



Leading Edge - Terms & Conditions of Business

These are the Terms and Conditions of Service for Leading Edge Design & Print Group to be known as Leading Edge or the Company for the purposes of this document (T/A Leading Edge Creative, Leading Edge Print Solutions, Leading Edge Web and Leading Edge Graphics) (ABN 75 116 2460863) and all clients who sign to engage our services for any design, print or web related jobs.

Consulting Services

1. Leading Edge will provide consulting services to the Customer relating to the creation or modification of a Design Work for Print or Website production. The specific nature of the services to be provided by Leading Edge will be as specified in a **Quote** for basic works or the **Project Brief** in more complex matters. Subject to any lawful restraint imposed upon it by any other party (such as an obligation as to confidence), Leading Edge will make available to the Customer all knowledge, information and expertise in its possession in performing the Services. If the Customer wishes Leading Edge to perform any services other than those specified in the this original document (including without limitation to provide any additional functionality to web sites or items to a design schedule or volumes or types of print to a printing order) or to provide further or other Products or software, then Leading Edge shall be entitled to quote the Customer separately for the provision of those services or the provision of those products or software. If the Customer accepts that quotation then the provisions of this Agreement will apply to the provision of those additional services, products or software.
2. Unless otherwise agreed in writing by the parties, the term of this Agreement will commence on the date specified in the Schedule.
3. Unless specifically stated as a fixed price quote any cost estimates that are or have been given by Leading Edge Web are estimates only. Actual time spent and Products supplied may be used as the basis for billing.
4. In all instances once the amount paid in a deposit has been exceeded in time spent by Leading Edge, the company will bill per month. If an outstanding Invoice is unpaid for one week we will in all instances reserve the right to stop work until the outstanding monies are paid.
5. If a project has been put on hold and remains on hold for 4 weeks we will deem the project closed and the amount owing to date will be billed and due immediately.
6. A closed project can be re-opened but a nominal fee of \$200 (+GST) will be charged to find and reactivate files from our data storage centre and re-familiarise all parties at Leading Edge with the project.

Products

7. Leading Edge may also supply the Client with Products as ordered by the Client and agreed by Leading Edge from time to time. In the context of these Terms, "Products" means any print, hardware and/or third party software provided to the Client by or on behalf of Leading Edge pursuant to the Agreement in place.





Reporting and Meetings

8. The Client shall make themselves or their employee (specified in the Schedule or such other person as the Client shall nominate in writing) (the "Client Contact") available to meet with Leading Edge when reasonably required by Leading Edge Web for the purposes of discussing the status of the Services. Leading Edge will meet with the Customer Contact (by remote communication facility if necessary) at a regularity agreed in the schedule and report to the Customer on the status of the Services.

Consulting Rates and Other Expenses

9. Leading Edge Web will provide Services to the Customer and will be entitled to charge the Customer for such Services at the rates specified in the Schedule.

10. Leading Edge Web shall be entitled to provide the Services remotely from its own premises and will not be required to attend the Customer's premises more than the agreed number of times in the schedule (e.g. to demonstrate use of a Content Management System on the Client's machine). If Leading Edge is required to attend the Customer's premises for any reason pursuant to this Agreement, the Customer will reimburse Leading Edge for reasonable transport and/or accommodation expenses incurred by Leading Edge Web in doing so. However this does not include transport or accommodation expenses where the Customer's premises are located within 25kms of Melbourne CBD.

11. The Customer authorises Leading Edge Web to obtain access to the Customer's computing facilities if necessary to complete the project, using the remote means of access if necessary.

12. Leading Edge Web will not use the Means of Access (or any other methods of remote access) to access the Facilities for any purpose other than to provide the Services. However, Leading Edge shall be permitted to gain remote access to the Facilities for lawful purposes using any publicly available means (such as the World Wide Web), which do not require special authorisation.

13. Leading Edge Web will take the following steps to ensure the security of the Facilities (insofar as the use of Leading Edge's systems and the Means of Access are concerned):

- a) ensuring that no passwords are stored in easily recognisable form on Leading Edge's own systems in circumstances where a breach of Leading Edge's own internal security may reveal them;
- b) ensuring that only those employees and contractors of Leading Edge Web who are required to access the Facilities using Leading Edge Web's systems and the Means of Access are able to do so;
- c) ensuring that the Facilities are not capable of being accessed by a system or user, which transmits Leading Edge's own systems, except as permitted by the signed Agreement.

14. The Customer indemnifies Leading Edge Web against any loss or damage arising directly or indirectly from any unauthorized use of the Facilities to which Leading Edge has been granted remote access, provided that such unauthorised use has not arisen as the result of any material breach by Leading Edge of its own obligations under Clause 10 of these Terms.

15. The Customer will also reimburse Leading Edge for all expenses incurred by Leading Edge on the Customer's behalf or in carrying out its obligations under any Agreement. (E.g. print, Domain Registration, Hosting, Payment Gateway Set-up etc.)





16. The Customer will pay Leading Edge for the cost of any Products (including any licensing that Leading Edge is required to pay to obtain a sub-license in favour of the Customer for any third party software) together with Leading Edge's own charge that it levies for handling and/or obtaining any relevant sub-licenses.

Payment of Invoices

17. To Begin working on any creative project Leading Edge require 50% (including GST) of the quoted price upfront as a deposit. With complex programming the second phase of our documentation (Requirements) Leading Edge Web will require a 10% deposit based on the Project Brief Cost Estimate (correct to 85% certainty) and signed Authorisation that we are to proceed. From there the Requirements Document will ascertain the exact costing and timeline. This will be signed off as acceptable and from this point Leading Edge will be entitled to invoice the Customer on an interim basis for each 'phase' as it is completed (or monthly if that time has elapsed first.) These progress payments for any Services performed or Products supplied during the 'phase' or the previous month (or during any earlier period which has not previously been invoiced) together with such expenses as the Customer is required to reimburse Leading Edge. Such invoices shall contain such information and detail as the Customer may reasonably require to permit the Customer to account for the Services and Products (for instance, by attaching copies of any time sheets) reasonably prescribed by the Customer.

18. All invoices rendered by Leading Edge Web are payable within seven (7) days from the date of invoice. The Customer agrees to pay Leading Edge Web in full within this time period. Once paid for the 'Phase work' will become the Property of the Client as per Clauses 18 - 22 Intellectual Property.

19. If the Customer fails to pay any invoice by the due date for payment, then without prejudice to Leading Edge's rights under these Terms, the Client shall also pay Leading Edge Web interest on the outstanding amount at the rate of 10% per month.

Confidentiality

20. Leading Edge Web will not disclose to any third party or use other than for the purposes of the Agreement any knowledge or information imparted to or obtained by it during or in connection with the fulfilment of the Agreement which is of a secret or confidential nature relating to the business, equipment, processes relating to the equipment, the products, services, process or business strategies offered or employed by the Customer. This obligation of confidence will cease to apply in relation to information that Leading Edge is required to disclose by any law, or which becomes part of the public domain other than as the result of a breach by Leading Edge of its obligations of confidence under the Agreement.

Intellectual Property

21. Our Terms leave full Copyright with Leading Edge for all designs, concepts, sketches or parts of artistic work used in the conceptual or creative process however basic or complex including all customised unique systems, scripts and code produced by Leading Edge. Upon payment in full for the Services provided by or on behalf of Leading Edge Web pursuant to the Agreement, Leading Edge Web grants the Customer a non-exclusive and non-transferable perpetual license to use the Intellectual Property for the Customer's own business purposes, and in the case of the third party software, will obtain a sublicense in favour of the Customer in similar terms.





In some instances for an additional payment normally a percentage of the project total (paid at the end of the project) Leading Edge may agree to transfer all Intellectual Property and the Copyright and all other rights relating to any artwork or software provided to the Customer by or on behalf of Leading Edge pursuant to the Agreement to become the property of the Client or where applicable its licensors.

22. Leading Edge Web warrants to the Customer that to the best of its knowledge, it has the right to grant the licenses referred to in these Terms, and the use by the Customer of any concepts or software provided by Leading Edge will not infringe the rights of any third party.

23. Leading Edge Web also grants the Customer the right to copy the Intellectual Property for the purposes of staff and subcontractor education and system backups. However, the Customer must not copy any of the Intellectual Property for any other purposes. Especially for the provision to and business gain of any other Media Organisation (Web Company, Design company or Advertising Agency or their derivatives.)

24. The Customer must not de-compile, disassemble, decrypt, extract or otherwise reverse engineer any part of any software that is provided to the Customer by Leading Edge without Leading Edge's prior written consent. This includes selling of the System to a third party for such use.

25. The Customer must hold any software (in source and/or in object code) and other materials provided to the Customer by Leading Edge Web confidential. The Customer must not disclose any of those materials to any third party without Leading Edge's prior written consent. The Customer must also take all reasonable steps within its power to protect the Intellectual Property, including during its sale to inappropriate organizations (see Clause 20).

Liability

26. Except for express undertakings to indemnify and any warranties set out in these Terms:

a) To the extent permitted by the law, Leading Edge expressly excludes all conditions and warranties whether express or implied.
b) Notwithstanding any other provision in these Terms, in no event will Leading Edge be liable to any party including the Client for any indirect, punitive, special, incidental or consequential damage in connection with or arising out of this Agreement (including for loss of profits, use, data, or other economic advantage), however it arises, whether for breach of the agreement or in tort, and even if Leading Edge has been previously advised of the possibility of such damage. Further, liability for such damages shall be excluded, even if inclusive remedies provided hereunder fail their essential purpose. The Customer will indemnify Leading Edge and keep it indemnified from and against any claims by any third party for or in respect of such damages.

27. Certain provisions relating to the trading of goods and services and other statutes, rules and regulations in Australia may imply certain non-excludable warranties or conditions. To the extent that they are not permitted to be excluded, Leading Edge's liability for breach of such conditions or warranties and the Customer's sole and exclusive remedy in relation to such breaches shall be limited to:

a) in the case of Products or software or other goods supplied by Leading Edge, at Leading Edge's option:
i) the replacement or repair of those Products or software or goods, or the supply of equivalent goods; or





- ii) the payment of the cost of replacing or repairing the Products or software or goods or of acquiring equivalent goods; and/or
- b) in the case of Services, at Leading Edge's option:
 - i) supplying the Services again; or
 - ii) the payment of the cost of having the Services supplied again.

28. The Customer is solely responsible for the proper backup and protection of all of its software and data, as well as the implementation and maintenance of firewalls and security measures (including proper virus control) in relation to the Facilities.

Assistance and Facilities

29. The Customer will provide Leading Edge Web with all reasonable assistance and facilities free of charge (including without limitation of the Means of Access and the other Items referred to in the Schedule, office facilities, and liaison with the necessary officers and employees of the Customer) in order to permit Leading Edge Web to efficiently provide the Services.

No Poaching

30. The Customer undertakes to Leading Edge that it will not for a period of two years from the termination of this Agreement entice away or endeavour to entice away from Leading Edge any employee of Leading Edge. The Customer acknowledges that the prohibition and restriction contained in this clause are reasonable in the circumstances and necessary to protect the business of Leading Edge.

Agreement Non-exclusive

31. The Customer acknowledges that Leading Edge is providing Services to the Customer on a non-exclusive basis and that Leading Edge may provide services of the same or a similar nature as the Services to any other party.

Termination

32. This Agreement may be terminated in the following circumstances:

- a) By either party by giving the other party thirty (30) days notice in writing to that effect;
- b) Immediately by Leading Edge by notice in writing if the Customer fails to remedy a breach of this Agreement (including any provision as to payment) within fourteen (14) days of receipt of a notice from Leading Edge

of such breach requiring it to do so; or

- c) By either party immediately by notice in writing if the other party takes any corporate action or other steps are taken or legal proceedings are started (and are not withdrawn, discontinued or struck out within twenty-one days) for its winding up, liquidation or dissolution (other than for the purposes of reconstruction) or the appointment of an administrator, receiver, receiver and manager, official manager, Liquidator, provisional Liquidator, trustee or similar office of it or of any or all of its revenues and assets ("Insolvency Event"), and such Insolvency Event remains in existence in respect of such party as the time of service of the Notice.

33. On termination of this Agreement however occurring, all moneys unpaid by the Customer (for completed work) pursuant to this Agreement will immediately become due and payable. If such moneys remain unpaid for a period of thirty days then (without prejudice to any other rights that Leading Edge may have for breach of this Agreement or otherwise) Leading Edge Web will be entitled to retake possession of the Products and to disable any software provided pursuant to this Agreement (including by remote means).





34. The Client's obligations (including any obligations to indemnify) under clauses 11, 18 to 23 inclusive (Intellectual Property), 24 to 26 inclusive (Liability), and Leading Edge's obligations under clause 17 (Confidentiality) shall survive the termination of this Agreement for whatever reason.

General

35. Any notice required or contemplated by the Agreement shall be deemed to have been duly given if it is in writing, properly addressed and delivered personally or mailed by registered or certified mail, postage prepaid addressed or by fax or electronic mail to the Customer or Leading Edge at the address set out in the Schedule or the Agreement or such other address nominated by a party in writing.

36. The Customer may not assign any of its obligations under this Agreement without the prior written consent of Leading Edge. However Leading Edge may arrange for subcontractors to perform any of Leading Edge's obligations under this Agreement.

37. Leading Edge Web will not be liable to the Customer or to any third party for any non-performance or delay in the performance of its obligations under the Agreement, if events or conditions beyond its reasonable control cause the non-performance or delay and Leading Edge Web give the Customer prompt notice thereof. In no event will this provision affect Customer's obligation to make payments to Leading Edge under the Agreement except in respect of Services that are unable to be performed by Leading Edge, until they can be performed.

38. A failure, delay, relaxation or indulgence by either Party in exercising any right, power or privilege conferred on the Party by the Agreement shall not operate as a waiver of the power or right. A single or partial exercise of any right, power or privilege hereunder does not preclude the further exercise of the same right or the exercise of any other right hereunder. A waiver of a breach does not operate as a waiver of any other breach.

39. If any part of this Agreement is held by a court of competent jurisdiction to be invalid, then;
a) Where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
and
b) In any case the offending provision must be severed from the Agreement the remainder of the Agreement shall continue in full force and effect unless such reading down or severance affects the basic nature of this Agreement.

40. This Agreement shall be governed by and must be construed in accordance with the laws of Victoria, Australia, and the Customer irrevocably submits to the nonexclusive jurisdiction of the courts of that State.

