

April Ford.

Terms & Conditions of Trade

Date
June 2021

1. Definitions

- 1.1. **"Additional Costs"** means the Company's Services, charged at the hourly rate prescribed in the Company's Fee Proposal provided to the Client and any disbursement incurred by the Company at cost.
- 1.2. **"Agreement"** means these Terms and Conditions, and any accepted Fee Proposal and/or Scope of Works.
- 1.3. **"Allocated Time"** means the amount of time specified by the Company to carry out various stages of the Works, as set out in Email, Fee Proposal, Quote or Production Timeline. This includes but is not limited to time spent on briefing, conceptualisation, strategy, research, execution, planning, design, development, client communication, copywriting, meetings, editing and proofing.
- 1.4. **"Assets"** means any Deliverables that have not been assigned to the Client pursuant to a perpetual license made between the Company and the Client.
- 1.5. **"Client"** referred to as you/your, means the person/s or any person acting on your behalf of and with the authority of the Client requesting us to provide the Deliverables and Services and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.6. **"Company"** referred to our, means April Ford Pty Ltd ACN 610 691 239 and includes its successors and assigns.
- 1.7. **"Company's Representative"** means an employee, agent or consultant of the Company.
- 1.8. **"Completion Date"** means the date the Completed Works have been given to or made available to the Client.
- 1.9. **"Confidential Information"** means all confidential information of the other party and includes but is not limited to proprietary, financial, legal, operational, marketing, systems, processes, customers, suppliers, employees and any other information normally considered confidential.
- 1.10. **"Completed Works"** means any Works completed by the Company.
- 1.11. **"Content"** means any photographs, video, designs, or otherwise created and produced by the Company.
- 1.12. **"Days"** means calendar days unless advised otherwise.
- 1.13. **"Deliverables"** means any Good/s, Service/s, Content, Document, or item developed by or on behalf of the Company for the Client.
- 1.14. **"Document"** means as that term is defined in the Acts Interpretation Act 1954.
- 1.15. **"Changes"** means any variation, revision or update to a Deliverable or Document which were not specified in the Scope of Works.
- 1.16. **"Management Plans"** means any monthly recurring Service specified in a Fee Proposal.
- 1.17. **"Price"** means the amount payable to the Company as specified in a Fee Proposal.
- 1.18. **"Production Timeline"** means the schedule of dates provided to the Client outlining the various stages of the Works. The Production Timeline will be adjusted where Changes are requested and/or required.
- 1.19. **"Scope of Works"** means the schedule of Services and inclusions provided by the Company to the Client.
- 1.20. **"Services"** means Works that are of and incidental to the supply of Deliverables.
- 1.21. **"Works"** means the supply of Deliverables and Services.

2. General Conditions

- 2.1. These Terms and Conditions, Fee Proposal, and/or Scope of Works provided by the Company set out the entire Agreement between the Company and the Client. The Client may not rely on an earlier agreement, or anything else said or done, by the Company and/or the Company's representatives prior to this Agreement being entered into, unless expressly agreed by way of a written variation pursuant to clause 15 of these Terms and Conditions.
- 2.2. The law of Queensland applies to any Agreement made between the Company and the Client. The Company and the Client submit to the exclusive jurisdiction of Queensland for the commencement of any claim, cause of action or proceeding in relation to any matter or dispute that arises from or is incidental to any Agreement made between the Company and Client.

- 2.3. Both parties warrant that they have the power to enter into these Terms and Conditions and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that these Terms and Conditions create a binding and valid legal obligation on them.
- 2.4. The failure by either party to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.
- 2.5. If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 2.6. The Client agrees that the Company may amend these Terms and Conditions by notifying them in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Company to provide Services to the Client.
- 2.7. The Client acknowledges and agrees that they have no right to set-off or deduct monies payable by the Client to the Company under these Terms and Conditions or any other contract nor to withhold payment of an invoice because part of that invoice is in dispute.

3. Fee Proposal

- 3.1. The Company's Fee Proposals are submitted at the request of the Client and are, at all times, subject to change until it is accepted in accordance with clause 3.4 of these Terms and Conditions.
- 3.2. Additional Costs will apply where requested or required Changes result in the Company exceeding the Allocated Time specified in a Fee Proposal.
- 3.3. The Company's Fee Proposals are valid for thirty (30) days from the date of issue unless expressly stated otherwise.
- 3.4. The Client can accept a Fee Proposal by:
 - (a) signing and returning them to the Company; or
 - (b) continuing to instruct the Company to work on behalf of the Client in accordance with the Fee Proposal.

4. GST

- 4.1. Unless otherwise specified in these Terms and Conditions, the Price of the Deliverables and/or Services is exclusive of GST.
- 4.2. The Company will charge GST at the rate set by the Australian Government in respect of any supply made to the Client.

5. Price and Payment

- 5.1. The Client must pay the Price to the Company for the supply of Deliverables and Services as set out in the accompanying Fee Proposal.
- 5.2. The Company reserves the right to vary the Price if:
 - (a) The Client requests a Change or variation, and the parties agree to the Change or variation in accordance with clause 14 of these Terms and Conditions; or
 - (b) Any legislative or statutory changes (commenced after acceptance of these Terms and Conditions) necessitate additional fees, charges or taxes that are applicable to the Deliverables and/or Services.
- 5.3. Unless otherwise agreed in writing, the following payment terms apply:
 - (a) Management Plans:
 - (i) Payment to be made before commencement of Works or advertising and or media being booked, placed or reserved.
 - (b) Advertising:
 - (i) The Client authorises the Company to use the Client's nominated credit card to pay for advertising costs and disbursements requested by the Client.
 - (c) Website Development
 - (i) 50% of the Price is to be paid before commencement of Works;
 - (ii) 50% of the Price is to be paid at the end of week four from the commencement of Works; and
 - (iii) An invoice may be issued to the Client at the completion of the website for Works completed outside a Fee Proposal.

- (d) Website Hosting
 - (i) Payment will be charged directly to the Client for the appropriate hosting service.
 - (ii) All hosting charges are subject to change.
 - (e) Custom Development Functionality:
 - (i) Charged at an hourly rate as specified in a Fee Proposal.
 - (f) Graphic Design
 - (i) Payment to be made before commencement of Works.
 - (g) Additional Costs:
 - (i) Charged at an hourly rate as specified in a Fee Proposal;
 - (ii) The hourly charge rate will be reviewed periodically by the Company; and
 - (iii) The Company will provide the Client with 1 months' notice of any changes to the hourly charge rate.
- 1.2. Unless otherwise agreed in writing, all invoices are payable within 7 days of receipt.
 - 1.3. All invoices issued by the Company must be paid in full before the Company will commence design or print works.
 - 1.4. In the event that the Client breaches any of these conditions the Company will not permit usage of any Documents until such breach is resolved.

6. Client Obligations

- 6.1. The Client agrees to the allocated Production Timeline and deadlines provided by the Company.
- 6.2. The Client acknowledges that:
 - (a) the Client will have the following responsibilities:
 - (i) Provide the Company with all necessary Documents before commencement of the Works.
 - (ii) Any Documents provided after commencement will be considered Changes and the Client will incur Additional Costs to update.
 - (iii) Provision of all Content for errors or omissions prior to approval.

- (b) The Company requires timely, accurate and comprehensive responses from the Client at all stages of the Production Timeline.
- (c) In the event the Client fails to provide such responses, the Client acknowledges that the Deliverables will continue in accordance with the Production Timeline and any Changes as a result of the Client's failed responses will incur Additional Costs.
- (d) Unless otherwise agreed in writing, all Deliverables will be subject to Client approval before being sent live or provided in final formats.
- (e) The Company will not be responsible for, and accepts no liability for any loss, damage or cost incurred by the Client as a result of Client approving a Deliverable that:
 - (i) contains an error or omission; or
 - (ii) requires further amendments at the request of the Client.

6.3 The Client agrees that:

- (a) only Completed Works is provided to the Client via their social media channels;
- (b) unless otherwise agreed in writing, Assets created under any Management Plan will not be provided to the Client; and
- (c) only photos selected for Content will be edited.

7. Website Design

- 7.1. Unless otherwise agreed in writing, all websites designed or developed by the Company will include 'Designed & Developed by April Ford Pty Ltd' in the footer of the website.
- 7.2. In circumstances where the Company is to make Changes to the website, these Works:
 - (a) require the Client to provide the Company with one weeks' notice; and
 - (b) will incur Additional Costs at a minimum billing of one hour.
- 7.3. The Company will place password protection on the website if the Client is not ready to go live once the website is complete. The Company will advise the Client how to remove this in the handover document.

- 7.4. The Company is not required to hand over the password to the Client until payment of all invoices issued by the Company to the Client have been made in full.
- 7.5. If the Client needs the domain directed at a later date Additional Costs will apply.
- 7.6. The Client must request all Changes via the Adobe proofing program.
- 7.7. The following functions are not included in the base website designs Fee Proposal:
- (a) Custom Development Functionality
 - (b) Website Hosting
 - (c) Ongoing website management
- 7.8. Unless otherwise agreed in writing, the ongoing management of the website is the responsibility of the Client and the Client indemnifies the Company against any loss or damage arising directly or indirectly from website downtime or security breaches.
- 9.5. If the Client engages a third party to rectify any defect within the warranty period without first notifying the Company in accordance with clause 9.1, then:
- (a) the Workmanship Warranty provided by the Company will be void to the extent it is permitted by law; and
 - (b) the Company will not be liable to compensate the Client for any cost incurred or loss suffered (including consequential loss) as a result of the third party attending to the defect.
- 9.6. For defective Deliverables which the Company has agreed in writing that the Client is entitled to reject, the Company's liability is limited to either replacing or repairing the Deliverables (at the Company's discretion) provided that the Client has complied with clause 9.1 of these Terms and Conditions.
- 9.7. The Client cannot withhold payment due to the identification a defect.

8. No-Guarantee

- 8.1. The Company does not warrant or guarantee any results, outcomes or deliverables other than those specified in these Terms and Conditions, Scope of Works, Fee Proposal or other written or verbal communication.

9. Defects

- 9.1. If a Client identifies a defect in the Deliverable provided by the Company, the Client must give written notice of the defect to the Company within 1 month ("Workmanship Warranty") of the Completion Date.
- 9.2. Upon receipt of written notice from the Client of a defect under clause 9.1, the Company will review the defect and rectify it within a reasonable time subject to any exclusions provided by these Terms and Conditions.
- 9.3. The Workmanship Warranty shall not cover any defect which was caused by or which resulted from any act or omission of the Client which if taken would have prevented the defect from occurring. The Client releases the Company from and indemnifies the Company against any loss, cost or cause of action suffered by the Client as a result of any such act or omission by the Client.
- 9.4. The Client must not engage another person or contractor to rectify the defect, without first notifying the Company that a defect exists in accordance with clause 9.1 of these terms and conditions and will provide the Company the first right of refusal to carry out rectification work.

10. Supply of Deliverables

- 10.1. The Company shall deliver the Deliverables as per the Scope of Works or Fee Proposal provided to and agreed to by the Client.
- 10.2. All Management Plans (excluding Digital TV) have a three-month minimum commitment period.
- 10.3. Unless otherwise agreed in writing, the Company does not provide copies of Assets, incomplete works and/or other internal working files to the Client.
- 10.4. if the Client requests copies of Assets, incomplete works or other internal working files, the Client agrees to pay the Company Additional Costs to collate, package and give such Documents.
- 10.5. Any time or date quoted by the Company for the delivery of the Deliverables is an estimate only. The Company shall not be liable for any loss or damage, including any consequential loss or damage, resulting either directly or indirectly from the delay in delivery or failure to deliver the Deliverables, either in whole or part.
- 10.6. The Company's obligations to deliver a Deliverable shall be discharged on the giving or making available of the Deliverable at the Client's nominated delivery destination.
- 10.7. The Company reserves the right to deliver or make available the Deliverables by portion and each portion shall not entitle the Client to repudiate these Terms and Conditions.

- 10.8. The Client shall not be relieved of any obligation to accept or pay for Deliverables by reason of any delay in delivery or making available.
- 10.9. The Client is responsible to ensure that they advise the Company of the correct information relating to all delivery access and relevant information ("Delivery Information") prior to the date of delivery.
- 10.10. If the Client provides the Company with incorrect Delivery Information, the Client will be liable for Additional Costs.

11. Intellectual Property

- 11.1. Subject to clause 11.3 of these Terms and Conditions, the copyright in the design of all Documents, Assets or Deliverables created by the Company for the Client, remain the property of the Company.
- 11.2. Upon full payment of the Price, the Company agrees to provide the Client with a royalty-free perpetual license for all Completed Works.
- 11.3. If agreed between the parties, the Company's copyright in the design of any Completed Works may be assigned to the Client by way of a Deed of Assignment.
- 11.4. The Client warrants that all designs, specifications or instructions given to the Company will not cause the Company to infringe on any patent, registered design or trademark in execution of the Client's order and the Client agrees to indemnify the Company against any action taken by a third party against the Company in respect of such an infringement.
- 11.5. Each party agrees not to use or disclose any Confidential Information acquired relating to the other party before, during or after this Agreement.
- 11.6. Each party is to bear its own costs in relation to the creation of a royalty-free or other perpetual license and any Deed of Assignment.

12. Warranty

- 12.1. The Client agrees that the Company shall not be liable for any:
- (a) representation, promise or undertaking regarding the fitness or otherwise of Deliverables supplied by the Company unless it is made in writing or implied by the law;

- (b) failure by the Client to maintain Deliverables in accordance with any advice, recommendation, specification, information, assistance or service provided by the Company in relation to Deliverable sold or manufactured by it.
- 12.2. To the extent permitted by law, the Company's liability for any defect or damage to the Deliverables is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Company;
- (b) limited to the warranty to which the Client is entitled to under the Manufacturer's warranty;
- (c) otherwise negated absolutely.
- 12.3. The warranty on the Deliverables shall not cover any defect or damage which was caused or partially caused as a result of:
- (a) the Client failing to properly maintain or store any Deliverables;
- (b) the Client failing to follow any instructions or guidelines as provided by the Company;
- (c) the Client using the Deliverables for a purpose other than for which they were designed; and
- (d) the continued use of any Deliverables after a defect becomes apparent or would have become apparent to a reasonably prudent operator or user.

13. Risk

- 13.1. Subject to any legislative requirements, the risk in the Deliverables will pass to the Client upon delivery of them to the Client.
- 13.2. The Company shall not be liable for any delay or failure to perform its obligations under the Contract if such a failure results directly or indirectly from any cause, matter or thing beyond the reasonable control of the Company including but not limited to:
- (a) any act, default or omission on behalf of the Client;
- (b) any events occurring before the Completion Date:
- (i) damage by fire, explosion, earthquake, lightning, storm, flood, acts of God, civil or military authority or industrial conditions;
- (ii) electrical power supply failure;
- (iii) inclement weather;

- (iv) unavailability of suitable materials or parts;
- (v) variations by Client;
- (vi) changes in law.

14. Variations

- 14.1. Either party may request a variation to these Terms and Conditions, by providing the other party with written notice ("Variation Notice").
- 14.2. The documentation requirements for submitting a variation by either party is as follows:
- (a) the document must be in writing and be in readily legible English;
 - (b) the document must describe the variation requested;
 - (c) the document must state the date of the request for the variation;
 - (d) if the variation will cause a delay to the Deliverables, the Company must state a reasonable estimate for the period of delay;
 - (e) if the variation will change the contract price, the document must specify the method for calculating the change to the contract price when the increase is due to be paid.
- 14.3. The Company must within 14 days of receiving the Variation Notice, advise the Client in writing if it accepts the variation.
- 14.4. The Company is not obliged to approve any variation requested by the Client.
- 14.5. All approved variations must be in writing and expressly accepted by the Company and the Client.

15. Cancellations

- 15.1. If the Client cancels an order for any one part or whole of the Deliverables, they will be required to pay for all costs incurred to date, including but not limited to materials, parts, consumables and administrative costs that the Company has incurred on behalf of the Client.

16. Default

- 16.1. If an invoice is not paid in full by the due date, interest shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 12% per annum.

- 16.2. If the Client owes money to the Company, the Client shall indemnify the Company from and against all costs and expenses incurred by the Company in recovering the debt including but not limited to:

- (a) internal administration fees;
- (b) legal costs on an indemnity basis;
- (c) debt collection agency costs on an indemnity basis; and
- (d) bank dishonour fees.

- 16.3. In the event that:

- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Client is unable to meet payment as they fall due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes to enter into an arrangement with a receiver, manager, liquidator (provisional or otherwise) or a similar person is appointed in respect of the Client or any other asset of the Client; or
- (c) without prejudice to any other rights or remedies the Company may have, if at any time, the Client is in breach of any obligations under these Terms and Conditions:
 - (i) the Company shall be entitled to cancel all or part of any order of the Client which remains unperformed;
 - (ii) the Company may suspend or terminate the supply of Deliverables and/or Services to the Client; and
 - (iii) the Company may rescind the royalty-free perpetual license.

- 16.4. The Company will not be liable for any loss or damage incurred by the Client as a result of the Company exercising its rights under this clause.

17. Termination

- 17.1. Subject to clause 10.2 of these Terms and Conditions, either party may suspend or terminate this Agreement by providing the other party with 30 days written notice thereof, after which time the Services will automatically terminate.
- 17.2. The Client may terminate this Agreement in the event of a substantial breach by the Company and our obligations under this Agreement. The Client may only exercise its right to terminate if:

- (a) the Client has notified the Company, in writing that it has breached its obligations under this Agreement; and
- (b) the breach has not been remedied within 30 days of the Company receiving the notice.

- 17.3. The Company may suspend or terminate this Agreement at any time for any reason by giving the Client written notice, after which this Agreement is ended. In the event the Company exercises its rights under this clause, our liability is limited in accordance with the provision of clause 18 of this Agreement.
- 17.4. The Client acknowledges that upon termination of this Agreement, they will not have access to the previously provided platforms, systems, software's and other Company-specific provisions post termination.

18. Limited Liability

- 18.1. In the event that the Company breaches its obligations under these Terms and Conditions, its liability in respect of the Deliverables and/or Services shall be limited to the cost of rectification only, and only in respect of the Scope of Works that the Company were obligated to perform under this Contract.
- 18.2. The Company shall, in no event, be liable to the Client by way of indemnity or by reason of any breach of this Contract, or in tort, equity or otherwise, for loss of use of the services or any part thereof, loss of production, loss of profit or loss of any contract, or for any indirect, special or consequential loss or damage that may be suffered by the Client or any third party in connection with this Contract.
- 18.3. Any failure by the Company to enforce any Terms and Conditions, or breaches of such, will not be taken as a waiver of that condition, nor will it affect its rights in relation to that condition.

19. Security and Charge

- 19.1. To secure repayment of the monies owed to the Company under these Terms and Conditions, the Client hereby agrees to grant a mortgage and/or charge all of its rights, title and interest (whether joint or several) in any land, realty or any other personal assets capable of being charged, owned by the Client either now or in the future.

- 19.2. The Client shall, at the request of the Company, do all such acts and things to execute and deliver to the Company any mortgage, charge or security interest in registerable form to establish and maintain a mortgage, charge or security interest over the Client's real or personal property in favour of the Company.

- 19.3. The Client indemnifies the Company from and against all costs and disbursements incurred in exercising the Company's rights under this clause.

- 19.4. The Client irrevocably appoints the Company and its directors, as the Client's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 19, including but not limited to, signing any document on the Client's behalf.

20. PPSA

- 20.1. In this clause: financing statement, financing change statement, security agreement and security interest has the same meaning given to it by the Personal Property and Securities Act 2009 (Cth) ("PPSA").

- 20.2. The Client acknowledges and agrees that these Terms and Conditions constitute a security agreement for the PPSA and creates a security interest in all Deliverables that have previously been supplied and that will be supplied in the future by the Company to the Client.

- 20.3. The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such as information to be complete, accurate and up to date in all respects) which the Company may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register ("PPSR");
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 20.3(a)(i) to 20.3(a)(ii);
- (b) indemnify and reimburse the Company for all expenses incurred in registering a financing statement or financing change statement on the PPSR established by the PPSA releasing any charged Deliverables changed thereby;

- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Company;
- (d) not register or permit to be registered a financing statement or a financing change statement in relation to the Deliverables in favour of a third party without the prior written consent of the Company;
- (e) immediately advise the Company of any material change in its business practices of selling the Deliverables which would result in a change of the nature of proceeds derived from such sales.

20.4. The Company and the Client agree that section 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms and Conditions.

20.5. The Client waives their rights to receive notices under section 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

20.6. The Client waives their rights as a grantor and or debtor under sections 142 and 143 of the PPSA.

20.7. Unless otherwise agreed in writing by the Company, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA

20.8. Subject to any provisions to the contrary, nothing in these Terms and Conditions is intended to have the effect of contracting out of any provisions of the PPSA.

21. Legislative and Authority Requirements

21.1. Electronic Transactions Act

- (a) By executing these Terms and Conditions, electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with section 14 of the Electronic Transactions (Queensland) Act 2001.

21.2. Copyright Act

- (a) Both parties acknowledge and accept that the Copyright Act 1968 applies to this Agreement and all Services thereunder.

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