

## 1. THESE TERMS

**1.1** This document sets out the terms and conditions (“Terms”) under which we provide you with the Services. By making any payment, using or continuing to use the Services you agree to be bound by these Terms.

**1.2** In addition to these Terms, there may also be specific terms which govern the provision of certain services and your use of, and access to, certain sections of Our Website. You also agree to be bound by any such additional terms.

## 2. INTERPRETATION

### 2.1 Definitions

- “Privacy Policy” means our privacy policy which can be found at [www.mixr.com.au/privacy-policy](http://www.mixr.com.au/privacy-policy).
- “Our Website” means the website operated by us under the domain name “[www.mixr.com.au](http://www.mixr.com.au)” and any subdomains through which, among other things, we provide the Services.
- “Services” means the website services we provide you (including but not limited to website design, website development, marketing, management, maintenance and hosting services).
- “Terms” means these terms and conditions and includes any variation, amendment and additions to them.
- “Third Party Websites” means any web sites of any third parties.
- “Third Party Products” means any products, services, api’s, components, modules, plugins provided by third parties under licence to or purchased by MIXR, subject to and in accordance with the terms and conditions of the third party product.
- “We, us, our, the provider, MIXR” means MIXR PTY LTD ABN 11 428 302 932, its principals, employees, agents and contractors and, as the context requires it, means each of us severally and each of us jointly.
- “You, the client, the customer” means the person or persons to whom we provide the Services. If that is more than one person, “you, the client, the customer” means each of them separately and every two or more of them jointly. “You, the client, the customer” includes your successors and assigns.
- “Your Website, your Site, your Microsite” means the site we created for you through the Services.

### 2.2 Interpretation Principles

In these Terms:

- headings are for convenience only and do not affect the interpretation or meaning of these Terms;
- the singular includes the plural, and vice versa;
- if a word is defined, another part of speech has a corresponding meaning;
- a word which suggests one gender includes the other gender; and
- 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.

### 3. PROVISION OF SERVICES

MIXR will provide you with the services set out in your confirmed Purchase Order. Only those services mentioned will be provided by MIXR and any amendments, add ons or schedule changes must be agreed to in writing. This and the following clauses are the General terms and conditions on which those services are supplied and together with the Purchase Order and Fee Schedule form the total agreement between us.

### 4. COSTS AND PAYMENTS

**4.1** You must pay all charges as set out in the Purchase Order. As prices quoted on MIXR material may change at any time without notice, please check the price on your Purchase Order before confirmation. Cost estimates are only valid for a period of 30 days.

**4.2** You will remain liable for all fees during any period when Services have been discontinued or suspended due to a failure on your part to comply with these terms and conditions

**4.3** You will be invoiced as agreed in your purchase order. All accounts are payable before delivery of final artwork or uploading of final files to live sites.

**4.4** You are liable to pay overdue interest at 5% per week on any amounts not paid within 7 days of invoice due date. All intellectual property rights remain with MIXR until payment.

**4.5** You must pay MIXR's charges without any set off, counter claim or deduction unless same is agreed in writing between us.

**4.6** MIXR reserves the right to prioritize early paying clients and to charge urgency fees for turnaround within 3 working days. (Urgency status). See particulars of urgency fees in our Fee Schedule.

**4.7** Agreed Costing is conditional on your supplying data required for a Website Stage or completion deadline agreed within 10 working days of confirmation of Order. MIXR reserves the right to revise costings if that condition is not met in line with charges applying at the relevant time.

**4.8** No final artwork or files will be delivered until final invoices are paid in full. Payment by cheque will entail waiting for clearance before supply of files. Delivery being: Supply of final artwork digital files to a printer, to you, on disk, via email or uploaded to nominated ISP. Construction files remain the property of MIXR unless arranged otherwise.

**4.9** Liason with printers, external service providers, external product vendors or internet service providers is charged at our current rate per hour. See particulars of hourly rates in our Fee Schedule.

## 5. REFUNDS

**5.1** It is not possible to refund a deposit, stage payment or full project payment after thirty (30) days or once MIXR has sent the design or development work to the Client. MIXR reserves the right to decide whether a refund is applicable if requested by the Client for any reason. If a refund is provided, any disbursements already paid to 3rd parties by MIXR on behalf of the Client (including but not limited to hosting fees, domain name registration, software purchases) will not be refundable. If paid by credit card, refunds will be issued to the original credit card provided at the time of purchase. If your account has been cancelled by us due to a breach of the terms and conditions on your part, you will not be eligible for a refund. Phone requests will not constitute acceptance of any cancellation.

**5.2** No refund is available on web hosting and Domain Name registration & renewals. For more information please refer to our Terms of Service for Hosting Clients available at <http://www.mixr.com.au/hosting/terms-of-service-for-hosting-clients> or alternatively via Mixr's client portal at <http://my.mixr.com.au>

## 6. LIMITATION OF LIABILITY

6.1 All terms conditions, warranties, undertakings inducements and representations, whether express or implied, statutory or otherwise relating to the provision of services by MIXR not contained in the Agreement are excluded and MIXR WILL NOT ACCEPT LIABILITY FOR ANY LOSS OR DAMAGE (INCLUDING CONSEQUENTIAL LOSS OR DAMAGE) HOWEVER CAUSED (WHETHER BY NEGLIGENCE OR OTHERWISE) WHICH MAY BE SUFFERED OR INCURRED OR WHICH MAY ARISE DIRECTLY OR INDIRECTLY with respect to the service.

**6.2** Where any applicable legislation implies any term, condition or warranty into the Agreement or in respect of MIXR's relationship with you, or otherwise gives you a particular remedy against MIXR and the legislation or any other legislation renders void or prohibits provisions excluding or modifying the application of, exercise of, or liability under such implied term, condition, warranty or remedy will be deemed to be included in the Agreement or as the case may require apply to the relationship between MIXR and you. However, MIXR's liability for any such breach of such implied term, condition or warranty or under such remedy, will be limited, at MIXR's option, in any one or more of the ways permitted in that legislation, including, where so permitted if the breach relates to Services the supplying of those services again or the payment of the cost of having those Services supplied again.

**6.3** You acknowledge that web sites cannot be guaranteed to be 100% error free in construction and acknowledge that the existence of errors falling short of a complete failure of consideration in the site shall not constitute a reason to terminate this agreement.

## 7. DISCLAIMER

Provider shall be held harmless from any legal problems, accusations, or illegal activities that may arise from the Client's website, business or personal activities. Mixr is a hired contractor, and is not in any other way affiliated with or employed by the Client.

## 8. WARRANTY

There is no warranty express or implied for any services offered unless explicitly detailed in each individual agreement.

## 9. CONFIDENTIALITY

**9.1** Provider agrees anything considered by any reasonable person, or explicitly deemed as “Confidential Information” is to be fully considered confidential and proprietary of the Client and Provider shall hold the same in confidence. The Provider shall not use the Confidential Information other than for the purposes of its business with Client, and shall disclose it only as necessary to its officers, directors, sub contractors, or employees with a specific need to know. Provider will not disclose, publish or otherwise reveal any of the Confidential Information received from Client to any other party whatsoever except with the specific prior documented authorization of Client.

**9.2** The Client shall not reveal any critical business information such as, but not limited to, cost of services, to any third party for any reason. Such revelation is grounds for termination of services.

## 10. NO IMPLIED EXCLUSION OR CONFLICT

The Provider is an independent contractor and is not in any way bound by any terms, to work for the Client exclusively, or shall the Provider be restricted from contracting other companies of similar or same business type in any market or geographic area.

## 11. SUSPENSION OF SERVICES

**11.1** MIXR reserves the right to suspend services in any case where you fail to perform your obligations under this agreement. If payment for services is not received within the terms of payment stipulated by us websites may be taken down until payment is confirmed.

**11.2** MIXR may from time to time and without notice or liability to you suspend any of the services if the reason for doing same is an event beyond the reasonable control of MIXR.

## 12. TERMINATION

MIXR may discontinue services if an amount payable to MIXR is overdue or take down a website permanently in any case where an amount payable is overdue by more than 7 days. In any such event, you remain liable for the total cost of the contract including all disbursements; unless otherwise agreed between the parties.

## 13. CONTENT OF WEB PAGES AND UNDERTAKINGS

**13.1** You will be solely responsible for the content of your Web Page/undertakings. MIXR is not responsible for proofreading any content unless specifically agreed.

**13.2** You acknowledge and agree that, if your site includes features that allow visitors to your site to add content, then you are responsible for that content and, without limiting any other provision of these Terms, you agree to indemnify us for any damages, losses and expenses arising as a result of or in connection with that content as if that content was put on Your Website by you. Without limiting this paragraph or these Terms, while we are under no obligation to monitor or moderate the content of Your Website, we reserve the right to remove any content from Your Website which we in our absolute discretion determine or deem to be inappropriate for any reason.

**13.3** MIXR makes no representations to you concerning the content or functionality of your Web Site. This is your responsibility to ensure that it meets your requirements.

**13.4** If you provide MIXR with goods, material, photographs, film, data or information to be used in any form, you hereby warrant that these do not infringe the rights of third parties and indemnify MIXR against any action taken against MIXR by any such third party.

**13.5** Without limiting the generality of the foregoing, you agree not to infringe the copyright trademark, privacy or personal or proprietary rights of third parties, supply libelous, abusive, obscene material or disparage the products or services of any third party.

**13.6** MIXR for its part hereby undertakes not to knowingly infringe the rights of third parties in activities conducted on your behalf.

**13.7** You are solely responsible for dealing with persons who access your data or webpage and warrant that you will not refer complaints or inquiries in relation to such data to us.

**13.8** You are fully responsible for the security, content and every-day operations of the website. Any breach of security, including, but not limited to, server hacking, stolen passwords, compromised data, lost data, etc., shall be the sole responsibility of the Client.

## 14. TECHNICAL SUPPORT, CHANGES, MAINTENANCE

**14.1** Technical assistance via telephone or email will be offered. Extensive queries taking more than 10 minutes to deal with or site maintenance will be charged at a minimum of 1/2 hour (30 minutes) increments. See particulars of hourly rates in our Fee Schedule.

**14.2** Technical assistance on-site will be offered and will be charged at hourly rate. Transportation fees will also be charged on hourly rate where applicable, otherwise as agreed. See particulars of hourly rates in our Fee Schedule.

**14.3** Maintenance requests shall be billed at a minimum of 1/2 hour (30 minutes) increments. Development requests shall be billed at a minimum of 1 hour (60 minutes) increments. Each invoice shall be sent by email. All invoices are due within 7 days of the invoice date. See particulars of hourly rates in our Fee Schedule.

**14.4** MIXR must perform scheduled maintenance to our servers from time to time. We will attempt to perform all scheduled maintenance at times that will affect the least amount of Clients. If scheduled maintenance requires the service to be off-line for more than 30 minutes we will notify Clients via email of the scheduled maintenance at least 24 hours in advance of the maintenance. As MIXR may provide its services from a single server, downtime spanning

several days may occur. Subject to law, we are not liable for any loss or disappointment you may suffer as a result of any faults or interruptions in the Service.

**14.5** Unscheduled maintenance may need to be performed on servers. If unscheduled maintenance requires services to be off-line for more than 30 minutes, we will notify Clients via email after the maintenance has been completed.

## 15. WEB HOSTING

**15.1** If you choose to organise your web hosting arrangements yourself, final exported sites will be uploaded to your preferred host company or supplied on disk to you at the cost set out in the Fee Schedule section on our web page. Construction files of the site can be supplied on request at the Fees set out in the Fee Schedule.

**15.2** Please note that MIXR accepts no responsibility for delays or down time, breakdowns or data loss caused by Internet Service Providers (ISPs).

**15.3** If you choose to use Mixr Hosting Services, you agree to be bound In addition to these Terms by the specific terms which govern the provision and use of our hosting services. For more information please refer to our Terms of Service for Hosting Clients available at <http://www.mixr.com.au/hosting/terms-of-service-for-hosting-clients>

## 16. DISPUTE RESOLUTION

**16.1** The parties agree that if any dispute should arise under this agreement, attempts in good faith by both parties will be made to resolve the matter fairly before resorting to court procedures. In doing so, each party agrees to use its best endeavours to:

**16.1.1** Clearly communicate in writing the background facts leading to or causing the dispute

**16.1.2** Set out clearly what action is required to settle the dispute

**16.1.3** Select a way of resolving the dispute and explain why that way of resolving the dispute can be said to be a fair resolution

**16.1.4** Discuss specific means of avoiding such disputes in the future

**16.2** Attempts to resolve the dispute must follow the following procedure:

**16.2.1** The person complaining shall set out in writing the background, the issues and the outcome desired.

**16.2.2** The person to whom the complaint is addressed will reply in writing within 10 business days to each issue in dispute setting out its perspective on the issue and the outcome desired.

**16.2.3** If the dispute is not resolved in accordance with this exchange of written issues and outcomes, then the complainant will raise the matter with a neutral professional adviser or Alternative Dispute Resolution (ADR) provider listed in a relevant publication of the Department of Workplace Relations and Small Business or similar government department within 10 business days.

**16.2.4** If the dispute is not resolved in accordance with such reference, the matter shall be referred to a single agreed arbitrator within 10 business days; whose decision shall be final.

**16.2.5** In the case of disagreement on the appointment of a single arbitrator, then the parties shall be entitled to nominate one independent arbitrator with 7 days of disagreement and a coin will be tossed by an independent person to decide which will act as arbitrator of the dispute.

**16.2.6** Action taken to settle the dispute at each stage must be undertaken promptly and the parties shall equally share the costs associated with the this dispute settlement procedure.

**16.3** These terms and conditions are governed by the law in force in Queensland and you submit to the non-exclusive jurisdiction of the courts of Queensland and courts which may hear appeals from those courts.

## 17. INTELLECTUAL PROPERTY

**17.1** All creation files remain the property of MIXR.

**17.2** MIXR retains the Copyright in and the right to use all artwork created in advancing the profile of MIXR and to be recognized for artwork created by MIXR.

**17.3** MIXR shall be free to reproduce, use, disclose display exhibit, transmit, perform, create derivative works, and distribute any item from your Web Page unless specifically agreed otherwise. Further, MIXR shall be free to use any ideas concepts know-how or techniques acquired in construction of sites for any purpose whatsoever, including but not limited to developing, manufacturing and marketing products and other items incorporating such information unless specifically agreed otherwise.

**17.4** MIXR observes Privacy Laws and Guidelines relating to personal data.

## 18. GENERAL

**18.1** If any of these terms and conditions (or part of them) is void or unenforceable, it is taken to be removed and no longer forms part of the Agreement between us. The remaining terms and conditions remain in full force and effect.

**18.2** Mixr may at any time vary the Terms by publishing the varied Terms on Our Website. You acknowledge and agree that by continuing to use the Services you accept the varied Terms.

**18.3** Written communications between us may take the form of letters, formal documents, faxes or emails.

**18.4** MIXR may require a personal guarantee from the Director of a company in cases where files/artwork is required before payment.

**18.5** Third Party Products may be used for the creation, provision or function of services provided to The Client. We grant you a limited, non-exclusive, non-assignable, non-sublicensable, non-transferable, freely revocable licence to use the 3rd party products solely for Your Website. By accepting our Terms and Conditions The Client also agrees not to copy, reproduce, disclose or transmit any source code, element or part of the third party products.