

# Terms and Conditions

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## 1. Definitions and Interpretation

**In these Conditions, the Rate Schedule and every Quote, Order, Plan contract, or other arrangement in connection with the supply of Goods or Services by Innovation Station the following words have the following meanings:**

- a. **"After Hours"** means from 17:00 to 09:00 hours Monday to Friday and all day Saturday and Sunday, excluding Public Holidays
- b. **"Innovation Station"** means Innovation Station ABN 96 645 165 035 and its heirs, successors and assigns;
- c. **"Business Hours"** means Monday to Friday from 09:00 to 17:00 hours excluding Public Holidays;
- d. **"Conditions"** means these terms and conditions;
- e. **"Customer"** or 'you' means a person who seeks or obtains a quote for, or who orders, Goods or Services from Innovation Station, and includes both a person whose name is on the order or on an email attached to which is an order, a person who places an order, and a person on whose behalf an order is placed or on whose behalf it appears and order is placed, and in any case each of their heirs, successors and assigns;
- f. **"Goods"** means any goods and/or services sourced by Innovation Station or provided by Innovation Station in connection with any such goods and/or services including website development, online marketing and digital production services and any goods or services provided in connection with any of those things;
- g. **"GST"** has the meaning given to it under A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- h. **"Hours"** means, where a customer agrees to buy Services from Innovation Station for a specified number of hours, that number of hours;

- i. **“Order”** means any order provided to Innovation Station for Goods or Services in any form;
- j. **“Quote”** means a quote provided by Innovation Station;
- k. **“Period”** means a particular number of half-days, days, weeks, fortnights, months, or any other period, as may be agreed between Innovation Station and the Customer as the period during which some Services will be provided;
- l. **“Plan”** means any arrangement between Innovation Station and a Customer (whether alone or in conjunction with any other person) for Services (including unlimited support) and/or the provision of Goods provided by Innovation Station under an arrangement in connection with Work agreed to be done or progressed for or on account of the Customer or any other person at the Customer’s request, including as set out in a Plan Schedule;
- m. **“Plan Schedule”** means the key terms applicable to Plans as set, and as may be varied by, Innovation Station from time to time in its absolute discretion without notice to the Customer;
- n. **“Public Holidays”** means any day which is a public holiday throughout New South Wales other than a bank holiday;
- o. **“Rates”** means the hourly rates and other charges for Services (including any call-out fees and any Return/Cancellation Fees) set out in the Rates Schedule, a Plan, Plan Schedule, Quote, contract or arrangement entered into by Innovation Station and a Customer;
- p. **“Rate Schedule”** means the schedule of rates, charges and conditions for the services of Innovation Station as set, and as may be varied, by Innovation Station from time to time in its absolute discretion without notice to any Customer;
- q. **“Services”** means the provision of any services by Innovation Station including Work, advice and recommendations;
- r. **“Software”** includes software and any installation, update, associated software and any services provided in connection with any of these things; and
- s. **“Work”** means anything Innovation Station may do, provide, customise, produce or acquire, whether or not in connection with, or for the purposes of, a Customer or a Customer’s use or benefit, and includes testing, troubleshooting, installation and configuration, consulting, scoping, planning, documenting and quoting for complex items.

**In these Conditions, the Rate Schedule and every Quote, Order, Plan, contract, or other arrangement in connection with the supply of Goods or Services by Innovation Station, unless the contrary intention appears:**

- t. Words denoting the **singular** number only **shall include the plural** number and vice versa;
- u. Reference to **any gender shall include every other gender**;
- v. Reference to **any Act of Parliament, Statute or Regulation shall include any amendment** currently in force at the relevant time and any Act of Parliament, Statute or Regulation enacted or passed in substitution therefore;
- w. **Headings** and words put in **bold** are for convenience of reference only and **do not affect the interpretation or construction** of these Conditions;
- x. All references to dollars (\$) are to **Australian currency**;
- y. A reference to time is to **Sydney, Australia time**;
- z. A reference to an **individual or person includes a corporation**, partnership, joint venture, association, authority, trust, state or government **and vice versa**;
- aa. A reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to these Conditions;
- bb. A recital, schedule, annexure or description of the parties forms part of these Conditions;
- cc. A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;
- dd. Where an expression is defined, **another part of speech or grammatical form of that expression has a corresponding meaning**;
- ee. A reference to **“includes”** means **includes without limitation**;
- ff. A reference to **“will”** imports a condition not a warranty; and
- gg. A reference to **bankruptcy or winding up** includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in section 9 of the Corporations Act), being subject to administration and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction and to the procedures, circumstances and events which constitute any of those conditions or matters.

## 2. Application of these Conditions

Unless otherwise agreed by Innovation Station in writing, these Conditions are deemed incorporated in and are applicable to (and to the extent of any inconsistency will prevail over) the terms of every Quote, Order, Plan, contract, or other arrangement in connection with the supply of Goods and/or Services by Innovation Station to the Customer.

## 3. Quotes

- a. **Term and effect:** Innovation Station may give a Customer a written quote for the supply of Goods and/or Services. Quotes will only be valid for 30 days unless otherwise specified in the Quote. A Quote is merely an invitation to the Customer to place an Order with Innovation Station and the acceptance of a Quote by a Customer will not create a binding contract between the Customer and Innovation Station.
- b. **Varying or withdrawing Quotes:** Innovation Station may vary or withdraw a Quote at any time in its absolute discretion and without prior notice to a Customer. It may do so for any reason it considers fit, including, e.g. where the Goods or Services become unavailable or the cost price of Goods or Services increases after the date of the Quote.

## 4. Orders

- a. **Order forms:** A Customer may place an Order for Goods and/or Services with Innovation Station. Normally, Innovation Station will require that the Customer provides, or that the Customer completes an Order form with, the date and the details of the Customer, including **the Customer's full legal name or description and any applicable ABN or ACN number (including the full name or description of any person on whose behalf the order is placed), their address** (including in the case of an individual, their residential address) together with any relevant Quote number and date.
- b. **Approval of Orders:** Each Customer will need to sign the Order or have it duly executed on its behalf, unless the Order is sent by email, in which case the Order will be treated or deemed as if signed by or on behalf of the Customer by the person whose name appears as the sender of the email.
- c. **Reliance on appearance of validity:** Absent actual knowledge to the contrary, Innovation Station may rely upon the apparent validity of an Order. If any Order is signed or sent by email by a named person, that person warrants that the Order is, and it is acknowledged the Order is deemed in favour of Innovation Station to be:
  - i. signed by, and duly authorised by, both the person who signed the Order and the person who sent the email; and
  - ii. duly authorised by the person on whose behalf the Order is placed or apparently placed.
- d. **Cancellation of Orders:** Cancellation of Orders after a project has commenced will incur a pro-rata fee for work already completed.
- e. **Processes and Procedures:** Innovation Station has processes and procedures that it follows in the course of the provision of its Services and the supply of Goods. The Customer agrees to co-operate with Innovation Station and to comply with such processes and procedures as advised to the Customer from time to time.

## 5. Pricing and Rates

**Rates exclude GST:** All rates and amounts charged or quoted for Goods and/or Services by Innovation Station are exclusive of GST and any other applicable taxes or government charges (unless otherwise stated in writing by Innovation Station).

- a. **Rates Schedule:** The Customer must pay for Goods and Services at the Rates set out in any applicable Plan and the Rate Schedule as applicable from time to time during the provision of the Goods and/or Services.
- b. **Calculation of increments:** Where a charge is calculated based on increments of time, e.g. 1 hour or 30 minutes, Innovation Station will charge the applicable rate for the whole increment of time even if work is done during part of, but not for the whole of, that increment of time.
- c. **Term:** Where a Plan sets out an applicable term, e.g. six months or a year, unless you give Innovation Station written notice of the cancellation of your Plan up to 30 days before the end of any applicable term, Innovation Station will extend the term of your Plan automatically for another

term equal to the original term (or such other term as may be agreed between Innovation Station and the Customer).

## 6. Services and Plans

- a. **Service and Plan Variations:** Should the Customer wish to vary the Services provided, Innovation Station may need to re-quote the Project rates and fee.
- b. **Termination of Plans:** Where a Plan has been entered into by Innovation Station with a Customer with respect to a specific Period, Innovation Station may acquire and retain resources in order to provide the Services to the Customer for the duration of the Period. In consideration of this and subject to these Conditions, the Customer may not terminate the Plan before the end of the Period.

## 7. Delivery, Title and Risk

- a. **Delivery liability:** Innovation Station will use all reasonable endeavours to deliver Goods and Services by the due date, but does not accept any liability for non-delivery or failure to deliver on time where this is caused by circumstances beyond the reasonable control of Innovation Station, including, for example, due to failures in supply to Innovation Station or delays caused by third parties.
- b. **Retention of Title:** Until Innovation Station receives full payment in cleared funds for any moneys due to Innovation Station by a Customer on any account or for any reason:
  - i. title to, and property in, Goods supplied to such Customer remains vested in Innovation Station and does not pass to the Customer;
  - ii. the Customer must hold those Goods as fiduciary bailee and agent for Innovation Station and must not sell them;
  - iii. the Customer must keep those Goods separate from its other goods and maintain the Goods and their labelling and packaging intact;
  - iv. where a Customer sells the goods in breach of these Conditions, the Customer is required to hold the proceeds of any sale of those Goods on trust for Innovation Station in a separate account (however any failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee and remit them to Innovation Station);
  - v. Innovation Station may, without prior notice, enter into any premises where it suspects those Goods may be, take possession of those Goods and sever and remove those Goods (notwithstanding that they may have been attached to other goods not the property of Innovation Station) and for this purpose, the Customer hereby irrevocably authorises and directs Innovation Station (and its employees and agents) to enter into such premises as its duly authorised agent and the Customer hereby indemnifies and holds harmless Innovation Station from and against any costs, claims, allegations, demands, damages or expenses or any other acts or omissions arising from or in connection with, such entry, repossession or removal.

## 8. Payment, Late Payment and Default

- a. **Payment due 14 days:** Except in respect of pre-paid Plans, projects, or any other work where payment must be made before the Services are provided, Customers must pay all invoices of Innovation Station within fourteen (14) days from the date of the invoice (unless otherwise agreed in writing) by cash, cheque or direct deposit in accordance with these Conditions and in the way set out in the invoice.
- b. **7 days late:** Where a Customer fails to pay an invoice within seven (7) days of the due date, Innovation Station may, in its absolute discretion and without prior notice, suspend or discontinue the supply of Goods and/or Services to that Customer.
- c. **Recoveries:** All legal and other costs and expenses incurred in connection with the recovery of late payments will be added to the amount due by the Customer to Innovation Station and will be recoverable from the Customer, in addition to the original invoice cost. If the Customer defaults in payment of any invoice on time, moneys which would have become due by the Customer at a later date shall be immediately due and payable without any further notice to the Customer. Collectively, all of these moneys are referred to in these Conditions as a "Sum Due".
- d. **Interest:** If payment of any Sum Due is not made on time, Innovation Station will charge interest daily on the Sum Due at the rate of ten (10) per centum per annum calculated and charged daily on and from the due date until the Sum Due is paid in full.

- e. **Application of funds:** All payments of the Sum Due made by the Customer to Innovation Station will be applied as follows:
  - i. first in or towards payment of any costs (including legal costs), charges, expenses or outgoings paid by Innovation Station in relation to and dishonoured cheques fees, collection costs or any other action taken by Innovation Station for the recovery of any amounts owing by the Customer to Innovation Station;
  - ii. secondly, in or towards payment of any interest due or payable hereunder, and
  - iii. thirdly, in or towards payment of the Customer's debts to Innovation Station in order from the longest standing due to the most recently incurred.
- f. **Security:** Innovation Station may require the Customer to provide security over the Customer's property (including the Goods or any other property of the Customer) as collateral to be held as security for any Sum Due or as a condition precedent to the continuation of supply of Goods or Services by Innovation Station to the Customer.
- g. **Payment arrangements:** In the event that a repayment arrangement is made in relation to any Sum Due and the supply of Goods or Services is resumed, but then a repayment due under that arrangement is not made on time, Innovation Station may, in its absolute discretion and without prior notice, again suspend or discontinue the supply of Goods or Services to that Customer.
- h. **Other remedies:** Innovation Station may exercise any of its rights and remedies including taking legal action against the Customer for the recovery of any moneys due to Innovation Station, notwithstanding it may have exercised other rights under these Conditions.
- i. **Terminate Plan:** A customer may only terminate a Plan where:
  - i. Innovation Station has, in the course of the performance of its Services, committed a material breach of an express term of these Conditions or any applicable Plan, and
  - ii. Innovation Station has failed to substantially remedy the breach within 21 days of a written notice served by the Customer on Innovation Station specifying the breach.

## 9. Liability

- a. **Exclusion:** Except as specifically set out herein and so far as may be permitted by law, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- b. **No liability for program or data loss:** The Customer indemnifies and holds harmless Innovation Station in respect of any allegation, claim, loss or expense of the Customer or any third party for any program or data loss or damage suffered by the Customer or that third party arising directly or indirectly from the supply of the Goods or Services by Innovation Station to the Customer. The Customer acknowledges it is solely responsible for backing up its programs and data in order to mitigate its own potential loss of programs and data.
- c. **Limit on consequential damage:** The Customer indemnifies and holds harmless Innovation Station in respect of any allegation or claim as to any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to the Customer or any third party.
- d. **Limit on damage from a failure in supply:** The Customer indemnifies and holds harmless Innovation Station for any allegation or claim for loss or damage by the Customer or a third party where Innovation Station has failed to meet any delivery date or cancels or suspends the supply of Goods or Services.
- e. **General limit on liability:** Except as otherwise expressly stated in these terms and conditions, Innovation Station is not liable for any loss or damage of any kind however caused (including, but not limited to, by the negligence of Innovation Station) which is suffered or incurred by you in connection with:
  - i. Goods or Services provided to you or any Work;
  - ii. these terms and conditions;
  - iii. the non-availability of Goods or Innovation Station Services or website services for any reason;
  - iv. any act or omission of Innovation Station or the provision of inaccurate, incomplete or incorrect information by you, or
  - v. for any other reason whatsoever.
- f. **Laws still apply:** Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or

Federal legislation applicable to the supply of the Goods or Services which cannot be excluded, restricted or modified.

- g. **Severance:** If any provision contained in the Conditions is unlawful, invalid or unenforceable, those provisions may be severed without prejudice to the validity and enforceability of the remaining provisions of the Conditions.

## 10. Force Majeure

Innovation Station will not be liable for any breach of contract due to any matter or thing beyond Innovation Station' control, including failures by third parties to supply goods, services or transport, stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident.

## 11. Errors and Omissions

Innovation Station makes every effort to ensure that all prices and descriptions quoted are correct and accurate. In the case of an error or omission, Innovation Station may rescind the affected contract by written notice to the Customer, notwithstanding that it has already accepted the Customer's Order and/or received payment from the Customer. Innovation Station' liability in that event will be limited to the return of any money the Customer has paid in respect of the Order.

## 12. Software

- a. All Software licences are the responsibility of the Customer and not that of Innovation Station. It is the duty of the Customer to store all licences for all Software used, so that that they can be reproduced if and when required.
- b. The Customer indemnifies and holds harmless Innovation Station against any claim, allegation, loss, damage or expense arising directly or indirectly from:
  - i. any unauthorised Software use by the Customer;
  - ii. any breach of any Software licence in respect of Software provided to Innovation Station by the Customer to be installed on a Customer's computer;
  - iii. otherwise as a result of Innovation Station installing Software at the request of the Customer where the Customer is not authorised to use the Software; and
  - iv. any problem, defect or malfunction associated with any Software (or related services) supplied by third parties.
- c. All copyright in custom software remains the sole property of Innovation Station unless alternate arrangements are made as part of a separate software agreement.

## 13. Copyright and Confidentiality

- a. **Warranty and breach:** The Customer warrants that any confidential or copyright information or intellectual property (of any kind and in any form held) or provided by the Customer to Innovation Station belongs to the Customer. In the event of any breach of this warranty, the Customer will pay all sums due to Innovation Station as if such warranty had not been breached (and regardless of any non-performance of any obligation by Innovation Station on account of or in connection with the breach of such warranty). The Customer indemnifies and holds harmless Innovation Station in respect of any allegations, claims, loss, costs or expenses in connection with such breach of warranty by the Customer.
- b. Unless specifically agreed in writing, any copyright material created by Innovation Station (such as text, designs and artworks), is automatically protected by copyright. Copyright may be assigned to a client by written agreement.

## 14. Privacy Statement and Your Rights

- a. Innovation Station is collecting your personal information for the fulfilment of Quotes, Orders and the provision of Goods or Services to you and it may retain and use it for any such purposes ("Authorised Purposes").
- b. You are required to provide your personal information to Innovation Station for Authorised Purposes.

- c. Innovation Station may disclose your personal information to other persons for the purposes of the fulfilment of Quotes, Orders and Work for you or in order to provide Goods or Services to you, to verify the information you provide, for enquiries about Goods or Services that may be suitable for your purposes, or to confirm your requirements, to anyone proposing to supply Goods or Services to you, or to acquire Goods or Services on your behalf, or in respect of enquiries relating to any of the foregoing.
- d. Otherwise Innovation Station will not disclose your personal information without your consent unless authorised by law.
- e. Your personal information will be held by Innovation Station at its Principal Place of Business and you can contact Innovation Station to request to access or correct it.
- f. Innovation Station relies on you to submit correct information and details where requested. You accept that you may incur additional expenses if you submit incorrect information.

## **15. Representations**

The Customer acknowledges that no employee or agent of Innovation Station has any right to make any representation, warranty or promise in relation to the supply of Goods or Services other than subject to and as may be contained in the Conditions.

## **16. Dispute Resolution and Notices**

- a. Before court or arbitration proceedings other than for urgent interlocutory relief may be commenced, the following steps must be taken to attempt to resolve any dispute that arises out of or in connection with this contract (including any dispute as to the validity, breach or termination of the contract, or as to any claim in tort, in equity or pursuant to any statute).
- b. Notice (the notice of dispute) must be given in writing by the party claiming that a dispute has arisen to the other party (or parties) to this contract specifying the nature of the dispute.
- c. Upon receipt of the notice of dispute, the parties must attempt to agree upon an appropriate procedure for resolving the dispute.
- d. If within 10 business days of receipt of the notice of dispute the dispute is not resolved or an appropriate alternative dispute resolution process is not agreed, then the parties shall refer the dispute to Resolution Institute, (ACN 008 651 232; Level 2, 13-15 Bridge Street, Sydney NSW 2000; email: infoaus@resolution.institute; telephone: (61-2) 9251 3366, for facilitation of a mediation in accordance with Resolution Institute's Mediation Rules.
- e. The parties must co-operate with Resolution Institute as facilitator.
- f. If within 10 business days after referral of the dispute to Resolution Institute the parties have not agreed upon the mediator or other relevant particular the mediator and any other relevant particular will be determined in accordance with Resolution Institute's Mediation Rules.
- g. This clause will remain operative after the contract has been performed and notwithstanding its termination.

## **17. Governing Law**

The Conditions shall be governed by and construed in accordance with the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.

## **18. Variation of these terms and conditions**

Innovation Station may at any time vary these terms and conditions by publishing the varied terms and conditions on Innovation Station website. You accept that by doing this, Innovation Station has provided you with sufficient notice of the variation. Innovation Station is under no other obligation to notify you of any variation to these terms and conditions.