

Terms and Conditions of Trade

Mind Methods Marketing Solutions

1. Definitions

“Consultant” shall mean Mind Methods, its successors and assigns, or any person acting on behalf of and with the authority of Mind Methods.

“Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, sales order or other form as provided by the Consultant to the Client.

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

“Services” shall mean all Services supplied by the Consultant to the Client and includes any website, and/or graphic design, professional advice or recommendations.

“Price” shall mean the price payable for the Services as agreed between the Consultant and the Client in accordance with clause 3 of this contract.

2. Acceptance

Any instructions received by the Consultant from the Client for the supply of Services and/or the Client’s acceptance of Services supplied by the Consultant shall constitute acceptance of the terms and conditions contained herein.

Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Consultant.

The Client shall give the Consultant not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number or business practice). The Client shall be liable for any loss incurred by the Consultant as a result of the Client’s failure to comply with this clause.

Services are supplied by the Consultant only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

3. Price, Payment and Fees

Items described in proposals, invoices and estimates are for the purchase of one creative approach (concept) to be selected by (client) and executed by Mind Methods. All other ideas, concepts, or designs described or exhibited remain the property of Mind Methods. All materials used in the execution of the project(s)—including artwork and computer-generated instructions and formats—remain the property of Mind Methods.

At the Consultant’s sole discretion the Price shall be either:

- (a) as indicated on invoices provided by the Consultant to the Client in respect of Services supplied; or
- (b) The Consultant’s current pricelist in the proposal.

The Consultant reserves the right to change the Price in the event of a variation to the Consultant’s estimate. Variations to the labour cost will be charged at the advertised standard and/or casual hourly rate (whichever applies). Variations to the standard hourly rate will be calculated in increments of 10 hours.

At the Consultant’s sole discretion a deposit not exceeding 50% of the estimated price may be required for marketing consulting, graphic design and associated work.

At the Consultant’s sole discretion:

- (a) payment for non marketing consultancy and graphic design work shall be due before delivery of the Services; or
- (b) payment for approved Clients shall be made by instalments in accordance with the Consultant’s payment schedule; or
- (c) payment may be based on a performance partnership agreement and will be agreed upon by the two parties at the time the Client engages the Consultant to provide Services quoted.

Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

Payment will be made by:

- (a) cash, cheque, bank cheque, electronic funds transfer (EFT) or
- (b) by any other method as agreed to between the Client and the Consultant.

GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

Unless otherwise specified in the Estimate and/or Proposal, the fees for the Services are exclusive of all:

- (a) travel expenses outside of Sydney, Australia.
- (b) costs for stimulus materials (including, commercials, story boards, samples, commissioned research, advertising space, media costs, photography, printing, etc); and
- (c) out-of-pocket or other expenses agreed between the parties
- (d) additions/extras: any additional items, pages or other features requested by the Client to be included in an already quoted or invoiced project will be assessed by Mind Methods and quoted, estimated or billed separately. As additions or extras are deemed out-of-scope and will have to be accounted for a new request/estimate.

and unless otherwise agreed, the client must pay Mind Methods prior to incurring such costs.

Where consultations are required between Mind Methods and the Client, charges may apply. Initial consultations which occur at mind Methods offices or telephone consultations are free of charge at 1st round briefing stage, known as “Ascertain and Discover”. Consultations which are required to take place at the Client’s premises may incur a consultation fee. Any consultation fees which may incur the Client will be advised prior to a consultation.

4. Delivery of Services

Delivery of the Services is deemed to have taken place when:

- (a) the Client signs off as to accept the satisfactory completion of consultancy work as quoted and provided by the Consultant or
- (b) the Client instructs the Consultant to make live any website or associated online project as quoted and provided by the Consultant.

The failure of the Consultant to deliver shall not entitle either party to treat this contract as repudiated.

The Consultant shall not be liable for any loss or damage whatever due to failure by the Consultant to deliver the Services (or any part thereof) promptly or at all where failure to deliver is due to circumstances beyond the control of the Consultant.

5. Risk

All risk for the Services passes to the Client on delivery.

All third-party software is provided at the Client’s own risk and is not in any way warranted by the Consultant.

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The Client accepts that domain names, hosting addresses and email addresses may expire and takes responsibility for the renewal of such names with the relevant service provider. The Consultant takes no responsibility for the loss of such names and the Client indemnifies the Consultant against any action arising from the loss of, or failure on the part of the Client to renew, such names.

The Client accepts full responsibility for all costs associated with the recovery of lost domain names, hosting addresses or email addresses and accepts that the Consultant is entitled to charge the Client the current market rate for the recovery of these names if so engaged to do so by the Client.

Where the Services provided to the Client by the Contractor allow for the addition, deletion or alteration of content in any form once the Client has taken delivery of the Services, the Client takes full responsibility for such changes and indemnifies the Consultant against any action whatsoever arising from such alterations.

Post-Live handover and live project alterations. Mind Methods cannot accept responsibility for any alterations caused by a third party occurring to the Customer's pages once installed, live and operational. Such alterations include, but are not limited to plug-in's upgrades, template edits, CSS edits, additions, modifications or deletions.

6. Client's Responsibilities

The Client warrants that all material supplied to the Consultant to be used for the Client's project will:

- (a) be true and correct in every particular; and
- (b) comply with Clause 7.2; and
- (c) not be, nor contain, anything that is defamatory of any person or is indecent or obscene; and
- (d) not breach any advertising industry standards or guidelines; and
- (e) not contain nor constitute a statement that is misleading or deceptive or likely to deceive or to mislead or which is otherwise in breach of a provision of the Trade Practices Act of 1974.

The Consultant reserves the right to refuse to accept, or withdraw from display at any time, any material submitted by the Client that does not comply with this Clause

Customer Consultation and Sign-Off. Mind Methods will provide the Client with regular opportunities to review the appearance, layout and content of the projects during the design and creation process. The initial stage of creation involves the 'design shell' of the Marketing Strategy, Planning or Marketing Design Project which, once finalised and approved by the Client (Known as as "Round one changes"), subsequent second round changes will not be amended without additional cost to the Client. At the completion of the project, such materials will be deemed to be accepted and approved unless the Client notifies Mind Methods otherwise within ten (10) calendar days including statutory holidays of the date the materials are made available to the Client via, email, post, electronic fax.

Turnaround Time and Content Control. Mind Methods will provide the Client's project by the agreed date wherever possible, unless a delay is specifically requested by the Client and agreed by Mind Methods. In return, the Client agrees to delegate a single individual as 'Subject Matter Expert' to aid Mind Methods with the project deliverables to progress the project in a satisfactory manner within the project scope, timing and budget.

During the project, Mind Methods will require the Client to provide text copy and content images. If content is not provided within four (2) weeks of an official request by email then Mind Methods reserves the right to advise the Client of a revision to the final payment fee based on new or revised pricing schedules should any changes in pricing schedules occur during this time. If content is not provided within eight (4) weeks from the original email or facsimile request then the Client is considered to be in default and the project will be terminated and the Client sent the final invoice for immediate payment. Mind Methods will agree, at its discretion, to recommence the project after agreement is reached on a new quotation document and once the original fees have been paid.

Media. Unless otherwise specified in the project estimate, this Agreement assumes that any text will be provided by the Client in electronic format (ASCII text files delivered on disc, via e-mail, or electronic drop box) which has been proof read and signed-off by the Client and that all photographs, images and other graphics will be provided electronically in .gif, .jpeg, .png, .eps, .psd or .tiff format. Images and photographs requiring external scanning, retouching, or documents provided in hard copy requiring re-typing will incur further charges. Although every reasonable attempt shall be made by Mind Methods to return to the Client any images or printed material provided for use in creation of the Marketing Programme, such returns cannot be guaranteed.

7. Intellectual Property

Copyright in any software, designs, drawings, or written documents supplied to the Client by the Consultant, shall remain vested in the Consultant, and shall only be used by the Client at the Consultant's discretion.

The Client warrants that all designs or instructions to the Consultant will not cause the Consultant to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Consultant against any action taken by a third party against the Consultant in respect of any such infringement.

The Client will use any third-party software supplied by the Consultant, and identified as such, strictly in terms of the licence under which it is supplied.

The Client hereby authorises the Consultant to utilise images (including but not limited to photographs and/or text) for advertising, marketing, or competition material whilst the Client is under contract to the Consultant.

8. Retention of Title

The Consultant and the Client agree that ownership of the Services shall not pass until:

- (a) the Client has paid the Consultant all amounts owing for the particular Services; and
- (b) the Client has met all other obligations due by the Client to the Consultant in respect of all contracts between the Consultant and the Client.

Receipt by the Consultant 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 the Consultant's ownership or rights in respect of the Services shall continue.

9. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

10. Default & Consequences of Default

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 one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.

If the Client defaults in payment of any invoice when due, the Client shall indemnify the Consultant from and against all costs and disbursements incurred by the Consultant in pursuing the debt including legal costs on a solicitor and own client basis and the Consultant's collection agency costs.

Without prejudice to any other remedies the Consultant may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Consultant may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Consultant will not be

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liable to the Client for any loss or damage the Client suffers because the Consultant has exercised its rights under this clause.

If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees sum which shall become immediately due and payable.

Without prejudice to the Consultant's other remedies at law the Consultant shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Consultant shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Consultant becomes overdue, or in the Consultant's opinion the Client will be unable to meet its payments as they fall due; or
- (b) 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

11. Cancellation

The Consultant may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Consultant shall repay to the Client any sums paid in respect of the Price. The Consultant shall not be liable for any loss or damage whatever arising from such cancellation.

In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by the Consultant (including, but not limited to, any loss of profits) up to the time of cancellation.

12. Privacy Act 1988

The Client and/or the Guarantor/s agree for the Consultant 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 Consultant.

The Client and/or the Guarantor/s agree that the Consultant may exchange information about the Client and 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) to 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 Client and/or Guarantor/s.

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

The Client agrees that personal credit information provided may be used and retained by the Consultant for the following purposes and for other purposes as shall be agreed between the Client and Consultant or required by law from time to time:

- (a) provision of Services; and/or
- (b) marketing of Services by the Consultant, its agents or distributors in relation to the Services; and/or
- (c) analysing, verifying and/or checking the Client's 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 Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.

The Consultant 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) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

13. Delays

The Client acknowledges that any delivery date stated by the Consultant is an estimation only. The Consultant shall not be liable for any loss or damages suffered by the Client caused by the delay or postponement in delivering the Services.

Should the Consultant seek instruction from the Client in relation to the provision and/or delivery of the Services and such instruction is not forthcoming for a period of 90 days, resulting in the stalling of the project ordered by the Client, delivery of the Services shall be deemed to have been completed and the Consultant shall be entitled to full payment of all moneys owing to the Consultant by the Client.

14. Defects

The Client shall inspect the Services on delivery and shall within sixty (10) days of delivery, as defined in Clause 4.2, with time being of the essence, notify the Consultant in writing of any alleged defect, shortage in quality, damage or failure to comply with the description or estimate.

The Client shall afford the Consultant an opportunity to inspect the Services within a reasonable time following delivery 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 presumed to be free from any defect or damage.

For defective Services, which the Consultant has agreed in writing that the Client is entitled to reject, the Consultant's liability is limited to repairing and/or rectifying the Services except where the Client has acquired Services as a consumer within the meaning of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Services, or repair and/or rectification of the Services, or replacement of the Services.

15. Warranties and Guarantees

To the extent permitted by statute, no warranty is given by the Consultant as to the quality or suitability of the Services for any purpose and any implied warranty, is expressly excluded.

The Consultant shall not be responsible for any loss or damage to the Services, or caused by the Services, or any part thereof however arising.

The Consultant provides no warranty as to the commercial performance or otherwise of the Services provided to the Client.

If, at any stage during the development of website design, graphic design and associated marketing consultancy work and prior to delivery as defined in Clause 4.1, the Client advises the Consultant that the standard of Service being provided is not satisfactory in relation to fulfilling the design brief and instructions of the Client to the Consultant, the Client may request to terminate the project and in doing so is entitled to a full or part refund (at the Consultant's sole discretion) of all monies paid to the Consultant in relation to the aborted provision of Services.

Consultant shall not be responsible for any 3rd party services provided to the client. This includes but is not limited to 3rd party hosting, domain names, email services and other 3rd party software which may be used to develop the software as per the scope required. No refund will be made once the service is acquired and paid by the Client to the Consultant.

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16. Confidentiality

The Client acknowledges that the Consultant may, from time to time, disclose certain confidential information and documentation of the Consultant relating to the Services, their marketing, use maintenance and software, including technical specifications.

The Client must use such confidential information solely for the purposes contemplated under any relevant sales contract and the Client must not at any time disclose, whether directly or indirectly to any third party this confidential information.

These obligations on the part of the Client do not apply to any information which is otherwise public knowledge within the public domain or which is required to be disclosed by law.

17. General

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.

These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.

The Consultant shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Consultant of these terms and conditions.

In the event of any breach of this contract by the Consultant the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.

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 the Consultant.

The Consultant may license or sub-contract all or any part of its rights and obligations without the Client's consent.

The Consultant reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Consultant notifies the Client of such change.

Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

The failure by the Consultant to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Consultant's right to subsequently enforce that provision.