

Terms and Conditions

Thank you for using our programs, products and services (our “**Goods and Services**”).

By purchasing our Goods and Services, you agree to be bound by these Terms and Conditions (“**T&C’s**”). If you purchase our Goods and Services on behalf of an organisation, community or Government/Public Body, you agree to these T&C’s on behalf of such organisation, community or Government/Public Body.

1 Definitions

In these T&C’s unless the context indicates otherwise, the following words have the following meanings.

Claims means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).

Client means you and/or, if you are acting on behalf of a company, that company.

Fees refers to the amount to be paid by the Client in consideration for the Goods and Services.

GST Law means the same as in the A New Tax System (Goods and Goods and Services Tax) Act 1999 (Cth).

Intellectual Property includes trademarks, patents, copyrights, processes, know-how, registered designs or other like rights or any right to apply for registration of any of the former.

Losses means all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.

Parties means us (Resilient Australia Reliance, a registered business of BlueWren Communications Pty Ltd as trustee of the BlueWren Communications Trust) and the Client, and **Party** means either one of them.

Related Body Corporate has the meaning given in section 50 of the Corporations Act 2001 (Cth).

Us (or **We** or **Our** as the context requires) means Resilient Australia Reliance, a registered business of BlueWren Communications Pty Ltd as trustee of the BlueWren Communications Trust.

2 Goods and Services

- (a) We will provide the Goods and Services to the Client in consideration for the Client paying the Fee to us, subject to the provisions of these T&C’s.
- (b) The Goods and Services will be performed by the employees or agents that we may choose as most appropriate to provide the Goods and Services.
- (c) If the Goods and Services are to be provided online at a specific time and date (such as an online workshop), we reserve the rights to change the date and time for provision of those Goods and Services.

3 Fees

3.1 The Fees

- (a) In consideration of the provision of the Goods and Services in accordance with these T&C’s, the Client will pay us the Fees.
- (b) The Fees payable by the Client are set out on our website/online platform. Alternatively, you may apply to us for bespoke Goods and Services for which we will provide our cost/price.
- (c) All Fees payable by the Client are either:
 - (i) payable upfront at the time of purchase, before the Goods and Services are provided; or
 - (ii) payable under a retainer or instalment plan, such payment plan to be set out in our invoice(s) for such Goods and Services provided.
- (d) The Client acknowledges that the Fees are exclusive of any GST that may be charged by us to the Client, and therefore, we will be entitled to add on GST to the Fees if applicable.

3.2 Payment and Invoicing

We will provide the Client with a tax invoice(s) in accordance with the GST Law in relation to Fees payable under this clause 3.

3.3 Variation of Fees

We are entitled to vary the Fees, in the event we have, or are likely, to incur additional costs and expense as a result of any action, omission or delay of the Client. In the event

the Fees are to be varied, we will notify the Client of such variation and will not commence or continue with provision of the Goods and Services until such time as the Client agrees to such variation in writing.

4 Client's obligations

- (a) The Client must:
 - (i) co-operate with us as we reasonably require;
 - (ii) provide the information and documentation that we reasonably require within a reasonable time frame, and ensure that such information and documentation is accurate, current and complete;
 - (iii) ensure that the Client's staff and agents cooperate with and assist us as necessary.
- (b) Any delay in the Client providing any information or documentation as required by us may affect the Fees for the provision of the Goods and Services, as well as any relevant timeframes. Any additional costs and expenses which are reasonably incurred by us due to this delay may be payable by the Client- please see clause 3.3 above.

5 No partnership or employment relationship

- (a) Nothing in these T&C's constitutes the relationship of employer and employee between us (or any of our employees, officeholders, contractors or affiliates) and the Client.
- (b) It is the express intention of the Parties that any such relationships are denied.

6 Use of subcontractors

- (a) We are permitted to use other persons to provide some or all of the Goods and Services.
- (b) We are responsible for the work of any of our subcontractors.
- (c) Subject to clause 6(d), any work undertaken by any of our subcontractors will be undertaken to the same standard as stated in these T&C's.
- (d) To the extent that the terms of any subcontract stipulate a higher standard for any of the Goods and Services than the standards set out in these T&C's (including as to timing or quality), any Goods and Services provided by the relevant subcontractor will

be governed by the terms and conditions of that subcontractor's subcontract.

7 Warranties, liability and indemnities

7.1 Warranties

- (a) We warrant that we will use reasonable care and skill in performing or providing the Goods and Services to the standard generally accepted within the industry, sector or profession in which we operate for the type of Goods and Services provided by us.
- (b) If we perform or provide the Goods and Services (or any part of the Goods and Services) negligently or we are in breach of these T&C's, then, if requested by the Client, we will re-perform or provide the relevant part of the Goods and Services, subject to paragraphs 7.5(a) and 7.5(b) below.
- (c) The Client's request referred to in paragraph 7.1(b) must be made within *seven (7)* days of the date we completed performing or provided the Goods and Services or that part of the Goods and Services.

7.2 Employees and subcontractors

We will comply with legislation applicable to our employees and agents.

7.3 Compliance with all laws and Indemnity

The Client must comply at the Client's own cost and expense with all acts, ordinances, rules, regulations, other delegated legislation, codes and the requirements of any Commonwealth, State and Local Government departments, bodies, and public authorities or other authority. This requirement applies to the Client or to the Goods and Services. The Client must indemnify us from and against all actions, costs, charges, claims and demands in respect thereof.

7.4 No warranties in relation to completion or compliance

- (a) We provide no warranty that any result or objective can or will be achieved or attained by the Client as a result of the provision of the Goods and Services at all or by a given completion date, whether stated in these T&C's, the Goods and Services, or elsewhere.
- (b) We provide no warranty or representation as to the compliance of any documents or information to be produced or communicated by us pursuant to the Goods and Services, with any specific laws, regulations or rules relating to the industry in which

we operate, or any other industry in which the Client may operate or work.

7.5 Limitation on liability

- (a) To the extent permitted by law, we will not be liable for any injury or loss suffered by the Client, or for any Claim or Loss of the Client, under or in connection with these T&C's whether arising in contract, tort, negligence, breach of statutory duty or otherwise.
- (b) Neither Party is liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill. The provisions of this clause do not apply to clauses 7.3 or 7.6.

7.6 Indemnity

The Client must indemnify and hold us harmless from and against all Claims and Losses arising from loss, damage, liability, injury to us, our employees and third parties, infringement of third party Intellectual Property, or third party losses by reason of a breach of these T&C's by the Client, or arising out of any information supplied to us by the Client, its employees, or supplied to us by the Client within or without the scope of these T&C's.

7.7 No reliance

Each of the Parties acknowledges that, in entering into these T&C's, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in these T&C's. Any conditions, warranties or other terms implied by statute or common law are excluded from these T&C's to the fullest extent permitted by law.

7.8 Limitation of our power

We warrant that we will not incur any liability on behalf of the Client or in any way pledge or purport to pledge the Client's credit or accept any other or make any contract binding upon the Client without prior approval being given by the Client.

7.9 Survival of obligations

The obligations accepted by us and the Client under this clause 7 survive cancellation of the Goods and Services or expiry of these T&C's.

8 Cancellation and Refunds

- (a) If the Goods and Services are to be provided online or in a digital form:
 - (i) it is the Client's obligation to ensure it provides the correct contact information to ensure the Goods and Services are delivered to the Client correctly;
 - (ii) It is the Client's sole obligation and responsibility to ensure all information provided to us by the Client is accurate, current and complete; and
 - (iii) Our refund policy for the respective Goods and Services purchased by you will be provided on our website or, if a bespoke set of Goods and Services are to be provided on request then we will confirm our refund policy upon provision of our quote in accordance with clause 3.1(c).
- (b) We may cancel the provision of Goods and Services upon the happening of any of the following events:
 - (i) if the Client enters into a deed of arrangement or an order is made for it to be wound up;
 - (ii) if an administrator, receiver or receiver/manager or a liquidator is appointed to the Client pursuant to the Corporations Act 2001 (Cth); or
 - (iii) if the Client would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act 2001 (Cth).

A cancellation of the Goods and Services in accordance with clause 8(b) will not entitle the Client to a refund of any Fees paid at the time of cancellation.

- (c) If the Client cancels the Goods and Services, the Client will be invoiced, and will be liable to pay, any and all additional costs and expenses incurred in addition to the Fees due to us for any time spent or cost and expense incurred by us for the period up to which notice for cancellation is given.

9 Intellectual Property Rights

- 9.1 In accordance with the Australian Copyright Council the production of any original work automatically deems us the

author and owner of such work and the owner of the Intellectual Property in the work. All copyright is reserved.

9.2 We retain full ownership of all Intellectual Property in the work we produce in the course of providing the Goods and Services including any unused concepts. We will provide you with an irrevocable, non-exclusive licence to use any Intellectual Property in the Goods and Services for the sole purpose of you being able to use the Goods and Services for the purpose for which they are intended. For the avoidance of doubt, you must not (or enable any third party to) amend, adapt, exploit, alter or use any Intellectual Property in the Goods and Services save for pursuant to this clause 9.2.

9.3 We reserve the right to use all documents and information produced in providing the Goods and Services (including unused concepts) and revisions for the purposes of promoting us in any forum including but not limited to in print or digital media portfolios, social media and blogs, except where the Client has specifically requested in writing otherwise. All documents and information used for such purposes shall be redacted appropriately if it contains Client-specific or confidential information.

9.4 The Client must not, or allow any third party to, adapt, amend, reproduce, sell or otherwise deal with any work produced or provided by us pursuant to the Goods and Services and the Client indemnifies and holds us harmless from and against all Claims and Losses arising as a result of the Client's breach of this clause 9.4.

10 General

10.1 Force majeure

Neither Party has any liability under or may be deemed to be in breach of these T&C's for any delays or failures in performance of these T&C's which result from circumstances beyond the reasonable control of that Party.

10.2 Amendment

Any amendment to these T&C's shall not be valid or enforceable unless such amendment is agreed by the parties in writing.

10.3 Representation

The Parties confirm that they have not entered into these T&C's on the basis of any representation that is not expressly incorporated into these T&C's.

10.4 Waiver

- (a) No failure or delay by us in exercising any right, power or privilege under these T&C's will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- (b) The rights and remedies provided in these T&C's are cumulative and not exclusive of any rights and remedies provided by law.

10.5 Severance

If any provision of these T&C's is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from these T&C's and rendered ineffective as far as possible without modifying the remaining provisions of these T&C's, and will not in any way affect any other circumstances of or the validity or enforcement of these T&C's.

10.6 Notices

A notice or other communication connected with these T&C's has no legal effect unless it is in writing.

10.7 Law and jurisdiction

These T&C's takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

10.8 Change in Circumstances

The Client shall give us not less than seven (7) days' written notice of any change, or proposed change, of ownership of the Client or any change in the Client's name or details.