

These Terms and Conditions apply to the services and deliverables described in the Proposal provided by Scorched Media.

For the purposes of this Agreement:

"Agreement" shall mean these Terms and Conditions together with the Proposal;

"Australian Consumer Law" means the Australian Consumer Law set out in Schedule 2 of the Competition & Consumer Act 2010 (Cth) as amended from time to time;

"Business Day" means a day on which the banks are open for general banking business in Queensland except Saturday, Sunday and public or statutory holidays;

"Client" means any individual or business entity named in the Proposal and/or the paperwork accompanying the Proposal and acceptance or otherwise accepting the Proposal including these Terms and Conditions;

"Content" means all materials, information, photography, writings and other creative content necessary to complete the service outlined in the Proposal.

"GST" means Goods and Services Tax payable under the GST Act

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth)

"Intellectual Property" means know-how, systems, manuals, trade secrets, copyright trademarks, eligible layouts and patents.

"Invoice" means the invoice for payment provided by the Contractor to the Client for the Works in whole or in part;

"Open Source Software" means computer software for which the source code and certain other rights normally reserved for copyright holders are provided under a software license that permits users to study, change, and improve the software.

"Services" means the services identified in the Proposal;

"Works" means the services provided by the Scorched Media to the Client.

## 1. QUOTATION

1.1. Scorched Media will provide the services as listed in the Proposal in exchange for receipt of payment set out in the Proposal.

1.2. The quote listed in the Proposal is valid for acceptance for a period of 14 days from the date of proposal and are otherwise subject to change.

1.3. Unless otherwise stated, the price for the Services is GST exclusive.

## 2. PRICE

2.1. The price payable by the Client to Scorched Media for Services is listed in the Proposal, which can be varied in accordance with this Agreement.

## 3. ACCEPTANCE

3.1. The following shall be deemed acceptance:

3.1.1. The Client returning the Proposal acceptance to Scorched Media with the Client's signature;

3.1.2. A written acceptance, whether by post, email correspondence, fax or other means which state that the Client accepts the Proposal;

3.1.3. Payment of the deposit as specified in the Proposal.

## 4. DEPOSIT

4.1. Scorched Media require a 50% deposit to be received prior to commencing the Works.

4.2. Once the deposit has been received and Scorched Media commence works, the 50% deposit is non-refundable.

## 5. PAYMENT

5.1. The Proposal outlines the cost of the Works. The fees are fixed and will only be altered if the specifications are changed.

5.2. Payments are to be made in the following increments:

5.2.1. 50% deposit paid prior to work commencing;

5.2.2. The remaining 50% is to be paid either prior to the website going 'live' or after a maximum of 60 days from commencement of development depending on which occurs first.

5.3. Should the Client fail to make payment for the services when they fall due, then the Client may, without prejudice to any other right or remedy of Scorched Media:

5.3.1. Be charged interest at a rate of 10% of the amount due charged daily.

5.3.2. Pay Scorched Media for any costs, expenses or losses, incurred by Scorched Media as a result if the Client's failure to pay Scorched Media all sums outstanding, including but not limited to debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

5.4. Once Scorched Media has received the Client's payment for services in full, the services will be handed over and publically accessible.

5.5. At the discretion of Scorched Media the following may apply:

5.5.1. Website design and development will not be made 'live' and publically accessible until full payment is received. It will remain as a development version until such time as payment has been received.

5.5.2. Design Services will be provided only in PDF version (not print) until full payment is received.

5.6. The Client acknowledges that the Client is solely responsible for the payment of domain registration and hosting set-up and fees.

## **6. CHANGE OF MIND**

6.1. Should the Client change their mind, the Client will be required to pay Scorched Media a reasonable amount

for the expenses incurred on the Client's behalf.

6.2. Scorched Media will advise the Client of the amount of work completed up to the time the Client changed their mind and will aim to reach an agreement on the amount payable.

## **7. COMMENCEMENT**

7.1. In providing website design services, Scorched Media will seek approval from the Client for a proposal design before commencing the Works. Once the Client has provided the approval to Scorched Media, the layout cannot be changed without Scorched Media provided a new Proposal to the Client including any additional fees.

## **8. ADJUSTMENT SERVICES**

8.1. Scorched Media can assist the Client with services not already identified in the Proposal. Should this be required a new agreement and attract an additional cost.

8.2. Service prices may be adjusted from time to time and will not necessarily be the same as set out in the current Proposal provided to the Client.

8.3. Any additional work outside the scope of the Proposal including small tasks will be charged at our hourly rate.

8.4. Given the fluid nature of the Online industry, if a Service that Scorched Media had offered to do is no longer effective, or no longer available, or there is another Service which is better than that originally quoted to the Client, Scorched Media may choose to change parts of the Services offered to the Client. If Scorched Media change parts of the service Scorched Media will advise the Client of the same. This will be at no extra cost or reduction to the Client.

## **9. VARIATIONS**

9.1. Once a draft has been provided to the Client, Scorched Media will provide two rounds only of final adjustments to the services by the Client. This is for

adjustments only and not significant changes.

- 9.2. The Client has seven (7) days to provide changes and comments after we send you the draft. If the Client does not provide a response, Scorched Media will proceed as if no changes are required.
- 9.3. Any changes the Client intends to make must be in writing and provided to Scorched Media. Each email received by Scorched Media will be considered as one Round.
- 9.4. Scorched Media will consider all written proposed variations supplied by the Client. The Proposal includes two rounds of adjustments only.
- 9.5. Any additional work requested which falls outside the scope will be charged at the hourly rates provided in the Proposal.

#### **10. CANCELLATION**

- 10.1. Scorched Media may cancel its obligation to supply the services under the Agreement by giving written notice to the Client, at any time before the deposit is received under clause 4.1.
- 10.2. Scorched Media may immediately cancel the Agreement if the Client:
  - 10.2.1. Is declared bankrupt; or
  - 10.2.2. Has a receiver, agent or manager appointed for all or substantially all of the property of the Client; or
  - 10.2.3. Enters into an arrangement or composition with its creditors; or
  - 10.2.4. Becomes insolvent within the meaning of section 95A of the *Corporations Act 2001* (Cth).
- 10.3. Scorched Media shall not be liable for any loss and damage from the cancellation of the Agreement under this clause.
- 10.4. The Client may cancel its obligations under the Agreement by giving written notice to the Contractor

at any time before the deposit is paid by the Client under clause 4.1.

- 10.5. The Client may immediately cancel the Agreement if Scorched Media:
  - 10.5.1. Is declared bankrupt;
  - 10.5.2. Has a receiver, agent or manager appointed for all or substantially all of the property of Scorched Media; or
  - 10.5.3. Enters into an arrangement or composition with its creditor.

#### **11. DELAY**

- 11.1. In the event that Scorched Media's works are delayed as a result of having to rely on a third party or an event outside of Scorched Media's control, Scorched Media will advise the Client of the delay and any revised completion times as soon as possible.
- 11.2. Should the delay be as a result of the Client failing to provide all necessary information as requested by Scorched Media, then 60 days after the website is ready to go live, the balance of payment will be due by the Client, regardless of whether the information has been provided by the Client or not.

#### **12. AUSTRALIAN CONSUMER LAW**

- 12.1. Any guarantees under the Australian Consumer Law which cannot be excluded by that statute or by any law are not intended to be excluded by the Agreement.
- 12.2. Subject to the Client's rights in relation to the services, under the Australian Consumer Law and to the fullest extent permitted by law, the Client agrees that Scorched Media will not be liable to the Client for any consequential loss including:
  - 12.2.1. Loss of profit or other economic loss;
  - 12.2.2. Direct or indirect or consequential, special, general or other damages; or

12.2.3. Other expenses or costs arising out of a breach of contract or any common law duty (including negligence) by Scorched Media, its agents or employees.

### **13. ABANDONMENT**

13.1. Scorched Media relies upon the Client to provide timely materials and responses to our requests for information;

13.2. If after repeated attempts to begin, continue or finalise the delivery of services, the client fails to participate or become unresponsive to our emails or phone calls for a period of 60 working days without explanation, the services will be cancelled.

13.3. Upon cancellation of the services due to abandonment, the client will pay us an amount equal to the greater of the deposit, or a reasonable amount for the expenses already incurred and work Scorched Media have completed at the time. If this is more than the deposit already received, Scorched Media will invoice the balance.

13.4. Should the services be terminated due to abandonment, Scorched Media will not and are under no obligation to provide any deliverables.

### **14. SCORCHED MEDIA WARRANTIES**

14.1. Scorched Media warrants that all services will be provided in a professional and competent manner.

14.2. Upon full payment of the services we will supply the following to the Client as agreed:

14.2.1. For web sites: the last back up of the site and associated data and ensure the website is 'live' and visible on the internet.

14.2.2. For social media services: upload and test the Clients campaign for use with the Client's database.

14.2.3. For design work: provide the work in a file format suitable for printing and future amendment.

14.3. Scorched Media will provide the Client with a copy of all information required to make use of the Services provided and be available for a maximum period of 15 Business Days after sending the Client a "How to Guide" (if any) relevant to your Services.

### **15. CLIENT WARRANTIES**

15.1. The Clients acknowledges that they are responsible for providing Scorched Media all content required to be used by Scorched Media in providing the Services. This is not applicable if the Clients has elected to proceed with the content creation service.

15.2. The Client warrants that they will provide all required information and materials and respond to requests from Scorched Media within 15 Business Days.

15.3. The Client acknowledges that should they fail to provide all information request by Scorched Media in the time frames advised, work on the Clients project will be suspended and the due date will be extended.

15.4. The Client warrants that the Client holds all necessary copyright and other permissions to use, publish, distribute or communicate the content you provide to us for the Services and that such content does not infringe upon the intellectual property rights of any other person.

15.5. The Client warrants that the Client will cooperate with Scorched Media to ensure services are completed in a timely and efficient manner.

15.6. The Client authorises Scorched Media to access the Clients hosting account, disk space, create databases and applications and submit pages of your web site to search engines and all other activities reasonably necessary

to complete the Services as agreed to in the Clients Proposal.

#### 16. INDEMNITY

16.1. The Client indemnifies Scorched Media against any claims, actions, loss or damage (including legal costs) arising directly or indirectly from any:

16.1.1. Errors or omissions in content;

16.1.2. Unauthorised use of copyright works or other intellectual property in relation to the Services;

16.1.3. Failure of software supplied to you;

16.1.4. Provision of services by us to you;

16.1.5. Loss of web site data.

16.2. The Client agrees to indemnify Scorched Media from any liability (including legal fees and costs), threatened or actual, arising from the use of information and content provided by you.

#### 17. OPEN SOURCE SOFTWARE

17.1. Scorched Media primarily use open source software and components to supply web sites and services to clients. Scorched Media do not charge a licencing fee on open source software.

17.2. In the event that a component is required to meet the client's special requirements, Scorched Media will advise the Client of the additional costs and request the Client's written approval before implementation. Scorched Media will invoice the Client for any additional purchases required to be made by Scorched Media.

17.3. All software and components not developed by Scorched Media retain the original licence and terms of use associated with that software. Scorched Media cannot assign any rights to the Client and the Client agrees to be bound by the original developer's licence terms.

17.4. Should Scorched Media be required to enter into agreements on

the Client's behalf, a copy of any such terms will be provided to the Client upon request.

#### 18. INTELLECTUAL PROPERTY

18.1. The Client acknowledges that they are responsible for managing any intellectual property complaint made in regard to any of the content or operation of the Services.

18.2. Scorched Media reserve the right not to publish content unless you are able to provide adequate proof of permission to use that material.

18.3. Scorched Media advise that they have all necessary rights to use the design work and software and any other materials used to provide the Services to you.

18.4. Scorched Media indemnify the Client from any liability (including legal fees and costs), threatened or actual, arising from the use of any materials created by Scorched Media and used in provision of the Services to the Client.

18.5. The Client agrees that all intellectual property rights in our proprietary software, any design, code or document created or discoveries made in the course of creating your web site or used to provide the Services to you, vest in Scorched Media upon creation.

18.6. Scorched Media grant the Client a perpetual, worldwide right to use that intellectual property only for the presentation and functioning of the Client's website. The Client does not have any right to use open sources software or our intellectual property for any other purpose.

#### 19. THIRD PARTY SERVICES

19.1. The Services Scorched Media provide rely upon the continued operation of online facilities that we use. Scorched Media will not be held liable for any third-party failures affecting the provision of our Services.

- 19.2. The Client Acknowledges that Scorched Media do not provide search engine optimisation (SEO) services and that third-party search engines may change their policies and systems at any time. Scorched Media cannot be held liable for fluctuations, changes or removal of your listing from search engine results.
- 19.3. The Client acknowledges that third party browsers and devices may change their policies and systems at any time which is out of Scorched Media's control.
- 19.4. Scorched Medias Services are aimed toward appropriate appearance on the most common browsers, being Chrome, Safari, Firefox and Explorer- as well as mobile capability. Scorched Media cannot guarantee that the Services will appear perfectly on every available device.
- 19.5. The Client acknowledges that if they enter into an agreement with a third party as a result of Scorched Media's recommendation, it is still the Client's responsibility to understand and negotiate their owns terms of agreement with the third party.
- 20. DISPUTE RESOLUTION**
- 20.1. Any disputes between parties arising from the performance of provisions of the Agreement and Proposal must be attempted to be settled between the parties within fourteen (14) days of notification of a dispute in writing from one party to the other party.
- 22.3. in the promotion of Scorched Media's business, including any original web site designs that the client may change in the future.
- 22.4. Scorched Media will retain copyright in any designs not approved by the Client. The Client may contact Scorched Media's office to purchase a licence to those designs.
- 23. JURISDICTION**
- 20.2. If a resolution cannot be reached within the above clause, then the dispute between Scorched Media and the Client may be referred to mediation if agreed by both parties.
- 20.3. The costs of any mediation are to be borne equally between the parties.
- 21. LIMITATION OF LIABILITY**
- 21.1. Scorched Media make no guarantees as to any improvement you may gain as a result of Scorched Media's services or any increase in business that may be generated for the Client through Scorched Media's services.
- 21.2. The client agrees that the total aggregate liability to Scorched Media for any claim made by the Client in respect of any service provided to the Client is limited to the total amount paid by the Client to Scorched Media for that service.
- 22. PROMOTION**
- 22.1. Where Scorched Media have provided web site Services the Client consents to Scorched Media creation of a credit and link in the footer of the Client's web site. The Client agrees to remove the credit and link in the event that the Client makes or authorises any other person to make substantial changes to your web site.
- 22.2. The Client consents to Scorched Media's use of the materials Scorched Media deliver to the Client as part of the Services, associated graphics and any unused ideas and development,
- 23.1. This Agreement and any other documents referred to herein are governed by the Laws of Queensland.
- 24. GENERAL TERMS**
- 24.1. The parties acknowledge that some of the information exchanged may be confidential. Scorched Media will only use information provided to provide the Service to the Client. The Client also acknowledges that any



information provided to them from Scorched Media must also be kept confidential.

- 24.2. Scorched Media confirm that any personal information collected by Scorched Media in the course of providing services will only be used to provide services to the Client and will not be shared.
- 24.3. Scorched Media may provide the Client with recommendations for third party services from time to time. The Client confirms that these are just suggestions provided and the Client should conduct their own due diligence enquiries.
- 24.4. The parties agree that any amendment to these terms must be

provided in writing and agreed by both parties.

- 24.5. The parties agree that the Client may only assign rights or obligations under these terms with prior written consent of Scorched Media.
- 24.6. The parties agree that should a clause in these Agreement be unenforceable, that term will be severed and the remaining terms will continue unaffected.
- 24.7. The parties agree that if the Client purchases Scorched Media's services and those services are provided to the Client, the Client agrees to these terms.

Please read this Agreement to ensure you understand the Terms. Your acceptance of our proposal including payment of deposit, indicates your acceptance of our full terms and conditions as covered above.