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GENERAL TERMS AND CONDITIONS

Impressive Digital Agency Pty Ltd (Impressive Digital)
Level 6, 534 Church Street, Richmond VIC 3121 Australia.
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LEGALS - General

GENERAL TERMS AND CONDITIONS

We, the “Company” – is engaged by the Client to provide the Services.

You, the “Client” – engages the Company to provide the Services.

1. The terms of your contract

- 1.1. These General Terms & Conditions apply to the provision of services by the Company (we, us) to you as a user and customer (you, your or the Client).
- 1.2. Your contract with us (“Contract” or “Terms”) for each service or services is made up of:
 - a. These General Terms & Conditions;
 - b. The relevant Service Terms for your Service/s (“Service Terms”);
 - c. Our Privacy Policy.
- 1.3. The documents listed above supersede all prior arrangements (whether written or oral) in relation to their subject matter.
- 1.4. We may change the terms of your Contract by giving you notice of the change and posting new versions of any online terms. If you continue to use the Service after that notice period, you will be taken to have agreed to the change. The period of notice depends on the nature of the change. If:
 - a. the change will benefit you or have a neutral impact on you, or is required to preserve or safeguard the security or integrity of our system, we may make the change effective immediately and without advance notice;
 - b. the change is required to comply with any law or requirement of any regulatory body, we will provide a reasonable period of notice;
 - c. for all other changes, including price changes, we will give you at least 30 days’ notice.

2. Supply of services

- 2.1. We shall use reasonable endeavours to supply the Services in accordance with your Contract until the Services are terminated. We shall not be liable for any delay or failure to perform our obligations under this Contract if such delay or failure is due to termination of access to a Service by the end supplier of the Service or as a result of a change to the conditions of supply by that supplier.
- 2.2. Monthly contracts will roll on a monthly basis without notice to you. If a Fixed Term Contract is not renewed for a further fixed term, but it is not terminated, it will roll over on a monthly basis.
- 2.3. Nothing in the Contract transfers to either party any intellectual property rights (“IPR”) owned by the other party existing prior to the commencement of the Services. All IPR in the materials produced by us in connection with the Services (including websites, designs, information, reports and data) other than your pre-existing IPR, are and will remain owned by us. We grant you a perpetual, irrevocable, non-exclusive, royalty-free licence to use those materials for the purpose of using our Services only.
- 2.4. You acknowledge and accept that a third-party supplier may be used to provide the Service to you and we may change this supplier at any time in our sole discretion. Should a change in supplier occur, you acknowledge and agree that we have full authorisation to move, alter or delete your data as reasonably necessary.

3. Your obligations

- 3.1. You must provide us with such co-operation and support as we may reasonably request to perform the Services, including by:
 - a. Responding promptly to our communications in relation to the Services; and
 - b. Providing accurate and prompt responses to our requests for any information or documentation reasonably required by us to perform the Services.
- 3.2. You are solely responsible for obtaining any and all necessary intellectual property clearances and/or other consents and authorisations, including without limitation, clearances and/or consents in respect of your proposed domain name, any materials given by you to us, any content that you upload to your Service, and merchant services agreements between you and the relevant financial institutions.
- 3.3. You indemnify us from and against any and all liabilities incurred by us in connection with:

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- a. our use or reliance upon any images or trading names, or any data, information, specifications, documentation, computer software or other materials provided by you;
 - b. our compliance with any directions or instructions by you in relation to the provision of the Services;
 - c. any breach of this Contract; or
 - d. any damage to the reputation of the Company suffered as a consequence of a breach of this Contract.
 - 3.4. Except to the extent that we expressly agree to do so as part of a Service, you are exclusively responsible for conducting backups of any of your data (whether hosted on our computer systems or provided to us in connection with the performance of the Services) at such intervals as are reasonable having regard to the nature of the data.
4. Fees and payment
- 4.1. You agree to pay us the Fees set out in the Contract for the Services, in advance as stated by the payment period.
 - 4.2. Unless otherwise agreed in writing, Payment of the Fees must be made by direct debit or payment in advance in cleared funds scheduled in advance for the payment period. No work will commence until such payment is made or direct debit scheduled.
 - 4.3. Without prejudice to our other rights and remedies under this agreement, if any Services Fees are not paid on or before their due date, we reserve the right, immediately and at our sole discretion, to suspend the provision of Services to you until such payment is made. In the event of a failed debit payment, the Client agrees to allow to be debited from their account an administration fee of \$9.90 including GST by the 3rd party debit provider engaged by the Company (including any interest charged on overdue amounts, calculated at the rate referred to in Section 2 of the Penalty Interest Rates Act 1983 (Vic.)).
 - 4.4. If we have taken action to recover overdue amounts from you, any reasonable costs incurred by us in recovering the debt, including but not limited to any legal expenses and collection agency charges, will be recoverable from you.
5. Termination
- 5.1. Either party can terminate a Contract for convenience on 30 days' notice, to take effect at the end of the term of a Fixed Term Contract, or if there is no term, at the end of the 30-day notice period.
 - 5.2. If you terminate a Fixed Term Contract before the end of its term, and unless the Service Terms provide differently you will be charged an early termination charge as set in the Service Terms and Conditions relating to the Service.
 - 5.3. Termination of services must be provided by written notice.
 - 5.4. Either party may terminate this Contract immediately by notice in writing to the other party if:
 - a. the other party commits a material breach which cannot be remedied, of its obligations under the Contract;
 - b. the other party commits a remediable material breach of its obligations under the Contract but fails to remedy that breach within 14 days of being required to do so in writing by the first party; or
 - c. an insolvency event, including entering into administration or liquidation, occurs with respect to the other party.

A "material breach" is defined as a breach of an obligation which is central to the performance of the Agreement which substantially and materially deprives the innocent party of the benefits it would have received under that Agreement. This definition includes but is not limited to breaches of the General Terms and Conditions and the Service Terms.
 - d. If we terminate a Service under this clause, we shall also be entitled to immediately cease any of our other Services to you.



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6. Warranties

- 6.1. To the extent permitted by law and excluding any guarantees granted through special conditions neither the Company, nor any employees, affiliates, agents, suppliers, third-party information providers, merchants, licensors nor the like (each a "Relevant Party") of either the Company or any Relevant Party, make any warranties of any kind, either expressed or implied, statutory or otherwise, relating in any way to the subject matter of this agreement, including, but not limited to, warranties of merchantability or fitness for a particular purpose, or non-infringement for the Services or any equipment provided, and all such warranties are hereby excluded.
- 6.2. You acknowledge and agree that nothing in this agreement shall constitute an express or implied warranty or guarantee by either us or a Relevant Party:
 - a. concerning the results or success that may be obtained from the use of the Services;
 - b. as to the accuracy, reliability or content of any information services or merchandise contained in or provided through the Services, or, for the avoidance of doubt, any information provided by us or a Relevant Party in any advice, report or communication to you or any other party;
 - c. that the provision of the SEO Services will result in the ranking of Your Web Site improving; and/or
 - d. that the provision of the SEO Services will result in an increased amount of traffic or users to Your Web Site; and/or
 - e. concerning any market conditions (whether favourable or not) that may be in existence at the commencement of the Service will continue; and/or
 - f. that the provision of the Services generally, or any software utilised by us to provide the Services, will not be subject to, or result in, either errors and/or delays.
- 6.3. You acknowledge that although we may suggest Optimisation Changes to you with respect to your website in connection with providing Services, neither us nor any Relevant Party take any responsibility for Your Web Site or Your Web Site Property. Accordingly, you agree that you shall at all times be solely responsible for Your Web Site and Your Web Site Property notwithstanding the provision of the SEO Services to you by us or our Relevant Party.
- 6.4. Without limiting the above, you acknowledge that our Services may require us to use, interface with or input information into a Relevant Party's systems (including companies such as Google and Facebook) and you agree that we have no liability to the extent that the Relevant Party is unable to provide its services to you.
- 6.5. If you are not the customer, you warrant that you have the power and authority to enter into this Contract on behalf of the customer and will indemnify us for any breach of the Contract by the customer.
- 6.6. We do not warrant that the Services will be uninterrupted, timely, secure or error free, or that they will be free from hackers, virus, denial of service attack or other persons having unauthorised access to our services or those of our suppliers.
- 6.7. All terms and warranties which might otherwise be implied by any legislation, the common law, equity, trade, custom or usage or otherwise in to the Contract, are expressly excluded to the maximum extent permitted by law.
- 6.8. If any goods or services supplied pursuant to this agreement are supplied to you as a 'consumer' of goods or services within the meaning of that term in the Australian Consumer Law as amended or relevant state legislation ("the Acts"), you will have the benefit of certain non-excludable rights and remedies in respect of the products or services and nothing in these terms and conditions excludes or restricts or modifies any condition, warranty, right or remedy which is so conferred by the Acts.
- 6.9. However, if the goods or services are not ordinarily acquired for personal, domestic or household use or consumption, we limit our liability to:
 - a. in relation to goods – the replacement of the goods or the supply of equivalent goods or payment of the cost of replacing the goods or acquiring equivalent goods; or, the repair of the goods or payment of the cost of having the goods repaired;

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- b. in relation to services – the supplying of the services again; or the payment of the cost of having the services supplied again as in each case we may elect.

7. Liability

- 7.1. Nothing in the Contract excludes or limits either party's liability under or in respect of:
 - a. Any indemnity;
 - b. Any fraud or other criminal act;
 - c. Personal injury or death caused by the negligence, breach of contract or other wrongful act or omission of that party; or
 - d. Any other liability that cannot be excluded by law.
- 7.2. To the maximum extent permitted by applicable law, neither party is liable for:
 - a. any indirect, special or consequential loss or damage, any loss of profit, revenue or business opportunities, loss of or damage to data or loss of goodwill arising out of or in connection with the Contract (whether or not the loss or damage may reasonably be supposed to have been in the contemplation of the parties as at the date the Contract was formed as a probable result of any act or omission);
 - b. any loss or damage to the extent such loss or damage is caused or contributed to by the other party's negligence, breach of contract or other wrongful acts or omissions; or
 - c. any claim made 6 months or more after the circumstances giving rise to the claim first became known by the claimant or could, with reasonable diligence, have become known by the claimant.
- 7.3. Each party's aggregate liability for any loss or damage in connection with the provision of the Service, which is not excluded or limited under this clause is limited to the charges paid by you in respect of the Services for the preceding 12 months to any such claim.

8. Indemnity

- 8.1. You will indemnify and defend the Company and all directors, contractors, officers, employees, and agents of the Company from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative) and expenses (including but not limited to reasonable legal fees on an indemnity basis or collection fees, commissions, fees, charges and expenses) arising out of, or directly or indirectly relating to:
 - a. Any Services provided to you;
 - b. Any breach of this agreement by you; and/or
 - c. The use of the Services by you.

Such claims shall include, but shall not be limited to, claims based upon trademark, service mark, trade name, copyright and patent infringement, trademark dilution, tortious interference with contract or prospective business relations, unfair competition, restrictive trade practices, misleading statement, misleading or deceptive conduct, breach of contract, defamation or injury to reputation, or other injuries or damage to business.

9. General

- 9.1. Neither party may assign its rights or obligations under this Contract without the written consent of the other party which consent will not be unreasonably withheld; provided, however, that without your consent we may novate this Contract to any of our related bodies corporate or assign this Contract to a successor in connection with any corporate reorganisation, merger, acquisition, or sale of our business or assets to which this Contract relates.
- 9.2. We are free to sub-contract any of our obligations under the Contract, but such sub-contracting will not release us from our liabilities under the Contract.
- 9.3. The Contract is to be interpreted in accordance with the laws of the State of Victoria, Australia.
- 9.4. Our failure to act with respect to a breach by you does not waive our right to act with respect to subsequent or similar breaches.

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- 9.5. In consideration of the Company agreeing to provide the Services to the client, the Client agrees and warrants to the Company that it and its related parties shall not engage any Company staff either as an employee or contractor at any time during the term of this Contract or within 12 months of the termination of this Contract.
 - 9.6. If the Client fails to pay any amount due under this Contract by the due date, the client agrees to pay the Company interest on the amount unpaid until full payment is made at the rate referred to in Section 2 of the Penalty Interest Rates Act 1983 (Vic).
 - 9.7. The parties covenant that they will not at any time make any disparaging comments or disclose any information or make or publish any statement or do any other thing which may tend materially to harm or prejudice the other party's reputation or good name (prejudicial information), this includes both parties not making disparaging comments or disclosing prejudicial information about the other through the use of social media, web discussion groups, websites or other like forums. The parties agree to immediately remove any prejudicial information posted online immediately upon written request of the other party.
 - 9.8. The parties agree and acknowledge that this non-disparagement provision is a material term of this Agreement and the Company would not have entered into this Agreement without the inclusion of this provision.
 - 9.9. The parties acknowledge and agree that a breach of this non-disparagement provision or disclosure of prejudicial information about the other party as described above will be a material breach of this Agreement and may cause material damage to the other party and that damages may be inadequate compensation for such a breach of this provision and, subject to the court's discretion, the non-breaching party may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this provision.
10. Intellectual Property
- 10.1. You are solely responsible for ensuring that you have all appropriate rights and licenses to any Content that you supply including but not limited to video, images and text. We reserve the right, in our sole discretion, to refuse to use any Content we believe is objectionable or which we believe may infringe upon the IPR of others, or would be in breach of our Acceptable Use Policy, however, we do not warrant that we will be able to screen all Content and Material to ensure that it is non-infringing.
 - 10.2. You agree to indemnify us against any claims arising out of or relating to your Content, Ad Keywords and your use of the campaign. You expressly grant us, and our supplier, a worldwide, perpetual, irrevocable, non-exclusive, royalty-free licence to use (and where necessary, cache) your Content and Material. You agree that any such use or caching is not an infringement of any of your IPR or any third party's intellectual property rights.
 - 10.3. Additionally, you grant us, and our supplier, a worldwide, perpetual, royalty-free, and sub-licensable license to:
 - a. use any Content in connection with producing the campaign and delivering the Service; and
 - b. create, publish and use screenshots or depictions of your Campaign for our marketing activities (for example, creating marketing materials that show screenshots of the Service which feature the campaign). You may withdraw consent to this use by notifying us in writing, and we will take reasonable steps to process your removal request.
 - 10.4. You represent and warrant that:
 - a. you have full rights to use, broadcast and distribute the Content and documentary substantiation for all the claims made therein;
 - b. Your Content is truthful and not misrepresentative or misleading and does not plagiarise, libel, defame or harm any party;
 - c. your use of the Service will not invade the rights of privacy of any third party or otherwise infringe upon or violate the rights or property interests of any third party; and
 - d. you will not use the Service except as permitted by the Contract.
 - 10.5. You agree you are responsible for obtaining any agreements and/or consents required of any third parties in connection with the grant of any licences to us (or our supplier) under this Contract.

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- 10.6. To the extent your campaign contains any copy, images (including logos or photos), or any other content or material from our library of content (a repository of pre-produced photos, images, logos, videos and other materials (which may include licensed third party materials)) ("Content Library"), then we grant you a royalty-free, non-exclusive, revocable, worldwide license to, for the term of the Service:
 - a. use such Content Library for your campaign; and
 - b. use and create derivatives of your campaign (which includes Content Library) in connection with advertising activities relating to you.
- 10.7. Ownership of all Content Library shall remain at all times with us or any Relevant Party.
- 10.8. Any campaign delivered by us under the Service are without any representation or warranty as to your ability to obtain trademark, copyright, or similar protections in any jurisdiction throughout the world. We expressly disclaim:
 - a. all liability to you or any third party for any infringement of intellectual property or proprietary rights; and
 - b. that we will be responsible for, or provide any advice or guidance in respect of, any potential intellectual property rights issues which may arise from your use of the Service (including without limitation the use of Content in your Campaign).
- 10.9. You are solely responsible for ensuring your campaign complies will all applicable laws and regulations, and does not infringe any third party's rights, at all times.
- 10.10. Your access to, and continued use of, the Service is contingent upon, and at all times subject to, payment of the fees for the Service. Except as otherwise expressly stated in this Contract, no other rights, titles or interests in the campaign are granted to you.