

Terms of Service

This document together with the attached engagement letter, proposal or statement of work and, where applicable, any subsequent letter, proposal or statement of work (**Engagement Document**), form the Contract between you, the client details in the Engagement Document (referred to **you and your**) and Rubilacx Pty Ltd trading as The Marketing Department ABN 21 109 648 393 (referred to as **we, us, our** and **TMD**). The terms defined in the any Engagement Document, proposal or statement of work have the same meaning in these Terms of Business.

1. Services

We will provide the services (**Services**) and deliver the deliverable items (**Deliverables**) which may include designing websites, logos, graphics creating design work, social media posts and providing services in photography, events, commercials, print media, films, advertising, and general marketing and creative services as described in the Engagement Document.

Our work will be based solely on the information provided, the circumstances made known to us and the assumptions set out in our correspondence. We rely on you bringing to our attention as soon as possible any changes in the information as originally presented as it may impact on our advice.

Changes in the law and in interpretations may take place before our advice is acted upon or may be retrospective in effect. Unless specifically stated in the engagement letter we accept no responsibility to inform you of changes in the law or interpretations affecting advice previously given by us.

Where acceptance of any Deliverables is required, the terms of such acceptance shall be set out in the Engagement Document.

2. Retainer Service

Where the Engagement Documents includes an on-going retainer based service, the following terms will apply:

You agree to engage us to provide the Services for the minimum initial period set out in the Engagement Document.

Unless other terms have been agreed to, full payment is required in advance as per the agreed monthly retainer fee, before any work is undertaken. Work undertaken outside of agreed scope of service under a retainer arrangement will be quoted and invoiced separately, as agreed upon in writing between you and TMD.

We will use our best endeavours to use the full budget allocated, however if the full amount is not spent by the end of the relevant period, you will not be entitled to a refund, nor will you be entitled to set off any unspent amounts against any future payments or services unless otherwise agreed in writing.

3. Customer Content and Materials

You must supply in the format that we require all required materials that you want us to use in the delivery of the Services, and all other content and materials that we reasonably request (**Client Content**) within 48-hours of such request.

You warrant that you are the owner of, or have the right to provide the Client Content and you indemnify us and our directors, agents officers and employees for any loss suffered including any third party claims a result of any breach of this warranty.

We will not independently verify the accuracy of such information and documents and we will not be liable for any loss or damage arising from any inaccuracy or other defect in any information or documents supplied by you.

4. Time Scale

We will use our best endeavours to carry out our obligations in accordance with the time scales set out in the Engagement Document or

as otherwise agreed. However, unless both of us specifically agree otherwise in writing, the dates contained in the Engagement Document or otherwise advised are indicative dates intended for planning and estimating purposes only and are not contractually binding.

All service fees are based on a reasonable time schedule, and may be revised to take into consideration your requested priority scheduling. Requested priority schedules that require overtime and weekend work may be subject to a 50% markup of our standard hourly rates. Overtime is defined as additional hours outside of normal business hours between 8.00am – 6.00pm Monday to Friday. We will advise you if overtime rates will be charged.

5. Changes to Services

Either of us may request changes to the services to be provided or changes to any other aspect of the Terms of Business but no such changes take effect unless agreed in writing. Both of us agree to work together to enable both parties to assess the impact of any requested changes on the cost, timing or any other aspect of the services.

6. Engagement Team

Where key personnel of TMD are named in the Engagement Document, we will use reasonable efforts to ensure that these people are available to provide the services for you. Where any changes are necessary, we will give you reasonable notice of the changes.

7. Reporting

We will report to you in accordance with the terms set out in the Engagement Document. You may make copies of any reports for your own internal use, but you must not provide the report or copies of it to any third party without first obtaining our written consent. Such consent will only be granted on the terms we deem appropriate which will include that we accept no duty or responsibility to any other party who may seek to rely on our report. In some cases, appropriate releases from third parties may be required.

8. Intellectual Property

Subject to any conflicting position in an Engagement Document, Intellectual property rights in all documentation, systems, materials, methodologies and processes brought to the assignment or created in the course of the providing the Services and the Deliverables shall remain and be vested in TMD.

Ownership of any finished content as part of the Deliverables will be transferred to you upon full payment of all issued invoices.

Where any Deliverables include any third party material, unless otherwise specified in an Engagement Document, such material will remain the ownership of such third party.

We grant to you a non-transferable, non-exclusive license to: (a) Publish one copy of the applicable Deliverable unless otherwise stated by us in an Engagement Document; and (b) Use and reproduce the Deliverables subject to the restrictions set out in this Contract.

You must not, without our prior written consent: (a) Adapt, create derivative works from or merge the template or other Deliverable; (b) Use the Deliverable for any purpose other than the specific purpose for which we have provided it; (c) reverse engineer, disassemble or decompile the Deliverable; (d) distribute, lend, resell, transfer, assign or sublicense the Deliverable, or allow any other person to use it except in the course of providing services to you; or (e) remove or attempt to remove any proprietary or copyright notices or any labels on the Deliverable.

The restrictions above do not apply in relation to Deliverables that are licensed to you under terms and conditions of third parties and the terms and conditions of that third party will apply.

We do not warrant that your use of the designs, materials or content produced by us in the course of providing the Services will not infringe any third party's intellectual property rights or any person's moral rights, but we will advise you if we become aware of any infringement.

You agree to allow us to use the Services provided, results and your data including website statistics for promotional and portfolio purposes, including case studies.

9. Fees

Fees for the Services will be charged on the basis set out in the Engagement Document. Where the Engagement Document does not state the basis on which our fees will be charged, our fees will reflect time spent and such other factors as complexity, monetary values involved, specialist input required and the urgency of the matter at our standard hourly rates. Goods and services tax (GST) at the prevailing rate will be added to and forms part of our fees. Our standard hourly rates may change from time to time.

Where we are engaged on a retainer basis, the retainer fees will be subject to fee annual price increase on 1 July each year at the rate of the greater of 5% or the consumer price index as then published by the Australian Bureau of Statistics.

Our total fees or rates and, where applicable, out of pocket expenses (our **Billings**) are based on the currently applicable GST rate (except where we have assessed that the services to be provided GST free). If this GST rate changes, our Billings will be adjusted to reflect the change.

10. Expenses

All charges are exclusive of expenses unless the Engagement Document states otherwise. We will charge you out of pocket expenses such as reasonable third party media expenses, stock images, fonts, photography, audio or video, advertising and media space, travel, subsistence and document handling costs (photocopying, printing, fax and courier, etc) incurred in connection with the Services. The charges will be calculated as the amounts incurred by us (net of any applicable GST input tax credit to which we are entitled) plus GST as applicable. Any special expense engagements will be agreed and set out in the Engagement Document.

11. Payment of invoices

Unless specifically agreed otherwise, your obligation to pay us fees and expenses to which we are entitled, will not arise until we have issued a fee account to you. Where an amount for GST is stated to be a component of the fees and expenses, our fee account will comply with the law specifying what is a "tax invoice" for GST purposes.

Our invoices will be issued on a monthly basis or as set out in the Engagement Document. All invoices will be due for payment within 14 days of issue. We retain the right to charge a commercial rate of interest on accounts which are overdue by more than one month.

12. Term and Termination Duration of Contract

This Contract will apply from the commencement date stated in the Engagement Document, if any, or where no commencement date is specified from the date of acceptance of the Contract as specified in the Engagement Document and shall continue until Terminated.

13. Termination

The Contract may be terminated by either party provided 30 days written notice of such termination is given.

Either party may terminate by notice with immediate effect if (a) the other party fails to materially perform or observe any term of this Contract and such breach is either not capable of cure or is not cured within: (i) in the case of failure to pay amounts due under this document, 10 business days after service of notice from the other party citing the relevant breach; or (ii) in all other cases, 20 business days after service of notice from the other party citing the relevant breach; or (b) is or becomes insolvent (which shall include the party being unable to pay its debts as and when they fall due, appointment to the party of administrator, receiver, controller (as defined in the Corporations Act 2001 (Cth)) or liquidator, entry by the party into a compromise or arrangement with, or assignment for the benefit of, any of the party's members or creditors or any analogous event."

14. Confidentiality

(a) Each party will treat, and ensure that their employees, contractors and agents treat, as confidential, all information, data, documentation, computer facilities (including software or technology embedded in the software), trade secrets (including information relating to financial position, technical matters, internal management, policies or strategies), and any other material whether owned or used by or licensed to the disclosing party obtained from the other party in connection with this Contract: (i) about that party or its related entities or its customers, suppliers employees, contractors or its business; (ii) regarding the terms of this Contract, or the commercial arrangements between the parties; (iii) which is by its nature confidential or which is designated as confidential by that party; or (iv) which any of the parties knows, or ought to know, is confidential, whether obtained before, on or after the date of the Contract which is not in the public domain at the time the information was obtained from the disclosing party (**Confidential Information**).

(b) The party who receives the Confidential Information must not, without the written consent of the other party: (i) use it other than in performing its obligations or exercising its rights under this Agreement; or (ii) disclose it to any person except its employees, legal advisers, auditors, contractors and consultants, and then only to those who need to know that information for the purpose of performing its obligations or exercising its rights under the Contract.

(c) Neither party will be in breach of this clause where the: (i) disclosure is required by law, a regulator or the rules of the stock exchange; (ii) Confidential Information is in the public domain through no fault or actions of the recipient, its employees, contractors, or agents; or (iii) Confidential Information was received by the recipient on a non-confidential basis from a third party who was not prohibited from disclosing it.

(d) These obligations of confidentiality survive termination of our engagement and this Contract.

(e) To afford the maximum protection to your confidential interests, all employees and contractors of TMD are employed or engaged under a contract which contains a clause strictly forbidding the unauthorised disclosure of information.

15. Liability

(a) We will use reasonable skill and care in the provision of the Services you as set out in the Engagement Document.

(b) To the extent permitted by law, TMD excludes all warranties, conditions or terms, other than those expressly set out in these terms and conditions including, but not limited to, all warranties, conditions or terms implied in fact or by law. Nothing in the Contract has the effect of excluding, restricting or modifying any non-excludable statutory condition, warranty, guarantee, right, remedy or other benefit that is preserved for you by the Competition and Consumer Act 2010 (Cth) (or any other legislative provision).

(c) Where we are not entitled to exclude a warranty, condition or term implied in fact or by law, and to the extent permitted by law, TMD's liability for breach of any such warranty, condition or term is limited to: (i) in the case of services, at our option, either the resupply of the Services or payment of the cost of having the Services resupplied; and (ii) in the case of documentary deliverables or materials, at the option of TMD, either the resupply of the deliverables or materials or payment of the cost of having the deliverables or materials resupplied.

(d) In all other instances, the total aggregate liability of TMD to you for loss or damage, caused by, or resulting from, or in relation to, the Services, including whether arising from breach of contract, negligence, or any other tort, in equity or otherwise, and whether or not TMD was advised of the possibility of such loss or damage, is limited (to the extent permitted by law) to the amount disclosed in the Engagement Document.

(e) To the maximum extent permitted by law, TMD excludes all liability for any indirect, incidental or consequential expenses, losses, damages or costs (including, without limitation, loss of profits or revenue, business interruption, loss of data, or failure to realise anticipated savings or

benefits) whatsoever incurred by or awarded against you arising in any way out of or in relation to this contract (including as a result of the negligence of TMD or any third party).

(f) The parties agree that, where the Professional Standards Act 1994 (NSW) (the Act) applies to limit the liability of TMD, it overrides any clause in these terms and conditions that provides for a limit of liability in excess of the amounts provided by the Act, but does not override any clause that provides for a limit of liability below the amounts provided by the Act.

(g) You agree that if you make any claim against us for loss as a result of a breach of our contract, and that loss is contributed to by your own actions, then liability for your loss will be apportioned as is appropriate having regard to the respective responsibility for the loss, and the amount you may recover from us will be reduced by the extent of your contribution to that loss.

16. Indemnity Against Third Party Liability

You shall indemnify and hold us and our directors, employees and contractors harmless from and against any loss, expense, damage or liabilities (or actions that may be assessed by any third party) that may result from any third party claims arising out of or in relation to the provision of the services or any use by you of any deliverable item under this engagement and will reimburse TMD for all costs and expenses (including legal fees on a solicitor client basis) incurred by TMD in connection with any such action or claim.

17. Insurance

(a) We are responsible for holding and maintaining any necessary insurance in relation to the Services including, but not limited to, workers' compensation insurance, employers' liability insurance, public liability insurance and any other insurances required by law or regarded as sound commercial practice.

(b) We will provide you on written request, with evidence of the terms and currency of the insurances referred to in this clause.

18. Documents

It is our practice to destroy documents belonging to us after they are more than seven years old. Your acceptance of these terms includes your consent for us to destroy any documents that strictly belong to you which have been filed amongst our own papers.

We may use an electronic document management system and all documents received from clients are scanned and stored electronically. Your acceptance of these terms includes your consent for us to destroy any hard copy documents received from you.

19. Communications

(a) During our performance of the Services we may wish to send messages and/or documents to each other by e-mail. As e-mail carries with it the possibility of inadvertent misdirection, or non-delivery of confidential material, unless you notify us otherwise you consent to the use of e-mail in accordance with clause 11.2.

(b) Where messages are sent by e-mail, we will adopt the following procedures and require you to do likewise: (i) If sending a confidential e-mail message, the sender will indicate if a response is not wanted in an electronic form. All risks connected with sending by e-mail commercially sensitive information relating to your business are borne by you and are not our responsibility. If you do not accept this risk, you should notify us in writing that e-mail is not an acceptable means of communication; and (ii) Both parties will carry out procedures to protect integrity of data, in particular, it is the recipient's responsibility to carry out a virus check on any attachments before launching any documents, whether received on disk or otherwise.

20. Exclusivity

We will not be prevented or restricted by anything in this Contract from providing services for other clients.

21. Privacy of Personal Information

Disclosure by you of personal information to us in the course of our engagement is subject to the Privacy Act 1988 ("The Privacy Act"). Accordingly, the Services are provided on the basis that you will only disclose personal information about an individual to us (a) for a purpose related to the performance of the Services; (b) provided you have made all disclosures required under the Privacy Act; (c) provided you have obtained any consents required under the Privacy Act; and (d) provided to do so would not otherwise breach the Privacy Act.

As we rely on you to fulfil these obligations you will indemnify TMD, its partners and staff, against any claim, loss or expense resulting from your failure to make any disclosure or obtain any consent required under the Privacy Act or otherwise to comply with the Privacy Act.

If the performance of the Services requires a third party to supply personal information to us on your request, it is your obligation to ensure that the third party complies with clauses 19(a) to (d) above and you will indemnify us against any claim, loss or expense resulting from that party's failure to do so, or to otherwise comply with the Privacy Act.

22. Restraint

(a) In order to protect the business of TMD, you must not (without our prior written consent) during the term of this Contract, and for a period of 2 years after the expiration or termination of this Contract, directly or indirectly either on its own account or for any person, business, company or other organisation: (i) solicit or endeavour to solicit or entice away from TMD any director, manager or employee, consultant or contractor of TMD whether or not such person would commit any breach of their contract by reason of leaving the service of TMD; (ii) employ or engage under as contractor any person who has during the continuance of this Contract been a director, manager or employee of or consultant or contractor to TMD and who by reason of any such position is or may be likely to be in possession of any Confidential Information, or any trade or business secret relating to the business of TMD or the business of any TMD client; (iii) interfere or seek to interfere with the relationship between TMD and our customers, suppliers, contractors and employees.

(b) If a restraint under this clause 22 is void for unreasonableness or for any other reason; and would be valid if part of the wording was deleted or the period or area was reduced; the restraint will apply with the modifications necessary to make it effective.

(c) Any breach of this Clause 22 by you will incur a fee in the amount equivalent to any replacement cost as incurred by TMD.

23. General

(a) Entire Agreement

This Contract comprising the Engagement or Confirmation Letter and Terms of Business forms the entire agreement between us relating to the services. It replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral.

(b) Engagement Letter to take Precedence

In the event of any conflict between these Terms of Business and the Engagement, the Engagement Document will take precedence.

24. Assignment

Neither party may, nor have the power to, assign or otherwise deal with its rights or obligations under this Contract without the prior written consent of the other party acting reasonably.

(e) Force Majeure

Neither of us will be liable to the other for any delay or failure to fulfill their obligations under this Contract to the extent that any such delay or failure arises from causes beyond their control, including but not limited to fire, floods, acts of God, acts or regulations of any governmental or supranational authority, war, riot, terrorist activities, strikes, pandemics, lockouts and industrial disputes.