



THE CLIENT

Form with fields: Full Legal Name, ABN / ACN, Entity Type (tick one), Postal Address, Email Address, Contact Person, Contact Phone. Includes a note: (referred to in this form as "you" or "the Client")

DECLARATION AND AGREEMENT

In consideration of Nick GreteLL Web & I.T. (referred to in this form as "Nick GreteLL Web & I.T.", "us" or "we") agreeing to perform the Work for you at your request, I, the Client or on behalf of the Client:

- 1. Agree to the below Terms of Trade; and
2. Declare that the information supplied in this form is correct.

Full Name: ..... Signed: .....

Designation: ..... Date: .....

By ordering any Work from us, you agree to these Terms of Trade to the exclusion of your terms (if any):

1. SCOPE OF WORK

- 1.1. These Terms of Trade apply to all work that we undertake for you from time to time, whether it be consultancy work, the production of a deliverable or anything else ("Work").
1.2. We will undertake such Work as we agree with you (including any contact appointed by you) in writing or verbally from time to time.
1.3. You can ask us to stop Work at any time for any reason. If you do ask us to stop any Work permanently, we will invoice you for what we have undertaken for you up until that point in time only.

2. FEE

- 2.1. You agree to pay us our Fee in return for us performing the Work.
2.2. In the absence of any agreement to the contrary, we will charge fees at our usual rates (which we will provide you if you ask and which we may change from time to time) on a time and materials basis.
2.3. If we agree to charge for Work on a retainer or a fixed fee basis, we will charge our Fee on that basis.
2.4. We will notify you if we have agreed to undertake Work for you on a retainer or fixed fee basis and the scope of the Work required to be undertaken exceeds the retainer / fixed fee parameters. In such circumstances we will charge for additional Work undertaken outside the retainer /fixed fee parameters on a time and materials basis.
2.5. Any estimate we provide is based on anticipated costs at the time and is for information purposes only, unless we have agreed in writing to be bound by a set price for the Work.
2.6. In addition to our fees, we may charge you disbursements for third party costs we incur on your behalf.
2.7. Unless we agree with you otherwise, all Fees are payable by you in Australian dollars and are plus GST (where applicable) and other taxes.

3. TERMS OF PAYMENT

- 3.1. We may require you to pay a deposit, being an advanced payment for the Work, before we commence the Work.
3.2. Payment for the Work (and any associated expenses and disbursements) is due 7 days following the date of our invoice

except where we have agreed in writing that other terms shall apply ("the Due Date").

- 3.3. If you do not make payment on the Due Date, you are in default and may be charged a Late Fee of 10% one time based on the total amount outstanding.
3.4. If payment is outstanding for more than 7 days from the Due Date, we may suspend performing any Work until the date of payment in full (subject always to clause 3.5).
3.5. All payments of Fees and disbursements must be made without set-off or deduction of any kind.

4. PERFORMANCE GUARANTEE AND EXTENT OF LIABILITY

- 4.1. We agree that we will:
(a) perform the Work with reasonable skill, care and diligence in a professional manner;
(b) endeavour to ensure that the Work is performed in accordance with any time frames agreed with you;
(c) liaise with you during the course of performing the Work in accordance with your reasonable requirements.
4.2. We will perform the Work to a standard that could reasonably be expected from a suitably qualified person with relevant experience. Given the nature of our work, this means that we cannot (and do not) guarantee that:
(a) our work will always be completely error-free; and/or
(b) our work will be fully secure from hacking.
4.3. If we have given you a time frame for completion of the Work, unless agreed in writing to the contrary such time frame is approximate only and is not deemed to be of the essence.
4.4. We exclude any and all implied warranties, conditions or obligations (including those under Australian Consumer Law), whether arising under statute, common law, equity or otherwise, to the maximum extent permitted by law.
4.5. To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms of Trade (including the above performance guarantee) or for any other reason, such liability is limited to an amount not exceeding the Fees paid to us by you in connection with any Work we have undertaken



for you in the immediately preceding 12 month period.

**5. WHAT YOU AGREE TO DO**

- 5.1. You agree that you will give reasonable assistance to enable us to perform the Work by:
- (a) giving clear instructions;
  - (b) promptly providing any information or content required from you for us to complete the Work;
  - (c) ensuring that the Work and products derived from the Work are fit for the purpose you intend to use them for and meet any appropriate statutory, regulatory, governmental and industry and environmental controls, standards or practices.
- 5.2. If we require website, or any form of account, access to perform the Work, said access shall be provided to us as soon as reasonably practicable. If you delay in providing us with such access as soon as is reasonably practicable, we reserve the right to charge you Fees on a time and materials basis for any additional time we spend on the Work as a result.

**6. INTELLECTUAL PROPERTY**

- 6.1. For the purposes of this clause the term "Intellectual Property" includes all intellectual property rights (including without limitation copyright, patent and design rights, drawings, documents, data, source code, ideas, procedures and calculations).
- 6.2. In respect of any Intellectual Property used in the performance of the Work:
- (a) all pre-existing Intellectual Property the subject of an Intellectual Property right resides with the owner as at the date of commencement of the Work (whether you or us);
  - (b) any new Intellectual Property will be dealt with in accordance with the balance of this clause 6.
- 6.3. If any Work is to be undertaken based on designs or any materials provided by you, you warrant that use of those designs and/or other material in the Work by us will not infringe any third party's Intellectual Property rights and you indemnify us against any loss, liability, costs and expenses in the event of any claim being made that the use of those designs or any materials provided by you in the Work infringes any ownership or Intellectual Property rights of any other person.
- 6.4. Unless we expressly agree otherwise in writing, and subject to clause 6.6 below, we are and will remain the exclusive owner everywhere in the world of all Intellectual Property rights and interests (including copyright and all other statutory and common law rights and interests) in the Work, and any other work performed by us for you, as first owner of those Intellectual Property rights and interests.
- 6.5. We shall retain exclusive worldwide ownership at all times of our artistic styles, methods of working, techniques, ideas, skills, and know-how.
- 6.6. You must not attribute the Work to anyone other than us or remove any of our trademarks, signatures, logos or similar from our Work.
- 6.7. Upon payment of all amounts owing to us in accordance with these Terms of Trade, we grant to you a perpetual, non-exclusive licence to make use of the product of any Work which we have specifically created for you for the purpose for which it was created.

**7. CONFIDENTIALITY**

- 7.1. For the purposes of this clause the term "**Confidential Information**" includes:
- (a) all information given by one party (or its advisers) to the other party or their advisers on a confidential basis;
  - (b) any information of a confidential nature which is obtained by one party as a consequence of us undertaking the Work; and
  - (c) the existence and the terms of this Agreement, in each case which is not in the public domain (otherwise than as the direct or indirect result of a breach of a confidentiality obligation of a party).
- 7.2. Each party must maintain as confidential at all times, and must not at any time directly or indirectly:
- (a) disclose or permit to be disclosed to any person;
  - (b) use for itself or for any purpose other than the purpose for which it was given; or

- (c) use to the detriment of another party, any Confidential Information, except:
- (d) as required by law or the rules of any relevant stock exchange on which the relevant party is listed;
- (e) as is already or becomes public knowledge, otherwise than as a result of a breach of any provision of this Agreement by the party disclosing or using that Confidential Information;
- (f) to our respective employees, contractors and advisers on a strictly "need to know" basis and on the condition that:
  - (i) they are made aware of and agree to abide by the terms of this confidentiality obligation; and
  - (ii) the disclosing party shall be responsible for any breach of such confidentiality obligation by such employee, contractor and/or adviser; or
- (g) as authorised in writing by the other party.

**7.3. We each agree to:**

- (a) take reasonable steps in the circumstances to ensure that no third party may access any Confidential Information we each hold in respect of the other; and
- (b) destroy (or procure the destruction of) any Confidential Information we hold in respect of the other upon receipt of a request to do so.

**8. PRIVACY OF INFORMATION****8.1. You authorise us:**

- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
- (b) to disclose information about you:
  - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
  - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms of Trade.

8.2. Notwithstanding clauses 7 and 8.1, unless you notify us in writing otherwise, you authorise us to use Work that we have undertaken for you as part of our client portfolio.

**9. MISCELLANEOUS**

- 9.1. **Non-solicitation:** You shall not solicit, employ or entice away or attempt to do so, any employee or contractor of ours without written consent from us. We will not solicit, employ or entice away or attempt to do so, any employee or contractor of yours without your written consent.
- 9.2. **Variation:** We shall be entitled at any time by notice in writing to you to vary any provision of these Terms of Trade and you shall be bound by such variation.
- 9.3. **Costs:** You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms of Trade.
- 9.4. **Termination:** Either party may terminate these Terms of Trade at any time by giving written notice to the other party.
- 9.5. **Assignment:** You must not subcontract or assign any of your rights, powers or obligations under these Terms of Trade.
- 9.6. **Force Majeure:** We shall not be liable for delay or failure to perform the Work if the cause of delay or failure is beyond our control.
- 9.7. **Survival:** Any other provision which by its nature is intended to survive the termination or expiration of these Terms of Trade will survive the termination or expiration of these Terms of Trade or completion of the Work.
- 9.8. **Governing Law and Jurisdiction:** The parties agree that these Terms of Trade shall be governed by Victorian, Australia law and the parties hereby submit to the exclusive jurisdiction of the Australian courts in relation to any matter arising in connection with these Terms of Trade or the provision of Work (or the failure to provide Work) by us to you.