

Vivid Obsession Group Limited – Terms and Conditions

- 1. Definitions
1.1 'Seller' shall mean Vivid Obsession Group Limited, and/or any related companies of the Seller, and/or agents, employees, successors or assignees thereof.
1.2 'Buyer' shall mean the entity or person, or persons, or entity, who agrees to buy the Seller to the Buyer (or any person acting on behalf of and with the authority of such Seller or person) who buys or agrees to buy Goods. If the Buyer includes two or more persons, those persons liability is joint and several.
1.3 'Guarantor' means that person (or persons, or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.
1.4 'Goods' shall mean all Goods, Services and/or Deliverables (including but not limited to any advice or recommendations given regarding the Goods) and shall mean all services provided by the Seller to the Buyer and shall include, without limitation, the provision of all graphic design, web design, copywriting, design, communication services and supplies, all charges for IT services and IT support, labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of services by the Seller to the Buyer, and as described on any Invoice, Quotation, Fees Schedule or any other forms provided by the Seller to the Buyer.
1.5 'Works' shall mean all Works, Services and/or Deliverables undertaken by the Seller (including, but not limited to any advice or recommendations given regarding the Works) and as described on any Invoice, Quotation, Fees Schedule or any other forms provided by the Seller to the Buyer.
1.6 'Deliverables' shall mean all Deliverables, Goods, Services and/or Works undertaken by the Seller (including, but not limited to any advice or recommendations given regarding the Deliverables) and as described on any Invoice, Quotation, Fees Schedule or any other forms provided by the Seller to the Buyer.
1.7 'Additional Services' shall mean any additional services described in the Fees Schedule.
1.8 'Client Materials' shall mean any materials provided by the Buyer to the Seller for incorporation in the Goods, Works and/or Deliverables including but not limited to, any images, photographs, illustrations, graphics, audio clips, video clips or text and any other materials that are created by the Seller specifically and uniquely for the Buyer and contained in the product delivered to the Buyer under these terms and conditions (contract), including licensed software, software applications or supplied IT services, software designs, code, data and technical components, and creative designs, images, artwork and text.
1.9 'Design Concept' shall mean a design concept, including any information architecture, design and static web site image designed by the Buyer.
1.10 'Design Product' shall mean web ready page(s), print and/or production ready files designed by the Seller in accordance with these terms and conditions (contract).
1.11 'Design Specifications' shall mean the design specifications for the Design Product agreed between the Seller and the Buyer. Also known as the design brief.
1.12 'Design Materials' means any designs, design materials, software, routines, know-how, methodologies, user interface conventions or design patterns, interfaces to third party products and other development and design tools (and all associated documents and derivatives thereof) which the Seller (i) develops prior to or otherwise than in the course of any Contract or (ii) develops during the course of any Contract but which are developed either at the Seller's Design cost or which are not uniquely applicable to the particular specifications, characteristics or functions of the Deliverables.
1.13 'Intellectual Property' means, in respect of any person, all intellectual property and industrial property rights and interests (including common law rights and interests) owned or held by that person, or lawfully used by that person, including, without limitation:
a) patents, trademarks, service marks, copyright, registered designs, trade names, symbols and logos; and/or
b) patent applications and applications to register trademarks, service marks and designs; and/or
c) all formulae, methods, plans, data, drawings, specifications, characteristics, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, trade secrets, price lists, castings, brochures and other information used by that person.
1.14 'Scripts' means any content management software provided by the Seller under this agreement (where applicable), and includes any enhancement, modification, correction or upgrade related to the software.
1.15 'Scripts User Manual' means any documentation provided by the Seller, which contains instructions on the use of the Scripts.
1.16 'Fees Schedule' shall mean the schedule of fees agreed between the Seller and the Buyer, and specified in or calculated by reference in respect to any Quotation, Estimate, or any other forms provided by the Seller to the Buyer.
1.17 'Price' shall mean the cost of the Goods, Works and/or Deliverables as determined by the Seller and any other amounts owing to the Seller by the Buyer.
1.18 'GST' shall mean goods and services tax payable under the Goods and Services Tax Act 1985.
1.19 'PPSA' shall mean the Personal Properties Securities Act 1999.
2. Acceptance
2.1 Any instructions, written or verbal, received by the Seller from the Buyer for the supply of Goods, Works and/or Deliverables and/or the Buyer's acceptance of Goods, Works and/or Deliverables supplied by the Seller shall constitute your assent by conduct to the terms and conditions of this contract. Written instructions will refer to the terms and conditions disclosed on the Credit Application, Quotation, and/or Estimate plus any other disclosure forms supplied by the Seller to the Buyer.
2.2 The Seller shall only supply Goods, Works and/or Deliverables subject to the Seller's terms and conditions. Any other terms and conditions of contract relating to the Buyer and/or any other entity shall over-ride the Seller's terms and conditions, unless agreed otherwise in writing.
2.3 These terms and conditions along with the Seller's credit application, quotations, estimates, order forms, and/or any other documents issued by the Seller, together, form the contract and are the full agreement between the parties.
2.4 No agents and/or representatives of the Seller are authorised to make any representations, statements, conditions and/or agreements not expressly directed by a Director or Shareholder of the Seller in writing, and the Seller will not be bound by any such unauthorised statements.
3. General
3.1 Headings are inserted for convenience and shall not affect the construction of this contract. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words referring to one gender include the other.
3.2 If any provision of this contract shall be invalid or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
3.3 This contract shall be subject to the laws and statutes of New Zealand and subject to the jurisdiction of the court geographically closest to the physical address of the Seller.
3.4 The Seller may sub-contract any part of this contract. No sub-contractor has any authority to agree to any variation of this contract on behalf of the Seller.
3.5 The Seller's failure or delay in exercising or enforcing any right it has under this contract shall not operate as a waiver of the Seller's rights to exercise or enforce such rights or any other rights under this contract.
3.6 The Seller reserves the right to review these terms and conditions at any time. The Seller may, and the Buyer may not, vary or replace this contract and it will be a condition of the Seller continuing to supply Works, Goods and/or Deliverables to the Buyer that the Buyer agrees to sign any variation or replacement of this contract.
3.7 Any waiver of these terms and conditions by the Seller must be made in writing. The Buyer may not assign all or any of the Buyer's rights or obligations under this contract without the written permission of the Seller.
3.8 The Seller shall not be bound by any error or omission made by the Seller on any invoice, quotation, estimate, or any other document issued by the Seller.
3.9 The Buyer shall notify the Seller of any intention to cease trading and/or of any change in the Buyer's name and/or contact details by giving at least seven (7) days notice in writing prior to any such events taking effect.
4. Cancellation
4.1 Under this clause, the Seller may cancel the contract at any given time. The Buyer will be notified of such cancellation in writing.
4.2 The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
4.3 If the Buyer serves the Seller with a cancellation notice at any time, the Buyer shall be liable for full costs of the Works, Goods and/or Deliverables provided by the Seller, including any Goods, Works and/or Deliverables ordered and/or purchased, to the date of the cancellation.
5. Compliance with Laws & Acts
5.1 The Buyer and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods, Works and/or Deliverables. If and where applicable, this shall include and not be limited to, Sale of Goods Act 1908, Fair Trading Act 1986, and Consumer Guarantees Act 1993.
6. Personal Property Securities Act 1999
6.1 The Buyer's acknowledgment of this contract creates a security interest in the Goods, Works and/or Deliverables, for avoidance of doubt, the proceeds of the sale of the Goods, Works and/or Deliverables. The Buyer will be requested by the Seller, sign any documents, provide all necessary information and do anything else required by the Seller to ensure that the security interest is a perfected purchase money security interest.
6.2 Until payment of the Price has been made in full the Buyer acknowledges and agrees that in relation to Goods, Works and/or Deliverables that are inventory, the Buyer will not allow any non-purchase money security interest to arise in respect of the Goods, Works and/or Deliverables unless the Seller has perfected the Seller's purchase money security interest prior to the Buyer taking possession of the Goods, Works and/or Deliverables.
6.3 The Seller and the Buyer agree that nothing in sections 114(1) (a), 120(1), 122, 133 and 134 of the PPSA shall apply to the Seller or the Buyer.
6.4 The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
6.5 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a discharge statement in accordance with section 48 of the PPSA.
6.6 The Buyer shall unconditionally sanction any actions taken by the Seller under clauses 6.1 to 6.5.
7. Design Concept
7.1 Upon agreement of design specifications of the Design Product, and upon receipt of any Client Materials, and any fees payable as set out in the Quotation, we will commence work to develop the Design Concept.
7.2 The Buyer shall have ten (10) business days, or such other time, as Seller and Buyer agree in writing, from the date of notification to completion of the Design Concept. The Buyer may request in writing from the Seller revisions to the Design Concept. The Seller shall use commercially reasonable efforts to implement such revision request that are within the scope of, and consistent with, the Design Specifications.
7.3 If the Buyer chooses to depart in any material respect from the Design Specifications, the parties will, in good faith, agree to additional fees to cover those revisions.
7.4 If the Buyer does not make any requests for revisions by the end of ten (10) business days from the date of written notice of completion of the Design Concept