



TERMS OF TRADE

Important

This document contains the standard terms and conditions governing the provision of services to you, the Client 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 you and METROPOLIS.

The signature by the Client ("You") of an estimate or media schedule confirms your agreement to these Terms of Trade.

1) Services

- a) METROPOLIS will provide the Services to You with due care and skill.
- b) METROPOLIS will make commercially reasonable efforts to adhere to Your brand and content direction. If Your feedback for a Project departs in a significant manner (as determined by METROPOLIS) from Your original scope of Services, METROPOLIS reserves the right to 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' then current rates.
- c) You must check advertising proofs and notify METROPOLIS in writing of any errors prior to material deadline. Final approval of artwork must be provided by You to METROPOLIS in writing.
- d) METROPOLIS takes no responsibility for advertisements that are delivered to METROPOLIS after the material deadline.

2) Project Estimates

- a) All Project Estimates assume the accurate and timely delivery of details, specifications, other information and approvals by You and Your consultants, when requested by METROPOLIS as appropriate.
- b) 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.
- c) Therefore You:
 - i) take all responsibility for managing your consultants and ensuring that details, specifications and other information are delivered within the agreed timeframe; and
 - ii) acknowledge that Metropolis cannot be held responsible for any delays in project timings or increased costs associated with late or inaccurate information provided by You to us; and
 - iii) acknowledge Metropolis' right to re-estimate to cover any increased costs caused by the above, prior to these costs being incurred.

3) Invoicing and Payment

- a) In consideration of METROPOLIS performing the Services You will:
 - i) pay to METROPOLIS the Fees; and
 - ii) reimburse METROPOLIS (at METROPOLIS' actual cost) for any Allowance.
- b) METROPOLIS will issue an invoice (or invoices) in respect of the Services in accordance with the invoicing terms set out in Schedule A annexed to this Agreement.
- c) Unless otherwise agreed, all invoices are due within 30 days and METROPOLIS reserves the right to suspend any account with outstanding invoices over 60 days.
- d) Any invoice enquiries must be made within 14 days of the invoice date to METROPOLIS.
- e) Invoice(s) unpaid over 90 days will be referred to Metropolis' lawyers and further collection and legal charges and interest (calculated at 12% per annum from the invoice date) will apply to the total sum payable by You.
- f) Where applicable, all fees and amounts due under this Agreement are exclusive of all taxes. You must pay GST and any other Government taxes or charges on a taxable supply made to it under this Agreement in addition to any consideration (excluding GST) payable for that taxable supply.

4) 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 You a 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 Your business.
- b) Subject to clause a) and You paying the Fees and any Allowances in full, the Intellectual Property rights in the Project will vest in the Client.
- c) You grant to METROPOLIS the right to include, by mutual consent of METROPOLIS and You, Your 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.

5) Client Intellectual Property

- a) If You contribute Client Material to METROPOLIS in connection with the Services, You grant to METROPOLIS a royalty-free, non-exclusive and perpetual license to use, reproduce, disclose, modify and adapt the Client Material for the purpose of providing the Services.
- b) You warrant 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) You warrant 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.

6) Trade Marks

- a) You acknowledge and agree that:
 - i) it is Your responsibility to undertake, or have undertaken on Your behalf, appropriate trade mark infringement and clearance searches to ensure that the Project and any trade mark(s) featured in the Project, and Your use of the Project will not infringe another person's rights;
 - ii) METROPOLIS 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;
 - iii) METROPOLIS provides no warranty, assurance or representation whatsoever that the Project or any trade mark(s) incorporated within the Project will not infringe the rights of any existing trade mark (whether registered or unregistered anywhere in the world); and
 - iv) use of the Project by You is at Your sole risk.

7) Digital Assets

- a) Where METROPOLIS creates Digital Assets for You, 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 You wish to host Digital Assets on servers not controlled or administered by METROPOLIS:
 - (1) deployment to client's hosting facilities will not commence until full payment for the job is received
 - (2) deployment to client's hosting facilities will incur additional costs and will be charged as used
 - (3) further support post-deployment will also incur additional costs
 - (4) the warranty period referred to in i) will be voided as You now have the ability to access the code and make changes

8) Warranties and Liability

- a) METROPOLIS disclaims all other warranties, either express or implied, to the maximum extent permitted by law.
- b) To the maximum extent permitted by law, METROPOLIS excludes for itself and its officers, employees, agents and contractors, all liability for all claims, expenses, losses, damages and costs made against or incurred or suffered by You directly or indirectly (including without limitation lost costs and profits) arising out of:
 - i) Your use of the Project; and
 - ii) METROPOLIS' negligence or the negligence of METROPOLIS' officers, employees, agents or contractors.
- c) 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 You will, to the extent permitted by law, be limited at METROPOLIS' option to supplying the Services again, or paying for their resupply.

- d) The Project and all stationery and other materials featuring the Project, will be printed as they appear during the final approval step. It is Your sole responsibility and You must satisfy Yourself, that all stationery and other materials are formatted correctly, do not contain spelling or grammatical errors and comply with all relevant laws before advising METROPOLIS of its final acceptance.
- e) METROPOLIS' liability to You for loss or damage of any kind (including loss or damage caused by negligence) is reduced to the extent that You caused or contributed to that loss or damage.

9) **Miscellaneous**

- a) **Variation:** This Agreement may only be varied by written agreement of the parties.
- b) **Governing Law:** This Agreement is governed by the laws of, 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) **Your right to enter into this Agreement:** You warrant that You are 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.

Definitions and Interpretation

In this Agreement:

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.

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.

Concepts mean any preliminary ideas, proof of concepts and samples that may be provided by METROPOLIS as part of the Services.

Client Alterations means additional Services that may be required to be provided by METROPOLIS in circumstances contemplated by clause 1)b),

Client Material means any Material provided to METROPOLIS by You (or at the Your direction) in connection with the Services.

Services means the services set out in a Project Estimate or Media Schedule to be provided by METROPOLIS, from time to time, and includes the creation of design concepts, advertising creative and website development.

Project means the final Project created for You by METROPOLIS under this Agreement including any new or revised Trade Marks but does not include any Concept revisions created by METROPOLIS as part of the Services which were not accepted or chosen by You.

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.

Intellectual Property means any copyright (including any neighbouring rights), trade marks (whether registered or unregistered), trade secrets, Project, drawings, patents, secret processes, business or domain names, 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.

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.

Project Estimate means a quote from METROPOLIS to You for the provision of Services in accordance with the terms and conditions of this Agreement.

SCHEDULE A – INVOICING TERMS:

The following terms apply to invoices. All Projects or Services will be estimated in advance, before work is commenced. Your 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. 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 due for payment within 30 days of invoice.

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

Media

A management fee will apply to all Media Schedules and any available commissions are retained by METROPOLIS.

All media rates are correct at time of scheduling. You will be notified of any discrepancies at the time of booking. Each media schedule is deemed to be approved for booking once it has been signed and returned to METROPOLIS via email or fax - no verbal approvals will be accepted.

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

All cancellations or alterations to an approved media schedule must be advised in writing and no verbal alterations will be accepted. Material and cancellation deadlines are to be adhered to at all times. METROPOLIS reserves the right to adjust supplied material deadlines to ensure material is delivered to the publication on time.

Media invoices are issued monthly and are payable within 30 days.