

## COOPERS DESIGN STANDARD TERMS

This agreement sets out the terms under which COOPERS DESIGN ABN 68 993 585 411 (**Coopers Design**) provides services to you or the company which you represent (the **Client**).

You will be taken to have accepted these terms and conditions if you sign these terms and conditions or otherwise indicate your assent, or if you order, accept or pay for any services provided by Coopers Design after receiving or becoming aware of these terms.

### 1. PROPOSALS

These terms will apply to all the Client's dealings with Coopers Design, including being incorporated in all agreements, quotations or orders under which Coopers Design is to provide services to the Client (each a **Proposal**) together with any additional terms included in such Proposal (provided such additional terms are recorded in writing).

In the event of any inconsistency between these terms and conditions and any Proposal the clauses of these terms and conditions will prevail to the extent of such inconsistency, except that any "Special Conditions" (being terms set out and described as such in a Proposal) will prevail over the other terms of this agreement to the extent of any inconsistency.

### 2. SERVICES

In consideration for the payment of the Fees, Coopers Design will provide the Client with the services set out in a Proposal (**Services**).

Unless otherwise agreed, Coopers Design may, in its discretion:

- (a) not commence work on any Services until the Client has paid any fees or deposit payable in respect of such Services; and
- (b) withhold delivery of Services until the Client has paid the invoice in respect of such Services.

### 3. HOSTING SERVICES

If the Services to be provided by Coopers Design include services to host the Client's website, application or other information or data (**Hosting Services**), the following terms apply unless otherwise specifically agreed in writing:

- (a) (**hosting location**) Coopers Design uses hosting servers that are located inside Australia.
- (b) (**service quality**) While Coopers Design will use its best efforts to select an appropriate hosting provider, it does not guarantee that:
  - (i) the Hosting Services will be free from errors or defects; or
  - (ii) the Hosting Services will be accessible or available at all times;
- (c) (**security**) Coopers Design will use its best efforts to ensure that the Client's website, application or other information or data (**Client Data**) is stored securely, however Coopers Design does not accept responsibility or liability for any unauthorised use, destruction, loss, damage or alteration to the Client Data, including due to hacking, malware, ransomware, viruses, malicious computer code or other forms of interference.
- (d) (**backups & disaster recovery**) If Coopers Design is engaged to perform backups and disaster recovery, Coopers Design will use its best efforts to create scheduled daily backups of Client Data stored by Coopers Design. In the event that Client Data is lost due to a system failure (e.g. a database or webserver crash), Coopers Design will attempt to restore the Client Data from the latest available backup, but cannot guarantee that this backup will be free from errors or defects.
- (e) (**maintenance**) Coopers Design's Hosting Services do not include troubleshooting, maintenance or fixing application or data-based failures and additional fees may apply for these sorts of services.

#### 4. WEB DESIGN SERVICES

In relation to any Services involving web development services, including building or customising websites or online applications (**Web Apps**) the following conditions will apply unless otherwise agreed between the parties in writing:

- (a) Coopers Design reserves the right to determine the choice of programming language(s) used in the Web Apps;
- (b) Coopers Design will not be responsible for inputting text, images or other content, or creating all pages in the content management system of Web Apps;
- (c) Coopers Design will not provide any graphics for the Web Apps, and if Coopers Design requires the Client to provide graphics, the Client must provide Coopers Design with graphic files in an editable, high resolution, vector digital format;
- (d) Coopers Design only tests websites in desktop resolution in the latest version of the following web browsers: Apple Safari, Google Chrome, Microsoft Edge and Mozilla Firefox; and
- (e) Coopers Design will not guarantee that any Web Apps will be mobile responsive. If Coopers Design does specifically agree to provide mobile responsive Web Apps, then it will test only on iOS Safari and Google Chrome on Android phones.

#### 5. MOBILE APP DEVELOPMENT SERVICES

In relation to any Services involving web development services, including building or customising mobile applications (**Mobile Apps**) the following conditions will apply unless otherwise agreed between the parties in writing:

- (a) Coopers Design reserves the right to determine the choice of programming language(s) used in the Mobile Apps;
- (b) Coopers Design will not be responsible for inputting text, images or other content, or creating all pages in the content management system of Mobile Apps;
- (c) Coopers Design will not provide any graphics for the Mobile Apps, and if Coopers Design requires the Client to provide graphics, the Client must provide Coopers Design with graphic files in an editable, high resolution, vector digital format; and
- (d) Coopers Design only tests Mobile Apps on iOS Safari and Google Chrome on Android phones.

#### 6. SUPPORT SERVICES

This clause applies if Coopers Design is required to provide support services to a Client:

- (a) Coopers Design will use its best endeavours to provide support services in a timely fashion and monitor the uptime, but the Client acknowledges and agrees that responses to downtime, the reduction in speed of a Web App and/or other issues may take Coopers Design up to 24 hours to respond to.
- (b) If Coopers Design discovers that an instance of downtime or reduced speed or accessibility is caused by substantially increased traffic, the Client acknowledges that a change to Hosting Services, and an associated fee increase, may be required.
- (c) Subject to clause 6(d), if Coopers Design is not able to respond to an issue within 24 hours, for any reason, the Client will not have any claim for delay and Coopers Design will use its best endeavours to respond to or resolve the relevant issue as soon as possible.
- (d) Coopers Design will use its best endeavours to provide the Client with 8 hours prior notice of any planned downtime.

#### 7. GRAPHIC DESIGN SERVICES

- (a) If, in its provision of the Graphic Design Services, Coopers Design is required to create an original typeface or logo (**Graphic Design**), then Coopers Design retains all rights in relation to that Graphic Design;
- (b) Coopers Design may, at its discretion, license any original Graphic Design to be used by the Client or any third party. Any such licence is not and does not form part of this agreement.

- (c) If, in the provision of the Graphic Design Services, Coopers Design is required to use material belonging to a third party, then the Client must acquire a license to use such designs, whether for a fee or otherwise.
- (d) Coopers Design will retain any deliverables for the Graphic Design Services for up to twelve (12) months only and will then dispose of the deliverables.

**8. THIRD PARTY TERMS & CONDITIONS**

- (a) If the Services involve Coopers Design acquiring goods and services supplied by a third party on the Client's behalf, the Client acknowledges that third party terms & conditions (**Third Party Terms**) may apply. The Client agrees to any Third Party Terms applicable to any third party goods and services that are used in performing the Services or providing the Deliverables, and Coopers Design will not be liable for any loss or damage suffered by the Client in connection with such Third Party Terms.
- (b) If Coopers Design recommends any third party software or other goods and/or services (**Third Party Goods and Services**) to the Client, the Client agrees to satisfy themselves that such Third Party Goods and Services are fit for their intended purpose and are of the requisite quality. Coopers Design will not have any obligations or liabilities to, and will not be a party to any contract between the Client and the relevant third party in relation to any Third Party Goods and Services or any other claims otherwise resulting from recommending the Third Party Goods and Services.

**9. FREE REVISIONS**

- (a) If the Services include free revisions, such revisions must be requested by the Client promptly and only include revisions that in the sole discretion of Coopers Design are not significant in nature.
- (b) The Client must provide feedback on any amendments carried out by Coopers Design as a result of the requested revisions within a month of receiving the amendments.

**10. CLIENT OBLIGATIONS**

**10.1 PROVIDE INFORMATION**

The Client must promptly provide Coopers Design with all documentation, information and assistance reasonably required by Coopers Design to perform the Services.

**10.2 ACCESS**

**10.3** The Client agrees to provide Coopers Design with access to:

- (a) the Client's premises and Personnel, to the extent required to perform the Services;
- (b) the Client's website (but only where Coopers Design is providing Services that involve making updates or changes to the Client's website); and
- (c) any other third party or other accounts used by the Client (including login details and passwords),

as reasonably required by Coopers Design to perform the Services.

**10.4 COMPLIANCE WITH LAWS**

The Client agrees that it will not by receiving or requesting the Services:

- (a) breach any applicable laws, rules and regulations (including any applicable privacy laws); or
- (b) infringe the intellectual property rights or other rights of any third party or breach any duty of confidentiality.

**11. TIMING**

As part of the Proposal or in the course of Coopers Design performing the Services, the parties may agree a schedule for providing certain Services and Deliverables, including estimated dates of completion, deadlines or schedules (**Schedules**).

Coopers Design will use its best efforts to meet these Schedules, however these are subject to change if unforeseen complexities arise. In these cases, Coopers Design will use its best efforts to minimise the impact of such changes.

Coopers Design reserves the right to revise Schedules in the event that the delay is caused by the Client's failure to provide timely feedback or other information reasonably requested by Coopers Design in order to perform the Services.

## **12. PAYMENT**

### **12.1 FEES**

The Client must pay to Coopers Design fees and any other consideration (including equity) in the amounts and at the times set out in the Proposal (**Fees**) or as otherwise agreed in writing.

### **12.2 TIME FOR PAYMENT**

Unless otherwise agreed in a Proposal:

- (a) if Coopers Design issues an invoice to the Client, payment must be made by the time(s) specified on such invoice; and
- (b) in all other circumstances, the Client must pay for all goods and services within 2 weeks of receiving an invoice for amounts payable.

### **12.3 EXPENSES**

Unless otherwise agreed:

- (a) the Client will bear all travel, accommodation, office stationery, computer storage, media and related expenses reasonably incurred by Coopers Design in connection with a Proposal; and
- (b) any third-party costs incurred by Coopers Design in the course of performing the Services may be billed to the Client, unless specifically otherwise provided for in the Proposal.

### **12.4 GST**

Unless otherwise indicated, amounts stated in a Proposal include GST.

### **12.5 CARD SURCHARGES**

Coopers Design reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard, American Express or Diners Club).

### **12.6 LATE PAYMENT**

If the Client does not pay Coopers Design the amounts due and payable under an invoice on or before its due date, without limiting any of Coopers Design's other rights under this agreement, the Client must pay Coopers Design interest at the rate of 1% per month on each amount outstanding, from the due date for payment to the date on which the payment is received by Coopers Design.

## **13. CHANGES**

The Client must pay additional charges for changes to Services requested by the Client which are outside the scope set out in the relevant Proposal (**Changes**).

Unless otherwise agreed in a Proposal:

- (a) changes will be charged on a time and materials basis, at Coopers Design's standard hourly rates as notified to the Client; and
- (b) Coopers Design may at its discretion extend or modify any delivery schedule or deadlines for the Services as may be reasonably required by such Changes.

## **14. ACCREDITATIONS**

Unless otherwise agreed:

- (a) all displays or publications of any deliverables provided to the Client as part of the Services (**Deliverables**) must, if requested by Coopers Design, bear an accreditation and/or a copyright notice including Coopers Design's name in the form, size and location as directed by Coopers Design; and
- (b) Coopers Design retains the right to describe the Services and reproduce, publish and display the Deliverables in Coopers Design's portfolios and websites, and in galleries, design periodicals and other media or exhibits for the purposes of recognition of creative

excellence or professional advancement, and to be credited with authorship of the Services and Deliverables in connection with such uses.

## 15. CONFIDENTIALITY & RESTRAINT

### 15.1 CONFIDENTIALITY

Except as contemplated by this agreement or a Proposal, a party must not and must not permit any of its officers, employees, agents, contractors or related companies to use or to disclose to any person any Confidential Information disclosed to it by the other party without its prior written consent.

This clause does not apply to:

- (a) information which is generally available to the public (other than as a result of a breach of these terms or another obligation of confidence);
- (b) information required to be disclosed by any law; or
- (c) information disclosed by Coopers Design to its subcontractors, outsourced workers, employees, cloud storage providers or agents for the purposes of performing the Services or its obligations under this agreement.

For the purposes of this clause 15.1, "**Confidential Information**" means information of or provided by a party to the other party under or in connection with this agreement or a Proposal that is by its nature confidential information, is designated by the party as confidential, or the other party knows or ought to know is confidential, but does not include information which is or becomes, without a breach of confidentiality, public knowledge.

### 15.2 RESTRAINT

For the duration of any Proposal, and for 1 year thereafter, the Client must not employ or engage (or be knowingly involved in another employing or engaging) any officers or employees of Coopers Design with which the Client had contact during the course of a Proposal.

## 16. INTELLECTUAL PROPERTY

### 16.1 CLIENT CONTENT

The Client grants to Coopers Design (and its subcontractors, employees or agents) a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use the Client Content to the extent reasonably required to perform any Services.

The Client:

- (a) warrants that Coopers Design's use of Client Content as contemplated by a Proposal will not infringe any third-party Intellectual Property Rights; and
- (b) will indemnify Coopers Design from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of such infringement.

### 16.2 Coopers Design IP

Unless otherwise expressly agreed in a Proposal, the Client will not under these terms or any Proposal acquire Intellectual Property Rights in any Coopers Design IP or Developed IP. Any Coopers Design IP and Developed IP will be solely and exclusively owned by Coopers Design.

Coopers Design grants to the Client a non-exclusive, royalty free, non-transferable, worldwide and revocable licence to use Coopers Design IP and any Developed IP to the extent required for the Client to use, enjoy the benefit of or exploit the Services and/or Deliverables.

### 16.3 DEFINITIONS

For the purposes of this clause 16:

- (a) "**Client Content**" means any documents or materials supplied by the Client to Coopers Design under or in connection with this agreement or a Proposal, including any Intellectual Property Rights attaching to those materials.
- (b) "**Developed IP**" means any materials produced by Coopers Design in the course of providing Services or Deliverables including documentation, reports, data, designs, concepts, know-how, information, advice, opinions, emails, notes whether in draft or final form, in writing, provided orally, either alone or in conjunction with the Client or others, and any Intellectual Property Rights attaching to those materials.

- (c) “**Coopers Design IP**” means all materials owned or licensed by Coopers Design that is not Developed IP and any Intellectual Property Rights attaching to those materials.
- (d) “**Intellectual Property Rights**” means any and all present and future intellectual and industrial property rights throughout the world, including copyright, trade marks, designs, patents or other proprietary rights, confidential information and the right to have information kept confidential, or any rights to registration of such rights whether created before or after the date of this agreement, whether registered or unregistered.

**17. WARRANTIES**

To the maximum extent permitted by applicable law, all express or implied representations and warranties (whether relating to fitness for purpose or performance, or otherwise) not expressly stated in this agreement or a Proposal are excluded.

Where any law (including the *Competition and Consumer Act 2010* (Cth)) implies a condition, warranty or guarantee which may not lawfully be excluded, then, to the maximum extent permitted by applicable law, Coopers Design’s liability for breach of that non-excludable condition, warranty or guarantee will, at Coopers Design’s option, be limited to:

- (a) in the case of goods, their replacement or the supply of equivalent goods or their repair; and
- (b) in the case of services, the supply of the services again, or the payment of the cost of having them supplied again.

**18. LIMITATION OF LIABILITY**

Without limiting any remedies the Client might have under *Competition and Consumer Act 2010* (Cth) and to the maximum extent permitted by applicable law, Coopers Design’s liability for all claims in aggregate (whether those claims be for breach of contract, negligence or otherwise, and whether those claims be only for economic loss, or for personal injury or other damage) arising under or in connection with this agreement or a Proposal:

- (a) is totally excluded, to the extent it concerns liability for indirect, special and consequential damages, and damages (whether direct or indirect) reflecting loss of revenue, loss of profits and loss of goodwill; and
- (b) is limited, insofar as concerns other liability, to the total money paid to Coopers Design under this agreement as at the date the event giving rise to the relevant liability occurred (or, where there are multiple events, the date of the first such event).

**19. INDEMNITY**

The Client indemnifies Coopers Design from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of:

- (a) any breach of this agreement by the Client; or
- (b) any negligent, fraudulent or criminal act or omission of the Client or its personnel.

**20. TERMINATION**

**20.1 TERMINATION BY COOPERS DESIGN**

Coopers Design may terminate these terms or any Proposal in whole or in part immediately by written notice to the Client if:

- (a) the Client is in breach of any term of these terms or any part of a Proposal; or
- (b) the Client becomes subject to any form of insolvency or bankruptcy administration.

**20.2 TERMINATION BY CLIENT**

The Client may terminate this agreement:

- (a) if Coopers Design has committed a material breach of this agreement or a Proposal and has failed to remedy the breach within 30 days written notice by the Client;
- (b) if Coopers Design consents to such termination, subject to the Client’s fulfillment of any pre-conditions to such consent (e.g. payment of a pro-rata portion of the agreed fees); or
- (c) Coopers Design becomes subject to any form of insolvency or bankruptcy administration.

## 20.3 EFFECT OF TERMINATION

Upon termination of this agreement, the Client must promptly pay (at Coopers Design's request):

- (a) Coopers Design's expenses to date;
- (b) payments required by Coopers Design's suppliers to discontinue their work, including but not limited to payments to any hosting providers;
- (c) usual time charges for the work of Coopers Design's staff to date;
- (d) Coopers Design's standard fees in relation to work already performed; and/or
- (e) an equitable amount by way of profit margin on the preceding items.

## 20.4 SURVIVAL

Any provision of these terms (including in a Proposal) which, by its nature, would reasonably be expected to be performed after the termination, shall survive and be enforceable after such termination, including without limitation clauses 12 - 24.

## 21. DISPUTE RESOLUTION

- (a) The parties shall endeavour to settle any dispute arising out of or relating to this agreement, including with regard to its existence, validity or termination, by mediation administered by the Australian Disputes Centre (ADC) before having recourse to arbitration or litigation.
- (b) The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (**Guidelines**).
- (c) The terms of the Guidelines are hereby deemed incorporated into this agreement.

## 22. NOTICES

### 22.1 FORM OF NOTICE

A notice or other communication to a party under this agreement must be:

- (a) in writing and in English; and
- (b) addressed to that party to:
  - (i) the postal address of that party; or
  - (ii) the email address of that party that has been regularly used by the parties to correspond during the term of this agreement (unless such email address is known to be inactive by the party giving notice).

### 22.2 HOW NOTICE MUST BE GIVEN

A notice must be given by one of the methods set out in the table below and is regarded as given and received at the time set out in the table below.

<b>Method</b>	<b>When Notice is regarded as given and received</b>
By hand	On delivery
By pre paid post in the same country	On the third Business Day after the date of posting
By pre paid post in another country	On the fifth Business Day after the date of posting by airmail
By email to the nominated email address	Unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address, 24 hours after the email was sent.

## 23. FORCE MAJEURE

- 23.1 If a party (**Affected Party**) becomes unable, wholly or in part, to carry out an obligation under this agreement or a Proposal (other than an obligation to pay money) due to an event beyond its reasonable control (**Force Majeure**), the Affected Party must give to the other party prompt written

notice of:

- (i) reasonable details of the Force Majeure; and
- (ii) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.

23.2 Subject to compliance with clause 23.1, the relevant obligation will be suspended during the Force Majeure to the extent that it is affected by the Force Majeure.

23.3 The Affected Party must use its best endeavours to overcome or remove the Force Majeure as quickly as possible.

## **24. GENERAL**

### **24.1 GOVERNING LAW**

This agreement is governed by the law applying in New South Wales, Australia.

### **24.2 JURISDICTION**

Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

### **24.3 ASSIGNMENT**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior consent of each other party (such consent not to be unreasonably withheld).

### **24.4 AMENDMENTS**

This agreement may only be amended by a document signed by each party.

### **24.5 WAIVER**

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

### **24.6 FURTHER ACTS AND DOCUMENTS**

Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to this agreement.

### **24.7 ENTIRE AGREEMENT**

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.