

IONYX PTY LTD ABN 22 605 061 327

Sales Terms for Customers

PART A – Terms applying to Design and Artwork Services

1. Formation of Service Agreement

- (a) Where the Customer wishes to acquire Services from the Company:
 - (i) The Company will issue a Quote to the Customer;
 - (ii) Unless otherwise expressly stated in the Quote, written Quote shall expire automatically thirty (30) days from the date stated on the Quote and will lapse if the Customer fails to accept within that period. After that time, the Company may have to issue a revised Quote.
- (b) Upon accepting the Quote, an agreement between the parties is formed, comprising of Part A and Part D of these Sales Terms (the Service Agreement).

2. Copyright to Artwork

- (a) Copyright and moral rights to the Finished Artwork produced by the Company is owned by the Company.
- (b) Upon final payment, the Customer is granted an irrevocable, sublicensable royalty free licence to the Finished Artwork.
- (c) Rights to source code, work-up files, and computer programs are specifically not transferred to the client and remain the property of their respective owners.

3. Fonts

Commercial fonts that are included in any artwork designed are rasterized or outlined. Should a Customer require the font, the Customer will need to acquire it legally from the font creator/shop. The Company does not distribute fonts to its Customers.

4. Performance and Delivery

The Customer must adhere to payment terms of invoices. Without prejudice to any other rights the Company may have at law, or in equity, the Company reserves the right to not deliver the licence to the artwork until payment is received.

PART B – Terms applying to Website Development Services

5. Formation of Service Agreement

- (d) Where the Customer wishes to acquire Services from the Company:
 - (i) The Company will issue a Quote to the Customer;
 - (ii) Unless otherwise expressly stated in the Quote, written Quote shall expire automatically thirty (30) days from the date stated on the Quote and will lapse if the Customer fails to accept within that period. After that time, the Company may have to issue a revised Quote.
- (e) Upon accepting and Quote , an agreement between the parties is formed, comprising of Part B and Part D of these Sales Terms (the Service Agreement).

6. Performance of Services

- (a) The Project Brief will set the requirements of the projects and what needs to be fulfilled.
- (b) The Customer acknowledges and agrees that the Company does not review and is not accountable for any of the content placed or caused to be placed on to the website by the Customer.
- (c) The Customer warrants that any information or content placed or caused to by placed on the Website:

- a. has been reviewed, approved by the Customer; and
 - b. the Customer is entitled to place such information on the website and the placing of such information is not in breach of any laws the Customer or the Company are subject to.
- (d) The Customer indemnifies and holds harmless the Company in respect any matter connected to the content caused to be placed on the website by the Customer.
- (e) We will graphically design concepts of how the site will look. If after previewing them, the Customer requires amendments or changes to the design contents prior to the Implementation Phase, then:
- a. the Customer may prepare and deliver to the Company a list of variations (**List of Variations**).
 - b. Upon receipt of a List of Variations the Company will make the amendments contained in the List of Variation:
 - i. Subject to clause 6(e)c, for no additional cost in respect of the first List of Variation; and
 - ii. in respect of any subsequent List of Variation or requests for amendments or changes to design for an agreed fee of \$160/hour ex GST will apply.
 - c. Where the scope of the changes contained in a List of Variation cause a departure from the scope of Services contemplated by the Project

Brief (as determined by the Company in its sole discretion) the Company may:

- i. negotiate a fee for said variations; or
 - ii. refuse to make such variations.
- (f) If a client wishes to transfer the website, database, Content Management System (CMS), hosting, Emails, and entire setup to another company to take control, a fee of \$395 ex GST port out fee applies for additional work required by us to release the website. Once released we will take no responsibility of the feature's functions and operations of the website.
- (g) Once the website design has been approved and the development has begun, any changes thereafter will incur a development fee of \$160/hour ex GST.

7. Authorisation

The named Customer is engaging the Company as an independent contractor for the specific project of developing and/or improving a website to be installed on the client's web space (depending on the software available) or on suitable web hosting provided by the Company. The Customer hereby authorizes the Company to access this account and authorizes the web hosting service to provide the Company with "write permission" for the Customer's web page directory, cgi-bin directory, and any other directories or programs which need to be accessed for this project. The Customer also authorizes the Company to publicize their completed website to Web search engines, as well as other Web directories and indexes.

By signing a web hosting agreement, the Customer acknowledges the Service Agreement, and agree to its terms and conditions. As referred to in this Service Agreement, "Site" refers to a World Wide

Web site and "IONYX Site" refers to the Site located at the URL <https://www.IONYX.com.au>, or any other successor Sites owned or maintained by the Company.

8. Web Hosting

The client understands that any web hosting services require a separate contract with the web hosting service. The client agrees to select a web hosting service which allows the Company full access to the website via FTP, a MySQL database if required by the Company, and access to a web hosting control panel. Other access or tools may be required by IONYX, and they will be provided or paid for by the client. The Company is a provider of suitable web hosting services. It is recommended that the Company be used as the web hosting service.

9. Copyrights and Trademarks

The Customer represents to the Company and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to the Company for inclusion in web pages are owned by the Customer, or that the client has permission from the rightful owner to use each of these elements, and indemnifies, will hold harmless, protect, and defend the Company and its subcontractors from any claim or suit arising from the use of such elements furnished by the Customer.

10. Electronic Commerce Laws

From time-to-time government entities enact laws and levy taxes and tariffs affecting Internet electronic commerce. The Customer agrees that the client is solely responsible for complying with such laws, taxes, and tariffs, and will indemnify and hold harmless, protect, and defend the Company and its subcontractors from any claim, suit, penalty, tax, or tariff arising from the Customer's exercise of Internet electronic commerce.

11. Copyright to Web Pages

- (a) Copyright and moral rights to the finished assembled work of web pages including photos, and graphics produced by the Company (**Finished Website Product**) is owned by the Company.
- (b) Upon final payment of this contract, the Customer is assigned an irrevocable, sublicensable royalty free licence to the rights to use and exploit the Finished Website Product.
- (c) Rights source code, work-up files, and computer programs are specifically not transferred to the client and remain the property of their respective owners unless agreed to by the Company.
- (d) The Company and its subcontractors retain the right to display graphics and other web design elements as examples of their work in their respective portfolios.

12. Website Built & Online Marketing Accreditation

All websites built by the Company will include an accreditation link. For example, "This website was built by IONYX" or a similar variation. These links appear in the footer of all web pages unless otherwise agreed on. There is a fee of \$1,000.00 inc GST to remove any on page accreditation. By signing up, the Company have the rights to use the Customer's project for promotional and portfolio purposes unless otherwise agreed on.

13. Initial Payment and Refund

Web development projects begin with a non-refundable initial payment. No portion of this initial payment will be refunded.

The amount of the non-refundable initial payment will be specified in the Quote. The customer acknowledges and agrees that such non-refundable initial payment is a fair reflection of the time and

opportunity cost incurred by the Company.

PART C – Terms applying to Web Hosting Services

14. Formation of Service Agreement

- (a) Where the Customer wishes to acquire Services from the Company:
 - (i) The Company will issue a Quote to the Customer;
 - (ii) Unless otherwise expressly stated in the Quote, written Quote shall expire automatically thirty (30) days from the date stated on the Quote and will lapse if the Customer fails to accept within that period. After that time, the Company may have to issue a revised Quote.
- (b) Upon accepting and Quote and making payment, an agreement between the parties is formed, comprising of Part C and Part D of these Sales Terms (the **Service Agreement**).

15. Appropriate Use of The Service

The Company makes no effort to edit, control, monitor or restrict the content of data other than as necessary to provide such Services.

- (a) Customer Content – Customer agrees that it will not distribute, electronically transmit or display any materials supplied by Customer – or through Customer by a third party – to any IONYX server in connection with Customer’s use of the Services which:
 - (i) violate any state, federal or foreign laws or regulations
 - (ii) infringe on any Intellectual Property Rights (e.g. copyright, trademark, patent or other proprietary rights) of IONYX or any third party;
 - (iii) are defamatory, slanderous or trade libellous, threatening or harassing content of any type;

- (iv) proxy server software (any type) used to hide users IP or cache content;
 - (v) are discriminatory based on gender, race, age or promotes hate;
 - (vi) contain viruses or other computer programming defects which result in damage to IONYX, it’s servers or any third party.
- (b) Spam Policy – The Customer shall not use our Services for chain letters, junk mail, spamming, bulk mailing (more than 100 recipients) or any use of distribution or mailing lists to any person who has not given specific permission to be included in such a process. The Customer also shall not engage in any unsolicited email practices that mention or reference any domain hosted on the Company’s servers or parked on the Company’s DNS servers.
 - (c) Server Loads – Customer agrees that any hosting account that uses excessive CPU or Memory resources (25% or more) for a sustained period of time (10 minutes or more) may be suspended at any time without notice. The Company reserves the right to terminate sites that are repeatedly using excessive resources at any time with prior notification. The Company will provide the offer to upgrade the site to a larger hosting plan on The Company’s services.
 - (d) Back-Up Files and Processing – The Company takes steps to safeguard the IONYX Servers and the data contained there-in, however IONYX will not be responsible for any loss of Customer data stored or intended to be stored on the IONYX Servers and/or back-up devices. The Customer will not be entitled to any form of compensation from the Company in the event of data loss. The Customer is responsible for its own backups. Whilst the Company actively performs a variety

of backups, there may be times when the backups fail or become unavailable. As such the final responsibility for all your data stored on IONYX Servers is ultimately your own. By acknowledging and signing a web hosting agreement you release IONYX from any legal action in the event of data loss and you agree that you will not be entitled to any form of compensation for said loss.

- (e) Software Updates – The Customer agrees that applications and scripts running on the server are the responsibility of the Customer and must be kept reasonably up-to-date. Failure to do so may expose our servers to possible exploits.

PART D – Terms applying to all Services

16. Nature of Quote

- (a) All monetary amounts stated in the Quote are in Australian Dollars, and all payments will be made in Australian Dollars (unless otherwise specified in writing).
- (b) The Price contained in the Quote relevant to the Service Agreement is fixed for the scope of Services expressly set out in the Quote. The Company will do the work described in the Quote. The Company's responsibility to the Customer is limited to that work, and any other work the Company agree in writing to do.
- (c) The Customer agrees that where the Company, following the commencement of Services, considers that additional work, parts or other materials are required for the Services which are not provided for in the Quote, the Company may in its absolute discretion, cease providing the Services the request that the Customer accepts a revised Quote in respect of the Services. The Customer acknowledges and agrees that it must make payment for any Service

performed by the Company prior to the issuance of the revised Quote.

- (d) Where the Customer accepts the Company's revised Quote, the revised Quote will be deemed to be effective for the purpose of the Service Agreement.
- (e) Where the Customer does not accept the Company's revised Quote, then:
 - (i) the Company will continue to provide the Services as set out in the original Quote
 - (ii) the Customer releases the Company from, and will indemnify, keep indemnified and hold harmless the Company in respect of all claims arising with the Customer's decision not to undertake the additional scope of work.
- (f) The major variables that will affect the timely completion of work, include:
 - (i) anything outside of the Company's control that causes a delay or causes the Company's work to be protracted.
 - (ii) delays on approval of concepts from the Customer.
 - (iii) additional requests that are outside the original scope of work that requires more time.
 - (iv) additional artwork updates required for unforeseen reasons.
- (g) You may accept a Quote we give to you:
 - (i) in writing, whether by email or otherwise;
 - (ii) orally;
 - (iii) by giving us further instructions;
 - (iv) by paying any invoice we render in a matter; or
 - (v) by paying any deposit or other amount we request from you.

17. Legal Disclaimer

The Services provided by the Company may come with guarantees and warranties that cannot be excluded under the CCA, ACL and the FTA. The Customer acknowledges that no other guarantees or warranties are given by the Company in respect of the Services provided.

Nothing in these terms and condition is intended to have the effect of contracting out of any applicable provisions of the CCA, ACL or the FTA, except to the extent permitted by those Acts as applicable.

To the extent permitted by the CCA, ACL and FTA:

- (a) the Company does not warrant that the functions contained in these web pages, or the Internet website will meet the Customer's requirements or that the operation of the web pages will be uninterrupted or error-free.
- (b) The entire risk as to the quality and performance of the web pages and website is with the Customer. In no event will the Company be liable to the Customer or any third party for any damages, including any lost profits, lost savings or other incidental, consequential or special damages arising out of the operation of or inability to operate these web pages or website, even if the Company has been advised of the possibility of such damages;
- (c) Without limiting the generality of the foregoing, IONYX specifically disclaims any warranty that:
 - a. the services will be uninterrupted or error-free;
 - b. defects will be corrected as soon as possible;
 - c. there are no viruses or other harmful components; and
 - d. the security methods employed will be sufficient.
- (d) In no event shall the Company be liable for damages resulting from loss of data, profits, use of any Company's

products or services, or for any incidental, indirect, punitive, or consequential damages in connection with this agreement or in connection with any products or services provided hereunder. In no event shall the Company's cumulative liability exceed an amount greater than one hundred dollars (\$100.00).

The Customer will indemnify and hold the Company harmless against any claims by third parties, including all costs, expenses and legal fees incurred by the Company arising out of or in conjunction with the Customer's performance, alleged breach or breach of this agreement. If any provision of this agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this agreement and shall not affect the validity and enforceability of any remaining provisions.

18. Completion Date

To be able to achieve the project within a reasonable timeframe, the Customer agrees to supply materials i.e. Corporate branding promotional materials, logos in a suitable format, make available hours for meeting and to deliver key information promptly for the Company to complete work on schedule. Failure to do so will cause a project to be delayed and other projects will take priority according to the timelines that need to be maintained.

19. Hourly Rate

Absent of agreement otherwise, the Company's standard hourly rate is charged at \$160/hour ex GST. The Company may change its hourly rates at any time. The Company will notify the Customer before any change occurs.

20. GST

The Customer must pay any GST amount that the Company must pay in connection with the Services. The GST amount will be specified in the Invoices.

21. Payment

	any late fees already incurred).
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21.1 Invoicing

The Company will invoice the Customer for the Services (the Invoice) from time to time and in any event in such manner as set out in the Quote, with each Invoice setting out the Price of Services supplied.

If the Customer still have not paid the total amount for any invoices after the Company sends the Customer a reminder, the Company can refer your debt to a debt collection agency after a 60-day period. If the Company do so, the Customer must pay any costs that the Company incur in connection with the recovery of the unpaid fees (including the agency’s fees and any legal fees).

21.2 Payment Terms

- (a) Subject to Clause 21.3, the Customer must pay the Price of the Services supplied to the Customer within 7 days from the date of the Invoice.
- (b) If payment in respect of an invoice has not been received by the Company within 30 from the date it was due and payable, the Company may without notice to you either:
 - a. suspend any and all Services provided to you, including your website and email activity until the balance is paid; or
 - b. terminate this agreement.
- (c) The Company must within 5 business days, reinstate the Services suspended pursuant to clause 21.2(b) upon the Customer:
 - a. making payment in full to the Company of all outstanding invoices; and
 - b. paying a reinstatement fee of \$395 plus GST.

21.4 Progress Payments

The Company may request that the Customer make one or more upfront progress payments in respect of particular Services.

21.5 Manner of Payment

In respect of amounts owing to the Company under this document, the Company will:

- (a) produce a receipt for the Customer and debit the Customer’s credit card/bank account (when such information is provided by the Customer), or
- (b) produce an invoice which will be delivered to the Customer by email with different types of payment methods.

21.3 Late or Non-Payment Fees

If payment is not made by the Customer when due, the Company may charge a late fee of:

Unpaid Amount	Late Fee
Less than \$100	\$15 (no GST payable)
More than \$100	\$15 plus Overdue Rate on a daily basis, calculated the unpaid amount (including

22. Performance and Delivery

After completion and confirmation of satisfaction by the Customer (whether express or implied) of any Service as set out in the Quote, subsequent increase or variation in the work will incur a fee of \$160/hour ex GST.

23. Assignment of Project

The Company reserves the right to assign subcontractors or third-party providers for any project to ensure the right skill for the work as well as to meet the scheduled Completion Date.

24. Charge and Indemnity

- (a) The Customer charges all of their present and after acquired real and personal property in favour of the Company to secure the payment of all monies and the performance of all obligations under these terms and conditions.
- (b) The Customer agrees to indemnify, and keep indemnified, on a full indemnity basis, the Company for all losses and costs incurred by the Company by reason of a failure of the Customer to comply with its obligations under this document, including but not limited to all enforcements costs incurred by the Company in procuring the performance of either the Customer's obligations under this document, including but not limited to referral to a debt collection agency, solicitor's and court costs, or any other enforcement costs that the Company determines is required.

25. Term & Termination

- (c) Subject to the terms and conditions hereof, this Service Agreement shall be effective on the date you register for the Services and shall continue in effect on a month-to-month basis unless otherwise specified in the Quote (the "Term") unless terminated earlier pursuant to the provisions of this Clause 25.
- (d) Either party will have the right to terminate this Service Agreement upon 30 days' notice in writing to the other party.
- (e) Terms and Conditions under Part D shall survive termination or expiration of this Service Agreement.
- (f) To the extent permitted by law, the Company reserves the right to refuse service to anyone.
- (g) Despite any termination of this document by the Customer, the Customer shall remain responsible

for any outstanding fees owed to the Company and agrees to pay any, and all fees incurred by Customer up to and including the date of termination.

- (h) Cancellation fee – If the Customer is on a fixed-length agreement and cancels the service or terminates this agreement before the end of the minimum term, the Company will charge the Customer a cancellation fee should one be specified in the Quote.

26. Service Agreement

If any of the provisions, or portions thereof, of this Service Agreement are found to be invalid under any applicable statute or rule of law, then, that provision notwithstanding, this Service Agreement shall remain in full force and effect and such provision or portion thereof shall be deemed omitted. This Service Agreement (including the Exhibits, attachments and/or addenda, if any) represents the entire agreement of the parties with respect of the subject matter hereof and supersedes all prior and/or contemporaneous agreements or understandings, written or oral between the parties with respect to the subject matter hereof.

This Agreement and the rights granted and obligations undertaken hereunder may not be transferred, assigned or delegated in any manner by Customer, but may be so transferred, assigned or delegated by the Company.

Any waiver or any provision of this Service Agreement, or a delay by any party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver nor create an expectation of non-enforcement of that or any other provision or right. In any legal proceeding between the parties under this Agreement, the prevailing party shall be

entitled to recover its costs, expenses and reasonable attorneys' fees.

This Service Agreement and the Company's policies are subject to change by the Company without notice. Continued usage of the Services after a change to this Service Agreement by IONYX or after a new policy is implemented and posted on the IONYX Site constitutes your acceptance of such change or policy. The Customer is encouraged to regularly check the IONYX Site for any changes or additions.

27. Inconsistency

Where there is any conflict or inconsistency between the provisions of this document and the Quote, the terms of the Quote shall prevail to the extent of any conflict or inconsistency.

28. Governing Law and Jurisdiction

The Service Agreement is governed by and construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

29. Definitions

The following definitions apply in this document unless the context dictates otherwise:

ACL means the Australian Consumer Law contained in Schedule 2 of the CCA as amended, re-enacted or replaced, and includes any subordinate legislation.

CCA means the Competition and Consumer Act 2010 (Cth) as amended, re-enacted or replaced, and includes any subordinate legislation.

Company means IONYX Pty Ltd ABN 22 605 061 327

Customer means the party defined as Customer in our Quote.

Finished Artwork means the final artwork accepted by the Customer including photos, and graphics produced by the

Company pursuant to the terms of a Quote.

FTA means the Fair Trading Act 1989 (Qld) or the Fair Trading Act 1987 (NSW) (as the context requires) as amended, re-enacted or replaced and includes any related or subordinate legislation.

Implementation Phase means such point where the Company considers (acting reasonably) that the design phase is substantially complete and the Company is working towards the completion and launch of the website.

Intellectual Property Rights means all intellectual property rights of whatever nature including all rights conferred under statute, common law or equity, including all copyrights, patent rights, trademark rights (including any goodwill associated with those trademark rights), design rights and trade secrets.

Loss means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment and includes legal costs and expenses on a solicitor/client basis.

Overdue Rate means on any date a rate equal to 10% per annum.

Price means price of the Services specified by the Company.

Progress Payment means that portion of the Price, if any, payable in accordance with Clause 21.4.

Project Brief means a document agreed to by the Customer and the Company outlining the scope of the Services and other works which are to be performed by the Company.

Quote means fixed Price of a Service to the Scope of Work provided in writing by the Company to the Customer.

Services means (a) the service as described in the Quote, plus any related goods and ancillary services which the Company supply (or to be supplied) in

connection to that services, and (b) any aspect of that service or collection of services as the context requires.