

Terms of Trade August 2020

nichestudio[®]

1. Definitions

- 1.1. **"Contract"** means the terms and conditions contained herein, together with any proposal, quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2. **"Niche"** means Niche Studio Pty Ltd ATF The Mussig Business Family Trust & The Wedemeyer Family Trust (In Partnership) T/A Niche Studio, its successors and assigns or any person acting on behalf of and with the authority of Niche Studio Pty Ltd ATF The Mussig Business Family Trust & The Wedemeyer Family Trust (In Partnership) T/A Niche Studio.
- 1.3. **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Niche to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - a. if there is more than one Client, is a reference to each Client jointly and severally; and
 - b. if the Client is a partnership, it shall bind each partner jointly and severally; and
 - c. if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - d. includes the Client's executors, administrators, successors and permitted assigns.
- 1.4. **"Services"** means all Goods (including copy, website content and/or development, blogs, any printed or virtual material, samples, brands, designs, images, advertising, publications, data, graphics, pictures, trademarks, software, applications, manuals, and other associated documentation and/or goods) and/or Services (which includes any advice or recommendations, consultancy, website design and/or maintenance, brand integration, information technology, hosting, marketing, research, etc.) provided by Niche to the Client, at the Client's request, from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5. **"Website"** means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.
- 1.6. **"Social Network"** means any social media platform and/or application which is accessible on the internet through the World Wide Web and which provides multimedia content via a graphical user interface (including, but not limited to Facebook, Twitter, LinkedIn, Pinterest, etc.).
- 1.7. **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.8. **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using Niche's website, then the Client shall have the right to enable / disable the Cookies first by**

selecting the option to enable / disable provided on the website or their web browser, prior to making enquiries via the website.

- 1.9. **"Prohibited Content"** means any content that:
- a. is, or could reasonably be considered to be, in breach of the broadcasting standards or any other applicable law or applicable industry code; or
 - b. contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
 - c. is, or could reasonably be considered to be, in breach of any person's Intellectual Property Rights.
- 1.10. **"Price"** means the Price payable (plus any GST where applicable) for the Services as agreed between Niche and the Client in accordance with clause 6 below.
- 1.11. **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1. The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Services.
- 2.2. In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3. Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4. The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Niche and it has been approved with a credit limit established for the account.
- 2.5. In the event that the supply of Goods requested exceeds the Client's credit limit and/or the account exceeds the payment terms, Niche reserves the right to refuse Delivery.
- 2.6. The Client acknowledges that:
- a. no intellectual property (including, but not limited to, Website coding, passwords etc.) will be transferred to the Client unless all amounts owing to Niche are paid; and
 - b. Services provided by Niche are subject to availability and only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade. Niche shall be entitled to change any distribution date at any time without notice; and
 - c. where colour matching is required, the Client agrees to supply information and samples regarding the correct colour; and
 - d. Niche reserves the right not to undertake any Services, refuse to accept any content supplied by the Client, withdraw any advertisement or publication at any time for any reason (including where such, in Niche's opinion is or may be unlawful, offensive,

contains Prohibited Content, or is otherwise inappropriate), and Niche shall not be liable to the Client for any such action; and

- e. Niche will endeavour to place any advertisement in the position requested by the Client; however, they cannot always do so and shall not be liable to the Client where any advertisement does not appear in the place requested.

2.7. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

3.1. Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to Niche as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services on the Client's behalf and/or to request any variation to those Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies Niche in writing that said person is no longer the Client's duly authorised representative).

3.2. In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise Niche in writing of the parameters of the limited authority granted to their representative.

3.3. The Client specifically acknowledges and accepts that they will be solely liable to Niche for all additional costs incurred by Niche (including Niche's profit margin) in providing any Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

4.1. The Client acknowledges and accepts that Niche shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- a. resulting from an inadvertent mistake made by Niche in the formation and/or administration of this Contract; and/or
- b. contained in/omitted from any literature (hard copy and/or electronic) supplied by Niche in respect of the Services.

4.2. In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Niche; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

5.1. The Client shall give Niche not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Niche as a result of the Client's failure to comply with this clause.

6. Price and Payment

6.1. At Niche's sole discretion, the Price shall be either:

- a. as indicated on any invoice provided by Niche to the Client; or
- b. the Price as at the date of Delivery of the Goods according to Niche's current price list; or
- c. Niche's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

6.2. Niche reserves the right to change the Price if:

- a. Niche agrees that there will be no charge in the preparation of the initial quotation, which may include Client discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned services may be charged to the Client additionally (at Niche's sole discretion). In the event the Client requires proofs, mock-ups, layouts, samples or dummies or printed, typewritten or other good copy and/or edits, this shall be invoiced at Niche's hourly rate unless specified otherwise in the initial quotation, therefore, this variation shall be detailed on the invoice as per sub-clause (h); or
- b. quotations are based on specifications, roughs, layouts, samples or dummies or printed, typewritten or other copy, any extra work or cost caused by any variation by the Client of their original instructions or by the copy being, in Niche's opinion, poorly prepared, or by the Client's requirements being different from those originally submitted or described; or
- c. all work carried out whether experimentally or otherwise at the Client's request will be charged to the Client; or
- d. any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Client and shown as extras on the invoice; or
- e. unless otherwise agreed, the Client shall bear the cost of fonts, colour proofs, or artwork, specially bought at the Client's request for the job; or
- f. where the performance of any contract with the Client requires Niche to obtain products and/or services from a third party, the Contract between Niche and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to Niche, and the Client shall be liable for the cost in full including Niche's margin of such products and/or services; or
- g. whilst every effort will be taken by Niche to match virtual colours with physical colours, Niche will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Client's computer and/or the final product. Should a physical sample be required this will be provided on request by the Client and will be charged for as an extra; or
- h. Niche reserves the right to amend the Price where there is any variation to the accepted plan of scheduled services, strategy, instructions or specifications, (including, but not limited to, as a result of additional purchases required such as "add-on" being modules or extension from third party companies which are used in creating the Client's Website or additional Services which will be charged for on the basis of Niche's standard hourly rates and time (and double such rate for any Services provided outside Niche's normal business hours); or the Client acknowledges that all Services and support for email are chargeable in addition to the Price;
- i. Niche shall not be held responsible for any amendments made by any third party before or

after a design is published.

- 6.3. Variations will be charged for on the basis of Niche's quotation, and will be detailed in writing, and shown as variations on Niche's invoice. The Client shall be required to respond to any variation submitted by Niche within ten (10) working days. Failure to do so will entitle Niche to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4. At Niche's sole discretion, a non-refundable deposit may be required.
- 6.5. Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Niche, which may be:
 - a. on or before delivery of the Goods; or
 - b. on completion of the Services;
 - c. by way of instalments/progress payments in accordance with Niche's payment schedule;
 - d. the date specified on any invoice or other form as being the date for payment; or
 - e. failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Niche.
- 6.6. Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Niche.
- 6.7. Niche may in its discretion allocate any payment received from the Client towards any invoice that Niche determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Niche may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Niche, payment will be deemed to be allocated in such manner as preserves the maximum value of Niche's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Niche nor to withhold payment of any invoice because part of that invoice is in dispute. Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Niche an amount equal to any GST Niche must pay for any supply by Niche under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Provision of the Services

- 7.1. Each project is unique to a Client and the costings of a project are estimated and based on the requirements as defined by the Client at the initial meeting and shall include the hours and timeframe that Niche envisages it will take to complete, (subject to variations as per clause 6.2). The estimate covers the following:
 - a. all technical, mandatory requirements and assumptions clearly itemised and disclosed by the Client prior to the initiation of the project to ensure all expected features and functionality have been correctly estimated; and
 - b. any additional work requested or required outside of the original estimate/scope needs to be agreed that Niche is entitled to re-estimate the charges and time-frame without

prejudice; and

- c. amendments which is to be expected should be kept to a minimum by receiving the styling, text or content updates in batches in-line with the stage of the project, however, if in the opinion of Niche, there is the need for more than one round of amendments, then the agreed number of changes must be established, prior to the commencement of the project.

7.2. Niche may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

7.3. Any time specified by Niche for delivery of the Services is an estimate only and Niche will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that Niche is unable to supply the Services as agreed solely due to any action or inaction of the Client then Niche shall be entitled to charge a reasonable Fee for re-supplying the Services at a later time and date.

8. Product Specifications

8.1. The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Niche's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by Niche.

9. Risk

9.1. Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

9.2. If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Niche is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Niche is sufficient evidence of Niche's rights to receive the insurance proceeds without the need for any person dealing with Niche to make further enquiries.

9.3. If the Client requests Niche to leave Goods outside Niche's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.

9.4. The Client shall provide Niche with data in the following formats:

- a. for text, files shall be in an electronic format as standard text (.txt), Word (.doc), Google (.doc, sheets, drive, slides or forms), on a USB, an online service or via email;
- b. for images, in an electronic format as prescribed by Niche on a USB, an online service, or via email with the images of a suitable quality applicable for the use intended and without any subsequent image processing being required. Niche shall not be responsible for the quality of images scanned from printed materials;
- c. additional expenses may be charged to the Client for any necessary action, including, but

not limited to, photography and art direction, photography searches, media conversion, digital image processing or data entry services.

- 9.5. The Client acknowledges and agrees that Niche shall not be held responsible or liable for:
- anything related to the Website or any other services provided;
 - any supplied content breaching any Acts, legislation or regulations, unless due to the negligence of Niche;
 - any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from illegal hacking or Services provided by Niche. Whilst Niche will endeavour to restore the Website, files or data (at the Client's cost), it is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to Niche providing the Services. The Client accepts full responsibility for the Client's software and data and Niche is not required to advise or remind the Client of appropriate back-up procedures (unless included as part of the Services);
 - any loss or damage to the Client's software or hardware caused by any 'updates' provided for that software.
- 9.6. Niche, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the Services by Niche to the Client.
- 9.7. The Services are provided on an "as is, as available" basis. Niche specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.

10. Client-Supplied Content or Materials

- 10.1. Where the Client supplies content or materials to Niche for inclusion in the Services:
- the Client acknowledges that any content or materials supplied to Niche for incorporation into the Services is subject to the approval of Niche and may, regardless of prior approval, be rejected and removed by Niche; and
 - such content or materials will be held by Niche at the Client's risk; and
 - Niche accepts no responsibility for imperfect work caused by defects in or unsuitability of such content or materials; and
 - the Client warrants that all such content or materials supplied to Niche to be used for the provision of the Services shall:
 - be true and correct in every particular; and
 - does not contain Prohibited Content; and
 - be non-political and non-religious by nature, and suitable for viewer of all ages; and
 - not be, nor contain, anything that is defamatory of any person or is indecent or obscene; and
 - complies with all laws, regulations, codes of practice, guidelines and any standards applicable to the advertising industry and as determined by any relevant regulatory agency or industry self-regulatory body (including, but not limited to, the Australian Consumer Law and Fair Trading Act, GDPR, privacy legislation, the Spam Act and the AANA Code of Ethics; and
 - does not infringe copyright, trademark or any other legal rights of another person

and/or entity (including the name and image of any person without their consent, etc.); and

- vii. does not contain anything which may give rise to any cause of action by a third against Niche (including, but not limited to, material that may cause damage or injury to any person and/or entity); and
- viii. is not false or misleading and is true in substance and in fact; and
- ix. not contain nor constitute a statement that is misleading or deceptive or likely to deceive or to mislead or which is otherwise in breach of a provision of the Fair Trading Act or any other applicable legislation; and
- x. be in the form, and delivered up to Niche by the date, specified thereby. If the Client fails to adhere to this sub-clause, Niche shall not be liable to the Client in the event Niche is unable to provide the Services.

10.2. The Client shall indemnify, and keep indemnified, Niche at all times against all actions, proceedings, claims, demands, liabilities, either express or implied, and all costs, losses, losses of profit, damages and expenses whatsoever which may be taken against Niche, or incurred or become payable by Niche, resulting or arising from the Client being in breach of clause 10.1

10.3. Imprints or any legal obligations required to appear on any printed material are the responsibility of the Client. Niche reserves the right to place its imprint on all printed material unless specifically requested otherwise.

10.4. In the case of content or materials left with Niche without specific instructions, Niche shall be free to dispose of them at the end of thirty (30) days after receiving them, and to accept and retain the proceeds, if any, to cover Niche's own costs in holding and handling them.

11. Proof Reading

11.1. Whilst every care is taken by Niche to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading of the Goods, which will be sent to the Client and will be deemed accepted if no response is received by the Client within forty-eight (48) hours of Niche's submission thereof. Niche shall be under no liability whatever for any errors not corrected by the Client in the final proof reading, and should the Client's alterations require additional proofs this shall be invoiced as an extra in accordance with clause 6.2.

12. Website Development and Maintenance

12.1. Upon acceptance of Niche's quotation, and in accordance with this Contract, Niche will:

- a. use its best endeavours to develop the Website in accordance with the Client's instructions and specifications; and
- b. to the extent specified in the Client's instructions and specifications, negotiate and procure any third-party agreements on behalf of the Client.

12.2. The Client acknowledges that the development of the Website by Niche is based upon current technology platforms (e.g. internet browsers, hardware, operating systems, etc.), and therefore Niche cannot guarantee that Website features and /or content will display correctly, and that the overall visual experience will be the same, for use by either superseded or presently undeveloped technology.

- 12.3. The Client will, in addition to any other obligations expressed in this Contract, have the following responsibilities:
- provision of all data to be incorporated into the Website;
 - provision of logos, designs, graphic and related materials to be incorporated into the Website; and
 - provision of any other information, ideas or suggestions which are to be expressly considered by Niche in developing the Website.
- 12.4. The Client will ensure that Niche is given such information and assistance as Niche reasonably requires to enable Niche to construct and maintain the Website.
- 12.5. It shall be the Client's responsibility to ensure that any specific requirements they may have for technology platforms is included in the brief, as, unless otherwise specified therein, the choice of web browsers and technology used in the development of the Website shall be at the sole discretion of Niche. In the event the Client requests additional work, in order to meet any specific requirements for technology platforms, after Niche has commenced work on the Website, shall be treated as a variation to the Price and a strict estimation of further work required shall be submitted to the Client for approval before proceeding with the variation work.
- 12.6. Niche will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Website which is attributable to:
- incorrect information provided by the Client, either pursuant to this clause or otherwise; or
 - failure by the Client to provide relevant information, either pursuant to this clause or otherwise; or
 - any third-party products and/or services used by Niche in creation of the Website.
- 12.7. **Domain Registration**
- Where Niche is to register a domain name on the Client's behalf, Niche cannot guarantee the availability of the domain name, nor assume a successful registration or such a name.
 - Niche will not be responsible for the renewal of any domain name registration unless specifically requested to do so by the Client.
 - The Client will be responsible for complying with all terms and conditions relating to any registered domain name, such as may be required by the 'Registry' that is responsible for administering the registration of such domain name.
- 12.8. **Public Access**
- The Client understands that by placing information on the Website, such information may be accessible to all internet users. Niche does not (unless expressly requested by the Client) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity. The Client assumes full responsibility for their use of the Services, and it is the Client's sole responsibility to evaluate the accuracy, completeness and usefulness or all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by Niche, or on the internet generally.

13. Social Network

- 13.1. The Client acknowledges and accepts that:

- a. where the Client wishes to engage a third party consultant to work on a project together with Niche, to carry out part of the Services, then the Client agrees to, in the first instance as an act of good faith, to advise of the proposed action prior to any engagement to ensure there is no issue or a conflict of interest;
- b. Niche does not guarantee the Social Network's performance;
- c. display on the Social Network does not guarantee the availability of any particular goods; therefore, all orders placed through the Client's Website as a result of any post or other communication posted shall be subject to confirmation of acceptance by the Client;
- d. the ability to post communications on a Social Network may be unavailable from time to time due regularly scheduled maintenance and/or upgrades by the Social Network provider;
- e. there are inherent hazards in electronic distribution, and as such Niche cannot warrant against delays or errors in posts appearing on any Social Network.

13.2. With changes in technology, changes in internet use and Social Network visiting patterns, particular Social Network availability/life cycle, Niche may suggest changes to the original proposal and recommend an alternative service. Any such suggestions and/or recommendations shall be communication to the Client prior to implementation of any changes.

13.3. The Client acknowledges that:

- a. all Social Network used in the provision of the Services are subject to the terms and condition of service of the third party provider and as such it is the Client's responsibility to be familiar with those terms and conditions; and
- b. in Niche's use of the Client's Social Network, Niche is acting as the Client's agent and any liability arising from the use of the Social Network account/s shall be the Client's responsibility.

14. Network Traffic

14.1. Network traffic shall be measured by Niche and may include all forms of traffic to and from the Website. Niche reserves the right to suspend hosting and/or support Services (at any time and without notice to the Client) for what it deems to be excessive traffic usage.

15. Title

15.1. Niche and the Client agree that ownership of the Goods shall not pass until:

- a. the Client has paid Niche all amounts owing to Niche; and
- b. the Client has met all of its other obligations to Niche.

15.2. Receipt by Niche of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

15.3. It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 15.1:

- a. the Client is only a bailee of the Goods and must return the Goods to Niche on request;
- b. the Client holds the benefit of the Client's insurance of the Goods on trust for Niche and must pay to Niche the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;

- c. the Client irrevocably authorises Niche to enter any premises where Niche believes the Goods are kept and recover possession of the Goods;
- d. Niche may recover possession of any Goods in transit whether or not Delivery has occurred;
- e. the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Niche;
- f. Niche may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

16. Personal Property Securities Act 2009 ("PPSA")

- 16.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 16.2. Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to Niche for Services – that have previously been supplied and that will be supplied in the future by Niche to the Client.
- 16.3. The Client undertakes to:
- a. promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Niche may reasonably require to;
 - i. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - ii. register any other document required to be registered by the PPSA; or
 - iii. correct a defect in a statement referred to in clause 16.3(a)(i) or 16.3(a)(ii);
 - b. indemnify, and upon demand reimburse, Niche for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - c. not register a financing change statement in respect of a security interest without the prior written consent of Niche;
 - d. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Niche;
 - e. immediately advise Niche of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 16.4. Niche and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 16.5. The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6. The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7. Unless otherwise agreed to in writing by Niche, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

- 16.8. The Client must unconditionally ratify any actions taken by Niche under clauses 16.3 to 16.5.
- 16.9. Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

17. Security and Charge

- 17.1. In consideration of Niche agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 17.2. The Client indemnifies Niche from and against all Niche's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Niche's rights under this clause.
- 17.3. The Client irrevocably appoints Niche and each director of Niche as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.

18. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 18.1. The Client must inspect the Services on Delivery and must within seven (7) days of Delivery notify Niche in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Niche to inspect the Services.
- 18.2. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 18.3. Niche acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Niche makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Niche's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.5. If the Client is a consumer within the meaning of the CCA, Niche's liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.6. If Niche is required to replace the Services under this clause or the CCA, but is unable to do so, Niche may refund any money the Client has paid for the Services.
- 18.7. If the Client is not a consumer within the meaning of the CCA, Niche's liability for any defect

or damage in the Goods is:

- a. limited to the value of any express warranty or warranty card provided to the Client by Niche at Niche's sole discretion;
- b. limited to any warranty to which Niche is entitled, if Niche did not manufacture the Goods;
- c. otherwise negated absolutely.

18.8. Subject to this clause 18, returns will only be accepted provided that:

- a. the Client has complied with the provisions of clause 18.1; and
- b. Niche has agreed that the Goods are defective; and
- c. the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- d. the Goods are returned in as close a condition to that in which they were delivered as is possible.

18.9. Notwithstanding clauses 18.1 to 18.8 but subject to the CCA, Niche shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- a. the Client failing to properly maintain or store any Goods;
- b. the Client using the Goods for any purpose other than that for which they were designed;
- c. the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- d. the Client failing to follow any instructions or guidelines provided by Niche;
- e. fair wear and tear, any accident, or act of God.

18.10. Notwithstanding anything contained in this clause if Niche is required by a law to accept a return then Niche will only accept a return on the conditions imposed by that law.

18.11. Subject to clause 18.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.

19. Intellectual Property

19.1. Where Niche has designed, drawn or developed Goods for the Client (including but not limited to, any information regarding strategies and other marketing methodologies etc.), then the copyright in those Goods shall remain the property of Niche, and the Client undertakes to acknowledge Niche's design or drawings in the event that images of the Goods are utilised in advertising or marketing material by the Client. Under no circumstances may such designs, drawings and documents be used without the express written approval of Niche.

19.2. Drawings, sketches, painting, photographs, designs or typesetting furnished by Niche, dummies, models or the like devices made or procured and manipulated by Niche, and negatives, positives, blocks, engravings, stencils, dies, plates or cylinders made from Niche's original design, or from a design furnished by the Client, remain the exclusive property of Niche, unless otherwise agreed upon in writing.

19.3. Sketches and dummies submitted by Niche on a speculative basis shall remain the property of Niche. They shall not be used for any purpose other than that nominated by Niche and no ideas obtained there from may be used without the consent of Niche, and Niche shall be entitled to compensation from the Client for any unauthorised use of such sketches and

dummies.

- 19.4. The Client warrants that all designs, specifications or instructions given to Niche will not cause Niche to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Niche against any action taken by a third party against Niche in respect of any such infringement.
- 19.5. The Client agrees that Niche may (at no cost) use for the purposes of marketing or entry into any competition, any Goods which Niche has created for the Client and/or any Services provided to the Client.
- 19.6. Niche does not accept commissions to provide Services based on copyright works; subject to the Copyright Act 1968 (Cth) and any amendments thereto and the conditions therein.
- 19.7. Where Niche has provided photographic (digital or otherwise) images for the Client, at Niche's sole discretion, any such images may be subject to ongoing licence payments for use of such images. The period of any such licence is determined by Niche from time to time.
- 19.8. Notwithstanding anything herein, the intellectual property rights in Niche's Services do not vest in the Client and there is no assignment of these intellectual property rights to the Client. Niche hereby grants to the Client an irrevocable, non-exclusive and transferable licence to use and reproduce the Services for the purposes of this Contract only, and solely for the operation of the Client's business however, the Client shall not use nor make copies of such intellectual property in connection with any work or business other than the work or business specified in writing to Niche unless express approval is given in advance by Niche. Such license shall terminate on default of payment or any other terms of this Contract by the Client.
- 19.9. All source code including PHP, Javascript, HTML and other supplied code (if any):
 - a. remains the intellectual property of Niche if created by Niche. Copying or disseminating the code for any purpose other than the purposes of this Contract, and solely for the operation of the Client's business is strictly forbidden and will be a breach of copyright; and
 - b. as part of a third party template or software remains the property of the third party.
- 19.10. Each party agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.

20. Default and Consequences of Default

- 20.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Niche's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2. If the Client owes Niche any money the Client shall indemnify Niche from and against all costs and disbursements incurred by Niche in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Niche's contract default fee, and bank dishonour fees).

- 20.3. Further to any other rights or remedies Niche may have under this Contract, if a Client has made payment to Niche, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Niche under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 20.4. Without prejudice to Niche's other remedies at law Niche shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Niche shall, whether or not due for payment, become immediately payable if:
- any money payable to Niche becomes overdue, or in Niche's opinion the Client will be unable to make a payment when it falls due;
 - the Client has exceeded any applicable credit limit provided by Niche;
 - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21. Cancellation

- 21.1. Without prejudice to any other remedies Niche may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Niche may suspend or terminate the supply of Services to the Client. Niche will not be liable to the Client for any loss or damage the Client suffers because Niche has exercised its rights under this clause.
- 21.2. Niche may cancel any contract to which these terms and conditions apply or cancel provision of the Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice Niche shall repay to the Client any money paid by the Client for the Services. Niche shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3. In the event that the Client cancels the Services, the Client shall be liable for any and all loss incurred (whether direct or indirect) by Niche as a direct result of the cancellation (including, but not limited to, any loss of profits). In the event that an order is cancelled or suspended by the Client, then Niche may immediately require the Client to pay for Services provided up to the date of cancellation or suspension.
- 21.4. Either party may, terminate these terms and conditions or cancel provision of the Services:
- prior to the commencement of the Services, in the event that after consultation with the Client, Niche determines it is not technically, commercially or operationally feasible to provide the Services to the Client;
 - if a term is specified, at any time after the end of the term by giving one (1) months' notice to the other party;
 - failure to give notice of intention to cancel at least one (1) month prior to the expiration date of the term, the term shall automatically renew on a monthly basis, unless cancelled by way of the Client providing Niche with one (1) months' notice.
- 21.5. Niche may, in addition to their right to cancel under clause 21.4:
- do so at any time:

- i. prior to the commencement of the Services, by giving notice to the Client. On giving such notice Niche shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Niche for Services already performed. Niche shall not be liable for any loss or damage whatsoever arising from such cancellation; or
- ii. in the event the Client materially breaches these Terms and Conditions, and such breach is not capable of remedy.

21.6. In the event of the premature termination of this Contract (including by notification from the Client, (at least one (1) month prior to the expiration date of the contract term), or as a result of Default, but excluding any breach or termination of this Contract by Niche), the Client shall be responsible for the immediate payment of the following sums:

- a. all monies due and payable up to the date of termination whether periodic or a fixed term, (noting applicable rates may change if the services agreement is shorter than that noted in the Quotation); and
- b. all other sums owing by the Client under this Contract directly as a result of the Default and termination of this Contract, which shall be calculated on the basis of any substantiated costs reasonably incurred by Niche, or a minimum of twenty percent (20%) of the remainder of the Price under this Contract, whichever is the lesser, where a fixed term applies (to cover such costs imposed by Niche third party suppliers that form part of, this Contract, without any margin added by Niche thereto).

22. Limitation of Liability and Indemnity

- 22.1. Niche accepts no liability whatsoever for any defect, error or omission in any Services approved by the Client, and will not be responsible for any costs or losses incurred by the Client by reason of any error in the Services (including, but not limited to, offering any refund or credit).
- 22.2. The Client agrees to indemnify Niche, its employees, agents and affiliates, and their employees and agents against any action, claim, loss or expense arising from the production of Goods and/or publication of the Services, cancellation of, or failure to produce the Goods and/or publish any Services, and all costs, losses and expenses suffered or incurred by Niche, its employees, agents and affiliates, and their employees and agents as a result of any breach by the Client of these terms and conditions, or any other agreement between the Client and Niche.
- 22.3. The Client acknowledges that, due to the nature of digital display, technical difficulties may arise which could prevent the provision of the Services; and the Client, therefore, agrees to indemnify Niche against any costs or losses incurred by the Client as a result of this.

23. Privacy Policy

- 23.1. All emails, documents, images or other recorded information held or used by Niche is Personal Information, as defined and referred to in clause 23.3, and therefore considered Confidential Information. Niche acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation

"GDPR") (collectively, "EU Data Privacy Laws"). Niche acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Niche that may result in serious harm to the Client, Niche will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

23.2. Notwithstanding clause 23.1, privacy limitations will extend to Niche in respect of Cookies where the Client utilises Niche's website to make enquiries. Niche agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

- a. IP address, browser, email client type and other similar details;
- b. tracking website usage and traffic; and
- c. reports are available to Niche when Niche sends an email to the Client, so Niche may collect and review that information ("collectively Personal Information")

If the Client consents to Niche's use of Cookies on Niche's website and later wishes to withdraw that consent, the Client may manage and control Niche's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

23.3. The Client agrees that Niche may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

- a. to assess an application by the Client; and/or
- b. to notify other credit providers of a default by the Client; and/or
- c. to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- d. to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.

23.4. The Client consents to Niche being given a consumer credit report to collect overdue payment on commercial credit.

23.5. The Client agrees that personal credit information provided may be used and retained by Niche for the following purposes (and for other agreed purposes or required by):

- a. the provision of Goods; and/or
- b. analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
- c. processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- d. enabling the collection of amounts outstanding in relation to the Goods.

23.6. Niche may give information about the Client to a CRB for the following purposes:

- a. to obtain a consumer credit report;
- b. allow the CRB to create or maintain a credit information file about the Client including credit history.

23.7. The information given to the CRB may include:

- a. Personal Information as outlined in 23.3 above;
- b. name of the credit provider and that Niche is a current credit provider to the Client;

- c. whether the credit provider is a licensee;
- d. type of consumer credit;
- e. details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- f. advice of consumer credit defaults (provided Niche is a member of an approved QAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Niche has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- g. information that, in the opinion of Niche, the Client has committed a serious credit infringement;
- h. advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

23.8. The Client shall have the right to request (by e-mail) from Niche:

- a. a copy of the Personal Information about the Client retained by Niche and the right to request that Niche correct any incorrect Personal Information; and
- b. that Niche does not disclose any Personal Information about the Client for the purpose of direct marketing.

23.9. Niche will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

23.10. The Client can make a privacy complaint by contacting Niche via e-mail. Niche will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

24. Service of Notices

24.1. Any written notice given under this Contract shall be deemed to have been given and received:

- a. by handing the notice to the other party, in person;
- b. by leaving it at the address of the other party as stated in this Contract;
- c. by sending it by registered post to the address of the other party as stated in this Contract;
- d. if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- e. if sent by email to the other party's last known email address.

24.2. Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

25. Trusts

25.1. If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Niche may have notice of the

Trust, the Client covenants with Niche as follows:

- a. the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- b. the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- c. the Client will not without consent in writing of Niche (Niche will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - i. the removal, replacement or retirement of the Client as trustee of the Trust;
 - ii. any alteration to or variation of the terms of the Trust;
 - iii. any advancement or distribution of capital of the Trust; or
 - iv. any resettlement of the trust property.

26. Jurisdiction

- 26.1. The Website (excluding any linked third party sites) is controlled by Niche from their principal business premises in Australia. It can be accessed from countries around the world to the extent permitted by the Website. As each country has laws that may differ from Australia, by accessing this Website, the Client agrees that the laws and statutes of Australia shall apply to any dealings, actions or claims arising out of, or in relation to, this Contract, or the Client's use of the Website, irrespective of any conflict with any laws and statutes applicable to the Client's country of domicile.
- 26.2. The Client further acknowledges and agrees that the filing of a claim against Niche (if any) must be made in the State of Australia in which their principal business premises in Australia is domiciled, and that any legal proceedings will be conducted in English.
- 26.3. Niche makes no representation that Services offered through the Website are appropriate, available or suitable for use in countries outside of Australia, and accessing and/or utilising any Content from, or through, the Website which is illegal in your country of domicile is strictly prohibited.

27. General

- 27.1. The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.2. These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which Niche has its principal place of business, and are subject to the jurisdiction of the courts in Brisbane, Queensland.
- 27.3. Subject to clause 18, Niche shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Niche of these terms and conditions (alternatively Niche's

liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

- 27.4. Niche may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 27.5. The Client cannot licence or assign without the written approval of Niche.
- 27.6. Niche may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Niche's sub-contractors without the authority of Niche.
- 27.7. The Client agrees that Niche may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Niche to provide Goods to the Client.
- 27.8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 27.9. Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.