

# RUCK AGENCY TERMS OF SERVICE

## 1. ENGAGEMENT

- (a) By agreeing in writing to the terms of the attached Proposal (Proposal) or otherwise giving us instructions to begin the work set out in the Proposal (whatever comes earlier) (Commencement Date), you agree these Terms of Service and the Proposal form a binding agreement (Agreement) between Ruck Agency and the Client listed in the Proposal.
- (b) The term of this Agreement will commence on the Commencement Date and continue until the parties have completed their obligations under the Agreement (Term).
- (c) This Agreement exclusively governs the provision of the Services listed in the Proposal.
- (d) The terms of this Agreement can only be changed with the written consent of both parties.

## 2. SERVICES AND DELIVERABLES

- (a) We will supply the Services and Deliverables listed in the Proposal as a non-exclusive independent contractor to you.
- (b) We may engage sub-contractors to perform any part of our obligations under this Agreement. We will provide you with notice when engaging sub-contractors.
- (c) If we give you a proposed delivery date for the Deliverables, you acknowledge that this is an estimate only and subject to change.
- (d) We will prepare revisions to draft Deliverables at your request (Revisions). You agree we will charge you at our standard hourly rates for Revisions.
- (e) You acknowledge that we are not required to provide any Services or Deliverables not expressly described in this Agreement or any Proposal, but if you wish to add to or change the Services or Deliverables, we can accommodate this, but note that any changes to the Project, scope, or timelines will result in additional Fees payable (where we have not already quoted for changes to the Project, scope, or timelines). We will notify you of additional Fees payable under this clause 2(e).
- (f) Once complete, we will provide you with final non-editable versions of the Deliverables (Final Deliverables) in the Delivery Format listed in the Proposal. We do not provide editable files (known

as raw or source files) in relation to the Final Deliverables unless we agree otherwise in writing (where additional fees may apply).

- (g) You may only use the Final Deliverables strictly in accordance with clause 6(c).

## 3. RETAINED SERVICES

- (a) Where we provide you with Retained Services, you agree we will provide the Retained Services for the Minimum Retainer Period in the Proposal. Our provision of the Retained Services automatically continues monthly until you provide us with 28 days notice that you wish to terminate Retained Services, where the Retained Services will end at the conclusion of the current billing cycle.
- (b) The Fees for the Retained Services are payable in accordance with the Payment Schedule in the Schedule.

## 4. CLIENT OBLIGATIONS

- (a) You agree to, in a timely and complete fashion, provide all necessary, complete and accurate information, documentation, feedback, passwords, logins, approvals, facilities and assistance that we require from time to time to provide the Services (Client Materials).
- (b) If you breach clause 4(a) in any way, the Services may be delayed and we are not liable for any Loss you may suffer as result of this.
- (c) You agree that you are responsible for and must carry out your own due diligence to ensure that you have the legal right to use any Final Deliverables for any intended commercial purpose.
- (d) At the end of the Term, you acknowledge that we are not required to return the Client Materials, unless you request in writing within 30 days after the end of the Term and agree to pay any of our delivery costs.

## 5. FEES AND PAYMENT TERMS

- (a) You must pay the Fees and Expenses set out in the Proposal (Total Costs) in consideration for our supply of the Services (and any Retained Services) and Deliverables.
- (b) All amounts payable to us under this Agreement are listed exclusive of GST. You agree to pay GST in addition to amounts charged to you under this Agreement, where stated on our invoice.

- (c) You must pay for the Total Costs in accordance with the Payment Schedule listed in the Proposal and our invoices. You agree to pay for all bank transaction fees relating to this Agreement including credit card fees and direct debit failure fees.
- (d) We may request you pay a deposit for our Services where listed in the Proposal (Deposit). If you change your mind and do not wish to go ahead with the Services, subject to clause 7(a), the Deposit is non-refundable.
- (e) You agree 'time is of the essence' when making payments under this Agreement.
- (f) We reserve the right to charge Interest on all overdue payments under this Agreement and may refer any debts to a debt collector or solicitor (where you agree to pay us for all costs incurred by us in doing so).
- (g) If your account is outstanding by more than 14 days, we may suspend our performance of the Services and will not be liable for any Loss you may suffer as a result.

6. INTELLECTUAL PROPERTY

- (a) You will retain ownership of the Intellectual Property in all Client Materials provided to us and grant us a licence to use the Client Materials to perform our obligations under this Agreement and warrant that our use of the Client Materials do not infringe any third party rights.
- (b) We agree that the Intellectual Property in the Final Deliverables (the Developed IP), will be assigned from us to you throughout the world in perpetuity on completion of the Project and payment in full by you of the Total Costs. The Developed IP does not include Our IP or Third Party IP nor does it include our internal notes, preliminary drafts, drawings, illustrations and designs, preliminary electronic works or any draft Deliverables which are rejected by you.
- (c) The assignment of the Developed IP under clause 5(b) is conditional upon you using the Developed IP for the Approved Purpose.
- (d) Any modifications to the Developed IP must be made by us unless we otherwise provide our consent.
- (e) We may at our discretion (or at your request) incorporate Intellectual Property owned by third parties into the Deliverables such as stock images, fonts, source code and other licensed materials (Third Party IP).
- (f) Your use of the Third Party IP as part of the Final Deliverables is subject to terms imposed by the relevant third party owner (Third Party Licences). You will be responsible for maintaining and paying for all Third Party Licences we notify you otherwise.

- (g) You give us a non-exclusive licence to use Final Deliverables for our self-promotional, marketing or demonstrative purpose (including in awards and pitches) and consent to us using your name and logo as part of any published client list.

7. SERVICE STANDARDS

- (a) Nothing in this Agreement restricts, limits or excludes any rights you may have under the Australian Consumer Law or any other law.
- (b) If you acquire the Services as a Consumer, we will provide the Services with due care and skill and in accordance with any applicable Consumer Guarantees, however to the fullest extent permitted by law, we otherwise exclude any warranty or condition in relation to those Services which would otherwise be implied.
- (c) If you do not acquire the Services as a Consumer, we will provide the Services with due care and skill, however to the fullest extent permitted by law, we do not make any warranties or guarantees that the Services will be suitable or fit for any particular purpose and otherwise exclude any warranty or condition in relation to those Services which would otherwise be implied.
- (d) Any recommendations, strategies and opinions provided by us as part of providing the Services are made on the basis of our experience and professional judgment and are not guarantees that we will achieve certain results. Subject to any rights you have under clause 7(a), you acknowledge and agree that reasonable people may disagree on matters involving professional judgment and, accordingly, a difference of opinion on a question of professional judgment will not excuse you from paying for Services rendered. Further, and subject to any rights you have under clause 7(a), where our Services do not obtain certain results, you agree that this will not excuse you from paying for the Services rendered.

8. LIABILITY AND INDEMNITY

- (a) You are liable for and indemnify us and our representatives against any Loss or Claim suffered by us or our representatives in respect of any breach of this Agreement. Our liability to you for any Loss or Claim suffered by you in respect of the Services, including in respect of a failure to comply with any applicable Consumer Guarantees, is limited to the extent permitted by law and at our election, to either resupplying the Services again; or paying the cost of having the Services supplied again.
- (b) Neither party is liable to the other party for any kind of Consequential Loss arising out of or in connection with this Agreement.

- (c) Subject to clause 7(a) and clause 8(a), we are not liable for any Loss you may suffer in relation to the Services, where the Services are restricted or impacted by a Force Majeure Event.

9. CANCELLATION AND ENDING THE AGREEMENT

- (a) The Proposal may be cancelled as follows (subject to clause 9(b) below):
  - (i) by you for convenience by providing at least 7 days' written notice;
  - (ii) by mutual written agreement of the parties;
  - (iii) by us with 7 days' written notice if the provision of the Services listed in that Proposal are impacted by a Force Majeure Event;
  - (iv) by us with 7 days' written notice if you repeatedly breach the terms of this Agreement; or
  - (v) by either party (Terminating Party):
    - (A) if the other party commits a breach of any of its material obligations under this Agreement; and
    - (B) the breach is not capable of remedy or if the breach is capable of remedy, the other party does not remedy that breach within 14 days after receipt of notice of the breach or any further time allowed by the Terminating Party.
- (b) The parties agree that if the Proposal is cancelled under clause 9(a) before completion:
  - (i) Unless we are required by law to refund the Deposit, any Deposit paid in relation to that Proposal is non-refundable;
  - (ii) You must pay on demand the Fees for Services supplied by us under that Proposal up to the date of the termination and any other costs that we have incurred or are due to incur in relation to that Proposal (less any Deposit that has been paid); and
- (c) If the Proposal is cancelled under clause 9(a):
  - (i) you agree that we must approve your continued use of any Final Deliverables which have been delivered to you under the Proposal prior to it being cancelled.
  - (ii) This Agreement will terminate once the parties have completed their obligations under this Agreement in relation to the cancelled Proposal.
- (d) If the Proposal is cancelled by you for convenience under clause 9(a)(i):
  - (i) you must pay on demand an amount equal to 20% of Fees and any Expenses relating to the next scheduled phase of work contained in the Proposal (such costs we have incurred or have committed to incurring at the date you

provide notice under clause 9(a)(ii) (Termination Fee); and

- (ii) You acknowledge and agree that the Termination Fee above is a genuine pre-estimate of the loss likely to be suffered by us in the event of termination under clause 9(a)(i) (including administration costs incurred by us to date, costs of rescheduling of resources, cancellation fees for contractors, costs incurred in finding new work, bringing forward work and impairment to cash flow).

10. GENERAL

- (a) Capitalised words are defined in 11.1, the body of this Terms of Service or in the attached Proposal.
- (b) This Agreement forms the entire agreement between us and changes to this Agreement must be agreed in writing by the parties.
- (c) This Agreement will be governed by the laws of Victoria, Australia. The parties agree that the courts of Victoria, Australia (or where applicable, the Federal Court of Australia) have exclusive jurisdiction of this Agreement.
- (d) You must not sub-licence, assign or novate your rights and obligations under this Agreement to another person without our prior written consent.
- (e) Any formal communication required under this Agreement must be in writing (email to suffice, except for any breach notices).
- (f) Each party agrees that it will not disclose the Confidential Information of the other party acquired in relation to this Agreement including our pricing without the party's consent, except that the Confidential Information may be disclosed to a party's representatives on a 'need to know' basis, to a party's professional advisors and as required by law.
- (g) If the whole or any part of this Agreement is void, unenforceable or illegal, it will be severed, and the remainder of this Agreement will continue in full.
- (h) The following clauses will survive the conclusion of this Agreement: 3, 5, 6, 8, 9 and 10.

11. DEFINITIONS AND INTERPRETATION

11.1 Definitions

In this Agreement the following definitions apply:

Australian Consumer Law means the *Competition and Consumer Act 2010* (Cth) Schedule 2.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature, whether present or future, fixed or unascertained, actual or contingent, at law, in equity, under statute or otherwise.

Confidential Information means any information belonging to or relating to a party to this Agreement

however acquired that is marked confidential or is by its nature confidential, including, without limitation, trade secrets, Intellectual Property, know-how, business and financial data, policies, plans, databases, client lists and reports but does not include information which is or becomes generally available in the public domain (other than through breach of this Agreement or an obligation of confidence).

Consequential Loss means special, incidental, indirect or consequential damages, loss of revenue, anticipated savings, profits, goodwill, reputation, interest or business; but specifically excludes legal and other professional costs of the parties.

Consumer has the same definition as in the Australian Consumer Law.

Consumer Guarantees has the same definition as in the Australian Consumer Law.

Final Deliverables has the definition in clause 2(f).

Force Majeure Event means an act of god, war, natural disaster, pandemic, global financial crisis, financial crisis, injury or illness, death in the family, government shutdown or similar restrictions, hacking, viruses, internet connectivity issues, power outages and any other cause not reasonably within the control of the party affected.

Interest means interest at the rate of 2% above the rate set down from time to time under section 2 of the *Penalty Interest Rates Act 1983* (Vic), such interest which is capitalised monthly.

Intellectual Property means all rights conferred under statute, common law or equity, wherever in the world subsisting, in relation to trade marks, copyright, patentable inventions and designs, whether existing now or in the future, and whether or not registered or registrable, and includes any rights subsisting in or relating to trade secrets, know how, geographical indications of origin, techniques, libraries and databases, Confidential Information, and further

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- (c) This Agreement exclusively governs the provision of the Services listed in the Proposal.
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includes the right to apply for the registration or grant of any such intellectual property.

Loss means any loss, cost, expense (including legal costs on a full indemnity basis) or damage, whether direct or indirect, present or future, fixed or ascertained, actual or contingent and whether arising under contract, in tort, at common law, in equity, under statute, under an indemnity or otherwise.

Our IP means Intellectual Property owned by, or licensed to, us prior to the Term, or created by us during the Term independently of the provision of the Services under this Agreement.

Services means the Services listed in a Proposal and include the Retained Services where applicable.

## 11.2 Interpretation

In this Agreement, unless expressly stated:

- (a) a word importing the singular includes the plural and vice versa;
- (b) a word importing a gender includes other genders;
- (c) a law is a reference to that law as amended, consolidated or replaced;
- (d) this Agreement includes all schedules and attachments to it;
- (e) a party to this Agreement includes its agents, personal representatives, successors and permitted assigns;
- (f) a person, includes a natural person, partnership, joint venture, corporation, trust, governmental agency, association or other body corporate;
- (g) a time, is a reference to the time in the State or Territory of the jurisdiction that governs this Agreement;
- (h) \$, is a reference to Australian dollars unless otherwise expressly stated; and
- (i) the words 'such as' or 'including' are not used as words of limitation.

## 2. SERVICES AND DELIVERABLES

- (a) We will supply the Services and Deliverables listed in the Proposal as a non-exclusive independent contractor to you.
- (b) We may engage sub-contractors to perform any part of our obligations under this Agreement. We will provide you with notice when engaging sub-contractors.
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- (f) Once complete, we will provide you with final non-editable versions of the Deliverables (Final Deliverables) in the Delivery Format listed in the Proposal. We do not provide editable files (known as raw or source files) in relation to the Final Deliverables unless we agree otherwise in writing (where additional fees may apply).
- (g) You may only use the Final Deliverables strictly in accordance with clause 6(c).

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### 6. INTELLECTUAL PROPERTY

- (a) You will retain ownership of the Intellectual Property in all Client Materials provided to us and grant us a licence to use the Client Materials to perform our obligations under this Agreement and warrant that our use of the Client Materials do not infringe any third party rights.
- (b) We agree that the Intellectual Property in the Final Deliverables (the Developed IP), will be assigned from us to you throughout the world in perpetuity on completion of the Project and payment in full by you of the Total Costs. The Developed IP does not include Our IP or Third Party IP nor does it include our internal notes, preliminary drafts, drawings, illustrations and designs, preliminary electronic works or any draft Deliverables which are rejected by you.
- (c) The assignment of the Developed IP under clause 5(b) is conditional upon you using the Developed IP for the Approved Purpose.
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- (f) Your use of the Third Party IP as part of the Final Deliverables is subject to terms imposed by the relevant third party owner (Third Party Licences).

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7. SERVICE STANDARDS

- (a) Nothing in this Agreement restricts, limits or excludes any rights you may have under the Australian Consumer Law or any other law.
- (b) If you acquire the Services as a Consumer, we will provide the Services with due care and skill and in accordance with any applicable Consumer Guarantees, however to the fullest extent permitted by law, we otherwise exclude any warranty or condition in relation to those Services which would otherwise be implied.
- (c) If you do not acquire the Services as a Consumer, we will provide the Services with due care and skill, however to the fullest extent permitted by law, we do not make any warranties or guarantees that the Services will be suitable or fit for any particular purpose and otherwise exclude any warranty or condition in relation to those Services which would otherwise be implied.
- (d) Any recommendations, strategies and opinions provided by us as part of providing the Services are made on the basis of our experience and professional judgment and are not guarantees that we will achieve certain results. Subject to any rights you have under clause 7(a), you acknowledge and agree that reasonable people may disagree on matters involving professional judgment and, accordingly, a difference of opinion on a question of professional judgment will not excuse you from paying for Services rendered. Further, and subject to any rights you have under clause 7(a), where our Services do not obtain certain results, you agree that this will not excuse you from paying for the Services rendered.

8. LIABILITY AND INDEMNITY

- (a) You are liable for and indemnify us and our representatives against any Loss or Claim suffered by us or our representatives in respect of any breach of this Agreement. Our liability to you for any Loss or Claim suffered by you in respect of the Services, including in respect of a failure to comply with any applicable Consumer Guarantees, is limited to the extent permitted by law and at our election, to either resupplying the Services again; or paying the cost of having the Services supplied again.

- (b) Neither party is liable to the other party for any kind of Consequential Loss arising out of or in connection with this Agreement.
- (c) Subject to clause 7(a) and clause 8(a), we are not liable for any Loss you may suffer in relation to the Services, where the Services are restricted or impacted by a Force Majeure Event.

9. CANCELLATION AND ENDING THE AGREEMENT

- (a) The Proposal may be cancelled as follows (subject to clause 9(b) below):
  - (i) by you for convenience by providing at least 7 days' written notice;
  - (ii) by mutual written agreement of the parties;
  - (iii) by us with 7 days' written notice if the provision of the Services listed in that Proposal are impacted by a Force Majeure Event;
  - (iv) by us with 7 days' written notice if you repeatedly breach the terms of this Agreement; or
  - (v) by either party (Terminating Party):
    - (A) if the other party commits a breach of any of its material obligations under this Agreement; and
    - (B) the breach is not capable of remedy or if the breach is capable of remedy, the other party does not remedy that breach within 14 days after receipt of notice of the breach or any further time allowed by the Terminating Party.
- (b) The parties agree that if the Proposal is cancelled under clause 9(a) before completion:
  - (i) Unless we are required by law to refund the Deposit, any Deposit paid in relation to that Proposal is non-refundable;
  - (ii) You must pay on demand the Fees for Services supplied by us under that Proposal up to the date of the termination and any other costs that we have incurred or are due to incur in relation to that Proposal (less any Deposit that has been paid); and
- (c) If the Proposal is cancelled under clause 9(a):
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- (ii) You acknowledge and agree that the Termination Fee above is a genuine pre-estimate of the loss likely to be suffered by us in the event of termination under clause 9(a)(i) (including administration costs incurred by us to date, costs of rescheduling of resources, cancellation fees for contractors, costs incurred in finding new work, bringing forward work and impairment to cash flow).

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Loss means any loss, cost, expense (including legal costs on a full indemnity basis) or damage, whether direct or indirect, present or future, fixed or ascertained, actual or contingent and whether arising under contract, in tort, at common law, in equity, under statute, under an indemnity or otherwise.

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## 11.2 Interpretation

In this Agreement, unless expressly stated:

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- (b) a word importing a gender includes other genders;
- (c) a law is a reference to that law as amended, consolidated or replaced;
- (d) this Agreement includes all schedules and attachments to it;
- (e) a party to this Agreement includes its agents, personal representatives, successors and permitted assigns;
- (f) a person, includes a natural person, partnership, joint venture, corporation, trust, governmental agency, association or other body corporate;
- (g) a time, is a reference to the time in the State or Territory of the jurisdiction that governs this Agreement;
- (h) \$, is a reference to Australian dollars unless otherwise expressly stated; and
- (i) the words 'such as' or 'including' are not used as words of limitation.