



TERMS OF BUSINESS

1 INTRODUCTION

1.1 Impressive Digital Agency Pty Ltd ABN 95 610 306 815 (Impressive Digital) are a specialist digital marketing agency with expertise in:

Digital Marketing strategy and implementation;

Search Engine Optimisation (SEO);

Web design;

Pay-per-click advertising (PPC)

1.2 The Client wishes to engage the services of Impressive Digital on the terms of this Agreement.

2 INTERPRETATION

2.1 The following definitions apply in this document:

ABN means Australian Business Number.

ACN means Australian Company Number.

Agreement means these Terms of Business.

Approval means approval of a Scope, or any Deliverable by an Authorised Person.

Authorised Person means the directors or employees of the Client authorised to approve a Scope Business

Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the city of Melbourne, Victoria.

Confidential Information has the meaning set out in clause 12.1 but does not include information that Impressive Digital can establish:

i Was in the public domain at the time it was given to Impressive Digital;

ii Became part of the public domain, without Impressive Digital's involvement in any way, after being given to Impressive Digital;

iii Was in Impressive Digital's possession when it was given to the Impressive Digital, without having been acquired (directly or indirectly) from the Client; or

iv Was received from another person who had the unrestricted legal right to disclose that information free from any confidentiality obligation.

Client means each client of Impressive Digital subject to this Agreement.

Deliverable means any deliverable supplied by Impressive Digital subject to this Agreement.

Impressive Digital means Impressive Digital Agency Pty Ltd ABN 95 610 306 815.

Intellectual Property means any intellectual property rights, whether registrable or not, including all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property of a party in any part of the world, and including applications for the registration of any such rights and any improvements, enhancements or modifications to such registrations.

GST has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

PPC means pay-per-click advertising.

Program Period means the period for which Works will be carried out for the Client subject to the Scope.

Promotional Materials means any written, graphic, video or other material intended to promote the Client.

SEO means search engine optimisation.

Services means the services provided by Impressive Digital subject to this Agreement, including but not limited to:

i Digital Marketing strategy and implementation;

ii The creation and distribution of Promotional Materials;

iii SEO;

iv Web design;

v PPC.

Scope means a written project specification, proposal or quote for Works accepted by the Client and subject to this Agreement.

Special Conditions mean any particular arrangements made between the parties that are governed by this Agreement and/or change any term or condition of this Agreement.

Tax Invoice has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Work means the Services and Deliverables subject to this Agreement.

2.2 Headings are only for convenience and do not affect interpretation. The following rules apply unless the context requires otherwise:

The singular includes the plural and the opposite also applies.

If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

A reference to a clause refers to clauses in this Agreement.

A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.

Mentioning anything after includes, including, or similar expressions, does not limit anything else that might be included.

A reference to a party to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).

A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.

A reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

A reference to dollars or \$ is to an amount in Australian currency unless otherwise explicitly specified.

3 APPLICATION OF THIS AGREEMENT

3.1 This Agreement applies to each Client's use of the Services provided by Impressive Digital.

3.2 Where the Client does not accept the terms and conditions of this Agreement, the User must immediately cease using the Services.

3.3 This Agreement may be updated by Impressive Digital at its absolute discretion from time-to-time, and unless stated otherwise by Impressive Digital in writing, such updates shall come into effect 10 Business Days after the Client receives written notice of the update(s).

3.4 If the Client does not accept any update to this Agreement, the client may terminate this Agreement and cease using the Services.

4 SERVICES

4.1 Services.

This Agreement and any proposal or quote prepared for the Client (whether orally or in writing) sets out the scope (Scope) of the Services and Deliverables the Client has requested (Work).

The Work will not extend beyond that scope unless Impressive Digital and the Client agree in writing.

Impressive Digital will provide the Services to the Client.

4.2 Exclusivity.

The Client shall not engage any third party to provide services in Australia that compete with or are similar to the services provided by Impressive Digital during the Term of this Agreement.

5 RELATIONSHIP

5.1 Impressive Digital warrants that it is an independent service provider to the Client and that it is not an employee or partner of the Client in any way.

5.2 Impressive Digital will not:

Hold itself out as an agent of the Client, except to the extent necessary to carry out the Works; or

Incur obligations or liabilities on behalf of the Client unless the Client provides written permission.

6 KEY OBLIGATIONS

6.1 Impressive Digital will:

Work diligently to protect and promote the interests of the Client at all times;

Act loyally and faithfully towards the Client in all matters;

Ensure that the Works are complete and provided in a timely manner and/or in accordance with any timeframes agreed by the parties;

Ensure that the Works are provided in accordance with the standards outlined in the Scope;

Establish and maintain clear channels of communication at all times with the

Client, and promptly answer any questions asked by the Client;

Comply with all the relevant laws and industry standards in respect of providing the Work; and

Act in accordance with the Client's reasonable directions while providing the Work.

7 THE CLIENT'S KEY OBLIGATIONS

7.1 The Client will:

Ensure that Impressive Digital has access to all the:

i Resources, personnel, electronic systems and premises required to provide the Work; and

ii All facilities and materials and information reasonably requested for Impressive Digital to do its job;

Establish and maintain clear channels of communication at all times with Impressive Digital;

Promptly provide clear, complete and timely instructions and all necessary information and documents to enable Impressive Digital to provide the Work effectively.

The Client must tell Impressive Digital immediately if Impressive Digital have misunderstood the Client or made incorrect assumptions.

The Client must take reasonable care to protect its own interests.

Provide Impressive Digital with all information, assistance and materials that Impressive Digital requests from time to time to facilitate the proper and timely performance of the Works.

Promptly provide Impressive Digital with a copy of all applicable policies, procedures, rules, regulations, standards of conduct and requirements relevant to the provision of the Services.

Notify Impressive Digital promptly if the Client considers that any statement made in any document submitted by Impressive

Digital to the Client for Approval is incorrect or misleading in any way, or may give rise to any claim or action for defamation or otherwise against Impressive Digital.

8 CLIENT APPROVAL

8.1 The Client shall notify Impressive Digital in writing of any change regarding who is an Authorised Person during the term of this Agreement.

8.2 Impressive Digital shall not be responsible for any delay in the performance of the Services resulting from the unavailability of an Authorised Person to provide Approval.

8.3 Approval shall be provided by:

a letter, fax or email from an Authorised Person bearing Approval; or

oral approval by an Authorised Person, either by phone, VOIP or face-to-face.

8.4 After obtaining Approval of a quote or proposal that form part of the Scope, Impressive Digital shall submit to the Client for specific Approval as required such draft or proof documents, images or video that require Approval subject to the Scope before dissemination.

8.5 Approval of drafts or proofs shall be taken by Impressive Digital as authorisation to proceed.

9 SUBCONTRACTING

9.1 Impressive Digital may engage such third-parties as are necessary to provide the Works without the Client's approval.

9.2 Impressive Digital shall be responsible for ensuring that all third-party subcontractors comply with Impressive Digital's obligations under this Agreement including those of Confidentiality.

10 FEES & PAYMENT

10.1 Fees

Impressive Digital will charge the Client such fees as specified in the Scope (Fees) which may include:

- i** an agreed fixed fee rate (Fixed Fee Rate);
- ii** an upfront fee; and
- iii** such other Fees or Expenses in accordance with a specified payment schedule.

Where a Fixed Fee Rate applies the Client agrees:

- i** To pay an upfront fee for Impressive Digital's commitment to undertake the agreed work;
 - ii** The Fixed Rate Fee only covers work done within the Scope;
 - iii** The Client must provide instructions (and all required information and other documents) to Impressive Digital within the timeframe(s) specified in the Scope; and
 - iv** The Fixed Fee Rate does not cover any work done outside of (i) to (iv) (inclusive) above.
- Impressive Digital reserves the right to not undertake any work falling outside of 10.1(b)(b)i to 10.1(b)iii above without additional payment or an agreement by the Client to pay Impressive Digital at its hourly rates.

Impressive Digital will advise the Client as soon as reasonably practicable where work falls outside of these parameters and give the Client an estimate of the additional costs/rates.

If Impressive Digital obtain any goods or services for the Work from third parties the Client agrees to pay these at cost (Expenses). Such Expenses shall include, without limitation:

- i** External consultants;
- ii** Design, artwork and print;
- iii** Direct mail;
- iv** Video production;
- v** Photography and prints;
- vi** Postage and packaging.

For the avoidance of doubt any services contained in Expenses shall not constitute subcontracting pursuant to clause 9 of this Agreement.

Impressive Digital shall seek Approval prior to incurring the cost of any Expenses.

Unless otherwise stated, fees are exclusive of GST, which is payable in addition at the prevailing rate.

10.2 Invoicing & Payment

Impressive Digital shall provide a Tax Invoice to the Client for any Works provided.

The Client agrees to pay any Tax Invoice promptly and within the stated timeframe, which in default shall be 5 business days from the date of the invoice.

Payment shall be by electronic transfer into Impressive Digital's nominated bank account unless otherwise agreed between the Parties.

10.3 Disputed Tax Invoice

Should the Client dispute any charge on a Tax Invoice, the Client must notify Impressive Digital of the disputed item within 2 business days of the date of the Tax Invoice.

The Client must pay the amount of the Tax Invoice not in dispute within the stated timeframe.

Failure by the Client to notify Impressive Digital of a disputed Tax Invoice within 5 business days shall be deemed acceptance by the Client of the entire Tax Invoice.

10.4 Interest

Impressive Digital may charge interest at a rate of 10% per annum, calculated daily, on overdue Tax Invoices.

11 INTELLECTUAL PROPERTY

11.1 Background IP.

Impressive Digital IP

- i** For the purposes of this clause, Impressive Digital IP means all Intellectual Property of Impressive Digital incorporated in the Services and/or Deliverables.
 - ii** The Client acknowledges that Impressive Digital retains ownership of all of Impressive Digital IP.
 - iii** Impressive Digital grants the Client a non-exclusive, perpetual, non-transferable, royalty free and worldwide licence to use, for the purposes of its day to day business, the Impressive Digital IP to the extent that it is contained within the Services and/or Deliverables.
- Client IP

i For the purposes of this clause, Client IP means all Intellectual Property of the Client contained in any information provided to Impressive Digital in the course of providing the Services.
ii Impressive Digital acknowledges that the Client retains ownership of all of Client IP.
iii The Client grants Impressive Digital a non-exclusive, perpetual, non-transferable, royalty free and worldwide licence to use the Client IP to the extent that it is contained within the Services and/or Deliverables.
iv The Client grants Impressive Digital a non-exclusive, perpetual, non-transferable, royalty free and worldwide licence to use the Client IP/Client's name and logo in Impressive Digital marketing or tender documents, unless the Client directs Impressive Digital not to.
Third-Party IP

i For the purposes of this clause Third-Party IP means any rights which are owned by a third-party that are attached to any materials included in the Works. Such Third-Party IP may be attached to (without limitation) software code; photographs; written material; visual and artistic design; video and film; and audio recordings.
ii Impressive Digital shall grant to the Client such rights as the owner of the Third-Party IP permits Impressive Digital to grant the Client.

11.2 New IP.

Any Intellectual Property generated by Impressive Digital for the Client in the process of providing the Works (New IP) is owned absolutely by the Client and vests in the Client immediately.

To the extent that Impressive Digital may at any time acquire any right, title or interest in the New IP, Impressive Digital, by this document, agrees to assign to the Client all such rights, title and interest in the New IP.

Unless otherwise agreed in writing by the parties, and notwithstanding any provision of this Agreement to the Contrary, the Client grants Impressive Digital a non-exclusive, perpetual, non-transferable, royalty free and worldwide licence to use, for the purposes of its day to day business, the New IP to the extent that it is contained within the Works.

The Client may only use the New IP for the purpose for which it was created, and no work in draft or incomplete form, or that was not otherwise Approved shall be used or published as finished work without Impressive Digital's prior written consent.

12 CONFIDENTIALITY

12.1 Confidential Information means any written or verbal information that:
is connected with the Client and is obtained from the Client or one of the Client's representatives;

The Client informs Impressive Digital that the Client considers it confidential and/or proprietary; or is personal information within the meaning of the Privacy Act 1988 (Cth).

12.2 Impressive Digital will keep all Confidential Information in confidence on an ongoing basis in accordance with this Agreement.

12.3 The Confidentiality obligations owed under this Agreement shall survive termination of the Agreement.

12.4 Impressive Digital must not:

Use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this Agreement; or

Disclose any of the Confidential Information except in accordance with clauses 12.5 or 12.6.

12.5 Impressive Digital may disclose Confidential Information to its personnel (including to third parties engaged by Impressive Digital to provide services in connection with the Work) if:
The disclosure is required to enable Impressive Digital to perform its obligations or to exercise its rights under this document; and

Prior to disclosure, Impressive Digital informs the person of Impressive Digital's obligations in relation to the Confidential Information under this document;

12.6 Subject to clause 12.7, Impressive Digital may disclose Confidential Information that Impressive Digital is required to disclose by law.

12.7 If Impressive Digital is required to make a disclosure under clause 12.6, Impressive Digital must:
To the extent possible, notify the Client immediately after it anticipates that it may be required to disclose any of the Confidential Information; and

Only disclose Confidential Information to the extent necessary to comply.

12.8 The Client and Impressive Digital must each assist the other to comply with its obligations under the Privacy Act 1988 (Cth) in relation to Confidential Information.

13 PRIVACY AND DIRECT MARKETING

13.1 Impressive Digital may collect personal information about the Client and its representatives and employees in the course of acting for the Client. This personal information will only be disclosed and used for the purposes of performing the Work, improving Impressive Digital's services and obtaining feedback, or otherwise in accordance with the Client's instructions.

13.2 The Client consents to Impressive Digital's use of the Client's contact details to maintain an ongoing professional relationship with the Client and any associated entity, including in order to provide updates, invitations and other communications Impressive Digital consider may interest the Client.

13.3 The Client may have rights under the Privacy Act 1988 (Cth) to obtain access to personal information Impressive Digital holds.

13.4 The Client may request Impressive Digital not to send direct marketing materials by contacting Impressive Digital by email.

14 DISPUTE RESOLUTION

14.1 If any dispute arises between the Client and Impressive Digital in connection with this Agreement (Dispute), then either party may notify the other of the Dispute with a notice (Dispute Notice) which: Includes or is accompanied by full and detailed particulars of the Dispute; and

Is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.

14.2 Within 10 Business Days after a Dispute Notice is given, a representative (with the authority to resolve the dispute) of the Client and Impressive Digital must meet and seek to resolve the Dispute.

14.3 Subject to clause 14.4, a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.

14.4 Nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

14.5 Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this document and any related agreements.

15 AMENDMENT AND ASSIGNMENT

15.1 This Agreement can only be amended, supplemented, replaced or novated by written agreement between the parties.

15.2 Save where expressly set out otherwise, the parties to this Agreement may not assign or otherwise create an interest in their rights under this document without the written consent of each other party.

16 ELECTRONIC COMMUNICATION & NOTICES

16.1 The words in this clause that are defined in the Electronic Transactions Act 1999 (Cth) have the same meaning.

16.2 The parties acknowledge and agree that this Agreement is binding upon each party if executed digitally and conveyed by electronic communication.

16.3 A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.

16.4 Notices must be sent to the parties' contact details as advised to the other party from time to time.

17 TERM AND TERMINATION

17.1 Term. This Agreement shall end when the works have been completed by Impressive Digital in the reasonable opinion of the Client, or by earlier termination in accordance with the terms of this Agreement.

17.2 Termination.

Either party may terminate this Agreement by giving the other party no less than 30 days' written notice unless agreed otherwise.

Should the Client terminate this Agreement without cause, it shall remain liable to pay any Fees that it had agreed to pay Impressive Digital for all Services and/or Deliverables (which if on an hourly basis are all Fees payable up to the date of termination, including time spent on disengagement).

18 GENERAL

18.1 Special Conditions. The parties may agree to any Special Conditions to this Agreement in writing.

18.2 Prevalence. To the extent that the Special Conditions are inconsistent with these terms, the Special Conditions will prevail.

18.3 Disclaimer. Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.

18.4 Relationship. The relationship of the parties to this Agreement does not form a joint venture or partnership.

18.5 Waiver. No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.

18.6 Further Assurances. Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.

18.7 Governing Law. This Agreement is governed by the laws of the state of Victoria, Australia. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there, in the city of Melbourne.

18.8 Inconsistency. If this Agreement is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

18.9 Counterparts. This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

18.10 Time. Time is of the essence in this Agreement.

18.11 Severability. Any clause of this Agreement, which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.

END TERMS OF BUSINESS