractors use of the Clients Client Materials will not infringe the intellectual property or other rights of any third party, or breach any applicable law, statute or regulation.

12.8 The Client agrees to indemnify the Contractor against all losses, costs, expenses, demands, or liabilities (including all legal costs and expenses) incurred by the Contractor relating to any claim that the provision of the Clients Client Materials, or the use of the Clients Client Materials by the Contractor, infringes the intellectual property rights of any third party or any breach of the Clients obligations under this agreement or any willful, unlawful or negligent act or omission by the Client.

12.9 The Client agrees to place the Contractors proprietary notices on the Deliverables, including the Contractors attribution and hypertext links to the Contractors websites.

12.10 The Client will assume sole responsibility for acquiring any authorisations necessary for hypertext links to third party websites in relation to Deliverables comprising a website and the accuracy of the Client Materials.

12.11 The Client shall provide Client Materials that do not contain obscene, threatening or malicious content and do not infringe any law, or third party right or which may otherwise expose the Contractor to civil or criminal liability. Provision of any Client Materials, which do not satisfy this clause, shall be deemed to be a material breach of this agreement.

12.12 Any provision of maintenance, which is not covered in the Design Specifications, shall be paid for by the Client as Additional Services at the rate set out in the Fee Schedule.

### **13. Privacy Act 1988**

13.1 The Client and/or Guarantor(s) agree for the Contractor to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor(s) in relation to credit provided by the Contractor.

13.2 The Client and/or the Guarantor(s) agree that the Contractor may exchange information about the Client and/or the Guarantor(s) with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes: a) to assess an application by the Client; and/or b) notify other credit providers of a default by the Client; and/or c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or d) to assess the credit worthiness of the Client and/or Guarantor(s).

13.3 The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1) (h) Privacy Act 1988).

13.4 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes and for other purposes as shall be agreed between the Client and Contractor, or required by law from time to time: a) provision of Services and/or b) marketing of Services by the Contractor, its agents or distributors in relation to the Services; and/or c) analysing, verifying and/or checking the Clients credit, payment and/or status in relation to provision of Services; and/or d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client and/or e) enabling the daily operation of the Clients account and/or the collection of amounts outstanding in the Clients account in relation to the Services.

13.5 The Contractor may give information about the Client to a credit reporting agency for the following purposes: a) to obtain a consumer credit report about the Client; and/or b) aloe the credit reporting agency to create or maintain a credit information file containing information about the Client.

## **14 Default**

14.1 Without prejudice to any other rights or remedies that the Contractor may have against the Client, the Client agrees that in the event of default in payment by the Client the Client agrees to pay on demand: a) all costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by the Contractor in recovering any amounts payable by the Client to the Contractor; and b) interest on the amount outstanding at the end of month in which the Clients account is in arrears at the rate of two percent (2%) per month (compounding) with such a rate after as well as before any judgement; and c) a monthly administration fee of twenty five dollars (\$25) by way of damaged payable on the last day of each month in which the Clients account is in default.

14.2 In the event the Clients payment to the Contractor is dishonoured for any reason, the Client shall be liable for any dishonour and other bank fees incurred by the Contractor. The Contractor may at the Contractors sole discretion stop further performance of this Contract, require payment in cash before further performance of this Contract. Or terminate this Contract without notice to the Client upon the happening of any of the following events: a) the Client makes default in payment due under this Contract or in payment of the monies due by the Client to the Contractor on any account whatsoever; or b) the Client is insolvent or takes any proceedings to reschedule any indebtedness; or c) in the Contractors opinion the Client is unable to pay indebtedness as it falls due; or d) a receiver or manager is appointed to any property of the Client.

## **15. Caveat & Mortgage**

15.1 The Client and/or any Guarantor of the Client agree that the Contractor shall have the right to complete and register a mortgage over any property owned by the Client and/or Guarantor of the Client to secure any amount outstanding and that the Contractor shall have the right at its discretion to place a caveat on any such property for the purposes of this clause and the Client and/or Guarantor hereby irrevocably appoint the Contractor as the attorney of the Client and/or the Guarantor for the purpose of the Contractor exercising its rights under this clause whilst any amount remains in default.

15.2 Should the Contractor elect to proceed in any manner in accordance with the clause The Client and/or Guarantor shall indemnify the Contractor from and against all the Contractors costs and disbursements including legal costs on a solicitor and own client basis.

## **16. Quotations and Estimates**

16. Where a quotation is given for the Price then: a) the quotation or estimate shall only be binding upon the Contractor for ten (10) days from the date of issue; and b) where Services, Works and/or Deliverables are required in addition to the quotation then the Client agrees to pay the additional Price of such Services, Works and/or Deliverables; and c) the Contractor reserves the right to amend the quotation in the event of circumstance beyond the Contractors control.

## **17. Price**

17.1 The Contractor may require a deposit of fifty (50) percent of the Price prior to the provision of the Services, Works and/or Deliverables. This will be shown in the quotation.

17.2 the Price of the Services, Works and/or Deliverables shall be either: a) as shown on the Contractors invoice, or b) as stipulated (subject to clause 16) in the Contractors quotation, or c) in respect of Services, Works and/or Deliverables provide by the Contractor, which has not been set pursuant of Clause 17.2 (a) or (b) or otherwise agreed or in the Fees Schedule, a reasonable Price for such Services, Works and/or Deliverables.

17.3 Unless otherwise agreed, no allowance has been made in the Price for the deduction of retentions.

17.4 Unless otherwise agreed the Price is exclusive of Services and Services Tax and any other applicable taxes, duties, charges and costs payable by the Client in addition to the Price.

17.5 The Prices quoted by the Contractor shall only apply to the specific Services, Works and/or Deliverables as itemised or specified in the quotation. Any additional Services, Works and/or Deliverables outside the scope of the Services, Works and/or Deliverables itemised in the quotation, requested by the Client, will be subject to a variation and will be charged at the Contractors standard prices and/or rates prevailing at the time of supply. For the avoidance of doubt, this includes artwork files created by the Contractor in the design and finalisation of the Services, Works and/or Deliverables and which will only be released upon payment of an additional fee as set out in the Fee Schedule.



17.6 Where the Works are suspended or cancelled, by the Contractor or the Client, the Contractor will charge for those Works completed, or partially completed, as at the date of suspension or cancellation of the Works. Such charge will be based on the hours expended and charged at the hourly rate as set out in the Fees Schedule.

17.7 If the Contractor has registered a domain for the Client, the Contractor may automatically renew the domain with 30 days from the expiration of the domain registration (at its discretion) unless the Client provides the Contractor with 14 days written notice before the expiration of the domain.

## **18. Payment**

18.1 Unless the Contractor otherwise agrees in writing, payment of invoices shall be due, either Cash on Delivery and/or Completion of the Services, Works and/or Deliverables or seven (7) days or ten (10) days, after an invoice is issued for the Price, or on the 20<sup>th</sup> of the month following the date on which an invoice is issued for the Price. The due date will be noted on the Contractors invoice.

18.2 Unless the Contractor specifies otherwise, payment shall be by way of irreversible bank transfer or cash.

18.3 The Contractor may submit a detailed payment claim at intervals of not less than one (1) month for work performed up to the end of the month. The value of Services, Works and/or Deliverables may include the value of authorised variations.

18.4 The Contractor has the right to apply or appropriate any payment to any account of the Client. Should the Client have a number of accounts, the Contractor is hereby given the right to combine any account and also set-off any amount between such accounts.

18.5 All payments by the Client must be made in full and without any retentions, or, deductions, or, right of set-off or counterclaim. The Client agrees, however, that any monies that the Contractor may owe the Client on any account whatsoever may, at the Contractors option, be set-off against payments due by the Client to the Contractor.

18.6 Should the Client dispute any invoice of the Contractors, the Client shall remain liable for payment to the Contractor, of any outstanding invoices not subject to any dispute raised by the Client. Payment for any invoice not related to a dispute, shall remain due, on the date noted on the Contractors invoices.

18.7 If the Client fails to pay for the Services, Works and/or Deliverables within the time stipulated in the final overdue notice, the Contractor may terminate all existing Services at its discretion, without further notice to the Client and the Contractor will not be liable for any consequential loss or damage caused by the termination.

## **19. Disclaimer and Limitation of Liability**

19.1 The Contractor disclaims all warranties and conditions, whether express, implied or statutory, other than those identified expressly in this agreement, including but, not limited to warranties of title, non-infringement, merchantability and fitness for a particular purpose. The Contractor will not be liable for any Services or Products provided by third party vendors, developers or consultants referred to the Client by the Contractor unless such third party Services or Products are provided under written agreement between the Client and the Contractor and then only to the extent expressly provided in those agreements.

19.2 Under no circumstance (including but, not limited to negligence) shall the Contractor, or any of the Contractors related companies, officers, employees, partners, agents or suppliers, be liable to the Client for: a) the Clients reliance on the Deliverables; and b) any direct, incidental, special, consequential, indirect or punitive damages (including loss of use, loss of data, loss of profits, loss of anticipated savings, or loss of goodwill) that result from the use of, or the inability to use and/or relating to the Deliverables.

19.3 If the Client is using the Deliverables for the purpose of a business, the Client agrees that the provisions under Australian Consumer Law (ACL) and Consumer Guarantees Act shall not apply to the Contractor.

19.4 If the Contractor is ever liable to the Client, the Client accepts that the liability of the Contractor, or any of the Contractors companies, officers, employees, partners, agents or suppliers (together) to the Client or anyone else using the Services, Works and/or Deliverables the Contractor provides to the Client (together) or damages, losses and causes of action (whether in contract, tort, including negligence, under statute or otherwise) shall not exceed the total cost of providing the Deliverables or \$10,000, whichever is the lesser amount.

## **20. Breach and Termination**

20.1 Either party may terminate any Contract on 90 days prior written notice to the other party at any time subject to clause 20.2.

20.2 Any maintenance or month to month Services provided by the Contractor to the Client, including but, not limited to (website hosting and Email solutions) where no fixed term agreement is in place, may be cancelled by the Client at any time upon providing thirty (30) days written notice to the Contractor. The Client will be responsible for the acquisition of a new Service provider to maintain the use of any existing website or Email solution. The Contractor will charge the Client for any additional services required to complete this transition.

20.3 All Products and Services which are pre-paid by the Client are non-refundable. If the Client no longer requires the Product or Services, the Contractor will provide the Client with a company credit to be used towards other Products and Services provided by the Contractor.

20.4 Where the Client has entered into a fixed term agreement with the Contractor for Products and/or Services and cancels the agreement, the Client continues to be liable for payment of the Products and/or Services for the remainder of the term.

20.5 If the Client is in breach of any of the Contractors terms and conditions or Contract, the Contractor may, at the Contractors discretion, terminate the Contract.

20.6 If the Client commits an act of bankruptcy, or, where the Client is a company and a receiver is appointed or the Client does anything that would render the Client liable to be liquidated, the Contractor may terminate all or any Contract upon written notice to the Client.

## **21. Effect of Termination**

21.1 If any Contract is terminated by the Client or the Contractor under clause 20, that Contract will terminate and the following will apply: a) any license granted under or pursuant to that Contract or these terms and conditions will end and the Client will not be authorised to use the Deliverables after expiry or termination of that Contract; and b) the Client will agree to pay the Contractor for any unpaid fees arising from the Clients use of the Deliverables up to the date of termination; and c) the Client will agree to return to the Contractor, on the Contractors demand, any information to which this clause relates, which includes but, is not limited to, any manuals, video clips, specifications, designs or other information relating to the business of the Contractor or the Services or Products provided under these terms and conditions and/or any Contract; and d) termination of any Contract shall be without prejudice to the rights of any party which have accrued prior to, or which arise in connection with, such termination; and e) the provisions of these terms and any Contract intended to apply after termination shall continue to apply.

## **22. Disputes**

22.1 Any and all disputes arising between the parties under this Contract will be referred to a single arbitrator to be mutually agreed upon by the parties (or failing such agreement as appointed by the Institute of Arbitrators and Mediators Australia (IAMA). Any determination of such arbitrator shall be final and binding on the parties and not subject to review.

## **23. Force Majeure**

23.1 Notwithstanding anything in the Contract, if the Contractor shall fail to perform any obligation hereby imposed upon it and such failure shall be caused by Acts of God, Strikes, Earthquakes, Floods, War, or any act of Government or any other cause beyond the reasonable control of the Contractor, then the Contractor shall be exempt.