

TERMS AND CONDITIONS OF SERVICE

1. INTRODUCTION

These Terms and Conditions set out the rights and obligations between Five Spots (hereinafter referred to as "the Agency") and its clients (hereinafter referred to as "the Client") regarding the provision of digital services, including but not limited to web development, e-commerce store development, social media management, advertising on Facebook or Google, digital marketing services, CRM automations, and SEO management. By contracting the services of Five Spots, the Client fully accepts these Terms and Conditions.

2. DEFINITIONS

- **The Agency:** Five Spots, a registered business in Australia.
- **The Client:** Any individual or entity contracting the services of the Agency.
- **Services:** Any of the services offered by the Agency and described in the commercial proposal or signed contract between the parties.
- **Contract:** A document signed by both parties outlining the specific details of the service provision.

3. SCOPE OF SERVICES

3.1. The Agency will provide services as specified in the commercial proposal accepted by the Client.

3.2. Any request for modification or expansion of the initial service will be subject to review and possible adjustment in costs and timelines.

3.3. The Agency commits to delivering services with diligence and quality, following industry best practices.

3.4. Branding development (logo creation, colour palette definition, font selection, visual guidelines) is not included in web design services unless explicitly agreed in writing. If the Client does not provide brand assets, the Agency may offer branding support as an additional paid service.

4. CLIENT OBLIGATIONS

4.1. Provide necessary information and access for the proper execution of services.

4.2. Make payments within the stipulated deadlines.

4.3. Approve designs, content, and strategies within the agreed timelines.

4.4. For digital advertising, the Client is responsible for direct payment to advertising platforms (Facebook Ads, Google Ads, etc.).

4.5. The Client must deliver all necessary materials — including brand assets, logo, color palette, content, and images — within 30 calendar days from the date of initial payment.

4.6. If the Client fails to provide these materials within 30 days, the Agency may pause the project without refund, and resuming the project may require an additional fee based on updated scope and resource allocation.

5. PAYMENTS AND CANCELLATION POLICY

5.1. Fees and costs will be detailed in each contract or proposal.

5.2. The initial deposit is mandatory for service commencement and is non-refundable under any circumstances, unless the Client requests cancellation within the first 10 calendar days and no design or strategic work has been delivered.

5.3. If the service is cancelled, the Client must cover the costs incurred up to the cancellation date.

5.4. The Agency reserves the right to suspend or terminate services if payments are overdue by more than 3 business days.

5.5. Refunds will not be issued if:

- The project has advanced into design, template approval, or development.
- The Client has approved a template or design and work has begun based on that approval.
- The delay or dissatisfaction is due to changes in the Client's business direction, branding evolution, or internal decisions made after approval.

5.6. In the case of partial delivery within a bundled service package, the Agency may, at its sole discretion, consider issuing a partial refund exclusively for services that have not yet commenced, provided the refund request is made within the first 30 calendar days from the initial payment date. Due to the nature of bundled pricing and promotional discounts, no refunds will be granted for any service within the package that has already entered the development, design, or strategic planning phase. This includes, but is not limited to, services where:

- Required assets were not provided by the Client after repeated written requests.
- The Client previously approved templates, designs, or written content as part of the workflow.

Refunds are not applicable in situations where the scope, direction, or business goals of the Client change after work has commenced on any discounted or bundled service.

5.7. If the Client receives a promotional or discounted price, they understand that the scope, timeline, and structure of the project must follow standard delivery guidelines. Any deviation or extended delay by the Client voids the discount, and additional fees may apply.

5.8. By submitting the initial payment and receiving the invoice, the Client acknowledges and agrees to these Terms and Conditions in full, regardless of whether a separate signature is provided.

6. DELIVERY TIMELINES

- 6.1. Delivery times will be stipulated in the contract and may vary due to Client delays in approving deliverables or providing necessary materials.
- 6.2. Any justified delay from the Agency will be communicated to the Client in advance.
- 6.3. The Agency is not liable for delays caused by force majeure events, including but not limited to natural disasters, cyberattacks, or third-party service disruptions.
- 6.4. In the event that the Client does not respond to communication, feedback requests, or material requests for more than 21 consecutive calendar days, the project will be considered paused. After 45 days of inactivity, the project will be archived, and a reactivation fee may apply.

7. INTELLECTUAL PROPERTY

- 7.1. All content, design, strategies, and materials developed by the Agency remain the property of the Agency until full payment has been made.
- 7.2. The Agency may include references to completed projects in its portfolio unless the Client expressly prohibits this in writing.
- 7.3. Upon full payment, ownership rights will be transferred to the Client, except for pre-existing proprietary tools, templates, or software used by the Agency, unless otherwise mutually agreed in writing.

8. LIMITATION OF LIABILITY

- 8.1. The Agency is not responsible for indirect losses or consequential damages arising from the use of the provided services.
- 8.2. The Agency does not guarantee specific results in advertising campaigns or SEO positioning, as these depend on various external factors.
- 8.3. The Agency is not liable for errors resulting from incorrect or incomplete information provided by the Client and no refund or compensation will be paid due to Client's incorrect or incomplete information.
- 8.4. To the fullest extent permitted by law, the Agency's total aggregate liability for any claim, loss, damage, or expense arising out of or in connection with these Terms and Conditions, whether in contract, tort (including negligence), equity, statute, or otherwise, shall be strictly limited to AUD \$2.
- 8.5. The Agency shall not be liable for any indirect, consequential, special, or incidental damages, including but not limited to loss of profits, data, goodwill, or business opportunities, even if advised of the possibility of such damages.

9. CONFIDENTIALITY

- 9.1. Both parties agree to maintain the confidentiality of all information shared during the provision of services.
- 9.2. No information will be disclosed without prior written consent from the other party, except where required by law.

10. INDEMNITY

10.1 The Client agrees to indemnify and hold the Agency harmless against any claims, losses, damages, liabilities, or expenses arising from:

- (a) The Client's misuse of the services;
- (b) Non-compliance with applicable laws or third-party rights;
- (c) Inaccurate or misleading information provided by the Client.

11. WARRANTIES

11.1 The Agency warrants that it will provide services using reasonable care and skill.

11.2 The Client warrants that it holds the necessary rights for any materials provided to the Agency for use in the services.

11.3 Except as expressly stated, all warranties, conditions, or representations (express or implied) are excluded to the extent permitted by law.

12. FORCE MAJEURE

12.1 Neither party shall be liable for any failure or delay in performance due to causes beyond their reasonable control, including but not limited to natural disasters, cyberattacks, telecommunications failures, or governmental actions.

13. TERMINATION OF CONTRACT

13.1. The Agency may terminate the contract if the Client fails to comply with payment terms or any other agreed obligations.

13.2. The Client may terminate the contract but will be subject to the refund and cost payment terms outlined in Clause 5.

14. DISPUTE RESOLUTION

14.1 If a dispute arises, both parties agree to first attempt to resolve the matter through good faith negotiations.

14.2 If no resolution is reached within 30 days, the dispute shall be referred to mediation before commencing legal proceedings.

14.3 The costs of mediation will be shared equally by both parties.

15. GOVERNING LAW AND JURISDICTION

15.1 These Terms and Conditions shall be governed by and construed by the laws of Victoria, Australia.

15.2 Any disputes arising out of or in connection with these Terms and Conditions shall be subject to the exclusive jurisdiction of the courts of Victoria, Australia.

16. CONTACT US

If you have any questions about these Terms and Conditions, please contact us at:

Email: info@fivespots.com.au

Phone: 0476001403

ACCEPTANCE OF TERMS

By submitting the initial payment and receiving the invoice, the Client acknowledges and agrees to be bound by these Terms and Conditions of Service in full. These Terms may be updated from time to time, and continued use of the services implies acceptance of any revisions.

Last updated: June 23, 2025