

ONLINE TERMS AND CONDITIONS**1. ACCEPTANCE**

- 1.1 These Terms and Conditions (**Terms**) are between **Amanda J Daley Pty Ltd ACN 600 639 665**, its successors and assignees (referred to as "**we**", "**us**" or "**our**") and you, the person, organisation or entity that purchases products or services from us (referred to as "**you**" or "**your**"), and collectively the Parties.
- 1.2 You have requested specific services (**Services**) and/or products (**Products**), described on and able to be ordered via our Website. You accept these Terms by:
- (a) ticking the online acceptance box;
 - (b) confirming by email that you accept the Terms;
 - (c) instructing us to proceed with the Services; or
 - (d) paying any Deposit required, or making part or full payment for the Products or Services, set out in our tax invoice to you (**Invoice**).
- 1.3 **You agree that these Terms form the agreement under which we will supply Services and Products to you. Please read these Terms carefully.** Please contact us if you have any questions. Purchasing Services or Products from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older. You must not order services from us if you are under 18 years of age or do not have the consent of a legal guardian who is 18 years or older. If you do not agree to these Terms, you should not purchase from us.
- 1.4 We will not commence performing the Services until you have paid the Deposit or first instalment of our Fees.
- 1.5 We will provide a confirmation of account registration when you register on the Website. It is your responsibility to keep your account details confidential. You are liable for all activity on your account, including purchases made using your account details.
- 2. SERVICES**
- 2.1 We agree to perform the Services with due care and skill.
- 2.2 You acknowledge that some of our Services require you to fill out an application on our Website and we shall inform you in writing if your application is accepted.
- 2.3 You acknowledge that spaces for participants in respect of our Services can be limited and we may accept or reject your application at our sole discretion.

- 2.4 The estimated period for us to perform the Services is set out on our Website and is subject to change at our sole discretion.
- 2.5 The time periods for the provision of our Services may change on notice due to different time zones and daylight saving time at our sole discretion.
- 2.6 Some of our Services are provided for a fixed term as set out on our Website and at the end of the fixed term we shall cease providing the Services. It is your responsibility to use our Services provided during the fixed term.
- 2.7 Our Services have certain technological and platform requirements in order to participate and you acknowledge that you must organise and pay for and are responsible for any such requirements in order to participate in the Services.
- 2.8 Our Services can include group activities with other third party customers. During the provision of the Services, you must not engage in any activity that:
- (a) Infringes the intellectual property rights of any person;
 - (b) defames, harasses, threatens, menaces, offends or restricts any person;
 - (c) is or could reasonably be considered to be obscene, inappropriate, defamatory, disparaging, indecent, seditious, offensive, pornographic, threatening, abusive, liable to incite racial hatred, discriminatory, blasphemous, in breach of confidence or in breach of privacy; or
 - (d) that would bring us into disrepute;
 - (e) interferes with or inhibits any user from using the Services; or
 - (f) facilitates or assists another person to do any of the above facts.
- 2.9 We may provide the Services to you using our employees, contractors and third party providers, and they are included in these Terms.
- 2.10 Third parties who are not our employees or our direct contractors (**Third Parties**) will be your responsibility. We are not responsible for the services provided by Third Parties.
- 3. PRODUCTS & ORDERS**
- 3.1 You may order Products from us as set out on the Website. We may at our discretion accept or reject an order depending on factors including availability of products and our ability to validate payment for the products.
- 3.2 It is your responsibility to check the order details, including product and pricing, before you complete your order on the Website.
- 3.3 We will provide you with order details, which may include an order number, an order ID, the shipping and billing addresses and a description of what was ordered, when you order and pay

- on the Website and your payment has been validated.
- 3.4 A binding agreement comes into existence between you and us once we have given you an order number. No changes to these Terms will be effective unless we both agree to the changes in writing
- 4. PRICE, INVOICING AND PAYMENT**
- 4.1 You agree to pay us the amounts set out on our Website, for the chosen Product and/or Services, including any Deposit required, by one of the methods set out on the Website. All amounts are stated as provided on the Website. All amounts include Australian GST (where applicable).
- 4.2 If a method of payment for the Services as set out on the Website includes a direct debit payment plan over a period of time (as applicable), it is your responsibility to ensure that your direct deposit details are kept up to date. You must not pay, or attempt to make any payments through any fraudulent or unlawful means. If your payment is not able to be successfully processed then we may cease to provide the Services. You must pay the full amount of the payment plan even where you cease using our Services.
- 4.3 You agree to pay our Invoices within the Invoice terms. If an Invoice is unpaid for more than 10 business days we will cease to provide the Services to you until we receive payment of the Invoice.
- 4.4 We may charge interest at the rate of 2% per month on any amounts unpaid after the expiry of 7 days after the payment date.
- 4.5 If invoices are unpaid for 7 days after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debt, and the right to commence legal proceedings for any outstanding amounts owed to us.
- 4.6 Our pricing structure, payment methods and these Terms may be amended from time to time at our discretion. The pricing changes will apply to you for Products and Services provided to you after the date of the change. All other changes will apply from the date that the amended or new Terms are posted on our Website or are provided to you, whichever is earlier.
- 5. YOUR OBLIGATIONS AND WARRANTIES**
- 5.1 You warrant that you will not canvass, employ, induce or attempt to employ, induce, solicit or entice away from us, any employee or contractor that was employed by or contracted to us during the term that we provide Services to you or the prior twelve (12) month period.
- 5.2 You warrant that throughout the term of these Terms that:
- (a) there are no legal restrictions preventing you from agreeing to these Terms;
 - (b) you will cooperate with us and provide us with information that is reasonably necessary to enable us to perform the Services as requested by us from time to time, and comply with these requests in a timely manner;
 - (c) the information you provide to us is true, correct and complete;
 - (d) you will not infringe any third party rights in working with us and receiving the Services;
 - (e) you will inform us if you have reasonable concerns relating to our provision of Products or Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns;
 - (f) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;
 - (g) you consent to the use of your name and Intellectual Property in relation to the Products or Services in a way which may identify you;
 - (h) if applicable, you hold a valid ABN which has been advised to us; and
 - (i) if applicable, you are registered for GST purposes.
- 6. OUR INTELLECTUAL PROPERTY**
- 6.1 The work and materials that we provide to you in carrying out the Services or providing the Products contains material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the intellectual property rights in the Materials, Website, business, Products and branding. We own the copyright which subsists in all creative and literary works incorporated into our Materials.
- 6.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any intellectual property rights in our Materials, except as stated in these Terms or with our written permission.
- 6.3 Your use of our Materials does not grant you a licence, or act as a right to use any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 6.4 You must not breach our Intellectual Property rights by, including but not limited to:
- (a) altering or modifying any of the Materials;

- (b) creating derivative works from the Materials; or
- (c) using our Materials for commercial purposes such as onsale to third parties.
- 6.5 **Editable files:** Editable files may be supplied to you upon request and full payment by you. These are provided only for the express purpose of the Services, are for personal use only, and must not be disclosed, provided to, or used by any other party, except with our written permission.
- 6.6 **Marketing:** You acknowledge that we may record your voice and video of you for the purpose of and at any time during the provision of the Services (**Footage**). You grant us a non-exclusive, irrevocable, perpetual, worldwide, royalty free, transferable licence to use the Footage and your name and your testimonials in our marketing and promotional activities and materials for the Website, Products and/or Services.
- 7. CONFIDENTIAL INFORMATION**
- 7.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than, where necessary, third party suppliers); to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you, to provide better quality services to you, and not for any other purpose.
- 7.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.
- 7.3 These obligations do not apply to Confidential Information that:
- (a) is authorised to be disclosed;
- (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
- (c) is received from a third party, except where there has been a breach of confidence; or
- (d) must be disclosed by law or by a regulatory authority including under subpoena.
- 7.4 The obligations under this clause will survive termination of these Terms.
- 8. FEEDBACK AND DISPUTE RESOLUTION**
- 8.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.
- 8.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
- (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 8.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 9. TERMINATION**
- 9.1 Either Party may terminate these Terms, if there has been a material breach of these Terms, subject to the above dispute resolution procedure.
- 9.2 We may terminate these Terms immediately, at our sole discretion, if:
- (a) we consider that a request for the Products or Service is inappropriate, improper or unlawful;
- (b) you fail to provide us with clear or timely instructions to enable us to provide the Products or Services;
- (c) we consider that our working relationship has broken down including a loss of confidence and trust;
- (d) for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe; or
- (e) you fail to pay an Invoice within 7 days of the payment date.
- 9.3 On termination of these Terms you agree that you will be liable for the full cost of the Service as this is a fixed term Service and we will be unable to fill your position in the course. Any Deposit or payments made are not refundable to you, and on termination any remaining fees will immediately become payable to us.
- 9.4 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our

- Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.
- 9.5 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property.
- 9.6 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 9.7 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 10. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 10.1 **ACL:** Certain legislation including the Australian Consumer Law (**ACL**) in the *Consumer and Competition Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**). Our liability is governed solely by the ACL and these Terms.
- 10.2 **Services:** If you are a consumer as defined in the ACL, the following applies to you: You are entitled to a replacement or refund for a major failure and for compensation for any other loss or damage. You are also entitled to have the services remedied if they fail to be of acceptable quality and the failure does not amount to a major failure. To the extent we are able to exclude liability; our total liability for loss or damage you suffer or incur from our Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.
- 10.3 **Delay:** Where the provision of Services depends on your participation, information, response or technological or platform requirements, we have no liability for a failure to perform the Services in the period set out on our Website where it is affected by your non or limited participation, delay in response, supply of incomplete or incorrect information or any technological issues.
- 10.4 **Information:** While the information and Materials provided to you as part of our Products and/ or Services is believe to be accurate and current, it is provided by us in good faith on an “as is” basis, and we accept no responsibility for and make no representations or warranties to you or to any other person as to the reliability, accuracy or completeness of such information and Materials. It is provided as general business information only, not therapy or counselling or any such similar service, and it does not take into consideration your own circumstances. You are solely responsible for determining the suitability of any of our Products and/or Services, and your reliance on any information and Materials that are provided to you through our Products and/or Services are at your own risk.
- 10.5 **Referral:** On request by you, we may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.
- 10.6 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 10.7 **Liability:** To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees and terms relating to the Services and these Terms, except those set out in these Terms, including but not limited to:
- (a) implied or express guarantees, representations or conditions of any kind, which are not stated in these Terms;
 - (b) the Services being unavailable; and
 - (c) any loss, damage, costs including legal costs, or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, or otherwise, suffered by you or claims made against you, arising out of or in connection with your inability to access or use the Services, and the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.

- 10.8 **Goods:** If you are a consumer as defined in the ACL, the following notice applies to you: "Our goods come with warranties and guarantees that cannot be excluded under the Australian Consumer Law (**Consumer Guarantees**). You are entitled to a replacement or a refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."
- 10.9 **Warranties: Seller:** To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and/or fitness for a particular purpose.
- 10.10 **Manufacturer:** The product may come with a manufacturer's warranty. The manufacturer's warranty is in addition to but may overlap with any rights and remedies you may have under applicable law, including any Consumer Guarantees. If you are not considered a "consumer" within the meaning of the ACL, the manufacturer's warranty may be your sole remedy. You should check the manufacturer's warranty, as many manufacturers' warranties do not apply in a business or commercial setting. Please contact the manufacturer if you would like to make a claim under the manufacturer's warranty.
- 10.11 **Repair, replacement or a refund:** If you wish to seek repair, replacement or a refund for a product, please contact us and we will explain the requirements to you. This may include you providing proof of purchase and evidence of the faulty product to us.
- 10.12 **Refund:** If you are entitled to a refund, we will only give you the refund once evidence of faulty product is received by us, or we have received the product and inspected it and assessed whether it is eligible for a refund under these Terms. Any refund we make will be by the same payment method used to purchase the product.
- 10.13 **Duty of care:** You have a duty of care for the product while it is in your possession. If you damage products, then subsequently return the products, you may be liable to pay to repair the product to its original condition. In these circumstances, where a repair is not economically viable, no refund will be made
- 11. LIMITATION OF LIABILITY AND DISCLAIMERS**
- 11.1 While the information and material contained on the Website is believed to be accurate and current, it is provided by us in good faith on an "as is" basis, and we and our directors, officers, employees, contractors and agents accept no responsibility for and make no representations or warranties to you or to any other person as to the reliability, accuracy or completeness of the information contained on the Website.
- 11.2 To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees and terms relating to the Products and Services, the Website and these Terms, except those set out in these Terms, including but not limited to:
- implied or express guarantees, representations or conditions of any kind, which are not stated in these Terms;
 - the Website, the products and services being unavailable; and
 - any loss, damage, costs including legal costs, or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, loss of programs or other data on your information systems or costs of replacement goods, or otherwise, suffered by you or claims made against you, arising out of or in connection with the Website, inability to access or use the Website, the products, the services, the late supply of products, or these Terms, even if we were expressly advised of the likelihood of such loss or damage.
- 11.3 **Limitation:** Our total liability arising out of or in connection with the Products, the Services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the total price paid by you for the purchase of Products and/or Services under these Terms
- 11.4 This clause will survive termination of these Terms
- 12. INDEMNITY**
- 12.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
 - any breach of these Terms; and
 - any misuse of the Services from or by you, your employees, contractors or agents.
- 12.2 You agree to co-operate with us (at your own expense) in the handling of disputes,

- complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 12.3 The obligations under this clause will survive termination of these Terms.
- 13. GENERAL**
- 13.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth), the *General Data Protection Regulation* (EU) and any other applicable legislation or privacy guidelines.
- 13.2 **Publicity:** You consent to us using advertising or publically announcing that we have undertaken work for you.
- 13.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 13.4 **GST:** If and when applicable, GST payable on the Services will be set out on our Invoices. By accepting these Terms you agree to pay us an amount equivalent to the GST imposed on these charges.
- 13.5 **Relationship of parties:** These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.
- 13.6 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 13.7 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 13.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 business days' notice in writing.
- 13.9 **Notice:** Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed to you at the address you provided us when you registered on our Website. Our address is set out on our Website. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.
- 13.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of Queensland and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Queensland.
- 13.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.
- 14. DEFINITIONS**
- 14.1 **Confidential Information** includes confidential information about the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential".
- 14.2 **Deposit** means the deposit required for the Services, as set out on our Website or otherwise communicated to you.
- 14.3 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 14.4 **Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, company names or internet domain names.

14.5 **Website** means the website, available at
www.amandajdaley.com

Contact details:

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