

# Maximus Agency

## Terms & Conditions

2024

## Terms & Conditions of Service

It is important that you (the Client) take the time to read the following Terms and Conditions applicable for all works (including Retainers) undertaken with Maximus Agency Pty Ltd (Maximus). From time to time we may need to update these terms and conditions without notice. Please contact us if you do not understand any of these terms and conditions. All costs shown in quotes, proposals, websites, statements and marketing material are exclusive of GST, unless otherwise stated. GST of 10% applies to all invoices issued by Maximus.

## Commencement of Work

Instructions to proceed with the estimate, project proposal or quote provided to you by Maximus constitutes acceptance of these terms and conditions. All prices are firm for a period of 30 (thirty) days from date of issue unless specified by Maximus. Estimates not accepted within that time may be subject to adjustment.

## Payment Terms

The Client agrees to pay a 50% deposit of the quoted amount to commence any project, with the balance payable prior to delivery and final handover/launch. 100% payment upfront is required where a project is quoted less than \$1,000. Once research, resources allocated or design work has commenced on a project, this deposit is non-refundable. In the case of a change of mind by the Client, the deposit or paid amount is non-refundable.

## Project Cancellation Grace Period

The Client shall be entitled to cancel a project within 24 (twenty-four) hours of receipt of payment by Maximus without incurring cancellation charges. After such time has expired cancellation fees shall apply.

## Project Cancellations

From time to time circumstances beyond the control of either party may result in the need for project cancellation. In the event of the Client cancelling a project after a project has commenced and after the Grace Period, the advance payment (deposit) will be forfeited in lieu of compensation to Maximus. This is to cover design and development time spent, resources purchased and allocated, research time and administration costs. If the project is more than 50% completed (determined by Maximus and the Client by negotiation) a pro

rata payment is payable for time spent up until cancellation notice, at the standard hourly rate. If a project is cancelled by Maximus due to unforeseen circumstances, the deposit will be refunded in full to the Client in a timely manner. In the event of cancellation of the project by the Client, ownership of all copyrights and the original artwork and disks shall be returned and retained by Maximus.

## **Client Failure to Contact**

Should the Client fail to contact Maximus for a period of 12 (twelve) months or more from commencement of work or project launch, Maximus reserves the right to annul all contractual obligations with the Client and terminate or suspend all services, resources (including third party resources) or repositories previously made available to the Client and/or public. Maximus acknowledges that extraordinary circumstances can impact communication and will make reasonable efforts to receive a response from you prior to acting.

If the Client's project remains inactive following this 3 month period with no forward progress made, milestones reached, or prior arrangement in place, Maximus' engagement will expire and no refunds will be given.

## **Transfers to Third Parties**

All accounts must be settled in full by the Client prior to the release of files to a third-party supplier. If you are having difficulty paying your invoice, please get in touch as soon as you are aware of the issue so we can discuss a solution that works for your company.

## **Final Review**

All project work sent to the Client for final review which has not received feedback within 7 (seven) days is deemed complete and will, if applicable, have the final invoice issued for payment prior to readying for launch.

## **Limited Liability**

While Maximus takes all care to avoid errors, it accepts no responsibility for typographical errors, spelling mistakes or incorrect information on any project committed to print, production or release to the public. It is the Client's responsibility to proofread and approve all final copy before the production and release of artwork. Email or verbal verification by the Client will be deemed approval prior to release for printing, implementation or publishing. No refunds or reprints are given after Client-approved work has gone to print or is published due to oversights by the Client's proofreading.

## Returns or Refunds

Maximus cannot be held responsible or liable (financially or otherwise) for any errors contained in the final product after it has been approved by the Client (which may be given verbally or in writing), committed to print or posted in view of the public. Maximus cannot be held responsible for any changes or amendments made independently by the Client or other party after approval. It is the responsibility of the Client to notify Maximus of any such errors during the 2-week revision cycle and before the final files have been generated or the project made public. Should errors be found following the Client's approval, amendments to these works will be payable by the Client at the standard hourly rate. Payment for printed projects must be prepaid by the Client.

## Printing Colour Variations

With all printing there may be some colour variation from what you have seen on screen to what the final product looks like and previous orders. This is due to the nature of CMYK printing and bulk-run printing system. As such, there will be no reprints at the expense of Maximus.

## Third Party Purchases

All third-party purchases of media, applications and any materials used in the production or output of work is payable by the Client unless otherwise agreed by both parties. The Client reserves the right to cancel any third-party licenses and Maximus will take appropriate steps to affect such cancellation at the standard hourly rate. The Client will hold Maximus harmless with respect to any costs incurred, such as initial purchase, setup, upkeep or deactivation. The Client will be solely responsible for the ongoing payment of third-party services and Maximus cannot be held liable should a payment default eventuate in deactivation, loss of data or any other service loss.

## Stock Imagery

Maximus reserves the right to use stock images in the creation of designs if required. Costs of this will be outlined to you prior to purchase if not specifically included in the project quote.

## Promotional Usage

Maximus reserves the right to use all artwork and concepts produced in the course of the project (including concepts not selected), and revisions, for the purposes of promoting Maximus in print or digital media portfolios, social media, marketing materials and its website, except where the Client specifically requests in writing otherwise.

## Standard Hourly Rate

Maximus' standard hourly rate will be provided either verbally or in writing to the Client and may be subject to change. Should this hourly rate be unclear, it is important to request this information by Maximus before work requests are made. Time will be billed in 15-minute increments, rounded to the next highest quarter hour. If work undertaken exceeds the items specified in the quote, the Client agrees to pay appropriate fees for the excess work, outside the scope of the original agreement or time estimates. Wherever possible, the Client will be notified of increases in the scope of the project or any changes to Maximus' standard hourly rate.

## Service Fees

Where payments are made by the Client by credit card or third-party provider (any methods other than bank transfer, such as PayPal or Stripe), Maximus reserves the right to add the third-party's service fee to invoices to the Client to ensure full payment is made for services rendered.

## Excess Work

Where the Client requests work in excess of a quote or proposal, Maximus will either charge by the standard hourly rate or provide a separate quote for this work. The Client will be informed the requested additions, alterations or changes fall outside the scope of the original project or work. If the Client elects to alter a completed file or product it must be agreed by both parties and the standard hourly rate will be payable. Should additional work not initially quoted for be requested during the development process, a progress payment may be payable prior to further work being carried out. Otherwise, all additional costs will be added to the final invoice, payable prior to the delivery of project files, and the release or launch of the project.

Publication and/or release of work performed on behalf of the Client by Maximus will not take place before all outstanding invoices have been reconciled. Any booking fees, delivery fees, service fees, commencement fees, deposits or progress payments are non-refundable once

work has commenced if the project is terminated by the Client outside of the initial 24-hour cancellation grace period.

## Issues During Delivery

Maximus is not responsible for any problems with the site or project that are only revealed when carrying out works. Maximus will carry out any work needed to fix any issues that may arise and notify the Client where possible, if Maximus considers it necessary for satisfactory completion of the works. Any additional work necessary due to an unforeseen circumstance, such as the above, is a variation and deemed Excess Work. If a separate quote is not provided, the Client agrees to pay the cost to carry out the work at the standard hourly rate.

## File Delivery & Deletions

If the Client loses or accidentally deletes files delivered by Maximus at the completion of the project, Maximus can re-upload to Dropbox or Google Drive at the standard hourly rate, providing the request from the Client has been made within 6 (six) months from the date of project completion. Should any Client work be required on CD/ DVD or USB, it will incur an administration fee of \$90 plus GST (excludes cost of data device).

## Materials Transfer

Whether due to project termination or at the request of the Client to transfer materials of any kind to another party, Maximus will provide assistance to move existing data and code to that partner and any such work will be charged by the standard hourly rate. This may involve, but is not limited to providing assets via Dropbox, Google Drive, Bitbucket or other external repositories to parties excluding the Client stated in the Project Proposal, exporting of databases or information, any Domain Name Server (DNS) management, account management, email setup, or transfer of ownership of application in the Apple App Store.

## Client's Supply of Information & Materials

The Client shall ensure that the terms of the Project Proposal are accurate, and any information provided by the Client is complete and accurate. The Client shall also provide all the materials and resources required by Maximus in order to supply the services according to the deadlines in the Project Proposal, and ensure that the information provided for inclusion on the website or application does not infringe any third party Intellectual Property rights. Maximus cannot be held liable for delays to the project's launch date due to the Client's delay in the provision of any materials associated with the project.

## Third Party Constraints

It is acknowledged that while third party software is used, Maximus is constrained by the preparedness of the third party software owner to rectify errors and provide updates of the applicable third party software. Maximus will use reasonable endeavours to resolve any errors in third party software and any such work will be chargeable at the standard hourly rate. For the avoidance of doubt, Maximus shall not be liable as a result of its failure to resolve any bugs contained in third party software.

## Management Fees

In the event Maximus is requested by the Client to purchase third-party applications, plugins, content or images, a 20% management fee will be imposed for the procuring and management of content on the Client's behalf.

## Response Times

Maximus will use reasonable endeavours to respond to work requests within 2 (two) business days and will provide a quote for the work where required. Timescales for delivery will then be agreed between both parties. In the event of an emergency, Maximus will use reasonable endeavours to resolve any urgent enquiries as soon as possible.

## Post Completion Works

Once a project is deemed complete by Maximus and the Client is notified as such, Maximus will provide the Client the opportunity to review the work. Maximus will make one set of minor changes at no extra cost within 14 (fourteen) days of the start of the review period. Minor changes include small textual changes, bug fixes and small adjustments to placement of items on the page. It does not include structural changes, changes to images, colour schemes or any navigation features. Any minor changes can be notified to Maximus by email or verbally. Maximus will consider the original completion accepted by the Client if no notification of changes (including bug fix requests) is received by the Client within 14 days from the start of the review period (which commences on signal of completion by Maximus). A fee after this time for tweaks, amendments and bug fixes is payable by the Client at the standard hourly rate.

## Maintenance Retainers

Where the Client opts in to a Maintenance Retainer, Maximus shall provide a list of the included Maintenance Services in either the Project Proposal or separate retainer proposal (as appropriate) to the Client. The Term of a Maintenance Retainer is on a rolling month to month basis until terminated by way of 30 days' written notice from either party. Where termination occurs, no refunds will be given for retainer payments made to Maximus under any circumstances.

## Retainer Payments

The Client shall pay to Maximus the monthly fees detailed in either the Project Proposal or separate retainer proposal (as appropriate). The charges for the Retainer will be based on an estimate of the number of hours of service required. All Retainer invoices constitute upfront payment for services to be rendered by Maximus for the following 30-day period.

## Non-payment of Retainers

Should the charges for the Retainer remain unpaid by the Client beyond the due date allocated on the monthly invoice, Maximus reserves the right to withhold all resources and stop work until such time as all outstanding invoices and fees have been reconciled. Maximus shall not be liable for any losses incurred by the Client as a result of such withdrawal or suspension due to non-payment of services to Maximus or third parties.

## Amendments to Retainers

At the end of every 12 months of a Maintenance Retainer, Maximus may elect to conduct a review of the number of hours used by the Client against the number of hours charged for and to issue an updated Maintenance Retainer cost revision for the following year.

## Retainer Termination

Either party may terminate a Maintenance Retainer by giving 30 (thirty) days' notice in writing to the other party. No refunds will be given for any retainer payments made by the Client.

## Payment

All payments shall be made by the Client within 7 (seven) days of the date of the relevant invoice, in Australian Dollars (AUD) by bank transfer unless otherwise agreed by Maximus. Payments in other currencies must be agreed to by Maximus prior to works commencing.



## Late Payments and Default

Accounts which are not paid within 15 days from issue will incur a late administration fee of \$90 plus GST. Accounts which remain outstanding for 30 days after the date of invoice will incur an additional late payment fee equivalent to 5% of the project costs for each week payment is outstanding. An account shall be considered in default if it remains unpaid for 30 days from the date of invoice or the Client has stated expressly that they do not intend to pay an invoice by Maximus, unless prior arrangements have been made.

Maximus shall at its sole discretion suspend any and all services provided to the Client by Maximus or its subsidiaries (including but not limited to hosting, third-party providers, websites, apps, design files, concepts, artwork, and email) and employ debt collection measures until the total outstanding balance has been fully paid. This includes any and all unpaid accounts due for services ordered, including, but not limited to design, hosting, third-party facilitators, domain registration, search engine submission, maintenance, sub-contractors, printers, photographers and libraries. Suspension of such services does not relieve the Client of its obligation to pay the due amount.

Files on external servers, such as hosted e-commerce solutions will be removed and held until payment is made or for 30 days until the Client has paid for their invoices in full. The Client whose account is in default agrees to pay Maximus reasonable legal expenses and third-party collection agency fees in the enforcement of these Terms and Conditions.

## Delayed Projects

If the Project is delayed due to an act and/or omission of the Client such that it exceeds its deadline for completion by 4 (four) weeks or more, Maximus shall be entitled to immediately invoice the Client in respect of all sums due to be invoiced upon completion in accordance with the Project Proposal.

## Suspension of Work

Maximus reserves the right to withdraw or suspend any services offered if payment is not received within the due date specified on the given invoice or third-party requirement for payment. Maximus shall not be liable for any losses incurred by the Client as a result of such withdrawal or suspension, nor for withdrawal or suspension due to a third-party default on payment.

## Project Copyright

Copyright for all published works that are subject to copyright, trademark, patent or similar protection produced by Maximus are the property of the Client provided 1) the project was accepted in writing by both parties within 3 (three) months of proposal, and 2) the Client has paid all fees and costs associated with producing the work. Should both conditions not be met, all work shall remain the property of Maximus. Should Maximus license materials from third-parties, ownership of such licensed materials remains with the licensor at the conclusion of the term of the license. In such instances, the Client is bound by the terms of such licenses.

Maximus assumes the Client has permission from the rightful owner to use any code, scripts, data, reports and any other materials provided by the Client for inclusion in its materials, and will hold harmless, protect and defend Maximus from any claim or suit arising from the use of such work.

Maximus reserves the right to reuse or resell work undertaken in the case of payment default. Maximus accepts no liability or responsibility for loss of income or damage to the Client for work removed from third party servers as a result of non-payment and the Client shall not take legal action for any situation arising from invoice disputes or removal of the disputed work in such cases.

## Concept/ Element Copyright

Maximus retains full ownership of design concepts and materials it produces, including any unused or unpublished materials. Maximus may still use paid-for concepts in its promotional marketing and in its design portfolio and retains the right to display a small by-line claiming credit on works it produces, excepting corporate stationery. Maximus also reserves the right to elements used to create your projects including RAW/ working files, fonts, patterns, stock images, textures, colour palettes and other non-exclusive items.

## Code Warranty

For a period of 30 (thirty) days following project launch, Maximus will use reasonable endeavours to resolve, without additional charge, any defects in functionality occurring as a result of errors in code. This warranty does not apply in respect of functionality outside of the scope of the project proposal nor any sections beyond code-based remedying. Following expiry of these 30 days, any work to repair such defects shall be charged at the standard hourly rate.

## Code as Intellectual Property

Any code produced in the course of a project shall be owned by Maximus. The Intellectual Property Rights in any Shopify Apps built by Maximus are owned by Maximus, with the Client billed for licence to use the Shopify App as part of the agreement specified in the Project Proposal.

## Code Hosting

Code for projects is held privately in a repository on a Maximus-licensed project hosting platform. No individual or organisation has access to this other than Maximus. Websites, databases and associated code-based projects are hosted by Amazon Web Services. No individual or organisation has access to these other than Maximus.

In the event of compromise of the repository, or the Website or Database on Amazon (by means such as hacking or the legal requirement for Software to be passed on to a governmental body), Maximus shall provide a backup of the Software, and use all reasonable endeavours to set the Project up on a new hosting platform to avoid further downtime.

## Design Assets

Intellectual Property Rights in the design assets prepared specifically for a Project and the text contained on the website and/or application created shall be owned by the Client.

## Open Source Assets

The final product produced in the course of a Project contains a number of open source libraries, languages and tools the Intellectual Property Rights to which are owned by their original owners. Some third-party software may contain or require other open-source licensed software, which has not been listed here for sake of brevity. Maximus makes no claim and has no responsibility for the ongoing maintenance and existence of these third-party or open source assets.

## Downtime

Maximus shall not be liable for any downtime resulting from technical problems of a hosting company or any third party provider, however, Maximus will use reasonable endeavours to maintain the Client's online presence and correct any faults resulting from hosting issues. Where Maximus or the hosting company wishes to undertake maintenance which will result

in downtime, Maximus will endeavour to provide the Client with reasonable notice of that downtime. Except in relation to scheduled downtime notified to the Client, Maximus shall use its reasonable endeavours to maintain availability of 99.99% in relation to the hosted services.

## Accreditation

Maximus can add its own accreditation to any work produced or performed, whether unpublished previously or published on behalf of the Client, on any format unless by prior agreement between both parties.

## Showcasing Work

The Client agrees to allow Maximus to showcase any work created in the course of a project as part of Maximus' portfolio. Maximus acknowledges the confidential nature of projects and agrees to only display project work once the product has been launched publicly. By extension, any testimonials or reviews provided publicly by an individual or company can be republished by Maximus via any means of communication.

## Termination by Breach

Maximus may terminate any works with the Client immediately at any time if the Client 1) is in breach of any of his obligations in this Agreement, or 2) if the Client has entered into liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) whether compulsory or voluntarily or compounds with his creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of his undertakings or assets, or 3) the Client has become bankrupt or shall be deemed unable to pay his debts. In the event of termination in accordance with the items stated in this Agreement, Maximus shall retain any sums already paid to it by the Client.

## Termination of Ongoing Services

Excepting Retainers, the Client may terminate this Agreement in respect of post-launch services (e.g. hosting, domain management) at any time by giving a minimum of 30 (thirty) days' notice in writing to Maximus. If, as a result of significant change within Maximus, the Client determines in its reasonable opinion that Maximus no longer has the capacity to provide the post-launch services in accordance with this Agreement, and Maximus is unable to provide evidence to rebut this assertion, the Client shall be entitled to terminate this Agreement by giving 10 (ten) business days' notice in writing to Maximus.

Maximus reserves the right to withdraw any product or service at any time should it believe any factors inhibit the ability to render services to the Client. In the event of a withdrawal, Maximus will make all reasonable efforts to offer the Client other suitable products and services, either from Maximus itself or another organisation.

## Timelines

Maximus shall use all reasonable endeavours to complete its obligations within the agreed timescales provided in the Project Proposal. If the timelines described by Maximus do not meet the requirements of the Client, a formal meeting (including Skype chat) will be organised to discuss the matter and for timelines acceptable to both parties to be agreed.

## Project Variations

If the Client wishes to vary any details of the project they must notify Maximus in writing (email is acceptable) as soon as possible. Maximus shall use reasonable endeavours to make the required changes and any additional costs incurred shall be invoiced separately.

## Project Acceptance

On conclusion of the Project by Maximus, the Client is required to confirm its acceptance of the output from the Project Proposal. Failure to provide a response within 7 (seven) days from the release date is considered acceptance of the project and the Project will be closed.

## Provision of Services

If, due to circumstances beyond Maximus' control, Maximus makes any change in arrangements relating to the provision of the services it shall notify the Client as soon practicable.

## Confidentiality of Information

Both parties agree that they shall not at any time during this Agreement, and for a period of five years after termination of this Agreement, disclose to any person any Confidential Information, except as permitted to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall procure that its employees, officers, representatives or advisers that it discloses Confidential Information to comply with this clause as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

## Indemnification

Each party shall indemnify the other against all damages, costs, claims and expenses suffered by either party arising from loss or damage to any equipment, by his agents or employees either directly or due to provision of contaminated files.

On the launch of a product (publishing to a public domain), the Client agrees to indemnify and hold Maximus exempt from all forms of any loss, real or perceived, of any type. This includes but is not limited to financial loss, data loss, interruption of business, or altercations or disputes of any kind between the Client, its users and any third party.

If failure to launch, assist or provide services to the Client is caused by matters beyond Maximus' reasonable control including (without limitation) acts of God, acts of any government, war or other hostility, national or international disaster, the elements, fire, explosion, power failure, equipment failure or any other force majeure occurrence, Maximus cannot be held liable.

## Limitation of Liability

Maximus shall not be held liable for any liability resulting from the infringement of third party Intellectual Property Rights as a result of information provided by the Client for use in the Project. The Client must ensure that any text provided for use on the Project does not infringe any Intellectual Property Rights. Any damages resulting from loss of profits, revenue, contractor or any other direct loss resulting from any work provided by Maximus, as all works are subject to being signed off as acceptable by the Client. Maximus cannot be held liable for damages resulting from delay in project launch.

Maximus' total liability as identified by the Courts of Western Australia, where arising under or in connection with this Agreement, whether arising in contract, tort (including negligence) or restitution, or breach of statutory duty, misrepresentation or otherwise, shall be limited to the amount already paid by the Client in respect to the project proposal. Maximus shall not be held financially liable or otherwise held responsible for any loss or perceived loss of information or income of any kind by the Client during development or post-publication of a project. By a project being made public, the Client deems the project complete and approved as closed.

## Force Majeure

Neither the Client nor Maximus shall be liable for any failure or delay in performing their obligations under these Terms where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question. Where such failure or delay continues for a period of 30 (thirty) days the affected party shall be entitled to terminate this Agreement by giving 30 (thirty) days written notice to the defaulting party.

## Notices

The Parties agree that any notice issued under this Agreement must be made in writing to the relevant company's defined email address. Any notice given by email on any day shall be deemed to have been received at the beginning of the next business day, so long as a confirmation of successful send receipt is received.

## Disclaimers

Graphic design, strategy, photography, TVC, illustration and marketing are all highly creative and subjective art forms. As such Maximus takes every possible care with professional advice offered and any suggested creative concepts and/or their implementation, however Maximus cannot be held responsible for variations between expectation and outcome. All information contained is intended for general information purposes only. The information is provided by Maximus. We try to keep the information up-to-date and ensure that it is correct, however, no warranties of any kind are made concerning the accuracy, completeness, suitability, reliability, or availability of the information contained, or any products, services, links, or graphics that may be found. Use this information at your own risk.

## Safeguard of Property

Maximus will hold Client materials and any other files relevant to client work outcomes for a minimum of 6 months, after which it cannot be held liable for unavailability of information if requested by the Client. Maximus and the Client will take reasonable precautions to safeguard property of the other entrusted to it, but in the absence of negligence or wilful disregard, neither Maximus nor the Client will be responsible for any loss or damage.

## Governance

This Agreement (and any non-contractual matters arising in relation to its subject matter) will be governed by Australian law and be subject to the exclusive jurisdiction of the Australian courts. If at any time either party has a claim against the other which it does not pursue quickly, that shall not mean that the claim can't be pursued subsequently, when the party concerned is ready. If a court decides that part of this Agreement is not enforceable in law, that decision does not alter the enforceability of the rest of the Agreement.

## Amendments

This Agreement and the documents referred to in it contain everything agreed between the parties in relation to the performance of the parties' obligations under this Agreement. Amendments to this Agreement will only be validly made where set out in a written document signed by both parties.



