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MBG Interactive Pty Ltd (ABN 52 905 184 773)



Terms & Conditions

1. Definitions In these Conditions:

- 1.1 "Client" means any company, subsidiary, firm or individual or agent thereof who orders any service offered and supplied by the Company.
- 1.2 "the Company" means MBG Interactive Pty Limited, ACN 132 474 296.
- 1.3 "Services" means any graphic design, website design, website development, website programming, e-business solutions, web applications, work or any other service offered to and supplied to the client by the Company.
- 1.4 "Proposal" means the written quotation of the services to be provided.
- 1.5 "Project" means the Services to be undertaken by the Company as outlined in the Proposal and any variation to the Proposal as agreed from time to time.
- 1.6 "Quotation" means the written quotation of the services to be provided.
- 1.7 "Stage" means the stage or stages of the project as referred to in the Proposal.

2. Entire Agreement

2.1 These Conditions supersede all previous agreements in respect of its subject matter and embodies the entire agreement between the parties. No variation or qualification of these Conditions or of a contract arising from here shall be valid unless agreed in writing by a Director of the Company.

3. Quotation

- 3.1 No contract shall arise between the Company and Client unless and until the following occurs:
 - 3.1.1 The Company has provided a written proposal to the Client;
 - 3.1.2 The Client accepts and executes that proposal in writing;
 - 3.1.3 The Client makes payment of all up front fees as outlined in the proposal to the Company;
 - 3.1.4 The Company advises the Client in writing of its acceptance of the agreement.

4. Timely provision of Services

- 4.1 The Company shall perform the Services in a timely manner to the extent that it is within its control to do so.
- 4.2 If the Company becomes aware of any matter which will change or which has changed the scope or timing of the Services Then it will give notice to the Client and the notice will contain, as far as practicable in the circumstances, particulars of the change.

5. Modification of Services

5.1 The Company will not be responsible for any changes to Services not carried out by the Company, nor for any impact that this may have on the continuity of the Project. It is the responsibility of the Client to ensure that the Company is advised of any such performed by third parties.

6. Payment Terms

- 6.1 In consideration of the promise by the Company to perform the Services pursuant to the Proposal, the Client promises to pay to the Company the Fees and costs outlined in the Proposal, and all additional costs.
- 6.2 The Company shall be paid for Services such fee as set out in clause 6.1, within seven (14) days from the date of the invoice, unless otherwise agreed in writing. In the case of continuing work, the Company will submit an invoice after the first Stage and thereafter at the end of each Stage of the Project.
- 6.3 Without derogating from the strict effect of clause 6.2 and all other rights and remedies of the Company, if any money payable by the Client is not paid when due, it shall bear interest from the due date of payment at ten (10) percent per annum, calculated daily.
- 6.4 If the client requests, prior to the completion of Services, either that the Services be postponed or that the Services should not be completed, or if the contract terminates for any reason other than for breach of the contract by the Company, the Company shall be entitled to be remunerated in respect of all work that has been undertaken, and all additional expenses incurred, up to the date of such notification by the Client. Such remuneration shall be on a quantum meruit basis.

7. Additional Expenses

- 7.1 The Company shall be entitled to charge fees in addition to those quoted in the Proposal in respect of:
 - 7.1.1 Additional work carried out by the Company arising from but not limited to alterations to the original brief, as requested by the Client. In this case, the additional charge will be calculated based on an hourly fee;
 - 7.1.2 All costs and expenses incurred by the Company in providing the services, that may include but are not limited to: print, typesetting, photography, illustrations, artwork, mechanicals, model-making and any other artwork costs and any out-of-pocket expenses properly incurred by the Company or its employees, agents or nominees in the fulfillment of the Order including hotel and travel expenses. For the Company's purposes, all such charges and expenses shall be charged to the Client at actual cost;
 - 7.1.3 Performance of the Services in circumstances other than those normally pertaining to such a Project, in which case the Company shall be entitled to reasonable costs in the circumstances; and
 - 7.1.4 The reasonable costs incurred in cases where there is a change in the Services, timing or order of the Services.

8. Goods and Services Tax

- 8.1 In this clause the expressions "adjustment note", "consideration", "GST", "supply", "supplier", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999. For the avoidance of doubt, "GST" includes any penalties or additional tax imposed in relation to the GST.
- 8.2 Unless otherwise expressly stated, all charges or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- 8.3 Despite any other provision in their document, if GST is imposed on any supply made under this agreement, the recipient must pay to the supplier an amount equal to the GST payable on the Supply.
- 8.4 The recipient must pay the amount referred to in 8.3 in addition to and at the same time as payment for the supply is required to be made under this agreement.
- 8.5 If a supply is made to which GST applies or is varied under this agreement, the supplier must provide the recipient of the supply a valid tax invoice or adjustment note at or before the time of payment or variation.
- 8.6 If the amount of GST paid or payable by the supplier on any supply made under this document differs from the amount of GST paid by the recipient, because the Commissioner of Taxation Lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.

9. Direct and Indirect Loss

9.1 Any claim for direct or indirect loss incurred by the client arising out of the performance or non-performance of the Services by the Company, whether under the law of contract tort or otherwise shall be excluded to the extent allowed by law.

10. Extent of Warranty

10.1. The Company does not give any warranty nor accept any liability in relation to the performance or non-performance of the Services except to the extent, if any, required by law or specifically provided for in these Conditions.

10.2. If apart from this Clause any warranty would be implied whether by law, custom or otherwise, that warranty is to the full extent permitted by law hereby excluded.

10.3. Nothing herein contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to this Agreement of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended) or any relevant State Act or Territorial Ordinance which by law cannot be excluded, restricted or modified.

11. Indemnities

11.1 The Client indemnifies and holds harmless the Company in respect of any claim against the Company caused by or arising out of any act or thing done by the Company in good faith and purportedly pursuant to a right granted to the Company under the provisions of these Conditions.

12. Intellectual Property

- 12.1 Copyright in all proposals, reports, specifications, and other documents provided by the Company in connection with the Services shall remain vested in the Company.
- 12.2 If during the course of providing the Services, the Company develops, discovers, or first reduces to practice a concept, product or process which is capable of being patented, then such concept, product or process shall be and remain the property of the Company and the Client shall not use, infringe or otherwise appropriate the same without first obtaining the written consent of the Company.
- 12.3 If the Proposal provides for the Intellectual Property in the finished product of the Services to pass to the Client, then such property shall so pass only upon completion of the Project and the payment of the fees and costs owed to the Company by the Client.
- 12.4 If the Company and the Client agree to the assignment of the Copyright or any other proprietary rights in Services by the Company to the Client, the Company shall assist the Client in any subsequent application for design registrations. All costs in connection therewith shall be borne by the Client who shall also reimburse to the Company any costs or expenses incurred by the Company.
- 12.5 It is the responsibility of the Client to carry out any legal searches, checking and registration of Concepts and Designs. All costs in connection therewith shall be borne by the Client who shall also reimburse to the Company any costs or other expenses incurred by the Company.

13. Persons to perform the Services

13.1 Nothing within this Agreement shall prevent the Company from employing such persons or companies as required by it to perform the Services.

14. Termination

- 14.1 The Company shall be entitled to treat any contract as terminated if the Client is in breach of any terms or conditions thereof which in the case of a breach capable of remedy is not remedied within fourteen (14) days of the Client receiving written notification from the Company indicating the breach and requiring its remedy. In such an event the company shall retain the Copyright in Services even if the Company had previously agreed to assign the Copyright in Concepts and Designs, and in this case the agreement to assign the Copyright to the client shall be deemed to be revoked.
- 14.2 Termination due to a breach of these terms and conditions by the Client pursuant to this clause shall not in any way prejudice such rights as the Company may have to seek payment for Services rendered or any other rights provided for under these Conditions.

TERMS OF PROPOSAL

1. Project Estimate

- 1.1 This Proposal is based on an estimate of the time and resources that is likely to be required to carry out each stage of the Project. If at any stage during the Project it becomes apparent that significantly additional time and resources will be required, you will be provided with a quotation before the commencement of the extra work.
- 1.2 The fees and costs quoted for this Project have been estimated based on the information contained in this document. Any details that are varied after the approval of this document may impact on the fees and costs that we have quoted for this Project. Visiontech Solutions Pty Limited reserves the right to charge additional fees and costs where such changes occur. Any additional fees and costs will be quoted prior to the commencement of work.

2. Additional Costs & Expenses

- The Client will be responsible for any additional costs above the professional fees quoted in the Proposal that may include, but are not limited to:
- 2.1 Costs such as digital colour printouts, colour photocopies, discs, computer facilities, local, file transfers, couriers, local travel and subsistence. For the purposes of estimating miscellaneous costs, the Company normally calculates these to be approximately 25% of the fee for each stage of the Project.
 - 2.2 Expenses including but not limited to typesetting, image retouching, illustration, photography, copywriting, mock-ups and model making. Wherever possible the Company will attempt to highlight outside fees and costs within our quotation. However, instances may arise where additional expenses may be incurred.
 - 2.3 Costs for interstate and international travel, when required for projects, will be passed on to the client and may include airfares, accommodation, subsistence and any other related expenses at cost. These costs will be quoted separately.
 - 2.4 Author's Corrections and client requested artwork changes will be billed by the hour at a rate of \$145/hour +gst unless specified otherwise on your quotation or invoice.

3. Trading Terms

- 3.1 Our terms of trade are fourteen (14) days from the date of invoice.
- 3.2 Clients will be invoiced for fifty (50) per cent of the entire costs of the Project (including professional fees, and projected costs and expenses) at the time that the Proposal is accepted by the client, for any projects quoted in excess of \$1000.
- 3.3 For Photography shoots, Clients will be invoiced for fifty (50) per cent of the entire costs of the Photography shoot (including art direction fees, photography fees and associated photography costs and expenses) at the commencement of the shoot, for any projects quoted in excess of \$1000.