



PRODUCT CONTRACT TERMS.



Our Product Contract Terms ("Terms") as amended by Us from time to time will apply to any Product (paid or complimentary) We supply to You now and in the future.

*Read the current version of Our Terms here:
<https://d2nv.com.au/wp-content/uploads/Product-Contract-Terms.pdf>*

Please read them carefully.

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PART A. TERMS THAT APPLY TO ALL PRODUCTS

1. ABOUT THESE TERMS

- 1.1. Each accepted Order constitutes a separate Contract for the Product(s) covered by that Order.
- 1.2. The Terms on which We supply any Product to You are:
 - (a) these Terms;
 - (b) the Visual Brief; and
 - (c) the Order and any specific terms We provide to You for a Product when You accept an Order.
- 1.3. If there is any inconsistency between any of the documents set out in clause 1.2 clause 1.2(a) prevails to the extent of the inconsistency.

2. HOURS OF SERVICE

- 2.1. Support may be available to You:
 - (a) Monday to Friday 9:00am and 5:00pm (Standard Time Zone: GMT / UTC + 09:30 hour, DST Time Zone offset: GMT / UTC + 10:30)
- 2.2. Support is not available to You:
 - (a) Saturday to Sunday;
 - (b) Australian and South Australia public holidays;
 - (c) Christmas / New Year Closure Periods;
 - (d) Other closure periods deemed necessary by Us.

3. RESPONSE TIME

- 3.1. Within the duration of the Contract We will make every effort to reply to inquiries within 48 hours except where You have been previously notified of a period of limited availability. We will respond in good faith but cannot guarantee any specific action within a given time frame.

4. VISUAL BRIEF AND VARIATIONS

- 4.1. We will attend an initial consultation with You at no charge to You. This consultation can be held via telephone or in person. A Visual Brief will be constructed from the initial consultation to assist Us in the evaluation and formulation of Your requirements.
- 4.2. The Visual Brief and all Visual Brief Samples form part of the Order and Contract.
- 4.3. If You provide us with existing artwork (e.g. logo, business card etc.), this will be considered a Visual Brief Sample and form part of the Visual Brief. Unless You request otherwise, in writing, and before the project Start Date, We will match Your project colour palette and font/s to the artwork You provide. You agree:
 - (a) artwork You supply forms part of the visual brief even if We do not attach it to the "Order from Design 2 Envy" email.
 - (b) font/s will only be matched if available as a free Google Font, otherwise a similar alternative will be selected by Your designer;
 - (c) colours will be matched via an Adobe Illustrator sample and therefore may vary in tone or shade from the artwork Your provide;
 - (d) if You request variations to the font/s or colour palette after the project Start Date, additional charges will apply. Refer to Clause 5.3.
- 4.4. If You provide us with Branding Guidelines, this will be considered a Visual Brief Sample and form part of the Visual Brief. Unless You request otherwise, in writing, and before the project Start Date, We will use the colours and fonts specified in Your Branding Guidelines to create the colour palette for Your project. You agree:
 - (a) Branding Guidelines You supply form part of the visual brief even if We do not attach it to the "Order from Design 2 Envy" email.
 - (b) font/s will only be matched if available as a free Google font otherwise a similar alternative will be selected by Your designer;
 - (c) colours will based on the Hex code provided in your Branding Guideline. If not Hex codes are provide colours will be converted from the CMYK colour values in Adobe Illustrator and therefore may vary in tone or shade from the CMYK colours provided in Your Branding Guidelines;
 - (d) if You request variations to the fon/ts or colour palette after the project Start Date, additional charges will apply. Refer to Clause 5.3.

5. CONCEPTS AND REVISIONS

- 5.1. Unless specified otherwise on your Order we will provide one [1] concept for the Product.
- 5.2. We do not offer a set number of revisions to the Concept/Artwork We submit for Your approval. We will not charge You for additional revisions to Artwork provided that Your requests for revisions conform to the Visual Brief, Order, are communicated within the specified timeline for Approval Items (see clause 9) and do not exceed estimated billable hours for Print Products (see clauses 24.7 to 24.9).
- 5.3. Any revisions or variations outside of the original Visual Brief and/or Order will be charged to You in thirty [30] minute increments, at the rate of eighty [80] dollars per hour.

6. ORDER FOR THE PRODUCT

- 6.1. The Order is generated by Us on the basis of the Visual Brief and expected time investment. The Order may be subject to change if Additional Work is required or requested.
- 6.2. No estimated printing, artwork or delivery dates specified in the Order are guaranteed and may vary.

7. TERM OF YOUR CONTRACT OR PRODUCT

- 7.1. Each Contract commences on the date that You sign the Order ("Commencement Date"), or authorise it by written, electronic or voice processes or when We start supplying the Product whichever is earlier and will continue until the earlier of:
 - (a) completion of that Contract; or
 - (b) termination of that Contract in accordance with these Terms.

7.2. If Your Contract relates to a Print Product, Your Contract will automatically end on the day ("Completion Date") We send the final Artwork Files to You.

8. POINT OF CONTACT

8.1. We will require one point of contact during the Contract for clarifying requirements for design, key features, usability and maintenance issues. We require this person be available to answer questions arising from the project within 24 hrs on business days (subject to reasonable exceptions), and to have authority to make design and related decisions.

9. APPROVAL ITEMS

9.1. Your approval is required by written, electronic or voice processes for all Approval Items.

9.2. If We do not receive Your approval or Your requests for further amendments from You within twenty-eight [28] days You will be deemed to have approved the Approval Item.

9.3. Approval in accordance with clause 9.1 or clause 9.2 denotes that the Approval Item is complete and no further revision/alterations are required.

9.4. If You do not provide approval within twenty-eight [28] days the project may be suspended and additional charges may apply to restart the project.

Approval of final Artwork proof

9.5. You are responsible for approving the final Artwork proof ("Proof") and ensuring accuracy and suitability. This includes, but is not limited to: design, spelling, grammar, illustrations, images and suitability.

9.6. Your approved Proof is the Artwork that will be submitted for Commercial Printing or web development. There will be no reprints or web development at Our expense due to errors in the Proof.

9.7. While We take care to avoid errors, We accept no responsibility for incorrect, inaccurate or unsuitable content on any Product committed to print or web development.

10. FORMAT AND CONTENT OF THE PRODUCT

Content supplied by You

10.1. You are responsible for fulfilling any Content requirements that come with a Product We supply to You. Content must be supplied in page order and must be supplied in the following formats:

(a) Text

(i) .doc;

(ii) .docx; or

(iii) .txt

(b) Images

(i) .jpg;

(ii) .jpeg; and / or

(iii) .png;

(c) Logo

(i) .ai;

(ii) .psd; or

(iii) editable .pdf.

10.2. You must provide Us with any Content for the Product in the manner We specify and within seven [7] days of the project Start Date. If we do not receive your content within seven [7] of the Start Date We may:

(a) not be able to supply the Product to You until You do so;

(b) exclude your content from inclusion in the Project.

10.3. If You do not provide Us with Content for the Product by the Close Date, We will use any Content (if any) You have already provided to Us and You must still pay Us the Price in full.

10.4. Unless You tell Us otherwise, We may collect Content from Your Website (if any) or from third parties and display that Content in the Product.

10.5. Unless You tell Us otherwise, We may alter, edit and/or enhance Content, but we are not obliged to do so.

10.6. We are not responsible for, and You must regularly check and keep current and accurate, the Content (whether provided by You or collected by Us) in the Product that We supply to You. You can update Your Content (for compatible Products) via the Content Management System ("CMS") provided or by providing Us with information so that We may update Your Content.

10.7. Unless specified otherwise, the Order allows for the upload of standard content to each page including up to 3 images and 300 words. This includes cropping of included images but excludes the following:

(a) typing, editing or enhancing text;

(b) editing or enhancing images;

(c) creation or recreation of tables;

(d) creation or recreation of flow charts or diagrams;

(e) creation of accordions or tabbed content.

- 10.8. If You request us to make any alterations to Your content as listed in Clause 10.7, this will be considered additional work and charged at out then current hourly rate.
- 10.9. Once content supplied by You has been added and/or uploaded to Your product, any alterations or additions You request Us to make will be considered Additional Work and charged at Our then current hourly rate.

Content supplied by Us

- 10.10. We are not obligated to collect, provide or create Content for You but We may do so. You are responsible for fulfilling any Content entitlements that come with a Product We supply to You.
- 10.11. If We provide Content for You, You agree to pay Us any applicable fees and charges (as notified by Us).
- 10.12. Once content supplied by Us has been added and/or uploaded to Your product, any alterations or additions You request us to make will be considered Additional Work and charged at Our then current hourly rate.

Our right to reject or remove Content

- 10.13. We may at any time reject or remove any Content from a Product or change, delete, withdraw, disable or suspend a Product or any Content for any reason and without prior notice to You, including:
- (a) if We reasonably believe that the Content, or the use of it, breaks any Law, infringes or is likely to infringe the rights of third parties or if We reasonably believe the Content is inappropriate, offensive or defamatory;
 - (b) if We reasonably believe that the Content, or its use, will result in a breach of Your Contract or affect Us unfavourably; or
 - (c) in order to comply with requirements, notices, standards or instructions given to Us by any third party, including a regulatory body.

Presentation, classification and availability of a Product and Content

- 10.14. We may determine, control or change a Product, Your Content or any page, site or other means, including the:
- (a) duration, nature, content, size and presentation (such as format, design, placement, order and position);
 - (b) Selected Keywords and search criteria; and
 - (c) availability of Product or components of Products.
- 10.15. End-users may access a Product and Your Content in a variety of ways (including via different browsers, applications, technologies and devices). We cannot guarantee how a Product or Your Content will be presented to end-users or that all features of a Product or Your Content will be accessible by end-users.
- 10.16. We may use Your Content, including Your name, address and phone number, in other Products that We supply, as well as in promotional material, on Our website, and in sites and applications that We develop, on occasion. We will determine the presentation of Your Content in these Products, sites and applications.
- 10.17. You agree that:
- (a) We may include in the Product We supply to You:
 - (i) links to and content from Third Party Sites or Applications that We reasonably consider to be relevant to You; and
 - (ii) widgets, plugins or other facilities that enable end-users to interact with Third Party Sites or Applications or with You via a Product; and
 - (b) to carry out these activities referred to in clause 10.17(a):
 - (i) You must provide Us with any account details (including login and password) requested by Us if You have already established accounts on Third Party Sites or Applications; and
 - (ii) We may be required to accept Third Party Terms on Your behalf and You agree to be bound by those Third Party Terms; and
 - (c) We do not accept responsibility or liability for:
 - (i) any communications or transactions between You or third parties and end-users (including Our end-users) via links, widgets, plugins or other facilities We include in a Product;
 - (ii) any content from a Third Party Site or Application or from Our websites included in a Website;
 - (iii) any other uses to which end-users put the links, widgets, plugins or other facilities We include in a Product We supply to You; and
 - (iv) any loss or damage arising out of any such links, content, widgets, gadgets or other facilities for any reason.
- 10.18. You agree that the Product or Your Content may be displayed either by Us or third parties together with other content (such as user generated ratings and reviews). You agree that We are not responsible for that other content.
- 10.19. Where We use the Product or Your Content, You agree that We will determine:
- (a) what part of the Website or Your Content We will use; and
 - (b) in what manner We will use the Website or Your Content.

Uploading Your own Content

- 10.20. If You choose to upload Your own Content to a Web Product the content shall be limited to:
- (a) Text;
 - (b) Images; and
 - (c) Documents.
- 10.21. By requesting to upload Your own Content to a Web Product You agree that Search Engine Optimisation ("SEO") may be adversely affected.

10.22. You will only be granted access to upload or edit Your content once contract is paid in full.

Retention of Content

10.23. When Your Contract is completed or terminated or when a Product is cancelled, We may retain or delete any Content relating to the relevant Contract or Product.

11. RESENDING FILES

11.1. If You lose or accidentally delete any of the files delivered by Us to You, We can resend the files. If We resend files to You, We will charge You a fee, as notified to You by Us from time to time.

12. ARTWORK ON DVD, CD OR USB DRIVE

12.1. If any files are required on DVD, CD or USB We will charge You a fee, as notified to You by Us from time to time.

13. RECOGNITION

13.1. You agree We may place a small credit and/or link to Our website on the Product.

13.2. You agree to not hide, alter or remove the credit described in clause 13.1 from the Product without Our prior written consent.

14. PAYMENT

Your obligation to pay Us

14.1. You must pay the Price (in Australian dollars) that applies to any Product by the due date specified on the invoice and otherwise in accordance with the invoice and these Terms. This obligation survives completion or termination (for whatever reason) of the applicable Contract or cancellation of any Product.

14.2. The Price for a Product may include an additional administration fee, management fee or non-refundable set up fee.

14.3. You must pay Us the Price by the due date specified on the invoice for any Product You have authorised on behalf of another person, if We have been unable to collect the Price from that other person.

14.4. If the Contract exceeds twenty-eight [28] days, You agree to pay any remaining balance in full by the due date specified on the invoice (excludes Monthly Websites).

Failure to pay Us

14.5. If You do not pay Us any amount You owe Us by the due date or if any payment You have made to Us is declined or otherwise not received by Us because of insufficient funds in Your account, We may:

- (a) charge You interest on the unpaid amounts (at the Reserve Bank's Official Cash Rate at the time the amount was due plus 5%) from the date the amount became due until it is paid in full;
- (b) charge You any reasonable debt collection and legal costs incurred as a result of You failing to pay Us the amounts You owe to Us;
- (c) charge You a late payment fee of 10% compounded monthly;
- (d) cancel any or all of the Products You purchase from Us; and/or
- (e) charge You a dishonour fee, as notified to You by Us from time to time.

PayPal payments

14.6. If You pay any amount to Us by PayPal, We may charge You a payment processing fee on the day You make the relevant payment equal to the fee charge to Us by PayPal on the relevant payment.

GST on payments

14.7. Unless specifically stated otherwise, all amounts or fees in relation to the Products include GST.

14.8. If at any time We decide that GST is payable on Product(s) made by Us, or if the Australian Taxation Office assesses GST on any such Product(s), then the necessary amount will be invoiced to You at the GST rate prevailing at the relevant time.

14.9. We reserve the right to recover from You at any time such an amount on account of GST on a Product(s) provided to You under the Contract.

14.10. In these Terms:

- (a) terms used that are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the meaning given in that Act, unless the context makes it clear that a different meaning is intended; and
- (b) consideration includes non-monetary consideration, for which the parties must agree on a market value, acting reasonably.

15. CHANGES TO THE TERMS OR PRODUCT

Changes to Contracts

15.1. We may change any term in Your Contract or Product Price at any time.

15.2. We will not give You prior individual notice of changes to:

- (a) these Terms that We reasonably consider are likely to benefit You, have a neutral impact on You or have a minor detrimental impact on most customers; or
- (b) the Price for a Product, if the change is by no more than CPI plus 4% in any 12 month period.

15.3. If We change these Terms in a way that We reasonably consider will have a minor detrimental impact on most customers, We will give You individual notice after the change has been implemented. If You can demonstrate that such a change has more than a minor detrimental impact on You, and the change is not of the type described in clause 15.2, We will allow You to cancel the affected Contract or Product without incurring cancellation fees.

15.4. Subject to clause 15.2, if We change these Terms or any Contract and We reasonably consider that the change is likely to have a material detrimental impact on most customers (such as where the Price increases by more than CPI plus 5%), We will give You reasonable prior written notice of the change and allow You to cancel the affected Contract or Product without incurring cancellation fees.

15.5. We may need to exercise Our rights in clause 15.4 on an urgent basis, for example, if there is a change in Law or because of security, fraud, technical and related issues. In such circumstances, rather than the notice period specified in clause 15.4, We will aim to give You 7 days' prior written notice of the change.

16. TERMINATION OF A CONTRACT OR PRODUCT

16.1. You may terminate a Contract (in whole or in part) in accordance with the cancellation policy set out in Part C. If You terminate a contract within the Minimum Period You may need to pay a cancellation fee as set out in Part C. The cancellation fee payable is a genuine pre-estimate of the amount of Our loss due to termination or cancellation.

16.2. We may terminate a Contract (in whole or in part) or suspend or cancel the Product(s) We supply to You, and You must pay any cancellation fee set out in Part C for the Product(s), immediately:

(a) if You breach the Terms of the Contract;

(b) if You:

(i) are unable to pay Your debts as they fall due, You make or commence negotiations with a view to making a general rescheduling of Your indebtedness, a general assignment, scheme of arrangement or composition with Your creditors;

(ii) take any corporate action, or any steps are taken or legal proceedings are started, for:

(A) Your winding up dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent; or

(B) the appointment of a controller, receiver, administrator, official manager, trustee, or other similar officer, of You or of any of Our revenue or assets; or

(iii) seek or are granted protection from Your creditors under any applicable legislation;

(c) if We become unable to perform the Contract due to a force majeure event affecting Us; or

(d) but with as much warning as We reasonably can, if:

(i) the Law requires Us to do so;

(ii) We believe on reasonable grounds that providing You with the Product is illegal or may become illegal;

(iii) We reasonably believe that there is a real risk of loss or damage to Us or another if We do not terminate Your Contract or suspend or cancel the Product (including credit risk resulting from You not paying any fees owed to Us on time); or

(iv) a third party directs Us to do so.

16.3. We may terminate a Contract (in whole or in part) or suspend or cancel the Product by 30 days' written notice to You without cause (and We will refund the Price on a pro-rata basis).

16.4. After termination or cancellation of a Contract:

(a) We will have no obligation to refund any component of the Price (together with any GST paid), which has already been paid prior to the termination (other than as set out in these Terms);

(b) You will not be required to pay further components of the Price to Us, other than payments which were due or incurred before termination and any cancellation fee;

(c) We may remove the Product We supplied to You and Your Content.

17. INTELLECTUAL PROPERTY

17.1. You grant Us a royalty free licence to use, reproduce, modify, adapt, communicate to the public and sub-license the Content that You provide to Us ("Your Inputs") or We collect from Your Website for the purposes of providing the Product and including the Product and the Content in any product, service, site, application or marketing material provided or used by Us. Where We provide Your Content to a third party, You agree that the third party may provide information or reports to Us regarding the use of Your Content in that third party's product or service.

17.2. Excluding Logos, You agree that We own all intellectual property rights in:

(a) the Product other than Your Inputs;

(b) in any new work created by modifying, amending, adapting or otherwise dealing with any part of the Product (including Your Inputs); and

(c) in any data, results and reports We generate, and give to You in accordance with the Terms.

17.3. Except in relation to Your Inputs, You must not (and must not permit others to) reproduce the Product or any new work created by Us using any part of the Product without Our prior written consent.

17.4. In addition to Our rights set out above, if You have a Web Product, You agree that:

(a) all intellectual property rights in the design, functionality and 'look and feel' of the Product (except to the extent that Your Product contains Your business names, trade-marks or other pre-existing intellectual property) are owned and will be retained by Us; and

(b) You give Us a perpetual, royalty-free licence to use Your business names, trade-marks and all other words and symbols displayed on Your Web Product in any domain name that We create for Your Product.

18. OUR WARRANTIES AND LIMITATION OF LIABILITY

18.1. Except for the express warranties set out in these Terms, any terms implied by law (that cannot be excluded) and Your rights under statutory guarantees provided under consumer protection laws, We provide no warranties or guarantees to You (including in relation to Our provision of a Product to You, the performance of a Product or Your return on investment in relation to a Product).

18.2. While We will use due care and skill in relation to the provision of the Product, We do not warrant or guarantee that:

(a) the Product will be free from errors or omissions or provided to You by or within a particular time; or

(b) We will monitor Your Content to ensure that it complies with the Law or Your obligations and warranties to Us under these Terms.

- 18.3. If We fail to comply with a statutory guarantee (if it applies to You under consumer protection laws) or any term of a Contract, then limit Our liability for that failure (where it is fair and reasonable to do so in respect of a statutory guarantee) to either of the following (at Our option):
- (a) supply of the Product again, free of charge to You; or
 - (b) paying You the cost of having the Product supplied again.
- 18.4. You agree that, apart from Your rights under clauses 18.1 and 18.3 of these Terms We, Our Third Party Site or Application Owners (and Representatives) will not be liable for any loss, damage, claim or demand incurred or made by any person (whether based in tort (including negligence), contract, statute or otherwise) arising out of or in connection with a Contract, including from provision of the Product, or failure to provide the Product, or from exercising any of Our rights in relation to Content.
- 18.5. Without limiting clause 18.4, We are not responsible for any loss, damage, claim or demand arising in connection with:
- (a) whether a third party publishes Your Content;
 - (b) how a third party displays Your Content;
 - (c) the way a third party determines the relevancy of Your Content on their site or application;
 - (d) any changes a third party makes to Your Content; and
 - (e) any changes a third party doesn't make or delays making to Your Content.
- 18.6. Without limiting clause 18.4 of these Terms:
- (a) We have no liability for any failure or delay in performing an obligation under a Contract due to matters outside Our reasonable control or to the extent it is caused by You or results from Your failure to take reasonable steps to avoid or minimise Your loss; and
 - (b) We are not liable for loss or damage that was not reasonably foreseeable.
19. YOUR WARRANTIES
- 19.1. You represent and warrant to Us that:
- (a) You or Your licensors own all intellectual property rights in the Content that You provide to Us or We collect from Your Website ("Your Inputs") and if You are not the owner of Your Website, You have obtained the consent of the owner of Your Website to allow Us to collect Content from Your Website and display that Content in the Product that You receive from Us;
 - (b) You have the right to enter into each Contract and are the owner of, or are legally authorised to use and/or sub-licence the use of, the Content in the Product that We supply to You;
 - (c) You will not purport to enter any Contract as an agent without authority from the principal;
 - (d) all information You provide for the purposes of a Contract is accurate, complete and current;
 - (e) You will not cause Us to breach any Contract or any of Our privacy policies or Third Party Terms that are relevant to Your Selected Keywords or any other Product;
 - (f) nothing in Your Content (whether supplied by You or collected by Us) in the Products that We supply to You:
 - (i) contravenes any Laws, or incites or encourages breaches of any Law;
 - (ii) infringes the rights (including intellectual property rights and moral rights) of any third parties;
 - (iii) breaches any of Your Contracts or Your obligations to any third party (including confidentiality and privacy obligations) or Third Party Terms that are relevant to Your Selected Keywords or any other Product;
 - (iv) constitutes or may result in any consumer fraud, product liability, tort, breach of contract, injury, damage or harm of any kind to any person or entity;
 - (v) in Our reasonable opinion, otherwise prejudices or prejudice Us Our reputation or brand;
 - (vi) is inappropriate, offensive, unsuitable for minors, obscene, indecent, defamatory, discriminatory, false, misleading or deceptive or likely to be misleading or deceptive, or promotes, incites or instructs in matters of crime;
 - (vii) falsely represents (whether expressly or implied) that You have an association or affiliation with the business, products, goods or services advertised or referred to in Your Content or falsely represents that they are endorsed, sponsored, approved or associated with; or
 - (viii) identifies a person or can be used to identify a person (including any copy, photos or other pictorial representations), unless You have obtained that person's authority (or, if they are a minor, the consent of their parent or legal guardian);
 - (g) You will monitor Your Content to ensure You comply with these warranties;
 - (h) if You are required by Law to restrict access to a Product or any part of Your Content to persons with particular characteristics, You have taken all steps necessary to ensure that You comply with those requirements;
 - (i) You will not engage in spamming or similar marketing activities in relation to any Product;
 - (j) Your Content in the Website that We supply to You is free of "worms", "viruses" and other disabling devices; and
 - (k) You have all necessary rights to advertise, sell, distribute and/or communicate to others the business, products, goods or services advertised or otherwise referred to in Your Content.
- 19.2. Your warranties under clause 19.1 of these Terms:
- (a) are given on an ongoing basis during the period of any Contract You have with Us; and
 - (b) apply to any changes made to Your Content (including via video or photo sharing sites) and displayed in any Product that We supply to You.
20. YOUR INDEMNITY IN FAVOUR OF US

- 20.1. You agree to indemnify Us and any associated Third Party Site or Application Owners (and Representatives) against all claims, demands, damages, costs, penalties, suits and liabilities of any nature caused directly or indirectly by Your:
- (a) act or omission or any breach by You of any provision of a Contract including the warranties given by You under clause 19.1 or Part B of these Terms; and
 - (b) appointment of Us as Your agent for any purpose specified in Your Contract.

21. CONFIDENTIALITY

- 21.1. All information of a confidential nature disclosed by Us to You under a Contract is and will remain confidential and must not be disclosed by You (or by Your employees, officers, advisers or contractors) to any third party, except for the purposes of the Contract. This does not apply to the extent that any such information:
- (a) is already known by You, or is in Your possession;
 - (b) has been lawfully obtained by You from another source;
 - (c) is or becomes publicly known through no wrongful act by You; or
 - (d) must be disclosed pursuant to any obligation You have at Law.

22. PRIVACY

- 22.1. We may communicate with You via any method We determine including email or SMS message, and those communications may not include an unsubscribe facility, unless You tell Us not to.
- 22.2. When We communicate with You via email:
- (a) You are solely responsible for ensuring that Your contact details are current (including email address), Your email service is operational and that You check Your emails regularly;
 - (b) You must promptly notify Us of any changes to Your contact details;
 - (c) You are deemed to have received the email We have sent You and We are not obliged to take any further action to confirm that You have received, opened or read the email, unless You promptly notify Us and demonstrate that the email was not delivered to Your email address; and
 - (d) if We receive an automated email non-delivery notification indicating You have not received the email that We have sent You, We will use reasonable endeavours to attempt to contact You using other contact details We have for You, but We do not guarantee that We will be able to contact You.

23. OTHER IMPORTANT TERMS

- 23.1. We may assign or novate Our rights and obligations under a Contract without Your consent. You may not assign or novate Your rights and obligations under a Contract.
- 23.2. Each Contract will be governed by the laws in force in the Australian State of South Australia.
- 23.3. We may use any third parties (locally or overseas) We consider fit to provide any part or the entire Product, without informing You or obtaining Your consent.
- 23.4. Each Contract constitutes the entire agreement between You and Us, and supersedes all other agreements, whether written or oral, between You and Us relating to its subject matter.
- 23.5. Failure by either You or Us to enforce any provision of a Contract is not a waiver of future enforcement of that or any other provision.
- 23.6. You must ensure that Your agents, employees or anyone else acting on Your behalf comply with Your Contract.
- 23.7. We may exercise a right or remedy or give or refuse consent or do or not do any act in any way We consider appropriate (including by imposing conditions) and in Our absolute discretion unless the Contract expressly states otherwise.
- 23.8. If any of the terms of a Contract are invalid, unenforceable or illegal, that term will be struck out and the remaining terms will remain in force.

PART B. PRODUCT SPECIFIC TERMS

24. PRINT PRODUCTS SPECIFIC TERMS

Submission of Your Artwork

- 24.1. You may submit Your own illustrations or images ("Your Artwork") for inclusion in the Print Product. You agree:
- (a) You are solely responsible for the end result of printing of Your Artwork;
 - (b) You will ensure Your Artwork print-ready with the correct specifications;
 - (c) We are not responsible for mistakes in Your Artwork;
 - (d) We are not liable for Your Artwork errors; and
 - (e) There will be no reprints at Our expense due to errors in Your Artwork.
- 24.2. When Artwork is trimmed, the bleed cut can vary in position by up to 2-3mm, therefore a 7mm internal margin from the bleed line is required if You supply Your Artwork.
- 24.3. You are responsible for ensuring that Your Artwork does not violate Australian Copyright Law. We and Our contractors assume Your Artwork adheres to Australian Copyright Law and all relevant permissions have been sought and/or royalties paid for.

Logo Intellectual Property

- 24.4. You agree that We own all intellectual property rights in all concepts and draft Artwork for the Logo. This includes, but is not limited to; logos, symbols, compositions and copy.
- 24.5. All Artwork will remain Our property until the Order is paid in full.

24.6. Upon full payment of the Order, intellectual property rights in the Logo will be released to You. We retain rights to utilise the Logo and all design elements for Our portfolio and self-promotion.

Quoted Fees and Billable Hours

24.7. The fees and billable hours quoted for Print Products in Your Order are an Estimate only.

24.8. Services we provided for the Print Product, but are performed outside the estimated billable hours will be charged at a rate of eighty [80] dollars per hour.

24.9. Additional time is accrued in 30 minute increments.

Unused Estimated Billable Hours

24.10. We are not obliged to refund to you any portion of the Fees due to unused estimated billable hours.

Your obligation to pay Us

24.11. You agree to pay 50% of the Price as deposit 14 days prior to the Commencement Date. This deposit is non-refundable.

24.12. You agree to pay 25% of the Price as a progress payment within 7 days of approving the Concept.

24.13. You agree to pay 25% of the Price as a progress payment within 7 days of approving the final Artwork, but before delivery of final Artwork digital files.

25. COMMERCIAL PRINTING SPECIFIC TERMS

25.1. You understand that We outsource all commercial printing to a third party.

25.2. We may be required to accept Third Party Terms on Your behalf and You agree to be bound by those Third Party Terms.

25.3. It is Your responsibility to make sure the Proof is correct and print ready. You agree no refunds or reprints are given due to errors in the Proof.

25.4. With all printing there may be some colour variations from electronic visual representations of Artwork and previous orders of the final printed Artworks. This is due to the nature of CMYK printing and bulk-run printing system. You understand no refunds or reprints are given due to colour variation.

25.5. Once a printing Order has been placed it cannot be cancelled under any circumstances without incurring a cancellation fee. The cancellation fee will be charged at the rate set by Us from time to time.

25.6. Any claims for faulty goods must be placed within 3 days after receiving Your order.

Print Samples

25.7. You agree to supply, for free, in addition to fees for service, any number up to 10 of printed samples of every item produced for You by Us (quantity to be specified by Us).

25.8. You agree to allow Us to use all print samples supplied for Our portfolio and self-promotion.

Delivery

25.9. We cannot be held liable for any printed Print Products that are damaged, lost or delayed when delivered by post or courier.

25.10. All turnaround time quotations are estimates and are based on calendar working (business) days. No quoted printing or delivery dates are guaranteed and may vary.

Your obligation to pay Us

25.11. Print files will not be released to the printer until We receive full payment for:

- (a) the Print Product Order; and
- (b) the Commercial Printing Order

26. AD HOC WEB DEVELOPMENT SPECIFIC TERMS

Inclusion and exclusions

26.1. Ad Hoc Web Development may include, but is not limited to the following:

- (a) WordPress Installation;
- (b) WordPress theme integration or establishing a child theme;
- (c) WordPress plugin integration;
- (d) Configuration of Your WordPress website, installed theme and plugins; and
- (e) Adding, removing or altering CSS and other applicable code to your WordPress theme.

26.2. Ad Hoc Web Development excludes purchase of:

- (a) WordPress frameworks, themes, child themes or plugins; and
- (b) Domain names, web hosting and other hosting related expenses.

Your Website Design, Layout, Framework, Theme and Plugins

26.3. You are responsible for ensuring that Your Website does not violate Australian Copyright Law or any other Copyright Laws. We and Our contractors assume Your Website and associated framework, themes and plugins adheres to all Copyright Law and all relevant permissions have been sought and/or royalties/fees paid for.

Quoted Fees and Billable Hours

26.4. The fees and billable hours quoted for Ad Hoc Web Development in Your Order are an Estimate only.

26.5. Services we provided for Ad Hoc Web Development, but are performed outside the estimated billable hours will be charged at a rate of eighty [80] dollars per hour.

Your obligation to pay Us

- 26.6. You will be invoiced weekly for Ad Hoc Web Development services. You agree to pay:
- a deposit of one [1] billable hour, 14 days prior to the Commencement Date of the project. This deposit is non-refundable; and
 - all invoices within 7 days.
- 26.7. Failure to pay an invoice within 7 days will result in cessation of work until such time that all outstanding invoices have been paid.
27. WEB PRODUCTS SPECIFIC TERMS
- 27.1. We provide no guarantee or warranty that:
- Web Products websites will be available continuously or on an uninterrupted basis, secure, or not interfered with or adversely affected by factors or circumstances outside of Our control;
 - We will maintain a back-up of Web Products websites and Content contained on Web Products websites; or
 - the Web Products websites We create for Our clients will each have a unique look and feel or contain unique content.
- 27.2. We may disable or suspend Web Products websites if You use Your Web Products websites in a manner that generates excessive traffic or imposes excessive storage burdens on Us. We will use Our reasonable endeavours to give prior notice to You before We disable or suspend Web Products websites in accordance with this clause.
- 27.3. We may modify, upgrade, remove functionality from, or temporarily disable Web Products websites, including for maintenance purposes.
- 27.4. You must not use Web Products websites for publishing, displaying or linking to or from third party advertising feeds (whether or not for financial gain) or as a data storage facility.
- 27.5. We will notify You when the Web Products website that We prepare for You is ready for Your approval. Unless We tell You otherwise, if You do not approve and publish the Web Products website within 5 days of the date of that notice, We will automatically publish the Web Products website after that 5 day period and commence billing.
- 27.6. You agree that We may feature Your Web Products website in Our promotional activities (such as case studies) at Our election.

Content Management System

- 27.7. A Content Management System ("CMS") will be provided with Web Products websites. You understand that the CMS, its extensions and plug-ins are provided by third parties, and therefore:
- We have limited control over the functionality or operation of the CMS;
 - We are not affiliated with or endorsed by the Third Party or any associated third parties; and
 - We may be required to accept Third Party Terms on Your behalf and You agree to be bound by those Third Party Terms.
- 27.8. You must promptly inform Us if You become aware of any breach or suspected breach of security in relation to Your Web Products website CMS account. Until You notify Us of any breach of security, You will be liable for any unauthorised use of Your Web Products website CMS account.

Security

- 27.9. If included on the Order, third party security plug-in may be provided with Web Products websites. You understand:
- We have limited control over the functionality or operation of the plug-in;
 - We are not affiliated with or endorsed by the Third Party or any associated third parties; and
 - We may be required to accept Third Party Terms on Your behalf and You agree to be bound by those Third Party Terms.
- 27.10. Although We make every effort to provide a secure Web Products website, due to the nature of rapidly advancing technology, We can in no way guaranty that the Web Products will not be subject to security breaches. We recommend the use of strong passwords and the observance of standard security practices. In order to minimize the chances of security violations, systems should be updated often. You are solely responsible for tracking software updates.

Domain Registration, Renewal or Transfer (including free domains)

- 27.11. Assistance with Registering Only. We may assist You to register one or more domain(s). For each such domain registered our involvement ends with the registration. You will be the registrant and administrative contact, and You agree to be bound by all applicable terms and conditions published by:
- the applicable registrar (<https://d2nv.com.au/wp-content/uploads/Terms-of-Service.pdf>);
 - ICANN's rights and responsibilities: <http://www.icann.org/en/resources/registrars/registrant-rights-responsibilities>; and
 - .au Domain Administration Ltd.'s (auDA) 'Mandatory Terms and Conditions Applying to .au Domain Name Licences': <http://www.auda.org.au/policies/current-policies/2008-07/>.
- 27.12. Maintenance of Domain Names. You are responsible for the ongoing maintenance, control and use of any domain name registered in Your name and for any fees or taxes associated with its maintenance. To maintain Your domain name registration You will need to interact directly with the applicable registrar. FOR GREATER CLARITY, YOU ARE RESPONSIBLE FOR:
- RENEWING THE REGISTRATION AND ENSURING THAT IT DOES NOT LAPSE; AND
 - ADDRESSING ANY ISSUES RELATING TO YOUR DOMAIN NAME. WE ARE NOT RESPONSIBLE FOR DOING SO.
- 27.13. Please note that, We are not able to guarantee that a proposed domain name is available for registration or that a registrar will register it.
- 27.14. The Contract does not include registration of a Premium Domain. If You require a Premium Domain You are responsible for:
- Negotiating the terms of sale;
 - Purchasing the domain; and
 - Redirecting or transferring domain.

- 27.15. The Contract does not include alterations to registered domains. You agree if You request alterations to a register domain You agree to pay Us any applicable fees and charges (as notified by Us).
- 27.16. Where needed to provide the Web Products website to You, You authorise Us to redirect or transfer a website domain or subdomain relevant to You. This can include contacting an existing domain registrar on Your behalf. If requested, You must assist Us to redirect or transfer a website domain or sub-domain. You agree to pay Us any applicable fees and charges (as notified by Us). We may, refuse to register a domain or sub-domain if it will adversely affect the Products or Our brands.
- 27.17. You accept that the domain redirection or transfer may occur at an unspecified time period between twenty-four [24] hours and seven [7] days following initiation of the process by Us and that during this period You accept that there will be a resulting disruption to the website and its associated email accounts which is beyond Our control.
- 27.18. You agree You are responsible for retaining a copy of all Content including Email Accounts associated with the domain or subdomain being transferred.
- 27.19. If We transfer or redirect a website domain or sub-domain to Adelaide Hills Web Hosting on Your behalf You agree to be bound by the terms set out in clauses 27.11 to 27.13.

Free Domain

- 27.20. If the cost of registering a single domain for twenty-four [24] months is included in the annual or monthly Fees that you are being charged for with the Product and the domain name that you wish to register or renew for use with the Product is both an eligible type of domain name and available, We will register the domain name for you. If We do so and you continue to subscribe to such Hosting Products for a period of at least twenty-four [24] months, We will not charge you its then current fee for registering or renewing a domain name (as applicable).

Hosting with Us

- 27.21. If included on the Order, Your Web Products website will be hosted by Adelaide Hills Web Hosting ("AHHW") for a Minimum Period, as set out in Part C.
- 27.22. At the end of the Minimum Period We will continue to supply the Hosting to You on an annual basis on the terms applicable at that time (including Price), unless You tell Us in writing or We tell You otherwise, at least 30 days before the automatic extension.
- 27.23. You understand AHHW is a subsidiary of Design 2 Envy Pty Ltd.
- (a) You agree to be bound by the terms of AHHW. The relevant terms and condition of AHHW are available via <https://d2nv.com.au/wp-content/uploads/Terms-of-Service.pdf> (or such other webpage determined by AHHW and its related entities from time to time).

Hosting with a Third Party Host

- 27.24. You may host a Web Products website with a Third Party. You agree You are responsible for creating and paying for any Third Party Hosting.
- 27.25. You agree to engage a third party host that allows Us appropriate access in order to establish the Website Products website. Such access shall as a minimum:
- (i) Meet the requirements for establishing a WordPress CMS;
 - (ii) Have a server memory allocation of not less than 64MB;
- 27.26. You agree to provide Us unrestricted access to Your Third Party Hosting:
- (i) cPanel
 - (ii) FTP;
 - (iii) web page directory;
 - (iv) cgi-bin directory;
 - (v) any other directories, accounts or programs We need to access; and
- 27.27. You agree to pay Us any applicable fees and charges (as notified by Us) that result from You engaging a third party host.

Free Hosting

- 27.28. If the cost of hosting the Product is included free on the Order, We will host the Product for you, at no charge, for a period of twelve [12] months. If We do so and you continue to subscribe to such Hosting for a period of at least twenty-four [24] months, We will not charge you the then current fee for hosting (as applicable).

Email Accounts

- 27.29. If specified on the order, the order includes the creation of up to 5 email accounts.
- 27.30. Email account creation is limited to:
- (a) up to 5 email accounts on Your Adelaide Hills Hosting service account only;
 - (b) email accounts using the domain name We register to the hosting service we supply.
- 27.31. The following is not included with email account setup:
- (a) Setting up the email account on mobile phones, tablets, laptops, PCs or any other devices;
 - (b) Setting up email accounts on third party software or applications;
 - (c) Merging, syncing or combining email accounts with third party software or applications.

Provision of Website Tools

- 27.32. We may incorporate Website Tools into Website Products websites.
- 27.33. You agree that some of the Website Tools are provided by third parties, and therefore:
- (a) We have limited control over the functionality or operation of the Website Tools;

- (b) if a Third Party provides data or other information for use with the Website Tools, We have no control over the accuracy or completeness of that information;
- (c) the third parties may invoice You directly for ongoing costs relating to Your use of the Website Tools.
- (d) the fees for updates and upgrades for the Website Tools may change from time to time.
- (e) We may be required to accept Third Party Terms on Your behalf and You agree to be bound by those Third Party Terms.

Licensing

- 27.34. Where a specific Proprietary Use License exists for the use of specific website content such as plug-ins, themes, images, cascading style sheets ("CSS") and JavaScript elements that have been supplied by Us or purchased by Us on Your behalf, then this content will be supplied for non-exclusive usage per number of registered domains. You may not modify, duplicate, redistribute, on-sell or include this specific website content without Our prior written consent. Where necessary We will advertise the usage of any such Proprietary Use Licenses within the Website Products website footer.
- 27.35. Specific website content purchased by Us on Your behalf remains the property of Us, under license or its licensors at all times and is governed under licensing restrictions and rules and are not transferrable.

Social Media linking

- 27.36. If You request Us to link Your Website to Your Social Media account You agree to do all things reasonably necessary to enable Us to link Your Website to Your Social Media account(s) including:
- (a) providing access to social media account(s) held by You (including passwords and usernames) on the nominated social media platform(s);
 - (b) granting permission to create new social media account(s) and profile(s) on the nominated social media platform(s) under Your name and to accept third party terms on Your behalf in order to set up those accounts (and You understand that You will be bound by any third party terms that are accepted on Your behalf);
 - (c) granting permission to edit and manage Your social media account(s) on the nominated social media platform(s), including to make posts and create pages consistent with Your social media strategy;
 - (d) providing Content to use in respect of Your social media profile(s) on the nominated social media platform(s); and
 - (e) co-operating with Our requests.
- 27.37. You must promptly inform Us if You become aware of any breach or suspected breach of security in relation to Your social media account(s) on the nominated social media platform(s) (such as loss, theft, or unauthorised disclosure or use of Your username or password). Until You notify Us of any breach of security, You will be liable for any unauthorised use of Your social media account(s) on the nominated social media platform(s).
- 27.38. We may use data that appears in any monthly reports We provide to You for a variety of purposes, such as analytical and promotional purposes. Where We use this data in Our promotional activities, You consent to Us identifying You and Our involvement in managing Your social media profile(s).

Facebook Blog Sync

- 27.39. The order may include Facebook Blog Sync. If included, You agree to do all things reasonably necessary to enable Us to link Your Website to Your Facebook account including:
- (a) providing access to Your Facebook held by You (including passwords and usernames);
 - (b) granting permission to create new Facebook account (if included on the Order) in Your name and to accept third party terms on Your behalf in order to set up a Facebook account (and You understand that You will be bound by any third party terms that are accepted on Your behalf);
 - (c) granting permission to edit and manage Your Facebook account, including to make posts and create pages consistent with Your social media strategy;
 - (d) granting permission to test the sync feature by creating a post on your website and syncing that post to your Facebook page;
 - (e) providing Content to use in respect of Your Facebook profile on the nominated social media platform(s); and
 - (f) co-operating with Our requests.
- 27.40. You must promptly inform Us if You become aware of any breach or suspected breach of security in relation to Your Facebook account (such as loss, theft, or unauthorised disclosure or use of Your username or password). Until You notify Us of any breach of security, You will be liable for any unauthorised use of Your Facebook account.
- 27.41. We may use data that appears in any monthly reports We provide to You for a variety of purposes, such as analytical and promotional purposes. Where We use this data in Our promotional activities, You consent to Us identifying You and Our involvement in managing Your social media profile(s).

Training

- 27.42. The Order may include CMS training. If applicable, a one [1] hour training session for a maximum of two [2] people per session and is limited to instructions for:
- (a) Logging in to the CMS
 - (b) Uploading content to the CMS
- 27.43. Training will be conducted either online, at your residence, or place of business, whichever we deem appropriate.

Gallery

- 27.44. The Order may include a gallery. Unless specified otherwise the gallery features are as follows:
- (a) Up to 10 uploaded images;
 - (b) Basic tiled layout;
 - (c) Standard WordPress post type sort feature;

- 27.45. Unless specified otherwise, the following is not included with a gallery:
- (a) Editing or enhancing images other than the resizing of images included in 27.44(a);
 - (b) Individual gallery albums or slideshows;
 - (c) Video files;
 - (d) Audio files;
 - (e) More than one gallery.

Slideshow

- 27.46. The Order may include a slideshow. Unless specified otherwise the slideshow features are as follows:
- (a) Up to 5 uploaded images;
 - (b) One [1] image per slide;
 - (c) Left to right sliding images or standard sliding feature included with the theme;

- 27.47. Unless specified otherwise, the following is not included with a slideshow:
- (a) Editing or enhancing images other than the resizing of images included in 27.46(a);
 - (b) Multiple images per slide;
 - (c) Text slides;
 - (d) Audio slides;
 - (e) Video slides;
 - (f) More than one [1] slideshow.

External Links

- 27.48. Unless specified otherwise, the order includes up to 5 external links, including social media links.

Post-launch Warranty

- 27.49. Website Products websites include a limited warranty for a period of twenty-eight [28] days following website Launch.

- 27.50. The determination of warranty inclusions is at the discretion of Us.

- 27.51. Warranty does not include:

- (a) Changes to website or page layouts;
- (b) Changes to website code ;
- (c) Changes or updates to store or shop pages;
- (d) Removing or replacing erroneous content resulting from the actions of another party other than Us;

Exclusions

- 27.52. Flash animation Headers, Banner Ads or Splash pages are not included with Web Products websites.

Your obligation to pay Us (excluding Monthly Websites)

- 27.53. You agree to pay 50% of the Price as deposit 14 days prior to the Commencement Date. This deposit is non-refundable.

- 27.54. You agree to pay 20% of the Price as a progress payment within 7 days of approving the Concept.

- 27.55. You agree to pay 20% of the Price as a progress payment within 7 days of approving the Demo, but before the Web Products are made available to the public.

- 27.56. You agree to pay 10% of the Price as a final payment when a Web Products is made available to the public.

28. CUSTOM WEBSITES SPECIFIC TERMS

- 28.1. A framework builder ("Framework") will be provided with the Custom Websites website.

- 28.2. You agree that the Framework and its extensions and plug-ins are provided by third parties, and therefore We may be required to accept Third Party Terms on Your behalf and You agree to be bound by those Third Party Terms.

29. UPFRONT WEBSITES SPECIFIC TERMS

- 29.1. Your Upfront Websites website will be developed from Pre-existing Template ("Theme").

- (a) You agree that the Theme may be provided by a third party, and therefore We may be required to accept Third Party Terms on Your behalf and You agree to be bound by those Third Party Terms.

30. MONTHLY WEBSITES SPECIFIC TERMS

- 30.1. Your Monthly Websites website will be developed from Pre-existing Template ("Theme").

- (a) You agree that the Theme may be provided by a third party, and therefore We may be required to accept Third Party Terms on Your behalf and You agree to be bound by those Third Party Terms.

Your obligation to pay Us

- 30.2. You agree to pay Us the Design Fee 14 days prior to the Commencement Date. This fee is non-refundable.

- 30.3. You agree to pay Us the Monthly Fee each and every month, by the due date specified on the invoice(s), until the end of the Minimum Period.

31. ECOMMERCE SPECIFIC TERMS

- 31.1. The Order may include an Electronic Commerce ("Ecommerce") Add-on.

- 31.2. Unless specified otherwise, Ecommerce Add-on includes:
- (a) 1 Shop/Store Page
 - (b) 9 Preloaded Products
 - (c) Standard Shopping Cart
 - (d) Standard Shipping Calculator
 - (e) Standard PayPal Payment Gateway
- 31.3. If included, an Ecommerce plug-in will be provided with the website. You agree that the Ecommerce plug-in is provided by a third party, and therefore:
- (a) We have limited control over the functionality or operation of the Ecommerce plug-in;
 - (b) if a Third Party provides data or other information for use with the Ecommerce plug-in, We have no control over the accuracy or completeness of that information;
 - (c) the fees for updates and upgrades for the Ecommerce plug-in may change from time to time.
 - (d) We may be required to accept Third Party Terms on Your behalf and You agree to be bound by those Third Party Terms.
- 31.4. You agree it is Your responsibility to:
- (a) Adhere to the terms of use of the third party Ecommerce software; and
 - (b) Pay any fees associated with any third party Ecommerce software if introduced in the future.
- 31.5. You agree We are not responsible for changes and / or updates to the:
- (a) Ecommerce plug-in;
 - (b) Ecommerce plug-in operation; and
 - (c) resulting changes to Your website.

Shopping Cart

- 31.6. The Ecommerce Add-on includes the standard third-party shopping cart provided with the Ecommerce plug-in. We take no responsibility for and/or cannot be held liable for any loss of earnings from shopping cart software as a result of normal use, misuse, or any compromised state from the third party shopping cart software.
- 31.7. Any additional shopping cart functionality, design or configurations outside of what is included as standard in the third-party shopping cart installation will be charged at the rate set by Us from time to time.

Shipping Calculator

- 31.8. The Ecommerce Add-on includes the standard third-party shipping calculator provided with the Ecommerce plug-in. We take no responsibility for and/or cannot be held liable for any loss of earnings from shipping cart software as a result of normal use, misuse, or any compromised state from the third party shipping calculator software.
- 31.9. Any additional shipping calculator functionality, design or configurations outside of what is included as standard in the third-party shipping calculator installation will be charged at the rate set by Us from time to time.

PayPal Payment Gateway

- 31.10. We implement PayPal Standard as the payment gateway for the Ecommerce Add-on.
- 31.11. You agree if You require an alternative merchant service payment gateway, integration and testing of the alternative payment gateway into Your shopping cart will be considered additional work and at the rate set by Us from time to time.
- 31.12. To activate PayPal gateway on Your website You will require a PayPal Business account. You agree You are responsible for:
- (a) Setting up a PayPal Business account; and
You can set up a PayPal Business account via this webpage: <https://www.paypal.com/au/webapps/mpp/merchant>
 - (b) Providing Us with Your PayPal Credentials and Identity Token.
You can find instructions on how to obtain your PayPal Credentials via this webpage: <https://developer.paypal.com/webapps/developer/docs/classic/api/apiCredentials/#creating-classic-api-credentials>. Information on "How to get started" the Identity Token can be obtained via this webpage: <https://developer.paypal.com/docs/classic/products/payment-data-transfer/>.
- 31.13. You agree there are fees and/or costs associated with accepting payments via PayPal. The relevant fees of PayPal can be found at the link below and this includes but is not limited to Fees found via this webpage: <https://www.paypal.com/au/webapps/mpp/paypal-fees> (or such other webpage determined by PayPal and its related entities from time to time);
- 31.14. You agree You are responsible for all PayPal associated costs and/or fees.
- 31.15. You understand We:
- (a) do not provide support for PayPal or any other third party payment processor employed in the functionality of the website;
 - (b) are not responsible for management, mismanagement, use or misuse of the payment processor;
 - (c) are not responsible for and/or cannot be held liable for the financial operations of Your Ecommerce business or any loss of earnings from Your Ecommerce website due to the functionality of Your payment processor, whether PayPal or another payment gateway.
 - (d) may be required to accept Third Party Terms on Your behalf and You agree to be bound by those Third Party Terms.

Laws affecting Ecommerce

- 31.16. From time to time governments enact laws and levy taxes and tariffs affecting internet Ecommerce. You agree:
- (a) You are solely responsible for complying with such laws, taxes, and tariffs; and

- (b) You will hold harmless, protect, and defend Us and Our subcontractors from any claim, suit, penalty, tax, or tariff arising from Your exercise of internet electronic commerce.

32. SEARCH ENGINE OPTIMISATION SPECIFIC TERMS

- 32.1. The Order may include Search Engine Optimisation ("SEO")
- 32.2. If included a SEO plug-in will be provided with the Website Project. You agree that the SEO plug-in is provided by a third party, and therefore:
 - (a) We have limited control over the functionality or operation of the SEO plug-in;
 - (b) if a Third Party provides data or other information for use with the SEO plug-in, We have no control over the accuracy or completeness of that information;
 - (c) the fees for updates and upgrades for the SEO plug-in may change from time to time.
 - (d) We may be required to accept Third Party Terms on Your behalf and You agree to be bound by those Third Party Terms.
- 32.3. We do not guarantee the position in which Your Website will be ranked in search results on Third Party Search Engines, Sites or Applications as it is impacted by factors outside Our reasonable control.
- 32.4. You agree that:
 - (a) Different Search Engines rank websites with their own varying strategies, therefore it is technically impossible to rank highly on all the major Search Engines at the same time.
 - (b) Some Search Engines use the algorithms and services of bigger Search Engines, therefore addition or alteration to the listing of Your Website in Google may affect the listing in other non-targeted Search Engines.
 - (c) Google has varying scheduled times to crawl and index submitted sites into their database, ranging from hours to months, therefore We cannot speed up the process in any ethical way.
 - (d) We have no control over the policies of Search Engines with respect to the type of sites and/or content that they accept now or in the future.
 - (e) Your Website may be excluded from any directory or Search Engine at any time at the sole discretion of the search engine or directory.
 - (f) Google has been known to hinder the rankings of new websites and/or pages until they have proven their viability to exist for more than "x" amount of time. This is referred to as the "Google Sandbox." We assume no liability for ranking/traffic/indexing issues related to Google penalties.
 - (g) Occasionally, Search Engines will drop listings for no apparent or predictable reason. Often, the listing will reappear without any additional SEO. Should a listing be dropped and does not reappear We can re-optimize Your website/page, however this will be considered Additional Work.
 - (h) Some search directories offer expedited listing services for a fee. If You wish to engage in said expedited listing services (e.g., paid directories or Google Ad-words), You are responsible for all paid for inclusion or expedited service fees.
 - (i) Linking to "bad neighbourhoods" or getting links from "link farms" can seriously damage all SEO efforts. We do not assume liability if You choose to link to or obtain a link from any particular website without prior consultation.
 - (j) You understand, pages not directly linked to your home page main menu may not be index by Google, and therefore may not rank in organic searches regardless of SEO applied to said pages.
- 32.5. In order for Us to supply SEO to You, You must ensure that Your Website meets the following requirements. Your Website (including pages) must:
 - (a) be operational 24 hours a day, 7 days a week;
 - (b) not have the majority of the site under construction;
 - (c) have operable features and links;
 - (d) load at an acceptable speed;
 - (e) be compliant with relevant Third Party Terms;
 - (f) not redirect to another site;
 - (g) be in English and suitable for an audience based in Australia;
 - (h) have an operational back button and not use pop-ups to trap users.
- 32.6. In order to perform some offsite activities, You authorise Us to create and/or manage profiles for You on Third Party Sites and Applications and agree that You are bound by the applicable Third Party Terms. However, nothing in these Terms or any Order gives You any right to enforce or rely upon the Third Party Terms.

Google Submission

- 32.7. The Order may include Submission of Your Website to Google. If We submit the Web Product website to Google on Your behalf, You will be governed by the terms and conditions of Google. The relevant terms and conditions of Google are available via <http://www.google.com.au/intl/en/policies/terms/regional.html> (or such other webpage determined by Google Inc. and its related entities from time to time);
- 32.8. You agree that by submitting Your Website to Google We are submitting Your Website and detailed information about Your Website to a third party, and therefore:
 - (a) We have limited control over the use of Your Website;
 - (b) We are not affiliated with or endorsed by Google or any associated third parties; and
 - (c) You accept and must comply with the terms and conditions of Google.
- 32.9. You give permission for Us to create and/or set up relevant accounts with Google on Your behalf.

Google Analytics Reporting

- 32.10. The Order may include 12 Months Google Analytics reporting. If We activate Google Analytics Reporting for the Web Product website on Your behalf, You will be governed by the terms and conditions of Google. The relevant terms and conditions of Google are available via <http://www.google.com.au/intl/en/policies/terms/regional.html> (or such other webpage determined by Google Inc. and its related entities from time to time);
- 32.11. You agree that by activating Google Analytics Reporting for Your Website We are submitting Your Website and detailed information about Your Website to a third party, and therefore:
- (a) We have limited control over the use of Your Website;
 - (b) We are not affiliated with or endorsed by Google or any associated third parties; and
 - (c) You accept and must comply with the terms and conditions of Google.
- 32.12. You give permission for Us to create and/or set up relevant accounts with Google on Your behalf.

Inclusion and Exclusion

- 32.13. Google Analytic Reporting service consists of setting-up:
- (a) Google Analytics account;
 - (b) automated Search Engine Optimization (SEO) reports in Google Analytics;
 - (c) automated Search Engine Optimization (SEO) reports to be emailed to an address of Your choice.
- 32.14. Google Analytic Reporting service does not include:
- (a) setting-up Google Analytics automated reports other than as included in clause 32.13;
 - (b) interpreting the data provided by Google Analytics;
 - (c) improving SEO other than as included in clause **Error! Reference source not found.**;
 - (d) setting-up or configuring Google Analytics mobile app.
33. POST-LAUNCH SUPPORT AND CONTENT UPDATE

Commencement of the contract

- 33.1. The Post-launch Support and Content Update contract will commence on the expiry of website Post-Launch Warranty or on date specified on Post-launch Content Updates Quotation (if any).

Duration of the contract

- 33.2. This Contract will remain in force for a duration of twelve [12] months.

Availability

- 33.3. Support can be requested via email to support@d2nv.com.au.
- 33.4. Support may be available via telephone, however the following costs are excluded:
- (a) STD telephone calls
 - (b) Long distance telephone calls
 - (c) Mobile telephone calls
 - (d) International telephone calls
- 33.5. Post-launch Support and Content Update service is limited to Web Product Websites built on the WordPress content management system by Design 2 Envy.

Inclusion and Exclusion

- 33.6. Post-launch Support and Content Update service consists of, but is not limited to:
- (a) Answering queries in relation to adding content (text, images, video and audio);
 - (b) Adding, editing or deleting page and post content;
 - (c) Adding, editing or deleting images in existing sliders or galleries;
 - (d) Creating galleries and sliders;
 - (e) Adding website pages;
 - (f) Adding website posts.
- 33.7. Post-launch Support and Content Update service does not include
- (a) Answering queries or fixing issues related to your network, service provider, computer hardware or software;
 - (b) Website, template or page re-designs;
 - (c) Creation of new template or page designs;
 - (d) Answering technical queries relating to the Website or the Website's Content Management System and any third party plugins or themes;
 - (e) Resolving technical issues that arise in relation to the Website or its operation;
 - (f) Monitoring and actioning security emails.
- 33.8. Services we provided that are not included in Support and Content Update service will be charge at the then current Professional Rates.
- Time Limits
- 33.9. Post-launch Support and Content Update service allows for up to one [1] hour maintenance per calendar month.

- 33.10. Services we provided that are included in Security, Maintenance and Backup, but are performed outside the allowed one [1] hours per calendar month will be charged at a discounted rate of forty [40] dollars per hour for customers who have purchased Post-launch Support and Content Update.
- 33.11. Service time is accrued in 15 minute increments.
- 33.12. Response times are indicative and not guaranteed.
- 33.13. Estimated time to complete requested support tasks may be provided when and if possible at Your request.

Unused Time

- 33.14. Unused Support and Content Update time will expire at the end of each calendar month.
- 33.15. We are not obliged to refund to you any portion of the Fees you have paid to us for the provision of Support and Content Update services due to unused time.

Commencement of Support and Content Update Tasks

- 33.16. Tasks will commence upon receipt of email request by Us from You; and
- 33.17. Confirmation of time estimate provided for the specific task/s from Us to You.

Website and Computer Network Access

- 33.18. To receive Support and Content Update services you must supply us, at your expense, unrestricted access to your:
- (a) Website; and
 - (b) Computer network;
- 33.19. If you do not provide us with such access within a reasonable time after we request it, then:
- (a) We are not obliged to provide you with any Support and Content Update services; and
 - (b) An invoice will be issued for any work carried out.
- 33.20. Support and Content Update services are dependent upon access to the website to perform the required tasks and to assess/view the requirements.

Your obligation to pay Us

- 33.21. You must pay the Fees for Support and Content Update annually, at inception of Support and Content Updates Service
- 33.22. You must pay Additional Fees / Cost within twenty-eight [28] days after the date on which we issue you an invoice for those Additional Fees / Costs.
- 33.23. We accept payment for Support and Content Update in Australian Dollars (AUD) only, via the following methods:
- (a) Bank Deposit
 - (b) PayPal™
34. POST-LAUNCH SECURITY, MAINTENANCE AND BACKUP

Commencement of the contract

- 34.1. The Post-launch Security, Maintenance and Backup contract will commence on the expiry of website Post-Launch Warranty or on date specified on Post-launch Support and Maintenance Quotation (if any).

Duration of the contract

- 34.2. This Contract will remain in force for a duration of twelve [12] months.

Availability

- 34.3. Support can be requested via email to support@d2nv.com.au.
- 34.4. Support may be available via telephone, however the following costs are excluded:
- (a) STD telephone calls
 - (b) Long distance telephone calls
 - (c) Mobile telephone calls
 - (d) International telephone calls
- 34.5. Post-launch Security, Maintenance and Backup service is limited to Web Product Websites built on the WordPress content management system by Design 2 Envy.

Inclusion and Exclusion

- 34.6. Post-launch Security, Maintenance and Backup service consists of, but is not limited to:
- (a) Answering technical queries relating to the Website or the Website's Content Management System and any third party plugins or themes we provided with the CMS;
 - (b) Resolving technical issues that arise in relation to the Website or its operation, except as listed in 34.7;
 - (c) Monitoring and actioning security emails;
 - (d) Updating the Website CMS, plug-in and theme;
 - (e) Daily Website backup.
- 34.7. Post-launch Security, Maintenance and Backup service does not include
- (a) Answering queries or fixing issues related to your network, service provider, computer hardware or software;
 - (b) All other queries not arising directly from the Website.

- (c) Website, template or page re-designs
- (d) Creation of new template or page designs

Time Limits

- 34.8. Post-launch Security, Maintenance and Backup service allows for up to one [1] hour maintenance per calendar month.
- 34.9. Services we provided that are included in Security, Maintenance and Backup, but are performed outside the allowed one [1] hours per calendar month will be charged at a discounted rate of forty [40] dollars per hour for customers who have purchased Post-launch Security, Maintenance and Backup.
- 34.10. Support time is accrued in 15 minute increments.
- 34.11. Response times are indicative and not guaranteed.
- 34.12. Estimated time to complete requested support tasks may be provided when and if possible at Your request.

Unused Time

- 34.13. Unused Security, Maintenance and Backup time will expire at the end of each calendar month.
- 34.14. We are not obliged to refund to you any portion of the Fees you have paid to us for the provision of Security, Maintenance and Backup services due to unused time.

Commencement of Support Tasks

- 34.15. Support will commence upon receipt of email support request by Us from You; and
- 34.16. Confirmation of time estimate provided for the specific task/s from Us to You.

Website and Computer Network Access

- 34.17. To receive Security, Maintenance and Backup you must supply us, at your expense, unrestricted access to your:
 - (a) Website; and
 - (b) Computer network;
- 34.18. If you do not provide us with such access within a reasonable time after we request it, then:
 - (a) We are not obliged to provide you with any Security, Maintenance and Backup services; and
 - (b) An invoice will be issued for any work carried out.
- 34.19. Support, consulting and analysis provision is dependent upon access to the website to perform the required tasks and to assess/view the requirements.

Your obligation to pay Us

- 34.20. You must pay the Fees for Security, Maintenance and Backup Costs annually, at inception of Security, Maintenance and Backup Services
- 34.21. You must pay Additional Fees / Cost within thirty [30] days after the date on which we issue you an invoice for those Additional Fees / Costs.
- 34.22. We accept payment for Security, Maintenance and Backup in Australian Dollars (AUD) only, via the following methods:
 - (a) Bank Deposit
 - (b) PayPal™

PART C - CANCELLATION POLICY FOR PRODUCTS

35. AMOUNTS YOU MUST PAY US ON CANCELLATION OF A PRODUCT

All Products

- 35.1. You may cancel the Order for the Product by 30 days prior written notice and by payment of the cancellation fee.
- 35.2. If an Order is cancelled or terminated, You agree:
 - (a) to pay Us any cancellation Fee(s) as described in this clause 35;
 - (b) any Deposit(s) and/or Design Fee(s) are not refundable;
 - (c) all Artwork, digital files, disks or CDs prepared in connection with the project will remain Our property;
 - (d) all materials delivered to You in connection with the Product must be returned to Us; and
 - (e) use of any work done in connection with the Product (excluding Your Inputs) without Our prior written consent may result in additional fees or legal action.
- 35.3. If an Order is cancelled or terminated before the Product is complete (Print Products), or before the Product is made available to the public (Web Products), then the cancellation fee is equal to the Deposit (for all Products excluding Monthly Websites) or the Design Fee (for Monthly Websites), plus any additional expenses incurred above the Deposit/Design Fee amount, as determined by Us.

Monthly Websites

- 35.4. Unless Your Order states otherwise, the Minimum Period for a Monthly Websites website is 24 months.
- 35.5. If an Order is cancelled or terminated during the Minimum Period and after the Product is made available to the public, and:
 - (a) more than 12 months before the end of the Minimum Period the cancellation fee is equal to 80% of the GST-exclusive Price of the Product, plus GST;
 - (b) more than 6 months before the end of the Minimum Period the cancellation fee is equal to 90% of the GST-exclusive Price of the Product balance, plus GST;

- (c) less than 6 months before the end of the Minimum Period the cancellation fee is equal to the GST-exclusive Price of the Website Product, plus GST.

Hosting

- 35.6. Unless Your Order states otherwise, the Minimum Period for Hosting (paid or complimentary) is twelve [12] months.
- 35.7. If the Hosting Product is cancelled or terminated less than twenty-four [24] months after the Activation Date or You attempt to transfer Your Domain and/or Product during that twenty-four [24] month period, We will charge You and You are required to pay Us then current fee for hosting as determined by Us.

Domain

- 35.8. Unless Your Order states otherwise, the Minimum Period for Domain(s) (paid or complimentary) is 24 months.
- 35.9. If the Domain is cancelled or terminated less than twenty-four [24] months after registering the domain name or You attempt to transfer the Domain during that twenty-four [24] month period, We will charge You and You are required to pay Us then current fee for registering a Domain as determined by Us.

PART D – INTERPRETATION AND DEFINITIONS

36. INTERPRETATION

36.1. In these Terms:

- 36.2. Bold type and/or Headings are for convenience only and do not affect the interpretation of these terms;
- 36.3. Any singular words include the plural equivalent and any plural words include the singular equivalent;
- 36.4. Expressions referring to a person include any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
- 36.5. An agreement, representation or warranty on the part of two [2] or more persons binds them jointly and severally;
- 36.6. No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision; and
- 36.7. Specifying anything in this agreement before or after the words “include” or “for example” or “etc.” or similar expression(s) does not limit what else is included.

37. DEFINITIONS

Activation Date means the day Your hosting service is activated, as determined by Us.

Additional Work means any work not included in the Order that We are permitted to charge You under this agreement.

Approval Items means any or all of the following:

- (a) Design brief;
- (b) Concepts;
- (c) Concept revisions/alterations;
- (d) Design Content;
- (e) Artwork;
- (f) Proof; and
- (g) any other item We request Your approval for.

Artwork means any design, concept, idea and/or visual item we create for you in relation to the Product.

Close Date means the day You approve the Product Concept

Commencement Date means the date you sign the Order or authorise it by written, electronic or voice processes or when We start supplying the Product whichever is earlier.

Concept means a design generated based on your Visual Brief.

Content means any information (including Personal Information), advertisement, business name, trade name, trade mark, design, logo, photograph, illustration, graphic, artwork, text, URL (and content accessible via that URL), video, video link or other material.

Contract means the terms on which We supply any Products to You as detailed in clause 1.2.

Custom Website means website design from scratch without the use of a template.

Completion Date means the day we send the final Artwork to You (Print Product).

Demo means a live version of Your Web Product website that is provided for demonstration and review purposes only.

Estimate an approximate calculation of the cost or time taken to complete a project.

Hosting means provision of space on a server to allow access to your web site via the internet with by us or a third party.

Launch means the day your Web Product is made available to the public on Your Domain.

Law means all laws, regulations, rules and applicable industry codes of practice and standards.

Minimum Cost means the total amount payable for a Monthly Websites website.

Minimum Period means the minimum commitment that applies to the Product We Supply to You, as set out in Part C and which commences on the date You sign the Order, whether by written, electronic or voice processes, unless stated otherwise.

Order means the document (Quote or Product Order) (whether provided in printed or electronic format or via voice signature) setting out Your Order and the details of the Product You purchase (whether the Product is paid or free (such as a complimentary Product donated to a sporting club)).

Personal Information means "Personal Information" as defined in the Privacy Act 1988 (Cth).

Premium Domain means a domain name that has been registered previously and is now available for resale.

Price means the price or charges payable by You for the Website Product, as notified to You by Us from time to time, whether payable in full or in instalments.

Print Product means the product that We design or provide for You in accordance with the Terms including but not limited to:

- (a) Logos;
- (b) Business Cards;
- (c) Brochures;
- (d) Flyers; and
- (e) Catalogues.

Proof means the final Artwork that will be sent for Commercial Printing or web development. It provides the last opportunity for You to make sure everything is correct before actual printing or web developing.

Representative includes officers, employees or agents.

Selected Keywords means all Keywords that You have selected or that We have selected for You

SEO means the process of attempting to increase the visibility of web pages in searches using search engines or any Product that We designate as a SEO Product from time to time.

Social Media means web based tools such as Facebook, Twitter, or Pinterest for example.

Support means paid or unpaid support service.

Theme means a pre-existing template we use to develop Your Upfront or Monthly website.

Third Party Search Engine Owner means Google, Yahoo! and any other Third Party Site Owner who We nominate as a Third Party Search Engine Owner from time to time.

Third Party Site or Application means a website or application either in Australia or overseas, which is not maintained or controlled by Us and includes:

- (a) online media and social networking sites and applications; and
- (b) websites on which, under Our authority or that of a Third Party Search Engine Owner, search results are made available.
- (c) Third Party Search Engine Owner means Google, Yahoo! and any other Third Party Site Owner who We nominate as a Third Party Search Engine Owner from time to time.

Third Party Site or Application Owner means the owner of a Third Party Site or Application and includes a Third Party Search Engine Owner.

Third Party Terms means:

- (a) the terms of Google Inc. and its related entities as set out on the webpage <http://www.google.com.au/intl/en/policies/terms/regional.html> (or such other webpage determined by Google Inc. and its related entities from time to time);
- (b) the terms of WordPress and its related entities as set out on the webpage <http://wordpress.org/about/license/> (or such other webpage determined by WordPress from time to time);
- (c) the terms of WooThemes and its related entities as set out on the webpage <http://www.woothemes.com/terms-conditions/> (or such other webpage determined by WooThemes from time to time);
- (d) the terms of Yoast and its related entities as set out on the webpage <https://yoast.com/terms-of-service/> (or such other webpage determined by Yoast from time to time);
- (e) the terms of PayPal and its related entities as set out on the webpage <https://www.paypal.com/au/webapps/mpp/ua/legalhub-full> (or such other webpage determined by PayPal from time to time);
- (f) the terms of templates, modules, components and plug-ins released under GNU / GPLv2 license as set out on the webpages:
 - (i) <http://www.gnu.org/licenses/gpl-2.0.html> (GPLv2 or later); and
 - (ii) <http://www.gnu.org/licenses/gpl-3.0.html>
- (g) the terms of other Third Party Search Engine Owners, to the extent they apply to any of Your Content displayed in the Website;
- (h) the terms of Third Party Sites or Application that We distribute Your Content to, that We link to, or that We otherwise integrate with a Product, from time to time (which may include online media and social networking sites); and
- (i) all policies, rules and guidelines referred to in the above terms.

Visual Brief means the document that describes the scope of the Order and details Your requirements prepared for You by Us.

Warranty means maintenance and/or repairs required to a Website Project within twenty-eight [28] days of launch. The determination of warranty labour is at Our discretion.

We, Us, Our means Design 2 Envy Pty Ltd (ABN 29 100 925 442)

Website Product means the website that We develop or provide for You in accordance with the Terms including but not limited to:

- (f) Custom Websites;
- (g) Upfront Websites;
- (h) Monthly Website;
- (i) Ecommerce; and
- (j) Search Engine Optimisation.

Website Tools means the tools, applications, packages or plug-ins that We use to generate website.

You, Your means the customer named on the Order and includes any principal on whose behalf the customer acts.

Your Website means any website that We identify as used in connection with Your business, and does not need to be owned by You.

This document was last updated on 6 December 2016

Change Log

Date	Clause	Action	Description
1 July 2015	All	Created	All
16 December 2015	10.7	Addition	Uploading of Content
16 December 2015	10.8	Addition	Alteration to Content
6 December 2016	10.1 a-c (i-iii)	Addition	File Types Accepted
6 December 2016	10.22	Addition	Uploading Own Content