

## TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1. Unless the context requires otherwise, in these Terms and Conditions,
- a) "Client" means the person/s buying the Goods and Services (each as applicable) as specified in any invoice, document or order, or acting on behalf of the Client and if there is more than one Client is a reference to each Client jointly and severally.
  - b) "Deposit" means 50% of the price payable under the Quote unless otherwise agreed by Rightside Creative Solutions in writing.
  - c) "Event of Force Majeure" has the meaning given to it in Clause 7.1.
  - d) "Goods" means Goods supplied by Rightside Creative Solutions to the Clients (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
  - e) "Price" means the Price payable for the Goods and Services as agreed between Rightside Creative Solutions and the Client in accordance with clause 4 of these Terms and Conditions.
  - f) "Project Brief" means the document prepared by Rightside Creative Solutions on the basis of the Client's instructions specifying the scope of the Goods/Services to be supplied by Rightside Creative Solutions.
  - g) "Quote" means a quote given by Rightside Creative Solutions to the Client specifying an estimate of Rightside Creative Solutions' charge for such Goods/Services.
  - h) "Rightside Creative Solutions" means Rightside Creative Solutions Pty Ltd (ACN 621 163 522) or any person acting on behalf of and with the authority of Rightside Creative Solutions.
  - i) "Services" means all Services supplied by Rightside Creative Solutions to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

### 2. ACCEPTANCE

- 2.1. The Client shall be considered to have accepted these terms and conditions on acceptance of the Quote and/or payment of the Deposit.
- 2.2. Rightside Creative Solutions provides goods and services on the basis of these terms and conditions and these terms alone constitute the terms of any contract between Rightside Creative Solutions and Clients.
- 2.3. Notwithstanding these terms and conditions are not reproduced on each of Rightside Creative Solutions documents, including quotes, invoices and other company documents, they have the same binding status between the parties as if they were reproduced on each document.
- 2.4. These terms and conditions supersede any terms, conditions, waivers or provisos appearing on the Client's purchase order, project instructions or other documentation save and except for a deed executed by both parties.
- 2.5. None of Rightside Creative Solutions' agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Director of Rightside Creative Solutions in writing nor is Rightside Creative Solutions bound by any such unauthorised statements.
- 2.6. The Client undertakes to give Rightside Creative Solutions not less than fourteen (14) days prior written notice of any proposed change in ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact email or phone number/s, or business practice). The Client shall be liable for any loss incurred by Rightside Creative Solutions as a result of the Client's failure to comply with this clause.

### 3. QUOTATIONS & ESTIMATES

- 3.1. Quotes are based on the description of the project as detailed in the Project Brief written by Rightside Creative Solutions.
- 3.2. Quotes remain current for 30 days, unless otherwise stated in writing by Rightside Creative Solutions.
- 3.3. If the client has not accepted the Quote at the expiry of 30 days, Rightside Creative Solutions may vary the Quote in its sole discretion.

### 4. PRICE AND PAYMENT

- 4.1. The Client must pay the Price to Rightside Creative Solutions when due and payable under these terms and conditions.
- 4.2. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 4.3. The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent those taxes are expressly included in any quotation given by Rightside Creative Solutions.
- 4.4. Rightside Creative Solutions reserves the right to change the Price:
  - a) if there is a variation in accordance with Clause 6; or
  - b) in the event of increases to Rightside Creative Solutions in the cost of labour or materials which are beyond Rightside Creative Solutions' control.
- 4.5. Any variation of the planned works or specifications will be charged for on the basis of the Quote and will be shown on the invoice. Payment for all variations must be made in full at the time of completion.
- 4.6. Time for payment for the Goods/Services being of the essence, the Price will be payable by the Client on the date/s determined by Rightside Creative Solutions, which may be:
  - a) on delivery of the Goods/Services; or
  - b) or completion of the Goods/Services; or
  - c) the date specified on any invoice or other form as being the date for payment; or
  - d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by Rightside Creative Solutions.
- 4.7. The Client shall not set off against the Price amounts due from Rightside Creative Solutions.

## **5. INTELLECTUAL PROPERTY**

- 5.1. Where Rightside Creative Solutions has designed or drawn Goods for the Client, then the intellectual property in those designs and drawings shall remain vested in Rightside Creative Solutions, and shall only be used by the Client at Rightside Creative Solutions' discretion.
- 5.2. The Client warrants that all designs or instructions to Rightside Creative Solutions will not cause Rightside Creative Solutions to infringe any patent, registered design or trademark.
- 5.3. Rightside Creative Solutions may assign intellectual property to the Client on mutually agreed terms.
- 5.4. Rightside Creative Solutions reserves the right to publish images and information of and relating to the Goods/Services.
- 5.5. The Client cannot publish images of the Goods/Services without the express written permission of Rightside Creative Solutions.

## **6. VARIATIONS**

- 6.1. Any extra work caused by any variation to the project description in the Project Brief will be charged to the client whether it is identified as a variation at the time of change or subsequently identified.
- 6.2. Rightside Creative Solutions shall have the right to increase the Price in the event of any of the following:
  - a) The Client requests a variation to the Project Brief;
  - b) Where additional Goods/Services are required due to the discovery of hidden or unidentifiable difficulties which are only discovered after the commencement of the Goods/Services;
  - c) Circumstances beyond the control of Rightside Creative Solutions have led to a variation in the scope of the project; and
  - d) Circumstances beyond the control of Rightside Creative Solutions have led to a delay.

## **7. FORCE MAJEURE**

- 7.1. Rightside Creative Solutions shall not be liable for any failure or delay to supply or deliver the Goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of Rightside Creative Solutions including, but not limited to, pandemics, epidemics, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind ("Event of Force Majeure").
- 7.2. An event of force majeure does not affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

- 7.3. Rightside Creative Solutions has no liability for:
- a) any costs, losses, expenses, damages in anyway incurred by the Client during an event of force majeure; and
  - b) any delay costs in any way incurred by the Client due to an event of force majeure.

## 8. DEFECTS AND RETURNS

- 8.1. The Client will inspect the Goods/ Services on delivery and will, within one (1) month of delivery, notify Rightside Creative Solutions of any alleged defect, damage or failure to comply with the Project Brief or Quote.
- 8.2. The Client will afford Rightside Creative Solutions an opportunity to inspect the Goods within a reasonable time following delivery, if the Client believes the Goods are defective in any way.
- 8.3. If the Client fails to comply with these provisions, the Goods/Services will be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

## 9. DELIVERY OF GOODS/SERVICES

- 9.1. At Rightside Creative Solutions's sole discretion delivery of the Goods/Services shall take place when:
- a) The Client takes possession of the Goods at Rightside Creative Solutions address or the Client's nominated address; or
  - b) The Services are undertaken at the Client's nominated address.
- 9.2. Rightside Creative Solutions may deliver the Goods/Services by separate instalments (in accordance with an agreed delivery schedule). Each separate instalment may be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 9.3. Delivery of the Goods/Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of these terms and conditions.
- 9.4. Any date or time quoted for delivery is an estimate only and Rightside Creative Solutions shall endeavour to effect delivery at the time or times requested by the Client but failure to do so shall not confer any right of cancellation or refusal of delivery by the Client or render Rightside Creative Solutions liable for any loss or damages directly or indirectly sustained by the Client as a result.
- 9.5. The Client shall ensure that Rightside Creative Solutions has clear and uninterrupted access to the site until the Services have been completed and paid for in full. The Client shall indemnify Rightside Creative Solutions from additional costs or penalties if the completion of the Services / delivery of Goods is delayed due to interrupted site access.

## 10. TITLE

- 10.1. It is the intention of Rightside Creative Solutions and agreed by the Client that property in the Goods shall not pass until:
- a) The Client has paid all amounts owing for the particular Goods, and
  - b) The Client has met all other obligations due by the Client to Rightside Creative Solutions in respect of all contracts between Rightside Creative Solutions and the Client, and that where practicable the Goods shall be kept separate until Rightside Creative Solutions shall have received payment and all other obligations of the Client are met.
- 10.2. It is further agreed that:
- a) Until such time as ownership of the Goods does pass from Rightside Creative Solutions to the Client Rightside Creative Solutions may give notice in writing to the Client to return the Goods or any of them to Rightside Creative Solutions. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.
  - b) Rightside Creative Solutions shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - c) If the Client fails to return the Goods to Rightside Creative Solutions then Rightside Creative Solutions or Rightside Creative Solutions's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods.
  - d) The Client is only a bailee of the Goods and until such time as Rightside Creative Solutions has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for Rightside Creative Solutions.

- e) The Client shall not deal with the money of Rightside Creative Solutions in any way which may be adverse to Rightside Creative Solutions.
- f) The Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Rightside Creative Solutions.
- g) Rightside Creative Solutions may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to Rightside Creative Solutions arising out of these terms and conditions, and Rightside Creative Solutions may take any lawful steps to require payment of the amounts due and the Price.
- h) Rightside Creative Solutions can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client.
- i) Until such time that ownership in the Goods passes to the Client, if the Goods are so converted, the parties agree that Rightside Creative Solutions will be the owner of the end products.

## 11. RISK

- 11.1. All risk for the Goods shall pass to the Client upon delivery / installation of the Goods to the Client or to a third party nominated by the Client. This applies whether or not the Price has become payable.
- 11.2. If any of the Goods are damaged or destroyed prior to property in them passing to the Client, Rightside Creative Solutions is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods.

## 12. SECURITY

- 12.1. If a word used in this clause has a particular meaning in the Personal Property Securities Act 2009 ("PPSA"), it has the same meaning in this clause.
- 12.2. Where Rightside Creative Solutions has supplied Goods as part of the Services to the Client but where title in those Goods has not yet passed to the Client and the Goods have not yet become affixed to land, the Client acknowledges and agrees that:
  - a) the Goods constitute Personal Property for the purposes of the PPSA;
  - b) these Terms constitute a Security Agreement for the purposes of the PPSA;
  - c) the Client will grant Rightside Creative Solutions a purchase money security interest ("PMSI") under the PPSA in the Goods and their proceeds to secure all amounts owed to Rightside Creative Solutions by the Client;
  - d) Rightside Creative Solutions may register the PMSI on the Personal Property Securities Register ("PPSR");
  - e) it will undertake to do all things necessary and provide Rightside Creative Solutions on request all information Rightside Creative Solutions requires to register a financing statement or financing change statement on the PPSR;
  - f) it undertakes not to change its name in any form or other details on the PPSR without first notifying Rightside Creative Solutions; and
  - g) it will, if required by Rightside Creative Solutions, pay to Rightside Creative Solutions the cost of registering and maintaining registration of the Client's PMSI on the PPSR, within 14 days of the request.
- 12.3. Rightside Creative Solutions need not give any notice under the PPSA (including a verification statement or a financing change statement) unless the notice is required by the PPSA and cannot be excluded.
- 12.4. No party may disclose information of the kind referred to in section 275(1) of the PPSA (except where the parties may do so and where required due to the operation of section 275(7) of the PPSA) and the Client must not authorise the disclosure of such information.
- 12.5. The Client appoints Rightside Creative Solutions as its attorney to sign in the Client's name all documents which Rightside Creative Solutions considers necessary to enforce and to protect its rights under these Terms.
- 12.6. The Client agrees that, to the maximum extent permitted by law, it waives any rights it may have pursuant to, and the parties contract out of, sections 95, 118, 123, 125, 128, 129, 130, 132(1), 132(4), 135, 142 and 143 of the PPSA.
- 12.7. The Client acknowledges that unless otherwise defined in these Terms, the terms and expressions used in clause 12 inclusive have the meanings given to them, or by virtue of, the PPSA.



### **13. LIABILITY, WARRANTIES AND INDEMNITY**

- 13.1. The Client shall indemnify and hold indemnified Rightside Creative Solutions against any claim, suit, proceedings or demand made by Rightside Creative Solutions or a third party for loss, damage, suffered whether directly or indirectly by infringement of its intellectual property rights.
- 13.2. In the case of a breach of any warranty or condition or the breach of any duty of care shall in all cases be limited, at the option of Rightside Creative Solutions to any one or more of: the replacement of the Goods/Services or the supply of equivalent Goods/Services, the repair of the Goods, the payment of cost of replacing the Goods or acquiring equivalent Goods or the payment of the cost of having the Goods repaired.
- 13.3. Except for those conditions and warranties implied by the Australian Consumer Law or consumer protection legislation which may be excluded, the Client agrees that:
- a) It has not relied on any inducement, representation or statement made by or on behalf of Rightside Creative Solutions in purchasing the Goods/Services; and
  - b) There are no implied conditions or warranties herein and no collateral contracts in connection herewith (except such as may be in writing and signed by a duly authorised representative of Rightside Creative Solutions).
- 13.4. The Client hereby disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to them by any servant or agent of Rightside Creative Solutions.
- 13.5. The Client acknowledges that they buy the Goods/Services relying solely upon their own skill and judgement and that Rightside Creative Solutions will not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty will be personal to the Client and will not be transferable to any subsequent Client.
- 13.6. Rightside Creative Solutions shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Rightside Creative Solutions of these terms and conditions.
- 13.7. In the event of any breach of this contract by Rightside Creative Solutions the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of Rightside Creative Solutions exceed the Price of the Goods.
- 13.8. The Client warrants that:
- a) all information provided to Rightside Creative Solutions as detailed in the Project Brief and as supplied during the project is accurate.
  - b) In the event the Client is a company, The Client warrants that the person purporting to have authority to enter the agreement does have that authority and to act for or on behalf of the company.
- 13.9. Should the Client breach these warranties, Rightside Creative Solutions shall have a right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to them by any servant or agent of the Client.
- 13.10. The Client will indemnify and hold blameless Rightside Creative Solutions from any damages, costs, or losses that may be suffered as a result of any claim arising directly or indirectly out of the Goods or Services or in connection with the project.
- 13.11. The Client will assume full responsibility for testing and certification of any or all designs to ensure product safety, reliability and fitness for purpose.

### **14. DEFAULT & CONSEQUENCES OF DEFAULT**

- 14.1. Interest on overdue invoices will accrue from the date when payment becomes due daily until the date of payment at 2% above the rate fixed under section 2 of the Penalty Interest Rate Act 1983 compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 14.2. If the Client defaults in payment of any invoice when due, the Client will indemnify Rightside Creative Solutions from and against all Rightside Creative Solutions's costs and disbursements including on a solicitor and own client basis and in addition all of Rightside Creative Solutions's nominees' costs of collection.
- 14.3. Without prejudice to any other remedies Rightside Creative Solutions may have, if at any time the Client is in breach of any obligation (including those relating to payment), Rightside Creative Solutions may suspend or terminate the supply of Goods/Services to the Client and any of its other obligations under the terms and conditions. Rightside Creative

Solutions will not be liable to the Client for any loss or damage the Client suffers because Rightside Creative Solutions exercised its rights under this clause.

## **15. DISPUTES**

- 15.1. If a dispute arises between the Parties then before any Claim is commenced the party must give 14 days' notice to the others setting out the dispute and make good faith efforts to resolve the dispute.
- 15.2. If after 14 days the dispute is not resolved then it must be referred to mediation on the same terms as those ordered by the Supreme Court of Victoria.
- 15.3. Each party will bear their own costs of mediation and contribute equally to the costs of mediation.
- 15.4. Any dispute shall be determined according to the laws of the State of Victoria and all proceedings arising there from shall be heard and determined in the Courts of Victoria.

## **16. GENERAL**

- 16.1. 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.
- 16.2. Rightside Creative Solutions may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.3. Rightside Creative Solutions reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which Rightside Creative Solutions notifies the Client of such change.
- 16.4. The Client agrees that these terms shall be construed according to the laws of Victoria. The Client submits to the exclusive jurisdiction of the Courts of Victoria.