



# TERMS & CONDITIONS OF TRADE

Last revision date: 30/06/2014

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## 1. Introduction

- 1.1 This document has been created by Constructive Media to document the terms and conditions which apply to all work Constructive Media undertakes for you, the client. These terms and conditions and any which are imposed by law which cannot be excluded are the only terms and conditions which are binding upon Constructive Media.
- 1.2 Constructive Media includes its employees and related entities.
- 1.3 Constructive Media will issue a checklist of pre-requisites prior to the start of the job and must receive a Job Approval Form before work can commence. Constructive Media reserves the right to accept or reject in its absolute discretion any Job Approval Form and/or Purchase Order.

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## 2. Products and Services

- 2.1 Constructive Media will provide the products and services as outlined in the Quotation and will use all reasonable commercial efforts to provide these products and services in an efficient and timely manner, using necessary skill and expertise to a professional standard.
- 2.2 All visuals created by Constructive Media are accepted to be for illustrative purposes only, and are only to be used as a guide to visualise the proposed final product prior to its completion.
- 2.3 All information technology (IT) services provided by Constructive Media are performed in the best interests of the client, however, no liability is assumed for errors leading to data loss or corruption or other loss or damage.
- 2.4 From time to time Constructive Media will advise you on hardware and/or software choices to make. These recommendations are based on our expertise and knowledge of the products and services available at the time, however Constructive Media does not assume responsibility for unintentionally incorrect information supplied.
- 2.5 All hardware installations provided by Constructive Media are performed in the best interests of the client, however no liability is assumed in the case of data loss or corruption or other loss or damage. A warranty period for this hardware is usually specified in the quotation.
- 2.6 If an estimated time frame is specified in the Quotation, that date is an estimate only and Constructive Media is not liable for any delay in delivery.
- 2.7 Risk passes to you upon delivery of the products or services. Upon delivery of the products and services by Constructive Media, you must immediately inspect the products and services and within 7 days after the date of inspection give written notice to Constructive Media with particulars of any claim that a product or service is not in accordance with the Quotation and Job Approval Form. If you fail to do so, then to the extent permitted by law the products and services are deemed to have been accepted by you and you must pay for them in accordance with clause 6 below.
- 2.8 To the fullest extent permitted by any law, all conditions and warranties implied by law arising out of the provision of the products and services by Constructive Media, are excluded. Constructive Media does not limit or exclude the application of any provision of any statute where to do so would contravene that statute or cause any part of this clause to be void. To the extent permitted by law, the liability, if any of Constructive Media arising from the breach of the conditions or warranties is, at Constructive Media's option, limited to and completely discharged in the case of products, by either the supply by Constructive Media of equivalent products or the repair or



replacement by Constructive Media of the products and in the case of the services, and any advice, recommendations or information, by supplying the services, advice, recommendations or information again and in any event, will not exceed the project value in correcting any failure, defect or deficiency of any kind in the products or services provided.

- 2.9 Except to the extent provided in this clause, Constructive Media has no liability to any person for any loss or damage, consequential or otherwise, suffered or incurred by that person in relation to the products or services or advice, recommendations, information or services provided by Constructive Media.

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### **3. Confidentiality and Privacy**

- 3.1 Constructive Media and you acknowledge that they may each deal with each other's confidential information and documents in the course of Constructive Media providing the products and services. As such, both parties agree to hold and to ensure that their officers, employees, agents, contractors or related companies hold such information in strict confidence, and not divulge information to any party, person, or body except as may be required by the law or judicial process or agreed by the other party in writing.
- 3.2 A separate non-disclosure agreement can be arranged if necessary and on request.
- 3.3 Your privacy rights are very important, and Constructive Media will not distribute, sell, forward, or supply your e-mail address or other personal details to any other third party without your permission. Constructive Media does not participate in any unsolicited email spam schemes.
- 3.4 Constructive Media reserves the right to use any of the visuals or code produced for its clients for promotional purposes only.

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### **4. Copyright**

- 4.1 The copyright in all visuals and code produced by Constructive Media is owned by Constructive Media and may not be reproduced, distributed, or duplicated outside of the original agreed intended purposes of production without prior written permission from the Chief Executive Officer (CEO) of Constructive Media. The original design and specification of any structural property development supplied to Constructive Media remains the property of the originating client, and Constructive Media only maintains the rights to the visuals produced from these designs.
- 4.2 Animated visuals ("animations") produced by Constructive Media may only be broadcast to the agreed intended person or party as specified in the job specification. No modifications to the broadcast material are allowed unless stated in the job specification and agreed by Constructive Media.

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### **5. Electronic Mail/Web site information**

- 5.1 If you ask Constructive Media to transmit any document to you electronically, you agree to release Constructive Media from any claim that you may have as a result of any unauthorised copying, recording, reading or interference with that document after transmission. Precautions are taken to check that all documents are virus free however, Constructive Media is not responsible for any damage caused to your system.
- 5.2 For your easy accessibility, Constructive Media may include links on its web site to other sites on the Internet that are operated by third parties. Constructive Media is not responsible for any content contained on sites that are linked to or from the Constructive Media web site.



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## 6. Fees, expenses and payment terms

- 6.1 Time based fees, if any, referred to in Quotation will remain valid for the duration stated in the Quotation. If no period is stated on the Cost Estimate, this period is deemed to be seven (7) days.
- 6.2 Cost estimates are indicative only and are subject to change when necessary. If a cost estimate needs changing, you will be notified of this immediately, and Constructive Media will seek approval prior to the application of any further costs or charges.
- 6.3 Constructive Media bases its cost estimates and quotations on the estimated number of hours required to fulfil the requirements of the job, together with an amount for disbursements. Any changes to the job requirements that increase the number of hours required as stated in the original estimate or quotation will incur additional costs and may also impact the final deadline date for the work requested.
- 6.4 Quotations are inclusive of estimated disbursements, but if the cost of these disbursements rises due to external factors not controlled by Constructive Media, you will be advised of the additional cost. At all times Constructive Media will attempt to anticipate any cost increases of material used and will discuss and agree those costs with you.
- 6.5 All invoices are to be paid within fourteen (14) days of the date of the invoice. Failure to meet this date may result in administration fees and interest being charged on any outstanding balances at 18% per annum from the due date for payment until the date of actual payment, or referral of the debt to debt collectors and/or lawyers at your cost. Any payments tendered by you must be applied first as reimbursement for any collection costs incurred, second in payment of any interest charged and third in satisfaction or part satisfaction of the oldest portion of your account.
- 6.6 Constructive Media will issue invoices for fees and any disbursements in instalments as the work progresses.
- 6.7 Constructive Media reserves the right to cease work for you until all outstanding invoices are paid in full.
- 6.8 To the extent that any supply made by Constructive Media is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided subject to Constructive Media delivering a valid tax invoice to the recipient of the taxable supply.
- 6.9 The Customer is liable for all taxes (excluding income tax), duties, excises, levies, fees and charges including foreign exchange fees.
- 6.10 Notwithstanding that risk passes to you upon delivery of the products or services, all products or services will remain the property of Constructive Media until full and final payment has been received in cleared funds by Constructive Media (excluding the copyright as specified in clause 4 above which remains the property of Constructive Media). The Customer agrees that Constructive Media's rights under this clause may constitute a security interest for the purposes of the Personal Property Securities Act 2009 (Cth) (PPSA) and Constructive Media is entitled to register such interest(s) at its discretion. If notified by Constructive Media, you must at your cost take all steps considered necessary or desirable by Constructive Media to ensure its security interest is enforceable and to perfect or better secure the position of Constructive Media in respect of the security. Constructive Media is not obliged to give any notice or provide copies of any documents under the PPSA (including notice of a verification statement) unless the notice is required by law and cannot be excluded. The Customer must promptly inform Constructive Media of any change to information that it provides to Constructive Media under this clause. The Customer may not disclose any information of a kind referred to in section 275(1) of the PPSA that is not publicly available.



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**7. Miscellaneous**

- 7.1 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is delayed or prevented.
- 7.2 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 7.3 The law of Western Australia governs these Terms & Conditions. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and of the Commonwealth of Australia.