

# TERMS OF TRADE

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## 1. Agreement

(a) These terms of trade (Terms) govern the agreement between 3DUX Pty Ltd (ACN 604 652 664) and you (Customer) for the supply of Services by 3DUX to the Customer. These Terms commence on the date that 3DUX commences providing the Services and the Customer is deemed to have accepted these Terms if 3DUX supplies Services after the Customer receives these Terms.

(b) These Terms apply to all and any Orders, unless 3DUX and the Customer expressly agree in writing to exclude any part of these Terms.

(c) To the extent of any inconsistency between an Order and these Terms, these Terms will prevail.

## 2. 3DUX Obligations

3DUX must:

(a) perform all Services with due skill, care and diligence;

(b) perform the Services in a timely manner;

(c) comply with all reasonable directions of the Customer when performing the Services; and

(d) comply with all legislation and regulations applicable to the Services.

## 3. Customer Obligations

The Customer:

(a) must ensure that the terms of any Order are accurate; and

(b) must provide 3DUX with the Customer Materials that are required by 3DUX in order to perform the Services,

and 3DUX will not be responsible or liable for any delay or non-performance of Services to the extent caused or contributed to by the Customer not providing the Customer Materials in a timely manner, those Customer Materials being faulty or incorrect, or the terms of any Order being incorrect or inaccurate.

## 4. Payment of Fee and terms of payment

(a) In consideration of the 3DUX providing the Services, the Customer must pay 3DUX the Fee specified in an Order on the terms set out in this clause 4.

(b) 3DUX will invoice Customer, on the terms specified in an Order, upon completion of the Services.

(c) The Customer must pay the Fee to 3DUX and any GST within 30 days after receiving a tax invoice.

(d) The Customer must reimburse 3DUX for any reasonable out-of-pocket expenses specified in an Order.

(e) The Customer agrees that, where necessary, it may be requested to pay third party expenses in part or full prior to order by 3DUX and commencement of that part of the Services.

## 5. GST

(a) Unless otherwise specified, all amounts payable under an Order are exclusive of GST and must be calculated without regard to GST.

(b) If a supply made under an Order is a taxable supply, the recipient of that taxable supply (Recipient) must, in addition to any other consideration, pay to the party making the taxable supply (Provider) the amount of GST in respect of the supply.

(c) The Recipient will only be required to pay an amount of GST to the Provider if and when the Provider provides a valid tax invoice to the Recipient in respect of the taxable supply.

(d) If there is an adjustment to a taxable supply made under these Terms then the Provider must provide an adjustment note to the Recipient.

(e) The amount of a party's entitlement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

## 6. Variation to the Services

(a) If the Customer requires additional services or a variation to the Services detailed in an Order, the parties will use their best endeavours to agree new dates and relevant deliverables, and any variation to the Fee arising as a result.

(b) 3DUX may require that the parties must agree in writing to any variation to the Fee prior to 3DUX commencing any additional services or any variation to the Services.

(c) If the Customer cancels any Services, the Customer must pay 3DUX all fees and expenses incurred by 3DUX on a pro-rata basis up to and including the day of cancellation together with all charges and costs that 3DUX may reasonably require in order to comply with its contractual or other obligations to any third party supplier.

## 7. Intellectual property

(a) All right, title and interest in all intellectual property rights (including copyright) in Customer Materials will remain or be vested in the Customer or the party who owns the Customer Materials. The Customer grants 3DUX a licence to use the Customer Materials to the extent required by 3DUX to perform the Services.

(b) Subject to the Customer paying 3DUX in full all fees, costs and expenses in the manner and the amount set out as being payable for the provision of the Services in these Terms and any Order, 3DUX will absolutely and unconditionally assign to the Customer, subject to third party material and any other third party interest and/or use limitations, all right, title and interest in all intellectual property rights (including copyright) in any and all Service Materials.

(c) The Customer will not own any material that is owned by 3DUX and developed independently of the Services but 3DUX will grant the Customer a non-exclusive licence to use this material to the extent necessary to obtain the benefit of the

## Services.

(d) In order to provide the Services, 3DUX may be required to source and license material that is owned by a third party, that may include images, photographs and other content. In such circumstances the intellectual property rights / use rights in such material is retained by the originator and is released for use on terms which may be limited on time, territory and/or media. Accordingly, the Customer acknowledges and agrees that there may be stated, inherent or industry practice based limitations upon the use of this third party material.

## 8. Warranties

Each party warrants that:

(a) it is entitled to enter into these Terms and grant the rights granted by these Terms; and

(b) it is not under any obligation or restriction which could in any way interfere with, restrict, or conflict with its obligations under these Terms or an Order.

The Customer warrants that:

(c) the use by 3DUX of any Customer Materials will not infringe the rights (including intellectual property rights) of any third party; and

(d) the Customer Materials will not contain any information, subject matter or content that is: illegal; contrary to any applicable laws, applicable industry codes, the requirements or directions of the relevant regulators; false, misleading or deceptive or likely to mislead or deceive; indecent, obscene, or defamatory.

## 9. Liability and Indemnity

(a) Under the Australian Consumer Law ("ACL"), a contracting party may have certain rights which cannot be excluded, including guarantees as to the acceptable quality and fitness for purpose of goods and services. Nothing in these Terms will be read or applied so as to have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.

(b) 3DUX and its affiliates, employees, officers and agents, will not be liable to the Customer under or in connection with these Terms or any Order for any indirect, incidental or consequential damage or loss, however caused (whether based on tort, contract or otherwise) and even if such damage or loss was in the reasonable contemplation of the parties at the date of these Terms as a probable result of breach of these Terms, including any loss of revenue, loss of production, loss of content, loss of data or information, loss of contract, loss of sales opportunity, direct or indirect labour costs, damage to equipment or property, the cost of engaging an alternative service provider and similar loss or damage.

(c) The Customer acknowledges that to the maximum extent permitted by law the Service Materials are provided on an "as is" basis and are used by the Customer at the Customer's sole risk, and 3DUX makes no representation or warranty in respect of the quality, completeness, accuracy or fitness for purpose of the Service Materials, or the acts that the Customer may take or results that the Customer may achieve by use of those Service Materials.

(d) To the maximum extent permitted by law 3DUX limits its liability to the Customer arising out of or referable to any breach by 3DUX of its obligations under these Terms and/

or an Order to, at its election, (i) the re-performance of the Services; or (ii) the cost of the reperformance of the Services.

(e) In no event will 3DUX or its affiliates, employees, officers or agents be liable to the Customer for an amount in excess of the total dollar amount actually received by 3DUX from the Customer directly in connection with the particular Services which are provided for under a particular Order which are the subject of the alleged breach, and less third party costs and out-of-pocket expenses and disbursements incurred by 3DUX.

(f) The Customer releases and indemnifies 3DUX, 3DUX's officers, contractors, agents and employees (Indemnified Parties) against all loss, costs (including legal fees and costs on a full indemnity basis), expenses, damages and liability arising directly or indirectly from or in connection with:

(i) any breach of a warranty given by the Customer under these Terms;

(ii) 3DUX's use or exploitation of the Customer Materials;

(iii) any injury to, or death of, persons and any loss or damage to Customer property or third party property, real or personal, (including arising from 3DUX' negligence) and against all actions, proceedings, claims and demands brought against 3DUX as a result.

## 10. Termination

(a) 3DUX may terminate these Terms, and/or any Order, at any time by giving at least two (2) week's written notice.

(b) 3DUX may terminate these Terms, and/or any Order, with immediate effect by giving written notice to the Customer if:

(i) an Insolvency Event occurs in respect of the Customer;

(ii) the Customer commits a breach of these Terms, or any Order, and does not remedy that breach (if it is capable of remedy) within 7 days of being required by notice from 3DUX to do so;

(iii) the Customer commits a breach of these Terms and the breach is incapable of remedy; or

(iv) the Customer engages in conduct which amounts to serious misconduct or a neglect of duty in connection with the provision of the Services.

(c) The Customer agrees that 3DUX will not be liable for any cost, expense, loss or liability suffered by the Customer as a consequence of the termination of these Terms.

(d) On termination of these Terms, provided that 3DUX has performed the Services in accordance with these Terms, the Customer will pay 3DUX for any Services supplied in accordance with these Terms up to the date of termination.

(e) All third party costs and expenses incurred up to date of termination must be paid in full. If 3DUX has contractually committed to a third party with the approval of the Customer, then the Customer must pay all costs and expenses associated with that third party engagement regardless of the date of termination.

## 11. Confidentiality

(a) Neither party may at any time disclose or make use of Confidential Information in any manner whatsoever except as required by law or to obtain professional advice.

(b) The parties acknowledge that the obligations under this clause 11 are continuing obligations which survive the termination of these Terms.

## 12. Insurance

Each party must maintain all insurances required by law and appropriate for its business at its own expense.

## 13. Force Majeure

(a) Neither party will be liable to the other party for any delay or failure to perform its obligations due to Force Majeure.

(b) Each party must notify the other party as soon as practicable of any anticipated delay due to Force Majeure. The performance by the party of their obligations under these Terms and/or an Order will be suspended for the period of the delay due to Force Majeure.

(c) If a delay or failure to perform a party's obligations due to Force Majeure exceeds 30 days, either party may immediately terminate these Terms and any Order by providing written notice to the other party.

## 14. Dispute Resolution

(a) Neither the Customer nor 3DUX may commence legal proceedings in respect of any dispute between them under these Terms unless and until the procedure set out in this clause 14 has been followed.

(b) If any dispute arises under these Terms, including in relation to its interpretation, either party may give written notice to the other that a dispute has arisen and request that a meeting be held of duly authorised representatives of the parties within fourteen (14) days.

(c) If a party receives written notice of a dispute from the other in accordance with clause 14(b), that party must cause one (1) authorised representative to attend the meeting referred to in that notice.

## 15. General

(a) These Terms, together with any Order, constitute the entire agreement between the parties and replaces any prior agreement, arrangement or representation in respect of the Services.

(b) 3DUX is engaged by the Customer as an independent contractor and not in the capacity of an agent, employee or partner of the Customer.

(c) These Terms may not be varied except by a later written document that is agreed and signed by the parties.

(d) These Terms must not be assigned by the Customer without the prior written consent of 3DUX, which consent may be given, given on conditions, or refused at the sole discretion of 3DUX.

(e) If any part of the Terms is unenforceable, invalid or void then that part of these Terms is severed and the rights and obligations of the remaining parts of these Terms continue to apply.

(f) Any failure or delay by 3DUX to insist on strict performance by the Customer of any part of these Terms will not constitute a waiver of that part or any rights of 3DUX under these Terms.

(g) These Terms are governed by the laws of the state of New South Wales and the parties submit to the jurisdiction of New South Wales.

## 16. Definitions

Confidential Information means all confidential information belonging to a party to these Terms, including but not limited to: (i) any and all information about the operations, products, finances, business arrangements, software, trade secrets, or contracts of a party; (ii) any information or material regarding these Terms; (iii) the Service Materials and any information about the Services; and (iv) other information which, by its nature or the way it is disclosed, could reasonably be expected to be confidential, but excludes information in the public domain.

Customer Materials means any material or information provided by the Customer to 3DUX for the purposes of the Services (including without limitation the Customer's logos, trade marks or other indicia, artwork, documents, equipment, computer programs, information, data and customer lists).

Force Majeure means any act, omission or circumstance over which the affected party could not reasonably have exercised control including but not limited to any acts of god, labour dispute, flood, fire, war, earthquake, storm, act of terrorism or governmental action.

GST means the goods and services tax levied in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insolvency Event means the winding up, dissolution or cessation of business, the appointment of an administrator, liquidator, receiver or an official manager, an assignment for the benefit of creditors, scheme of arrangement with creditors, insolvency and bankruptcy of the Customer or any similar procedure.

Order means any written order, brief, job, quote, request or other order for Services between 3DUX and the Customer which is agreed in writing.

Services and Fee have the meaning and are described in an Order.

Service Materials means any and all results and proceeds of 3DUX's Services, including all artwork files, video files, audio files, data files and other documents, information, content and materials developed or created by 3DUX in providing the Services, whether in physical or electronic form and includes all copies of such materials.