

Terms & Conditions

The Terms & Conditions outlined herein apply to all works produced by Fizz Farm Pty Ltd (ACN 603 186 205) of as trustee for The Fizz Farm Family Trust (ABN 22 640 211 795) of 219B/ 757 Bourke Street, Docklands VIC 3008 AUSTRALIA ("Fizz Farm"). Unless otherwise agreed in writing they constitute the full Agreement between Fizz Farm and the person or company ("Client") named herein. The Terms and Conditions should be read in conjunction with any Quotation, Estimate Project Proposal and/or Project Timeline provided.

1. Quotations

- 1.1. Quotations provided by Fizz Farm to the Client will be valid for 30 days from the date of issue.
- 1.2. Unless otherwise indicated, the quotations provided in the Project Proposal do not cover incidentals, including but not limited to: shipping, freight, handling, couriers, postage, prints, photo negatives/positives, on-going administration, proofs and/or media charges.

2. Acceptance of Project Proposal

- 2.1. To allow Fizz Farm to best serve the Client, the Client will provide Fizz Farm with a formal brief prior to issuance of a Project Proposal.
- 2.2. Any Project Proposal will be based on this brief and will be subject to change as outlined in this Agreement.
- 2.3. Fizz Farm asks that the Client accept the Project Proposal in writing prior to the commencement of works detailed therein. Alternatively, the Client's continued instructions to Fizz Farm following delivery of the Project Proposal will be deemed as acceptance.
- 2.4. Acceptance of the Project Proposal by the Client will mark the commencement of this Agreement.
- 2.5. Fizz Farm requires that the Client make payment of a 50% non-refundable commencement fee ("Commencement Fee") upon acceptance of the Project Proposal. No work will be conducted by Fizz Farm prior to payment of this fee, unless otherwise agreed in writing.

3. Project Timelines

- 3.1. Following receipt of the Commencement Fee, Fizz Farm will provide a project time line to the client.
- 3.2. Project timelines provided by Fizz Farm are an estimation only, and should not be relied upon by the Client. Though Fizz Farm will endeavour to adhere to same, no guarantee of completion by the estimated date is offered.

4. Cancellation of Works

- 4.1. The Client may cancel the project set out in the Project Proposal in writing prior to commencement of work by Fizz Farm, however a cancellation fee may apply.
- 4.2. Fizz Farm is entitled to recover 50% of the charges outlined in the Project Proposal if the Client cancels the project within 48 hours of the scheduled start date outlined in the Project Timeline.
- 4.3. Fizz Farm is entitled to recover 100% of the charges outlined in the Project Proposal if the Client cancels the project within 24 hours of the scheduled start date outlined in the Project Timeline.

5. Variation to the Project Proposal

- 5.1. Where the Client wishes to vary the accepted Project Proposal in any way, this request must be made in writing. Acceptance of same will be at the discretion of Fizz Farm.

- 5.2. If the Client requests removal an item from the accepted Project Proposal, Fizz Farm remains entitled to any portion of charges incurred in conducting works on this item prior to acceptance of the variation.
- 5.3. Requests for work beyond the agreed Project Proposal as at the Commencement Date will incur additional charges. Fizz Farm reserves the right to accept or reject responsibility for performing such additional works.
- 5.4. In the event that additional works are accepted by Fizz Farm, additional charges will be passed on to the Client at an appropriate hourly rate. The provision of these additional services will be subject to the terms of this Agreement.
- 5.5. Requests for work beyond the agreed Project Proposal that are deemed urgent or require work to be conducted outside standard business hours may be charged at an hourly rate equalling 150% of Fizz Farm 's ordinary fee.
- 5.6. Where variation to the Project Proposal is required for any reason, Fizz Farm may provide the Client with a revised or supplementary Project Proposal for acceptance. This supplementary Project Proposal will be subject to the terms of this Agreement unless specified in writing.

6. Client's Instructions & Performance

- 6.1. To facilitate delivery, Fizz Farm ask that the Client provide clear and concise instructions in a timely manner. Delays resulting from the Client's inability or failure to provide instructions, raw materials and/or requested information may result in an adjustment to the agreed timelines and additional fees being incurred.
- 6.2. Fizz Farm encourages the Client to provide or reiterate all instructions in writing. Where instructions are provided verbally, Fizz Farm will not be held responsible for errors or omissions resulting from misunderstanding or misinterpretation of same.

7. Termination & Third-Party Costs

- 7.1. Fizz Farm reserves the right to terminate this Agreement at any point in time by providing the Client with 14 days' written notice.
- 7.2. If the project is terminated at any point prior to completion, Fizz Farm reserves the right to retain the Commencement Fee in order to cover costs incurred up to that point. Where costs incurred exceeds this amount, Fizz Farm may validly request further payment from the Client.
- 7.3. The Client will be deemed responsible for any third-party and/or out-of-pocket expenses incurred up to the date of termination of this Agreement.
- 7.4. The Client may also be deemed responsible for third party expenses incurred after termination of this Agreement where such expenses are incidental to the termination of the Agreement, including third party cancellation fees.

8. Hand Over & Review

- 8.1. Delivery of the items detailed under the Project Proposal will be made electronically where appropriate, either by email, DropBox or as otherwise agreed, upon:
 - 8.1.1. completion; or
 - 8.1.2. in accordance with agreed project timelines.
- 8.2. Fizz Farm asks that the Client approve, reject or advise of changes and/or revisions required to delivered works within 14 days of delivery.
- 8.3. Unless otherwise indicated, two rounds of changes are included in the Project Proposal. Additional rounds of changes and/or revisions will be conducted at the discretion of Fizz Farm and may incur additional fees.

- 8.4. Completed works will be taken to be approved, unless otherwise indicated by the Client within 14 days of delivery. Fizz Farm will not be obliged to attend to changes or revisions requested after this time.
- 8.5. Fizz Farm are not obliged to provide working files to the Client.
- 8.6. All charges incurred under this Agreement must be paid by the Client within 14 days of approval of the works,
- 8.7. Where expansion of the agreed Project Proposal occurs, Fizz Farm reserves the right to alter project timelines.

9. Film Production and Photography

- 9.1. Where film production or photography services are included in the Project Proposal, Fizz Farm will endeavour to produce the highest quality video footage and/or photographs within the estimated timeframes provided to the Client.
- 9.2. Fizz Farm will not be responsible for circumstances beyond their control that may effect the quality of footage or photos, including but not limited to weather conditions, power shortages and or equipment malfunctions. Where such factors result in a requirement for additional shoot days, these additional services will be charged to the client.
- 9.3. Fizz Farm will not be responsible for loss of footage or digital photo files resulting from the factors referred to above in 10.2.

10. Production & Print

- 10.1. The Client bears the responsibility for all third-party production costs following approval of works. Fizz Farm will not be liable for errors, including grammatical errors, contained therein.
- 10.2. In the instance of approved works, the Client is held fully responsible for guaranteeing the accuracy of content, including design, spelling, grammar and quality.

11. Intellectual Property Rights

- 11.1. Fizz Farm retains ownership of the copyright subsisting in all works produced under the Project Proposal until such time as payment of all outstanding amounts has been made by the Client.
- 11.2. Upon receipt of payment in full, Fizz Farm grants the Client a non-exclusive, non-transferable licence to the copyright subsisting in approved works, limited to the objective(s) and/or purpose(s) detailed in the Project Proposal. Such license does not grant the Client permission to alter, edit or amend accepted works beyond that which is reasonably anticipated.
- 11.3. Fizz Farm retains ownership of the copyright subsisting in all works produced but not ultimately approved by the Client, including but not limited to: draft concepts; ideas communicated; working notes and any other internal written materials; preliminary drafts, drawings, illustrations, photographs and designs; preliminary electronic works including website drafts, source code, development tools, programs, multimedia applications and programmers' notes; raw footage, draft videos, sound recordings, outtakes, storyboards, scripts, screenplays and character lists; designs which are rejected by the Client; and/or source files.
- 11.4. Additional Assignments of intellectual property interests and/or License Agreements may be granted by Fizz Farm at their discretion.
- 11.5. In all other respects, Fizz Farm retains copyright and all other intellectual property interests subsisting in work produced under this Agreement, including moral rights of the author.

12. Confidential Information

- 12.1. The Client agrees not to disclose any confidential information created under or in respect of this Agreement to any third-party, save as required by law or as instructed by Fizz Farm .

12.2. All draft concepts and ideas communicated to the Client will be considered Confidential Information and/or intellectual property of Fizz Farm.

13. Fonts, Typefaces, Images and Recordings

13.1. Where Fizz Farm is required to use an original font, typeface, image or recording owned by a third-party, the Client agrees to:

13.1.1. Acquire a license to use the typeface, font, image or recording; and

13.1.2. Pay any licence fees applicable.

13.2. Where a font, typeface, image and/or recording is provided by the Client, Fizz Farm validly assumes that it has been licensed appropriately and therefore bears no responsibility for any breach of intellectual property interests and/or moral rights stemming from use of same.

13.3. Where Fizz Farm utilises an original font, typeface, image and/or recording validly obtained by them under license for the purpose of producing the works under the Project Proposal, the Client agrees not to take any actions which would breach the moral rights of the author following acceptance of the works, including but not limited to modification of the original font, typeface or recording.

14. Self-Promotion by Fizz Farm

14.1. Under this Agreement the Client grants Fizz Farm the right to use and reproduce work produced under the Project Proposal for the purposes of promoting skills and services, (including by entering works in competitions or design publications, and/or displaying the work in a portfolio, including physical and web-based reproductions). This grant includes the right to use and reproduce work that may display protected intellectual property interests of the Client, including but not limited to, registered trade marks or domain names.

15. Web Development

15.1. Fizz Farm will endeavour to ensure that any developed or designed website, eNewsletter, eSignature, platform or Application will function correctly on the server upon which it is initially installed and that it will function correctly when viewed with web-browsing software, but cannot guarantee a correct or identical function with all systems and/or browser softwares.

15.2. Fizz Farm is committed to including mobile website design on all appropriate projects with the view to achieving the highest degree of functionality for the Client.

15.3. Fizz Farm accepts no responsibility for website and/or email downtimes, delays, data loss or other damage caused by service providers, including ISPs. The Client indemnifies Fizz Farm against all claims resulting from such disruptions.

16. Archiving

16.1. Finalised files relevant to all approved works produced under the Project Proposal will be supplied to the Client upon completion.

16.2. For a period of 3 months from the date of delivery all files will be stored in an accessible format, following which they will be archived for a period of 2 years.

16.3. Where the Client requests a copy of an archived file after this 3 month period, Fizz Farm may charge a reasonable fee at their discretion.

17. Overdue Accounts & Disputing of Invoices

17.1. Fizz Farm reserves the right to charge the Client interest at 5% per month on all amounts outstanding unless otherwise agreed in writing. Interest shall accrue monthly from the date payment was due, until the date payment is made or awarded by way of judgement.

- 17.2. In the instance of default, the Client indemnifies Fizz Farm against all costs and disbursements incurred in pursuing the debt, including legal costs and/or agency costs.
- 17.3. Where the Client seeks to query the quantum and/or other details contained in an invoice issued by Fizz Farm, such query must be raised within 14 days of receipt. Failure to raise a query within this timeframe will result in deemed acceptance resulting in an obligation to pay.
- 17.4. Fizz Farm reserves the right to suspend and/or cancel works pending payment of amounts outstanding, including the suspension of production, design and or website and email hosting. In the instance of such suspension, the Client indemnifies Fizz Farm against claims for all losses flowing from such suspension.

18. Client's Undertakings & Warranties

- 18.1. In accepting this Agreement, the Client undertakes and warrants that they are ultimately responsible for the use of approved works and limiting the use thereof to the objective(s) and/or purpose(s) defined by the Project Proposal. In doing so, the Client undertakes and warrants that the works will not be deemed contrary to law to any extent, including by:
 - 18.1.1. Ensuring that all intellectual property interests subsisting in any material provided to Fizz Farm have not, and will not be infringed;
 - 18.1.2. Ensuring that works and/or any representations contained therein do not constitute or include an unauthorised use or infringement of any trade mark owned by a third-party, including by undertaking Trade Mark Clearance Searches;
 - 18.1.3. Ensuring that works and/or any representations contained therein do not constitute or include an unauthorised use of materials subject to copyright protection, including moral rights;
 - 18.1.4. Ensuring that all necessary licenses and assignments are obtained and appropriately maintained;
 - 18.1.5. Ensuring that the works do not contain any representations, written or visual, which would be deemed defamatory to any person, company or legal entity;
 - 18.1.6. Ensuring that the works and/or any representations contained therein will not be deemed obscene, blasphemous, offensive or discriminatory; and
 - 18.1.7. Ensuring that the works and/or any representation contained therein, are not in any way contrary to the Competitions and Consumer Act 2010 (Cth) and will not give rise to any common law action in passing off.
- 18.2. The Client attests to the truth and accuracy of all statements included in the works, purporting to be fact. The Client warrants that reliance on same by any person will not cause loss, damage or injury.
- 18.3. Use of the works produced under this Agreement is at the Client's own risk, including but not limited to publication and display.
- 18.4. The Client indemnifies Fizz Farm against any and all claims arising from:
 - 18.4.1. Use of material provided by or recommended by the Client;
 - 18.4.2. Works produced under the Project Proposal;
 - 18.4.3. Any actions taken by Fizz Farm under instruction from the Client; and
 - 18.4.4. Any actions taken by Fizz Farm otherwise approved by the Client.

19. Liability

- 19.1. Fizz Farm accepts no liability, to the fullest extent under law regarding:
 - 19.1.1. Any consequential loss, damage or injury arising, regardless of how it arises; and

19.1.2. Any punitive, additional or exemplary damages.

19.2. If found to be liable for any claims, losses, damages, costs or injuries arising out of this Agreement, the quantum sum of Fizz Farm's liability or liabilities is limited to the value of the project as detailed in the Fee Proposal.

20. Contractor Relationship & Sub-Contracting

20.1. The relationship formed under this Agreement is one of independent contractors and should not be interpreted as creating a partnership or agency relationship.

20.2. Fizz Farm may sub-contract obligations formed under this Agreement and Project Proposal, at their discretion. Doing so will not alter the terms of this Agreement.

21. Law of Agreement

21.1. This Agreement is governed by the laws of the State of Victoria.

22. Severability

22.1. Any provision of this Agreement which is prohibited or unenforceable will be ineffective to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement.