

# CREATIVA TERMS & CONDITIONS FOR SERVICES

## TERMS & CONDITIONS

### 1. Application of Terms & Conditions

- 1.1 We are willing to provide services to you (**Services**) in relation to a project (**Project**) detailed in the relevant Creativa Proposal, Order Form, quote, document or e-mail from Creativa addressed to you, or invoice addressed to you (**Client Proposal**).
- 1.2 Once you confirm that you wish for us to go ahead with the Project in accordance with the terms set out in the Client Proposal, you agree that these terms and conditions, which incorporates the Client Proposal (**Agreement**), will form a binding agreement between us (jointly, **Parties**, or in the singular, **Party**). This term of this Agreement will continue until the Parties have completed their obligations under this Agreement (**Term**).
- 1.3 In the event of any inconsistency between this Agreement and the Client Proposal, the terms of this Agreement will prevail to the extent of the inconsistency.

### 2. Our Services

- 2.1 We agree to provide our Services in a professional, skillful and legally compliant manner.
- 2.2 Any changes to the Client Proposal after signing will need to be discussed and agreed in writing (e-mail to suffice) by both Parties in good faith.

### 3. Client Obligations

- 3.1 We require you to provide us in a timely manner with accurate instructions in relation to the Project, supply us with the **Client Materials** and review our draft work.
- 3.2 For this purpose of the Agreement, **Client Materials** means briefs, logos, brand guidelines, brand assets and any other information, assets, data or other items requested by us for the Project.

### 4. Sub-Contractors

- 4.1 For the Project, we are permitted in our discretion to engage appropriately skilled independent sub-contractors, freelancers or other third parties (**Sub-Contractors**) to perform some or all of the Services.

### 5. Project Costs

- 5.1 In consideration for our Services on the Project, you agree to pay the services, fees and expenses set out in the Client Proposal (**Project Costs**) and any other expenses (for example parking costs, postage and production supplies) reasonably incurred by us. We reserve our rights to increase or decrease the Projects Costs, where any details and particulars from the Client Proposal change.
- 5.2 In order for us to commence providing our Services to you in relation to the Project, you must pay a deposit. The deposit and any further payments specified in the Creativa Proposal will be calculated and become payable in accordance with the following table:

Project Costs	Deposit	Progress and Final Payments
\$1,500 or less	100%	N/A
\$1,501 - \$4,999	50%	50% (final payment due at creation of Final Deliverables)
\$5000 +	30%	40% (payable prior to recording or at storyboard stage of the Production Stages for a Project)  30% (final payment due at creation of Final Deliverables)

- 5.3 Unless otherwise advised by us in writing, we will not commence providing our Services to you in relation to a Project until we receive the deposit from you.
- 5.4 We will issue invoices to you for any progress and final payments referred to in clause 5.2. Unless otherwise advised by us in writing, payment terms for any invoices are 7 days from the invoice date.
- 5.5 We reserve our right to cease undertaking the recording or storyboard stage of the Production Stages for the Project if the installment payment referred to in clause 5.2 for projects totaling \$5,000 or more is not made by you when required.
- ### 6. Payment Terms
- 6.1 For the Project, we will invoice you and you agree to pay for Project Costs at the timeframes set out in clause 5.2, or at other appropriate intervals. We reserve the right to invoice you at any time for all or part of the Project Costs where you fail or delay to provide us with instructions or other materials as required by us to complete the Project.
- 6.2 All amounts charged by us under the Agreement in connection with any Project shall be in the first instance, calculated exclusive of any GST.
- 6.3 Where we engage a lawyer or collection agency to recover any unpaid money under this Agreement, you agree that you shall be liable (on a full indemnity basis) for all of our costs spent recovering such sums from you. You acknowledge that 'time is of the essence' when paying invoices under the Agreement, and we reserve the right to suspend work if any invoices are outstanding. If any invoice remains unpaid 30 days after the date it was due, we may charge you interest at the Cash Rate Target, as fixed by the Reserve Bank of Australia, plus 2%.
- ### 7. Video Production Stages
- 7.1 You acknowledge that there are a number of stages involved in the production of videos (**Production Stages**) which we will undertake as part of the Project and providing the Services to you. You agree to comply with all of your obligations and deadlines during and relevant to the Production Stages, as instructed by us.
- 7.2 Unless otherwise agreed by us in writing, it is your sole responsibility to ensure that the appropriate talent release forms are obtained from any persons sourced by you to be filmed by us as part of the creation of any videos for a Project.

## 8. Revisions during Production Stages

8.1 You are able to request revisions for the Project and any Deliverables supplied by us during any Production Stage, where reasonably required subject to the following conditions:

- a. Your request for a revision is made while we are working on the relevant Production Stage to which the revision relates;
- b. You must review the revision and either accept the revision or ask for a further revision, within 48 hours or other timeframe with prior written agreement by the parties; and
- c. The requested revision must not require more than 20% of the total time allocated to the relevant Production Stage to which the revision relates.

## 9. Revisions after Completion

9.1 We are able to modify your company logo/branding, contact details or pre-selected music track for the Project at no cost within 3 months from completion of the Project, provided that your request for modification complies with the following conditions:

- a. Changes must be generic to the video and not adapted for alternative uses;
- b. Changes must not exceed 5% of the total original video editing work time;
- c. Changes must be limited to editing and animation work, any changes which require re-recording, additional stock images or voice recordings are not included;
- d. Changes must be specific, explained clearly and unambiguously; and
- e. Only one instance of reviewing a change you have requested under this clause will be provided, otherwise once the change you have directed has been made, the change is final and cannot be reviewed by you.

## 10. Intellectual Property

10.1 We shall assign to you exclusive ownership and control over the Intellectual Property in the final completed versions of the Deliverables for the Project (**Final Deliverables**) upon payment by you in full of the Project Costs, and subject to the following conditions:

- a. Nothing in this Agreement shall transfer ownership to you of any Third Party IP, Creativa IP or any draft versions of the Deliverables for the Project;
- b. Your use of the Third Party IP as part of the Final Deliverables will be subject to terms imposed by the relevant owner of the Third Party IP;
- c. We shall grant you a non-exclusive, worldwide, royalty free licence to use any Creativa IP in the Final Deliverables for the sole purpose of using the Final Deliverables;
- d. Nothing in this Agreement shall transfer ownership to us of Client IP. You shall grant us a non-exclusive right to use the Client IP solely in connection with the supply of Services to you under this Agreement;
- e. Subject to our limited permitted use of Final Deliverables as specified in clause 11.2; and
- f. Unless otherwise agreed by us in writing, your use of the Final Deliverables are subject to the following restrictions:
  1. Final Deliverables are only to be used on web, at corporate events and presentations, or privately;
  2. Final Deliverables are not to be used on TV, radio or cinema; and
  3. Final Deliverables are not to be monetized.

10.2 For the purpose of the Agreement:

**Intellectual Property or IP** means all items of intellectual property including without limitation trade marks (registered or unregistered), copyrights, designs and patents.

**Third Party IP** means Intellectual Property owned by a party who is not a party to this Agreement;

**Creativa IP** means Intellectual Property owned by us which was created prior to or independently of our obligations to you under this Agreement;

**Client IP** means Intellectual Property owned by you which was created prior to or independently of your obligations to us under this Agreement.

## 11. Credits and Promotion

11.1 Where possible, you will provide us with credit for authorship on all reproductions, distribution, communications or other exploitations of the Final Deliverables as follows: "Written and Produced by Creativa Videos", together with a copy of our current logo. You agree that you will not attribute any third party as author of the Final Deliverables.

11.2 Unless you otherwise advise us in writing, we have the right to publish and communicate the Deliverables in our portfolio and marketing materials promotional and demonstrative purposes.

## 12. Privacy & Confidential Information

12.1 During the Term, we may obtain access to Personal Information owned or held by you. We agree to collect and handle Personal Information in accordance with our Privacy Policy, which can be viewed at the following URL: <http://creativa.com.au/privacy-policy>

12.2 Each Party agrees not to directly or indirectly use or disclose any Confidential Information belonging to the other Party without first obtaining the first Party's prior written consent except to the extent that the disclosure is required by law or the disclosure is made to legal or accounting advisors.

12.3 The confidentiality obligations in this clause shall survive the expiry of this Agreement and shall continue to apply until all Confidential Information disclosed between the parties under this Agreement is in the public domain.

12.4 Subject to our obligations under this clause, while we will take reasonable steps to keep Client Materials in our possession secure, we accept no responsibility for the provision of Client Materials to us.

12.5 For the purpose of the Agreement:

**Confidential Information** means all information belonging to or relating to a Party to this Agreement howsoever acquired, including without limitation trade secrets; Intellectual Property; Personal Information, know-how; business and financial data; and all other information obtained pursuant to this Agreement, that is by its nature confidential.

**Personal Information** means personal information as defined in the *Privacy Act 1988 (Cth)*.

## 13. Cancellations and Terminations

13.1 As part of undertaking the Production Stages for a Project, we may need to organise and schedule a video shoot in consultation with you. As soon as the video shoot is scheduled, we commence taking steps to organise the conducting of the video shoot at the schedule time, and incur costs and expenses in doing so (**Shoot Costs**). Therefore, you agree that if you decide to cancel a scheduled shoot:

- a. Up to 7 days prior to the scheduled time, you will be required to pay 50% of the Shoot Costs; and
  - b. Within 48 hours prior to the scheduled time, you will be required to pay 100% of the Shoot Costs.
- 13.2 If you wish us to cease working on a Project, we will invoice you for our Services performed up to the date of termination and for any cancellation fees in clause 13.1 (such final amount to be determined taking into account any payments already made by you), as well as any applicable expenses that we have incurred or are due to incur before the date of termination.
- 13.3 Without limiting any other term in this Agreement, if you delay the undertaking of the Project by two weeks (by, for example, not providing instructions, information or Client Materials we have requested from you), we may decide to cease working on a Project by providing written notice to you. If this occurs:
- a. We will invoice you for our Services performed up to the date of termination and for any cancellation fees in clause 13.1 (such final amount to be determined taking into account any payments already made by you), as well as any applicable expenses that we have incurred or are due to incur before the date of termination; and
  - b. If you wish for the Project to continue at this stage, you must pay us a restarting fee of \$800 plus GST.
- 14. Insurance**
- 14.1 During the Term of this Agreement, we agree to effect and maintain public liability with a value of \$10 million dollars for any one event, professional indemnity insurance with a value of \$1 million dollars for each claim and workers compensation insurance as required by law.
- 15. Warranty**
- 15.1 You warrant and represent that:
- a. You have the capacity to grant us a licence to use the Client IP and that our use of the Client IP and Client Materials shall not infringe the rights of any third party.
  - b. You will pay all Project Costs on time and in full.
- 16. Indemnity**
- 16.1 For each Project, you agree to indemnify us for any loss, damage, claim or expense (including legal expenses on full indemnity basis) (**Loss**) caused by you or any other person arising out of:
- a. A material breach of this Agreement by you; or
  - b. Damage to any property owned by us throughout the course of the Project.
- 17. Limitation of Liability**
- 17.1 To the extent permitted by law and with the exception of any Consumer Guarantees which may apply to our Services under this Agreement, we exclude any implied term, implied condition, implied warranty and statutory guarantees relating to the Agreement and the Services.
- 17.2 To the extent permitted by law, we will not be responsible for any loss, damage, claim or expense incurred by you from using the Deliverables or Final Deliverables, including (but not limited to) any electronic equipment failure.
- 17.3 In relation to any Consumer Guarantees which apply to the provision of the Services to you, and for any other breaches of this Agreement by us, our responsibility to you (to the extent permitted by law) will be limited to either:
- a. Providing the Services again to you within a reasonable timeframe; or
  - b. Reimbursing you for the provision of the Services.
- 17.4 For the purpose of the Agreement, **Consumer Guarantees** means any right or guarantee you may have under the Australian Consumer Law or other rights in relation to the supply of goods or services (such as terms implied into a contract) that cannot lawfully be excluded.
- 18. General**
- 18.1 The rights and obligations under the Agreement, which by their nature would reasonably continue beyond the expiration or termination of the Agreement, will survive the expiration or termination of the Agreement. Without limiting the generality of the foregoing, clauses 10, 11, 12, 15, 16 and 17 will survive any termination or expiration of the Agreement.
- 18.2 The Agreement constitutes the entire agreement between the Parties and cannot be altered except in writing and signed by both Parties.
- 18.3 The Agreement will be governed by and construed in accordance with the laws of Victoria, Australia. The Parties submit to the exclusive jurisdiction of the courts of Victoria.
- 18.4 The Agreement does not create any employment, partnership, agency or joint venture relationship between the Parties.
- 18.5 Where any clause or part of that clause is void, illegal or unenforceable it may be severed without affecting any other part of the Agreement.
- 18.6 If the performance of any of our obligations under this Agreement is prevented, restricted or interfered with by reason of an **Unforeseen Event**, we:
- a. upon giving prompt notice to you, are excused from such performance to the extent of such prevention, restriction or interference; and
  - b. are not liable for any Loss suffered by you by reason of compliance with (a) above.
- We must use our best efforts to avoid or remove the Unforeseen Event or to limit the impact of the Unforeseen Event on our performance as required under this Agreement.
- For the purpose of this clause, **Unforeseen Event** affecting us means anything outside of our reasonable control, including without limitation, any illness or unavailability of our staff or talents that we have sourced for a Project which impacts the completion of any of the Production Stages for a Project.
- 18.7 During the Term and for a twelve-month period thereafter, you agree that you must not solicit, employ, or attempt to employ, directly or indirectly any of our employees or contractors (or any former employees or contractors whose employment or contract was terminated within the previous six months) unless you have obtained our prior written consent.
- 18.8 We will retain any raw video footage and other files and materials (**Raw Materials**) created for the Project for up to 3 months after the Production Stages conclude, following which we will have the right to delete or erase the Raw Materials. If you wish to purchase the Raw Materials prior to them being deleted or erased by us (this is not included as part of the Deliverables and Final Deliverables), please let us know and we will provide you with a quote.