

# Adz Power Agencies – Terms & Conditions of Trade

1.	<p><b>1.1 Definitions</b></p> <p>"APA" means ND Sorensen &amp; TE Sorensen T/A Adz Power Agencies, its successors and assigns or any person acting on behalf of and with the authority of ND Sorensen &amp; TE Sorensen T/A Adz Power Agencies.</p> <p>"Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.</p> <p>"Services" shall mean all Services supplied by APA to the Client (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other) and includes any advice or recommendations, and are as described on the invoices, estimates, work authorisation or any other forms as provided by APA to the Client. These Services include but are not limited to, graphic design of websites, brands, designs, images, or advertising, brand integration or strategies, analysis, and the organisation of copyrighting such Goods and/or Services.</p> <p>"Goods" shall mean all Goods supplied by APA to the Client (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other) and includes Goods described on any invoices, estimates, work authorisation or any other forms as provided by APA to the Client. These Goods include but are not limited to, any printed or virtual material, samples, websites, brands, designs, images, advertising, data, graphics, pictures, trademarks or software).</p> <p>"Website" means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.</p> <p>"Prohibited Content" means any content on any advertising media that:</p> <ol style="list-style-type: none"> <li>is, or could reasonably be considered to be, in breach of the Broadcasting Services Act 1992 (Cth); the Competition and Consumer Act 2010 (Cth); or any other applicable law or applicable industry code or</li> <li>contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or</li> <li>is, or could reasonably be considered to be, in breach of any person's Intellectual Property Rights.</li> </ol> <p>"Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between APA and the Client in accordance with clause 5 below.</p> <p>"GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).</p>	5.3	<p><b>Additional and/or Varied Services:</b></p> <ol style="list-style-type: none"> <li>APA agrees that there will be no charge in the preparation of the initial quotation, which may include Client discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned services may be charged to the Client additionally (at APA's sole discretion). In the event the Client requires proofs, mock-ups, layouts, storyboards, samples or dummies or printed, typewritten or other good copy and/or edits, this shall be invoiced at APA's hourly rate unless specified otherwise in the initial quotation, therefore, this variation shall be detailed on the invoice as per sub-clause (g).</li> <li>All work carried out whether experientially or otherwise at the Client's request will be charged to the Client.</li> <li>Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Client and shown as extras on the invoice.</li> <li>Unless otherwise agreed, the Client shall bear the cost of fonts, or colour proofs, or artwork, specially bought at the Client's request for the job.</li> <li>Where the performance of any contract with the Client requires APA to obtain products and/or services from a third party, the contract between APA and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to APA, and the Client shall be liable for the cost in full including APA's margin of such products and/or services.</li> <li>Whilst every effort will be taken by APA to match virtual colours with physical colours, APA will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Client's computer, device or other screen and/or the final product. Should a physical sample be required this will be provided on request by the Client and will be charged for as an extra and charged contra against final invoice.</li> <li>APA reserves the right to amend the Price where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of APA's standard hourly rates (and double such rate for any Services provided outside APA's normal business hours) and will be shown as variations on the invoice.</li> <li>The Client acknowledges that all services and support for email are chargeable in addition to the Price.</li> <li>APA shall not be held responsible for any amendments made by any third party before or after a design is published.</li> <li>APA shall not be responsible for any delays in obtaining completed Talent Consent and Release Forms where required.</li> </ol>	5.4	<p>Variations will be charged for on the basis of APA's quotation, and will be detailed in writing, and shown as variations on APA's invoice. The Client shall be required to respond to any variation submitted by APA within ten (10) working days. Failure to do so will entitle APA to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.</p>	5.5	<p>At APA's sole discretion a non-refundable deposit of up to thirty percent (30%) of the Price may be required.</p>	5.6	<p>Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by APA, which may be:</p> <ol style="list-style-type: none"> <li>on delivery of the Goods;</li> <li>before delivery of the Goods;</li> <li>by way of instalments/progress payments in accordance with APA's payment schedule;</li> <li>the date specified on any invoice or other form as being the date for payment; or</li> <li>failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by APA.</li> </ol>	5.7	<p>Publication and/or release of the work done by APA shall only be released once the funds have been cleared or honoured.</p>	5.8	<p>Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and APA.</p>	5.9	<p>The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by APA nor to withhold payment of any invoice because part of that invoice is in dispute.</p>	5.10	<p>Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to APA an amount equal to any GST APA must pay for any supply by APA under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p>	5.11	<p>Receipt by APA of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then APA's ownership or rights in respect of the Goods shall continue.</p>								
2.	<p><b>2.1 Acceptance</b></p> <p>The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.</p> <p>These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and APA.</p> <p>The Client acknowledges and agrees that any expected or estimated outcomes concerning increased sales or market share or penetration achieved by the Client derived from marketing activities undertaken by APA, expressed in consultation or estimates, are speculative and in no way constitute a guarantee.</p> <p>None of APA's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of APA in writing nor is APA bound by any such unauthorised statements.</p> <p>Once accepted by the Client, APA's quotation shall be deemed to interpret correctly the Client's instructions, whether written or verbal. Where verbal instructions only are received from the Client, APA shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.</p> <p>Any advice, recommendations, information, assistance or service provided by APA in relation to Services provided is given in good faith, is based on information provided to APA, and APA's own knowledge, and experience. Whilst it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Services, human error is possible under these circumstances, and APA shall make all effort to offer the best solution to the Client.</p> <p>The Client accepts and acknowledges that in the event APA acts as an agent on behalf of the Client with a third party (including, but not limited to, purchasing any advertising medium), the Client agrees to honour their obligation for payment for such transactions invoiced by APA and shall ensure payment is made by the due date, thereby not limiting APA in their obligations for payment as agents acting on behalf of the Client to third parties.</p> <p>Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p>	2.1	<p><b>2.2 Delivery of Goods</b></p> <p>APA will deliver the Goods to the Client at the address specified in the invoice or other document provided to APA. Receipt by APA of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then APA's ownership or rights in respect of the Goods shall continue.</p>	2.3	<p><b>2.3 Change in Control</b></p> <p>The Client shall give APA not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by APA as a result of the Client's failure to comply with this clause.</p>	2.4	<p><b>2.4 Authorised Representatives</b></p> <p>Unless otherwise limited as per clause 4.2, the Client agrees that they should the Client introduce any third party to APA as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods, and/or to request any variation thereto, on the Client's behalf (such authority to continue until all requested Goods have been delivered, or the Client otherwise notifies APA in writing that said person is no longer the Client's duly authorised representative).</p> <p>In the event that the Client's duly authorised representative, as per clause 4.1, is to have any limited authority to act on the Client's behalf then the Client must specifically and clearly advise APA in writing of the parameters of the limited authority granted to their representative.</p> <p>The Client specifically acknowledges and accepts that they will be solely liable to APA for all additional costs incurred by APA (including APA's profit margin) in providing any Goods, or variations thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).</p>	2.5	<p><b>2.5 Price and Payment</b></p> <p>At APA's sole discretion the Price shall be either:</p> <ol style="list-style-type: none"> <li>as indicated on any invoice provided by APA to the Client; or</li> <li>the Price as at the date of delivery of the Goods according to APA's current price list; or</li> <li>APA's quoted price (subject to clause 5.3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</li> </ol> <p>A copy of the written estimate or quotation is to be signed and dated by the Client to indicate acceptance and should be returned to APA. As an alternative, the Client may send an official order for the Services via email in reply to the estimate or quotation which will imply the Client's acceptance of APA's terms and conditions. The Client accepts that no work will be commenced until acceptance has been supplied to APA as per this clause.</p>	2.6	<p><b>2.6 Web Site Development</b></p> <p>APA's Responsibilities:</p> <ol style="list-style-type: none"> <li>The Client will, in addition to any other obligations expressed in this agreement, have the following responsibilities: <ol style="list-style-type: none"> <li>provision of all content (including data, logos, designs and/or graphic and related materials) to be incorporated into the Web Site;</li> <li>provision of any other information, ideas or suggestions which are to be expressly considered by APA in developing the Web Site.</li> </ol> </li> <li>The Client will ensure that APA is given such information and assistance (including access to computer systems and other locations to complete a branding project) as APA reasonably requires to enable APA to construct and maintain the Web Site.</li> <li>subject to clause 21.3, the Client shall supply access to any computer system, usernames and passwords required to remove data and/or sites for failure to comply with these terms and conditions.</li> <li>it shall be the Client's responsibility to ensure that any specific requirements they may have for mobile web browsers is included in the brief, as, unless otherwise specified therein, the choice of web browsers and technology used in the development of the Web Site shall be at the sole discretion of APA. In the event that additional Services are requested, or required (as per clause 8.1(b)), in order to meet any specific requirements for mobile web browsers, after APA has commenced work on the Web Site, shall be treated as a variation to the Charges, and a strict estimation of further work required shall be submitted to the Client for approval before proceeding with the variation work.</li> <li>APA will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Web Site which is attributable to: <ol style="list-style-type: none"> <li>incorrect information provided by the Client, either pursuant to this clause or otherwise; or</li> <li>failure by the Client to provide relevant information, either pursuant to this clause or otherwise; or</li> <li>any third-party products and/or services used by APA in creation of the Web Site.</li> </ol> </li> </ol>	2.7	<p><b>2.7 Proof Reading</b></p> <ol style="list-style-type: none"> <li>whilst every care is taken by APA to carry out the instructions of the Client, it is the Client's responsibility to undertake proof reading and provide feedback (where necessary) via Dropbox, cloud storage and/or any other platform agreed to between the two parties which provides regular, possibly daily contact. APA shall be under no liability whatever for any errors not corrected by the Client during the proof reading stages, and: <ol style="list-style-type: none"> <li>should the Client's alterations require additional proofs this shall be invoiced as an extra;</li> <li>if, at any stage the Client is unhappy with the direction the Services are taking, the Client can cancel this agreement and pay APA for work completed up to that date of cancellation.</li> </ol> </li> <li>when style, type or layout is left to APA's judgement and the Client makes further alterations, this will be invoiced as an extra.</li> <li>APA will make one (1) set of minor changes at no extra cost within fourteen (14) days of the review period. Minor changes include small text changes and small adjustments to placement of items on the artwork. It does not include changes to images, colour schemes, or any navigation features. Any minor changes need to be notified to APA via email.</li> <li>should the Client fail to notify APA in writing of any amendments within fourteen (14) days from the commencement of the review period, APA shall deem that the original draft as being acceptable.</li> </ol>	2.8	<p><b>2.8 Client's Property and Materials:</b></p> <ol style="list-style-type: none"> <li>graphic files should be supplied in an editable, vector digital format and photographs in a high resolution digital format. If the Client chooses to purchase stock photographs, APA can suggest stock libraries.</li> <li>in the case of property and materials left with APA without specific instructions, APA shall be free to dispose of them at the end of twelve (12) months after their receiving them and to accept and retain the proceeds, if any, to cover their own costs in holding and handling them.</li> <li>where materials or equipment are supplied by the Client, APA accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.</li> </ol>	2.9	<p><b>2.9 Maintenance:</b></p> <ol style="list-style-type: none"> <li>subject to sub-clause (b), APA will provide the Maintenance Services in accordance with the maintenance terms set out in APA's maintenance schedule.</li> <li>the Client will procure all necessary authorisations, licences and consents to enable APA to have access to the Web Site in order to provide the Maintenance Services.</li> </ol>	2.10	<p><b>2.10 Hosting Services</b></p> <p>"Live Date" means the date in which APA provides the Hosting Services as per initial acceptance of APA's quotation.</p> <p>Hosting Services shall only be used by the Client for lawful purposes. Any use which violates any applicable national or international laws is strictly prohibited (e.g. posting or transmitting any unlawful, threatening, abusive, libellous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind – including, but not limited to, any transmission constituting or encouraging conduct that would constitute a criminal offence or give rise to civil liability).</p> <p>Hosting Services exclude domain registrations and Secure Sockets Layer (SSL) Certificates, and where the Client is changing from another hosting provider the install and set-up of the Web Site on APA's web servers, which shall be charged to the Client additionally.</p> <p>APA will, at its sole cost and expense:</p> <ol style="list-style-type: none"> <li>host the Web Site on APA's web servers;</li> <li>ensure that from the Live Date: <ol style="list-style-type: none"> <li>sufficient capacity is maintained on APA's webserver to enable users access to the Web Site in a timely manner;</li> <li>the Web Site is accessible to users in accordance with the agreed service levels (subject to reasonable downtime for server maintenance which has been notified to the Client prior to the commencement of the downtime or (where applicable) Maintenance in accordance with clause 9.8);</li> </ol> </li> <li>provide the Client with reasonable access to the Web Site to perform maintenance services.</li> </ol> <p>APA will not:</p> <ol style="list-style-type: none"> <li>alter or amend, or permit any person to alter or amend the Web Site without the written consent of the Client;</li> </ol>	2.11	<p><b>2.11 Search Engine Optimisation (SEO)</b></p> <p>Although APA shall use their knowledge and experience to gain the best results possible, APA gives no guarantee of the quality of visitor or the position / page rank or volume of visits to the Web Site, or warranty that the Web Site will be effective in promoting the Client's business or result in any increase in sales of the products/services of the Client. Periodic reporting will be sent to the Client's nominated email address, at the sole discretion of APA.</p>	2.12	<p><b>2.12 Domain Registration</b></p> <p>Where APA is register a domain name on the Client's behalf, APA cannot guarantee the availability of the domain name, nor assume a successful registration or such a name.</p>	2.13	<p><b>2.13 Risk and Limitation of Liability for Client Data</b></p> <p>The Client shall provide APA with data in the following formats:</p> <ol style="list-style-type: none"> <li>for text, files shall be in an electronic format as standard text (.txt) or Word (.doc) on a USB, CD-ROM or via email;</li> <li>for images, in an electronic format as prescribed by APA on a USB, CD-ROM or via email with the images of a suitable quality applicable for the use intended and without any subsequent image processing being required. APA shall not be responsible for the quality of images scanned from printed materials;</li> <li>additional expenses may be charged to the Client for any necessary action, including, but not limited to, photography and art direction, photography searches, media conversion, digital image processing or data entry services.</li> </ol> <p>The Client acknowledges and agrees that APA shall not be held responsible or liable for:</p> <ol style="list-style-type: none"> <li>anything relating to the Web Site, Hosting Services or any other Services provided;</li> <li>any negligence or content breaching any Acts, legislation or regulations, unless due to the negligence of APA;</li> <li>any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from illegal hacking or Services provided by APA. Whilst APA will endeavour to restore the Web Site, files or data (at the Client's cost), it is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to APA providing the Services. The Client accepts full responsibility for the Client's software and data and APA is not required to advise or remind the Client of</li> </ol>	2.14	<p><b>2.14 Post and Display on the Web Site</b></p> <p>APA will make best efforts to ensure that the Client receives continual and uninterrupted Services (including network or hosting servers) during the term of this agreement, however APA does not in any way warrant or otherwise guarantee the availability of the Services, which shall be subject to regularly scheduled maintenance cycles, and many events/circumstances beyond the control of APA. In no event though, shall APA be liable to the Client for damages (including loss of income) resulting from or in relation to any failure or delay (including server downtime, programming errors, lack of connection or slow connection) of APA to provide Services under this agreement, or any loss of data, if such delays or failures are due to circumstances beyond our control. Such a failure or delay shall not constitute a default under this agreement.</p> <p>APA may, at their sole discretion, limit or deny access to the Services is, in the judgement of APA, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network.</p> <p><b>2.14.1 Web Site Maintenance Services:</b></p> <ol style="list-style-type: none"> <li>subject to clause (b), APA will provide the Web Site Maintenance Services in accordance with the maintenance terms set out in APA's maintenance schedule.</li> <li>the Client will procure all necessary authorisations, licences and consents to enable APA to have access to the Web Site in order to provide the Maintenance Services.</li> </ol> <p><b>2.14.2 Client's Obligations:</b></p> <ol style="list-style-type: none"> <li>the Client will, at its sole cost and expense: <ol style="list-style-type: none"> <li>subject to any contract with APA for Web Site Development, develop and maintain the Web Site;</li> <li>provide the content to APA, in such form as reasonably prescribed by APA from time to time, and hereby grants APA a non-exclusive, worldwide, irrevocable licence to use such content for the purposes of hosting the Web Site;</li> <li>do all things reasonably necessary to enable APA to host the Web Site on APA's webserver;</li> <li>change the type of hosting account used if that account is deemed by APA to be unacceptable because of poor service, lack of bandwidth or in any other way insufficient to support the Web Site;</li> <li>is responsible for any fees payable and due to previous hosting organisations engaged by the Client;</li> <li>ensure that content supplied to APA do not contain Prohibited Content, a link to any web site that contains Prohibited Content, or any viruses, trojan horses, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the Hosting Services.</li> </ol> </li> <li>the Client will not: <ol style="list-style-type: none"> <li>logon to an account that the Client is not authorised to access;</li> <li>access data or take any action to obtain services not intended for the Client;</li> <li>attempt to probe, scan or test the vulnerability of any system, subsystem or network;</li> <li>tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation;</li> <li>transmit any material outlined in clause 9.9(a)(v);</li> <li>do anything that prevents or hinders APA from providing Hosting Services to any other person.</li> </ol> </li> </ol> <p><b>2.14.3 Network Traffic:</b></p> <ol style="list-style-type: none"> <li>network traffic shall be measured by APA and may include all forms of traffic to and from the Web Site. Domestic data transfer is provided free of charge, but APA reserve the right to suspend Hosting Services (at any time and without notice to the Client) for what it deems to be excessive traffic usage.</li> </ol> <p><b>2.14.4 Limitation of Liability for Hosting Services</b></p> <ol style="list-style-type: none"> <li>in consideration of clause 25.3, in the event the Hosting Services provided to the Client are disrupted or malfunction for any reason, APA's liability shall be limited to damages which under no circumstances shall exceed the amount due and payable by the Client to APA for the Hosting Services during the period of disruption or malfunction.</li> </ol>

# Adz Power Agencies – Terms & Conditions of Trade

<p>appropriate backup procedures (unless included as part of the Services);</p> <p>(d) any loss or damage to the Client's software or hardware caused by any 'updates' provided for that software.</p> <p>12.3 APA, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the Services by APA to the Client.</p> <p>12.4 The Services are provided on an 'as is, as available' basis. APA specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.</p> <p>12.5 <b>Publicly</b></p> <p>(a) All media releases and public announcements by either party relating to these terms and conditions, or the Services (including subject matter and related Materials), shall be co-ordinated with the other party and approved jointly by the party prior to release.</p> <p>(b) APA shall not be held responsible for the use of Services as referred to in by media, once information approved by the Client has been submitted to the media.</p> <p>(c) When reactive PR is required, the Client agrees that APA can act on the Client's behalf, if required, in line with the provision of Services under these terms and conditions, based on information previously supplied by the Client and APA's understanding of the Client's instructions.</p> <p>12.6 <b>Public Access:</b></p> <p>(a) The Client understands that by placing information on the Web Site, such information may be accessible to all internet users. APA does not (unless expressly requested by the Client) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity. The Client assumes full responsibility for their use of the Services, and it is the Client's sole responsibility to evaluate the accuracy, completeness and usefulness or all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by APA, or on the internet generally.</p> <p>12.7 <b>Defects, Errors and Omissions:</b></p> <p>(a) The Client shall inspect the Services on provision and shall within seven (7) days of such time notify APA of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford APA an opportunity to inspect/review the Services within a reasonable time following such notification if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.</p> <p>(b) For defective Services, which APA has agreed in writing that the Client is entitled to reject, APA's liability is limited to either (at APA's discretion) replacing the Services or rectifying the Services, provided that the Client has complied with the provisions of sub-clause (a).</p> <p>13. <b>Publicity and Social Media</b></p> <p>13.1 All media releases and public announcements by either party relating to these terms and conditions, or the Services (including subject matter and related Materials), shall be co-ordinated with the other party and approved jointly by the party prior to release.</p> <p>13.2 APA shall not be held responsible for the use of Services as referred to in by media, once information approved by the Client has been submitted to the media.</p> <p>13.3 When reactive PR is required, the Client agrees that APA can act on the Client's behalf, if required, in line with the provision of Services under these terms and conditions, based on information previously supplied by the Client and APA's understanding of the Client's instructions.</p> <p>13.4 <b>Public Access:</b></p> <p>(a) The Client understands that by placing information on the Web Site, such information may be accessible to all internet users. APA does not (unless expressly requested by the Client) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity. The Client assumes full responsibility for their use of the Services, and it is the Client's sole responsibility to evaluate the accuracy, completeness and usefulness or all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by APA, or on the internet generally.</p> <p>13.5 <b>Proof Reading:</b></p> <p>(a) Whilst every care is taken by APA to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading. APA shall be under no liability whatever for any errors not corrected by the Client in the final proof reading. Should the Client's alterations require additional proofs this shall be invoiced as an extra.</p> <p>(b) When style, type or layout is left to APA's judgement and the Client makes further alterations, this will be invoiced as an extra.</p> <p>14. <b>Compliance</b></p> <p>14.1 The Client and the Producer shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities in the country where the Services are being produced. Furthermore, the Producer warrants that any Services and/or content produced are fully compliant with said statutes, regulations and bylaws.</p> <p>14.2 The Client shall obtain (at the expense of the Client) all licenses and/or approvals pertaining to materials to be used in the production of the Services.</p> <p>15. <b>Title</b></p> <p>15.1 APA and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client has paid APA all amounts owing to APA; and</p> <p>(b) the Client has met all of its other obligations to APA.</p> <p>15.2 Receipt by APA of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>15.3 It is further agreed that:</p> <p>(a) until ownership of the Goods passes to the Client in accordance with clause 15.1 that the Client is only a bailee of the Goods and must return the Goods to APA on request.</p> <p>(b) the Client holds the benefit of the Client's insurance of the Goods on trust for APA and must pay to APA the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.</p> <p>(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for APA and must pay or deliver the proceeds to APA on demand.</p> <p>(d) the Client shall not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of APA and must sell, dispose of or return the resulting product to APA as it so directs.</p> <p>(e) the Client irrevocably authorises APA to enter any premises where APA believes the Goods are kept and recover possession of the Goods.</p>	<p>(f) APA may recover possession of any Goods in transit whether or not delivery has occurred.</p> <p>(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of APA.</p> <p>(h) APA may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p> <p>16. <b>Personal Property Securities Act 2009 ("PPSA")</b></p> <p>16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>16.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by APA to the Client.</p> <p>16.3 The Client undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which APA may reasonably require to;</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 16.3(a)(i) or 16.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, APA for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of APA;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of APA;</p> <p>(e) immediately advise APA of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>16.4 APA and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.</p> <p>16.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(c) and 132(4) of the PPSA.</p> <p>16.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>16.7 Unless otherwise agreed to in writing by APA, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>16.8 The Client must unconditionally ratify any actions taken by APA under clauses 16.3 to 16.5.</p> <p>16.9 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>17. <b>Security and Charge</b></p> <p>17.1 In consideration of APA agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>17.2 The Client indemnifies APA from and against all APA's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising APA's rights under this clause.</p> <p>17.3 The Client irrevocably appoints APA and each director of APA as the Client's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.</p> <p>18. <b>Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</b></p> <p>18.1 The Client must inspect the Goods on delivery and must within five (5) days of delivery notify APA in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow APA to inspect the Goods.</p> <p>18.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (<b>Non-Excluded Guarantees</b>).</p> <p>18.3 APA acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>18.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, APA makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. APA's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>18.5 If the Client is a consumer within the meaning of the CCA, APA's liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>18.6 If APA is required to replace the Goods under this clause or the CCA, but is unable to do so, APA may refund any money the Client has paid for the Goods.</p> <p>18.7 If the Client is not a consumer within the meaning of the CCA, APA's liability for any defect or damage in the Goods is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Client by APA at APA's sole discretion;</p> <p>(b) limited to any warranty to which APA is entitled, if APA did not manufacture the Goods;</p> <p>(c) otherwise negated absolutely.</p> <p>18.8 Subject to this clause 18, returns will only be accepted provided that:</p> <p>(a) the Client has complied with the provisions of clause 18.1; and</p> <p>(b) APA has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p> <p>18.9 Notwithstanding clauses 18.1 to 18.8 but subject to the CCA, APA shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Client failing to properly maintain or store any Goods;</p> <p>(b) the Client using the Goods for any purpose other than that for which they were designed;</p> <p>(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) the Client failing to follow any instructions or guidelines provided by APA;</p> <p>(e) fair wear and tear, any accident, or act of God.</p> <p>18.10 APA may in its absolute discretion accept non-defective Goods for return in which case APA may require the Client to pay handling</p>	<p>fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.</p> <p>18.11 Notwithstanding anything contained in this clause if APA is required by a law to accept a return then APA will only accept a return on the conditions imposed by that law.</p> <p>19. <b>Intellectual Property</b></p> <p>19.1 Where APA has designed, drawn, produced or developed Goods for the Client, then the copyright in any designs and drawings, productions and documents shall remain the property of APA. Under no circumstances may such designs, drawings and documents be used without the express written approval of APA.</p> <p>19.2 Where APA has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of APA.</p> <p>19.3 The Client warrants that all designs, specifications or instructions given to APA will not cause APA to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify APA against any action taken by a third party against APA in respect of any such infringement.</p> <p>19.4 The Client agrees that APA may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which APA has created for the Client. Sketches and dummies submitted by APA on a speculative basis shall remain the property of APA. They shall not be used for any purpose other than that nominated by APA and no ideas obtained therefrom may be used without the consent of APA. APA shall be entitled to compensation from the Client for any unauthorised use of such sketches and dummies.</p> <p>19.6 Disks, artwork and film supplied by the Client and/or other authorised persons remain the property of the Client. Unless otherwise indicated in writing APA shall assume these disks, artwork and film to be duplicate copies of the original.</p> <p>19.7 Where APA has provided music or musical score, photographic or film (digital or otherwise) images for the Client, at APA's sole discretion any such images may be subject to ongoing licence payments for use of such recordings or images. The period of any such licence is determined by APA from time to time.</p> <p>19.8 The Client shall indemnify APA against any claims by third parties for patent, trademark, design or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, or use of the Goods or any other deficiency therein. Where the Client has supplied drawings, sketches, files or logos to APA, the Client warrants that the drawings, sketches, files or logos do not breach any patent, trademark, design or copyright, and the Client agrees to indemnify APA against any action taken by a third party.</p> <p>19.9 Both parties warrant that any and all content (of the production/materials) are fully compliant with Australian licensing legislation and regulations, by-laws etc.</p> <p>20. <b>Confidentiality</b></p> <p>20.1 Each party agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.</p> <p>21. <b>Default and Consequences of Default</b></p> <p>21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at APA's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>21.2 If the Client owes APA any money the Client shall indemnify APA from and against all costs and disbursements incurred by APA in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, APA's contract default fee, and bank dishonour fees).</p> <p>21.3 Further to any other rights or remedies APA may have under this contract, if a Client has made payment to APA, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by APA under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.</p> <p>21.4 Without prejudice to any other remedies APA may have, if at any time the Client is in breach of any obligation (including those relating to payment, whether or not the payment is due to APA or any Nominated Consultant as per clause 21) APA may suspend or terminate the supply of Goods and/or Services to the Client, (this includes but is not restricted to, cancelling any advertising or printing that may be booked, cancelling any content delivery, and blocking or restricting public and Client access to the Client's website, or removing the website from the web completely) and any of its other obligations under the terms and conditions. APA will not be liable to the Client for any loss or damage the Client suffers because APA has exercised its rights under this clause.</p> <p>21.5 Without prejudice to APA's other remedies at law APA shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to APA shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to APA becomes overdue, or in APA's opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client has exceeded any applicable credit limit provided by APA;</p> <p>(c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>22. <b>Cancellation</b></p> <p>22.1 Without prejudice to any other remedies APA may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions APA may suspend or terminate the supply of Goods to the Client. APA will not be liable to the Client for any loss or damage the Client suffers because APA has exercised its rights under this clause.</p> <p>22.2 APA may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice APA shall repay to the Client any money paid by the Client for the Goods. APA shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>22.3 In the event that the Client cancels delivery of the Goods/Services (and are still due to make payments as per the agreed payment schedule as per clause 5.6(c)) and Goods/Services have been provided or performed, that are not covered by the payments made to that date, then the Client shall be responsible to make payments to satisfy the Price of the Goods/Services provided, and shall be liable for any loss incurred by APA (including, but not limited to, any loss of profits) up to the time of cancellation.</p> <p>22.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p>	<p>23. <b>Privacy Act 1988</b></p> <p>23.1 The Client agrees for APA to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by APA.</p> <p>23.2 The Client agrees that APA may exchange information about the Client with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Client; and/or</p> <p>(b) to notify other credit providers of a default by the Client; and/or</p> <p>(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</p> <p>(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.</p> <p>23.3 The Client consents to APA being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>23.4 The Client agrees that personal credit information provided may be used and retained by APA for the following purposes (and for other agreed purposes or required by):</p> <p>(a) the provision of Goods; and/or</p> <p>(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or</p> <p>(d) enabling the collection of amounts outstanding in relation to the Goods.</p> <p>23.5 APA may give information about the Client to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit information file about the Client including credit history.</p> <p>23.6 The information given to the CRB may include:</p> <p>(a) personal information as outlined in 23.1 above;</p> <p>(b) name of the credit provider and that APA is a current credit provider to the Client;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);</p> <p>(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and APA has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of APA, the Client has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>23.7 The Client shall have the right to request (by e-mail) from APA:</p> <p>(a) a copy of the information about the Client retained by APA and the right to request that APA correct any incorrect information; and</p> <p>(b) that APA does not disclose any personal information about the Client for the purpose of direct marketing.</p> <p>23.8 APA will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.</p> <p>23.9 The Client can make a privacy complaint by contacting APA via e-mail. APA will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at <a href="http://www.oaic.gov.au">www.oaic.gov.au</a>.</p> <p>24. <b>Service of Notices</b></p> <p>24.1 Any written notice given under this contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this contract;</p> <p>(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>24.2 Any notice that is posted shall be deemed to have been served, unless the Client is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p>25. <b>General</b></p> <p>25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which APA has its principal place of business, and are subject to the jurisdiction of the courts in Rockhampton, Queensland.</p> <p>25.3 APA shall be under no liability whatsoever to the Client for any expenses, claims, costs (including but not limited to legal fees and commissions), damages suffered or incurred by APA, or indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by APA of these terms and conditions, caused by any failure by the Client to comply with their obligations under this agreement, or that arise from any claim relating to the Services by any person that the Client authorises to use the Services, or where due to server downtime or programming errors (alternatively APA's liability shall be limited to damages which under no circumstances shall exceed the Price).</p> <p>25.4 Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). APA may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of APA's sub-contractors without the authority of APA.</p> <p>25.5 The Client agrees that APA may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for APA to provide Goods to the Client.</p> <p>25.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>25.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.</p>
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