

Terms & Conditions

- a) This following Terms and Conditions apply to all Agreements entered into by and between Studio22 Pty Ltd located at 5/250 Oxford St, Leederville, WA 6007 ("Studio22") and the ("Client"), effective from the issue date. They cover all products and services supplied by Studio22 and the Client accepts them by instructing Studio22 to provide any product or service.
- b) Subject to clause 7e, all of the Intellectual Property contained in the products and services developed for the Client by Studio22, remains the property of Studio22. Studio22 grants a non-exclusive, non-transferrable, royalty free licence to the Client to access, use, customise, communicate and reproduce Studio22's Intellectual Property to the extent necessary for the Client to obtain the intended benefit of the product and services.

2. POSSESSION OF PRODUCTS & DELIVERY

- a) Once the application is deemed complete by Studio22 in accordance with this Agreement, and all payments have been received for said products, and in the case of a website, the site is ready to go live on the internet, the Client is deemed to have taken possession of the product.
- b) Whilst every endeavour is made to adhere to the scheduled timelines, there are sometimes mitigating factors that will inhibit Studio22 ability to deliver projects on time. These may include, amongst others, the client being unavailable to provide information and/or approval, the scope of requirements expanding in a project, and unforeseen matters regarding third party suppliers. In no case shall Studio22 be liable for any delay in providing any product or service.
- c) The Client must provide information, images and content required by Studio22 in a timely manner and in any event within the times set out in any Studio22 product or services quotation. If no time for provision is specified, the Client must provide such items within 15 business days of being requested to do so. Failure or delay by the Client in providing such items will be a breach of this Agreement.
- d) The Client must review and provide feedback and/or approval on all products or services delivered by Studio22 for the Client's review within 2 business days of request from Studio22. The Client acknowledges any that failure to respond is deemed approval by the Client. Studio22 has no obligation to proceed with any product or service until a response is received but may do so at its sole discretion.
- e) Any instructions from any member of the Client organisation may be relied upon by Studio22. It is the Client's obligation to ensure that only authorised members of its organisation provide instructions. Studio22 may require the Client to provide a single contact for all decisions and agrees to coordinate design decisions between the relevant parties in a prompt and professional manner so as to provide the feedback and revisions required within the required timeframes.
- f) The Client may make one round of amendments within the original brief unless otherwise specified in the Studio22 quotation. Any further amendments or material amendments outside of the initial brief or scope will be charged at Studio22's usual rates in addition to the quoted fee.

3. CONFIDENTIALITY

- a) During this Agreement, either party may have or may be provided access to the other's proprietary items or confidential information ("Confidential Information").
- b) Each party agrees to maintain the confidentiality of the other's Confidential Information in accordance with this provision and any separate nondisclosure agreement that expressly references the disclosure(s) between Studio22 and the Client. At a minimum, each party agrees that it shall not make the other's Confidential Information available to any third party without the written consent of the other and that title and ownership of the Confidential Information provided by one party to the other shall remain the exclusive property of that party who has the right to possess the Confidential Information.
- c) In no case shall Studio22 be liable for any gathering or use of third-party confidential information related to a Client website. The Client indemnifies Studio22 against any claim or liability in any way related to any Client website.

4. LIMITATION OF LIABILITY

- a) Studio22 will not be responsible or in any way liable for any pre-recorded, registered, patented or copyrighted sounds, music, text, images etc. that the Client provides or wishes to utilise. This is at the sole risk of the Client. The Client should seek independent legal advice if it is unsure. The Client indemnifies Studio22 against any claim or liability in any way related to claimed or actual breaches of third-party intellectual property.
- b) Whilst all care is taken with system security, Studio22 will not accept responsibility for loss of data or security breaches. Clients must make their own data and information backups at all times. Notwithstanding the above, Studio22 will backup a Client website hosted on its servers.
- c) Studio22 provides no guarantee of search engine registration, website functionality or statistics accuracy where the service is hosted externally.
- d) Studio22 and its directors, employees, agents, contractors and related bodies corporate, are not liable to the Client for any losses, damages, liabilities, claims and expenses (including but not limited to legal costs and defence or settlement costs) whatsoever, whether direct, indirect or consequential, arising out of or referable to Studio22's opinions or advice. Studio22's total liability to the Client is at all times limited to the amount received from such Client in the 12 months preceding any claim. In no case will Studio22 be liable for any indirect or consequential damage, loss or cost.
- e) If Studio22 supplies a faulty product or services (or any part of it) negligently or in breach of this Agreement, then the Client must give Studio22 the opportunity to re-supply the relevant part of the services to rectify the same.

5. TERMINATION AND CANCELLATION

- a) Studio22 may terminate your account at its sole discretion in the event of serious breaches such as activities of an illegal or fraudulent nature, or any activity considered not in keeping with the 'goodwill' of the service.
- b) These include but are not limited to:
- Spamming (sending unsolicited promotional electronic mail)
 - Uploading or storing of content that could be deemed 'NC' by the Australian Broadcasting Authority (ABA) or prosecutable under Australian Law. This includes things such as illegal software, software cracks and pornography.
 - Obscene material, fraudulent or deceptive statements, threatening, intimidating or harassing statements or material which violates the privacy rights or property

- rights of others, or is likely to be defamatory of another person or business.
- Studio22 reserves the right to terminate the connection/account at any time if the service is used in a way in which Studio22 reasonably deems inappropriate.
- c) Studio22 may also suspend or terminate provision of products or services at its sole discretion. In such case and where there is no breach of this Agreement by the Client, Studio22 will refund any fees received for products not provided or services not provided up to the date of termination.

6. DEFAULT

- a) If the Client fails to pay any amount owed within five (5) days of it becoming due and payable; or if the Client fails to observe, or perform any other provision of this Agreement required to be observed; or if a petition is filed by or against the Client under the Bankruptcy Act or any amendment thereto (including a petition for reorganization or an arrangement); or if a receiver is appointed for the Client or its property; or if the Client commits an act of bankruptcy, becomes insolvent, makes an assignment for the benefit of creditors, or offers a composition or extension of any of its indebtedness; or if the Client, without Studio22's prior consent, attempts to alter, modify, translate, decompile, disassemble, copy, sell, trade, transfer, encumber, pledge, or in any way dispose of the product or application; then Studio22 or its agents may exercise any one or more of the following remedies:
- Immediately cease to provide any further product or services.
 - Declare the entire outstanding amount of this Agreement, including all fees to the end of any services fixed term, immediately due and payable without notice or demand to the Client notwithstanding that fixed period services may not have been and will not be provided to such date.
 - To claim and recover from the Client an amount equal to the unpaid balance of any amounts due, or to become due, during the term of this Agreement as well as reasonable legal fees and other expenses incurred by Studio22 in an attempt to enforce the provisions of this Agreement.
 - To sue for and recover costs and reasonable damages for the Client's default.
 - To take possession of the website or application and restrict or remove Client access without demand or notice wherever the same may be located, with or without court order. The Client will have no claim against Studio22 for any loss, cost or damages occasioned by such retaking of possession of and the restriction or removal of Client access to such website or application.
 - To charge interest from the overdue date on all outstanding amounts at 2% per calendar month calculated daily and compounded monthly.
- b) If Studio22 takes possession or restricts website access, it shall not constitute a termination of this Agreement and shall not relieve the Client of its original obligations under this Agreement unless Studio22 expressly so notifies the Client in writing. Additionally, Studio22 shall have such other rights and remedies available at law by reason of the Client's default.

7. BRANDING

- a) Studio22 will commence branding projects according to the details specified in the brief provided to us or agreed to by the Client. If the details of the brief changes, this may naturally affect costs, resulting in the quoted fees and time frames being increased.
- b) Studio22 in the role of Brand Guardian, will ensure that all artwork to be committed to print, digital, signage, or broadcast medium is in alignment with overall brand objectives. The Client acknowledges that specific decisions on how to conduct any media campaign will be at Studio22's discretion and that it need not notify the Client of all details of such matters.
- c) Therefore, creative control rests with Studio22 in regard to finalised artwork. This includes press and radio advertising, TV broadcast, signage, digital media and printed media. All finalised creative concepts must be approved by the Client before production work commences. Final review and approval for all artwork/scripts, etc. is the responsibility of the Client. The Client is at all times liable for the accuracy of any information, including in the case of products and pricing. Studio22 will use best efforts to proof and check all design work however it has no liability for any error or departure from the brief for approved work. The deemed approval provisions of clause 2d apply here. In no case does Studio22 claim that any design or brand suggestion is fit for any particular purpose.
- d) Studio22 will use reasonable endeavours to search for possibly conflicting branding however in no case shall Studio22 be in any way liable for any claim by any third-party regarding breaches of their intellectual property rights. It is the responsibility of the Client to search for possible intellectual property conflicts with any design submitted by Studio22 for consideration. In case any such claim arises, Studio22 shall assist the Client to amend the design to overcome any such claims, where they are prima facie valid, at Studio22's then hourly rate.
- e) Notwithstanding clause 1b, the ownership of any design product shall vest in the Client upon payment in full of the fee.

8. WEBSITE

- a) Upon presentation and inclusion of all images and text and after all functionality has been installed (in terms of the signed Agreement) the site is deemed complete, and the Client will have fourteen days to advise of any changes. Failure to notify Studio22 within the fourteen days will result in the website being considered duly completed with all outstanding monies becoming immediately due and payable. The Client must provide information as set out in clause 2 above to avoid delays for Studio22 to complete their obligations. Studio22 will not be responsible for any delays created by the Client.
- b) Studio22 may charge additional fees for material changes or concept redesigns beyond the initial design concept. The Client acknowledges that variations to the initial quotation and any design brief agreed upon may not be feasible or able to be provided by Studio22. In such cases the Client is liable to pay the original quoted fee and Studio22 remains liable to provide the original product.
- c) Studio22 may access statistical data derived, images and branding from the Client's website and use it for its own purposes, including, but not limited to effectiveness analysis and promotion.
- d) Studio22 may promote (or not promote at its discretion) a Client's website for the purposes of Studio22's own marketing through appropriate means, including, but not limited to, the placement of the Studio22 logo and hyperlink on all pages and listing of the Client's website in a Studio22 directory.
- e) Studio22 provides no guarantee as to the time it will take to build the Clients

website unless expressly stated to the contrary on the quotation.

f) Studio22 will build web sites according to Web Standards as outlined and recommended by the W3C (World Wide Web Consortium). The web site should function across several platforms (PC, Linux and Macintosh) on the most common web standards compliant web browsers from time to time. Failure of the website to perform optimally on any platform or system other than those specified is not deemed a fault.

g) Studio22 provides no guarantee that web sites built will be 100% compatible with all mobile devices including smart phones and tablets unless the Agreement specifically includes the development of a responsive website.

h) The Client acknowledges that Studio22 may utilise subcontractors for these services. In all cases Studio22 will remain liable for the provision of the services and the product.

i) Studio22 will use reasonable efforts to provide additional support and updates for website product however it is under no obligation to do so and will not be liable for any failure of performance or security issues once the product has met the quoted specifications.

9. WEBSITE CONTENT AND CREATION

a) Clients may request one round of edits of content created by Studio22. Any additional edit requests will be charged at Studio22's then current hourly rate. This clause does not apply to Studio22 content errors.

b) Where Studio22 provides blogs as part of its services the Client must provide comments or approve content within 72 hours of receiving the draft. Failure to meet the deadline will be deemed approval and Studio22 may upload such approved content.

c) Upon request Studio22 will upload up to 20 of Client products to the Client web site. Additional product uploads (in excess of 20 products) as well as bulk product uploads may be arranged at additional cost and these costs will be quoted upon request.

10. SEO, ADWORDS & SOCIAL MEDIA ADVERTISING

a) Search Engine Optimisation ("SEO") results (increased traffic and higher rankings) can take many months to materialize as results are subject to many variables.

Studio22 will attempt to obtain the goals of the Client. The Client acknowledges that Studio22 makes no representation that the goals will be achieved. Studio22 recommends that the Client commence a paid advertising campaign Simultaneously, which can provide faster search results.

b) No postponement or holiday of SEO services will be allowed for fixed period agreements.

c) The Client must pay an advertising spend deposit equivalent to 1 months spend as stated in the quotation prior to the commencement of a SEO Campaign in addition to the monthly advertising fees in advance. The deposit will be refunded to the Client at the end of the Agreement provided the Client is not in breach of the Agreement.

d) Studio22 will charge management fees which will be billed monthly and must be paid by the Client via direct debit.

e) Client advertising spend must be paid for by the Client directly to the relevant advertiser or platform. Studio 22 is not liable for any claim or loss in any way related to the Client advertising order or spend.

f) It is the Client's responsibility to provide to Studio22 in writing any variation requested to the Clients monthly advertising spend for the following month.

g) Studio22 will remove all intellectual property associated with Studio22's SEO service upon cancellation of the search engine service by the Client. Studio22 will not be liable for any decrease in traffic or other changes in the Client website or online profile following SEO services termination.

h) Studio22 and its SEO services provide no guarantee of any nature to the client, with respect to search engine rankings, positioning, traffic and the resultant demand for, or sales of, the Client's products or services.

i) Any digital marketing accounts created by Studio22 remain the intellectual property of Studio22 and Studio22 reserves the right to retain control and remove Client access to these campaigns and to disempower any backlinks it may have purchased if the Client does not complete a 12-month SEO services term. This is in addition to Studio22's rights to receive the full 12 months fees for such campaign.

j) If the Client enters into a SEO services Agreement of less than 12 months duration, the Client must provide Studio22 with 90 days' prior notice for cancellation of the Agreement.

k) If the Client completes a 12-month Agreement and no further Agreement is entered into, the Client must give Studio22 30 days' notice before ending the agreement.

11. PAYMENT TERMS

a) Tax Invoice: This Agreement or the quotation constitutes a tax invoice upon the Client entering this Agreement which includes instructions from the Client to provide services or products.

b) Deposits: Upon the Client entering this Agreement the Client is bound to pay the quoted fees and no refund will be given. With regard to scoped projects, printing and or media bookings Studio22 will require a deposit prior to work commencing. Progress payments will then be invoiced consistent with delivery of project benchmarks or at an agreed monthly rate unless otherwise negotiated. Studio22 generally requires payment in advance for each stage of its products and services.

c) Web Hosting Monthly Subscription: The monthly charges for these services will commence on entering into of the Agreement, unless specifically stated. In the case of a Agreement renewal the first installment will commence 30 days after the Clients final payment on the existing Agreement. The Client may cancel any subsequent term by giving 30 days written notice prior to the commencement of that term.

The renewal will cover the same services as contained in this Agreement. The rate payable will increase by the annual CPI for each successive period. The payment method that forms a part of this Agreement will be used to process payments for any subsequent terms.

d) Once the Client's website goes live, Studio22 will provide website hosting, CMS upgrades, technical support and a dedicated account manager as part of the service.

e) Studio22 reserves the right to suspend the hosting service due to non-payment of any amount owing on this Agreement at any time subject to 14 days written notice. The Client holds Studio22 harmless and indemnifies Studio22 from all claims, costs and damages in any way related to any suspension or failure of its hosting services.

f) Refund and Cancellation Policy: All payments are non-refundable unless otherwise agreed by Studio22 in writing. It is the responsibility of the Client to ensure Studio22's products and services are suitable for their purposes. Studio22's only obligation is the

delivery of the products and services specified in the quotation and paid for by the Client. If the Client terminates the Agreement prior to its expiry, it will remain liable to pay the total remainder of the total fees for the entire Agreement period less any payments already made. The Client acknowledges that Studio22 encourages and provides them with a reasonable opportunity to obtain independent legal advice with respect to this Agreement.

g) Quotations provided by Studio22 are valid for 30 days unless withdrawn prior.

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a) Studio22 may assign the Agreement at its sole discretion by notice to the Client.

b) This Agreement, including the Schedules, comprises the entire Agreement between the Parties and no earlier representation or Agreement, whether oral or in writing, in relation to any matter dealt with in this Agreement will have any effect from the date of this Agreement. This Agreement may be executed in any number of counterparts; all counterparts, when taken together, constitute the Agreement.

c) The quotation is deemed to be part of this Agreement. If there is an inconsistency between this Agreement and the quotation, then any special condition, the other quotation details, and the general terms of this Agreement will prevail in that order to the extent of the inconsistency.

d) Each Party agrees that in the event any section or part thereof of this Agreement is held to be unenforceable or invalid then said section or part shall be struck and all remaining provision shall remain in full force and effect.

e) The failure, delay or omission by either Party to exercise any power or right conferred upon by this Agreement will not operate as a waiver of the power or right, nor will any single exercise of any such power or right preclude any other or future exercise of the power, or the exercise of any other power or right under this Agreement.

f) This Agreement is governed by the Laws of Western Australia.

g) Including is to be read as "including without limitation".