

TERMS OF USE & DISCLAIMER

Surf Pacific Pty Ltd (ABN 14 095 026 609)

1. DEFINITIONS

- 1.1. **COMPANY** means Surf Pacific Pty Ltd (ACN: 095 026 609) its successors, assigns, or any person or entity acting on behalf of and/or with the authority of Surf Pacific Pty Ltd with its registered office at C/- Suite 30307, Level 3, Southport Central Commercial Tower 3, 9 Lawson Street, Southport QLD 4215. Also referred to in this agreement as "We", "Us", and "Our".
- 1.2. **WEBSITE** means www.surfpacific.com
- 1.3. **AGREEMENT** means these Terms and Conditions.
- 1.4. **SERVICES** shall mean all marketing services provided by the Company to You pursuant to:
 - a. Surf Pacific 360 Digital Marketing Campaign;
 - b. Surf Pacific Edge Digital Marketing Campaign; or
 - c. Surf Pacific Organic Search Content Marketing Campaign, and including, but not limited to:
 - i. organic search content marketing;
 - ii. online advertising;
 - iii. social media;
 - iv. reputation management and conversion;
 - v. branding and positioning;
 - vi. responsive website design and development; and
 - vii. public relations and monitoring services.
- 1.5. **PRICE** means the costs of Services as agreed between the Company and the Client as set out in this Agreement.
- 1.6. **PERSON** shall include a firm, corporation or body corporate. Also referred to as "Party".
- 1.7. **CLIENT** means the person entering into this Agreement being the Company's customer in whose name the credit card and account is conducted. Also referred to in this agreement as "You" and "Your".
- 1.8. **INTERNET PROPERTY** is any website, responsive website, iPhone, iPad, tablet or mobile device application (apps) or any other virtual (cloud based) management system.

2. INTERPRETATIONS

In this Agreement, unless the contrary intention appears:

- 2.1. headings are for ease of reference only and do not affect the meaning of this Agreement;
- 2.2. the singular includes the plural and vice versa and words importing gender include other genders;
- 2.3. other grammatical forms of defined words or expressions have corresponding meanings;
- 2.4. a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph of, schedule or annexure to this Agreement and a reference to this Agreement includes any schedules and annexure;
- 2.5. a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- 2.6. a reference to "A\$", "A", "dollar" or "\$" is a reference to Australian currency;
- 2.7. a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- 2.8. a reference to a Party includes its executors, administrators, successors and permitted assigns;
- 2.9. words and expression defined in the Corporations Act 2001 (Cth) as at the date of this Agreement have the meanings given to them in the Corporations Act 2001 (Cth) at that date; and
- 2.10. a reference to writing includes email, typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form;
- 2.11. a reference to a person includes a natural person, body corporate, partnership, trust, association or any governmental, administrative or judicial body, tribunal, department, commission, authority, agency,

minister, corporation or instrumentality or any other entity;

- 2.12. a reference to a statute, ordinance, code or other law includes regulations, rules and other instruments under the statute, ordinance, code or other law and any consolidations, amendments, re-enactments or replacements;
- 2.13. the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- 2.14. any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- 2.15. any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- 2.16. a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of this Agreement; and
- 2.17. if a day on or by which an obligation must be performed or an event must occur is not a business day in the location of the Service Provider' address, the obligation must be performed or the event must occur on or by the next business day in the location of the Service Provider' address

3. GOVERNING CONDITIONS

- 3.1. These Terms and Conditions shall apply to the supply of Services by the Company to You.
- 3.2. All orders, however made, are accepted upon these Terms and Conditions, which shall override any Terms and Conditions incorporated or referred to by You in writing, orally or otherwise.
- 3.3. It is expressly agreed that no variation or alteration of this Agreement shall be effective unless in writing and signed by a duly authorised signatory of each Party.
- 3.4. No failure by the Company to object to any Terms and Conditions incorporated or referred to by You in writing, orally or otherwise shall be deemed a waiver of these Terms and Conditions or an acceptance of the Terms and Conditions by the Company.

4. EMPLOYEES' AUTHORITY

- 4.1. Without the written consent of the Company first obtained, no employee, agent or sales representative of the Company has the authority to attend, alter or enlarge these Terms and Conditions.

5. ACCEPTANCE

- 5.1. Any instructions received by the Company from You for the supply of Services and/or Your acceptance of Services supplied by the Company, shall constitute acceptance of the Terms and Conditions contained herein.
- 5.2. Placing an order presumes knowledge and acceptance of these Terms and Conditions. Upon placing an order, You shall receive a written acknowledgement of the order, which does not constitute a binding contract until the Company accepts Your order by written confirmation via e-mail.
- 5.3. Where more than one Party has entered into this Agreement, the Parties shall be jointly and severally liable for all payments of the Price.
- 5.4. None of the Company's agents, employees, representatives or subcontractors are authorised to make any representations, statements, conditions or agreements not expressed or authorised by the manager of the Company in writing nor is the Company bound by any such unauthorised representations, statements, conditions or agreements.

6. DOMAIN NAMES

You will be required to confirm to the Company that You have full proprietary rights to any domain name that You use in relation to these Services and agree to indemnify the Company in respect to any claims for damages or losses received from You or any third party arising from its use.

7. SEARCH ENGINES

The Company makes no claims or promises in regard to search engine indexing, time scales, or search engine position. This is due to changes made from time to time by search engine companies with their search algorithms. The authenticity of the Company's organic search work can be

verified by viewing any project constructed and optimized by the Company.

8. LINKS

The Company reserves the right to make links from other pages to Your Internet Property and from Your Internet Property to others. We also reserve the right to use Your Internet Property to market Our own Internet Property in any promotion or marketing campaign of Our choice.

9. EMAIL & WEB HOSTING

The Client's Internet Property and domain e-mail will remain visible and operational on the Internet for the duration of the hosting service agreement. In the unlikely event of mail or web server failure due to any technical malfunction, the Company will not be held responsible or liable for the downtime of those servers.

10. ZERO TOLERANCE SPAM POLICY

The Company has a zero tolerance stance against sending of unsolicited e-mail, bulk emailing, and spam. Any Client who sends out spam will have their account terminated with or without notice.

11. TECHNICAL SUPPORT

The Company does not provide technical support in respect of the Client's own software, hardware or internal network, by telephone or otherwise. Assisting the Client setup email addresses over the telephone is free of charge for the first 15 minutes. Over and above this period You will be charged in increments of 15 minutes or part thereof thereafter at the rate of \$25 + G.S.T.

12. WEBSITE CONTENT CHANGES

Where a Client's website has not been designed, developed or managed by the Company, the Client understands that any changes to their business website or contact details must be communicated to the Company prior to being implemented or set to go live. The Client understands that failure to inform the Company prior to any changes being made, and individually validated thereafter, will likely have an adverse impact on the performance of their Services.

13. MAINTENANCE PROCEDURES

The Company will do its best to announce any scheduled maintenance at least 24 hours ahead of time to the Client. The Company reserves the right to perform emergency maintenance without any prior notification, should it be deemed necessary to protect and maintain the security and integrity of the Service.

14. RESPONSIVE WEBSITE DESIGN & DELIVERY

A project is normally completed and launched live on the internet anywhere between 30 and 40 days. This time scale is governed by the Client in supplying images and in some cases, approving design and text content for the project subject to this Agreement. The Company will adhere to any reasonable deadline imposed by the Client.

15. PROJECT REVISIONS

The Company will make a maximum of two rounds of revision in relation to a 'Home' and 'Content' page design layout and copywriting. Design layout and copy-writing after the two rounds of revision will be charged at \$250 + GST per hour.

16. DISCLAIMER AND LIABILITY

- 16.1. The information provided on or via this Website should not be used as a substitute for any form of advice. Decisions based on this information are for Your own account and risk.
- 16.2. Although We attempt to provide accurate, complete and up to date information, which has been obtained from sources that are considered reliable, We make no warranties or representations, express or implied, as to whether information provided on or via this Website is accurate, complete or up to date.
- 16.3. Messages that You send to Us by e-mail may not be secure. We recommend that You do not send any confidential information to Us by email. If You choose to send any messages to Us by e-mail, You accept the risk that they may be intercepted, misused and modified by a third party.
- 16.4. The Company agrees to use all reasonable efforts to provide the Services to You. However, You acknowledge and agree, that nothing

in this Agreement shall constitute an express or implied warranty or guarantee by the company:

- a. that the Services will be uninterrupted, error free or not subject to delays;
- b. that the Services will be free from external intruders or hackers, virus or worm attack or other persons having unauthorised access to the Services or systems of the Company;
- c. concerning any increase in revenue, profit or goodwill that may be obtained as a consequence of You using the Services; and
- d. as to the accuracy, reliability, completeness or content of the Services, any information Services or merchandise contained in or provided through the services or any information provided by the Company in any advice report or communication to You or any other Party.

- 16.5. The Company only provides that the Services are processed correctly and delivered by the Company to the applicable network. The Company is not responsible for the final delivery of any communication initiated through the Company Services, as this is out of our control and is the responsibility of the communications carrier.
- 16.6. The Company transmits and receives phone calls and text messages via major telecommunications companies and mobile network operators, and thus the Company's influence over the timing of the transmission of Your messages and phone calls is within the technical constraints imposed upon the Company. While the Company shall use commercially reasonable efforts to transmit Your calls and messages to the applicable network for final delivery to Your designated recipients as fast as possible, we cannot commit to, and do not guarantee, a specific maximum delivery time.
- 16.7. The Company is not liable for any loss incurred by the failure or delay of a phone call or text message to be connected or delivered, and You acknowledge that damages for financial or other loss resulting from connection or delivery failure cannot be claimed from the Company for any such failures.

17. EXCLUSION OF LIABILITY

- 17.1. Neither Us nor any of Our agents, employees, directors, officers, or subcontractors shall be liable for any direct, indirect, special, incidental, consequential, punitive, or exemplary damages, including lost profits (even if We are advised of the possibility thereof) arising in any way from, including but not limited to:
 - a. any defects, viruses and any other malfunctions caused to any equipment and other software in connection with access or use of the Service provided;
 - b. any external intruders (hackers) or other persons having unauthorised access to the services or systems of the Company;
 - c. the information provided on or via our Website;
 - d. the interception, modification or misuse of information transmitted to Us or transmitted to You;
 - e. the functioning or non-availability of our Services;
 - f. the functioning or non-availability of Your website through all major web browsers;
 - g. the loss of data;
 - h. downloading or use of any software made available by our Services; or
 - i. claims of third parties in connection with the use of these Services.
- 17.2. The Company's aggregate liability to You in respect to any occurrence attributable to negligence, whether for breach of contract, misrepresentation, or otherwise, shall in no circumstances exceed the price paid by You to the Company with respect to the Services in question.
- 17.3. We acknowledge that some jurisdictions do not allow the exclusion or limitation of warranties or incidental or consequential damages, so that the above limitations may not apply to You. In such jurisdictions, the liability of the Company (and the liability of any director, officer, employee, agent, affiliate, content provider or service provider of the Company) shall be limited to the greatest extent permitted by applicable law.

18. INDEMNITY

- 18.1. You will indemnify and defend the Company and its directors, officers, employees and agents (each an Indemnified Party) from and against any and all claims, damages, losses, liabilities, suits, action, demands, proceedings and expenses (including but not limited to reasonable legal fees) incurred by any Indemnified Party arising out of, or directly or indirectly relating to:
- any breach of this Agreement by You;
 - any Service provided or performed or agreed to be performed pursuant to this Agreement;
 - any material supplied by the Client that infringes or allegedly infringes on the proprietary rights of a third party; and
 - any products sold or services provided by the Client.
- 18.2. Such claims shall include, but shall not be limited to, claims based upon trademark, service mark, trade name, copyright and patent infringement, trademark dilution, tortious interference with contract or prospective business relations, unfair competition, restrictive trade practices, misleading statement, misleading or deceptive conduct, breach of any contract, defamation or injury to reputation, or other injuries to business.

19. INTELLECTUAL PROPERTY

- 19.1. Intellectual Property includes but is not limited to the name, trademarks, patents, copyrights, logos, designs, documentation, insignias, emblems and other material however embodied that appear on this Website.
- 19.2. The Company retains all ownership of the Intellectual Property in relation to all information provided on or via this Website (including all texts, graphics and logos).
- 19.3. You may not copy, download, publish, distribute or reproduce any of the information contained on this Website in any form without the prior written consent from Us. However, You may print and/ or download information contained on this Website for Your own personal use. Links to Our Websites are not permitted without the prior written consent of Us.
- 19.4. You agree to indemnify the Company for all liability, loss, damages, claims, demands and expenses suffered or incurred by Us arising under or in connection with a breach by You of Your obligations under this clause.

20. OWNERSHIP OF INTELLECTUAL PROPERTY

- 20.1. Once final payment has been facilitated for a project or campaign, the Client is designated as the authorized owner of the Internet Property, excluding any virtual (cloud based) management system.
- 20.2. On final payment of this Agreement, the Client will own the Internet Property, excluding any virtual (cloud based) management system. The Internet Property's working files will become the Client's once payment is made in full for a completed project or campaign.
- 20.3. The system that runs Your website remains the property of the Company unless released. The coding, programming and intellectual property that creates Your website is owned by the Company.

21. RELEASE FEES

- 21.1. In the event of the Client migrating their Internet Property to another vendor, an administration fee of \$250 + GST will be charged to the Client.
- 21.2. Should the Client wish to purchase the rights to the projects development files, a fee of \$1,000 + GST is payable to the Company.

22. BILLING & AUTOMATIC RENEWAL

- 22.1. Payment for Services will be debited to the credit card nominated by You in the Agreement on a monthly basis for the period specified in the Agreement.
- 22.2. A reminder will be sent prior to billing the Client, and a receipt will be sent by e-mail once the payment is processed unless otherwise requested by the Client.
- 22.3. At the end of the Agreement, the term of Service will automatically renew for the same specified term unless written notice is given by the Client to the Company within one month prior to the renewal date. In this event, the Client agrees to engage in a face to face meeting with the Company to examine the documented effectiveness of the Service

prior to being officially released from their monetary obligations of their contract terms.

- 22.4. It is the responsibility of the Client to contact the Company if there are any changes to the account including, but not limited to changes concerning contact information, and/or billing information.

23. GST

- 23.1. "GST" means Goods and Services Tax as defined in the New Tax Systems (Goods and Services Tax) Act 1999 or any like tax.
- 23.2. If a Goods and Services Tax or any similar tax (GST) has application to the supply of Services made under this Agreement, the Company may, in addition to any amount or consideration expressed as payable elsewhere in this Agreement (subject to issuing a valid tax invoice for the Client), obtain the prevailing GST rate.
- 23.3. Unless otherwise expressly stated, all Prices or other sums payable or consideration to be provided under or in accordance with this Agreement, are exclusive of GST. Therefore, the Client will pay the GST together with the Price.

24. CANCELLATION

- 24.1. The Company may cancel these Terms and Conditions or cancel the Services at any time before the Services are provided by giving You written notice. The Company shall not be liable for any loss or damage whatsoever arising from the cancellation.
- 24.2. Once the Agreement has been signed by the Client, the Client is liable for full payment of all monthly fees relating to the campaign for the agreed minimum term (e.g. the number of months specified).
- 24.3. If the Client cancels or terminates the Agreement for any reason, all fees for the remainder of the minimum term shall be immediately due and payable, and any prepaid fees shall be forfeited.

25. FAILURE TO PAY

- 25.1. If You fail to pay for the Services in accordance with these Terms and Conditions, or if you:
- become bankrupt or insolvent;
 - have a receiver, administrator or liquidator appointed over any of Your assets; or
 - wind up your company; then we may at our absolute discretion cancel any current Service and terminate the Agreement and take proceedings against You to recover any overdue amount including costs in relation to any action taken against You by Us.
- 25.2. Upon default by the Client for payment obligations under this Agreement, the Company may notify a debt collection agency to recover the outstanding amount owed.

26. NOTICES

If the Client needs to notify the Company for cancellation of services, an e-mail should be sent to the following: For the 360 Digital Marketing Campaign james.gray@surfpacific.com.au.

27. FORCE MAJEURE

If due to war, strikes, industrial action short of a strike, import or export embargo, lockouts, accidents, fire, blockade, flood, natural catastrophes or other obstacles over which that Party has no control, that Party fails to perform any of its obligations under this Agreement, that Party shall not be held responsible for any loss or damage which may be incurred as a result of such failure. Should the event of force majeure continue for longer than one month, the Party adversely affected shall have the option of terminating this Agreement immediately without further liability other than such liabilities as have already accrued when the Agreement ends.

28. DISPUTE RESOLUTION

- 28.1. No proceedings: A Party must not start court proceedings, except proceedings seeking interlocutory relief, in respect of a dispute arising out of this Agreement ("Dispute") unless it has complied with this clause.
- 28.2. Notification of Dispute: The Party claiming that a Dispute has arisen must notify each other Party of the Dispute in writing ("the Dispute Notice") giving details of the Dispute.
- 28.3. Best Efforts to Resolve Dispute: During the five (5) Business Days period after the Dispute Notice is given, or such longer period

unanimously agreed in writing by the parties to the Dispute, ("Initial Period") each Party to the Dispute ("Disputant") must use its best efforts and negotiate in good faith to resolve the Dispute.

28.4. Referral to Mediator and Arbitrator: If the Disputants are unable to resolve the dispute within the Initial Period, each Disputant agrees that the Dispute must be referred at the request of any Disputant, to an independent Mediator determined by the Parties no later than two (2) days after the end of the Initial Period or, in the absence of agreement, the Mediator is to be appointed by the President of the Queensland Law Society, and the Disputants must act in the utmost good faith and co-operate with the Mediator and the other Disputants in a genuine attempt to resolve the Dispute within ten (10) days after it is referred to the Mediator ("the Mediation Period").

28.5. Each Disputant will bear its own costs in preparation for and participation in mediation.

28.6. The mediator's costs will be paid in equal shares by the Parties.

28.7. If the Disputants are unable to resolve the Dispute within the Mediation Period, each Disputant agrees that the Dispute must be referred to an independent Arbitrator determined by the Parties no later than two (2) days after the end of the Mediation Period or, in the absence of agreement,

28.8. the Arbitrator is to be appointed by the President of the Queensland Law Society.

28.9. Despite any other provision of this clause, any Disputant may decline mediation and request that the Dispute be referred directly to arbitration.

28.10. The arbitration shall be conducted in accordance with the Rules for the Conduct of Commercial Arbitration of the Institute of Arbitrators of Australia and, subject to those rules, in accordance with the provisions of the Commercial Arbitration Act 1990 (Qld).

28.11. Each Disputant will bear its own costs in preparation for and participation in arbitration.

28.12. The arbitrator's costs will be paid in equal shares by the Parties.

28.13. Confidentiality: Complete confidentiality shall be adhered to by the Parties and the terms of any resolution of a Dispute, whether it is by consent, mediation or arbitration, will remain confidential.

29. FURTHER ACTION

Each Party must use reasonable efforts to do all things reasonably necessary to give full effect to this Agreement.

30. WAIVER AND REMEDIES CUMULATIVE

30.1. The whole or partial failure of a Party to enforce at any time the provisions of this Agreement shall in no way be construed to be a waiver of such provisions nor in any way effect the validity of this Agreement or any part of it or the right of a Party to enforce subsequently each and every provision.

30.2. The failure of a Party at any time to require performance of any obligation under this Agreement is not a waiver of that Party's right to claim damages for breach of that obligation; and at any other time to require performance of that or any other obligation under this Agreement, unless written notice to that effect is given.

30.3. No waiver by the Company of any of its rights under these Terms and Conditions shall release the Client from full performance of any remaining Terms and Conditions, and no waiver by the Company of any breach of the Terms and Conditions shall be a waiver of any subsequent breach of the same or any other obligation under these Terms and Conditions.

30.4. No failure to exercise, nor delay or omission by the Company in exercising, any right, power or remedy conferred on it under these Terms and Conditions or provided by law shall except with the express written consent of the Company affect that right, power or remedy or operate as a waiver of it.

30.5. Waiver of any provision of or right under this Agreement must be in writing signed by the Party entitled to the benefit of that provision or

right; and is effective only to the extent set out in that written waiver.

30.6. The rights, remedies and powers of the Parties under this Agreement are cumulative and not exclusive of any rights, remedies or powers provided to the Parties by law.

31. REFERENCE TO LAWS

A reference to any legislation or statutory instrument or regulation is construed in accordance with the Acts Interpretation Act 1901 (Cth) or the equivalent State legislation, as applicable.

32. SEVERANCE

32.1. If reading down a provision of this Agreement would prevent the Agreement being invalid, illegal, unenforceable or voidable it shall be read down to the extent that it is necessary and capable of being read down.

32.2. Where, notwithstanding the above, a provision of this Agreement is still invalid, illegal, unenforceable or voidable:

- a. if the provision would not be invalid, illegal, unenforceable or voidable if a word or words were omitted, that word or those words shall be deleted; and
- b. in any other case, the whole provision shall be deleted; and
- c. the remainder of this Agreement shall continue to have full force and effect.

33. RELATIONSHIP

This Agreement does not create a relationship of employment, agency, trust or partnership between the Parties.

34. NEGATIVE AGREEMENT

Where in this Agreement a Party agrees not to do something, the Party will not attempt to do that thing, nor permit or procure that thing to be done.

35. IMPLIED PROVISIONS

The provisions implied in this Agreement by law which are inconsistent with the express provisions of this Agreement will, where permitted, be modified to the extent of the inconsistency so that the express provisions prevail.

36. THE COMMONWEALTH COMPETITION AND CONSUMER ACT 2010 (CTH) ("CCA") AND FAIR TRADING ACT 1989 (QLD) ("FTA")

Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

37. ENFORCEABILITY

The provisions of this Agreement constitute legally binding relations between those Parties who have executed this Agreement.

38. INDEPENDENT LEGAL ADVICE AND RELIANCE

38.1. Each Party warrants and covenants in favour of the other Parties, that it has received, or has waived its right to receive, independent legal advice with respect to all matters contemplated by this Agreement.

38.2. Each Party acknowledges that it has relied on its own enquiries before entering this Agreement and it has not relied in any statement made by the other Party.

39. PRIVACY AND PERSONAL INFORMATION

The circumstances where We may use or disclose personal information without Your consent are very limited. We may disclose Your information if We believe that it is reasonably necessary to comply with a law, regulation or legal request; to protect the safety of any person; or to address fraud, security or technical issues. Such information will be disclosed in accordance with applicable laws and regulations.

40. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of Queensland. All disputes arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction of the courts of Queensland.