

2022

WEBSITE TERMS & CONDITIONS

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TERMS & CONDITIONS

1. Supplier Services

- (a) In consideration of the payment of the Service Fee, the Supplier will provide the Services to the Customer in accordance with this Agreement.
- (b) The Supplier will provide the Maintenance Services for 30 days following website completion covering basic plugin and fault fix due to built process.
- (c) The Supplier will provide the Additional Services, where required by the Customer such as hosting and maintenance upon agreement for additional services post building phase.

2. Development Specifications

- (a) The parties will use reasonable endeavours to comply with each Development Phase within the timeframes specified in the development plan.
- (b) Within 7 days of the Supplier becoming aware of a delay in completing any Development Phase it will notify the Customer in writing of the cause of the delay and the estimated date of completion.
- (c) Where the Supplier provides notice in respect of a delay under clause 4(b) above, the Customer must grant the Supplier an extension of time for completion of any Development Phase.

3. Development Phases

- (a) If the Customer requires any changes during the term of this Agreement to the scope and nature of the Services to be provided, or the elements of the Website which the Supplier advises require additional time, material or resources to be provided by the Supplier, such changes will occur as follows:
 - (i) the Customer will notify the Supplier of any changes it requires;
 - (ii) following notification, the Supplier will provide the Customer with written notice of:
 - (A) the changes required to the Development Specifications;
 - (B) the Additional Services required by such changes; and
 - (C) the Additional Fees required to undertake such Additional Services; and
 - (iii) if the Customer agrees to:
 - (A) the changes to the Development Specifications;
 - (B) the Additional Services; and
 - (C) the Additional Fees.
- this Agreement will be considered varied to include such changes as set out in the notice provided by the Supplier pursuant to this clause.

4. Development Phases

- (a) The Supplier will perform the Acceptance Tests under the supervision of the Customer at its own cost and, within 7 days of completion of each Development Phase and in accordance with the development plan.
- (b) If the Website materially complies with the Acceptance Tests at a Development Phase, the Customer must issue a written acceptance notice for that Development Phase within 7 days of completion of the Acceptance Tests for the relevant Development Phase.
- (c) If the Customer notifies the Supplier, within 7 days of completion of the Acceptance Tests for the relevant Development Phase, that the Website is materially non-complaint with the Acceptance Tests at a Development Phase, the Customer will provide written notice to the Supplier and may:

- (i) set a new date for carrying out further tests on the Website on the same terms and conditions;
 - (ii) accept the Website subject to conditions; or
 - (iii) reject the Website for non-conformance with this Agreement and terminate this Agreement in accordance with clause 5.
- (d) If the Customer does not provide notice to the Supplier in accordance with clause 5(b) or 5(c) above then the relevant Development Phase will be deemed to be accepted by the Customer.

5. Termination

- A party may terminate this Agreement by written notice to the other if any of the following events occur in respect of the other party:
- (a) a material breach of this Agreement which is not remediable or if capable of remedy, where the other party fails to remedy within 7 days of written notice; and
 - (b) an insolvency event occurs, other than an internal reconstruction with notice to the other party.
- (c) If this Agreement is terminated or expires for any reason, then, in addition, and without prejudice to any other rights or remedies available:
- (a) the parties are immediately released from their obligations under the Agreement except those obligations listed in the scope of work and any other obligations that, by their nature, survive termination;
 - (b) each party retains the claims it has against the other;
 - (c) the Customer must immediately pay all outstanding Service Fees; and
 - (d) the Supplier is entitled to suspend the Customer's access to the Website and or remove the Website from the internet.

6. Payment

- (a) The Customer will pay the Service Fee as set out in Schedule 5 and any Additional Fees incurred under this Agreement.
- (b) The Supplier will provide the Customer with an invoice following acceptance of this Agreement setting out the Service Fee, any Additional Fees and any applicable Software Licence Fee. The Customer must pay the Supplier the amounts set out in the invoice within 7 days of the date of invoice.
- (c) The Customer acknowledges that any alteration or amendment to the timing of a Development Phase may necessitate an amendment of the timing for subsequent Development Phases. The Customer further acknowledges that an alteration or amendment of the Development Specifications may, in addition to necessitating an amendment to the timing of the Development Phases, entitle the Supplier to make an additional charge.
- (d) If the Customer disputes the whole or any part of the amount claimed in an invoice submitted by the Supplier pursuant to this Agreement, the Customer will pay the undisputed portion on the due date. The dispute regarding the remainder may be referred to the dispute resolution procedure prescribed by this Agreement. If it is subsequently resolved that a further amount is payable, the Customer will pay that amount together with interest at the rate of 10% per annum.
- (e) All fees set out in this Agreement are exclusive of all taxes, including any goods and services tax (GST).



TERMS & CONDITIONS

7. Liability

- (a) To the full extent permitted by law, the Supplier excludes all liability in respect of loss of data, interruption of business or any consequential or incidental damages (including loss of sales).
- (b) In respect of any claim between the parties under or in connection with this Agreement, the parties agree that to the maximum extent permitted by law, the operation of Part 1F of the Civil Liability Act 2002 (WA) or of any laws having a similar effect in the Commonwealth and other states and territories of Australia with respect to proportionate liability, are excluded and have no application or effect.
- (c) The Supplier's total aggregate liability for all claims relating to this Agreement is limited to \$1,000.
- (d) Either party's liability for any claim relating to this Agreement will be reduced to the extent to which the other party contributed to the damage arising from the claim.
- (e) This Agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, guarantees, conditions or obligations. If such legislation applies, to the extent possible, the Supplier limits its liability in respect of any claim to, at the Supplier's option:
- (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

8. Warranties

- (a) Each party warrants that:
- (i) the execution and delivery of this Agreement has been properly authorised;
 - (ii) it has full corporate power to execute, deliver and perform its obligations under this Agreement;
 - (iii) this Agreement constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy;
 - (iv) this Agreement does not conflict with or result in the breach of or default under any provision of its constitution, or any material term or provision of any law or regulation to which it is a party or a subject or by which it is bound; and
 - (v) there are no actions, claims, proceedings or investigations pending or threatened against it or by it of which it is aware, and which may have a material effect on the subject matter of this Agreement.
- (b) In addition to the warranties provided in clause 8(a), the Supplier warrants that:
- (i) it will exercise reasonable skill, care and attention in providing the Services to the Customer in accordance with this Agreement; and
- the Website will perform substantially in accordance with the Development Specifications.

9. Indemnity

- (a) The Customer unconditionally and irrevocably indemnifies the Supplier against any and all demands, claims, suits, actions, damages, liabilities, losses, costs, and expenses which may be made or brought against or suffered or incurred by the Supplier.
- (b) The Customer will pay to the Supplier on demand any costs or expenses (including legal costs and out-of-pocket expenses) which may be incurred in, or in connection with this Agreement.

10. Maintenance

If the Customer wishes to obtain any additional Maintenance Services (Additional Maintenance Services) it must request these from the Supplier and, if the Supplier agrees to provide such Additional Maintenance Services, the Supplier's standard rates for such Additional Maintenance Services will apply, as set out in the Supplier's website at www.brandguruagency.com as updated from time to time. Refer to quote for maintenance pricing.

11. Confidentiality

- (a) A party must not, without the prior written consent of the other, use or disclose the other party's Confidential Information unless expressly permitted by this Agreement or required to do so by law or any regulatory authority.
- (b) A party may:
- (i) use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights under this Agreement; and
 - (ii) disclose the Confidential Information to its personnel or advisers to the extent necessary for them to know the information for purposes related to this Agreement, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.
- (c) Each party must implement and maintain effective security measures to prevent unauthorised use and disclosure of the other party's Confidential Information whilst it is in the receiving party's possession or control.
- (d) Each party must return, or at the other party's option destroy, all Confidential Information of the disclosing party in the receiving party's possession or control, on the earlier of the Supplier's request or on termination of this Agreement for any reason.

12. Acknowledgments

- The Customer acknowledges and agrees that:
- (a) the Supplier may appoint sub-contractors to perform Services under this Agreement;
 - (b) the Supplier will use third party software and third party coding to develop the Website;
 - (c) Mail Boxes Etc. Australia is the owner of the domain name for the Website; and
 - (d) Mail Boxes Etc. Australia assumes all risks on the Website.

13. Dispute resolution

Any dispute or difference arising in connection with this agreement will be submitted to arbitration in accordance with, and subject to, the Rules for the Conduct of Commercial Arbitrations (or equivalent) of (ABN 69 008 651 232). During such arbitration, both parties may be represented by a duly qualified legal practitioner.

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MARKETING PLAN
PITCH PROPOSALS & PRESENTATIONS
CONSUMER GROUP PROFILING
TRADEMARK REGISTRATION
DIGITAL STRATEGY
WEB DEVELOPMENT
ERP SYSTEMS
BRANDING DESIGNS
BRANDING STRATEGY
PRODUCT DEVELOPMENT
PACKAGING DESIGNS
ELECTRONIC DIRECT MAIL AUTOMATIONS IN
MARKETING
MARKETING BUDGETS
SALES FUNNEL MARKETING
BUSINESS DEVELOPMENT
SEO & GOOGLE ADWORDS
MARKETING TRAINING (UPSKILL)

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