



## Services - Terms & Conditions

These are the Terms and Conditions on which Fluffyduck Internet Services (“Fluffyduck Internet Services”, “Fluffyduck”, “we”, “us”, or “our”) will carry out work for you. They will apply each time that you ask us to do work for you, or carry out a Project. They set out our Services and what you can expect from us. Please read them carefully. It is a condition of your use of our Services that you comply with these Terms and Conditions.

These Terms and Conditions are subject to change without notice and may be superseded.

We may modify these Terms and Conditions by general notice on a page of our website, by email or by any other method of communication.

### 1. Engagement

(a) You may engage us to carry out a Project for you by:

- signing and returning a Proposal to us; or
- providing an authorised Purchase Order; or
- in the case of smaller engagements by written verification.

(b) Unless we notify you otherwise, we will accept that engagement, subject to these Terms and Conditions. The Project will commence inline with the project schedule or when we accept the engagement.

### 2. Proposals

(a) If we provide you with a Proposal for the Project, then that Proposal:

- is based on the Specifications, and is subject to change if the parties agree to amend the Specifications;
- does not include GST; and
- is valid for a period of 30 days from the date we issue the Proposal, unless otherwise agreed by Fluffyduck.

### 3. Staged Approach

For most Projects we prefer to adopt a staged approach for planning and implementation purposes.



## **Discovery Stage**

At this stage, the requested features are just high-level ideas and really need to be fleshed out in detail. In a workshop with key stakeholders, we'll define the keys to success, functionality, branding, look and feel, and the more complex technical aspects that will drive the Project.

The deliverables for the discovery stage may include:

- functional specifications (sitemap and wireframes);
- design and/or marketing specifications;
- fixed price proposal for the design and/or marketing;
- estimate for development/technology.

## **Creative Stage**

Following on from the discovery stage the creative team will take charge and work through our process. Whilst this occurs the technology team will work collaboratively to create and develop the technical specifications and database schema/architecture.

The deliverables for the creative stage may include:

- completed design, content and/or brand;
- technical specifications;
- database schema/architecture;
- fixed price proposal for development/technology.

## **Development/Technology Stage**

The development/technology stage is usually the largest and most involved. Throughout this stage Fluffyduck likes to work as close as possible with you via your Project Manager.

The deliverables for the development/technology stage may include:

- completed development;
- testing;
- quality assurance;
- user acceptance testing;
- training sessions;



- deployment;
- installation of devices.

## **Marketing Stage**

Once the Project is completed we will ensure that it is optimised for marketing purposes.

The deliverables for the marketing stage may include:

- meta information;
- 301 redirects;
- image alt tags;
- sitemap creation and submission to Google;
- Google analytics installed.

## **4. Services**

(a) The Services that we provide to you, and any specific terms, may include some or all of the following:

- clause 12 – Consultation;
- clause 13 – Workshops;
- clause 14 – Design;
- clause 15 – Copywriting;
- clause 16 – Development/Technology;
- clause 17 – Maintenance;
- clause 18 – Third Party Software;
- clause 19 – Training;
- clause 20 – Warranty;
- clause 21 – Support & Maintenance Packages;
- clause 22 – Hosting;
- clause 23 – Domain Name Services;
- clause 24 – Beacon and other Devices;
- clause 25 – Email/SMS Marketing;
- clause 26 – Social Media Management (SMM);
- clause 27 – Search Engine Optimisation (SEO);
- clause 28 – Online Advertising;
- clause 29 – Strategy and Analytics.



(b) You acknowledge that electronic services are subject to interruption and breakdown and all non electronic services are subject to disruption, and therefore:

- the Services will not be error-free or uninterrupted; and
- your access to the Project and the operation of the Project will not be error-free or uninterrupted.

## **5. Hours of Service**

(a) All Services will be carried out between 8:30am and 5:00pm (local office time), Monday to Friday excluding public holidays and the Christmas / New Year closure periods. Unless specifically requested and agreed upon otherwise.

## **6. Content and Materials Supplied by You**

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

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

- text/copy: Microsoft Word or Rich Text (clearly labeled and in correct order);
- tables: Microsoft Excel (clearly labeled and in correct order);
- images: high resolution where possible (JPEG, PNG files);
- logos: vector format (Illustrator EPS/AI);
- diagrams/maps: vector format (AI) or (JPEG files);
- if required, access to your current website and database via SSH, ftp and/or CMS/hosting control panel login;
- brand style guidelines (if applicable).

(c) We may charge Additional Costs if the Client Content is not provided in the appropriate format or if material is not supplied when requested.

(d) You warrant that the materials or content you provide to us, or that are provided to us on your behalf, will not:

- breach any rights (including Intellectual Property Rights or Moral Rights) of any third party; or
- compromise the security or operation of our computer systems, through a virus or otherwise.

(e) You indemnify, and agree to keep Fluffyduck, its directors, officers and employees indemnified, against all Loss arising out of the breach of any rights (including



Intellectual Property Rights and Moral Rights) of any third party in connection with materials or content that you supply to us, or that are supplied to us on your behalf.

## 7. Variations and Additional Costs

(a) If during the course of our engagement there are changes in the Specifications of the Project, the changes will be treated as a Variation.

(b) Where a Variation occurs Fluffyduck reserves the right to halt work and review the project costings. We will discuss the Variation with you and where required will issue a Variation Notice which is to include the modifications to the Specifications and any associated costs. We will not proceed with the Services until we receive your written approval to proceed.

(c) Examples of Variations include:

- introduction of additional requirements not discussed during the discovery stage i.e. branding deliverables, introduction of video requirements, data entry required;
- changes in the Specifications during the design stage i.e. additional pages requiring design, additional design elements/features etc.;
- costs for commercial fonts, photography, audio and video;
- additional pages, features, functionality etc. required / introduced in the development/technology stage;
- customisation of the CMS or building an extension not specified in the approved design, Specifications or database schema/architecture;
- additional project management time;
- unplanned delays in obtaining approval, Client Content or feedback resulting in Fluffyduck having to reschedule projects, staff or facilitate continuance;
- overtime required to meet deadlines due to delays by the Client providing approval, Client Content or feedback.

(d) It is our process to include project management time in all quotes, but from time to time we are required to not only project manage the Fluffyduck team but also manage your team. This is generally not known at the time of quoting and may be treated as a Variation.

(e) If during the course of our engagement there are small changes in the Project, we will contact you and provide an estimate of the Additional Costs for these small changes.



(f) Where possible, we will attempt to obtain approval from you prior to undertaking the additional work. However in some cases due to deadline and availability constraints, this may not be possible and we may proceed with the work without obtaining approval.

(g) Additional Costs will be invoiced separately to the Client on an ad hoc basis, charged at current Professional Hourly Rates, or where appropriate, placed on a Support & Maintenance Package (see Clause 21).

(h) Examples of Additional Costs include:

- content not in the appropriate format;
- extra workshops or workshops requiring additional hours;
- requested additional design concepts / alterations;
- requested changes to the design after final approval has been requested or provided;
- uploading and styling/layout of additional Client Content;
- additional training sessions, additional training session attendees or training at your premises;
- additional meetings and travel time.

## **8. Purchase of Stock Images, Fonts, Photography, Audio or Video**

(a) Unless specified in the Proposal, the Fees do not include any searches or purchase of stock images, commercial fonts, photography, audio or video.

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

(c) You indemnify, and agree to keep Fluffyduck, its directors, officers and employees indemnified, against all Loss arising out of the breach of these licenses.

(d) Standard stock images will be charged according to the Stock Image Rates.

(e) Costing for any font, photography, audio or video required will be provided for approval separately via a Variation Notice.

(f) Ownership of the finished photography, audio or video will be transferred to you upon full payment of all issued invoices.

(g) Fluffyduck retains ownership of all working files.



## 9. Your Approval

(a) Your approval may be required for a number of items (Approval Item) presented to you:

- project brief;
- functional specifications (sitemap and wireframes);
- design specifications;
- marketing specifications;
- design concepts (and your choice of one of them);
- each updated version of the chosen design concept;
- completed design;
- technical specifications;
- database schema/architecture;
- completed deliverable including uploaded content;
- Variation Notices; and
- any other item for which we request your approval.

(b) When we provide you with any Approval Item, you must notify us in writing whether you do or do not accept the completed Approval Item.

(c) You will be deemed to have accepted the Approval Item if we do not receive a response from you, within 5 business days.

(d) Your acceptance of the completed Approval Item in accordance with paragraph (b) or (c) means that the Approval Item is complete, and no further amendments are necessary. However, we will not proceed to the next Stage of the Project until we receive your approval to proceed.

(e) There may be Additional Costs in having to reschedule projects, staff or facilitate continuance due to unplanned delays in obtaining approval. If unable to perform continuance, the Client may have to pay a shut down and subsequent restart fee commensurate to the labour and resource costs incurred.

## 10. Scheduling, Production and Project Management

(a) If we consider it to be necessary, we will develop a production schedule for the Services. We will use reasonable commercial endeavours to carry out the Services in accordance with that schedule.



(b) If you delay in providing approval, Client Content or feedback we require, then this may result in:

- a change in the delivery deadline set out in the production schedule; or
- if the delivery deadline cannot be changed, a Variation Notice will be issued, including necessary overtime costs.

## **11. Digital Marketing Services**

(a) You acknowledge that the Digital Marketing Services provided by Fluffyduck is not an exact science and that search engines, media services, platforms and providers are constantly changing and evolving and that Fluffyduck has no control over these changes.

(b) Fluffyduck will perform the Digital Marketing Services utilising best practice strategies and up to date techniques, and will make recommendations to best achieve the client's goals, but cannot guarantee results.

(c) Fluffyduck will endeavour to seek approval from the Client for material prior to publication, but this may not always be possible due to time constraints, deadlines and access to the appropriate authority.

(d) Unless agreed otherwise, Digital Marketing Services and media spend will be invoiced and automatically paid by direct debit at the beginning of the each month.

(e) Fluffyduck will perform the Digital Marketing Services as specified in the Proposal or as agreed in writing with the client, utilising the specified providers and/or platforms, for the specified term.

(f) If a client wishes to cancel a contract early, Fluffyduck will charge a penalty for the early termination of the contact. The penalty will be equal to 50% of the remaining value of the contract.

(g) Once the initial contract term is completed, the contract will automatically renew for subsequent periods of the same duration, unless either party gives the other party 30 days written notice terminating the agreement or both parties agree in writing to vary the Digital Marketing Services provided.

(h) You indemnify, and agree to keep Fluffyduck, its directors, officers and employees indemnified, against all Loss arising from actions taken performing Digital Marketing Services.





(i) Fluffyduck cannot be held liable and accepts no responsibility for being unable to perform the Digital Marketing Services due to lack of client resources or access.

(j) Fluffyduck may be required to work along side another agency or third party provider. Fluffyduck cannot be held liable and accepts no responsibility for being unable to perform services due to faults or defects in any service provided by third parties.

(k) Fluffyduck reserves the right to charge Additional Costs caused by the Clients instructions, lack of instructions, interruptions, mistakes, work for which Fluffyduck is not responsible and changes to the requirements, expectations or hardware and software environment, and extra work required caused by faults or defects in any service provided by a third party.

## **12. Consultation**

(a) Our consultancy services may include:

- researching and developing a tailored strategy, campaign planning and implementation, current system review and analysis; audits, workshops, public speaking and installation;
- project management of a third party or internal implementation.

## **13. Workshops**

(a) Our workshop service vary in length, cost and deliverables based on the brief and other requirements.

(b) Unless otherwise specified in the Proposal the workshop will be held in one of the Fluffyduck offices.

(c) Extra workshops or workshops requiring additional hours will be an Additional Cost.

(d) Deliverables from a workshop may include:

- in-depth brief;
- stakeholder review and analysis;
- customer feedback and insights;
- recommendations and documentation;
- functional specifications (sitemap and wire-frames);
- design specifications;



- marketing specifications;
- fixed price proposal for the design;
- estimate for development/technology.

## 14. Design

(a) Our design services will include:

- delivery to you of one design concept (or as specified in the Proposal); and
- one round of alterations.

(b) Upon completion of the alteration, Fluffyduck will supply an updated version of the design concept to you.

(c) If you request additional concepts or alterations, or request changes to the design after final approval has been requested or provided, the work will be an Additional Cost.

(d) The work referred to in paragraph (c) do not include a change to the Specifications which will be treated as a Variation.

(e) The deliverables from the creative stage may include:

- completed design;
- technical specifications;
- database schema/architecture;
- fixed price proposal for development/technology.

(f) Other design services may include:

- branding – competitor analysis, name research, URL review, logo trend analysis, branding options, refinement, final brand and logo and style guide;
- discussions regarding developing options for your digital marketing strategy, current system review and analysis;
- other design services – print ad design, booth design, banner design, business card and stationary design and printing, brochure design, email template design, sub-brand logo design.

(g) Ownership of the finished design will be transferred to you upon full payment of all issued invoices.



(h) Fluffyduck retains ownership of all working files.

## **15. Copywriting**

(a) Our copywriting services may include:

- SEO copy;
- Blog writing;
- EDM copy.

(b) Our copywriting services include presentation of one copy and one round of alterations for each copy/blog.

(c) Ownership of the finished copy will be transferred to you upon full payment of all issued invoices.

(d) Fluffyduck retains ownership of all working files.

## **16. Development/Technology**

(a) Our development/technology services will be derived from the Proposal, the technical specifications, and final deliverables from discovery and design stages.

(b) Our development/technology services may include uploading and styling/layout of the Client Content to the developed software. If applicable we will complete a specified number of standard pages or screens of the software. If we complete additional pages or screens for you, the additional work will be an Additional Cost.

(c) A Content Management System (CMS) may be provided as part of the Project. Unless otherwise specified in the Proposal, our services do not include customisation of this CMS, its extensions, plug-ins or components. Any customisation required:

- the work will be a Variation;
- the customisation, extension, plug-in or component remains licensed under the original author or Fluffyduck; and
- you accept and must comply with the CMS terms and conditions in relation to your use of the customisation extension, plug-in or component.

(d) You acknowledge that the CMS and many of its extensions, plug-ins and components are provided by third parties, and therefore:



- we have limited control over the functionality or operation of the CMS and its extensions etc; and
- you accept and must comply with the terms and conditions of those third parties relating to the CMS.

(e) A Standard Page or Screen is: up to 500 words, up to 3 images and up to one implementation of any tabular data.

(f) Unless otherwise specified in the Proposal or as agreed in writing with Fluffyduck, Fluffyduck retains ownership of the IP of any custom applications.

(g) You acknowledge that Fluffyduck is free to reuse any code, inventions, extensions, plug-ins or components and you grant Fluffyduck an indefinite perpetual licence to use, re-sell and modify.

(h) Ownership of the finished deliverable will be transferred to you upon full payment of all issued invoices.

(i) Fluffyduck retains ownership of all working files.

(j) Unless otherwise agreed for all apps being uploaded to an app store (iTunes, PlayStore, Windows App Store), Fluffyduck will listed as the “developer”. If in the event the Client wishes to be the “developer” with their own account, the costs to action such transfer will be an Additional Cost.

(k) You acknowledge that the software that is developed by Fluffyduck may run on third party platforms, software and environments and therefore if any of these third part platforms, software or environments make an update or discontinue this may cause your software to breakdown, be interrupted or not operate at full functionality.

## **17. Maintenance**

(a) Our maintenance services consist of making modifications / updates based on the Proposal, brief and/or Specifications.

(b) Unless otherwise specified in the Proposal, the Fees for modification do not include any provision for training or post-implementation support or warranty.

## **18. Third Party Software**

(a) As part of a Project we may provide Third Party Software as part of the Project. You acknowledge that:



- we have limited control over the functionality or operation of the Third Party Software;
- if the third parties provide data or other information for use with the Software, we have no control over the accuracy or completeness of that information;
- you accept and must comply with the terms and conditions of the Third Party Software providers; and
- those Third Party Software providers may invoice you directly for ongoing costs relating to your use of the Software.

(b) The Fees for the Third Party Software may change from time to time. The new prices not supplied directly by the provider will apply from the date that we notify you.

## **19. Training**

(a) The Proposal may include training sessions of varying length, content and outcomes. Training sessions will be conducted in one of Fluffyduck's offices, with no more than 3 trainees.

(b) If additional training sessions are required, or you wish to have additional attendees at a training session, or require training at your office, there may be an Additional Cost.

## **20. Warranty**

(a) Fluffyduck provides a 20 business day period for Client Testing. During this time we provide 2 rounds of testing and feedback and 2 subsequent rounds of code fixes.

(b) Fluffyduck provides a limited Warranty Period for a further 20 business days.

(c) The limited Warranty Period will commence 20 business days after the project is handed over for Clients Testing. If data entry is required then the Warranty Period will commence 30 business days after the project is handed over for Client Testing.

(d) Extended warranty periods can be negotiated during the Discovery Stage and outlined in the Specifications.

(e) All identified bugs must be reported within the Warranty period.

(f) It is your responsibility to review and test the software and ensure you are satisfied with it during the testing and warranty periods.

(g) Any modifications that are not defined as a bug for the purposes of this warranty will be quoted for separately or placed on a Support & Maintenance Package.



(h) Any bugs that fall outside the warranty period will be quoted for separately or placed on a Support & Maintenance Package.

(i) When open source software, such as October CMS, WordPress, MySQL, PHP and Apache, is used to build and host websites, we cannot guarantee that these open source software products are error-free. Any work required to address bugs, version or system updates, are not included under the Warranty and will be quoted for separately, or placed on a Support & Maintenance Package.

(j) Any bug fixes or changes required as a result of upgrades to mobile operating systems like ios, android or windows, are not included under the Warranty and will be quoted for separately, or placed on a Support & Maintenance Package.

(k) Any bug fixes or changes required as a result of upgrades to search engines or system upgrades, are not included under the Warranty and will be quoted for separately, or placed on a Support & Maintenance Package.

(l) Unless otherwise specified in the Proposal, Warranty will only apply to:

- the latest 2 browsers versions for Chrome, Firefox, Safari, Edge
- the latest 2 operating systems for Windows, Android and iOS
- the latest 2 device versions for Windows, Android and iOS

when handed over for Client Testing.

(m) The determination of warranty labour is at Fluffyduck's discretion.

## **21. Support & Maintenance Packages**

(a) Support and maintenance services are a paid service utilising paid Support & Maintenance Packages and can be pre-purchased in blocks of 10, 20, 40 or 80 hours.

(b) Our support services consist of, but are not limited to:

- answering your technical questions relating to the Software, its operation and the Content Management System and the extensions, plug-ins or components provided with it; and
- resolving technical issues that arise in relation to the Software or its operation, except as set out in 21 (d).

(c) Our maintenance services may consist of, but not limited to



- general design services;
- general copywriting services;
- general development services;
- general marketing services;
- small updates to Software;
- design and development of landing pages;
- out of warranty bug fixes;
- out of scope project work – design or development;
- data entry;
- content changes;
- general project management.

(d) Our support and maintenance services do not include resolving:

- issues that relate to your networks, email, computer systems or software;
- other technical issues not arising directly from the Software.

(e) You may be required to provide to us, at your own cost, access to the Software and your computer network and any systems required in order for us to provide the support and maintenance services. If you do not provide us with such access within a reasonable time after we request it, then:

- we are not obliged to provide you with any support & maintenance services; and
- we are not obliged to return to you any portion of the Fees that you have paid to us for the provision of support & maintenance service.

(f) Support & Maintenance Package reduced hourly rate deals require that the Support & Maintenance Package be in paid for in full before any work is undertaken. Work undertaken outside of a Support & Maintenance Package will be charged at our current Professional Hourly Rates.

(g) Support & Maintenance Packages are not designed for major creative, technology, development or marketing tasks rather for tasks that can be completed within a maximum of 40 hours. Any work that will require more time than this to complete will require a Proposal.

(h) Estimated time to complete requested support and maintenance tasks may be provided when, and if possible, at Client's request.



(i) Commencement of support tasks will start upon receipt of written support brief/request, confirmation of time estimate provided (where required and possible) and availability of hours on a Support & Maintenance Package.

(j) Support & Maintenance Package activities are limited to Software and Services created by Fluffyduck.

(k) Unused Support & Maintenance Packages will not be refunded.

## **22. Hosting**

(a) If we provide hosting services for the Website, those hosting services are governed by our Hosting Terms and Conditions, which can be found [here](#).

(b) Ownership of the hosting account will be transferred to you upon full payment of all issued invoices.

## **23. Domain Name Services**

(a) Fluffyduck does not represent or warrant the availability, suitability or registerability of any domain name.

(b) Fluffyduck will not, at any time, assume any liability whatsoever in respect of the use of any domain name. Any disputes arising must be resolved between the parties involved.

(c) You must not transfer a domain name to another internet service provider unless you have first paid all Fluffyduck accounts in full.

(d) When a domain name is due for renewal we will issue an invoice with at least 14 days notice. If the invoice is not paid prior to the due date, we cannot guarantee the continuance of the domain name.

## **24. Beacons and Other Devices**

(a) Fluffyduck may be required to supply beacons and/or other devices as part of a Proposal, campaign or strategy.

(b) Fluffyduck will install the devices or provide instructions for the installation as detailed in the Proposal.





(c) You warrant that the beacons and/or other devices will only be used for the purpose for which they were provided or which they are designed for.

(d) If any of the beacons and/or other devices are faulty, damaged or otherwise not fit for use, within the appropriate warranty period, we will endeavour to assist you to get the items repaired or replaced. But we cannot guarantee the compliance or efficiency of the third party providers.

(e) All intellectual property rights in and to the products, including all patent rights, copyright, trademarks, trade secrets or other proprietary rights therein shall be and remain the sole property of third party providers.

## **25. Email/SMS Marketing**

(a) Fluffyduck will provide email and/or SMS services utilising an agreed service provider.

(b) You will be responsible for the costs associated with engagement of the email and/or SMS service provider.

(c) You warrant that in accordance with the Privacy Act 1988 (Cth):

- you have consent from the recipients to receive email messages that will be sent or the message is directly related to the primary purpose for which the customers email accounts was recorded;
- the email will contain accurate information about the Client that authorised the sending of the message and how they may be contacted;
- you authorise a functional unsubscribe facility to allow the recipient to opt out from receiving future email messages. Any opt out received must be honoured within five (5) business days.

(d) You warrant that in accordance with the SPAM Act 2003 (Cth):

- you have consent from the recipients to receive SMS messages that will be sent and is therefore not an unsolicited commercial electronic message as defined by section 6 of the SPAM Act 2003 (Cth) (SPAM Act);
- the SMS will contain accurate information about the Client that authorised the sending of the message and how they may be contacted;
- you authorise a functional unsubscribe facility to allow the recipient to opt out from receiving future SMS messages. Any opt out received must be honoured within five (5) business days.



## **26. Social Media Management (SMM)**

(a) Our Social Media Management services may include:

- social media review, analysis and strategy development;
- social media campaigns, blogs, content creation, client engagement and/or profile management for Facebook, Twitter, LinkedIn or other social media platforms;
- social media analytics;
- social media policy.

(b) You will provide the access to your social medial accounts or permission for us to set up accounts on your behalf.

(c) If Fluffyduck is not engaged to perform response management, Fluffyduck will not be held responsible for repercussions of any negative feedback provided on social media by third parties.

## **27. Search Engine Optimisation (SEO)**

(a) Our Search Engine Optimisation services may include

- on page optimisation;
- content generation;
- link building.

(b) Fluffyduck requires full access to your website to be able to perform SEO duties.

(c) You acknowledge that the Google and other search engines algorithms are constantly changing and evolving and that Fluffyduck has no control over these changes.

## **28. Online Advertising**

(a) Our Online Advertising services may include:

- Search Engine Marketing (SEM);
- Social Media Marketing (SMM);
- Pay-Per-Click (PPC).



(b) Unless otherwise agreed, Fluffyduck will utilise our professional account/s to engage the appropriate third party provider e.g. Facebook, Google, Bing.

(c) The agreed monthly online advertising costs (also referred to as media buying) will be invoiced and automatically paid by direct debit at the beginning of the each month.

(d) Fluffyduck will charge a 15% + GST media buying fee on online advertising costs charged to their professional account/s.

(e) Actual media buying costs may vary from month to month depending on the level of activity, campaign requirements, length of the month and/or agreed goals. Fluffyduck will endeavour to ensure that the agreed expenditure is expended during the duration of the term period.

(f) The client acknowledges that we source suppliers and placements, but the terms and conditions of those placements are governed by the suppliers.

(g) Fluffyduck retains ownership of all campaigns, advertising accounts (Facebook, Google, Bing, Unbounce etc) and working files. Upon termination of services client access to these accounts, campaigns and services will be removed.

## **29. Strategy and Analytics**

(a) Our Strategy and Analytics services may include:

- digital marketing audits;
- digital marketing strategy development;
- digital marketing strategy implementation;
- videos, images, memes, infographics, whitepapers, reports and surveys;
- Google analytics;
- reputation management.

## **30. Archiving / Retrieval**

(a) We will endeavour to store or archive all electronic files used in the production of your Project. However, we provide no guarantee that any stored or archived files can be retrieved in the future.

(b) Once your Project is launched, archiving of the files and database and copies of these files becomes the responsibility of the Client. Fluffyduck can at the request of the Client provide this service for an Additional Cost.



### **31. Disbursements**

(a) Disbursement charges are not included in the Fees. If we incur any disbursements or expenses during the course of the Project, we will charge these to you as Additional Costs.

(b) These may include but are not limited to:

- costs of plugins and themes purchased as part of the Project;
- consumable material utilised as part of a Project or campaign;
- one off costs for social media monitoring at events.

### **32. Warranty Disclaimer**

(a) Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition implied or imposed by legislation which cannot be lawfully excluded or limited. Such legislation includes the Australian Consumer Law which contains guarantees that protect the purchasers of goods and services in certain circumstances, each a non-excludable provision.

(b) Subject to Fluffyduck's obligations under the non-excludable provisions, and to the fullest extent permissible by law, Fluffyduck expressly disclaims all warranties and representations of any kind with respect to the Services whether express, implied, statutory, or arising out of the course of performance, course of dealing or usage of trade including any warranties or merchantability, fitness for a particular purpose, satisfactory quality, accuracy, title of non-infringement.

### **33. Limitation of liability**

(a) To the fullest extent permissible by law, Fluffyduck is not liable (whether in contract or tort) for:

- faults or defects in any services or goods provided by third parties in connection with this Agreement; or
- any indirect, special or consequential loss (including loss or corruption of data, loss of profits, revenue, goodwill, anticipated savings and business interruption) however arising, whether or not Fluffyduck knew of the possibility of such loss and whether or not such loss was foreseeable.

(b) To the fullest extent permissible by law, in no event will Fluffyduck's liability in contract, tort (including negligence and breach of statutory duty) or otherwise arising



out of, or in connection with, this Agreement exceed the amounts actually paid by the Client to Fluffyduck for the Service;

(c) To the fullest extent permitted by law, the liability of Fluffyduck for a breach of a non-excludable condition is limited to:

- in the case of the provision of services:
  - the supplying of the services again; or
  - payment of the cost of having the services supplied again.
- in relation to goods:
  - the replacement of the goods or the supply of equivalent goods;
  - the payment of the cost of replacing the goods or acquiring equivalent goods; or
  - the repair of the goods or the payment of the cost of having the goods repaired.

#### **34. Indemnity**

(a) You indemnify, defend and hold harmless Fluffyduck in respect of all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal fees on a full indemnity basis), in connection with any of the following:

- any breach of this Agreement;
- your negligent acts or omissions; or
- your use of the Services, including any third party claims made in connection with or arising out of the Clients use of the Service, other than use in accordance with this Agreement.

#### **35. Intellectual Property and Supply of Raw / Editable files**

(a) All Intellectual Property Rights in Project Intellectual Property vest in, or will upon their creation vest in Fluffyduck.

(b) We grant you a non-transferable, non-exclusive license to:

- publish one copy of the Project and supporting Project Intellectual Property unless otherwise stated by Fluffyduck; and
- use and reproduce the other Project Intellectual Property;
- subject to the restrictions set out in paragraph (c).

(c) You must not, without our prior written consent:



- adapt, create derivative works from or merge the template or other Project Intellectual Property;
- use the Project Intellectual Property for any purpose other than the specific purpose for which we have provided it;
- reverse engineer, disassemble or decompile the Project Intellectual Property;
- distribute, lend, resell, transfer, assign or sublicense the Project or other Project Intellectual Property, or allow any other person to use it except in the course of visiting the Project; and
- remove or attempt to remove any proprietary or copyright notices or any labels on the Project or other Project Intellectual Property.

These restrictions do not apply in relation to extensions that are licensed to you under the terms and conditions referred to in clause 16, or some extensions licensed per domain or via a license key.

(d) The supply of raw / editable files is at the discretion of Fluffyduck. Additional Costs will apply, and may be based upon a percentage of the original Proposal, or a retrieval and release fee.

(e) Stock images and commercial fonts remain the property of Fluffyduck, under license or its licensors at all times and are governed under licensing restrictions and rules and are not transferrable.

(f) We do not warrant that your use of the designs, materials or content produced by us for you in the course of the Project will not infringe any third party's Intellectual Property Rights or any person's Moral Rights, but we will advise you if we become aware of any infringement.

(g) You agree to carry the Fluffyduck logo or text hyperlink describing the nature of the service provided e.g. 'Website Design and Development by Fluffyduck Internet Services' in or under the website footer.

(h) You agree to allow Fluffyduck to use the Services provided for promotional and portfolio purposes.

(i) You agree to provide feedback or a testimony upon request after the release/closure of the Project.

### **36. Confidentiality**



(a) Each party agrees to keep confidential, and not to use or disclose except as permitted by these terms and conditions, any Confidential Information of the other party. The parties agree not to disclose these terms and conditions (including any schedules), or any details of a Purchase Order or Proposal. This obligation of confidence extends to Confidential Information obtained by a party before entering into this agreement.

(b) The obligation of confidence in paragraph (a) does not apply to Confidential Information to the extent that is required to be disclosed by law or the rules of any stock exchange on which the recipient's securities are listed, provided that the recipient discloses the minimum amount of Confidential Information required to satisfy the Law or rules.

(c) The Party required to disclose the other Party's Confidential Information as set out in paragraph (b) must:

- provide a reasonable amount of notice to the other Party of the proposed disclosure;
- consult with the other Party as to the form of the disclosure; and
- take all reasonable steps to maintain such Confidential Information in confidence.

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

### **37. Calculation of Fees if not Specified**

(a) If the Fees are not specified (in a Purchase Order, Proposal or otherwise) at the commencement of the Project, then we will charge you at the Professional Hourly Rates for all work that we carry out for you in the course of the Project.

(b) The Professional Hourly Rates may change from time to time.

(c) Travel time is not included in our quotations. If you would prefer meetings at your office or any other location additional fees may apply.

### **38. Payment Method**

(a) You must pay the Fees and Additional Costs to us within 7 days the date on which we issue you an invoice.



(b) In relation to our Services, we may issue invoices for:

- payment as indicated in our Proposal or estimate;
- for Additional Costs on an ad hoc basis; and / or
- "Work in Progress" or retainer invoice at the beginning of each calendar month.

### **39. GST**

(a) Unless we expressly state otherwise, the Fees and Additional Costs do not include GST.

(b) If at any time we decide that GST is payable on supplies made by us, or if the Australian Taxation Office assesses GST on any such supplies, then the necessary amount will be added to, and form part of, the Fees or Additional Charges (as the case may be) at the GST rate prevailing at the relevant time.

(c) We reserve the right to recover from you at any time such an amount on account of GST on supplies made by us to you under this agreement.

### **40. Duration of agreement and its termination**

(a) Upon execution by both parties this agreement will take effect: immediately and remain in effect until the purpose of the Project has been achieved, unless it is terminated earlier under this clause 40.

(b) A party may terminate this agreement by notice in writing to the other party if:

- the other party commits a material breach of this agreement that is capable of remedy (including failure to pay any amount due under this agreement) and fails to remedy that breach within [14] days after receiving notice from the other Party to do so;
- the other party commits a material breach of this agreement that is not capable of remedy (including a breach of clause 35 or clause 36); or
- the other Party becomes Insolvent.

(c) We may terminate this agreement if:

- you do not provide any information or materials requested within a reasonable time after being asked to do so; or
- we consider that mutual confidence and trust no longer exist.

(d) Upon termination of this agreement under paragraph (b) or (c):





- our obligation to carry out the Project ceases;
- each party's rights and obligations accrued prior to termination are not affected;
- the licence granted in clause 35(b) ceases;
- any unpaid invoice owed to Fluffyduck must be paid;
- each party must immediately return to the other party (or destroy or delete as the other party directs) all Confidential Information of the other party in its possession or control, except to the extent that the party needs to keep such information to comply with its record-keeping obligations; and
- except as provided in this paragraph (d), clauses 32, 33, 34, 36, 41 and 42 will continue.

#### **41. General**

(a) Any notice given under this agreement must be in writing, addressed to the other party's contact persons as notified by the other party.

(b) This agreement does not create a relationship of employment, agency or partnership between the parties.

(c) We may subcontract our obligations under this agreement.

(d) The failure of a party at any time to insist on performance by the other party of an obligation under this agreement is not a waiver of any of its rights.

(e) If part or all of any of the provisions of this agreement is illegal or unenforceable, it will be severed from this agreement, and will not affect the continued operation of the remaining provisions.

(f) The additional terms and conditions referred to in clauses 32, 33, 34 and 35 do not apply to the extent that they:

- are not permitted under Australian law; or
- exclude or unlawfully limit any applicable Consumer Guarantee or Title Guarantee.

(g) We may change this agreement from time to time. The new terms will apply to any Project that commences after the date that we publish the changed terms and conditions. Your engagement of our Services after that date signifies your acceptance of the amended agreement.

#### **42. Interpretation**



In this agreement:

- (a) a reference to “this agreement” means these terms and conditions (including any schedule) together with a Purchase Order or Proposal (if any);
- (b) headings and bold type are for convenience only and do not affect the interpretation of these terms;
- (c) the singular includes the plural and the plural includes the singular;
- (d) words of any gender include all genders;
- (e) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning, unless the context clearly requires otherwise;
- (f) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
- (g) a reference to any legislation includes all delegated legislation made under it, and amendments, consolidations, replacements or re-enactments of any of them;
- (h) a reference to a party to a document includes that party’s successors and permitted assignees;
- (i) a promise on the part of 2 or more persons binds them jointly and severally;
- (j) 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
- (k) specifying anything in this agreement after the words “include” or “for example” or similar expressions does not limit what else is included.

#### **43. Dictionary**

**Additional Costs** means all additional costs that we are permitted to charge you under this agreement.

**Approval Item** is defined in clause 9(a).

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



**Claim** means a demand, action or proceeding of any nature whether actual or threatened.

Client, you or your means, in relation to any work that we do for you:

- (a) the person named as the Client in the Purchase Order;
- (b) if there is no Purchase Order, then the person named as the Client in the Proposal; or
- (c) if there is no Proposal, then the person for whom we are undertaking the Project.

**Client Content** is defined in clause 6(b)

**Confidential Information** of a party:

(a) means any information:

- regarding that party's business or affairs;
- regarding that party's customers, employees, or other people doing business with that party;
- which is by its nature confidential;
- which is designated as confidential by that party at the time of disclosure or within 14 days after disclosure; or
- which the other party knows or ought to know is confidential;

(b) includes without limitation (unless excluded under paragraph (c) that party's Intellectual Property Rights and these terms and conditions; but

(c) does not include information to the extent that information is developed or known by the other party independently of this agreement and independently of any obligation of confidence (including because it is in the public domain).

**Consumer Guarantee** means a consumer guarantee applicable to this agreement under the Australian Consumer Law, (including any 'express warranty' within the meaning of section 2(1) of the Australian Consumer Law).

**Content Management System (CMS)** means the content management system described in clause 16(c).

**Digital Marketing Services** means Services as described in clauses 11, 25, 26, 27, 28 and 29.



**Fluffyduck**, we or us means Fluffyduck Australia Pty Ltd ACN 28 603 710 274 of 35 Brookes Street, Bowen Hills, Queensland.

**Fees** means, in respect of a Project:

- (a) the Fees payable to us for the Project as set out in a Purchase Order or Proposal; or
- (b) if no Fees are specified, Fees for all work we do in the course of the Project calculated in accordance with clause 37.

**GST** means a goods and services tax or similar tax levied in Australia.

**Insolvent** in relation to a party, means that:

- (a) the party has ceased or taken steps to cease to conduct its business in the normal manner;
- (b) the party has entered into or resolved to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;
- (c) the party is unable to pay its debts when they are due;
- (d) a liquidator or provisional liquidator is appointed to the party, or a receiver, receiver and manager, official manager, trustee or similar official is appointed over any of the party's assets or undertakings;
- (e) an application or order is made or a resolution is passed for the winding up of the party; or
- (f) an event similar to one in paragraphs (a) to (e) occurs in respect of the party in any non-Australian jurisdiction.

**Intellectual Property Rights** means all industrial and intellectual property rights anywhere in the world, including:

- (a) copyright, patents, trade marks, plant breeder's rights, rights in circuit layouts, registered designs and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in (a).

**Loss** means



(a) any liability, cost, expense, loss, personal injury (including illness), death or damage; and

(b) in relation to a Claim, Loss includes amounts payable on the Claim and (whether or not the Claim is successful), legal costs and disbursements on a full indemnity basis.

**Moral Rights** are defined in section 189 of the Copyright Act 1968 (Cth), and includes any similar rights in any jurisdiction outside Australia.

**Project** means, in relation to any work that we do for you:

(a) the Project described in a Purchase Order;

(b) if there is no Purchase Order, the project described in a Proposal;

(c) if there is no Proposal, then the project described in the Specifications; or

(d) if there are no Specifications, then the work that you have asked us to do.

**Project Intellectual Property** means designs, artwork, software and materials provided to you in the course of the Project, and any other Intellectual Property Rights created in the course of the Project, but does not include:

(a) the Content Management System (except to the extent that we have modified it);

(b) the Website Tools (except to the extent that we have modified them); or

(c) Client Content.

**Purchase Order** means a document issued (in writing or electronically) by us to you that sets out:

(a) the Services that we will provided to you;

(b) the estimated times within which those Services will be provided; and

(c) the Fees payable to us for those Services.

**Proposal** means a Proposal or an estimate that we provide to you in respect of any work that you have asked us to do.

**Schedule of Fees** means the rates and packages attached to this document, and any replacement of that professional services schedule released from time to time.



**Services** means the Services that we provide to you in the course of the Project, as described in clause 4.

**Specifications** means specifications for the work that you have asked us to do, and that you provide to us before or at the commencement of the Project, or as developed during the discovery and/or creative stages.

**Support & Maintenance Packages** means the packages provided to supply paid maintenance and support services to assist in the management, maintenance, training for, and repair of a Fluffyduck supplied/built/maintained Project as described in clause 21.

**Third Party Software** means software as described in clause 18.

**Title Guarantee** means a guarantee pursuant to any of sections 51, 52 or 53 of the Australian Consumer Law.

**Variation** means changes to the Proposal, Specifications as described in clause 7 and elsewhere in this agreement.

**Variation Notice** means is the written notification regarding the costs associated with Variations as described in clause 7 and elsewhere in this agreement.

**Warranty** is any fix required to be supplied by Fluffyduck as outlined in clause 20. The determination of warranty labour is at Fluffyduck's discretion.

**Website** means the website that we develop for you in accordance with clause 14.

**Website Tools** means the tools, applications or packages set out in clause 16.