

# Terms and Conditions of Trade

## 1. Acceptance of Terms

By accepting our Quote, the Customer named in the Schedule ("you") agrees to be bound by the following terms of use between you and Brand Hero Pty Ltd As Trustee for the Edwards Family Trust trading as Brand Hero ABN 74 353 886 641 ("we", "us").

## 2. Term

### 2.1 Commencement and Duration

This agreement commences from the date that we confirm that we have accepted your order, and continues until completion of the Services, or until terminated under these terms.

## 3. Services

### 3.1 Services

We will provide the Services specified in the Schedule in accordance with this agreement.

### 3.2 Performance

Unless otherwise specified in the Scope of Services, we agree to provide the Services to the standards specified in the Scope of Services in a timely manner

### 3.3 Service Limitations

We will use reasonable efforts in providing the Services, however other than as set out in the Scope of Services and this agreement, to the fullest extent permitted at law.

(a) Defects and Interruptions: we do not warrant or guarantee the Services or Deliverables are uninterrupted or error free, and we do not take any responsibility for defects or interruptions to the Services or Deliverables caused by:

- (i) misuse or user error;
- (ii) variation or modification to the Deliverables by you or any third party;
- (iii) your software, equipment, or network;
- (iv) the delays, action or inaction of any third party;
- (v) the delays, action, operation, inaction, or failure of any third party service, software, or equipment; or
- (vi) any Force Majeure Event;

(b) Fitness for Purpose: we do not warrant or guarantee the Services or Deliverables are fit for purpose, performance, or compatibility;

(c) Business Activity: we do not represent or warrant that you will achieve any particular result from the Services or Deliverables in terms of increased activity, search engine ranking, or revenue;

(d) Backup and Disaster Recovery: we are not responsible for any backup or disaster recovery services, including for any Deliverables and any hosting services we provide;

(e) Supported Browsers and Operating Systems: where we provide website design services under this agreement, we will design for current released browser and operating system versions only. However, we do not guarantee the provided website will display correctly on all browsers on all devices (but will in any event build the website to be responsive). For clarity's sake, "current" means current as at the date this agreement began under clause 2.1;

(f) Security: we will take reasonable precautions in providing the Services, but we are not responsible for any security breach or related loss associated with any Services;

(g) Integration: we do not guarantee or represent that the Deliverables will integrate with any particular third party hardware, software, or environment;

(h) Legal Review: you are responsible for ensuring that any Deliverables comply with applicable laws and advertising standards. Where we provide logo design or brand identity services, we cannot guarantee that our designs are eligible for trade mark protection; and

(i) Specific Exclusions: we provide no services in relation to the Specific Exclusions under this agreement;

### 3.4 Variations to the Scope of Services

(a) You may request changes to the Scope of Services and we will:

- (i) make reasonable efforts to accommodate your request, but are not obliged to accept the changes; and
- (ii) advise you of any additional costs and timetabling for implementing the changes.

(b) If you accept the additional costs and timetabling for implementing your requested changes, we will invoice you for the additional costs, payable prior to delivery unless you have previously been approved by us for trading terms.

(c) This agreement will then continue to apply to the Services as amended.

(d) If we anticipate that your requested changes will result in less than 4 hours of additional work, we may with your agreement treat the additional work as Out-of-Scope Services.

### 3.5 Out-of-Scope Services

(a) We may at our discretion, upon request by you, provide Out-of-Scope Services. For clarity's sake, this expressly includes any meetings and any rounds of amendments requested in addition to those set out in the Scope of Services.

(b) The same standards, warranties and indemnities apply to Out-of-Scope Services as apply to the Services.

(c) We will charge the Out-of-Scope Fee for any Out-of-Scope Services we provide.

(d) We may vary the Out-of-Scope Fee at any time, by 30 days' Written Notice. Any change will apply only to Out-of-Scope Services requested and performed after the effective date of the change.

### 3.6 Urgent or out of hours Services

(a) We reserve our right to charge a Rush Fee for Services which:

- (i) you request to be performed urgently; or
- (ii) you request to be performed outside Business Hours.

(b) We may vary the Rush Fee at any time, by 30 days' Written Notice. Any change will apply only to urgent or out of hours Services requested and performed after the effective date of the change.

### 3.7 Changes to Services

Technology and business environments are constantly evolving and we may make adjustments to the Services to ensure you continue to receive the best possible results. However, we will give you reasonable notice of any changes, and ensure that the replacement services are of the same high standards as the original.

### 3.8 Right to sub-contract

We may appoint employees or agents to provide all or part of the Services, and such entities are bound by the same obligations as us. It is our responsibility to ensure such entities comply with this agreement.

### 3.9 Warranties

We warrant that we and every person who provides the Services on our behalf is competent and has the necessary skills, qualifications, permits and licences to provide the Services.

## 4. Printing Services

4.1 In addition to the other terms and conditions set out in this agreement, this clause 4 applies only in relation to Print Deliverables.

4.2 If we have provided you with a quote for printing services, as set out in the Schedule, the quote will specify:

- (a) the work required to be done; and
- (b) an Estimate of the charge for the work.

4.3 We reserve the right to amend the Estimate, before the work has commenced, to take into account any rise or fall in the cost of performing the work under the quote and we will notify you of any such amendment as soon as practical. On your acceptance, which can be written or verbal, of the amended quote, the amended quote is deemed to be the Estimate for purposes of the Schedule.

### 4.4 You acknowledge that:

- (a) whilst we will use our best efforts to produce the exact number of items as described in the Scope of Services, owing to human or computer error the number of items actually produced may be 10% over or under the number specified in the Scope of Services; and
- (b) in circumstances where we produce less than the amount agreed in the Scope of Services, we may adjust the amount charged to you on a pro rata basis to reflect the actual number of items produced.

## 5. Delivery, Risk and Acceptance

### 5.1 Delivery

(a) Unless expressly stated in the Scope of Services, delivery dates are a guide only and we do not guarantee any fixed deadlines for the delivery of Services or Deliverables (but will in any event provide the Services and Deliverables in a timely manner).

(b) We are not responsible for delays caused by:

- (i) your delay in providing us with instructions, access, or Client Materials necessary to undertake the Services;
- (ii) the delays, action or inaction of any third party (including your contractors);
- (iii) the delays, action, operation, inaction, or failure of any third party service, software, or equipment;
- (iv) changes in the Scope of Services (whether requested by you, or required to cater for changes in technology or other circumstances);
- (v) any Force Majeure Event; or
- (vi) us exercising our rights under clause Error! Reference source not found., and if any of these events cause a delay, we may, by Written Notice to you, extend the delivery date by the same length of time or any greater period as we deem reasonably necessary.

### 5.2 Acceptance of Print Deliverables

(a) This clause 5.2 applies only to Print Deliverables.

(b) If we provide you with a proof of the Print Deliverable, we will not be responsible for any errors in the Print Deliverable which appeared in the proof and which were not corrected by you before you approved the proof.

(c) A proof will be approved if you:

- (i) confirm the approval in writing, including by email; or
  - (ii) on our online acceptance form.
- (d) The cost of any additions, alterations or corrections to the proof, after the proof has been approved will be treated as Out-of-Scope Services.

### 5.3 Rejection of Print Deliverables

(a) Subject to clause 5.2, you may reject the Print Deliverables if you reasonably determine that they are not to the standards specified in the Scope of Services.

(b) If you wish to reject the Print Deliverables, you must notify us of the rejection either:

- (i) within 7 days of delivery; or
- (ii) within 7 days of notification that the Print Deliverables are ready for collection.

### 5.4 Delivery of Print Deliverables

(a) We will notify you when the Print Deliverables are ready for collection.

(b) Subject to clause 5.4(c), you must collect the Print Deliverables from our premises, within 7 days of the notification in clause 5.4(a).

(c) If we have agreed to arrange for delivery of the Print Deliverables, you are liable for all freight or other postage costs of such delivery.

### 5.5 Risk of Print Deliverables

(a) The risk in the Print Deliverables passes to you:

- (i) if we deliver the Print Deliverables to you, at the time of delivery; or
- (ii) otherwise, at the time we notify you that the Print Deliverables are ready for collection in accordance with clause 5.4(a).

(b) If you elect to reject the Print Deliverables in accordance with clause 5.3, risk reverts to us when:

- (i) you notify us that the Print Deliverables are rejected; and
- (ii) if the Print Deliverables are in your possession, we receive those Print Deliverables.

(c) We are not liable for insurance, loss or damage to any Print Deliverables incurred while being delivered, in transit or which have been left at our premises.

(d) If you leave your property, including the Print Deliverables, at our premises for 6 months or more, we may retain or sell the property or Deliverables and retain the proceeds of sale as compensation for holding and handling of the property or Deliverables.

### 5.6 Acceptance of Digital Deliverables

(a) The following applies to any Deliverable which is a Digital Deliverable:

(i) upon delivery of a Digital Deliverable (whether at a particular stage of completion or upon final completion), it is your responsibility to review and test the Digital Deliverable to confirm they fulfil the Scope of Services and meet your specified requirements.

(ii) you may give us Written Notice within 14 days of delivery if you reasonably consider that the Digital Deliverable contains a Defect, clearly identifying the ways in which it does not meet the agreed Scope of Services. We will then correct the identified Defects to meet the agreed specifications, and re-present the Deliverable to you for acceptance within 14 days (or other period agreed between the parties).

(iii) the parties will repeat the process in clauses 5.6(a)(i) to 5.6(a)(ii) until the Deliverable meets the agreed specifications.

(iv) the Deliverable is deemed to be accepted if you confirm that you accept the Deliverable, or if we do not receive a Written Notice under clause 5.6(a)(ii) within 14 days.

(v) the parties acknowledge that delayed acceptance of a Deliverable will impact upon the delivery timeframe of all future Deliverables. As such, deadlines for all Deliverables will be extended by the same duration as final acceptance is delayed.

(b) Any changes you request to any part or stage of a Digital Deliverable once that part or stage has been deemed accepted (including changes to content) will be treated as Out-of-Scope Services, and we reserve the right to charge the Out-of-Scope Fee to those services.

## 6. Your Rights and Obligations

### 6.1 Instructions, equipment and materials

You agree to:

- (a) supply clear instructions regarding the scope and specifications of the Ser-

VICES, and respond to any questions about the scope and specifications of the Services promptly and clearly;

(b) respond in a timely manner if we bring an issue to your attention in relation to your software, equipment, data or network that affects the operation of the Services;

(c) provide all Client Materials, equipment, data or information necessary to provide the Services and specified in the Scope of Services or as agreed between the parties from time to time;

(d) keep us informed of any information or event relevant to the Services, including, but not limited to, details of any changes to key personnel, access codes or any equipment or software;

(e) provide us with unique administrator level login details and passwords, and remote access to your network so that we can carry out the Services. If you are unable to provide us with unique administrator level login details and passwords, the parties will negotiate an alternative arrangement;

(f) provide us on request with copies of all necessary software licences, licence keys and original media, to enable us to carry out the Services; and

(g) not do anything to damage our good standing, integrity, or reputation. Any disputes must be handled in accordance with clause 13.

### 6.2 Access authority

Where we require access to the Site or any location under your direction or control (for example, installing a building sign on a premises) to perform the Services, or to exercise any other rights under this agreement, you must provide or arrange:

(a) access and a safe working environment in compliance with all occupational health and safety laws; and

(b) for our employees or contractors to have adequate workspace, light, ventilation, electric current and outlets, internet and long distance telephone access as necessary when at the Site.

### 6.3 Warranties

(a) You warrant and undertake that:

(i) you and your representatives have all necessary licences and legal right(s) to permit and authorise us to provide the Services.

(ii) providing the Services in accordance with your directions will not contravene applicable laws including the Copyright Act 1968 (Cth), Trade Marks Act 1995 (Cth) and Competition and Consumer Act 2010 (Cth).

(iii) You are authorised to grant the licence in clause 9.1(b).

(iv) you and all of your employees and contractors maintain prudent and comprehensive insurance policies.

(b) You must provide adequate assurances of these warranties, including providing copies of any licences or insurance policies under clauses 6.1 and 6.3 upon request.

## 7. Payments

### 7.1 Payments

(a) You must pay the Upfront Fee (if any) in advance. We will issue an invoice for the Upfront Fee upon you signing this agreement. We will not order any materials from our suppliers until we have received the Upfront Fee in cleared funds.

(b) You must pay us the Fees as set out in the Schedule. We will issue an invoice for the Fees.

(c) In addition to the Fees above, we will issue a separate invoice for:

- (i) any fees for Out-of-Scope Services requested and performed under clause 3.5, payable fortnightly in arrears or otherwise as agreed.
- (ii) any expenses we incur on your behalf in the course of performing the Services, as specified in the Schedule;
- (iii) any travel time at our Travel Rate if we are required to travel to a site; and
- (iv) any pre-approved expenses if we are required to travel to a site more than 100 km from our offices, including travel time at current daily rates, and all travel expenses including flights, accommodation and meals (excluding alcohol) at cost.

### 7.2 Additional Fees for Printing Services

(a) In addition to the Estimate, we may charge:

- (i) fees for any preliminary work performed at your request;
- (ii) fees for additional work required to be done as a result of you changing your mind;
- (iii) fees for having to work from a poor copy;
- (iv) fees for work which involves tables or a foreign language and which was not notified to us when we prepared the Quote;
- (v) fees for additional work required to be done as a result of the author's corrections, including repagination or reformatting;
- (vi) fees for handling or storing material or equipment supplied by you for the purposes of carrying out the work;
- (vii) fees for changing or correcting any plates, film, bromides, artwork or any document including computer files supplied for the purposes of producing the Print Deliverables;
- (viii) freight costs and charges; and
- (ix) other charges, fees or expenses referred to in this agreement and not specified in this clause.

### 7.3 Further payment provisions

(a) Unless otherwise stated, each tax invoice:

- (i) is payable 7 days from the date of the tax invoice;
- (ii) may be sent by post or email.

(b) You are responsible for and must reimburse us for any transaction, processing, dishonour or charge-back fees issued by a financial institution or payment gateway in the course of making payment.

### 7.4 Fee disputes

(a) If you reasonably believe that an invoice contains an error, and you wish to dispute an invoice, you must:

- (i) notify us before the due date of the invoice;
- (ii) pay all undisputed fees on the invoice; and
- (iii) provide detailed information about any disputed fees.

(b) We will not suspend or terminate any Services for non-payment of the disputed fees while the dispute is being investigated.

(c) Our records are prima facie evidence of fees owing and paid.

### 7.5 Default in payment

If you fail to pay any invoice by the due date, but without prejudice to our other rights or remedies, until payment is made in full (including for any accrued interest), then:

- (a) we may immediately suspend work of any or all Services and provide you with a Notice of Default;
- (b) title and property in all Print Deliverables will not pass from us to you;
- (c) no licence or assignment of Intellectual Property is effected under clause 9;
- (d) we retain a lien over all equipment, materials, Deliverables, data and work in progress, including those owned by you in our possession and control; and
- (e) you are liable by way of liquidated damages for all amounts payable under

