

# BLACK MOUSE DESIGN TERMS OF BUSINESS & SERVICE

These Terms of Business and Service cover the conditions of working with Black Mouse Design as a client and details specific terms for the supply of service relating to Graphic Design, Website Design, Website Maintenance and Strategic Planning.

Acceptance of the quote / Proposal will constitute acceptance of these Terms of Business and Service.

**Abbreviations:** Black Mouse Design: means us / we / Black Mouse Design (ABN 35 627 469 927), Client: means you / the customer / the client.

## 1. DEFINITION OF TERMS

**a. Domain Name:** The root address of a website, e.g. www.example.com. All such names must be registered with the appropriate naming authority, which will usually charge a fee.

**b. Copyright:** Refers to laws that regulate the use of the work of a creator, such as an artist, photographer or author. This includes copying, distributing, altering and displaying creative, literary and other types of work.

**c. Downtime:** Time when the website is not accessible via the Internet. This may be because of a technical failure of the Host or because work is being carried out on the site.

**d. Host:** The company on whose system the website physically resides.

**e. Link, Hyperlink:** A 'clickable' link embedded on a web page which may take the form of a graphic or text.

**f. Search Engine:** A website which contains a directory of websites on the internet enabling users to find websites by subject matter classification.

**g. Website:** A collection of web pages and associated code which forms an integrated presence.

## 2. BUSINESS TERMS

**a. Contract:** The instruction for work to commence and/or acceptance of a quote / proposal and/or the payment of the required deposit by the Client constitutes a contractual agreement between the client and Black Mouse Design. These actions also indicate that the Client has read and agreed to the Terms of Business and Service outlined in this documentation.

**b. Start Date of Works:** Work on projects will commence within ten (10) working days from receiving approval of the quote / Proposal and, if requested, the date the required deposit is paid and cleared unless a prior agreement exists.

**c. Agreement of Delivery:** Acceptance of Proposals, Agreements and deposits by Black Mouse Design constitutes our agreement to deliver the services as outlined in the quote / Proposal subject to these Terms of Business and Service and in compliance of these terms.

**d. Delivery Schedule:** Black Mouse Design agrees to deliver work in a timely manner and inform the Client of any reasons why an agreed deadline cannot be met. No compensations in financial or services are offered for projects completed after scheduled delivery dates.

**e. Supply of Materials and Instructions:** The Client agrees to provide materials, instructions and feedback in a timely, concise and professional manner, via email, SMS, online brief forms, organised Dropbox folder, etc. Verbal instructions will not suffice. Failure to do so will delay the project and may result in additional charges and/or the project being cancelled by Black Mouse Design.

**f. Cancellation:** The Client may terminate the Contract at any point but in doing so will forfeit any deposit paid. In instances where deposits were not requested and formal agreement to these terms of business were respected, Black Mouse Design reserves the right to charge for any hours worked at their hourly rate. All uncompleted work remains the intellectual copyright

of Black Mouse Design as per the Intellectual Copyright terms as within.

**g. Office hours:** Normal office hours of 9am 5pm apply Monday to Friday (AEDT). These are the scheduled working days.

**h. Overtime & requested hours:** Requested Saturday hours are charged at time and a half. Requested Sunday hours are charged at double time. Requested work after 7pm is also charged at double time. Requested hours apply when the client specifically requests for work to be done inside these hours / days.

**i. Term of Agreement:** The term of this Contract will begin on receiving approval of the quote / Proposal and will remain in full force and effect until the completion of the services, subject to earlier termination as provided in this Agreement. The Term of this Agreement may be extended with the written consent of the Parties.

**j. Independent Contractor:** In providing the services under this Agreement, it is expressly agreed the Black Mouse Design is acting as an independent contractor not as an employee. Black Mouse Design and the Client acknowledge that this Agreement does not create a partnership or joint venture between them and is exclusively a contract for service.

**k. Registration & Hosting Fees:** Black Mouse Design either refers Clients to third party businesses who supply domain registration and hosting services, or on occasions acts on the Client's behalf to place orders through these third parties. As such Black Mouse Design has no control over the costs or services provided by these third parties but does attempt to source the best options for the Client. Domain registration and hosting services need to be renewed, generally yearly or every 2 years, for a price that is outside the control of Black Mouse Design. Black Mouse Design is not responsible for any price increases or service changes made by these third parties now or in the future.

**l. Work Outside our Scope:** Any technical or specialised work specifically requested by the Client that is outside our scope or abilities may be outsourced. Black Mouse Design will aim to provide alternative solutions to match the Client's needs.

### 3. FINANCIAL TERMS & CHARGES

**a. Quotations:** The price quoted to the Client is for the cost to complete the project as detailed in the quotation.

Alterations or adverse changes to a project brief may result in a re-quote being delivered to the Client where additional charges may apply. All prices quoted are valid from 30 days of issue.

**b. Payment Options:** Payment is accepted in Australian Dollars (AUD) only. The Client will make payment to Black Mouse Design by:

- Cheque (made payable to "Black Mouse Design" and posted to PO Box 376 Mont Albert Vic 3127), or
- Electronic Funds Transfer to the following account "Black Mouse Design" Bank: National Australia Bank, Account Number: 58 2535450, BSB: 083 088, or
- Credit card (Visa or Mastercard via Paypal) (2.6% surcharge will apply)

**c. Payment Terms:** The amount invoiced is to be paid within fourteen (14) days of receiving a valid tax invoice.

**d. Late Payment Fee:** Accounts which remain outstanding for twenty-one (21) days after the date of invoice will incur an additional late payment fee equivalent to 5% of the project costs for each week payment is outstanding. If you are having difficulty paying your invoice, please get in touch as soon as you are aware of the issue, so we can discuss a solution that works for your business.

**e. Suspension of Service:** Black Mouse Design may suspend service if the Client fails to comply with any items as specified in this agreement, including failure to pay charges due, until the breach is remedied.

**f. Call Outs & Meeting Charges:** To compensate time out of our offices, where the Client requests a meeting or a call out, Black Mouse Design will apply the following charges at an hourly rate of \$100 plus GST with a minimum charge of \$100 plus GST. Time is recorded from the departure of our offices up until our return and includes the time during the meeting / call out.

**PLEASE NOTE:**

- Pre-scheduled meetings that were quoted for or included in a quote/ Proposal are excluded from these charges.
- Charges exclude any materials / Intellectual Property supplied as part of the call out and in turn such materials / Intellectual Property will be invoiced separately.

**g. Hourly rate:** The current hourly rate for non-quoted projects or call outs or meetings as described above is \$100.00 plus GST per hour.

**h. Fee increase:** Black Mouse Design may increase their fees and charges, upon giving the Client not less than 14 days' notice in writing prior to the expiration of this agreement or any renewed term and will take effect upon the commencement of the renewed term of this agreement. Either party may terminate the agreement if the new Fee changes are unacceptable.

## 4. CLIENT'S OBLIGATIONS

**a. Access:** Black Mouse Design may need access to the Client's facilities, information, website, tools and resources for and during the provision of the services. If so requested by Black Mourse Design, the Client, without charge to Black Mouse Design, will provide access to these to the extent reasonably requested by Black Mouse Design and shall co-operate with Black Mouse Design to the extent reasonably required to achieve the objectives set out in the quote / Proposal.

**b. Information:** The Client acknowledges that, in giving any opinion or advice in the course of provision of the services, Black Mouse Design relies on the information about the Client or any project described in the quote / Proposal provided to it by the Client and does not seek to establish the reliability of such information; accordingly, the Client.

The Client agrees to give Black Mouse Design prompt written notice of any change or anticipated change in the Client's financial condition, business structure or operating environment. Upon notification of such change, Black Mouse Design may terminate this agreement on written notice to the Client.

The Client will inform Black Mouse Design of any updates or changes in current programs, service, products, policies, staff etc. that may effect the provision of the service outlined in the quote / Proposal.

**c. Accuracy:** The Client undertakes to provide complete and accurate information about itself and about any such project which is or may be relevant to the service and to provide such other information as Black Mouse Design may reasonably request; and warrants that any such information provided is accurate, complete and not misleading.

## 5. CREATIVE MEDIA TERMS

**a. Intellectual Copyright:** All Intellectual Property Rights relevant to the service or software or designs or documents offered as part of the service remain with

Black Mouse Design or with the original owner. Except where specified to the contrary, no Intellectual Property Rights are transferred as part of the service. Components of the service are made available to the Client on a non- exclusive basis for use in conducting their normal course of business. Copyright of stock imagery used in web or graphic designs are represented by their own respective copyright notices and intellectual copyright.

**b. Source Files:** Charges for design work do not cover the release of copyright design files including ai, psd or any other source files. If the Client requires these files, they will be subject to a separate quotation or 'buy-out' charge.

**c. Client responsibilities with regard to copyright:** In situations where he Clients provides images, text, animations or any other content for their design materials, website or media publication(s) the Client is legally responsible for ensuring that this material does not infringe any copyright laws.

**d. Mock and draft designs:** Any mock / draft designs supplied to the Client by Black Mouse Design remain the intellectual copyright of Black Mouse Design. We reserve the right to use any un-used mocks / drafts in our portfolio and or in other design projects for you or other clients.

**e. Visuals:** All visuals of progressive development will be emailed to the Client. Please be aware that all monitors display colours differently. The cost to produce sample prints can be quoted as required.

**f. Proofing:** The Client is responsible for final proofing of artwork and web designs. Black Mouse Design check all our artwork and web designs before publishing, but the Client is responsible for final proofing. Black Mouse Design cannot be held liable for any errors found after the Client has approved artwork for print or a web design for publishing.

**g. Accreditations:** On all website design work Black Mouse Design reserves the right to credit work to Black Mouse Design with the inclusion of a worded statement and / or hyperlink where seen fit. Clients can request the exclusion of credits with prior agreement with Black Mouse Design.

**h. Warranty by Client as to Ownership of Intellectual Property Rights:** The Client will obtain all the necessary permissions, copyrights and authorities in respect of the use of all copy, graphic images, business logos, names and trademarks or any other material it supplies to Black Mouse Design for inclusion on the Website.

The conclusion of a contract between Black Mouse Design and the Client shall be regarded as a guarantee by the Client to Black Mouse Design that all such permissions and authorities have been obtained and that the inclusion of such material on the Website would not constitute a breach of the law. By agreeing to these terms and conditions, the Client removes the legal responsibility of Black Mouse Design and indemnifies them from any claims or legal actions however related to the content of the Client's site.

**i. Domain Name:** Any Domain Name obtained will belong to the Client. The Client agrees to indemnify Black Mouse Design, including any incidental costs, against any claims that a Domain Name applied for, or obtained, violates the intellectual property rights of a third party. The Client warrants that the Domain Name sought is not a trademark of a third party.

## 6. COMMUNICATION

**a. Meetings:** Where consultations are required between Black Mouse Design and the Client, charges may apply. This includes consultations which occur virtually or via telephone.

Appointments may be scheduled for planning, fact finding, discussion of strategic approach, feedback or recommendations. All appointments or meetings that are for the purposes of information or knowledge transfer are subject to being charged at the consultancy rate, minimum charge of one hour.

**b. Cancellations:** If the Client needs to cancel or reschedule a meeting, they should do so within one business day prior to the scheduled session. Black Mouse Design will make every effort to reschedule that session within five (5) business days, at a convenient time for both parties.

## 7. PROVISION OF SERVICES AND DELIVERABLES

**a. Service and deliverables:** Black Mouse Design undertakes that it will perform the services and supply the deliverables expressly described in the quote / Proposal with reasonable skill and care and in a good and workmanlike manner, and of a quality conforming to generally accepted industry standards and practices.

**b. Timing:** Black Mouse Design agrees to deliver the service and/or deliverables within a reasonable time.

Both parties will use all reasonable endeavours to meet any target date, project plan or time table referred to in the quote / Proposal.

**c. Completion of Work:** Black Mouse Design warrants completing the Work in accordance with the terms and conditions stated in this document, to the specifications previously agreed with the Client. Black Mouse Design will not charge more than the amount previously agreed unless the Client has varied the specifications of the Work since the agreement. Black Mouse Design will not undertake changes to the specifications of the Work which would increase the cost, without prior written authorisation from the Client.

**d. Supply of Materials:** The Client is to supply all materials and information required for Black Mouse Design to complete the Work in accordance with the agreed specification. Such materials may include, but are not limited to, photographs, written-copy, logos and other printed materials. Where the Client's failure to supply such materials leads to a delay in completion of the work, Black Mouse Design has the right to extend previously agreed deadlines for the completion of the Work by a reasonable amount.

**e. Approval of Work:** On completion of the Work, the Client will be notified and have the opportunity to review it. The Client should notify Black Mouse Design in writing (email will suffice), of any unsatisfactory points within 7 days of receipt of such notification. Any of the Work, which has not been reported in writing to Black Mouse Design as unsatisfactory within the 7-day review period will be deemed to have been approved. Approved work, or deemed approved work, cannot subsequently be rejected, and the contract will be deemed to have been completed and the balancing payment will become due.

## 8. DATA STORAGE POLICY

**a. Data storage:** Black Mouse Design stores final Client artwork / source code / images for a sufficient period preceding the completion of the project and up to a point when the project is deemed dormant. Dormant artwork / source code / images / documents are archived for a minimum period of one (1) year after the completion of the project.

**b. Supporting files:** Supporting files, used for the creation of any project(s) are deleted when the project is deemed dormant and therefore Black Mouse Design holds no liability or responsibility to store such media files on their system(s).

**c. Backup liability:** Black Mouse Design takes appropriate precautions and practices to backup Client artwork / source code / images / documents through a range of backup and archive systems. Black Mouse Design offers no guarantee or warranty for projects neither deemed dormant nor past any archiving period detailed above.

**d. Wavier:** In the event of an act of God or circumstances beyond the control of Black Mouse Design, and ensuring all precautionary practices were followed, Black Mouse Design holds no liability for the safe keeping or backup of Client original artwork / source code / images / documents nor the responsibility to re-create any such media files without fees.

## 9. RIGHTS AND RESPONSIBILITIES

**a. Right to Terminate:** Black Mouse Design reserves the right to refuse or break a contract without prior notice, if it is believed that the Client, their Website, or any material is illegal, immoral or otherwise unacceptable. Should the Client wish to cancel at any point during the process they shall forfeit any monies already paid and remain liable for the work that has taken place and shall be invoiced accordingly. Cancellation may also be agreed with mutual consent and Black Mouse Design will invoice accordingly.

**b. Events Beyond the Control of Black Mouse Design:** Black Mouse Design will not be liable for breach of contract where that breach was due to software, hardware or electrical failure, natural events such as fire or other events beyond the control of Black Mouse Design, including a delay in supply of materials or feedback by the Client.

**c. Supply & Pricing of Services:** Black Mouse Design reserves the right to use whoever it feels appropriate at the time for third party software and services, and to alter its prices as necessary without prior notice and without affecting existing contractual pricing agreements.

## 10. FORECASTS AND RECOMMENDATIONS / THIRD PARTY SERVICES

**a. Forecasts:** Statements made by Black Mouse Design and all recommendations, opinions surveys and forecasts, or any report, presentation or other communication are made in good faith on the basis of

information available at the time and such forecasts are addressed only to the Client. Whilst Black Mouse Design will use reasonable skill and care in the preparation of such forecasts, neither Black Mouse Design nor any consultant employed or engaged by Black Mouse Design shall have any liability in relation to losses or damage incurred as a result of or in relation to the Client's reliance on such opinions or recommendations and Client acknowledges that such liability is a business risk of the Client.

**b. Implementation:** Implementation of the results of the service and the Client's completion of any project of which the service form part may require the involvement or supervision of or giving advice to third parties engaged by the Client. Black Mouse Design strongly recommends that the Client obtain independent advice before entering into any legally binding commitment with any such third parties.

**c. Recommendations:** Black Mouse Design may, during the performance of their services, make statements about or recommendations of third party products, software, equipment or services. Black Mouse Design gives no warranty in relation to such products, software, equipment or services, and the Client shall rely solely on the warranties and remedies provided by any such third party with whom it may contract.

## 11. DISCLAIMER AND WAVIER

**a. Wavier of terms:** Should Black Mouse Design waive any of these terms on an individual basis, this shall not affect the validity of remaining items in this Agreement or commit Black Mouse Design to waive the same clause on any other occasion. By agreeing to these terms and conditions your statutory rights are not affected. Black Mouse Design reserves the right to change or modify any of these terms and conditions at any time.

**b. Our services are advisory:** The Client bears total responsibility for the use and implementation of these services in their business. The Client agrees to forever indemnify and hold harmless Black Mouse Design from and against any loss, cost or expense resulting from any activities undertaken. Ultimately issues relating to compliance such as permits are the responsibility of the Client.

**c. Delivery date extension:** In circumstances and / or eventualities beyond our control Black Mouse Design reserves the right to extend delivery dates if required.

This includes situations such as system crashes, data loss, power failure, loss of Internet access, acts of God.

**d. Holidays:** Where applicable Black Mouse Design reserves the right to extend project delivery dates, scheduled website updates and meetings during times of scheduled holidays without limitation to family / personal emergencies. Any such pre-scheduled holiday plans are taken into account when setting project delivery dates where applicable.

**e. Maintenance & Correction of Errors:** Black Mouse Design is unable to take responsibility for the functionality or maintenance (unless a maintenance contract is in place) of the Website once the initial contract has been completed. Errors (both technical and typographical) attributable to Black Mouse Design will be corrected free of charge. Black Mouse Design reserves the right to charge a reasonable fee for correction of errors for which Black Mouse Design is not responsible, including, but not limited to malicious modification of the Website by a third party and typographical errors contained in materials provided by the Client.

**f. Extent of Work:** Installation to the Internet is limited to the uploading of all necessary files to the Host, and testing functionality. The Website is provided to and accepted by the Client as a fully functioning, completed work and Black Mouse Design is not responsible for future support. Future support can normally be provided upon request and for an agreed fee. However, no guarantee of future support is given unless an ongoing support package is negotiated.

**g. Consequential Loss:** Under no circumstances will Black Mouse Design be responsible or liable for financial or other loss or damage caused by the failure or use or misuse of its software. The Client should be aware that unless you have a maintenance contract, Black Mouse Design does not hold any responsibility for keeping backup copies of the website. The Client should ensure that data on their site is regularly backed up and that a contingency plan is in place to minimize possible losses as a result of software failure. Unfortunately, malicious software, spy-ware, viruses and website hacking are common threats and Black Mouse Design cannot be held responsible for problems that develop on completed sites as a result of such illegal activity. Should changes in technology mean that at some future date the website no longer functions as originally intended, Black Mouse Design will undertake to update the website accordingly, subject to the contractual hourly fee.

**h. Status & Duration of Quotations:** Website quotations are valid for the period stated on the quotation. Black Mouse Design is not bound to honour quotations that have expired. Quotations are not legally binding until an acceptable timetable for the work has been agreed by both parties. This timetable must be agreed within the timeframe that the quotation is valid. If an acceptable timetable has not been approved by both parties within that time, the quotation is deemed to have expired.

**i. Search Engine Listings:** Black Mouse Design cannot guarantee Search Engines listings as the Engines themselves determine who to list. All sites will be designed with search engine appeal in mind, but Black Mouse Design is unable to make any guarantees about the success of any search engine positioning.

## 13. PRIVACY

**a. Confidentiality:** Documents are confidential and cannot be used, disclosed or duplicated except within the Clients' own business. All Client records including personal information, accounts, written documents including those emanating from computers, written, received or otherwise produced by others or Black Mouse Design are deemed strictly private and confidential and shall not be discussed or in any way released to anyone and according to privacy law (Commonwealth Privacy Act (1998) & Privacy Amendment (Private Sector) Act (2000) and Victorian Health Records Act (2001).

## 14. OTHER SERVICE PROVIDERS

**a. Other service providers:** If the service of another professional consultant is required (E.g. Photography, Legal, Printing, Hosting, Signage) extra charges may be incurred by the Client.

In the instance that an extra charge applies, the Client will be supplied with a quote for this additional cost for approval before implementation. The Client acknowledges that Black Mouse Design is not responsible for the performance, conduct or advice of other Service Providers. Black Mouse Design Clients may not hold back payment to Black Mouse Design due to the conduct or performance of other service providers.

## 15. TERMINATION

**a. Termination:** The Client may terminate this agreement by giving Black Mouse Design seven (7) days notice in writing. A prorata payment is payable for time spent up until cancellation notice, at an hourly rate of \$100 per hour plus GST.

Without limiting the rights which you or us may otherwise have arising from a breach of this agreement, you or us may terminate this agreement immediately by notice in writing if:

1. Any payment due from the Client to Black Mouse Design under this agreement remains unpaid for a period of twenty-one (21) days;
2. The Client or Black Mouse Design breach any item of this agreement and such breach is not remedied within fourteen (14) days of written notice by us or you;
3. The Client or Black Mouse Design become subject to any form of insolvency administration; or
4. The service becomes unavailable for a period in excess of one month.

## 16. INTERPRETATION

**a. Jurisdiction & Arbitration:** This Agreement shall be governed by the laws of Australia which shall claim venue and jurisdiction for any legal action or claim arising from the contract between Black Mouse Design and the Client. The said contract is void where prohibited by law. Any dispute arising out of, or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration.

**b. Survival of Contract:** Where one or more terms of the said contract are held to be void or unenforceable for whatever reason, any other terms of the contract not so held will remain valid and enforceable by law.

**c. Change of Terms & Conditions:** These terms & conditions may change from time to time. For the latest version of this document please visit our website.

## 17. ADDITIONAL TERMS

**a.** Where applicable we may impose additional terms and conditions individually respective of the media design / project concerned. These additional terms if any will be detailed in the quotation supplied for the media design / project concerned.