

## **TERMS AND CONDITIONS**

The Poseidon Digital website <http://www.poseidondigital.com.au/> ("the Site") is owned and operated by Studio Fig Pty. Ltd. ABN 62 621 271 216 ('The Supplier') trading as "Poseidon Digital".

The Supplier may share and/or swap information, including Personal Information, with other Supplier related companies, affiliates, licensors and licensees (collectively referred to as "the Poseidon Digital Entities").

By using, browsing and/or accessing the pages or services in the Site, You acknowledge that You have read, understood, and agree to be bound by these Terms and Conditions ('T&C's'). If You do not agree to these T&C's, please do not use the Site. You also agree to provide us with your consent to receive any required notices (if any). You acknowledge that these T&C's contain disclaimers and other provisions that limit the Suppliers or the Poseidon Digital Entities' liability to You. You further agree that You will not use the Site for any unlawful purpose. In the event that You do not wish to be bound by these T&C's, please do not use browse or access the Site.

All orders are accepted and handled in accordance with the conditions below and the customer accepts these conditions by using the Site.

### **1. Governing law**

The Supplier controls and operates this site on servers in a secure hosting facility in Sydney, NSW Australia. These T & C's are governed by the parliament laws of Australia. You and the Supplier agree to submit to the non-exclusive jurisdiction of the courts of Australia. You hereby waive any and all jurisdictional and venue defences that might otherwise be available to You.

### **2. Revisions to T & C's**

The Supplier may revise or amend these T&C's at any time at our absolute discretion by posting revised terms. You agree that, in the event that any portion of these T&C's is found to be unenforceable, the remainder of these T&C's remain in full force and effect. Any revisions will be effective immediately and by your continued use of the Site, You agree to the T&C'S as amended. If You do not agree to the new posted T&C's, You agree that your only remedy is to discontinue your use of the Site.

Whist The Supplier and the Poseidon Digital Entities' seek to make reasonable efforts to provide accurate and timely information about the various products and services offered by The Supplier on the Site, the Supplier cannot guarantee that the information provided is always up to date and correct or that the Site contains all the relevant information available.

### **3. Site content, ownership, and use restrictions**

The material on the Site is protected by copyright under the laws of Australia and other countries through international treaties. Unless otherwise indicated and except for information directly from or links to third-party websites, all rights (including copyright) in all content, other material and compilations contained in, or used to create or support this site including text, graphics, logos, button icons, video images, audio clips and navigational and other software (collectively referred to as the Contents) are owned or controlled, and are reserved by the Supplier and the Poseidon Digital Entities.

The display of the Contents is not intended to be a comprehensive compilation of all of the Suppliers worldwide proprietary ownership rights and the Supplier may own or control other proprietary rights in one or more countries outside of Australia. All rights not expressly granted are reserved.

### **4. Advertising & Links to Third Party Websites**

This site may contain information from or hyperlinks and other pointers to internet websites operated by third parties. Such information or websites are not under the control of the Supplier and/or the Poseidon Digital Entities nor is the Supplier or the Poseidon Digital Entities responsible for the contents

of any such information or website. The Supplier and/or the Poseidon Digital Entities provide such information and hyperlinks to You as convenience only, and the inclusion of any link does not imply any endorsement of the linked website by the Supplier and/or the Poseidon Digital Entities. You rely on such information or websites entirely at your own risk. You are referred to the relevant third party websites for all information regarding the third parties products and/or services. Third parties are solely responsible to You, subject to their conditions, for all issues relating to their website including information, goods, services, prices and the delivery of any goods or services You purchase on the third party website.

You further agree that the personal data You choose to give to unrelated third parties is not covered by the Supplier's privacy policy and You are encouraged to review the privacy policy of any company or website before submitting your Personal Information. Some third parties may choose to share their personal data with the Supplier and/or the Poseidon Digital Entities and You acknowledge any such sharing is governed by that third-party company's privacy policy.

## **5. Personal, non-commercial use**

You must not, without our prior written permission, exploit any of our site materials for commercial purposes or other purposes that are not expressly permitted under these T&C's.

We encourage You to carefully read the Suppliers privacy policy ("the Privacy Policy"). You agree, and unless other consents or notices are required by law, that using, browsing and/or accessing the pages or services in the Site, that You will be bound by the terms of the Privacy Policy and to the use of such personal information and any submissions by the Supplier and/or the Poseidon Digital Entities in accordance with the Privacy Policy.

You agree not to use the Site for any purpose that is unlawful or may be deemed as unlawful or prohibited by the T&C's, or to cause damage on or through use of the Site. You warrant to the Supplier that none of your communications with or through the Site will violate any applicable, local, state, federal, provincial, national, or international laws and/or regulations or infringe upon the rights of any third party or contain libellous, defamatory, obscene or abusive material.

## **6. Prohibited conduct**

You are not authorised, without the prior written permission of the Supplier and any other owner of rights in content that You access via the site, to reproduce, frame, download, store (in any medium), communicate, show or play in public, adapt, change, or create a derivative work from that content. No trademark (whether registered or otherwise) that is contained on this site or otherwise used by the Supplier may be used without our prior, specific, written permission or that of the trademark owner.

The content and material on the Site is provided for lawful purposes only and any other use or modification of the content and materials found on the Site violates the intellectual property rights of the Supplier and/or the Poseidon Digital Entities. The Supplier and/or the Poseidon Digital Entities retain complete and full title and intellectual property rights to all content and materials found on the Site. You may not sell, modify, reproduce, repost or convert any contents and/or materials on the Site in any manner inconsistent with these T&C's.

## **7. Licence to use**

You grant the Supplier a perpetual, irrevocable, non-exclusive, fully-paid, royalty-free licence to use any material, information, expression of ideas and ideas that You transmit to this site or otherwise provide to the Supplier from the time You authorise it to be sent without restrictions of any kind and without any payment or other consideration of any kind, or permission or notification, to You or any third party.

You agree that this license shall include, without limitation, the irrevocable right to reproduce, prepare derivative works, combine with other works, alter, translate, distribute copies, display, perform, and/or license the submission, and all rights therein, in the name of the Supplier and/or the Poseidon Digital Entities or their designees throughout the world in perpetuity, in all media now or hereafter known or

created. In addition, You warrant that any “moral rights” (if any) pertaining to any copyrighted materials have been waived.

## **8. User conduct**

You must not upload, post, transmit or otherwise make available through this Site any material which:

- violates or infringes the rights of others (including their privacy and intellectual property rights);
- is unlawful, threatening, abusive, defamatory, invasive of privacy, vulgar, obscene, profane or which may harass or cause distress or inconvenience to, or incite hatred of, any person;
- encourages conduct that would constitute a criminal offence, give rise to civil liability or otherwise violate any law;
- restricts or inhibits the Supplier or any other user from using the site;
- affects the functionality or operation of the site or the Supplier servers or the functionality or operation of any user's computer systems (e.g. by transmitting a computer virus or other harmful component, whether or not knowingly);
- breaches any standards, content requirements or codes promulgated by any relevant authority, including authorities that require the Supplier to take remedial action under any applicable industry code.

## **9. Indemnity**

You agree to indemnify and will keep the Supplier indemnified against any claim, demand, injury, damage, loss, expense, cost or liability (whether direct or indirect) made against or suffered by the Supplier in connection with your use of this site, your breach of these T&C's or your breach of any rights of third parties.

## **10. Intellectual Property**

Intellectual Property developed throughout the Supplier's dealings with You remains the property of the Supplier unless specifically stated otherwise. Any use of any of the Supplier's and/or Poseidon Digital Entities Intellectual Property, where not authorised, is a direct breach of these terms and conditions and may attract future implications, including but not limited to legal action. Further, it is a strict breach of these T&C's, for You to share any Intellectual Property with the Supplier and/or Poseidon Digital Entities which they do not legally own the rights to. Any such act will result in, amongst other possible action, the immediate termination of the existing Agreement between the Supplier and You.

## **11. Fees and Payments**

All prices are exclusive of GST unless otherwise specified. Prices displayed on the Site are current at the time of issue, but may change at any time and are subject to availability. Prices and availability of items are subject to change without notice. Where permitted, we reserve the right to limit sales.

You may enter into either an Adhoc or Retainer arrangement with the Supplier, for the supply and payment of services. For all arrangements, advance payment is required from You to the Supplier. Adhoc arrangements, require part payment in advance, with the remaining amount being paid to the Supplier prior to selected services being completed.

In any event, any payments that become overdue may be collected through debt collection services, at the expense of You. Further, overdue payments will attract interest at a rate in line with the current local court interest rate accruing from the day that the payment becomes due, until full payment is received by the supplier. In the event that any payment becomes overdue the Supplier will immediately cease work until such date as payment is made. For the avoidance of any doubt, the Supplier and/or Poseidon Digital Entities will not be liable for any loss or damage you may suffer due to the fact that the Supplier was exercising their right under this clause.

Further, you agree to indemnify and keep indemnified the Supplier and/or Poseidon Digital Entities against all costs and disbursements, including legal costs, incurred by the Supplier as a result of any defaults on payment.

All prices are in the Australian Dollar.

## **12. Confidential Information**

During the course of any dealings with the Supplier and/or any Poseidon Digital Entities confidential information may be shared between the parties. Confidential Information means information/material relating to a party which comes into the possession or knowledge of the other party, and includes but is not limited to, strategic, corporate and financial information. A party to the Confidential Information agrees that during the term of the agreement, and at all times after that, they will not disclose any Confidential Information, directly or indirectly, to any third party.

### **13. Limitation of liability**

Our total liability to You (if any) in connection with the Site, or with these T&C's or any goods or services supplied under them, will be limited to your discontinued use of the Site. To the maximum extent permitted by any applicable law, the Supplier, the Poseidon Digital Entities and any other party (whether or not involved in the creation, maintenance, development or delivery of the Site) and the directors, officers, managers, employees, members, shareholders or agents of the Supplier and/or the Poseidon Digital Entities exclude all and any liability and responsibility for any amount or kind of loss or damage of whatsoever nature or kind that may result to You or a third party in connection with the Site in any way whatsoever or in connection with the use, inability to use or the results of use of the Site, including without limitation actions or activities resulting from the use of resources presented on the Site, any websites linked to the Site or the material on such websites, including but not limited to loss or damage due to viruses that may affect your computer (including but not limited to computer equipment, software, data) or any other property on account of your use of or access to or browsing or downloading and/or uploading of any material of the Site or any website linked to the Site.

Further, the Supplier and/or Poseidon Digital Entities will not be held liable for server outages, including but not limited to software failure, hardware failure or internet connection failure. The Supplier and/or Poseidon Digital Entities will not be held responsible for any losses or damages that may occur due to these server outages.

Nothing in these T&C's shall limit or exclude the Suppliers or the Poseidon Digital Entities' liability in jurisdictions which do not allow the limitation or exclusion of liability for consequential or incidental damages. In such jurisdictions the Supplier and/or the Poseidon Digital Entities liability shall be limited by the maximum extent permitted by law.

### **14. Disclaimer of warranty**

The Supplier is providing the Site and the Supplier information, contents, materials and services on an 'as is' basis and use of this site is at your own risk. The Supplier and the Supplier related companies, affiliates, licensors or licensees, and their respective directors, officers, employees or agents make no representation or warranty as to the accuracy, completeness, currency or reliability of the information contained on this site (including in relation to any products or services). To the extent permitted by law, none of them will be liable or responsible in any way (including in negligence) for errors in, or omissions from, the information contained on this site. To the extent permitted by law, the Supplier expressly disclaims all warranties of any kind, whether express or implied, including (without limitation) implied warranties or conditions of merchantability or fitness for purpose.

### **15. IP Protocol Addresses and Web Logs**

The Site's web servers will automatically collect the Internet Protocol (IP) addresses and log files of visitors. Your IP address is an identifying number that is automatically assigned to your computer by your Internet Service Provider (ISP). This number will be identified and logged automatically in our server log files whenever You visit the Site, along with the time(s) of your visit(s) and the page(s) that You visited. This information is collected in an aggregate form only and does not contain any Personal Information. We use IP address for purposes such as calculating the Site usage levels, helping diagnose problems with the Site's servers and administering the Site. Collecting IP addresses is standard practice on the Internet and is done automatically by many websites. In addition, we may also record your IP address for fraud prevention purposes.

### **16. No Assignment and Waiver**

You may not transfer or assign in any way any of your rights or obligations under these T&C's. Any such transfer or assignment shall be null and void.

The Supplier and/or the Poseidon Digital Entities failure to insist upon or enforce strict compliance with any provision of these T&C's shall not be construed as a waiver of any provision or right.

### **17. Applicable Law, Jurisdiction and Severability**

Access to and use of the Site and these T&C's are governed by the laws of Australia without giving effect to any conflicts of law or choice of laws principles. Any proceeding or legal action relating to your use, or access of the Site or compliance with these T&C's shall be in the jurisdiction of the courts of Australia. You hereby waive any and all jurisdictional and venue defences that might otherwise be available to You.

If any provision of these T&C's or the application of any such provision to any person or circumstance is held illegal, unenforceable, or invalid for any reason whatsoever, the remaining provisions of these T&C's and the application of such provisions to other persons or circumstances shall not be affected.

To the fullest extent possible, the court finding such provision illegal, unenforceable, or invalid shall construe and modify the provision so as to render it enforceable and valid as against all persons or entities and to give the maximum possible protection to persons subject to indemnification within the bounds of legality, enforceability and validity.

### **18. Headings**

You agree that the headings used in these T&C's are for convenience of reference only. Such headings will be and shall be ignored in the interpretation or construction of any of these Terms and Conditions.

### **19. Complete Understanding**

You warrant and agree with the Supplier that these T&C's and the Poseidon Digital privacy policy, constitute the entire understanding between the Supplier, the Poseidon Digital Entities and You with respect to your use of the Site, including, but not limited to, all orders placed through the Site.

### **20. Dispute Resolution**

In the event that You are not satisfied with the Supplier and/or Poseidon Digital Entities You must initially attempt to resolve the dispute internally. You must notify the Supplier and/or Poseidon Digital Entities of the dispute and seek discussion and compromise to resolve the dispute. If the dispute is not able to be resolved internally, through informal means, then You must partake in mediation to resolve the dispute, on the same terms as those ordered by the Supreme Court of New South Wales and the costs of the mediation shall be borne equally by You.

Only once You have attempted to resolve the dispute through the above specified methods may You pursue other methods.

### **21. Disclaimer of Earnings**

Any business opportunities or money-making opportunities that the Supplier and/or any Poseidon Digital Entities may inform You of from time to time are entered into by You, on the understanding and agreement that no representation or guarantee has been given in relation to earning potential.

Any earnings, revenue or income statements are based on actual individual results and/or estimates as may be stated. The supplier and the Poseidon Digital Entities do not guarantee that You or any client will receive the same results as the estimates and results that may be posted from time to time on the Site. Individual results will vary and will be based on an infinite number of variables. For the avoidance of any doubt, there are no guarantees concerning the level of success You may achieve.

The Supplier does not make any assurances that any prior successes or past results referred to on this Site will apply in your situation. Further, in any case that You do rely on any figures or results posted

on this Site, You accept and understand the full risk of doing so and will not hold the Supplier and/or Poseidon Digital Entities personally liable for any means whatsoever.

All information, products and services provided by the Supplier and/or Poseidon Digital Entities are intended for educational and informational purposes only. The use of any information, products or services provided by the Supplier and/or Poseidon Digital Entities should only be used based on your own due diligence. The Supplier and/or Poseidon Digital Entities recommend that You always consult your personal legal, financial and other qualified professional advisors for an independent analysis.

You agree that the Supplier and/or Poseidon Digital Entities are not responsible for any losses or damages resulting from your use of any link, information or opportunity contained within Poseidon Digital or within any information disclosed by the Supplier and/or Poseidon Digital entities in any form whatsoever.

## **22. Termination**

If at any time any of the above T&C's are not complied with by You then the Supplier and/or Poseidon Digital Entities reserve the right to terminate any Agreement that may exist between the parties. Further, the Supplier and/or Poseidon Digital Entities reserve the right to terminate the agreement at any time, for any reason whatsoever.

## **23. Registration**

All information provided to the Supplier and/or Poseidon Digital Entities, must be complete, accurate and current information. The Supplier and/or Poseidon Digital Entities may at any time change the keywords used in any search engine marketing campaign, without giving you notice. By continuing the use of this Site you agree to comply with any additional copyright notices, information, or restrictions contained in any keywords or other material available on or accessed through the Site.

By submitting information to the Supplier and/or Poseidon Digital Entities you are granting an irrevocable right to edit, copy, publish, distribute and otherwise use any such content that is posted. All risk and responsibility attached to the distributing of any information on the public domain remains, at all time, with you. You represent and warrant that you are authorised to grant all the preceding rights, and those set out throughout these T&C's by continued use of the Site.

Further, you understand that if you have the Supplier and/or Poseidon Digital Entities build or makeover your existing website, you will be required to supply the registry key for your domain name. The responsibility of providing this registry key to the Supplier rests solely with you. Further, you understand that any delay in the supply of this registry key, will delay publication of the website. Any delays that may arise due to this are solely the responsibility of you, and the Supplier and/or Poseidon Digital Entities will not accept any responsibility for any damages or losses suffered by as a result of any delay and/or the registry key.

You agree that even with the timely providing of the registry key for your domain name further delays may occur, which the Supplier and/or Poseidon Digital Entities will not take responsibility for.

## **24. Cancellations Policy**

The Supplier and/or Poseidon Digital Entities, may at their sole discretion, allow you to cancel any contract you may have with them. The intention to cancel any Agreement between the parties, must be given at least 60 days before you intend to cease paying for the services provided.

Once an intention to cancel an Agreement has been submitted to the Supplier and/or Poseidon Digital Entities, they may approve this cancellation. If this cancellation is approved you will be liable to pay a cancellation fee and/or the remaining amount of the balance due on the Agreement. You agree that you remain liable for all charges that are incurred up to the time when the Agreement has been cancelled by the Supplier and/or Poseidon Digital Entities.

Refunds may also be approved under certain circumstances, by the Supplier and/or Poseidon Digital Entities. For the avoidance of any doubt, budgeted amounts that have already been spent by the Supplier and/or Poseidon Digital Entities will not be refunded under any circumstances.

If you are a party to a reoccurring Agreement with the Supplier and/or Poseidon Digital Entities, you must give at least 30 days notice, before the end of your current Agreement, if you do not wish to continue your Agreement with them. If you do not notify the Supplier and/or Poseidon Digital Entities of your intention to end your Agreement it will be automatically renewed at the end of each period.

The Supplier and/or Poseidon Digital Entities, reserves the right, to restrict, suspend or terminate your Agreement with them at any time for any reason, without prior notice or liability. Further, the Supplier and/or Poseidon Digital Entities may charge, suspend or discontinue all or any aspect of the services that may be provided through your Agreement with them.

## **25. Contacting Us**

For more information, or if You have any questions about these T & C's, please contact us at:

- **By Post:** Suite 202, Level 2, 34 Charles Street Parramatta NSW 2150.

### **General Disclaimer**

This e-mail and any attachments to it are confidential. They may contain confidential information or copyright material. You should not read, copy, use or disclose them without or express authorisation. If You are not an intended recipient, please delete this email and contact us at once by return e-mail. We do not accept liability in connection with any computer virus, data corruption, delay, interruption, unauthorised access or unauthorised amendment.