



DEFINITIONS AND INTERPRETATIONS

In this document, terms that are capitalized are defined terms and will have the following meanings:

“Business Day” means a day that is Monday to Friday in which 77 Productions is open for business and excluding state or national public holidays.

“Client” or **“Customer”** means the person, firm or company who purchases the Services from 77 Productions.

“Contract” means the agreement 77 Productions executes with the Client or enters into with the Client following acceptance by conduct of the Client for the supply of the Services as constituted by these terms and conditions and the Quotation.

“Contract Price” means the price stated in the Quotation and as may be varied from time to time in accordance with the Contract;

“Deliverables” means and agreed files as outlined in the Quotation.

“Intellectual Property” means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names and inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable

“Project” means the project described in the Quotation;

“Proposal” or **“Quotation”** means the 77 Productions document which sets out, amongst other things, the description of the Services, Project, Deliverables, commencement date for the Project, timeline and relevant charges for the Services; it's the offer to provide the client or customer with 77 Productions services.

“Services” means the services which includes the Project and the Deliverables to be provided by 77 Productions under the Contract together with any additional services which 77 Productions provides, or agrees to provide, to the Client.

“Term” means the dates or days in which a milestone, project or payment is due

“Third Party Costs” means any costs incurred or committed to be incurred by 77 Productions in delivering a Service Guaranteed Project other than 77 Productions Labour Charge.

“Quotation” means the 77 Productions document entitled Quotation which sets out, amongst other things, the description of the Services, Project, Deliverables, commencement date for the Project, timeline and relevant charges for the Services.

“We” or **“us”** means 77 Productions Australia Pty Ltd A.B.N. 96 671 412 810

THE LEGAL TERMS OF SUPPLY

This document contains important legal Terms and Conditions (Terms) which affect your rights, including our process and fees associated with cancellation and delays. Please ensure you read these Terms carefully.

These Terms apply to, and are incorporated in, any quote, proposal or scope of work ("**Proposal**") provided to you by 77 Productions Australia Pty Ltd A.B.N. 96 671 412 810 ("**We**" or "**us**").

Please let us know if you do not agree with any part of these Terms. Any changes must be agreed in writing. If you continue to engage us to perform the services (including by paying the deposit) after receiving these Terms, you are agreeing to these Terms.

These Terms take effect from the date that you instruct us to proceed with the works set out in the Proposal ("**Project**") and will finish on the date that the Project is complete ("**Term**"), unless cancelled or terminated in accordance with these Terms.

1. PROPOSALS

- a. The estimate of fees provided to you in the Proposal are valid for 30 days, unless otherwise extended by us.
- b. The Proposal has been prepared following initial discussions with you and are based on:
 - the inclusions and exclusions as listed in the Proposal;
 - the number of hours or nature and number of deliverables that we have estimated in the Proposal; and
 - whether there will be revisions permitted to our deliverables, and the number and nature of such revisions (if applicable). Where no reference is made to the number of permitted revisions in the Proposal, our initial deliverables will be determined as final and not subject to revision.
- c. If you change your mind, vary the scope, add extra content, require further feedback rounds or the underlying assumptions used by us to form the fee estimate change, these and similar events will be treated as additional works.
- d. Additional works are governed by these Terms and will be charged on the basis of the hourly rates set out in the Proposal or as otherwise agreed, with all changes to the scope and fees to be agreed in writing prior to commencement.
- e. We will carry out the works with reasonable care and skill according to the standards customary in the industry.

2. FEES

- a. Unless noted otherwise in the Proposal, a deposit of 50% of the total value of the fees is payable in order to secure the commencement of our services.
- b. All fees for services and the relevant milestones for payment are listed in the Proposal. All invoices must be paid by the due date set out on the invoice, and if no date is stipulated within 7 days of the date of the invoice, unless otherwise agreed.
- c. If you are on a monthly or quarterly service arrangement, you may choose to pay this under a direct debit arrangement. Invoices for monthly services are sent 14 days in advance and must be paid within 14ys of the date of invoice.
- d. We are entitled to prompt reimbursement for all expenses noted in the Proposal within 7 days of notification, including by provision of a tax invoice or receipt. Any additional expenses must be pre-approved by you.
- e. You agree that we may stop providing you with our services and withhold all services, files, artwork, code and content if you do not pay an invoice by the due date unless otherwise agreed. This may

include removing any live online content in our control or decommissioning third party services that we have arranged on your behalf.

- f. We may charge interest on all overdue amounts calculated daily from the due date for payment at the rate of 10% per annum unless otherwise agreed. We may also charge you for any costs that we incur in the event that the collection of unpaid monies is referred to a third-party collection agency or lawyer.
- g. All Fees are exclusive of GST unless otherwise agreed.

3. CANCELLATION POLICY MONTHLY SERVICES

- a. If our Proposal specifies that you receive “monthly services” you must provide at least 30 days’ notice in writing to cancel those services. In the event of cancellation, you will be charged for any work we have performed up to and including the date of termination and, if relevant, any third party costs that we have incurred prior to termination that cannot be cancelled.
- b. Additional clauses relating to cancellation and termination are set out in section 9 below.

4. DELAYS OR DISRUPTION

- a. If you delay the commencement of the work or the achievement of any agreed milestones by 7 days or more, or any other longer period of time agreed in writing or in a Proposal (for example by not providing instructions, information or materials or by requesting an extension), we may, in our discretion either:
 - Charge \$1500 for each fortnight that you have placed your project on hold. You agree that this fee is not a penalty but rather a reasonable and genuine estimate of damage that we will incur as a result of the delay; and/or
 - Immediately, terminate the Project by providing you notice in writing. If we terminate, you will forfeit any deposit paid and we will charge you for any work we have performed up to and including the date of termination and, if relevant, any costs that we have incurred prior to termination that cannot be cancelled; and/or
 - Charge a restart fee that is no more than 40% of the total agreed project fee. You agree that this fee is not a penalty but rather a reasonable and genuine estimate of damage that we will incur as a result of the delay.
- b. Projects that remain on hold for more than 60 days without written agreement may be cancelled and the client's deposit retained by us.
- c. During a Project we may incur third party costs including but not limited to setup, installation, hosting, storage, cloud-based software subscriptions, integration, photography, venue hire, equipment hire, talent fees, contractor fees and other costs necessary to provide our services to you. If you reschedule, delay, amend or cancel any part of the services, you are solely responsible for any agreed third party costs that we have committed on your behalf which cannot be cancelled. An invoice for these costs will be issued to you and will be payable by the due date listed on the invoice.
- d. We will use our reasonable endeavours to complete the Project within a reasonable timeframe or, if agreed, by a specified date. However, from time to time delays may occur including due to factors outside of our control. To the extent allowed by law, we will have no liability for delays in the completion of any of the works in these circumstances.

5. YOUR RESPONSIBILITIES

You agree that:

- a. you will provide any written approvals and instructions in a timely manner and submit any and all revisions within 7 days of receiving drafts, unless otherwise agreed in writing or set out in the Proposal;

- b. you will provide any information that we need to complete the project including final copy, imagery, content and other information in the format that we ask for in a timely manner;
- c. where you provide us with any content or materials for inclusion in the works, that those materials are: true, accurate, complete, not misleading, can be substantiated, do not breach of any third-party rights and comply with all laws and regulations;
- d. you must seek your own legal advice in relation to protecting your intellectual property rights in any branding, design, logos or other images or content that may arise as a result of the performance of the Project by us as well as satisfying yourself that the use of any of these materials will not infringe any third party intellectual property rights;
- e. you are responsible for the final proof reading of any content provided by us; and
- f. where applicable, you must include in all displays or publications of any website or app that we create for you a notice attributing the development of that content to us.

6. BACKGROUND INTELLECTUAL PROPERTY

- a. You guarantee to us that any text, graphics, photos, designs, trademarks or any other artwork, materials or data (**Content**) that you provide us for inclusion in the deliverables that we create, or which you provide to us in order for us to provide you with services, is either owned by you or that you have permission to use them (including any consents required for use of any personal information). You remain the owner or licensee of your Content. You grant to us a non-exclusive, fee free, limited licence to use the Content for the purposes of providing the services under this Agreement.
- b. Nothing in these terms affects the ownership of any Content which is owned by us or which we have permission to use. We remain the owner or authorised user of our Content.
 - c. Except where we provide you with hosting services, you are solely responsible for the storage of any Content that you provide to us.

7. DEVELOPED INTELLECTUAL PROPERTY – Licence

- a. Where the Proposal indicates that Developed Intellectual Property is licenced or where the Proposal is silent, this clause 7 applies.
- b. All intellectual property developed in the course of providing the services (**Developed Intellectual Property**) is owned by or will, on its creation, be owned by us.
- c. Upon payment in full of all amounts owing to us under these Terms, we grant to you a personal, non-transferrable, royalty free license to use, reproduce and display the Developed Intellectual Property for marketing, promotional and internal business purposes in Australia. The licence is granted on a perpetual basis or any shorter period in circumstances where there are limitations on the term of the final works by third parties. If the Proposal sets out licence terms which are different to this clause 7(c), the terms of the Proposal will prevail.
- d. Any additional uses will require a separate proposal and pricing. All other rights, including copyright, are reserved by us.
- e. You acknowledge that we can only licence the content and materials which we have created. There may be limitations on the use of the final works by third parties (clause 12 below sets out further information about licences and open-source software).
- f. You may alter, adapt, change, edit, cut, take from, add to, or carry out any other activity in relation to the Developed Intellectual Property, where such activities would otherwise infringe the moral rights of the author of the works, but only to the extent necessary to give effect to the licence set out above and in accordance with the terms of any third party licences.
- g. Without limiting the above, you must not distribute, transfer, assign or sublicense the Developed Intellectual Property, or allow any other person to use it outside of its express purpose without our prior written consent.

8. DEVELOPED INTELLECTUAL PROPERTY – Assignment

- a. Where the Proposal indicates that the Developed Intellectual Property is assigned, this clause 8 applies.
- b. Upon payment in full of all amounts owing to us under these Terms and subject to clause 8(c), we assign to you all intellectual property rights, including copyright, in the works created in the course of providing the services (**Developed Intellectual Property**).
- c. You acknowledge that we can only assign the content and materials which we have created. There may be limitations on the use of the final works by third parties (clause 12 below sets out further information about licences and open-source software).
- d. You may alter, adapt, change, edit, cut, take from, add to, or carry out any other activity in relation to the final works, where such activities would otherwise infringe the moral rights of the author of the work, and subject to the terms of any third party licences.

9. TERMINATION

- a. In addition to any other termination rights set out in these Terms, a party may terminate the agreement made by these Terms by notice in writing to the other party if:
 - the other party commits a material breach of these Terms that is capable of remedy (including failure to pay any amount due under this agreement) and fails to remedy that breach within 21 days after receiving notice from the other party to do so;
 - the other party commits a material breach of these Terms that is not capable of remedy;
 - the other party becomes insolvent bankrupt or enters into liquidation; or
 - by mutual agreement.
- b. Upon termination of the agreement made by these Terms, and after receipt of an appropriate invoice from us, you will pay us the amount of any fees owing pursuant to these Terms, including any fees incurred up to and including the date of termination and all third party costs which we have incurred or will incur which cannot be cancelled.
- c. Each party must return to the other all equipment, records, documents, and materials provided by the other party for the purposes of the Agreement.
- d. All rights and obligations accrued up to the date of the termination are not affected. This clause and any other clause which by its nature is intended to survive termination, will survive termination.

10. LIABILITY

Certain laws such as the Australian Consumer Law contain warranties that protect the purchasers of goods and services in certain circumstances ("**non excludable consumer warranties**"). Nothing in these terms alters any protection available to you under the Australian Consumer Law.

Our liability to you under or in connection with these Terms, or a breach of any non-excludable consumer warranties is limited, at our option, to resupplying the goods or re-performing the services or the cost of resupplying the goods or performing the affected part of the services again. Where the Australian Consumer Law applies and there is a major failure in the goods or services, we will provide you with another remedy as required by the Australian Consumer Law. To the extent permitted by law, we will not be responsible for any consequential or indirect loss suffered by you in connection with the receipt of the goods or services.

11. CONFIDENTIALITY + PRIVACY

We each must take all reasonable steps to ensure that we do not disclose or use the confidential information of the other party, other than for the purpose for which it was disclosed. This does not apply if one of us is required to comply with any law or regulation or with the other party's prior written consent or to the extent that the confidential information was already known to it. Each of us will comply with applicable data protection and privacy laws in respect of the provision and use of the services.

12. SPECIFIC REQUIREMENTS

Licenses: Throughout the course of the Project, we may be required to obtain licenses for software (including website components, plugins, or extensions) or other assets (including stock imagery, commercial fonts, audio or video and other assets) which will incur a licence fee, either perpetual or recurring. You will be liable for the full cost of any such licenses. It is your responsibility to enter into a licence and maintain these licences. You indemnify, and agree to keep us, our directors, officers and employees indemnified, against all loss arising out of the breach of these licenses.

Open Source Software: Open source software not owned by us is subject to separate license terms. A copy of these terms is available from us upon request. The applicable open source software licences will not materially or adversely affect your ability to exercise your rights in the applicable Developed Intellectual Property.

Project Back Up: We will backup and retain an archive of all finished files created by us during the Project for a maximum of 12 months from the commencement of the Project. You authorise us to permanently delete any materials held by us at the expiry of 12 months. The backup of files does not extend to a website backup unless we are providing web hosting services.

Promotion: You agree that we may use and reference the works that we create for you for promotional purposes including but not limited to our social media accounts, our website, portfolio, case studies, public relations and media announcements, as well as for industry competitions.

13. COMPLAINTS

If our work does not meet your expectations, you should tell us in writing within 14 days of the issue arising. We will respond to any complaint promptly to attempt to resolve the complaint.

If we cannot agree on a resolution, we agree to attend a mediation conducted by an independent mediator we each agree to appoint, or, if we can't agree on a mediator, you will select one from a list of three mediators proposed by us.

You agree to first try to resolve any complaints through this process, and to give us time to respond to your complaint before taking any other steps, except in cases of genuine urgency.

14. OTHER

A party will not be liable for any failure of or delay in the performance of its obligations under these Terms (other than the obligation to make payments for services performed) for the period that such failure or delay is: beyond the reasonable control of a party; materially affects the performance of any of its obligations under these Terms; and could not reasonably have been foreseen or provided against.

These Terms are intended as a contract for the provision of services. Nothing in these Terms creates a partnership, joint venture, relationship of employment, agency, or similar relationship between us.

To the extent allowed by law, these Terms and the Proposal forms the entire agreement between us and supersedes any other agreements, whether or not in writing. The Proposal will prevail to the extent of any inconsistency between these Terms and the Proposal.

You acknowledge and agree that we may engage subcontractors to perform work under these Terms.

These Terms cannot be varied except when we both agree in writing to do so. If you wish to assign the Terms, you must obtain our written approval.

These Terms are governed by the laws of VICTORIA and any dispute will be heard in the courts of that place.