



Ray The Tall One
ABN 75 659 547 290
26 Bullion Ave, Wollert
VIC 3750

Terms and Conditions

Thachanon Chaisiwamongkhon (ABN 75 659 547 290) of 26 Bullion Ave, Wollert VIC 3750 (**Ray**) agrees to provide the Services to the Client as set out in the Quote and governed by these Terms and Conditions.

1. Definitions

In these Terms and Conditions:

Agreement means the particulars in the Quote and these Terms and Conditions as read together;

Background IP means Intellectual Property Rights owned by a party in existence prior to the Commencement Date including the Ray Indicators, and any new Intellectual Property Rights which arises from the further development or adaptation of the Background IP in relation to the Services;

Fees means the amount(s) specified in the Quote;

Client means the person or entity identified as such in the Quote;

Confidential Information means any information in any form relating to any current or proposed projects (including any ideas, concepts in relation to the same) of a party, fee rates, its staff, personnel, contractors or clients or any marketing, finance, legal or business affairs, information or plans of a party or that of any related entities but does not include any information that is widely available to and known by the public (other than as a result of a breach of confidentiality by, or involving, a party);

Copyright Share means the percentage as specified in the Quote of current and/or future copyright in the photographs taken by the Client for the Project;

GST means Goods and Services Tax imposed and payable in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Intellectual Property Rights means all forms of patent, copyright, trade mark (whether registered or not), trade names, trade secrets, know how, discoveries, inventions, secret processes, designs, improvements in procedure, innovations or confidential information and any right to apply, register or assert any claim in relation to the same;

Project means the project 'Reference' as further described in the Quote;

Quote means the quotation provided to the Client for Ray's performance of the Services on the Project in consideration of the payment of Fees;

Services means the description of services specified in the Quote; and

Work means the photographs and any other deliverables or materials created by the Client or other third parties for the Project.

2. Engagement

- 2.1. **(Acceptance)** The client may accept the Quote either by clicking the 'Accept' button in the email containing the Quote or by confirming acceptance of the Quote in a written email to Ray. Ray will then be legally engaged to provide the Services in consideration for the Fees in accordance with these Terms and Conditions.
- 2.2. **(Variations)** Any variation to the nature or scope of the Services will be mutually agreed on by both parties. Additional fees may apply to any such variation at Ray's standard rates.

3. Cancellation

The Client may cancel Ray's engagement by giving written notice. Where two business days' notice is given (or more) the Client will be charged 50% of the Fees. Where less than two business days is given the Client may be charged up to 100% of the Fees. Once Ray has been engaged, the Client is responsible for payment of all of Ray's incurred expenses relating to the Project up to the time of cancellation.

4. Postponement

The Client may postpone or reschedule a shoot by giving Ray at least 48 hours notice. If no such notice has been received by Ray within 48 hours of the scheduled shoot start time, the Client will be deemed to have confirmed the shoot. If the Client postpones or reschedules a shoot within 48 hours of the scheduled start time, Ray will be entitled to charge for one day of labour (at the daily rate specified on the Quote) and any reasonable excess prop hire fees or other hard costs that Ray has incurred.

5. Force Majeure

The parties agree that if a shoot is suspended, frustrated or delayed by a contingency beyond the Client's control or other force majeure event including but not limited to inclement weather, criminal acts, floods, injury, illness or non-appearance of key talent, delay or failure of delivery of goods or services to be supplied by the Client's client (whether as an on-screen product, props or otherwise), the Client must pay Ray's Fees for all Services already performed along with any other reasonable costs associated with such suspension, delay or frustration on request. For the avoidance of doubt, all current and future direct and indirect impacts (including all related official directions and orders) of COVID-19 pandemic are deemed force majeure events.

6. Intellectual Property Rights

- 6.1. **(Project Copyright)** To the extent that the Client holds (or upon the completion of the Project will hold) full or partial copyright in the Work, the Client hereby assigns to Ray the amount of Copyright Share in all photographs for the Project as specified in the Quote. If no Copyright Share is specified on the Quote, Ray acknowledges he will have no claim to any copyright in the Work.
- 6.2. **(Moral Rights)** Notwithstanding the status of copyright ownership of the Work, Ray reserves all Moral Rights (as defined under the *Copyright Act 1968 (Cth)*) in the Work and working files. Ray asserts the right to be duly credited for his creative contribution to the Work, and not to have any other third party falsely credited for his contribution. The Client further warrants it will take reasonable steps to prevent the Work being presented, edited or otherwise altered in a derogatory manner.

- 6.3. **(Third Party IP)** The Client acknowledges that Ray may utilise or provide props and other items that are subject to third party Intellectual Property Rights (**Third Party IP**). Ray will make reasonable efforts to identify the existence of any Third Party IP in any props used for the Project, and will notify the client accordingly. Ray agrees to make reasonable efforts to procure any licenses that may be required for the Client to make use of such Third Party IP as it is incorporated into the Work, but will always be limited to the extent of Ray's ability to sub-licence such rights to the Client.
- 6.4. **(Professional Promotion)** The Client grants Ray a perpetual and non-exclusive right to use the Work in any manner at any time and in any part of the world for the purposes of professional self-promotion including but not limited to website, portfolio and external publications use.

7. Props

- 7.1. **(Provision of props)** Ray may provide props and other materials to be used in the Project which at all times shall be owned by Ray. A hire fee for such use of Ray's props on the Project may be charged to the client as part of the Fees as specified in the Quote.
- 7.2. **(Purchase of props)** Ray may purchase props on behalf of the Client for use in the Project. Costs to purchase such props will be included in the Fees as specified in the Quote. Purchased props shall be deemed the property of the Client at all times and Ray will transfer possession to the Client upon the completion of the Services.

8. Fees, Payments and GST

- 8.1. Ray will issue a valid GST tax invoice for the Fees to the Client after the provision of the Services. Unless otherwise stated in the Quote, the Fees are exclusive of GST.
- 8.2. The Client must pay the Fees within a period of 30 calendar days following receipt of a tax invoice (**Payment Due Date**) by direct debit bank transfer to the account specified in the relevant invoice.
- 8.3. When issuing a tax invoice, Ray may offer to discount the Fees payable in exchange for the Client's early payment. Such discount terms, if applicable, will be specified on the relevant tax invoice. If no discount terms are stated on the invoice the Client must pay the full Fees.
- 8.4. The Client acknowledges that any payment made after the Payment Due Date shall attract an interest rate of 10% p.a. with interest to be calculated daily. Interest may only be charged where Ray has notified the Client in writing of non-payment and provided full details of the same in writing and such non-payment is not rectified by the Client within 7 days of the date of Ray's written notice.

9. Warranties and Representations

- 9.1. Ray warrants and represents to the Client that it will comply with all applicable legal and regulatory requirements in performing the Services under these Terms and Conditions.
- 9.2. The Client warrants and represents to Ray that it has the legal right and authority to enter into an agreement under these Terms and Conditions and to perform its obligations under the same.

10. Indemnities

- 10.1. Should a party incur any loss or liability, costs (including reasonable external legal costs) or damages as a result of the other party's breach of this Agreement, the offending party shall indemnify the non-offending party in relation to such damage, loss or expense.

- 10.2. Ray's liability under this clause 10 shall be limited to the Fees or the resupply of all Services pursuant to the terms of this Agreement.
- 10.3. Notwithstanding any other clause of this Agreement, no party shall have any liability for indirect or consequential damages or losses, economic loss, loss of business profits or other pecuniary losses, fines or exemplary damages.

11. Confidentiality

- 11.1. Each party agrees and undertakes to:
- (a) keep all Confidential Information strictly confidential;
 - (b) not disclose or permit any disclosure of the Confidential Information to any third party without the prior written consent of the other party except for any disclosure that is required by law;
 - (c) not to use or reproduce the Confidential Information for any purpose except as strictly necessary to perform and provided the Services under this Agreement; and
 - (d) maintain proper and secure custody of all Confidential Information and take all necessary precautions to prevent unauthorised disclosure, access or copying of the Confidential Information by third parties.

12. Dispute Resolution

- 12.1. Where a dispute between the parties arises, and prior to the commencement of any proceedings in relation to the dispute, the parties agree:
- (a) to use best endeavours to negotiate the resolution of a dispute; and
 - (b) should the dispute remain unresolved within 20 business days, the parties will then submit to arbitration which will be conducted in accordance with the Rules for the Conduct of Commercial Arbitrations from The Institute of Arbitrators and Mediators Australia.

13. General

- 13.1. No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.
- 13.2. If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 13.3. The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 13.4. Neither party will assign, sub-contract, sub-licence or otherwise transfer any of its rights, entitlements and obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld).
- 13.5. The Quote together with these Terms and Conditions, will constitute the entire agreement between the parties and will supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter. In the event of any

inconsistency between the Quote and the Terms and, these Terms and Conditions will take precedence.

- 13.6. The Agreement is governed by and will be construed in accordance with the laws of Victoria and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria.