

77 PRODUCTIONS

Terms of Supply between 77 Productions and the Client.

This document sets out the terms and conditions pursuant to which 77Post Pty Ltd ACN 156 551 012 (trading as **77 Productions**) will provide you, the Client, with the Services. This document together with the Quotation forms the contract between the parties.

Definitions and Interpretation

In this document, terms that are capitalized are defined terms and will have the following meanings:

“**77 Productions Labour Charge**” means the costs 77 Productions charges the Client for its labour and professional services with respect to a Service Guarantee Project and excludes Third Party Costs or disbursements that 77 Productions incurred or committed to incur in the process of delivering the Service Guarantee Project.

“**Business Day**” means a day that is Monday to Friday in which 77 Productions is open for business and excluding state or national public holiday.

“**Client**” means the person, firm or company who purchases the Services from 77 Productions

“**Contract**” means the agreement 77 Productions executes with the Client or enters into with the Client following acceptance by conduct of the Client for the supply of the Services as constituted by these terms and conditions and the Quotation;

“**Contract Price**” means the price stated in the Quotation and as may be varied from time to time in accordance with the Contract;

“**Deliverables**” means and agreed files as outlined in the Quotation.

“**Intellectual Property**” means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names and inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.



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“**Project**” means the project described in the Quotation;

“**Services**” means the services which includes the Project and the Deliverables to be provided by 77 Productions under the Contract together with any additional services which 77 Productions provides, or agrees to provide, to the Client;

“**Service Guarantee**” means a Project delivery guaranteed time commitment as set out in Clause 7.

“**Third Party Costs**” means any costs incurred or committed to be incurred by 77 Productions in delivering a Service Guaranteed Project other than 77 Productions Labour Charge.

“**Quotation**” means the 77 Productions document entitled Quotation which sets out, amongst other things, the description of the Services, Project, Deliverables, commencement date for the Project, time line and relevant charges for the Services;

1. The Contract and Cancellation

The contract between 77 Productions and the Client consist of these terms and conditions and the Quotation. The contract shall prevail over any inconsistent terms or conditions contained, or referred to, in the Client’s purchase order, confirmation of order, acceptance of a Quotation, or specification or other documents supplied by the Client, or implied by law, trade, custom, practice or course of dealing.

A valid and binding agreement is formed between the parties once the Client signs the Quotation, however, if the Client does not sign the Quotation but provide a verbal or written confirmation to 77 Productions to proceed and deliver the Services, the Client shall be deemed to have read and accepted these terms and conditions and agree to be bound by them.

77 Productions may issue confirmation to the Client with respect to the Contract, however, the lack of confirmation does not impact the validity or enforceability of the Contract.

Quotations are given by 77 Productions on the basis that no Contract shall come into existence except in accordance with this Clause. Any Quotation is valid for a period of 14 days from its date unless otherwise agreed by 77 Productions and provided that 77 Productions has not previously withdrawn it.



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Cancellation Policy

Subject to the provisions in this clause with respect to the refund of the deposit paid by the Client pursuant to clause 4, the Client may cancel a Project up to three clear Business Days before the Project is due to commence by notifying 77 Productions in writing of the cancellation. The Project commencement date is set out in the Quotation.

For the avoidance of doubt;

- a. three clear Business Days means that the notice **must** be received by 77 Productions offices exactly on or before 9 am on the third Business Day before the Project is due to commence;
- b. it is the Client responsibility to verify and ensure that the notice of cancellation is received by 77 Productions at least three clear Business Days; and
- c. in the event of doubt in relation to delivery of the notice of cancellation it is presumed that the notice was not received by 77 Productions.

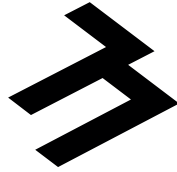
If the Client cancels a Project in compliance with the time frame as set out in this clause, 77 Productions shall refund the Client the deposit paid pursuant to clause 4 within 28 calendar days of 77 Productions receiving the cancellation notice.

In the event 77 Productions incurred or committed incur costs in the preparation of the cancelled Project, other than 77 Productions internal labour costs, then 77 Productions shall be entitled to deduct any such incurred or committed costs from the deposit and refund the Client the remainder of the deposit.

If the Client cancels a Project in breach of the time line as set out in this Clause, the Client shall forfeit the deposit paid by the Client pursuant to clause 4.

The Client acknowledges and agrees that;

- a. the cancellation of a Project with less than three clear Business Days will result in damage being sustained by 77 Productions; and
- b. the forfeiture of the deposit as set out in this clause is not a penalty but the payment by the Client of compensation to 77 Productions as a reasonable and genuine pre-estimate of the damage 77 Productions sustain as a



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consequence of the cancellation of the Project outside of the time frame allowed under this clause.

2. Description of the Project and Delivery of the Services.

77 Productions agrees to develop the Project and deliver the Services according to the terms listed in the Quotation provided.

3. Client's Reviews and Additional Revisions.

The Client must submit any and all revisions within 28 days of receiving drafts.

77 Productions will accept a maximum of 2 rounds of revision from first draft.

- (a.) The first round should consist of major revisions for example reordering/restructuring more than 40% footage, major design changes.
- (b.) The second round of revision should include smaller refinements for example spelling corrections.

Any work deemed outside the scope of these revisions will be classified as additional work to the Quotation and is subject to additional charges outlined in this clause.

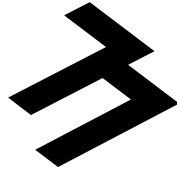
Any additional revisions and work deemed by 77 Productions to be outside the scope of the Quotation will be billed at studio rate of \$150 per hour + GST or part thereof with all work to be approved in writing prior to commencement. This quote supersedes any and all other quotes referencing the Project or the Services.

GST (Goods and Services Tax) shall be charged in accordance with the relevant legislation governing goods and services tax and at the applicable rate dictated under this legislation.

4. Payment.

The Client must pay 50% of the price quoted for a Project in the Quotation on signing of the Quotation or giving instructions to 77 Productions to proceed with the Project.

On completion of a Project, the Client must pay the full price as detailed in the Quotation, together with any additional editing or revisions, on or before the required date for payment listed on the final Invoice. Failure to pay any payment



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on time shall entitle 77 Productions to delay or stop any work it is doing under the Services until payment is made in full.

5. Raw Artwork and Source Files

The client shall be solely responsible and liable for the storage and or archiving including back up or raw footage or data files. 77 Productions accepts no responsibility or liability whatsoever for backup of raw footage or data files supplied by the Client for this Project.

The Client agrees to make available to 77 Productions, for use by 77 Productions in the Project, such graphical elements and materials as the Client and 77 Productions may agree in writing for such purpose. Failure to provide 77 Productions with materials in the requested formats may result in additional delays or fees in addition to those stated in the Quotation.

6. Project Backup and Archival

77 Productions will backup and retain an archive of all working files created by 77 Productions during the project for a maximum of 12 months from the commencement of the Project. The Client expressly authorises 77 Productions to discard any materials held by 77 Productions at the expiry of 12 months.

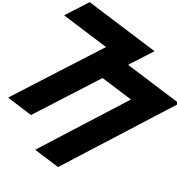
7. Delivery of Project.

General Delivery Commitment

77 Productions will use all reasonable efforts in the development of the Project and endeavour to complete and deliver to the Client all final render files related to the Project no later than the date indicated either in the Quotation or via email provided that pre-payment (if requested) and all requested instructions and material have been received by 77 Productions from the Client.

Any delay in the completion of the Project due to actions or negligence by the Client, transportation delays, illness, or circumstances outside the control of 77 Productions may alter the delivery date. 77 Productions will make every effort to notify Client of any delays to the estimated delivery date as soon as possible.

While 77 Productions endeavours to keep delivery dates, any delay or delivery for any reason whatsoever, will not constitute a breach of this Contract by 77 Productions and will not entitle the Client to claim for any damages or



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compensation including consequential loss or damage or to cancel, rescind or terminate the Contract.

Service Guarantee

Subject to the exclusions conditions set out in this clause, 77 Productions undertakes, in relation to a Project specifically marked as Service Guarantee Projects, to deliver the Project on time as agreed with the Client from time to time and set out in the Quotation or the Project is delivered to the Client free of 77 Productions Labour Charge.

For the avoidance of doubt;

- a. only a Project that are specifically marked and designated by 77 Productions to be a Service Guarantee Project qualifies for the Service Guarantee. In the event of doubt, the Project is not a Service Guarantee Project; and
- b. the only waiver with respect to costs in relation to Service Guarantee Projects is the exclusion of 77 Productions Labour Charge.

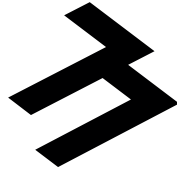
Exclusion Conditions

Notwithstanding clause 3 of these terms and conditions, the Quotation will set out the time line for the Client to return any revisions or comments on the Project. Time is of the essence with respect to the Client providing revisions and comments in relation to a Project.

In the event the Client fails to deliver to 77 Productions its revisions and or comments in compliance with the time line as set out in the Quotation, 77 Productions may, in its absolute discretion, either cancel the Service Guarantee status of the Project or agree to maintain the Service Guarantee for the Project subject to 77 Productions time line for delivering the Project being extended to commensurate (but not necessarily equal to or exactly as) the delay of the Client.

This clause and the Service Guarantee shall not apply to any delay in a Project delivery time table if 77 Productions can reasonably demonstrate that the delay was not under its direct or indirect control.

For the avoidance of doubt, if the delivery of a Project is dependent on a third party delivery of goods or services to the Project or to 77 Productions then the



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delay by the third party is an event not under the direct or indirect control of 77 Productions notwithstanding that 77 Productions ordered these goods or services from the third party..

8. Proofs.

Emailed proofs will be presented for the Client's approval at each stage of production. If revisions are required, a request must be made to 77 Productions in writing and will/may constitute additional costs in accordance with clause 3 above. This is dependent on degree of difficulty in changes and time it takes to complete.

9. Ownership of Artwork and Source Files.

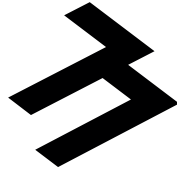
Ownership of any Intellectual Property in all the Deliverables, Project and any component of the Services prepared by 77 Productions shall remain with 77 Productions, and 77 Productions shall provide to the Client a personal perpetual, non-transferable royalty free 'licence' to use the materials and Deliverables for the Project for which they were created, on the condition that all amounts owing to 77 Productions have been paid.

In the event that any amount is outstanding to 77 Productions, then 77 Productions reserves the right to revoke the 'license' to use any Intellectual Property until all amounts have been paid.

For the avoidance of doubt, 77 Productions shall retain all right, title and interest in all original artwork, whether in draft, mock-up, concept or final development for the Project. Specifically, but without limitation, 77 Productions shall hold all right, title, and interest in and to:

- (a) all text, graphics or digital components of the Project;
- (b) all layouts, logos, structures or arrangements or other components of any materials presented to the Client that comprises the Project,
- (c) all literal and non-literal expressions of ideas that operate, cause, create, direct, manipulate, access, or otherwise affect the Project, and
- (d) all copyrights, patents, trade secrets, and other intellectual or industrial property rights in the Project or any component or characteristics thereof.

The Client shall not do anything that may infringe upon or in any way undermine 77 Production's right, title, and interest in the Project, as described in this clause.



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Notwithstanding the above, the Client shall retain and, 77 Productions shall have no proprietary rights whatsoever in all of the Client's Intellectual Property rights in any and all text, images or other components and/or materials owned by the Client, or which the Client has the legal right to use, that are delivered to 77 Productions, including but not limited to software, related documentation, marketing material, logos, and tag lines (**Client's Proprietary Material**). 77 Productions agrees that they shall not use the Client's Proprietary Material for any other purpose than those expressly set forth in this Contract.

10. Purpose Test and Liability

The Client acknowledges that the instructions issued to 77 Productions were specific and described the purpose for which the Services are to be provided and the industry in which the Services will be used. 77 Productions takes into account the industry of the Client and the purpose for which the Client intends to use the Services when delivering the Project and Deliverables.

The Client acknowledges and agrees that 77 Productions shall have no liability whatsoever in the event the Client uses the Project and Deliverables for a purpose and or in an industry that was not disclosed to 77 Productions or agreed to by 77 Productions.

11. Consequence of a Breach.

In the event the Client fails to make any of the payments referenced in the Project by the set terms, 77 Productions have the right, but are not obligated, to pursue any or all of the following remedies:

- (a) terminate the Contract,
- (b) withhold all files, artwork, website code, source, commitments or any other service to be performed by 77 Productions for the Client,
- (c) bring legal action for the recovery of the amount outstanding and any enforcement expenses including legal costs; and
- (d) charge interest on the overdue amount at 15% per annum or such other rate as allowed under the Penalty Interest Rate Act 1983 (VIC) calculated daily and accumulated until the outstanding amount is paid in full .

The Client is responsible for all material costs as outlined in the Project, and accepts responsibility for all additional material costs that 77 Productions may incur in the development of this Project.

12. Confidentiality.



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The Client and 77 Productions acknowledge and agree that the specifications and all other documents and information related to the development of the Project, excluding however, Client's Proprietary Material, (the Confidential Information) will constitute valuable trade secrets of 77 Productions. The Client shall keep the Confidential Information in confidence and shall not, at any time during or after the term of this Contract, without 77 Production's prior written consent, disclose or otherwise make available to anyone, either directly or indirectly, all or any part of the Confidential Information.

13. Screen Credits

For any material where screen credits are incorporated, credit must be given to 77 Productions and relevant staff or as otherwise agreed.

14. General Provisions

Terms and Conditions

(a.) These terms and conditions apply to all transactions between 77 Productions and the Client.

(b.) Entire Agreement

This Contract contains the entire agreement between parties relating to the subject matter hereof and supersedes any and all prior agreements or understandings, written or oral, between the parties related to the subject matter hereof. No modification of this Contract shall be valid unless made in writing and signed by all of the parties hereto.

(c.)Governing Law

The Contract is governed by the laws in force in the state of Victoria. Both parties agree to submit to the non-exclusive jurisdiction of the Courts of that state.

(d.) Binding Effect

This Contract shall be binding upon and ensure to the benefit of the Client and 77 Productions and their respective successors and assigns, provided that 77 Productions shall not assign any of their obligations under this Contract without the Client's prior written consent.



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(e.) Waiver

The waiver by either party of any breach or failure to enforce any of the terms and conditions of this Contract at any time shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance with every term and condition of this Contract.

(f.) Good Faith

Each party represents and warrants to the other that such party has acted in good faith, and agrees to continue to so act, in the negotiation, execution, delivery, performance, and any termination of this Contract.

(g.) No Right to Assign

The Client has no right to assign, sell, or modify or otherwise alter the Project, except upon the express written advanced approval of 77 Productions, which consent can be withheld for any reason.

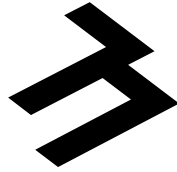
(h.) Right to Remove Project

In the event the Client fails to make any of the payments within the time prescribed in the terms, 77 Productions have the right immediately cease all work on the Project until payment in full is paid, including the removal of any online/internet project that may be current or live on the internet.

(i.) Indemnification

The Client warrants that the Client Proprietary Materials are legally owned or licensed to the Client. The Client agrees to indemnify and hold 77 Productions harmless from any and all claims brought by any third-party relating to the Client's Proprietary Material provided by the Client to 77 Productions including any and all demands, liabilities, losses, reasonable associated costs and claims including attorney's fees arising out of injury caused by the Client's Proprietary Material supplied to 77 Productions including but not limited to copyright infringement or defective products sold as a result of the Client's distribution or use of the Project.

(j.) Use of the Project for Promotional Purposes



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The Client grants 77 Productions the right to use the Project for promotional purposes and/or to cross-link it with other marketing venues developed by 77 Productions, but excludes the right to use confidential material as highlighted by the Client in writing.

(k.) Right to Style or to Make Derivative Works

Subject to Clause 9 above, 77 Productions have the exclusive rights in making any derivative similar Works of the Project and similarities between the Client's Project and future projects constitutes 77 Production's methods and style.

(l.) Legal Fees

In the event that 77 Productions employs a Solicitor or debt collector to enforce any of the terms of the Contract, 77 Productions shall be entitled to recover its legal fees or other enforcement expenses incurred in pursuit of its rights under this Contract.

15. Changes to Terms

77 Productions may change the Contract terms at any time provided that such change will not affect the Contract already executed by the parties. Details of 77 Production's current terms will always be available at <http://www.77productions.com.au/terms.pdf>. Changes to the Contract will become effective upon their publication on 77 Production's website and the Client's use of the Services following publication of any amended version of the Contract terms will constitute acceptance of the amended terms.