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GENERAL TERMS AND CONDITIONS

Impressive Digital Agency Pty Ltd (Impressive Digital)
Level 6, 534 Church Street, Richmond VIC 3121 Australia.
ABN: 95 610 306 815 | www.impressive.com.au



LEGALS - General

GENERAL TERMS AND CONDITIONS

The Company is engaged by the Client to provide the digital marketing services according to the terms and conditions in the Contract.

Definitions

The following definitions shall apply to the Contract:

"Contract" means:

- a. these General Terms & Conditions;
- b. the Service Terms;
- c. our Privacy Policy; and
- d. the Particulars.

"Fee" means the fee for the Services, as specified in the Particulars;

"Fixed Term Contract" means a contract to provide the Services for the fixed term, as set out in the Particulars;

"Particulars" means the services agreement between the Client and the Company containing the particulars, including the Term, Services and Fees;

"Relevant Party" means an employee, agent, director, officer, contractor, affiliate or associate of the Company;

"Service Date" means the date which the Company begins working on the Services for the Client, irrespective of the date the Particulars are signed;

"Services" means the digital marketing services outlined in the Particulars and Service Terms;

"Services Terms" means the Services Terms and Conditions provided to the Client by the Company;

"We/Us/Our/Company" means Impressive Digital Agency Pty Ltd ACN 610 306 815 of Level 6, 534 Church Street, Cremorne VIC 3121;

"You/Your/Client" means the person or entity who engages the Company to provide the Services.

1. Supply of services

- 1.1. We shall supply the Services to the Client in accordance with the Contract.
- 1.2. Timeframes of Services are subject to change due to unforeseen events or circumstances beyond the Company's control.
- 1.3. We shall not be liable for any delay or failure to perform our obligations under this Contract if it is due to termination of access or change to conditions of a Service by the end supplier or the Client.

2. Term

- 2.1. This Contract commences on the Service Date and continues until:
 - a. the end of the Fixed Term Contract;
 - b. it is terminated under clause 5.
- 2.2. Monthly contracts will continue on a monthly basis without notice.
- 2.3. If a Fixed Term Contract is not renewed for a further fixed term, but it is not terminated under clause 5, it will continue on a monthly basis.

3. Your obligations

- 3.1. You must:
 - a. Respond promptly to our communications in relation to the Services; and

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- b. Provide accurate, complete and current information or documentation reasonably required by us to perform the Services.
- 3.2. You agree that You own all intellectual property rights in any material provided to the Company.
- 3.3. You indemnify and release us from and against any and all liabilities incurred by us in connection with:
 - 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. any delay or failure in Services as a result of Your failure to comply with this clause 3;
 - c. our compliance with any directions or instructions by you in relation to the provision of the Services;
 - d. any breach of this Contract; or
 - e. 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 Service Terms in consideration for the Services.
- 4.2. Unless otherwise agreed in writing, payment of the Fees must be made by direct debit or payment in advance in cleared funds. 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 Contract, if any Fees are not paid by their due date, we reserve the right to immediately suspend the Services until payment is made.
- 4.4. 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).
- 4.5. If we have taken action to recover overdue amounts from you, you are liable to pay any reasonable costs incurred by us in recovering the debt, including but not limited to any legal expenses and collection agency charges.

5. Termination

- 5.1. Either party can terminate a Contract for convenience with 30 days' written notice, to take effect at the end of the term of a Fixed Term Contract, or if there is no fixed 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 relating to the Service.
- 5.3. The Company may terminate this Contract immediately by notice in writing to the other party if:
 - a. the Client commits a breach of its obligations under the Contract which cannot be remedied;
 - b. the Client does not pay the Fees by the due date;
 - c. the Client commits a 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 Company; or
 - d. the Client becomes insolvent, including entering into administration or liquidation (as defined by the *Corporations Act 2001*).
- 5.4. If we terminate a Service under this clause 5, we shall also be entitled to immediately cease any of our other Services to you.

6. Warranties

- 6.1. You acknowledge and agree that nothing in this Contract 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;



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- 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 Services will result in the ranking of your website improving;
 - d. that the provision of the Services will result in an increased amount of traffic or users to Your website as well as sales;
 - e. concerning any market conditions (whether favourable or not) that may be in existence at the commencement of the Service will continue; and
 - 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.
- 6.2. 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 website or other property.
- 6.3. You agree you are responsible for your website and your website property notwithstanding the provision of the Services to you by us or our Relevant Party.
- 6.4. You acknowledge that our Services may require us to use, interface with or input information into third party systems (including companies such as Google and Facebook) ("Third Party Platforms").
- 6.5. We will not be liable for:
- a. the extent that the Third Party Platform is unable to provide its services to you;
 - b. any changes in a Third Party Platform's algorithms; and
 - c. technical faults or crashes of a Third Party Platform.
- 6.6. 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.
- 6.7. 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.
- 6.8. To the extent permitted by law, neither the Company, nor any employees, affiliates, agents, suppliers, third-party information providers, merchants, or licensors (each a "Relevant Party"), make any warranties relating to the subject matter of this Contract, including warranties of merchantability or fitness for a particular purpose, or non-infringement for the Services or any equipment provided.
- 6.9. All terms and warranties which might otherwise be implied by any legislation, the common law, equity, trade, custom or usage or otherwise into the Contract, are expressly excluded to the maximum extent permitted by law.
- 6.10. If any goods or services supplied pursuant to this Contract 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.
- 6.11. 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;
 - 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 and Indemnity

- 7.1. You will indemnify and release the Company and all the Relevant Parties from and against any and all claims, damages, losses, liabilities, expenses (including but not limited to reasonable legal fees) relating to:

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- a. anything (including damage, injury and death) caused or contributed to by the act, omission, negligence or default of the Client or the Client's employees, contractors or agents;
 - b. breach by the Client of any provision of this Contract; and
 - c. infringement or alleged infringement of any intellectual property by the Client or any third party arising out of the provision of the Services.
- 7.2. To the maximum extent permitted by applicable law, the Company is not 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; and
 - b. 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. The Company's aggregate liability for any loss or damage in connection with the provision of the Services, 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. General

- 8.1. The Client cannot assign its rights or obligations under this Contract without the written consent of the Company which consent will not be unreasonably withheld.
- 8.2. The Company may novate, sub-let or assign this Contract to any of our related bodies corporate or a successor in connection with any corporate reorganisation, merger, acquisition, or sale of our business or assets without the Client's consent.
- 8.3. The Contract constitutes the entire agreement between the parties in relation to the subject matter and supersedes all previous agreements and understandings, whether verbal or in writing.
- 8.4. The Contract may only be amended by mutual agreement of the parties (or their authorised representatives) in writing.
- 8.5. The Contract is to be interpreted in accordance with the laws of the State of Victoria, Australia.
- 8.6. 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.
- 8.7. To the extent that an act of God, fire, flood, natural disaster, war, revolution, other unlawful act against public order or authority, strikes, lock-outs or acts by any government authority ("Force Majeure Event") prevents or delays a party from performing an obligation under this Agreement, that party will not be liable for the failure to perform that obligation, and that obligation is suspended for as long as the Force Majeure Event continues.
- 8.8. 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. Non-disparagement

- 9.1. 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).
- 9.2. The parties agree to immediately remove any prejudicial information (including information posted online) immediately upon written request of the other party.
- 9.3. 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.
- 9.4. The parties acknowledge and agree that a breach of this clause is a material breach of this Agreement and damages may be inadequate compensation for such a breach of this provision. Subject to the court's



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discretion, the non-breaching party may restrain, by an injunction or similar remedy, any conduct or threatened conduct.

10. Intellectual Property

- 10.1. You are solely responsible for ensuring that you have all appropriate rights and licenses to any material provided to the Company ("Content") that you supply, including but not limited to video, images and text.
- 10.2. 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 Intellectual Property Rights ("IPR") of others or would be in breach of our policies.
- 10.3. You agree to indemnify us against any claims arising out of or relating to your Content, advertising keywords and your use of the campaign.
- 10.4. You expressly grant the Company a worldwide, perpetual, irrevocable, non-exclusive, royalty-free licence to use (and where necessary, cache) your Content.
- 10.5. 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;
 - d. you will not use the Service except as permitted by the Contract; and
 - e. all campaigns will comply with applicable laws and regulations.
- 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, irrevocable, worldwide license to, for the term of the Contract:
 - 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 Services 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 limit liability:
 - a. 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 IPR issues which may arise from your use of the Service (including without limitation the use of Content in your Campaign).
- 10.9. Your access to, and continued use of, the Service is contingent upon, and at all times subject to, payment of the Fees. Except as otherwise expressly stated in this Contract, no other rights, titles or interests in the campaign are granted to you.
- 10.10. After the expiry of the Contract, all IPR in the materials produced by us in connection with the Services (including websites, designs, information, reports and data) will be transferred to the Client subject to full payment of all Fees by the Client. Until such time, all IPR rights will be retained by the Company.