
Terms and Conditions

Version 2.1; February 2013

The terms and conditions of trade set out below govern the supply of goods and services from Fraynetwork Limited ABN 82 150 945 243 (“FWLTD”) to the customer (“you”). They will replace any terms and conditions contained in any document used by you and purporting to have contractual effect, and your acceptance of this Agreement indicates your acceptance of these terms and conditions of supply.

Definitions

“**Confidential Information**” means the confidential information of a party which relates to the subject matter of this Agreement and/ or all information relating to the business of a party to this Agreement, including copyright, patents, trade secrets, drawings, know-how, techniques, staff details, financial information, internal management, policies, strategies, business or marketing plans, arrangements or agreements with third parties, customer information, formulae, customer lists, concepts not reduced to any material form, technical specifications, designs, plans, models and any information which is not publicly available or which is by its nature confidential or which the other party knows, or ought to know, is confidential.

“**Intellectual Property Rights**” means any copyright, trade or service mark, design, patent, trade, business or company name both in Australia and throughout the World.

“**Multimedia Product**” means the websites referred to in this Agreement.

“**Project**” means the design and construction of the Multimedia Product as outlined in this Agreement.

“**Software**” means WordPress CMS and any modules, components, plugins developed by FWLTD for use with WordPress CMS and any documentation, any error corrections, all copyrights, trade secrets, trademarks and other intellectual property rights protecting or pertaining to any aspect of WordPress CMS.

1. Nature and Effect of this Agreement

This Agreement is intended to be a contract for services from Fraynetwork Limited ABN 82 150 945 243 (“FWLTD”) to the customer (“you”). This Agreement supersedes and replaces any prior contracts, agreements, arrangements, representations or understandings between FWLTD and you. To the extent that the terms of this Agreement conflict with the terms of the Software License Agreement annexed below, the terms of the Software License Agreement shall prevail.

2. GST

You agree to pay any GST payable under GST law, as expressed in A New Tax System (Goods and Services Tax) Act 1999 (Cth), and any other government duties, levies or taxes payable in respect of the goods and services.

3. Ownership and Payment

Ownership of the Intellectual Property Rights subsisting in the Multimedia Product shall pass in full upon payment in full of all monies associated with the Project as specified above.

4. Confidentiality

4.1 FWLTD and You (the Parties) shall not, either during or after termination or completion of this Agreement, except as expressly permitted in writing by the Parties, divulge to any third party Confidential Information concerning the business, financial arrangements, dealings, transactions or affairs of either Party.

4.2 The obligations of this clause 4 do not apply to disclosures of Confidential Information to the extent that:

4.2.1 the disclosure is required to be made by law, provided that the Party disclosing the information gives as much time as is reasonably practicable and permitted by law prior to the disclosure in order to permit the other party to oppose that disclosure or seek orders requiring the information be kept confidential;

4.2.2 the Confidential Information is in the public domain otherwise than as a result of a breach of this Agreement;

4.2.3 the Confidential Information is already known by, rightfully received by, or independently developed by the recipient free of any obligation of confidence.

4.2.4 such disclosure is made to the disclosing Party's solicitors, auditors, insurers or accountants for the purpose of obtaining advice.

4.3 A Party who discloses Confidential Information to a third party as permitted by this Agreement must ensure that the third party keeps such information confidential on terms similar to those contained in this clause 4. The Party must also ensure, to the extent that it is able to do so, that the third party uses that information only at the direction of the disclosing Party and only for a purpose for which the Party is entitled to use that information under this Agreement.

5. Termination

5.1 This Agreement and the provision of services under this Agreement may be terminated by either party in writing immediately and without further notice in the event that the other party:

5.1.1 commits a serious, fundamental and/ or persistent breach of its obligations under this Agreement;

5.1.2 otherwise fails to rectify any breach of any term of this Agreement (which is capable of being rectified) to the satisfaction of the other Party after having been given seven (7) days prior written notice to do so; and/ or

5.1.3 enters into bankruptcy, receivership or liquidation.

5.1.4 THE CLIENT may, at any time, terminate any service by providing Fraynetwork with notification in writing for cancellation of service/s. All costs incurred by Fraynetwork relating to the project will be charged to THE CLIENT including planning, time scheduling, programming, designing, resources allocation, customer contact time, archiving and all other project related costs at the discretion of Fraynetwork. Fraynetwork also reserves the right and will charge THE CLIENT the next invoicing milestone following the project status at the time of termination by THE CLIENT.

5.1.5 Any existing fees, or fees paid in advance for that service which is being cancelled shall be forfeited under a termination of services status and no refunds will be given.

5.1.6 Fraynetwork retains full copyright ownership and other rights for all work produced under a termination scenario.

6. Service of Notices

Any notice, demand or formal communications between the Parties for the purpose of this Agreement must be in writing and addressed to the other party at the address specified in this Agreement or any other address which that party may have substituted by written notice to the other Party.

7. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Victoria.

8. Variations

This Agreement can only be varied by the mutual agreement of the parties in writing.

9. Dispute Resolution

9.1 If either party believes that a dispute has arisen in connection with the rights and obligations of the Parties under this Agreement or this Clause 9 (a "Dispute"), it may serve a notice in writing on the other party notifying the other Party in reasonable detail of the facts of the matter in dispute (a "Dispute Notice")

9.2 The Parties must promptly, but no longer than thirty (30) days after the service of a Dispute Notice, hold good faith discussions to attempt to resolve the dispute and must (without prejudice to the privilege against the production of any such information to a court) furnish to the other party all information with respect to the Dispute which is appropriate in connection with its resolution.

9.3 In the event that the Dispute is not resolved within thirty (30) days after the giving of a Dispute Notice (or such further period as may be agreed in writing between the Parties) then either party may (but is not obliged to) refer the Dispute to arbitration ("Arbitration"). The arbitrator shall be agreed on between the parties within three (3) business days of written notice of the referral by the referring party to the other or failing agreement, the arbitrator is to be appointed by the President of the Law Institute of Victoria or their authorised delegate. In either case the arbitrator must not be a person who has participated in an informal resolution procedure in respect of the Dispute.

9.4 The Arbitration must be conducted in accordance with the Rules for the conduct of Commercial Arbitrations of the Institute of Arbitrators Australia, and, subject to those Rules, in accordance with the provisions of the *Commercial Arbitration Act 2011* (Vic).

9.5 A Party must not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first giving a Dispute Notice and complying with the provisions of Clause 9 of this Agreement.

9.6 If the Dispute has not been resolved within 10 Business Days after commencement of Arbitration, either party may pursue its rights and remedies under this Agreement as it sees fit.

9.7 Notwithstanding anything in this Clause 9, a Party may, at any time, commence court proceedings in relation to any Dispute or claim arising under or in relation to this Agreement where that Party seeks urgent interlocutory relief.

10. Force Majeure

If the performance of any part of this Agreement by either Party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, fire, acts of terrorism, judicial or governmental action, labour disputes, acts of God or any other causes beyond the control of either Party then:

10.1 neither party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement;

10.2 the performance of that Party's obligations under this Agreement will be suspended;

10.3 if such delay or failure to perform its obligations due to Force Majeure exceeds twenty (20) days, either Party may immediately terminate the Agreement by providing notice in writing to the other Party; and

10.4 if this Agreement is termination pursuant to clause 10.3 then FWLTD must refund moneys previously paid by You pursuant to this Agreement for work not provided by FWLTD.

11. Timing / Delays / Delivery Schedule

THE CLIENT acknowledges and agrees that Fraynework's ability to meet any and all schedules is entirely dependent upon THE CLIENT'S prompt performance of its obligations to provide materials, assets, content and written approvals and/or instructions pursuant to the Proposal. Any such delay caused by THE CLIENT shall constitute a breach of any term, condition or Fraynework's obligations under this Agreement.

11.1 In the event that THE CLIENT does not provide assets and content, required to continue work on the project within a 28-day period, Fraynework reserves the right to invoice the next milestone payment.

11.2 In the event the project is 'on hold' or held up due to CLIENT delays greater than 3 months, Fraynework has the right to invoice in full the outstanding amounts of the entire project including hosting charges.

11.3 The project will be re-activated once delays have been attended to and as soon as Fraynework's production schedule allows.

11.4 THE CLIENT will receive one year free hosting if delays greater than 21 days are deemed to be caused by Fraynework.

12. Revisions / Changes

THE CLIENT will have an opportunity to make two revisions to design concepts after the initial design work or concept is presented. THE CLIENT is responsible for providing constructive feedback for each revision cycle in a timely manner. (14 days).

12.1 The purpose of the revision process is to create responses that move the project forward in a specific direction as determined by THE CLIENT. Revisions requested after the two revisions will be charged at Fraynework's standard hourly design rate. If THE CLIENT does not respond with requested feedback within 14 days, Fraynework will place the project on hold to ensure other clients and our production schedule is not jeopardised and a re-establishment fee will be applicable to recommence the project. Fee will be calculated on a case-by-case basis to allow for each individual project's specification and required workload.

12.2 Any changes made after CLIENT approval has been given for specific stages of the project according to the agreed upon quote, including but not limited to concepts, layout, colours, artistic styles, programming etc., additional costs will incur. A revision fee or out of scope charges may be applicable at the discretion of Fraynework after discussing the changes with THE CLIENT.

13. Proofing

It is the responsibility of THE CLIENT to proof-check all content submitted to Fraynework to ensure that there are no grammatical, spelling or errors contained in the final product.

13.1 It is the sole responsibility of THE CLIENT to notify Fraynework of any such errors during the revision cycles and before the final files have been generated. If a further revision is required to content including text changes, an additional revision charge will incur at Fraynework's hourly maintenance rate.

14. Placing projects on hold.

THE CLIENT may request that a project be placed 'on hold' indefinitely. Any request for placing a project on hold must be supplied to Fraynework in writing. In such cases, ownership of copyright and all rights shall be retained by Fraynework.

14.1 A fee for work completed, based on the contract price and expenses already incurred, as well as the next invoicing milestone shall be paid by THE CLIENT.

14.2 THE CLIENT may request that a project successfully deemed by Fraynework as 'on hold' be re-activated at the discretion of Fraynework. Any request by THE CLIENT for re-activation must be supplied to Fraynework in writing. In such cases, THE CLIENT shall pay a re-establishment fee. The amount required for the re-establishment fee will be calculated on a case-by-case basis to allow for each individual project's specification and required workload. Any existing fees paid by THE CLIENT to Fraynework, or fees paid in advance by THE CLIENT to Fraynework shall be forfeited under a project on hold status and no refunds will be given.

15. Assignment

A Party must not assign part or all of its benefits or obligations under this Agreement (whether to a related party or to any assignee) without the prior written consent of the other Party, such consent not to be unreasonably withheld. The Party assigning its interests must ensure that the assignee enters into an agreement with the other party confirming that it will be bound by the obligations imposed on the assignee in this Agreement from the date of assignment.

16. Limitation of Liability

You agree that you shall not hold FWLTD liable in relation to any costs, actions, loss or damage, claims and demands (including any legal costs or expenses properly incurred) whatsoever relating to the Multimedia Product and/or any other goods and/or services supplied by FWLTD to you pursuant to this Agreement, including but not limited to the following;

- i. loss of data; l
- ii. loss of profits; or
- iii. functionality of the Multimedia Product;

Arising from or occasioned by reason of any breach of this Agreement by you including any breach of your warranties, or the negligence, act or default of you, your directors, agents, employees, sub-contractors or of any other person for whose acts or omissions you are vicariously liable.

17. Content Posted on Site

You represent and warrant that:

17.1 you have all legal rights necessary to publish the Content on the Site and/or that you own such content; and

17.2 the posting of content on or through the site does not violate any applicable laws, including, but not limited to, privacy rights, intellectual property rights, contract rights or any other personal or proprietary rights of any person or entity or contain any defamatory Content; and

17.3 you will pay all royalties, fees and other monies owing to any person or entity, if any, by reason of any content posted by you on or through the Site.

17.4 you indemnify and at all times will keep FWLTD indemnified from and against all costs, damages or expenses incurred by FWLTD in defending and/or settling any actions, suits, proceedings, claims or demands made or brought against FWLTD as a result or a consequence of any breach or non-performance of any or all of the agreements, representations, undertakings and/or warranties you make in this clause

18. The Software

FWLTD provides to You a World wide License to use the Software on a single-use, perpetual, irrevocable, non-transferable, non-exclusive, royalty free basis solely for the purpose for which the Software is provided under this Agreement. You are not permitted to reverse-engineer and/ or disassemble the Software for distribution or usage outside of the Multimedia Product.

19. Warranty

Without limiting any of your other rights, FWLTD will promptly rectify any defect in the multimedia product at no charge, if it is advised of the defect within the period of sixty (60) days from project completion.

20. Maintenance

THE CLIENT understands that post-completion maintenance is not included in the cost of the final Deliverables. THE CLIENT may request maintenance at Fraynetwork's current hourly rate.