

Terms and Conditions



These terms and conditions set out the agreement between Ucidity and you, the Client. By accepting any quotation provided by Ucidity, you agree that you have read and agreed to these terms and conditions.

1. Definitions:

- **Client** means you, being the party listed as such in Schedule 1.
- **Ucidity** means Bernard Aziz Kassab, trading as Ucidity (ABN 96 224 185 397).
- **Deliverables** means the end products and/or services provided to you by Ucidity, in the form or media described in the Quotation (or as otherwise agreed between you and Ucidity).
- **Draft** means a preliminary design, mock-up or other item to be provided to you for approval prior to the preparation and provision of a Deliverable.
- **Estimate** means the estimated fees to provide the Services, as set out in the Quotation.
- **Fees** means the costs charged by Ucidity to provide the Services and/or Deliverables.
- **Milestone** means the dates and associated actions set out in Schedule 1.
- **Project** means the scope and purpose of your identified usage of the Deliverables and/or Services.
- **Quotation** means the quotation provided to you in writing by Ucidity.
- **Services** means the services provided by Ucidity as described in the Quotation.

2. Quotation:

Ucidity will provide a quotation to you outlining the services it will provide to you, the timeframe within which those services can be completed and an Estimate. The Estimate stated in the Quotation is an estimate only, and you acknowledge that upon completion of the Services the Fees may be less or more than the Estimate.

Ucidity will advise you as soon as reasonably practicable when it is clear to Ucidity that the Fees will exceed the Estimate by 20%.

The Estimate is based on a maximum of four (4) revisions per item/Deliverable supplied to you. Any revisions over and above this number will result in additional costs, charged at the hourly rates set out in the Schedule.

3. Provision of the Services:

3.1 Timing

You agree that you will advise Ucidity in writing of any deadlines for the completion of the Services or the provision of the Deliverables to you prior to Ucidity commencing the Services. Ucidity will use its best endeavours to meet any such deadline(s) if it is aware of the deadline(s) prior to commencing the Services, but will not be liable for any delay caused by factors beyond its control (including, but not limited to, illness, injury, server failure, act of God and industrial action).

Where milestones are stated in the Schedule, Ucidity agrees to use its best endeavours to meet those Milestones. If it appears that Ucidity will not be able to meet a Milestone, Ucidity will advise you as soon as possible of this fact, and will advise the date by which it believes it will be able to provide the relevant Draft or Deliverable.

If, after commencement of the Services, you advise Ucidity that a Draft or Deliverable is required either earlier than you had previously advised, or earlier than the relevant Milestone, then Ucidity reserves the right to charge a premium of up to 20% of the hourly rates set out in the Schedule in consideration of meeting the earlier deadline.

Ucidity is not liable for any delays resulting from: (a) changes required by you to the Project, the Services, or the Deliverables; (b) delays in you responding to enquiries from Ucidity relating to the Project, the Services, or the Deliverables; or (c) delays by you in approving Drafts, mock-ups, or any revisions of the Deliverables.

3.2 Drafts and Deliverables

Ucidity will provide you with initial, low-resolution designs (a "Draft" or "Drafts") for your approval throughout the Project. You agree that you will either approve or reject any such Draft in writing, within 3 business days. If you reject a Draft, you agree that you will also provide Ucidity with the reasons for any such rejection, and clear instructions as to your proposed amendments to the Draft in order to bring it to your satisfaction. If you do not either approve or reject a Draft in writing within 3 business days, then the Draft is deemed

to have been approved and Ucidity will proceed with further provision of the Services in relation to that Draft, including but not limited to the creation of the Deliverables. Any amendments to the Draft(s) after an approval (being either approval in writing, or a deemed approval under this clause) will result in additional cost to you, charged at the hourly rates set out in the Schedule.

Ucidity will not charge for any revisions to the Deliverables resulting directly from an error on the part of Ucidity.

Any revisions requested by you after Ucidity has provided the Deliverables will be charged at a premium of up to 10%, to be determined at the sole discretion of Ucidity.

Ucidity is not liable for any damage to physical items in transit to you, and you are responsible for obtaining insurance for any such items if you wish.

4. Payment:

Ucidity reserves the right to request a deposit prior to commencing the Services, with such deposit not to exceed 50% of the Estimate. If such a deposit is requested, you agree that you have accepted these Terms and Conditions upon payment of that deposit.

If a deposit is not requested by Ucidity, you acknowledge and agree that Ucidity has provided you with these Terms and Conditions prior to commencing the Services, and by instructing Ucidity to commence the Services you have accepted these Terms and Conditions.

If Milestones are stated in the Schedule, then any payments are due on the date set out in the Schedule. If there are no Milestones set out in the Schedule, Ucidity will invoice you monthly for all costs associated with the Project for the previous month. Payment is due within 14 days of issue of the invoice to you.

You agree that, in addition to the Fees, you will pay any expenses associated with providing the Services, such as costs of commissioning images or subcontracting talent, run-time license costs, research, postage and delivery, photocopying, and storage media expenses, procurement of stock images, printing, and pre-approved travel costs associated with the Project.

Ownership of all rights, including but not limited to intellectual property rights (including copyright), in any Deliverables, images, written content, designs or any other materials (in either electronic or physical form) provided to you by Ucidity remain the property of Ucidity until full payment of the Fees.

Interest will be charged on unpaid invoiced amounts at a rate of 10% per annum, calculated daily, and you acknowledge that this amount is a true reflection of Ucidity's losses as a result of non-payment. The interest payable under this clause will be added to any subsequent invoice, and Ucidity retains all copyright and other intellectual rights in Drafts, Deliverables or any other materials supplied to you until any such interest is paid in full.

If Ucidity is required to commence any proceedings or engage a third party debt recovery to recover unpaid Fees, you are also liable for any associated costs.

5. Intellectual Property:

5.1 Ucidity Warranties

Ucidity warrants and represents that, to the best of its knowledge, the materials provided to you during the course of the Project are original and either: (a) have not been previously published; or (b) consent to use the materials has been obtained for use on the Project.

This warranty does not extend to any uses that you or others may make of the materials provided by Ucidity which may infringe on the rights of others.

5.2 Warranty and Indemnity Provided by You

You warrant that any materials you provide to Ucidity in order for it to provide the Services (including, but not limited to, images, written material, copy, electronic files, and computer code), is either original, or you have all necessary rights to provide those materials to Ucidity and to use that material

Terms and Conditions

for the purpose of the Project.

You agree to indemnify Ucidity, and to hold Ucidity harmless, against any action, claim or proceedings, or for any loss, cost, expense or damage resulting from a breach of the warranty given by you under this clause.

5.3 Use of Deliverables and other materials by Ucidity

Ucidity reserves the right to use the Deliverables and any other materials prepared by Ucidity in the course of providing the Services, or for the Project, for the purposes of its own marketing and promotion, including in any printed company portfolio or on its website. This may include use of your logo.

If you don't wish for Ucidity to exercise its rights under this clause, you must advise Ucidity before commencement of the Services, and Ucidity will negotiate in good faith with you in relation as to the limitations to be placed on such use, or (at the sole discretion of Ucidity) a potential increase in the Estimate in consideration of its agreement to not use the materials.

6. Confidentiality:

In the course of providing the Services, Ucidity may be provided with materials and information that is confidential to you. Ucidity agrees to keep such information confidential, and only disclose it in the following circumstances:

- 1) when the disclosure is to related bodies corporate, officers, employees, consultants, professional advisers, bankers, financial advisers or financiers and those persons undertake to keep confidential any information so disclosed;
- 2) where required by law, or pursuant to a court order; or
- 3) where the confidential information is already in the public domain, other than through a breach of this clause by Ucidity.

If you provide any confidential information to Ucidity, you agree to indemnify Ucidity against:

- a) any action, claim or any proceedings against Ucidity; or
- b) any cost, loss, damage or expense incurred by Ucidity (including, but not limited to any associated legal costs),

if it should be found that such information was confidential to another party.

7. Cancellation, Refund Policy, and Limitation of Liability:

You may cancel the Project at any time and for any reason. However, if you do cancel the Services, you must pay Ucidity:

- 1) for all hours worked in relation to the Project, in accordance with the hourly rates set out in the Schedule (in which case, Ucidity will provide you with evidence of any hours worked) including for hours worked preparing any project scope, strategic planning, market analysis or review in anticipation of the Project;
- 2) any other costs and expenses incurred by Ucidity in the course of providing the Services, including costs to engage any third-party providers; and
- 3) any unpaid invoices, including (if applicable) any interest payable in accordance with clause 4.

In the event of a cancellation for any reason, Ucidity retains ownership of all rights (including but not limited to copyright) in any original artwork, design or written material prepared by Ucidity in the course of the Project (including Drafts and/or Deliverables). In the event of cancellation, you acknowledge and agree that you are unable to use any artwork, design, written material, Draft or Deliverable for any purpose without the written consent of Ucidity.

Notwithstanding any other clause in these Terms and Conditions, and to the extent permitted by law, the maximum liability of Ucidity to you in relation to the Project or the provision of the Services is the greater of:

- a) rectification of any defects or errors in the Drafts, Deliverables or any other materials supplied by Ucidity;
- b) re-supply of the Services; or
- c) refund of any payments made by you to Ucidity.

To the extent permitted by law, the decision as to whether to refund any or all of the Fees to you is at the sole discretion of Ucidity.

Notwithstanding any other clause in these Terms and Conditions, Ucidity will not be liable for any special, indirect or consequential losses incurred in any way in connection with the Services or the Project, regardless of whether such failure was caused by intentional or negligent acts or omissions of Ucidity or a third party engaged by Ucidity.

8. Dispute Resolution:

In the event of a dispute about anything arising from these Terms and Conditions, the Fees, the provision of the Services or the provision of the Deliverables, then before commencing any proceedings in a court of competent jurisdiction both you and Ucidity agree to negotiate in good faith to resolve the dispute for a period of 28 days.

If the dispute cannot be resolved within that 28-day period, then both you and Ucidity agree to participate in mediation in accordance with the Mediation Guidelines of the Law Society of New South Wales and the nominee of the President of the Law Society of New South Wales will select the mediator and determine the mediator's compensation.

9. Miscellaneous:

9.1 Interpretation

The following rules apply in interpreting these Terms and Conditions, except where the context makes it clear that a rule is not intended to apply:

- a) Headings are for convenience only, and do not affect interpretation;
- b) A singular word includes the plural, and vice versa;
- c) If a word is defined, another part of speech for that word has a corresponding meaning;
- d) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- e) If the day on or by which a person must do something under this document is a Saturday, Sunday or public holiday, the person must do it on or by the next day that is not a Saturday, Sunday or public holiday; and
- f) This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

9.2 Communications

All communications and notices in relation to the Services or the Project will be between the Client Representative and the Ucidity Representative, and the preferred form of communication will be email via the respective email addresses for stated in the Schedule.

9.3 Governing Law

This document is governed by the laws of the State of New South Wales, and both you and Ucidity submit to the jurisdiction of the courts of New South Wales.