



TERMS OF TRADE

Important

This document contains the standard terms of trade governing the provision of services by **Metropolis Agency Pty Ltd** (ABN 52 103 294 417) of Suite 2, Level 2, 7 Bridge Street, Sydney NSW 2000 ("Metropolis"). Please read it carefully as these terms and conditions, together with the information in each Project Estimate or Media Schedule, will form a legally binding agreement between The Client and Metropolis.

1) Definitions and Interpretation

- a) In this Agreement:
 - i) **Allowance** means any travel, accommodation or other out-of-pocket expense to be incurred by Metropolis associated with the performance of the Services, including, but not limited to, any such allowances as specified in a Project Estimate and approved by The Client in writing. (All items over \$200 must be included on a Project Estimate.)
 - ii) **Background Material** means any Material owned by, or licensed by a third party to Metropolis and used by Metropolis for the purpose of providing the Services.
 - iii) **Concepts** mean any preliminary ideas, proof of concepts and samples that may be provided by Metropolis as part of the Services.
 - iv) **Client Alterations** means additional Services that may be required to be provided by Metropolis in circumstances contemplated by clause 2)b),
 - v) **Client Material** means any Material provided to Metropolis by The Client (or at The Client's direction) in connection with the Services, including any Material licensed by a third party to You.
 - vi) **Fees** mean the fees as set out in the Project Estimate for the Services, and as applicable in accordance with the invoicing terms set out in The Schedule, and includes any additional charges for time and materials for Client Alterations.
 - vii) **Intellectual Property** means any copyright (including any neighbouring rights), trademarks (whether registered or unregistered), trade secrets, Project, drawings, patents, secret processes, business or domain names, Moral Rights or other similar proprietary rights and also includes any rights to the registration of those rights, whether created, formed or arising before or after the date of this Agreement in Australia or elsewhere.
 - viii) **Material** includes documents, reports, agreements (including draft agreements), data, information, software, tools and methodologies, fonts, computer files, Project, graphics, logos, artwork, know-how, templates or other material of any sort and in any form, created by Metropolis as part of a Project and accepted by The Client.
 - ix) **Moral Rights** means moral rights as defined in the *Copyright Amendment (Moral Rights) Act 2000*.
 - x) **Project** means any project as described in the relevant Fee Estimate or Media Schedule and includes the final designs, artworks, graphics, logos, trademarks, brand assets, digital assets, know-how, templates,

media plans or any other materials of any sort and in any form created for The Client by Metropolis as part of a project under this Agreement, including any new or revised Trade Marks, but does not include anything created by Metropolis as part of the Services which was not accepted or chosen by The Client.

- xi) **Project Estimate** means a quote from Metropolis to The Client for the provision of Services in accordance with the terms and conditions of this Agreement.
- xii) **Services** means the services set out in a Project Estimate or Media Schedule (including any appendices or amendments) to be provided by Metropolis, from time to time, and includes the creation of the Project, design concepts, advertising creative, media services and website development.

2) **Services**

- a) Metropolis will provide the Services to The Client:
 - i) with the degree of professional care, skill and diligence to be expected of a competent professional agency experienced in carrying out services of the same or similar nature and; and
 - ii) in accordance with any timeframe agreed between The Client and Metropolis.
- b) Metropolis will make commercially reasonable efforts to adhere to The Client's brand and content direction. If The Client's feedback for a Project departs in a significant manner (as determined by both parties, acting reasonably) from The Client's original scope of Services, Metropolis may charge additional fees for time and materials for such alterations at the rates specified in the Project Estimate, and if no rates are specified then at Metropolis' current rates, provided that approval is obtained from The Client. Metropolis will provide an updated scope of the additional services or alterations that are required to be undertaken and a reasonable estimate of those additional fees which may be incurred.
- c) The Client must check all artwork proofs and notify Metropolis in writing of any errors prior to any material deadline.
- d) Metropolis will provide adequate time for The Client's review of the artwork proofs or design before any material deadline. Metropolis reserves the right to adjust supplied material deadlines to ensure material is delivered to the publication on time.
- e) Metropolis takes no responsibility for advertisements that are delivered to Metropolis after the material deadline, where the delay is caused by The Client or your architects, designers, builders and other consultants.

3) **Project Estimates and Media Schedules**

- a) Subject to 9)f), costs on Project Estimates and Media Schedules are valid for 30 days.
- b) All Project Estimates and Media Schedules assume the accurate and timely delivery of design details, specifications, other information and approvals by The Client and The Client's architects, designers, builders and other consultants, when requested by Metropolis as appropriate.
- c) Incorrect detail and/or delays in the provision of the above can impact Metropolis' ability to meet timelines and may also increase the costs of the work required.
- d) Therefore The Client:
 - i) takes all responsibility for managing its architects, designers, builders and other consultants and ensuring

- that design details, specifications and other information are delivered within the agreed timeframe; and
- ii) acknowledges that Metropolis cannot be held responsible for any delays in project timings or increased costs associated with late or inaccurate information provided by The Client to Metropolis; and
 - iii) acknowledges Metropolis right to re-estimate to cover any increased costs caused by the above, prior to these costs being incurred.

4) Approvals and Cancellations

- a) All approvals of Project Estimates, Media Schedules and final artwork must be in writing, or by an agreed electronic process.
- b) All cancellations or alterations to an approved Media Schedule must be advised in writing, or by an agreed electronic process. No verbal alterations will be accepted. Material and cancellation deadlines are to be adhered to at all times and, where Metropolis is unable to cancel a previously approved booking in time, The Client will remain liable for any costs incurred.
- c) Where a Project or part of a Project is postponed, but Metropolis is unable to postpone a previously approved booking due to its obligations to the supplier, Metropolis will be entitled to invoice The Client in accordance with the original schedule. Metropolis will make its best efforts to negotiate with the supplier for The Client to receive fair value for any amounts charged under this clause, but this cannot be guaranteed.
- d) Where a Project or part of a Project is cancelled, postponed or subject to unreasonable delay, Metropolis is entitled to charge for any work performed and costs incurred up until the date of cancellation, postponement or delay.

5) Invoicing and Payment

- a) In consideration of Metropolis performing the Services, The Client will:
 - i) pay to Metropolis the Fees; and
 - ii) reimburse Metropolis for any approved Allowance.
- b) Metropolis will issue an invoice (or invoices) in respect of the Services in accordance with the invoicing terms set out below and in Schedule A annexed to this Agreement.
- c) Subject to Metropolis being able to obtain Credit Insurance on the specific legal entity to be invoiced, Metropolis, at its sole discretion, will provide 30-day credit terms, in which case, unless otherwise agreed, the following terms will apply:
 - i) all invoices are due within 30 days.
 - ii) Metropolis reserves the right to suspend any account with outstanding invoices over 45 days, except where The Client gives notice to Metropolis to dispute an invoice (acting reasonably), in which case only the part of that invoice which is undisputed is due and payable within 30 days.
 - iii) Any invoice enquiries must be made within 14 days of the invoice date to Metropolis.
 - iv) Invoice(s) unpaid over 60 days may be referred to Metropolis' lawyers and further collection costs, legal charges and interest (calculated at 12% per annum from the invoice date) may apply to the total sum payable by The Client.

- d) Where Metropolis is unable to obtain sufficient Credit Insurance, or for any other reason, Metropolis may insist on payment in advance of performing any Service under this Agreement.
- e) Where applicable, all fees and amounts due under this Agreement are exclusive of all taxes. The Client must pay GST and any other Government taxes or charges on a taxable supply (as detailed on a valid invoice) made to You under this Agreement, in addition to any consideration (excluding GST) payable for that taxable supply.

6) Intellectual Property

- a) Metropolis may contribute Background Material as part of the Services. The Intellectual Property in Background Material remains vested in Metropolis. Metropolis grants The Client an irrevocable, non-exclusive licence, to use the Intellectual Property in the Background Material for the sole purpose of using the Project in the ordinary course of its business. Subject to The Client paying the Fees and Allowances in full, there will be no fee for this licence.
- b) Subject to clause a) and The Client paying the Fees and any Allowances in full, the Intellectual Property rights in the Project and any Materials generated from the Project will vest with The Client. Metropolis hereby assigns to The Client all Intellectual Property rights in the Project upon its creation. To the extent that any Intellectual Property rights in the Project are not created at the time of creation of the Project, Metropolis will do everything within its power to ensure that The Client becomes the owner of those rights.
- c) On request from The Client and subject to The Client paying all amounts validly due to Metropolis under this or any other agreement in full, Metropolis will provide:
 - i) packaged InDesign artwork files (excluding fonts) of the final version of all Materials created by Metropolis and used in the Project(s);
 - ii) photographs and other images supplied to Metropolis by third parties, for use in the Material. This will be limited to the number of images specified in any cost proposal, estimate or invoice. This will exclude all other imagery, which remains the intellectual property of the third-party supplier; and
 - iii) the final edited version of any video assets created by Metropolis or its suppliers. This excludes the raw footage taken to create the video asset, which remains the intellectual property of the supplier.
- d) Metropolis will be entitled to charge fees to cover time in collating and supplying these files, which will be estimated in advance, based on the number of files and assets involved.
- e) Metropolis warrants that the provision of Background Material to The Client and The Client's permitted use of the Background Material will not infringe the Intellectual Property rights of any person, or infringe any other laws or a person's rights under any law.
- f) Subject to any terms of use specified in a Project Estimate or elsewhere, Metropolis warrants that it has obtained from its employees, agents or any third party involved in the creation of, or whose Intellectual Property rights form part of, the Project, all necessary written consents or licences to use, reproduce, adapt and modify the Project for the purposes of The Client's business (including consents from authors with Moral Rights to use, reproduce, adapt and modify the Project without further reference to the creator or author). For the avoidance of doubt, this clause is intended to cover rights managed images; talent for video and stills photography; illustrations; fonts; and any other licensed assets.

- g) Should The Client wish to use the items covered in clause f) above for purposes outside of the Project, or any media, geographic or time restrictions, further fees may be payable to the licensor and Metropolis.
- h) The Client warrants that it will adhere to any restrictions on usage specified on a Project Estimate or elsewhere and will indemnify Metropolis against the costs of any breach.
- i) Subject to Metropolis obtaining The Client's written approval (not to be unreasonably withheld), The Client grants to Metropolis the right to include, The Client's name and details of the Project (including a copy of the Project) as part of Metropolis' portfolio of work for the purpose of promoting Metropolis, and that the portfolio may appear in any media.

7) Client Intellectual Property

- a) Intellectual Property rights in the Client Material remains vested in The Client. If The Client contributes Client Material to Metropolis in connection with the Services, The Client grants to Metropolis a royalty-free, non-exclusive non-transferable licence to use, reproduce, and disclose the Client Material, and only where required, to modify and adapt the Client Material with The Client's approval, for the sole purpose of providing the Services.
- b) The Client warrants that the provision of Client Material to Metropolis, and that Metropolis' permitted use of Client Material (including incorporation of the Client Materials into the Project), will not infringe the Intellectual Property rights of any person, or infringe any other laws or a person's rights under any law.
- c) The Client warrants that if any of the Client Material includes any factual information, that such information will be accurate and capable of substantiation, and will not contain any claims that are misleading or deceptive.
- d) Metropolis will ensure that any Client Material provided by The Client will be stored securely for the duration of this Agreement, and that on completion of the Services or expiration or termination of this Agreement, any Client Material in its possession will be promptly returned to The Client.
- e) Metropolis will not improperly use, and will not permit or authorise others (including its employees or agents) to improperly use the Client Material.
- f) Metropolis will notify The Client as soon as it becomes aware of any suspected or threatened or actual infringement of any of the Intellectual Property rights in the Client Material arising by reasons associated with Metropolis' use.

8) Trade Marks

- a) The parties acknowledge and agree that:
 - i) Metropolis will undertake, or have undertaken on The Client's behalf, appropriate trade mark infringement and clearance searches to ensure that the Project and any trade mark(s) featured in the Project, and The Client's use of the Project created by Metropolis will not infringe another person's rights or subject to a claim of a passing off;
 - ii) Metropolis will use its best endeavours to create a unique and distinctive trade mark or brand marks as part of the Project, but it provides no assurance or representation whatsoever that the Project and any trade mark(s) incorporated within the Project will be capable of registration as a trade mark in Australia under the Trade Marks Act 1995 or in any overseas jurisdiction;

9) Media Services

- a) The Client acknowledges that Metropolis may receive media commissions, rebates or other fees from a third-party media owner for using a particular media channel for marketing or advertising the Project. Metropolis will retain any amounts received in accordance with this clause.
- b) Where Metropolis is unable to receive a minimum of 10% commission from a publisher, Metropolis may increase rates by an amount sufficient to ensure that Metropolis will make a maximum of 10% on the relevant item. This clause will not apply where Metropolis charges fees for Digital Campaign Management in accordance with clause 10) below.
- c) Metropolis will investigate all available media options for marketing and advertising the Project and, where possible, Metropolis will provide comparable proposals from third party media owners that fulfil campaign objectives.
- d) Metropolis will recommend to The Client the most appropriate media channel having regard to the nature of the Project and disregarding any media commissions which it may receive from individual media owners.
- e) If The Client, in The Client's absolute discretion, believes that a particular marketing or advertising solution can be sourced or provided at more competitive rates than the media owner nominated by Metropolis, The Client may direct Metropolis to use an alternative third-party media owner for such engagement.
- f) All media rates are correct at time of scheduling. The Client will be notified of any discrepancies at the time of booking.
- g) All media is subject to availability at time of booking.
- h) All media vendor specific Terms & Conditions are extended to The Client and The Client warrants that it will indemnify Metropolis against any liability it may incur due to The Client's failure to observe those Terms & Conditions.
- i) All media booking terms are final and at The Client's liability.
- j) Should an approved media schedule be cancelled, before it commences, Metropolis will be entitled to charge a planning fee equal to 20% of the commission which Metropolis would have earned from the bookings on that schedule.

10) Digital Campaign Management

- a) Where appropriate for digital media tracking and optimisation purposes, The Client will allow Metropolis to place tracking tags onto the website that digital media traffic is being driven to. The tracking will be used for:
 - i) reporting;
 - ii) measuring the effectiveness of the media;
 - iii) affecting optimisations;
 - iv) making commendations as to the direction of future media investments; and
 - v) providing website data used for retargeting when this media tactic is being utilised.
- b) As part of Metropolis' Platform Optimisation service, where necessary, The Client allows Metropolis to re-allocate budgets between the digital media platforms (such as Google Adwords to Facebook) based on the effectiveness of the campaign in order to maximise results.
- c) Where Facebook advertising is included in a Media Schedule and managed by Metropolis:
 - i) The Client must allow a link between its Facebook and Instagram pages and Metropolis' Facebook Ads platform; and
 - ii) The Client warrants that the relevant website will have:
 - (1) a privacy policy stating what it does to protect its visitors' privacy; and
 - (2) information disclosing the use of cookies on the site.
 - iii) Metropolis is unable to activate live Facebook advertising until the relevant website has a compliant privacy policy and terms and conditions page.
- d) Metropolis will provide reporting at fortnightly intervals, and will provide digital media results from active periods.
- e) Metropolis will make optimisations to improve campaign results which will be advised within the reports, unless other requirements have been agreed.
- f) Metropolis will charge fees for managing digital campaigns in accordance with this clause 10). These fees will be notified to The Client in advance on a Project Estimate or Media Schedule.

11) Digital Assets

- a) Where Metropolis creates digital assets for The Client, the following will apply:
 - i) Metropolis provides a three (3) month standard warranty period. This covers errors, defects or bugs identified within this warranty period.
 - ii) If The Client wishes to host digital assets on servers not controlled or administered by Metropolis:
 - (1) deployment to those hosting facilities will not commence until full payment for the job is received;
 - (2) deployment to those hosting facilities will incur additional costs and will be charged as incurred;
 - (3) further support post-deployment will also incur additional costs; and
 - (4) the warranty period referred to in i) will be voided as The Client now has the ability to access the code and make changes.

12) Warranties and Liability

- a) Other than as expressly set out in this Agreement, Metropolis disclaims all other warranties to the maximum extent permitted by law.
- b) If Metropolis breaches any express provision of this Agreement or a condition or warranty implied under any law which cannot be lawfully modified or excluded by this Agreement, then Metropolis' liability to The Client will, to the extent permitted by law, be limited at The Client's option to Metropolis supplying the Services again, or Metropolis paying for their resupply from a third party.
- c) The Project and all stationery and other materials featuring the Project, will be printed as they appear during the final approval step. Whilst Metropolis will make commercially reasonable efforts to ensure that all materials are correct, it is The Client's sole responsibility, and The Client must satisfy itself, that they are factually correct, do not contain formatting, spelling or grammatical errors and comply with all relevant laws before advising Metropolis of its final acceptance.
- d) Metropolis' liability to The Client for loss or damage of any kind (including loss or damage caused by negligence) is reduced to the extent that The Client caused or contributed to that loss or damage.
- e) Metropolis makes no warranties or guarantees regarding the likelihood of success of marketing or promotional activity undertaken pursuant to the Agreement.

13) Term and Termination

- a) This Agreement commences on the date of signing of this Agreement and continues indefinitely, unless otherwise terminated in accordance with clauses b) or c) below.
- b) Either party may terminate this agreement for any reason by giving thirty (30) days' notice to the other party.
- c) Either party may terminate this Agreement immediately by giving written notice to the other party if the other party has committed a material breach of this Agreement and has failed to rectify that breach within fourteen (14) days following a written notice to do so, or if the other party becomes insolvent or winds up.
- d) On termination, Metropolis will be entitled to charge for any work performed up until the date of termination and any time incurred in facilitating the transfer of assets and digital data (for example, Google Adwords or Facebook campaign information) to The Client or another agency.

14) Confidentiality

- a) The existence of and terms of this Agreement or any information provided by a party in connection with this Agreement (**Confidential Information**) is confidential in nature. The recipient of the Confidential Information must:
- i) keep the Confidential Information confidential and not disclose or use it for any other purpose other than as necessary to perform the Services;
 - ii) not disclose or permit the disclosure of the Confidential Information to any unauthorised person; and
 - iii) take or cause to be taken all reasonable precautions necessary to maintain the confidentiality and prevent disclosure of the Confidential Information,
- except if:
- iv) the disclosure of Confidential Information is required by law;
 - v) the disclosure of Confidential Information is in accordance with the terms of this agreement;
 - vi) the disclosure of Confidential Information is to either party's professional advisers; or
 - vii) the disclosure is with the disclosing party's prior written consent; or
 - viii) the Confidential Information is or has become available in the public.

15) Miscellaneous

- a) **Variation:** This Agreement may only be varied by written agreement of the parties.
- b) **Governing Law:** The laws of NSW govern This Agreement, and the parties irrevocably submit to the non-exclusive jurisdiction of, the courts of NSW.
- c) **Entire Agreement:** This Agreement sets out the entire agreement between the parties in relation to the subject matter and supersedes any previous correspondence, agreement, arrangement or understanding.
- d) **Right to enter into this Agreement:** Each party warrants to the other party that it is authorised to enter into this Agreement and to grant the rights contemplated by this Agreement.
- e) **Severability:** If a clause(s) of this Agreement is held to be invalid or otherwise unenforceable then that clause will be deemed to be severed without affecting the enforceability of the remainder of this Agreement.
- f) **Non-cessation:** Clauses 6), 7), 9) and 0 of this Agreement do not cease on termination or expiration of this Agreement or completion of the Services.

SCHEDULE A – INVOICING TERMS:

The following terms apply to invoices relating to head hours, production and media. All Projects or Services will be estimated in advance, before work is commenced. The Client's signature on a Project Estimate or Media Schedule is Metropolis' authority to commence work on that particular Project or part thereof.

Head hours

Head hours will be charged at the Agency's current rates. Costs will be estimated in advance and invoiced as agreed. Subject to clause 5), invoices are payable within 30 days.

Production

Any production charges will be estimated in advance.

Unless otherwise agreed, or as below, production invoices are issued upon approval of final artwork and, subject to clause 5), are due for payment within 30 days of invoice date.

TV, photography (including video) and print production invoices are generally payable 50% in advance of the work being undertaken and 50% on completion, but may be subject to alternative milestone payment schedules, as agreed between The Client and Metropolis.

Media

All available commissions are retained by Metropolis.

Fees for managing Search and Social campaigns will be calculated at Metropolis' current rates and itemised in advance on a Media Schedule.

Unless otherwise agreed, media invoices are issued monthly and, subject to clause 5), are due for payment within 30 days of invoice date.