

# Rightside Design - Terms & Conditions

## Definitions

**Consumer** means any individual who acquires Rightside Design's services wholly or predominately for personal, domestic or commercial use.

**Customer** means any person or entity requesting Rightside Design to provide services.

**Agreed Fee** means the fees estimated by Rightside Design in any quotation once accepted by the Customer.

**Materials** means any goods, chattels, items or things, including but not limited to any photographs, documents (whether digital or hard copy), tapes, videos, films, footage, props and equipment provided by the Customer to Rightside Design for the purposes of Rightside Design supplying the Services.

**Rightside Design** means Rightside Design Pty Ltd (ACN 165 988 321) of Level 9, 3 Bowen Crescent, Melbourne Victoria 3004.

**Services** means graphic design work and website development and design work.

**Works** means any graphic design, websites or other products produced by Rightside Design pursuant to these Terms and Conditions.

## Application

These terms and conditions apply to and are incorporated into all contracts, agreements arrangements, transactions and dealings entered into by Rightside Design with any person or entity ("the Customer") in relation to all products and services provided by Rightside Design ("the Services").

All work carried out by Rightside Design is on the basis that the Customer has agreed to these Terms and Conditions.

## Consumer Contract

If the Customer is a Consumer:

These conditions do not affect any rights the Customer have under Schedule 2 of the Competition and Consumer Act 2010 (Cth); and The laws in force in the place in which the contract is made prior to the contract.

## Quotations

Quotations are calculated by estimating how long it will take to provide the Services under typical circumstances and are based on an hourly rate. Two rounds of Customer changes and/or revisions is included in each quotation.

If the Customer instructs Rightside Design that significant changes and/or revisions to the scope of the Services described in a quotation are required then Rightside Design shall be entitled to charge an additional Agree Fee based on a further quotation..

## Cancellations

If the Customer has engaged Rightside Design to provide Services, the Customer may notify Rightside Design in writing (during normal business hours) that the Customer does not require the Services to be provided on that date ("the cancellation").

If notification of the cancellation is provided outside of normal business hours, it is deemed to have been provided at the commencement of the following business day.

If the cancellation is provided prior to Rightside Design commencing work on the Services, the Customer must reimburse Rightside Design for any expenses incurred by Rightside Design in preparation for provision of the Services.

If the cancellation is provided after Rightside Design has commenced providing the Services, the Customer must pay for any time expended by Rightside Design, it's employees or agents in providing the Services together with all costs and expenses incurred by Rightside Design up to the date on which the cancellation was received. .

Any amount payable pursuant to clauses 5.3 or 5.4 must be paid by the Customer within 30 days of the cancellation.

## Payment

The Customer will pay the Fee to Rightside Design in the following manner:

50% of the Fee will be payable prior to the commencement of the Services ("the Deposit"); and

The balance will be payable within 14 days of the date of any interim and/or final invoices submitted in respect of the Services; and

Rightside Design reserves the right not to commence any work until the Customer has paid the Deposit.

Upon completion of the 7 day review period, Rightside Design will invoice the Customer for the 50% balance of the project.

Publication and / or release of work done by Rightside Design on behalf of the Customer will not take place before full payment has been received.

If any Rightside Design invoice, or part thereof is not paid within 30 days of the date of the invoice, then the Customer agrees that:

Interest will accrue on the outstanding amount at the rate specified in section 2 of the Penalty Interest Rates Act 1983 (Vic); and

Rightside Design will be entitled to remove from the internet any website created by Rightside Design for the Customer.

## Variations

Rightside Design is pleased to offer Customers the opportunity to make revisions to the design. However, Rightside Design have the right to limit the number of design proposals to a reasonable amount and may charge for additional designs if the Customer makes a change to the original design specifications.

The website development phase is flexible and allows certain variations to the original specification. However, major deviation from the specification will be charged at the rate of \$150.00 per hour plus GST.

The print design phase is flexible and allows certain variations to the original specifications. However, any major deviation from the specification will be charged at the rate of \$110.00 per hour plus GST.

## Artistic Licence

The Customer acknowledges and agrees that providing the Services may include elements of artistic expression and interpretation. Rightside Design reserves the right to use 'Artistic Licence' in providing the Services.

## Supply of Materials

The Customer must supply all materials and information required by Rightside Design to complete the work in accordance with any agreed specification. Such materials may include, but are not limited to, photographs, written copy, logos and other printed material.

Where there is any delay in supplying these materials to Rightside Design which leads to a delay in the completion of work, Rightside Design have the right to extend any previously agreed deadlines by a reasonable amount.

Where the Customer fails to supply materials, and that prevents the progress of the work, Rightside Design has the right to invoice the Customer for any part or parts of the work already completed.

## Customer Acknowledgements

The Customer acknowledges and agrees that:

Rightside Design will have a lien on Materials provided by the Customer; and

No title (including any copyright) in the Services manufactured, produced, duplicated or otherwise provided by Rightside Design will be transferred to the Customer until the Customer pays all amounts due to Rightside Design in full.

The Customer acknowledges and agrees that upon payment of all outstanding invoices due to Rightside Design, the Customer is entitled to receive the finished works, but has no entitlement to the working files of Rightside Design.

The Customer acknowledges and agrees that the content, views and opinions expressed in the finished works produced for the Customer by Rightside Design are solely those of the Customer. The finished works are intended to represent the opinion of the Customer and in no way reflect the views and opinions of Rightside Design, its employees and subcontractors.

## Customer Undertakings & Warranties

The Customer must obtain all necessary permissions and authorities in respect of the use of the Materials which are to be included in the works produced for the Customer pursuant to these Terms and Conditions.

The Customer indemnifies and holds Rightside Design harmless from any claims or legal actions related to the content of the works produced for the Customer pursuant to these Terms and Conditions.

The Customer hereby indemnifies and holds harmless Rightside Design against all loss, damage, costs or expenses suffered or incurred by Rightside Design as a result of any breach of clauses 11.1 and 11.2. .

## Project Delays & Customer Liability

Any estimate of the date by which Rightside Design will complete any part of the Services is contingent upon the Customer providing complete instructions to Rightside Design and fully cooperating with Rightside Design until Rightside Design has ceased providing Services to the Customer.

The Customer must appoint a person who has complete authority to provide instructions to Rightside Design and respond to requests for feedback until Rightside Design has ceased providing Services to the Customer.

The person appointed pursuant to clause 12.2 must be available to respond to communications from Rightside Design on every day which is a business day in Victoria.

## Approval of Work

On completion of the work the Customer will be notified and have the opportunity to review it. The Customer must notify in writing of any unsatisfactory points within 7 days of such notification. Any of the work which has not been reported in writing to Rightside Design as unsatisfactory within the 7 day review period will be deemed to have been approved. Once approved, or deemed approved, work cannot subsequently be rejected and the contract will be deemed to have been completed and the 50% balance of the project price will become due.

## Rejected Work

If the Customer rejects any of our work within the 7 day review period, or does not approve subsequent work performed by Rightside Design to remedy any points recorded as being unsatisfactory, and if Rightside Design, acting reasonably, considers that the Customer has been unreasonable in any rejection of the work, Rightside Design can elect to treat this contract as at an end and take measures to recover payment for the completed work.

## Subcontracting

Rightside Design reserves the right to sub-contract any Services that Rightside Design has agreed to perform for the Customer as it sees fit.

## Ownership of Domain Names and Website Hosting

Rightside Design will supply to you account credentials for domain name registration and / or website hosting that Rightside Design purchased on a Customer's behalf when the Customer reimburses Rightside Design for an expenses that we have incurred.

## Cross Browser Compatibility

Rightside Design endeavours to ensure that the websites and web applications Rightside Design creates are compatible with all current modern web browsers as at the date of creation, such as the most recent versions of Internet Explorer, Firefox, Google Chrome and Safari. Third party extensions, where used, may not have the same level of support for all browsers. Where appropriate, at the time of creation, Rightside Design will substitute alternative extensions or implement other solutions, on a best effort basis, where any incompatibilities are found. Future updates to browsers could impact the support of plugins/extensions etc. Rightside Design is not accountable for this and time needed to fix these issues is charged at a current hourly rate.

## E-Commerce

The Customer is responsible for complying with all relevant laws relating to ecommerce, and to the full extent permitted by law will hold harmless, protect, defend and indemnify Rightside Design and its sub-contractors from any claim, penalty, tax, tariff, loss or damage arising from the Customer's use of internet electronic commerce.

## Limitation of Liability

The parties acknowledge that, under applicable State and Commonwealth law, certain clauses, conditions, guarantees and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of goods or of services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights").

Except to the extent of Non-excludable Rights, Rightside Design will not be liable for:

Any claim by the Customer or any person, including without limitation any claim relating to or arising from all clauses, conditions, guarantees and warranties express or implied, and all rights and

remedies conferred on the Customer, by statute, the common law, equity, trade, custom, usage or otherwise; and

Any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by Rightside Design in writing,

and the liability of Rightside Design for any such matters is hereby excluded.

Where (and to the extent) permitted by law the liability of Rightside Design for a breach of a Non-excludable Right can be limited, Rightside Design's liability is limited, at Rightside Design's option, to one of the following:

The supply of the service again; or

Payment for the cost of having the services supplied again.

Notwithstanding any other provision, Rightside Design is in no circumstance (whatever the cause) liable in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise to compensate the Customer for:

Any increased costs or expenses;

Any loss of profit, revenue, business, contracts or anticipated savings;

Any loss or expense resulting from a claim by a third party; or

Any special, indirect or consequential injury, loss, damage or expense whatsoever and howsoever arising.

## Force Majeur

If Rightside Design cannot carry out an obligation under the Contract either in whole or in part because of anything outside its reasonable control, including without limitation, fire, flood, storm, earthquake, explosion, accident, road or rail closures, rail derailment, wharf delays, war, terrorism, sabotage, epidemic, quarantine restriction, labour dispute or shortage, act or omission of any third person or public authority, then Rightside Design's obligations under the Contract will be suspended for the duration of the event or waived to the extent applicable.

## Legal Costs

The Customer will be liable for any legal costs incurred by Rightside Design in the recovery of unpaid invoices on an indemnity basis.

## Privacy

All information received by Rightside Design from the Customer, written or otherwise, will be kept confidential. Any private information will not be divulged or distributed to any third party without the Customer's consent.

## Other Matters which effect the Contract

The laws of Victoria apply to the contract and the Customer must bring any proceedings against Rightside Design in a Victorian Court.

If a condition, or part of a condition, is unenforceable its must be severed from the contract and does not make the rest of the contract unenforceable.

Rightside Design is not bound by any waiver, discharge or release of a condition or any agreement which changes the contract unless it is in writing and signed by Rightside Design.

Rightside Design reserves the right to use an extract of any Works for promotional or commercial purposes, unless an alternative arrangement is made between Rightside Design and the Customer.

## Amendment

Rightside Design reserves the right to amend these Terms and Conditions at any time. Amendments will be effective after the Customer has been given 7 days written notice.