

## **TERMS AND CONDITIONS | Last Update: 19-02-2023**

All services provided by Tenacity Design Pty Ltd (ABN 21 653 246 630) are subject to the following terms and conditions. Please read them carefully as they, together with your purchase order, quotation or proposal, form the agreement between you and Tenacity Design Pty Ltd. These terms and conditions may change from time to time, and the most up-to-date version can be found online at [www.tenacity.design/terms](http://www.tenacity.design/terms).

### **GENERAL TERMS, INDEMNITY, LIMITATION OF LIABILITY**

#### **1. PAYMENT TERMS:**

1. **Payment Method:** The client shall make all payments to the marketing agency using a method agreed upon by both parties, such as by bank transfer or Stripe using credit card.
2. **Payment Schedule:** The client shall make payments to Tenacity Design Pty Ltd in accordance with the payment schedule outlined in the quote or service agreement. This may include a schedule of payments at certain intervals (e.g. deposit, monthly, quarterly or annually) or a lump sum payment for the entire project.
3. **Late Payment:** If the client fails to make any payment in accordance with the payment schedule, Tenacity Design Pty Ltd may charge a late fee of a 2% of the outstanding balance or a flat fee. This fee will be clearly stated in the quote or service agreement.
4. **Suspension of Services:** If the client fails to make a payment in accordance with the payment schedule, the Tenacity Design Pty Ltd may suspend services until payment is received. Tenacity Design Pty Ltd will not be liable for any losses or damages that result from the suspension of services.
5. **Termination for Non-Payment:** If the client fails to make a payment in accordance with the payment schedule and does not rectify the issue after a notice from Tenacity Design Pty Ltd, Tenacity Design Pty Ltd may terminate the agreement. The client shall be responsible for all fees and expenses incurred by Tenacity Design Pty Ltd up to the date of termination.
6. **Taxes:** All tax and other returns required by city, local, state or federal laws or regulations with respect to the performance of this contract or otherwise in connection with the business of Tenacity Design Pty Ltd and all payments due thereon, and all fees or other payments due in connection therewith, including generally, but not limited to, income or other tax withholding, unemployment compensation, disability coverage and other taxes shall be made, filed and paid by Tenacity Design Pty Ltd, and
7. **Pausing services or projects:** In the case where the client wants to pause a service or a project, the client must request, in writing, to do so. It will be up to the discretion of Tenacity Design Pty Ltd to pause the project or the payments. In the case where the service has not been paused, the client is liable for all payment as per the quote or service agreement schedule.

## **2. ERRORS:**

1. Tenacity Design Pty Ltd will exercise all care to ensure all work is free from error. Tenacity Design Pty Ltd will correct any and all errors made by Tenacity Design Pty Ltd free of charge.
2. Tenacity Design Pty Ltd will not be held responsible for any errors after the approval by the client of any project or proof signed off by the client or its representatives.

## **3. QUOTATIONS & PROPOSALS:**

1. Quotations and proposals provided by Tenacity Design Pty Ltd are valid for 30 days from date of issue only. Older quotations and proposals are subject to review and change.
2. Accepting a quotation or proposal issued by Tenacity Design Pty Ltd will only be valid when the quotation or proposal is accepted online or in writing by email in accordance with these terms and conditions or otherwise stipulated in a quote or proposal.
3. Services will be provided as itemised in the quote or service agreement. Any changes must be requested in writing via email. Tenacity Design Pty Ltd provide a quote to effect any changes and the client must accept these quotes if they want to effect these changes.
4. Quotations and proposals remain the property of Tenacity Design Pty Ltd at all times and it is a condition of their provision that their contents, including any costs, concepts, strategies, solutions or recommendations, may not be disclosed to third parties at any time prior to Tenacity Design Pty Ltd receiving written acceptance of the quotation or proposal and the payment terms have been adhered to.
5. Tenacity Design Pty Ltd will use any resources it deems fit to fulfil a quotation or proposal. This includes, but is not limited to, discretion as to choice of software, materials, and contractors.
6. All prices listed in any portal, printed, or published online are subject to change without notice.

## **4. INVOICING:**

1. Invoice will be sent to the email account provided by the client in relation to payment.
2. Invoice may be generated manually, by Xero accounting software or Tenacity Print Portal.
3. General payment terms are 7 days from invoice date or as defined in the quotes or service agreement.

## **5. CANCELLATION:**

1. Cancelling or pausing of services or projects: In the case where the client wants to cancel or pause a service or a project, the client must request, in writing, to do so. It will be up to the discretion of Tenacity Design Pty Ltd to cancel or pause the project. In the case where the service has not been cancelled or paused, the client is liable for all payment as per the quote or service agreement schedule.

## **6. FINANCIAL ADVICE:**

1. We are are not financial planners and can not provided any financial advice, in the case were we discuss budgets or profit forecast, it is the responsibility of the client to seek professional advice and base their financial diction on the the advice of their advices, before they give us the go ahead on any projects

#### **7. SERVICE AGREEMENT:**

1. In the case of a larger project or monthly retainer a service agreement must be signed by both parties. Contained in these service agreement are:
  - scope of services to be provided
  - the payment terms
  - term of the agreement
  - exclusivity
  - confidentiality provisions
  - warranties
  - limitations of liability
  - any special terms and conditions

#### **8. CONFIDENTIALITY:**

1. Both parties agree to maintain the confidentiality of all information disclosed by one party to the other in connection with the services provided under any agreement. This information may include, but is not limited to, trade secrets, proprietary information, financial information, and other sensitive information. The parties agree to use this information solely for the purpose of performing their obligations under any agreement and not to disclose such information to any third party without the other party's prior written consent.
2. Both parties agree to take reasonable measures to safeguard and protect confidential information, including but not limited to, maintaining physical and electronic security measures, limiting access to confidential information to those employees or agents with a need to know, and promptly notifying the other party in the event of any suspected or actual unauthorised disclosure of confidential information. The obligations of confidentiality shall survive the termination or expiration of any agreement."

#### **9. EXCLUSIVITY:**

1. Generally, no client has exclusivity, unless so stipulated in the service agreement.
2. Tenacity Design Pty Ltd may work with any client even if it is in direct competition with an existing client.
3. Agreement shall not give rise to any exclusive relationship and nothing in this Agreement shall prevent Tenacity Design Pty Ltd acting for or providing the same or similar works to the Works to any existing or prospective third party.

4. The Works provided by Tenacity Design Pty Ltd shall be for the use and benefit of the Client and may not be supplied or passed on to any person without the approval of Tenacity Design Pty Ltd
5. Tenacity Design Pty Ltd duty of care is to the Client, not to any third party, unless agreed Tenacity Design Pty Ltd has agreed in writing to accept a duty to the third party. The Client may only rely upon the Works provided by Tenacity Design Pty Ltd for the purposes which such goods and services are provided.

#### **10. INDEMNITIES & LIMITATION OF LIABILITY:**

1. Tenacity Design Pty Ltd makes no warranties or representations about the success of any proposed solution. It is your responsibility to ensure that any service or solution proposed by Tenacity Design Pty Ltd meets your requirements.
2. Any express or implied statutory or otherwise terms, conditions, warranties, representations not included in these terms and conditions, including those of The Client's, are excluded.
3. Tenacity Design Pty Ltd and its employees and agents will not be liable for any losses, losses to profit or damage to goodwill, nor any direct, indirect, incidental, special, consequential or punitive damages incurred directly or indirectly out of services provided by Tenacity Design Pty Ltd.
4. Where any part of these terms and conditions is excluded, modified or voided under any legislation, the legislative provision will be deemed incorporated in these terms and conditions. Where more than one term, condition, warranty or remedy is available to you, Tenacity Design Pty Ltd reserves the right to select the means by which any breach of such legislative provisions will be remedied, including, specifically, supplying the agreed service again where permitted.

#### **SERVICE SPECIFIC**

##### **11. DIGITAL MARKETING:**

1. Service Agreement: The Service Agreement for digital marketing, together with the preceding quote or proposal, collectively govern the terms under which Tenacity Design Pty Ltd may manage digital campaigns for the Client.
2. Term: The of the services agreement will be as indicated in writing on the service agreement. Where no end date is specified activity will run until such time as written notice of termination is received, at which time a standard 60 day notice will apply.
3. Indemnity and Hold Harmless: The Client agrees to indemnify, defend, protect and hold free and harmless Tenacity Design Pty Ltd and its officers, members, directors, and employees from and against any and all liabilities, damages, costs, expenses, obligations, claims, fines, penalties or losses, including but not limited to all attorney's fees and other costs of defence, arising in any way from the fault or negligence of The Client, its agents, employees, and sales

personnel or from the publication of any editorial or The Client materials supplied by The Client, including, without limitation, any such liability arising out of copyright, privacy, or antitrust. The Client shall not, however, be liable hereunder for any damages or other losses set forth above which are caused by the fault or negligence of Tenacity Design Pty Ltd. Tenacity Design Pty Ltd does hereby indemnify and hold harmless The Client and its officers, members, directors, and employees from any liability, damages, costs, expenses, obligations, claims, fines, penalties or losses, including but not limited to all attorney's fees and other costs of defence, arising in any way from the fault or negligence of Tenacity Design Pty Ltd, its agents, or employees or from the publication of any material supplied by Tenacity Design Pty Ltd. Tenacity Design Pty Ltd shall not, however, be liable hereunder for any damages or other losses set forth above which are caused by the fault or negligence of The Client.

**ASSIGNMENT:**

1. Tenacity Design Pty Ltd services hereunder are personal in nature. The Service Agreement may not be assigned or transferred by Tenacity Design Pty Ltd without the prior written consent of The Client.

**MODIFICATION:**

1. The Service Agreement may only be modified in writing and signed by both parties hereto.
2. Confidentiality: Information that is disclosed by one party to the other party, and that is marked "confidential," or which under the circumstances ought reasonably to be treated as confidential information (including The Service Agreement, proposals and strategies), will be treated as confidential by you. You will not disclose to a third party such information or use such information other than for the purpose for which it was provided without the written consent of us. This limitation will apply for a period of one (2) year after disclosure of such confidential information. The foregoing limitations do not apply to the extent such information: is or subsequently becomes publicly available other than through a breach of these limitations; is already known to the receiving party at the time of disclosure; is developed by the receiving party independent of such information; or is rightfully received from a third party without restrictions on disclosure or use. Tenacity Design Pty Ltd and The Client collectively agree to keep the terms of The Service Agreement and all information pertaining to the advertising sales and other information pertaining to either party's business strictly confidential except as may be required to sell Advertising. Disclosure by Tenacity Design Pty Ltd or The Client to its attorneys, accountants, or tax advisors and sales representatives, or as may be required by law to any governmental agency or authority or to a court or arbitrator shall be conditioned on all reasonable steps being taken to maintain the

confidentiality of the terms of this Agreement. Either party shall notify the other party promptly if any such disclosure is requested or required.

3. Neither party shall issue any press releases or public announcements pertaining to The Service Agreement or the Advertising Sales unless such releases or announcements have been approved by the other party prior to issuance.
4. Responsibility for Advertisements: The Client represents and warrants to Tenacity Design Pty Ltd that it is fully authorised to deliver, and authorises Tenacity Design Pty Ltd to deliver on its partners' behalf, content through advertisements (including, without limitation, all content such as text, graphics, URLs, and sites to which URLs are linked) All content complies with all applicable laws and regulations. If an agency is entering into this Agreement on behalf of an The Client, Tenacity Design Pty Ltd agrees to the foregoing representations and also represents and warrants that it is the authorised agent of The Client, and The Client is not, as of the date of The Service Agreement in material breach of any agreement with or in default with respect to any amount owed to Agency. It is the responsibility of The Client to inform Tenacity Design Pty Ltd of removed or relocated web content that may adversely affect the advertisements' ability to deliver appropriate content to visitors. Tenacity Design Pty Ltd will not be held liable for any clicks delivered to removed or relocated web content, such as those resulting in an HTTP 404 error response code.
5. Costs associated with media and clicks generated from running this service will be charged directly by the respective platform. The Client authorises Tenacity Design Pty Ltd to provide your credit card details to the advertising platform for this purpose. These fees will appear as separate charges on the Clients credit card statement. The Client agrees that Tenacity Design Pty Ltd is not responsible or liable for any incorrect payments charged by third party advertising platforms. The Client agrees to communicate directly with the advertising platform should any incorrect charges be made on your nominated account by a third party advertising platform. Tenacity Design Pty Ltd agrees to provide reasonable assistance to facilitate communication between the Client and third party platform owners should this situation arise.
6. All paid platform accounts initially set up by Tenacity Design Pty Ltd are the property of Tenacity Design Pty Ltd. Upon termination or expiration of this Agreement, the Client may apply to Tenacity Design Pty Ltd to transfer ownership of the account which will be granted if the following conditions are met: The term of the agreement is realised; and A minimum of 12 payments have been made on this service. The Client must comply with guidelines for the respective paid advertising platforms.
7. If Tenacity Design Pty Ltd elects to use a paid platform account owned by the Client, changes to the account should only be made by Tenacity Design Pty Ltd staff. The Client can request changes to the account via the nominated Tenacity Design Pty Ltd account manager.

8. Please note that Tenacity Design Pty Ltd is not directly affiliated with Google™, Facebook™ or any other third party platform. As such related services, claims and guarantees are performed and underwritten by Tenacity Design Pty Ltd.

**MISCELLANEOUS:**

1. The Service Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications.
2. This Agreement does not constitute an offer by Tenacity Design Pty Ltd and it shall not be effective until signed by The Client.
3. The Client will not have direct access to bid management interface, advertising platforms, or metrics such as cost per click incurred and cost per thousand impressions incurred.
4. It is agreed and understood that any activities undertaken by the The Client (or by any third party on its behalf) which is in relation to or similar to the Works, including without limitation any modification of the Works, modification or changes to the The Client's web site, or the use of or inclusion of any third party product or service which might relate to the Works shall interfere with the provision of the Works by Tenacity Design Pty Ltd and shall affect the results, outcomes and positions in search engines. All such activities should be discussed with Tenacity Design Pty Ltd prior to implementation and The Client shall not implement the same without the prior written consent of Tenacity Design Pty Ltd.
5. All platform accounts and contents therein will remain the intellectual property of Tenacity Design Pty Ltd during and after the program described with this agreement.
6. The Client will pay all media costs directly to 3rd party vendors.
7. Counts and Make Goods:
8. Tenacity Design Pty Ltd counts instances of Content being delivered based on requests, and Tenacity Design Pty Ltd will issue monthly tracking reports on that basis.
9. The Client will only be privy to results of their individual advertising or the cumulative results of their program when sponsoring a cooperative initiative.
10. If Tenacity Design Pty Ltd fails to deliver the contracted impressions during the contract term, The Client's sole remedy for such failure will be an extension of this The Service Agreement until the contracted deliverables are provided in full. The final determination of delivery will be as reported by Tenacity Design Pty Ltd ad server platforms.
11. Tenacity Design Pty Ltd will not be liable for impressions or other delivery discrepancies between said platforms and The Client's 3rd party ad tagging.
12. Tenacity Design Pty Ltd guarantees costs and assumes all risks based on current levels of online inventories and marketplace demand.

13. In the event, and only in the event, market conditions shift to prevent the execution of the contract as contemplated by the parties, The Client and Tenacity Design Pty Ltd may mutually agree to alter the agreement terms or either party may terminate the contract upon 10 business days' notice in party's sole discretion.
14. Commitment and Payment Terms: Unless otherwise agreed upon, The Client will be billed in full upon advertising campaign activation. Tenacity Design Pty Ltd will invoice The Client for all fees under The Service Agreement, and
15. The Client will pay Tenacity Design Pty Ltd all invoiced amounts within 7 days after the date of the invoice to Tenacity Design Pty Ltd.
16. Tenacity Design Pty Ltd may remove any advertisements and cancel any Service Agreements, if The Client is in default of its payment obligations.
17. The computation and payment of which (other than taxes on Tenacity Design Pty Ltd income) is the responsibility of The Client.
18. Reporting: Tenacity Design Pty Ltd will provide monthly reports, at a minimum, taken directly from the applicable advertising account(s) demonstrating key metrics such as clicks, impressions and click-through rates.
19. The Client will only be privy to results of their individual advertising or the cumulative results of their program when sponsoring a cooperative initiative.
20. Independent Status: The parties intend that an independent contractor relationship will be created by The Service Agreement. Nothing in The Service Agreement shall be construed as making the parties joint ventures or as making either party or any of its employees the employee of the other.
21. Covenant Not to Divert: During the term of The Service Agreement and for a period of one (1) year thereafter, the parties will not directly or indirectly solicit, induce, attempt to induce, or endeavour to entice away any employee of the other party, whether for their own account or for the account of a third party.
22. Access: The client shall provide Tenacity Design Pty Ltd with access to all necessary information, data, and materials required to perform the digital marketing services. The client shall be solely responsible for the accuracy and legality of all content provided to Tenacity Design Pty Ltd
23. The parties acknowledge that digital marketing is subject to the changing nature of the internet and related technologies, and as such, Tenacity Design Pty Ltd does not guarantee any specific results or outcomes. The parties agree to work collaboratively to achieve the client's digital marketing goals and to regularly review and adjust the digital marketing strategy as necessary."

## **12. GRAPHIC DESIGN:**



1. You agree to electronically supply all text, documentation, images, artwork or any other necessary material for Tenacity Design Pty Ltd to complete agreed work, within (1) one working week of acceptance of the quotation or proposal unless otherwise agreed in writing. Tenacity Design Pty Ltd will not be responsible for delays to agreed scheduling and/or failure to meet deadlines where you fail to adhere to this condition. Costs incurred by Tenacity Design Pty Ltd arising out of delays caused by breach of this condition will be charged to you.
2. You must ensure all artwork and any other material Tenacity Design Pty Ltd is asked to use meets all relevant Australian legal requirements, including but not limited to compliance with intellectual property rights legislation and/or statutory or common law personal rights or proprietary rights.
3. Compliance with intellectual property rights legislation means you will obtain all necessary permissions, licences or any other authorization to use copy, artwork, graphics, registered names, trademarks, patents, logos or any other material you provide to Tenacity Design Pty Ltd so that their use by Tenacity Design Pty Ltd does not constitute an unauthorised dealing within the meaning of the Copyright Act 1968 (as amended).
4. Compliance with clause (12.3) of this section will be implied by your supply of any material mentioned in clause (12.3) to Tenacity Design Pty Ltd. It will be construed in the form of a guarantee to Tenacity Design Pty Ltd that material complies with clause (12.3) of this section.
5. Tenacity Design Pty Ltd will be indemnified against any claims and/or costs arising from your failure to comply with any part of clause (12.3) of this section.
6. Unless otherwise agreed, any required liaison with a printer other than one nominated by Tenacity Design Pty Ltd will be charged at a per hour rate.
7. Tenacity Design Pty Ltd will always supply a final proof to you for review and approval prior to delivery and/or printing and/or publication. You must examine the final proof carefully for errors. When you are satisfied with the final proof, you convey explicit approval of electronically supplied proofs in writing (email, online portal). Any errors or exceptions must be noted in writing and returned with the proof to Tenacity Design Pty Ltd for correction in accordance with these terms and conditions.
8. Alterations to previously approved work will be invoiced at an hourly rate of \$125.
9. Tenacity Design Pty Ltd shall use its best efforts to create original and innovative designs that meet the client's specifications and requirements. Tenacity Design Pty Ltd shall provide the client with a set number of design concepts and revisions as outlined in the quote or service agreement. The client shall provide feedback on the designs in a timely manner and approve the final designs before Tenacity Design Pty Ltd proceeds with final production or delivery.

10. Tenacity Design Pty Ltd reserves the right to use any artwork, designs, or logos created for the client as part of its promotional material. The client may opt out of this by providing written notice to Tenacity Design Pty Ltd.
11. All original artwork and design ownership remains with Tenacity Design Pty Ltd until full payment has been received
12. The parties acknowledge that design is a subjective and creative process, and as such, Tenacity Design Pty Ltd does not guarantee any specific results or outcomes.
13. The parties agree to work collaboratively to achieve the client's design goals and to regularly review and adjust the design strategy as necessary.

### **13. PRINT MANAGEMENT:**

*These terms are to be read in conjunction with our print portal Terms and Conditions*

*<https://print.tenacity.design/terms-of-use.html>*

1. Shipping costs. All prices displayed on The Print Portal, website and quotes exclude shipping costs. Unless clearly indicated
2. Orders are dispatched within 5 business days and shipping times are estimated at between 7 - 14 business days depending on your location within Australia and the exception of products with an unusually long production time.
3. We do not ship goods out of Australia unless prior arrangements are made.
4. Please contact us on +61 07 55004044 to enquire about a special order.
5. Availability: We endeavour to make sure that all products listed on our print portal are currently in stock and pricing is true and correct. In the event that an ordered item is not available or we are unable to fulfil your order we will notify you within 2 business days to arrange an agreeable alternative item, a backorder or a full refund.
6. Price Changes: In the case where the price displayed on the print portal or quote is out of date or incorrect we reserve the right to cancel the order or replace the order with the correct price.
7. Refund Policy: Please choose carefully. We do not normally give refunds if you simply change your mind or make a wrong decision. You can choose between a reprint or credit where goods are faulty, have been wrongly described, are different to the product purchased on the print portal.
8. Intellectual Property: Working files and concept/design development files remain the property of Tenacity Design Pty Ltd at all times unless otherwise agreed in the quotation or proposal or in writing.
9. Ownership and intellectual property rights in any works created by Tenacity Design Pty Ltd remains with Tenacity Design Pty Ltd. Ownership and intellectual property rights are free of charge but need to be requested at time of Quotation. Works for the purpose of this clause

refers to any literary, artistic or dramatic work as defined in the Copyright Act 1968 (as amended).

10. Notwithstanding clause (13.9) of this section, moral rights to works are retained by and remain with Tenacity Design Pty Ltd at all times.
11. Pursuant to clause (13.9) of this section, Tenacity Design Pty Ltd explicitly retains the right to use, publish, reproduce, display, distribute or create derivative works from any designs, artwork, copy, concepts, or designs to promote or publicise Tenacity Design Pty Ltd and/or foster recognition of Tenacity Design Pty Ltd as the author of the material.

#### **DELIVERY:**

12. Tenacity Design Pty Ltd shall deliver the Goods to the Customer's address as arranged at the time of Quotation or as registered in the Print Portal. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Customer at Tenacity Design Pty Ltd's address.
13. The cost of any insurance is the sole responsibility of the customer.
14. Delivery of the Goods to a third party nominated by the Customer is deemed to be delivered to the Customer for the purposes of this agreement.
15. The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
16. Tenacity Design Pty Ltd shall not be liable for any loss or damage whatsoever due to failure to deliver the Goods (or any of them) promptly or at all.
17. Rejection – Subject to clause 9 the customer may only reject the Goods if they do not comply with the customer's instructions.
18. Design if they do not comply with the customer's instructions.
19. If the customer wishes to reject, the customer must notify Tenacity Design Pty Ltd of the rejection:
20. If the customer is entitled to rejection and rejects in accordance with these Terms and Conditions, risk reverts to Tenacity Design Pty Ltd at the time the customer notifies Tenacity Design Pty Ltd of the rejection.

#### **14. CONSULTATION**

1. Tenacity Design Pty Ltd shall provide consultation services to the client as specified in a quote, proposal or Service agreement. These services may include, but are not limited to, brand messaging, marketing consultation, and strategy consultation.
2. Tenacity Design Pty Ltd shall use its best efforts to provide the client with expert advice and guidance based on its professional knowledge and experience.

3. Tenacity Design Pty Ltd shall work collaboratively with the client to understand their needs and goals, and to provide tailored solutions that meet those needs and achieve those goals.
4. The client shall provide all necessary information, data, and materials required to perform the consultation services. The client shall be solely responsible for ensuring that all content provided to Tenacity Design Pty Ltd is accurate and lawful, and that the client has obtained all necessary licences and permissions for use in the consultation services.
5. Tenacity Design Pty Ltd shall not be liable for any decisions or actions taken by the client based on the consultation services provided. The client shall be solely responsible for implementing any recommendations or strategies discussed during the consultation.
6. The parties acknowledge that consultation is a collaborative process, and as such, Tenacity Design Pty Ltd does not guarantee any specific results or outcomes. The parties agree to work together in good faith to achieve the client's consultation goals and to regularly review and adjust the consultation strategy as necessary.
7. Fees for consultation services shall be as specified in The Service Agreement, and shall be billed on an hourly or project basis. Payment terms for consultation services shall be as specified in The Service Agreement.

#### **15. WEBSITE MAINTENANCE:**

1. One off fixes are considered to be:
  - a. Malware removal
  - b. WordPress migration
  - c. Broken Site
  - d. White screen of death
  - e. Contact forms error
  - f. WooCommerce Checkout Error

Any other fixes required will be considered as web development and will be quoted accordingly on request.

- One Off Website Fix, These bring websites back to their original working state. One-off fix examples include the following:
  - Malware/Hack Cleanup
  - Fix PHP Errors
  - White Screen of Death
  - Dead Links
  - Update Core site updates along with Plugins and Theme.
  - Speed optimisation
  - Adding a plug in

- Small visual adjustments
- Plugin configurations
- Website migrations

### **EXCLUSIONS:**

The following work is explicitly excluded from the One off Website Fix: Any other fixes required will be considered as web development and will be quoted accordingly on request.

- any website development tasks
- Any design related tasks
- Editing functionality of a website
- Configuration of an external hosting environment
- Data entry
- Content writing
- Link building and closing SQL injection vulnerabilities present in custom code.
- Individual task or fix request. Each individual website fix or task must be submitted as a separate task. If multiple tasks are submitted in a single submission we reserve the right to either reject the order or reassign each individual task or fix to separate orders. You will be charged for each individual website fix or task.
- Time limit. We will normally provide you with a time frame for completion of the work at the time the order is placed and the details of the website fix or task are provided to us. Whilst we endeavour to complete any website fix or task as soon as possible, we offer no guarantee as to how long it will take us to complete the website task or fix. We will dedicate a reasonable amount of time required to complete the website task or fix.
- Team member. Wherever possible we attempt to appoint a specific team member to complete a website task or fix. However, we work as a team and any team member may work on your website fix or task at any given time.
- Incomplete website tasks or fixes. There will be occasions where it is not possible to fix the problem, for example where the website is irretrievably broken or where features of your website are incompatible with other features or the hosting environment. Where we are of the reasonably held view that it will not be possible to complete a website fix regardless of the amount of time our experts spend, we will notify you of this and provide you with written confirmation setting out why it has not been possible to complete the website fix.
- Best Effort Service. Tenacity Design Pty Ltd will use reasonable skill and care to complete any website fix or task. However, it is not possible to guarantee any website fix or task will be error free. Where errors arise you must notify us within 7 days. If the error is as a direct result of the work undertaken by us we will endeavour to resolve the error within a reasonable period of time.

- Tenacity Design Pty Ltd is not responsible for any work done by third parties on your website, or for any software or plugins that are utilised by you. There may be occasions where actions by third party suppliers, such as website hosts, software and plugin developers, web browsers, email clients, domain name registrars or search engines, will affect our ability to complete a fix or task. In the event of a third party interruption Tenacity will not be liable for any delay in completing the fix or task. You will not be entitled to a refund in the event that we are unable to complete a website fix or task as a result of a third party's action.

#### **MONTHLY PACKAGES:**

- Our plans include visual tweaks and plugin customisation: Under the website maintenance plans we take care of technical WordPress maintenance; significant work such as redesigns, page builds, changing website functionality, or working through SEO reports. Should be requested and will be quoted accordingly. Here are the services provided depending on which package you have signed up for.

#### **WORDPRESS MAINTENANCE:**

- Plugin updates: All updates are done on a staging environment for testing purposes and then pushed live
- Theme updates: All updates are done on a staging environment for testing purposes and then pushed live
- WordPress core updates: All updates are done on a staging environment for testing purposes and then pushed live
- Website audits: Website audits
- Configure caching
- Debug email issues
- Staging websites
- Twice daily backups
- Proactive monitoring
- SLA: A guaranteed response from our experts within four hours. We can create custom SLAs on request.

#### **SECURITY:**

- Malware Removal: Complete removal of malware from WordPress site files and database
- Proactive WordPress Protection: Proactive WordPress Protection
- Improve website security: Security hardening on a server and website level. Website needs to be hosted with us.

- Google Search Reviews: Recrawl the site through google to remove the red "Website Deceptive" warning and remove fake/false search results

#### **PERFORMANCE:**

- Speed Optimisation: We will optimise the website to make sure it runs as efficient as possible
- GTMetrix and PageSpeed: We will attempt to get you as high a score as possible on CWV/GtMetrix/PageSpeed, within our remit as a WordPress maintenance company.
- Core Web Vitals: We will attempt to get you as high a score as possible on CWV/GtMetrix/PageSpeed, within our remit as a WordPress maintenance company.
- TECHNICAL WORK
- Unlimited Support:
- Fix WordPress errors: Debug and fix WordPress fatal errors, white screens of death and timeouts
- Plugin configuration: We help configure a plugin to work with your website
- Theme customisation
- Contact form errors
- Install new plugin
- Add a contact form

#### **WEB HOSTING AND EMAILS:**

- Premium Web Hosting
- Choice of Locations
- Dedicated Server
- PCI Compliant
- Disk space allowance
- SSL Certificate
- Email setup assistance
- Bandwidth allowance
- Spam filtering

#### **USER INTERFACE:**

- Visual tweaks: We can make small visual tweaks on your WordPress site. For instance, adding an image or changing some text.
- Simple content addition: Single post upload - we don't do bulk data processing
- Plugin configuration

- Add code snippet: Add tracking code widgets and snippets such as live chat apps and google analytics
- CSS Edit: Make CSS changes in order to rectify stylesheet corruption, render issues, or element misplacement

#### **MISC:**

- LMS plugins support
- Google search console errors
- Custom coded theme/plugin troubleshoot

#### **WOOCOMMERCE MAINTENANCE:**

- Fix broken checkout
- Shipping configuration
- Payment gateway configuration
- Core Web Vitals: We will attempt to get you as high a score as possible on CWV/GtMetrix/PageSpeed, within our remit as a WordPress maintenance company.
- Fix WordPress errors: Debug and fix WordPress fatal errors, white screens of death and timeouts

#### **HOSTING:**

- **Purpose of Services.** Unless explicitly stated to the contrary our services are intended to be used for the purposes of hosting websites and email. Batch processing, video encoding/transcoding, web crawling/spidering, archiving and online backup systems and any system for purposes other than hosting a website are not permitted on our servers. You may only use such tools with our agreement in writing on a dedicated server. We reserve the right to take proactive action to maintain the stability of our systems for all clients.
- **Suitability of Hosting Environment.** On our included managed hosting, we do not actively limit your account on either disk space or bandwidth (or both). However, to ensure system stability, accounts are limited by resource usage to ensure no one client can affect the service of others on shared servers. On dedicated servers, your resources are defined by the package you purchase
- **Unlimited Allowances.** Any 'unlimited' allowances are subject to fair use and any customer using an amount of monthly bandwidth or disk space deemed excessive in comparison to the average usage by other customers on our platform may, at our discretion, be advised to improve website efficiency and/or configure a CDN, or upgrade to a bespoke solution and will be billed accordingly.



- **Service Needs.** If we feel that the service selected or purchased by you does not meet your service needs we will inform you of this and advise you of the appropriate service for your needs. We are under no obligation to continue to provide hosting services that are inadequate or unsuitable to your needs. Refusal to cooperate with an account move request may result in account suspension and/or termination.
- **Migration Service.** We offer a free migration service to help move your website from your previous provider to ourselves. This is a best-effort service. We will take reasonable care to move your site files and data but it is your responsibility to give us suitable access to retrieve the data and to check that the site has been migrated successfully. In some cases we may be able to migrate emails, DNS records and domain names also, but we do not warrant that we can move them successfully, or without interruption.
- **Changes to the hosting environment.** We reserve the right to change the hosting environment your website runs in:
  - to reflect changes in relevant laws and regulatory requirements; to implement minor technical adjustments and improvements, for example to address a security threat. These changes will be made on a “like for like” basis and will not affect your use of the hosting environment. The only circumstances where material changes will be made to your website hosting environment will be to provide you with an ‘upgrade’. You will be informed in writing of any changes that we make to the hosting environment.
- **Upstream Providers.** You must agree to the terms of our upstream providers with emphasis on their terms of export law. We have attempted to incorporate all of their relevant terms here.
- **CDN and Bandwidth Usage.** In some locations where bandwidth prices are high due to relative lack of connectivity (e.g. the Middle East), or fluctuate, we may require you to use a CDN service we provide. A CDN service distributes worldwide traffic worldwide, rather than from your single server, thus speeding up page loads and reducing bandwidth from source. We will reasonably assist with the setup.<sup>5.9</sup>
- **No Guarantee.** We make no guarantee to defend your website from a denial of service attack unless that service has been specifically offered and agreed. If you think you may be a DDOS target you should purchase a DDOS mitigation service from a third party such as Cloudflare.
- **Service uptime.** We endeavour to provide a 99.9% service uptime, excluding planned or emergency server maintenance or conditions beyond our reasonable control. All customers will be notified of planned maintenance as far as possible in advance through our status page and, should the maintenance last for longer than 30 minutes, via e-mail. In the event of a problem with your server, we shall ensure that a qualified engineer will be dealing with the

problem within 30 minutes of being notified. In the rare event that your problem cannot be resolved within 30 minutes you will be notified. When notifying you we will provide you with the details of the problem along with an estimation of when the issue will be resolved.

- **Backups.** We take twice-daily backups of your websites and store them offsite, usually in the same geographic region (but not necessarily the same country) as your live server for the best performance. If you have data residency requirements please contact us to arrange a bespoke solution. We may exclude files we consider non-fundamental to the operation of your website, e.g. error logs, cpanel backups, cache files. Backups are a best effort service and we do not warrant that they are complete or regular. It is your responsibility to keep backups of your own website.
- **Disruption to Services.** We are not responsible for disruption to the services outside our control. We endeavour to choose providers that offer an extremely high level of performance and uptime but if our supply of the services is disrupted by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the disruption. We will not be liable for disruption caused by the event. We will not be responsible for network or hardware issues upstream of us. E.g. If AWS have an issue we will not be responsible for their problems or include this within our 99.9% uptime.

#### **WEBSITE DEVELOPMENT:**

1. "Web design" refers to the design and/or development of any one or combination of the following:
2. HTML websites and landing pages
3. online e-commerce modules
4. applications or components
5. website content management systems
6. web or electronic applications
7. electronic animations.
8. Web design quotations and proposals are for design and upload to a host server only unless otherwise agreed in writing. On-site installation or setup, website maintenance and any other ongoing support services are subject to separate quotations and proposals unless otherwise agreed in writing.
9. Web design maintenance and/or updating (including additions and deletions) will be performed in accordance with a separate purchase order for such services.
10. Tenacity Design Pty Ltd will not be held responsible for any alterations whatsoever to web designs performed by you or any third party.
11. Tenacity Design Pty Ltd reserves the right to exclude offensive or illegal material you ask to be included in your web design.

12. Tenacity Design Pty Ltd will be indemnified by you against any claims and/or costs arising from material incorporated at your request.
13. All care will be taken to provide reliable goods to you, but Tenacity Design Pty Ltd accepts no responsibility or liability for any losses arising out of the operation of the web design, either by you or your The Clients. This includes loss of data, profits, interruption to service, and any damage or consequential loss. You will be given an opportunity to fully test and review your web design(s) prior to them being uploaded and published on the Internet or implemented in accordance with your purchase order. All errors, including any failures to meet specification, must be brought to Tenacity Design Pty Ltd attention for correction at this stage. Once the test version is approved, any further changes will be charged at cost.
14. Approval of web design(s) must be provided to Tenacity Design Pty Ltd in writing, stating that you have thoroughly reviewed the web design(s) and found the web design(s) to be free from error and completed to specification, and that, as such, you approve the web design(s) for final upload and/or implementation.

**COPYWRITING:**

1. Copywriting Services: Tenacity Design Pty Ltd shall provide copywriting services to the client as specified in the Service agreement or quote. These services may include, but are not limited to, the creation of marketing copy, website content, blog posts, email newsletters, and social media posts.
2. Tenacity Design Pty Ltd shall use its best efforts to provide the client with high-quality, engaging, and persuasive copy that is tailored to the client's target audience and business objectives. Tenacity Design Pty Ltd shall work collaboratively with the client to understand their brand voice and messaging, and to provide copy that is consistent with that voice and messaging
3. The client shall provide all necessary information, data, and materials required to perform the copywriting services. The client shall be solely responsible for ensuring that all content provided to Tenacity Design Pty Ltd is accurate and lawful, and that the client has obtained all necessary licences and permissions for use in the copywriting services.
4. Tenacity Design Pty Ltd shall not be liable for any decisions or actions taken by the client based on the copywriting services provided. The client shall be solely responsible for the use and implementation of the copy provided by Tenacity Design Pty Ltd.
5. The parties acknowledge that copywriting is a subjective and creative process, and as such, Tenacity Design Pty Ltd does not guarantee any specific results or outcomes. The parties agree to work together in good faith to achieve the client's copywriting goals and to revise the copy as necessary based on client feedback.

6. Fees for copywriting services shall be as specified in the service agreement, and shall be billed on a per-project or hourly basis. Payment terms for copywriting services shall be as specified in the service agreement.
7. As with any service agreement, the specific terms and conditions will depend on the nature and scope of your copywriting services, and it's always a good idea to consult with a licensed attorney to ensure that your agreement complies with all relevant laws and regulations