

Terms and Conditions

These Terms and Conditions are effective from the date of acceptance of the Proposal or Service Agreement by the Client and may be amended or superseded from time to time and is also available on the Company's website URL: <https://www.lightmedia.com.au/termsandconditions.pdf>

1. Definitions

- 1.1. "Company" shall mean the supplier of products and/or services to the Client: Light Media Pty Ltd and all its brands and divisions ("**Light Media**").
- 1.2. "Client" shall mean the client purchasing the products and/or services from the Company ("**The Client**")
- 1.3. "Price" shall mean the cost of the Goods and Services as agreed between the Company and the Client as per Proposal or Service Agreement.
- 1.4. "Goods and Services" shall mean all goods and/or services supplied by the Company to the Client, or ordered by the Client, but not yet supplied and includes goods described on any proposal, quotation or invoice.
- 1.5. "Proposal" shall mean all proposals, quotations, offers or invitation to do business submitted by the Company to the Client.
- 1.6. Headings are for ease of reference only and do not form part, or affect the interpretation, of these general terms and Conditions.
- 1.7. All amounts specified are in AUD (Australian Dollar).

2. Jurisdiction

This agreement shall be construed in accordance with laws of the State of Victoria and, where applicable, The Commonwealth of Australia and the Client submit to the non-exclusive jurisdiction of the courts of Victoria.

The Company shall have exclusive right to nominate the Court in which any legal action is to be commenced and conducted.

3. Proposal and Acceptance

Any request from the Client to the Company for the supply of goods and services shall constitute acceptance of these general terms and conditions and proposal submitted. Payment of any amount by the Client indicates the acceptance of these terms and conditions and proposal agreed.

4. Authorisation

The Client authorises Light Media to perform the services outlined in the proposal on the Clients' behalf, which may include, but is not limited to, accessing their web hosting account and disk space, software maintenance, creating databases and applications, and submitting the project to search engines.

5. Project Scope

Any projects, services and rates supplied are limited to what is specifically set forth in the proposal (The Scope) and based on a set number of hours. Any additional services will require a new quotation based on additional hours. We reserve the right to adjust our hourly rates at any time.

Changes and additions outside of the scope of the proposal will be quoted and invoiced to the Client separately. The Client will be advised of all costs, changes and additions before commencement of the additional work.

The Scope does not include outside purchases such as, but not limited to, software licensing, copyright licensing, printing, photography, colour printouts, laminating, illustrations, shipping and handling or courier services.

6. Service Level Agreement (SLA)

The company provides ongoing service to the Clients based on monthly packages which includes competitive hourly rates among other benefits, under the name Service Level Agreement (SLA). Unless otherwise specified, ongoing service is not included in the project proposal and it is voluntary by the Client. If the Client chooses to opt for it, please refer to the SLA packages for more details about its included hours and other benefits.

The SLA Package starts on the first day of each month and run for the whole month. The Client will be invoiced at the beginning of the month for the selected package with its respective hours capped for the month. At the end of the month, shall the client exceed the hours specified in the package, a second invoice will follow with these extra hours.

For Clients under the service level agreement, Light Media works base on the tasks, or group of tasks, requested by the Client. This is simply because Light Media is not in a position to assess what is priority for Client's business. It is responsibility of the client to requests tasks and work to be done.

Light Media requires 1 month notice to cancel the SLA.

If the Client does not proceed with the ongoing service level packages, The Client is responsible for the ongoing management and maintenance of the website. Light Media can provide ongoing support outside the service level agreement; however this will incur our standard hourly rate and be treated as non-priority.

7. Web Hosting

For the Flex Web Hosting services, please refer to its exclusive Terms and Conditions on the link below:

<https://www.flexwebhosting.com.au/terms.php>

8. Production Schedules

Production schedules will be estimated on the proposal and adhered to by both the Client and Light Media. Where production schedules are not adhered to by the Client; final delivery date or dates will be adjusted accordingly. Additional costs may be charged for Client delays.

In case there are delays due to any circumstances, Light Media will communicate this to the Client in writing. Light Media is not held liable for any losses or damages caused by delays. Neither is the Client entitled to a refund due to delays.

9. Overtime and Travel

Overtime is defined as between 6.00pm – 9.00am Monday to Friday Australian Eastern Standard Time, all day Saturday, Sunday and public holidays in Australia.

Requested priority schedules that require overtime and weekend work will be subject to 50% mark-up at an hourly rate. The Client is responsible for any overseas and interstate travel expenses made by any member of the Company to perform work in which the Company has been contracted to perform.

10. Payment Terms

10.1. Project Payment Terms

The Client agrees to pay Light Media in accordance with the payment terms specified in each proposal or quotation. When not specified in the proposal, the Client will be required to pay 50% of the proposal amount before commencement of work. Unless otherwise specified in the Proposal, all subsequent balance due is payable within 30 days of the invoice date. At the Company's sole discretion, payment may be required prior to the supply of any goods and services. Credit Terms may be granted at the Company sole discretion.

10.2. SLA Payment Terms

The Client must pay in advance at the beginning of the month for its respective SLA package. Shall the Client be invoiced for extra hours at the end of the month, the payment term is 7 days.

11.2. General Payment Terms

If the Client fails to pay any invoice, Light Media reserves the right to withdraw the website and associated materials or refuse completion and/or delivery of work until over due balances are fully paid. Light Media may charge a late payment fee of 5% per month on the outstanding amount.

In the event of a dispute, the complete undisputed portion of the account must be paid in accordance with the Payment Terms. Should it be considered necessary by the Company to incur legal and/or any other expenses, including any such expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Client, the Client shall be liable for all such expenses.

Any Client having an overdue account will be precluded from participating in any special deals, discounts, bonus payments, redemptions, rebates and other incentive programs until their account is no longer overdue.

Any payment made by or on behalf of a Client which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Client's indebtedness and, in such an event, the parties are to be restored to rights which each respectively would have had if the payment had not been made.

The Client shall be liable for, and expressly undertakes to pay, all fees (including an Administration Fee in an amount to be set from time to time by the Company) for all costs incurred for any cheque being dishonored for whatever reason.

11. Termination

Either party may terminate the agreement by giving 30-day written notice to the other of such termination. In the event that the work is postponed or terminated at the request of the Client, Light Media shall have the right to bill pro rata for work completed through to the date of that request, while reserving all right under this Agreement.

In the event of the termination, the Company will retain the entire amount paid by the Client up to date. Once all monies owed for the work carried out by Light Media are paid by the Client, Light Media will provide a copy of the codes files within 15 days. The Code base will be provided in a compressed digital file format and transferred to the Client electronically.

The Company shall not be liable for any loss or damage, including any consequential loss or damage, arising from such termination. In the event of the project termination both parties release and forever discharge each other from all claims, demands, suits, actions and proceedings related to the proposal.

12. Ownership

Property in all the goods and services (including websites) supplied shall remain vested in the Company and shall not pass to the Client until all monies owing to the Company by the Client together with all collection, repossession and / or legal costs incurred, have been paid in full.

Except as expressly authorized by the Company, Client will not copy, modify, distribute or transfer (by any means), sublicense, rent, reverse engineer, decompile or disassemble the Company's properties.

The Company will at all times be and remain the sole and exclusive owner of any custom web development or software created in any format used in or made part of the website or software which is not provided by the Client or a Third Party (open source), unless otherwise agreed in the proposal.

13. Subcontractors

Light Media reserves the right to assign subcontractors or external suppliers. Any subcontractors or external suppliers will be bound to the terms of this agreement.

The Client must not in any situation contact or engage in a business relationship with any Light Media employee, contractor or subcontractor without strict Light Media authorization.

14. Promotion

Light Media reserves the right to use the Client's brand name, website, associated graphics and any unused ideas and development in the promotion of Light Media services. The Client agrees to allow Light Media to retain a credit and link from the footer or the website, unless otherwise agreed.

15. Copyright

The Client is responsible for all trademarks, service mark, copyright and patent infringement clearances. The Client is also responsible for arranging, prior to publication, any necessary legal clearance of materials Light Media uses for this project. The Client indemnifies Light Media against any loss or damage arising directly or indirectly from any unauthorized use of photographs, text, or other Intellectual Property not under copyright ownership of the Client.

16. Internet Browser Variance

We test using the browsers that are statistically most commonly used. Layout and aesthetic elements may change or degrade in some browsers. Websites are tested on: Internet Explorer version 11 (PC), Microsoft Edge (PC), updated version of Mozilla Firefox (PC and MAC), Apple Safari (MAC) and Google Chrome (PC and MAC).

Website visitors use different monitors with different settings. Colours and image quality of the website including graphics and photography will shift between devices and screen sizes. Websites are optimised for all devices.

17. Domain Names

The Client legally owns all its domain names. All domain name registrations are subject to availability and registration rules. The Client manages their domain(s) and payment of fees unless the Client requests in writing that Light Media manages the domain name(s) on behalf of the Client. Light Media will invoice the Client when fees are due. Failure to pay for the domain registration fee may result in loss of domain name.

18. Web Hosting

The Client is free to transfer their website hosting to another website hosting provider. Light Media will supply the most up to date backup of the website and associated data. Light Media will take all reasonable actions to transfer the Client's domain name and website. All costs related to transferring the website to another hosting server is the responsibility of the Client.

19. Warranty

Once the project has been completed, as determined by Light Media, Light Media will notify the Client either verbally or in writing, and provide the Client with an opportunity to test and review the website.

The Company provides 30-day warranty on bugs. The Company is not liable for fixing existing bugs on open source applications, third party software, plugins and extensions (such as Joomla, Wordpress, Magento, Drupal, etc.), nor is the company liable for coding done by another developer or third-party provider.

During the warranty period, Light Media agrees to perform the corrections of errors free of charge to the system (website, software, web application) the Company has developed in accordance with the proposal.

20. Revisions

Light Media will provide two rounds of revisions to the new websites or design, before the scope of work is completed, as long as such changes are based on the scope agreed in the proposal. These changes do not include development of new functions or modifications of existing functions in the website. Extended revisions and new features and functions outside of the scope will incur an extra charge.

21. Client Responsibilities

If the Client or an agent of the Client other than Light Media attempts to update, edit or alter the website in a way that causes damage to individual pages or the website's architecture, time to repair it will be assessed at our standard hourly rate. The repair rate is an additional cost on top of the costs outlined in the proposal.

Light Media is not liable for errors or omissions from content submitted by the client. The Client indemnifies Light Media against any loss or damage arising directly or indirectly from any errors and omissions.

All text and images must be supplied by the Client to the Company in digital format.

22. Client Obligations

Client will provide Light Media with full direct and remote access to its website and servers, and shall provide such other reasonable assistance as Light Media may request, including, but not limited to, providing source code and other statistical, diagnostic information and other relevant information required to enable Light Media to perform the work contracted and comply with its obligations under these Terms and Conditions.

Where the Service being provided requires working with a third-party agency or supplier, Light Media will liaise with the relevant agency or other third party in order to provide the Services. Light Media shall not be liable for any act or omission by the relevant web agency, hosting company or other third party, if such act or omission results in Light Media breaching its obligations under these Terms and Conditions and proposal.

Light Media will not make changes to or update a Customer's website prior to written or verbal consent from the Customer, stating that Light Media have the right to make the agreed changes and the Customer, as the website owner, agrees to and takes full responsibility for those changes being made. It is the client responsibility to take and maintain backup of the system, application and database.

23. Limitation of Liability

The services and the work product of Light Media are sold "as is." In all circumstances, the maximum liability of Light Media to the Client for damages for any and all causes whatsoever, and the Client's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the net cost of the proposal, or in case of the SLA, it shall be limited to the time used to perform the specific task.

In no event, shall Light Media be liable for any lost data or content, lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the materials or the services provided by Light Media, even when Light Media has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy. Light Media is not liable for website hacks or vulnerability, especially the ones related to third party software and open source application.

The Client indemnifies Light Media against any loss or damage arising directly or indirectly from website downtime, hack, security breaches or any other maintenance related issues.

Light Media is not liable if the Client breaches any copyright laws due to the use of copyright images and text provided by the Client.

24. Delivery of Print and Promotional Material

The Client shall be responsible for providing correct delivery details and for making all necessary delivery arrangements for the Print Materials.

The Company shall not be liable for any loss or damage, including consequential loss or damage, arising from delay in delivery or failure to deliver the print material, either whole or in part, due to circumstances beyond its control.

The failure of the Company to deliver shall not entitle either party to treat the contract as cancelled.

Should the Client leave it to the Company to arrange carriage for delivery of goods, then all and any additional costs associated with that delivery shall be added to the Price and shall be due and payable in accordance with the Payment Terms.

The Company's obligation to deliver shall be discharged on arrival of the goods at the Client's nominated delivery destination, nominated agent or carrier or the address appearing on the invoice.

25. Content and Materials Supplied By You

You must supply to us all required materials you want us to use in the Service, and all other content and materials Light Media reasonably request (Client Content) in a timely manner.

You must supply all Client Content in the following digital format/s:

- text/copy: Microsoft Word or Rich Text (clearly labelled and in correct order);
- tables: Microsoft Excel (clearly labelled and in correct order);
- images: high resolution where possible (JPEG, PNG files);
- logos: vector format (Illustrator EPS/AI);
- diagrams/maps: vector format (AI) or (JPEG files);
- if required, access to your current website and database via SSH, FTP and/or CMS/hosting control panel login;
- brand style guidelines (if applicable).
- Light Media may charge Additional Costs if the Client Content is not provided in the appropriate format or if material is not supplied when requested.

You warrant that the materials or content you provide to us, or that are provided to us on your behalf, will not: breach any rights (including Intellectual Property Rights or Moral Rights) of any third party; or compromise the security or operation of our computer systems, through a virus or otherwise.

26. Purchase of Stock Images, Fonts, Photography, Audio or Video

Unless specified in the Pricing Structure, the Fees do not include any searches or purchase of stock images, commercial fonts, photography, audio or video.

You can provide stock images, commercial fonts, audio or video, or Light Media can purchase them on your behalf. When any stock images or commercial fonts are purchased on your behalf, Light Media will be the license holder and the image or font can only be used under the terms of the license/s.

You indemnify, and agree to keep Light Media, its directors, officers and employees indemnified, against all Loss arising out of the breach of these licenses.

Standard stock images will be charged according to our current stock image rates
Costing for any font, photography, audio or video required will be provided for approval separately via a Variation Notice.

Ownership of the finished photography, audio or video will be transferred to you upon full payment of all issued invoices. Light Media retains ownership of all working files.

27. Defects in Print and Promotional Material

The Client shall inspect the goods upon delivery and notify the Company within 5 working days of any defects, short deliveries or any failure to fulfill any quotation or order. The Company will, within a reasonable time following delivery, be given access to the goods in order to inspect for any alleged defects.

Should the Client fail to notify the Company within the specified period then the goods shall be deemed to be in compliance with the order and free from any defect whatsoever.

28. Implementation of Service for SEO (Service Engine Optimisation)

Client acknowledges that Search Engine Optimization (“SEO”) is governed by many factors, which are outside the direct control of Light Media. Search Engines are third party systems with unknown variables, algorithms and indexing decisions that can change at any time and without notice over which we have no control. Light Media will use best efforts, techniques and accepted standards to improve Client’s Search Engine Ranking but cannot guarantee of #1 ranking of Client’s website on any major Search Engine using Client’s desired keywords. Client further acknowledges that the website’s ranking with a particular Search Term will rely on both the relevancy of that term on your pages, a range or marketing activities and the popularity of that term on other websites.

Links to other websites are provided for your convenience. Light Media does not control these other websites and cannot be responsible for the content or accuracy of the information or other material on these websites. Unless expressly stated on this website, the provision of a link to an external website does not constitute an endorsement or approval of that website or any of the products or services on that website. You should seek independent expert advice if you have any concerns regarding what services, products or solutions may be suitable for you. Light Media will not be liable for any damages or injury arising from your access to such sites or content.

Client further acknowledges and understands that a website’s rankings may go backwards. Client agrees if this were to happen, no liability will be on Light Media and no refunds or discounts given.

Light Media is not responsible for changes made to the website by other parties that adversely affect the search engine rankings of the Client’s website.

Light Media is not responsible for the Client overwriting Light Media’s work to the Client’s site. (e.g., Client/webmaster uploading over work already provided/optimized). The Client will be charged an additional fee for re-constructing content.

Light Media follows a strictly ethical SEO policy and will not be responsible for any bans or search engine suspension for the following:

- Duplicate sites, duplicate content or pages, redirects or doorway pages.
- Link farms or any spanning techniques, which may harm the web site’s, ranking with Google.
- Increased traffic or sales
- Hidden links
- Automated web site submission software or websites

29. The Commonwealth Trade Practices Act 1974

The warranties, rights and remedies of the Client as outlined in the Commonwealth Trade Practices Act 1974 are not intended to be compromised as a result of anything contained in these terms and conditions, except to the degree permitted by the Act.

30. Change in The Client Structure

This agreement is made in respect of the owners and/or Directors of the Client as at the date of the proposal. The Client agrees to notify the Company in writing within seven (7) days of any change whatsoever in ownership structure and, further, indemnifies the Company against any loss or damage that may result from the Client's failure to notify the Company of any such change.

31. General

The Company accepts no responsibility for changes in any law, which may affect the supply of goods and services.

Neither the Company nor the Client shall be liable for any breach of any provision of any contract between them arising from an act of their respective God, natural disaster, terrorism, war, telecommunication infrastructural downtime and/or any other occurrence beyond the control of either party.

The invalidity or unenforceability of any provision of these General Terms and Conditions shall not affect the validity or enforceability of the remaining provisions. Clerical errors are subject to correction and do not bind the Company.

32. Privacy Policy

The Company is committed to protecting your privacy. Its policy is to comply with the National Privacy Principles for the handling of personal information as set out in the Privacy Act, 1988. In accordance with those principles, and with the Company's Privacy Policy, persons will be given access to their personal information upon request. The Company uses the types of personal information collected including enabling it to supply Clients with its products and services and for assessing Applications for Commercial Credit, managing accounts and, if necessary, assessing its risk in collecting debts. This information may be disclosed to the Company's associated or related entities, parties related to the Client's contractors, other credit providers, whether or not an account is overdue and, if necessary, its risk insurers, debt collectors and credit reporting agencies. If all or part of the information requested is not provided, the Company may not be able to consider any application or to provide credit facilities. Clients who have any concerns about the Privacy Policy are requested to direct them to Light Media by phone, email or in writing.

33. Confidentiality

Each party agrees to keep confidential, and not to use or disclose except as permitted by these terms and conditions, any Confidential Information of the other party. The parties agree not to disclose these terms and conditions (including any schedules), or any details of a Purchase Order or Pricing Structure. This obligation of confidence extends to Confidential Information obtained by a party before entering into this agreement. Each Party shall refrain from making negative comments about the other Party, whether online or in person.

The obligation of confidence as set out above does not apply to Confidential Information to the extent that is required to be disclosed by law or the rules of any stock exchange on which the recipient's securities:

- are listed, provided that the recipient discloses the minimum amount of Confidential Information required to satisfy the Law or rules.
- The Party required to disclose the other Party's Confidential Information as set out above must:
- provide a reasonable amount of notice to the other Party of the proposed disclosure;
- consult with the other Party as to the form of the disclosure; and
- take all reasonable steps to maintain such Confidential Information in confidence.

Each party must take all steps and do all such things as may be necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other party.

34. Dispute Resolution

If a dispute arises out of or relates to this Agreement, a Party may not commence any court or arbitration proceedings relating to the dispute unless the Party has complied with this clause, except where the Party seeks urgent interlocutory relief. Where a Party fails to comply with this clause any other Party in dispute with the Party so failing to comply need not comply with this clause before referring the dispute to arbitration or commencing Court proceedings relating to that dispute.

A Party claiming that a dispute to which this clause applies has arisen under this Agreement or in relation to this Agreement shall give written notice to each of the other Parties designating as its representative in negotiations relating to the dispute a person with authority to settle the dispute on its behalf. Each other Party given written notice shall promptly give notice in writing to each other Party designating as its representative in negotiations relating to the dispute a person with similar authority.

Light Media may pause work to conduct whatever investigations deemed appropriate and, within 90 days of the given written notice, seek to resolve the dispute.

If the dispute is not resolved within the following 90 days (or within such further period as the representatives may agree is appropriate), the Parties shall within a further 90 days (or within such further period as the representatives may agree is appropriate) seek to agree on:

- a process for resolving the whole or part of the dispute through means other than litigation or arbitration, such as further negotiations, mediation, conciliation, independent expert determination or mini-trial;
 - the procedure and timetable for any exchange of documents and other information relating to the dispute;
 - procedural rules and a timetable for the conduct of the selected mode of proceeding;
 - a procedure for selection and compensation of any neutral person who may be employed by the Parties to assist in relation to the dispute; and
 - whether the Parties should seek the assistance of a dispute resolution organisation.
- The Parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this Clause is to attempt to settle the dispute between the Parties.

After the expiration of the time established by or agreed upon under the Clause for agreement on a dispute resolution process, any Party which has complied with the provisions of this clause and may in writing terminate the dispute resolution process provided for in those paragraphs and may then refer the dispute to arbitration or commence Court proceedings relating to the dispute.