

These are our standard Terms & Conditions. We've tried to keep them as clear and straightforward as possible, but if you have any doubts or queries about any of them please contact us and we'll try to help you understand them.

When you accept any Proposal, Quotation or Estimate from us you also agree to be bound by these Terms & Conditions.

## 01: INITIAL CONSULTATION, PROPOSALS, ESTIMATES, QUOTATIONS

All Initial Consultations, Proposals, Estimates and Quotations are provided by us without charge.

All Proposals, Estimates and Quotations remain valid for 30 days from the date of issue.

Additional work which is outside the original scope and not provided for in the original Quotation will be charged at the appropriate rate as quoted on the current Rate Card accompanying the Quotation. You will be notified of any such additional work and asked to authorise it before we start or continue.

Occasionally we will provide an Estimate rather than a firm Quotation, particularly (but not exclusively) where the project has significant Research or Development elements or other exceptional features. We will suggest what we believe will be the most beneficial rate for the work - Hourly, Daily or Weekly. Should we provide an Estimate, it will show a charge based on the average of the best and worst-case times estimated for the work. Depending on the actual time taken and the possibility of specification revisions and redesign iterations the eventual charge may be lower or higher than the average shown in the Estimate. Should the project look like it might potentially exceed the Estimate by more than 25%, we will let you know and ask you to accept and authorise any further work, or to rescale existing work to fit your budget.

## 02: AGREEMENT TO START

We agree to start work on a project only when you either:

- (a) return a signed and dated copy of our Estimate or Quotation Acceptance to us, and your deposit clears.

or

- (b) send us a Purchase Order from your company stating our Estimate or Quotation Reference and that you accept our Terms and Conditions, and your deposit clears.

## 03: DEPOSITS AND STAGED PAYMENTS (Traditional Payments)

For clients within Australia we require 50% of the project value as an initial deposit.

For clients within Australia with technical projects estimated under \$1000, or design projects of any value, we require the remaining balance to be paid on completion of design, and before final delivery of any assets.

For clients within Australia with technical projects estimated at \$1000 or more we require 30% of the overall project value to be paid on completion ('acceptance') of the design, and the remaining 20% before final implementation ('going live') and delivery of any assets.

For clients or projects based outside Australia we require a 100% deposit of the project value.

These terms hold for all clients and all projects, unless otherwise agreed by BrainVox in writing such as for 'Continual Development' projects. BrainVox will consider and may offer other payment options upon request.

## 04: TIMESCALES AND DEADLINES

We (BrainVox) will always do our best to accommodate your and other clients' deadlines, if we are given a sufficient lead time. For that reason, all timescales in an Estimate or Quotation refer to the overall elapsed time dedicated to fulfilling the contract, not an absolute time for delivery. This allows us to suspend work on a project to cater for occasional urgent and unforeseen client deadlines.

## 05: REVISIONS

We will normally estimate or quote with the expectation that reasonable revisions and design iterations will be included. These will be explained and discussed with you during our Initial Consultation.

Should the revision or design iteration process exceed the reasonable bounds set we will let you know and ask you to accept and authorise the additional work.

All corrections, changes, and amendments must be supplied in writing.

We assume that you will supply us with assets you wish us to use in the appropriate format we agree in advance; should this not happen we will inform you so that you can correct it, or if you are unable we will change them if possible and notify you of the additional cost.

## 06: DRAFTS, PROOFS, TEST SITES, DEVELOPMENT SITES, ETC.

High resolution files and prints will not normally be supplied during the project as drafts, proofs, etc. Full access to websites for use, training, administration, etc. (including passwords) will not be granted until the project is complete.

Where it is possible, test and development websites will not use the planned destination domain name during the project, instead using subdomains or unrelated domains owned by BrainVox.

## 07: APPROVAL AND RELEASE OF WORK

While we at BrainVox take great pride and care in our work, final responsibility for proof reading and identifying errors or omissions rests with you, the Client.

All corrections, changes, and amendments must be supplied in writing. (Yes, we have said this twice - it's worth repeating!)

A written Final Approval (email is acceptable) from you is required before we will release any high-resolution digital files or supply files and instructions for printing or pass over final files or passwords for use of internet, application or database assets. At that point you accept full responsibility and liability for all and any errors or omissions.

## 08: EXPENSES

Expenses incurred by BrainVox for the purposes of providing our services related to a project will be charged back to the Client at cost.

Expenses may include, but are not limited to:

- Licences or other costs directly associated with the project.
- Material costs directly associated with the project.
- Goods and Services Tax (GST), Value Added Tax (VAT) or other taxes.
- Courier or Delivery costs.

## 09: INVOICING AND PAYMENT

An invoice will be issued to you for all work completed by BrainVox upon completion of that work, or at stages as agreed before work starts.

Payment should be made by Cash Deposit or Electronic Funds Transfer to the nominated BrainVox bank account. Complete payment should be made by the Due Date, normally 7 days from the Date of Issue unless otherwise agreed and confirmed in writing.

Foreign currency (i.e. non-AUD) payments may be accepted in some cases by prior agreement in writing at an exchange rate set by BrainVox based on current commercial rates, and with a 5% exchange and administration surcharge.

BrainVox retain full copyright and title (intellectual and other) to all goods supplied and services provided until full payment is received, and retain the rights to recover goods, prevent further use, and withhold further services if payment is not made by the Invoice Due Date.

All outstanding amounts will incur an interest charge of 3% per month (or part thereof) on the outstanding amount. The client is responsible for all debt collection fees, legal fees and court fees that may be incurred as a result of the client's failure to pay invoices by the Due Date.

If any invoice remains unpaid 14 days after the Due Date the project will be considered to have entered a 'Project Break' (please see below).

Any extra administration associated with invoicing or payment caused by the client without prior written agreement from BrainVox will be billed to the client. Time will be charged by the half-hour (and parts thereof) at our current Tier Two Services Hourly Rate as stated in the current Rate Card at <https://brainvox.com/our-rates/>.

## 10: MEETINGS & PROJECT REPORTING

All initial assessment meetings are free of charge and will usually be conducted by telephone or internet. For short / small projects we will not normally charge for further meetings under the same conditions.

For more significant projects, and depending on the amount, length and frequency of meetings required, we reserve the right to charge for these, plus travelling times and costs involved, at the normal rate associated with the project.

If we believe that the scope of the project meetings has changed, and they would be more accurately described as training sessions or consultancy, we will inform you and offer a specific rate for these as a separate project item.

For more significant projects with more detailed project reporting requirements, time taken to prepare progress reports, etc. will be included in the recorded time of the project and charged at the normal rate associated with the project.

## 11: PROJECT BREAKS AND RESTARTS

A 'Project Break' occurs when either (a) a pause or break in the project longer than FOUR WEEKS is introduced by the client for any reason unless previously agreed by us in writing, or (b) when any invoice due is overdue by 14 days.

We will charge a Restart Fee to resume work after any Project Break. Restart Fees will normally be charged as 2 Hours at the normal rate associated with the project plus 10% of the overall project value. Any Restart Fee(s) are in addition to the normal project costs.

If the Project Break is due to late payment we reserve the right to immediately invoice for the remainder of the project as known at that time.

After a Project Break your project will rejoin the list of existing projects as though it were a new project and may need to wait until one or more of those projects are complete before work restarts.

## 12: OWNERSHIP AND COPYRIGHTS

BrainVox will require you to provide clear proof of permission to use any assets you provide to us for use within the project; proof of copyright ownership, original production, or written authority from the copyright owner along with clear proof of their ownership. Ownership of these assets remains with the existing rightful copyright owner. You further agree to fully indemnify BrainVox from all and any claims resulting from you not having obtained all necessary permissions for use and copyright clearances.

## 13: DOMAIN OWNERSHIP

BrainVox will act completely as your agents. BrainVox do not and will not make any claim on the ownership of any domains registered or transferred in respect of the project and accept that you have the full and legitimate claim to them at all times. Any transfers of any such registrations will be made by us on your request, immediately, at minimum cost without profit.

## 14: LICENCE

Any website, design, copywriting, drawing, code, database, data or other assets created by us for you is licensed for use by you solely within the limits of the project. These assets may not be re-used, modified or re-distributed in any way or any form (including promotional items, other websites or microsites, or printed materials) without our written consent which (for fair use) BrainVox shall normally grant without charge.

Full copyright and title (intellectual and other) to all drafts, proofs, test and development sites, etc. produced prior to the completion of the project, as well as assets we generate to produce the project (such as patterns, images, textures, fonts, texts, colour schemes and variations of these) remain with BrainVox unless otherwise agreed in writing.

BrainVox retain the right to include a link to the BrainVox website, including a logo, on any internet assets produced for the client, and a written credit including URL on any other assets. These will not be unduly obtrusive and may be removed by prior agreement. The acceptance of these terms is reflected in the current Rate Card and the quoted Rate may be varied if such removal is requested. Removal without prior agreement will be deemed as acceptance of the higher rate.

BrainVox retain the right to use all assets (including copies of final accepted works) in context for promotional use only - for example, displaying images of a website shown on different devices, or pictures of brochures, book covers or logos, so that future clients can see our previous work.

## 15: CONTACT AND SUPPORT

Our normal working hours are 09:00 to 17:00, Monday to Friday. However, in the unlikely circumstance of there being a problem with the website please contact us outside those times. For service problems the above hours extend through weekends and public holidays too. **Please ensure you use the email address [Support@BrainVox.com](mailto:Support@BrainVox.com) - that is monitored by us 7 days a week between 08:00 and 23:00.**

## 16: OCCASIONAL AMENDMENTS AFTER COMPLETION

If amendments are occasional and trivial (i.e., take less time than processing a quote and invoice for it!), we will provide them free of charge - for instance, changing a price or an address, or adding a few new entries to a purchase option. If there is significant work involved in a single change (such as a redesign or adding a new feature) we will explain why we believe it's not a trivial change and quote as per our current rate card.

## 17: HIDDEN SERVICES

During development we expect you'll want to view and review the progress, but we don't want others (especially Search Engines like Google) to see the site until it's complete. We'll provide this via some 'hidden services', usually using our StealthyKoala.com domain. While we expect you may show these to friends and family, please explain that they are works in progress! Please do not publicise or publish any references to them as the StealthyKoala domain is a confidential resource we use for our other clients. We reserve the right to charge for all and any changes required should confidentiality be breached.

## 18: RUSH FEES

We try to keep all project work within the bounds of 09:00 to 17:00, Monday to Friday.

Should your project timescale be such that with our existing commitments we would be unable to complete it within those normal hours, we may be willing to extend our project hours into evenings and weekends on payment of a 'Rush Fee'.

The 'Rush Fee' for any project will normally be equivalent to the overall project fee minus discrete expense costs such as stock, licences, and the like.

## 19: LIABILITY

In no event shall BrainVox or their suppliers be liable for any accidental, incidental, indirect or consequential damages of any type (including without limitation damages for the consequences of business interruption, loss of business information, loss of business profits, or all and any other losses) arising out of work carried out by BrainVox.

In no event shall BrainVox's liability for all and any claims (whether in contract, tort or any other theory of liability) exceed the charged price of the services or work contracted or products supplied, unless such limitation of liability is otherwise prohibited by law. Any such claim will be strictly limited to the direct losses associated with remedial costs of the services or work contracted or products supplied only, not to include claims for delays, out of sequence working, non-productive overtime, award of costs, etc. Liability to any third party for any reason is specifically excluded unless separately agreed in writing.

BrainVox shall not be liable for failure to supply or delay in supply of goods, services, or other contracted work or products where the failure or delay is due in part or in whole to any cause or circumstance outside BrainVox's control, including (but not limited to) industrial disputes (strikes, lockouts, work-to-rule, etc.), war, embargoes, government restrictions or rationing, fire, flood, power or communication breakdowns, plant or transport breakdowns, failure of suppliers of goods or services (e.g. hosting), postal, banking, government, communication, licensing and other authority delays, theft, vandalism and other criminal acts, riots, civil commotion, terrorism and accidents of any kind.

## 20: CONTINUAL DEVELOPMENT AND OTHER SPECIAL ARRANGEMENTS

Where any special arrangements exist, such as a Continual Development agreement, Additional Terms & Conditions may be provided, and will be deemed an extension to these Terms & Conditions.

Where any overlap occurs between any of the Additional Terms & Conditions for a special arrangement and any of the Standard Terms & Conditions above, those included in the Additional Terms & Conditions will be held as the active Terms & Conditions.

## 21: PAYMENT

For each of the 3 years of this agreement, the Normal Amount as stated in the Accepted Quotation shall be due each month.

Additionally, for each of the 3 years of this agreement, the Lump Sum Amount as stated in the Accepted Quotation shall be due at the start of the anniversary month in that year.

## 22: DEVELOPMENT DAYS

Your package may include a stated number of Development Days per year. These are days which can be used for further Web Development, Support, or any other website-associated work that would normally be covered in our Tier One Services at <https://brainvox.com/our-rates/>.

Should you wish to use more than the allocated amount of Development Days in any year you may draw forward on future years' allocations. Should you not draw on the full allocation of Development Days in any year, the unused days may be rolled over into future years.

Where possible work done within the scope of Development Days in this agreement will be scheduled to flexibly utilise any gaps in BrainVox's immediate schedule, with the aim of being completed as soon as possible.

## 23: AGREEMENT LENGTH AND TERMINATION

This agreement shall last for 3 years unless terminated early by mutual agreement.

The Client may also choose to terminate this agreement by:

- (a) giving 2 months notice, and
- (b) completing payment to the end of the agreement, minus any credit for whole years of Hosting and Support.

In the case of Development Days being drawn forward before the early termination date, payment for those days will be required at the appropriate standard non-discounted BrainVox Daily Rate at that time available at <http://brainvox.com/our-rates>. No rebate or allowance will be made for unused Development Days remaining at the time of an early termination.

Any whole years of Hosting and Support unstarted at the date of termination will be credited towards the final payment.

Payment for all licences, external services, domains, etc. included in the agreement will immediately become due in full at the time of notice of termination.

Late-payment and non-payment may, at any time and at BrainVox's discretion, be deemed to be equivalent to an early termination request and will be subject to the same terms as detailed above.

## 24: SUBSTITUTIONS

From time to time software and services may become unavailable, inappropriate, or otherwise unsuitable for your website and services. We reserve the right to make appropriate substitutions to maintain the integrity of your website's functionality and design.

Should this result in a significant difference in costs, functionality or design in future years we will contact you as soon as possible to alert you of the proposed changes and use our best efforts to find an agreeable solution.