

# Integral Media Pty Ltd - Terms & Conditions

## Definitions

This Agreement, as varied from time to time, applies to all sales of goods and the provision of all services by the Supplier to the Client pursuant to the Agreement, together with any non-excludable conditions and warranties expressed by law, constitutes the entire agreement between the parties.

- “Agreement” means these terms and conditions herewith.
- “Client” means the person and/or business described as the client within the “Client Details” area of the order form, proposal, Contract.
- “Authorisation” means the acceptance of the proposal using the online portal, making a payment or signing our paperwork / contract.
- “Business Day” means any day that is not a Saturday, Sunday or a public holiday in Victoria;
- “Fees” means the Price together with any Additional Charges incurred by you relating in any way to this Agreement and the Services.
- “Bug” means any lack of function in the Services that is the direct result of a coding or design error by Integral Media;
- “Training” means the instruction of 1 person in the operation of the Services at Integral Media offices, at an agreed time and date.
- “Website” means your website designed, built and hosted pursuant to this Agreement.
- “Scope” means the document entitled “Scope” provided by Integral Media to the Client and which describes the Services Integral Media offers to perform for the Client pursuant to this Agreement.
- A “reasonable time frame” is within 12 months however shall be extended by client requests, amends or delays.
- “Intellectual Property” means the intellectual property attaching to the Services including copyright, patents, trademarks, design rights, domain names whether registrable or not and whether registered or not.

“Confidential Information” means all the information provided by one party to the other in connection with this Agreement where such information is identified as confidential or ought reasonably be considered to be confidential based on its context, nature or the manner of its disclosure, but excluding:

- information that is in the public domain other than by a breach of this Agreement; and
- information developed independently by a third party. Without limiting the foregoing, Confidential Information includes the terms of this Agreement and the contents of the Scope.
- “Price” means the fees outlined by Integral Media.
- “You” and “Your” means the Client named within the “Client Details” area.
- “Our”, “Us”, “Integral Media” and “We” means the “Supplier” Integral Media Pty Ltd, ACN 614 262 930 and associated brands and businesses.
- “Notice of completion” means a notice in writing, given by the Integral Media to the Client advising that the goods or services subject of the Contract have been provided completed by the Supplier.

## Offers

You are engaging Integral Media to provide the Services as defined in the "Contract".

To accept our offer to provide the Services you must accept the offer of Integral Media using the online acceptance system or sign our paperwork or pay either the agreed Deposit / Initial Payment or agree to a payment schedule (any of these acts, individually or combined is considered "Acceptance").

If Acceptance does not take place within 28 days from the date the document is provided to you, then our offer to provide the Services will expire without further notice to you. This may be extended by mutual agreement.

Services Integral Media will produce the chosen services to the specifications contained in the Scope (herein referred to as "the Services") our services offered include:

- Graphic Design / Web Design;
- Website Development;
- Search Engine Optimisation;
- Content Writing;
- iPhone App Design and Development;
- Google Adwords / PPC Services
- Conversion Tracking;
- Domain Name Acquisition;
- Hosting;
- Technical Support;
- Training;
- Consultancy.
- Conversion Tracking;

## Price

You agree to pay Integral Media the Price for the Services in accordance with the Contract.

The Supplier may, at the cost of the Client, engage the services of a debt recovery agency to assist it, if payment is more than 7 days late. The engagement of a debt recovery agency may result in your credit file being updated, having a negative impact on your credit history.

Integral Media is retained to undertake the Services exclusively. No part of the Services may be undertaken by you or by any third party instructed by you.

Notices All notices must be in writing and can be given by:

1. Hand delivery between the hours of 9.00am and 4.30pm AEST;
2. Registered post;
3. Email

A notice is deemed to be given and received:

- If delivered in accordance with clause 1, on the next Business Day after delivery;
- If sent in accordance with clause 2, in 5 Business Days after the day of posting;
- If delivered in accordance with clause 3, on the next Business Day after sending;

A Notice of Completion will be issued upon achieving a milestone and the relevant amount is due within 7 days.

The Client will inspect the goods and services provided by the Supplier within 7 days of receipt of a Notice of Completion and must within that period:

- Give the Supplier written notice of any matter by virtue of which the Client alleges that the goods or services are not in accordance with the Contract;
- Make payment of the Balance of the price. The Supplier shall have no obligation to rectify or replace any goods or services not in accordance with the Contract where notice is not given by the Client within seven days after the date of provision.

### **Breach & Termination**

You will breach this Agreement upon:

- failure to have provided content as required within 4 weeks of signing this agreement;
- contravention of your obligations pursuant to Warranty Indemnity & Confidentiality terms previously listed;
- termination of the Hosting;
- being unresponsive to our communication;

Integral Media may terminate this Agreement upon the occurrence of any of the events described immediately above, where you have failed to remedy the breach within 14 days of notice.

In addition to these clauses, any party may terminate this Agreement by written notice to the other party if any of the following events has occurred in respect to the other party:

- a material breach of this Agreement which is not remediable or if the other party has not remedied within 14 days of written notice;
- an insolvency event occurs, other than an internal reconstruction with notice to the other party.

Upon termination:

The parties are immediately released from their obligations under this Agreement except those obligations contained within the Price, Additional Charges, Warranties & Indemnity clauses and any other obligations which by their nature survive termination within their contractual period;

- each party retains the claims it may have against the other;
- you must immediately pay any outstanding Fees.

## General Provisions

In regards to the production of the chosen Services, Time is not of the essence. The Services will be provided within a reasonable time frame as defined above.

Nothing in this Agreement creates any relationship of partnership or agency between the parties.

If a provision is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.

Each party must at its own expense do everything reasonably necessary to give full effect to this Agreement and the events contemplated by it.

This Agreement and the Scope together form the entire agreement between the parties about its subject matter and supersedes all other representations, arrangements or agreements. Except as expressly set out in this Agreement or the Scope, no party has relied on any representation made by or on behalf of the other.

Unless otherwise expressly stated in the Contract, no waiver or relaxation in whole or in part of any of the terms and conditions of the Contract will be binding on the Supplier unless in writing and signed on by a Director of the Supplier. Any such waiver or relaxation shall be limited to the term or condition and occasion in question.

A party will not be responsible for a failure to comply with its obligations under this Agreement to the extent that its failure is caused by an event beyond the control of that party ("Force Majeure") provided that the party so affected keeps the other party closely informed and uses reasonable endeavours to rectify the situation.

Without limiting any other right to terminate under this Agreement, if Force Majeure affects a party's performance under this Agreement for a period of more than 30 consecutive days, the other party may immediately terminate this Agreement by written notice.

Any action or thing that falls due to be done on a day that is not a Business Day will fall due on the next Business Day.

The law of Victoria governs this Agreement and each party submits to the jurisdiction of the courts of Victoria.

The Client agrees that there is no cooling off period and any monies debited or received are non-refundable.

Cancellation of any Direct Debit Authority does not affect your liability to pay the fees in full under the contract.

## **Confidentiality**

A party must not, without the prior written consent of the other party, use or disclose the other party's Confidential Information unless expressly permitted by this Agreement or required to do so by law or regulatory authority.

Each party must implement and maintain effective security measures to prevent unauthorised use and disclosure of the other party's Confidential Information.

A party may:

- use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights under this Agreement; and
- disclose the Confidential Information to its personnel or advisers to the extent necessary for them to know the information for the purposes related to this Agreement but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.

## **Additional Charges**

Subject to the Price, all work requested by you and undertaken by Integral Media in addition to the Services will incur charges additional to the Price ("Additional Charges").

- As at the date of this Agreement, the Additional Charges are \$150 / hour + GST;
- Minimum charge is half an hour;
- Except for agreed and quoted work.

Where the Supplier, at the request of the Client, provides services in addition to those specified in the Scope of Works, and no Price for those additional services has been agreed to by the parties in writing signed by them, the Supplier's fee for those additional services shall be the number of hours (or part thereof) spent by each employee of the Supplier in providing those services multiplied by the Supplier's hourly rate.

## **Intellectual Property**

You authorise Integral Media to display your Services in its portfolio, including but not limited to the portfolio displayed on <https://www.integralmedia.com.au>, any of our partner websites and media releases.

You also agree for Integral Media or our partners logo to be placed on the footer of your website and hyperlinked to any of our websites with a "Do Follow" tag.

Subject to the full payment of the Price, the Intellectual Property shall be vested in you and Integral Media thereupon assigns the Intellectual Property to you.

**Indemnity**

You hereby unconditionally and irrevocably agree to indemnify and keep indemnified Integral Media, its officers, employees and agents against any and all actions, claims, demands, losses, liabilities or costs (including legal costs) that arise, or result from, or are connected in any way with the Services, the Hosting, including but not limited to the sale of any product or service via your Website, except to the extent to which it arises out of any breach by Integral Media of this Agreement.

If the Client orders goods or services in its capacity as trustee of a trust, the Client warrants that it has full power and authority to accept goods and/or services under the Contract for the benefit of the trust, warrants that its right of indemnity against the trust property is unrestricted and will not be adversely affected by the Contract, agrees that it will be bound by the Contract both personally and in its capacity as trustee of the trust, acknowledges that its liability for indebtedness incurred while a trustee will apply even if it ceases to be trustee of the trust for any reason; and acknowledges that its liability will not be limited to the assets of the trust.

## Limitation of Liability

Integral Media excludes all liability in respect of loss of data, interruption of business or any consequential or incidental damages or loss.

To the full extent permitted by law, Integral Media excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement.

Integral Media's total aggregate liability for all claims relating to this Agreement is limited to 35% of the Price and any Additional Charges incurred by you.

Each party's liability for any claim relating to this Agreement will be reduced to the extent to which the other party contributed to the damage arising from the claim.

The Supplier will not be liable to the Client for any loss or damage of any kind sustained by the Client as a consequence of any breach of the Supplier's obligations pursuant to the Contract.

If failure to supply is caused by matters beyond the Supplier's reasonable control including (without limitation) acts of God, acts of any government, war or other hostility, national or international disaster, the elements, fire, explosion, power failure, equipment failure, strikes, lockouts, inability to obtain necessary supplies and any other force majeure occurrence.

This Agreement is to be read subject to any legislation, which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions or obligations. If such legislation applies, to the extent possible, Integral Media limits its liability in respect of any claim to, at Integral Media's option:

In the case of goods:

- the replacement of the goods or the supply of equivalent goods;
- the repair of the goods;
- part payment of the sum chargeable by Integral Media (without discount) if it supplied those goods to an unrelated third party; or
- part payment of the sum chargeable by Integral Media (without discount) if it repaired those goods for an unrelated third party, and

In the case of services:

- the supply of the services again; or
- part payment of the sum chargeable by Integral Media (without discount) if it supplied those services to an unrelated third party.

## Warranties

Each party warrants that:

- the execution and delivery of this Agreement has been properly authorised;
- it has full corporate power to execute, deliver and perform its obligations under this Agreement;
- this Agreement constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy;
- this Agreement does not conflict with or result in the breach of or default under any provision of its constitution, or any material term or provision of any law or regulation to which it is a party or subject or by which it is bound;
- there are no actions, claims, proceedings or investigations pending or threatened against it or by it of which it is aware and which may have a material effect on the subject matter of this Agreement.
- In addition to the warranties above, Integral Media warrants that:
  - it will exercise reasonable skill, care and attention in providing the Services;
  - the Services will not contain any viruses as at the date of activation;
  - the Services will be compatible with Internet Explorer 9 and above, and the latest versions of Mozilla Firefox, Google Chrome and Safari.
  - other than in relation to material included in the Services by you or any third party from time to time, any use of the Services by you in accordance with this Agreement will not infringe the right of any party and will not breach any applicable law.

In addition you warrant that any material which you cause to be published, displayed or contained with the provided Services will not contain any illegal or unethical material or activity.

You warrant that you own copyright or have been granted copyright for all, text, images and materials used.

Integral Media retains title to all work carried out on behalf of the Client until paid for in full.



## Web Development T&C's Definitions

- "Bug" means any lack of function in the Services that is the direct result of a coding or design error by Integral Media;
- "Training" means the instruction of 1 person in the operation of the Services at Integral Media offices, at an agreed time and date.
- "Website" means your website designed, built and hosted pursuant to this Agreement.
- "Scope" means the document entitled "Scope" provided by Integral Media to the Client and which describes the Services Integral Media offers to perform for the Client pursuant to this Agreement.
- A "reasonable time frame" is within 12 months however shall be extended by client requests, amends or delays.

## Bugs

Integral Media will endeavour to rectify any Bugs of which Integral Media receives written notice of, up until the expiration of 90 days from the date of activation of your Services.

Tweaks, amends or improvements in usability, functionality or design are not considered a Bug, they are considered outside the original Scope and as such are billable at the standard hourly rate.

Integral Media does not support or warrant any bugs derived from obsolete browsers such as Internet Explorer 6 and versions of other browsers that are more than two versions old.

Integral Media shall do a reasonable level of testing of your Services, however the Client is responsible to thoroughly test your Services for any Bugs during the warranty period.

## Provision of Content and Communication

Integral Media will always endeavour to complete the development of the client website efficiently and within a reasonable time frame, however, this relies on the co-operation of the client to provide content in a timely manner. The client agrees to respond to any form of communication from Integral Media within two working days or 48 hours.

The client website will be archived under the following circumstances:

- I. When a client is non-responsive to any form of communication from Integral Media including, but not limited to, telephone and email communication for 15 working days or more.
- II. When the client does not provide website content for 15 working days or more e.g. text and images.
- III. When the development process lasts longer than 20 working days due to the slow provision of content from the client or lack of responses to telephone and email communication.
- IV. A re-activation charge of \$150 plus GST must be paid prior to the website being made live once more.

In the above circumstances the client website will be archived without notice and an archive charge of \$395 plus GST levied which will fall due immediately upon receipt of invoice. There will then be a monthly archive charge of \$50 plus GST.

## Mobile Responsive, Devices and Screen Resolution

Integral Media does not guarantee every single resolution sequence and 'dragging and dropping' the browser is not a sign of correct screen re-sizing. All websites are designed to work to the follow resolutions and internet browsers:

**Notices**

Integral Media will provide notices in the form of an invoice, when milestones are achieved. Once the invoice is received, payment will be due within the stated period, generally 7 days

Notices will be provided for "Deposit", "Design Sign Off" and "Supply of Development Link", or as per the contract terms.

**PPC T&C's**

- Comply with all Google Adwords terms and conditions, which update regularly;
- There is a minimum 4 month term on all campaigns, unless otherwise stated on the contract;
- You will not get direct access to the Adwords portal;
- Monthly Statements / receipts from Adwords can be sent on request;
- We will provide reports generated via Google Analytics and various 3rd party software linked to the Adwords account;
- Any tracking telephone numbers remain our property.
- After cancellation, you will forfeit any outstanding credit, it shall not be refunded under any circumstances;
- For cancellation of Google Adwords services we require 30 days written notice to [accounts@integralmedia.com.au](mailto:accounts@integralmedia.com.au) and all charges are pro rata.

## **SEO T&C's**

### **Disclaimer**

We make no guarantee the targeted phrases will move in a positive direction, especially if the targeted website has:

- engaged in SEO previously;
- has poor or duplicate content;
- is on a SEO unfriendly content management system (CMS);
- if we cannot get access to your hosting and or CMS;
- is suffering from a penalty, either automatic or manual from Google;
- has an unnatural link profile;
- is hosted on a slow or blacklisted server. The standard term of an SEO contract is for 6 months. Any variations to a shorter contract period must be signed off by Integral Media's management prior to the agreement being signed.

Furthermore you should be aware that Google continually updates it's search algorithm, which may have a negative impact on your rankings at any time, this does not release you from your contract. We will endeavour to rectify any negative losses as quickly as we can but make no guarantees you will recover.

In rare instances we may have to move your website to a new domain to remove a penalty, you have to accept the change if we recommend this action.

### **Website Amendments Made by the Client**

Integral Media must be notified of any changes that the client proposes to make to the website prior to such changes being made as some amendments may have a negative effect on the ranking of the website within the search engines.

Examples of changes that WILL affect the website's ranking include but are not limited to the following: amendments to Header Title tags, uploading duplicate content, changing navigation and creating links to third party websites.

ALL proposed changes by the client to the website must be approved in writing by Integral Media before being actioned. Failing to do so releases Integral Media from any liability in the event that the website's ranking falls.

Client's who make changes without consulting Integral Media do so at their own risk.

### **Cancellation**

The SEO contract will continue after the initial term on a month by month basis unless cancelled by the client in accordance with our standard terms and conditions providing a minimum of 30 days notice in writing to [accounts@integralmedia.com.au](mailto:accounts@integralmedia.com.au)

## Hosting T&C's

"Hosting" means hosting Services provided by Integral Media on a month-to-month basis, or annual (12 months) basis.

For annual hosting Services, the 12 months of the Hosting is calculated from the date of Activation of the services.

You may discontinue your Hosting at any time. Discontinuing your Hosting does not affect your liability to pay the Fees.

If you decide to host your services away from Integral Media or their approved hosting providers, Integral Media will not warrant or support the services regardless the date of activation, you will have to resolve any issues with your new hosting provider.

When your Hosting is due renewal, you have seven days to pay it, failure to do so will result in suspension of your Hosting.

If your Hosting was paid annually, the renewal shall remain annually.

Integral Media will not under any circumstances provide FTP or cPanel access to websites hosted on our servers. This is to protect the integrity of the hosting environment, ensure security and is non negotiable.

If you require a backup of your site, this can be provided within 48 business hours and will incur a one time charge of \$250+ GST which will require payment prior to the commencement of a backup being created.

If you wish to move your website from Integral Media's hosting environment, a back up of the website will be provided to you in electronic format, such as USB, Disc or Downloadable link.

Integral Media can assign your Hosting to another provider at any time. If this occurs, then notwithstanding anything to the contrary in this Agreement:

- you will be advised;
- your Hosting fees will thereafter be payable to the provider to whom your Hosting is assigned; and
- your Hosting will be subject to terms and conditions set by the provider to whom your Hosting is assigned.

It is your responsibility to provide notice to Technical Support and the Accounts Department once the site has successfully been moved to your new hosting environment. Until the notice has been provided to Technical Support and the Accounts Department, all fees payable to Integral Media for hosting may still be applicable.

accounts@integralmedia.com.au

## Website Warranty

### General

- I. It is an implied contract term that Integral Media will deliver a fully functioning Website.
- II. Delivery of the Client Website takes place once the Website is published “live” on the World Wide Web as a fully functioning Website in accordance to the Client’s specifications as detailed on the “Sale Order Form”.
- III. Any functional issues with the Website will be resolved by Integral Media free of charge within the terms of the Warranty as detailed in the following terms.
- IV. Functional and design changes or additions required post delivery will be chargeable at the Integral Media standard hourly rate.
- V. This Warranty does not apply if the Client owes money to Integral Media outside the normal payment terms.

### Warranty Term

- A 90 day Warranty is supplied with every website.
- The decision about what is a warrantable defect is at the sole discretion and determination of Integral Media.
- Any work provided under warranty shall be completed within a reasonable time as determined by Integral Media.
- Any disputes in relation to warranty claims, if not resolved with the Integral Media account manager, shall be brought to the attention of the Integral Media office manager whose decision will be final and binding on both parties.
- If Integral Media accept a claim under the warranty and while rectifying the issue, subsequently determine, in its reasonable opinion, that the defect is excluded from the warranty conditions, the customer shall be liable to pay Integral Media’s standard rates and charges for the remedial work.
- Warranties are not transferable to new owners of websites.
- Integral Media reserve the right to terminate the warranty without notice if, in their reasonable opinion, the website is not being used in accordance to it’s original specifications or purpose.
- To the full extent permitted by law:
  - Integral Media will not be liable for any loss, damage or alterations to third party hardware, software, programs, data and/or information stored on any media, no matter how occurring; or for any loss or damage arising from loss of use, loss of profits or revenue, or for any resulting indirect or consequential loss or damage.
  - Integral Media’s aggregate liability in respect of all claims under the Warranty and Extended Warranty shall not exceed the original purchase price or at Integral Media’s option, replacement of the product with a like or similar product.
  - Integral Media excludes all other warranties, conditions, terms, representations and undertakings whether express or implied.
- This warranty is governed by the laws of Victoria and represents the entire agreement between the parties.