
TERMS AND CONDITIONS**1. ACCEPTANCE**

- 1.1 In these Terms and Conditions (**Terms**), “we” or “us” means PB & TL Powell (ABN 99 081 135 421), its successors and assignees. “You” means the person, organisation or entity that uses any of the services (**Services**) available on our website at tonipowell.me.
- 1.2 We and you will be collectively referred to as “the Parties” and each “a Party”.
- 1.3 You agree and accept that our Services are provided to you on these Terms.
- 1.4 **These Terms form the agreement under which we will supply products and services to you. Please read the Terms carefully.** Please contact us if you have any questions, before you purchase or related services from us.
- 1.5 Your purchase of our Services indicates that you have had sufficient opportunity to access the Terms and contact us, that you have read, accepted and will comply with the Terms, and that you are eighteen (18) years or older. You must not use our Services if you are under eighteen (18) years of age.
- 1.6 Our Terms of Use set out the terms and conditions for using our Site. Our Privacy Policy sets out how we collect, use and protect your personal information. These are available on our Site.

2. SERVICES

- 2.1 We agree to provide the Services set out on our Site. The estimate period for us to perform such Services are also set out on our Site.
- 2.2 For some of our Services, you may be provided with account details including a username and password. It is your responsibility to keep your account details confidential, and you are liable for any activity on your account.
- 2.3 Suppliers of third party services who are not an employee or our direct contractor (**Third Party Services**), such as Vimeo Pro and MailChimp, will not be our responsibility and we are not responsible for the quality of service provided by suppliers of Third Party Services.
- 2.4 Where we provide any of our Services through Third Party Services, you acknowledge and agree that you are subject to their terms and conditions.
- 2.5 Our Services are as set out on our Site. If you request additional services, including but not limited to changes in scope or any variations (**Variation**), we have discretion as to whether we perform this work and whether an adjustment to the Fee may be required in respect of the same, or if we are unable to accommodate for such Variation.
- 2.6 If we agree to perform any Variation, then we will inform you of the additional costing (**Variation Fee**). You need to approve, in writing, the Variation and Variation Fee, before we commence work. We will invoice you accordingly for the Variation upon receipt of your approval.

3. PRICE, INVOICING AND PAYMENT

- 3.1 You agree to pay the purchase price specified on the Site (**Price**) at the time that you place your order for our Services. All amounts are stated in Australian dollars. All Prices include Australian GST where applicable.
- 3.2 You must pay via PayPal or any payment method available on our Site. You must not pay, or attempt
- 3.3 to pay, for an order through any fraudulent or
- 3.4 unlawful means. If your payment is not able to be successfully processed then your request for our Services may be cancelled.
- 3.5 Our pricing structure or payment methods may be amended from time to time in our discretion.

4. HAPPINESS GUARANTEE

- 4.1 If you are unhappy with your purchase for any reason, please contact us within fourteen (14) days of purchase, and we will provide you with a full refund. Any refund we make will be by the same payment method used to purchase our Services.

5. CLIENT 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 this Agreement that:
 - (a) there are no legal restrictions preventing you from agreeing the Terms;
 - (b) you will cooperate with us and provide us with information and comply with requirements in a timely manner, as requested by us from time to time, that are reasonably necessary to enable us to perform the Services;
 - (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 Services under the Terms, with the aim that we and you will use all reasonable efforts to resolve the 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 Services in a way which may identify you;
 - (h) if applicable, you have 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 Any of the videos, emails, training documents, and other work and materials that we provide to you in carrying out the Services contains material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). 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 ownership rights in our Materials, except as stated in these Terms or with our written permission.
- 6.3 We grant you a perpetual, irrevocable, worldwide, non-exclusive, and non-transferable right and license to use our Materials for your personal use only.
- 6.4 You must not breach our copyright or intellectual property rights by, including but not limited to:
- republishing, copying, distributing, transmitting any of the Materials;
 - making any of the Materials available for public display or viewing;
 - altering or modifying any of the Materials;
 - creating derivative works from the Materials; or
 - using our Materials for commercial purposes such as onsale to third parties.
- 7. CONFIDENTIAL INFORMATION**
- 7.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party; 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 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:
- is authorised to be disclosed;
 - is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
 - is received from a third party, except where there has been a breach of confidence; or
 - 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 our Services, please contact any member of our staff. We may, at our sole discretion, offer you a partial or full refund.
- 8.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure.
- 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**).
 - 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 Queensland 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 These Terms will terminate automatically at the completion of the Services.
- 9.2 Either party may terminate the Terms, if there has been a material breach of these Terms, subject to following the dispute resolution procedure.
- 9.3 We may terminate the Terms immediately, in our sole discretion, if:
- we consider that a request for a Service is inappropriate, improper or unlawful;
 - you fail to provide us with clear or timely instructions to enable us to provide the Services;
 - we consider that our working relationship has broken down including a loss of confidence and trust;
 - for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe;
 - we are unable to process your payment; or
 - you enter into a dispute with PayPal in relation to your payment.
- 9.4 On termination of these Terms you agree that the any payments made are not refundable to you. However, we may, at our sole discretion, and as a goodwill gesture, offer you a full or partial refund.
- 9.5 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.

- 9.6 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.
- 9.7 On completion of the Services, we will retain your documents (including copies) as required by law or regularity requirements. Your express or implied agreement to the Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 9.8 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 10. LIMITATION OF LIABILITY AND DISCLAIMER**
- 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).
- 10.2 Our liability is governed solely by the ACL and these Terms. We exclude all conditions and warranties implied by custom, law or statute except for your Statutory Rights.
- 10.3 Except for your Statutory Rights, all material and work is provided to you without warranties of any kind, either express or implied; and we expressly disclaim all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 10.4 **Services:** If you are a consumer as defined in the ACL, the following applies to you: We guarantee that the Services we supply to you are rendered with due care and skill; fit for the purpose that we advertise, or that you have told us you are acquiring the Services for or for a result which you have told us you wish the Services to achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are unable 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.
- 10.5 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in this estimated period, which is affected by your delay in response, incomplete or incorrect information.
- 10.6 **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.
- 10.7 **Liability:** To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees, warranties and terms relating to the Services and this agreement, except those set out in this agreement, including but not limited to:
- (a) implied or express guarantees, warranties, representations or conditions of any kind, which are not stated in the Terms;
 - (b) our 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 the 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 **Not medical advice disclaimer:** You agree that any information, insights or guidance contained in our Site, Services or Materials is not an attempt to practice medicine or provide medical advice. It is not to be used or relied on for any diagnostic or treatment purposes. Use of our Site, Services or Materials does not establish a doctor-patient relationship. The Materials should not be used as a substitute for professional diagnosis and treatment. Any health information in our Site, Services or Materials, is provided simply for your convenience. The Site, Services and Materials are intended for general information purposes only. They do not take into account your own personal circumstances. They are not intended to be advice, they are not intended to be relied upon and they are not a substitute for professional medical advice based on your personal circumstances.
- 10.9 **Not healthcare disclaimer:** The Site, Services and Materials may support the relationship between you and your healthcare provider, but are not intended to replace it. They should not be used as a substitute for professional diagnosis and treatment. If you suffer from any health conditions please consult with your health practitioner.
- 10.10 You are solely responsible for determining the suitability of any of our Services, and your reliance on any information that is provided to you through our Site, Services or Materials are at your own risk.
- 10.11 This clause will survive termination of these Terms.
- 11. INDEMNITY**
- 11.1 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:
- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
 - (b) any breach of these Terms; and

- (c) any misuse of the Services from or by you, your employees, contractors or agents.
- 11.2 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 our Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 11.3 The obligations under this clause will survive termination of these Terms.
- 12. GENERAL**
- 12.1 **Publicity:** You consent to us using advertising or publically announcing that we have undertaken work for you.
- 12.2 **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.
- 12.3 **GST:** If and when applicable, GST payable on our 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.
- 12.4 **Relationship of parties:** The Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.
- 12.5 **Assignment:** The 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).
- 12.6 **Severance:** If any provision (or part of it) of the 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) of 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 the Terms are valid and enforceable.
- 12.7 **Notices:** 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 provide. Our address is set out at the end of these Terms. 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.
- 12.8 **Jurisdiction & Governing 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. DEFINITIONS**
- 13.1 **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".
- 13.2 **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.
- 13.3 **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.

For any questions or notices, please contact us at:

PB & TL Powell
ABN 99 081 135 421
PO Box 307 Coolumb. Beach QLD 4573
Phone: +61 427 000 359
Email: admin@tonipowell.me

As at 21th June 2019