

Terms of Service

These Terms of Service apply to the services you have engaged us to provide which are stipulated in our Letter of Engagement. Our Letter of Engagement and these Terms of Service form the entire agreement between us with respect to those services. They replace any earlier agreements, representations or discussions. If anything in these terms of service is inconsistent with our Letter of Engagement, our Letter of Engagement takes precedence.

1. Our services

- 1.1. **Scope** – Our services will be of high quality and completed in a timely and efficient manner, in conformity with all applicable State and Federal laws, and in alignment with established ethics and best practice, and in accordance with these Terms of Service.
- 1.2. **Changes** – By accessing and using our services you agree to be bound by these terms. We may amend these terms and conditions from time to time. The parties may request a change to the services, or anything else in this agreement. Any change will be effective once both parties have agreed to it in writing.
- 1.3. **Deliverables** - All resources produced as a part of this engagement will be transmitted to you electronically and/or saved at a cloud location of your choosing. . We will not be responsible for delivery delays caused by any network or other failure beyond our control including if your software is incompatible or your network protection system blocks delivery. Unless otherwise stipulated in our Letter of Engagement, we will retain no distribution or usage rights nor any ongoing responsibilities over the resources post-delivery.
- 1.4. **Availability** - All products and services are subject to availability. We will inform you as soon as possible if the product or service you have ordered is not available.

2. Your responsibilities

- 2.1. **Generally** – You agree to:
 - a. provide us promptly with all information, instructions and access to third parties we reasonably require to perform the services.
 - b. provide reasonable facilities for us when we work at your premises.
 - c. ensure we are legally entitled to use any third-party information or intellectual property you require us to use to perform the services.
- 2.2. **Information** – You agree to:
 - a. ensure that information provided to us is accurate, complete and not misleading (we will rely on this information to perform the services and will not verify it in any way, except to the extent we have expressly agreed to do so as part of the services).
 - b. alert us to changes to information provided to us.
 - c. let us know if you expect us to use information from other engagements in connection with this one (otherwise, we are not required to use that information and will not be deemed to know it for the purposes of this agreement).

- 2.3. **Access and responsiveness** – To ensure efficiency in our engagement, we will require access to relevant senior management, and we will expect timely responses to queries and requests for clarification or further information that may be required in the pursuit of our engagement with you.
- 2.4. **Materials** – You agree that all and any materials provided to us, including audio and video recordings, documents, text and images are either,
 - a. in the public domain
 - b. belong to you, having been obtained legally and with appropriate licensing.
- 2.5. **Interdependence** – Our performance depends on you also performing your obligations under this agreement. You agree that we are not liable for any default that arises because you do not fulfil your obligations.
- 2.6. **Bookings and Cancellations** – Bookings to use our services will not be effective until confirmed by us. A cancellation fee may apply regardless of whether a deposit has been received. If a booking is cancelled by us, no cancellation fee will be payable and you may reschedule or receive a full refund.
- 2.7. **Meetings** – If you book a meeting, virtual meeting or phone consultation with us and you cancel that meeting less than 24 hours before the meeting time, or you do not join the meeting at the arranged time, the meeting will be billed to you as one hour (1hr) at our normal hourly rate.

3. Fees, expenses and costs

- 3.1. **Fees** – Our fees are published on our website. The rates published on our website at the time of our Engagement are those that apply to this agreement.
- 3.2. **Quotes** – Rates quoted to you remain in force for four weeks from the initial date of our Letter of Engagement.
- 3.3. **Payment for services** – You agree to pay us fees for our services on the basis set out in our Letter of Engagement. You agree to pay the invoiced amount within 7 days of the invoice date.
- 3.4. **Invoices** – We will invoice you for our fees and expenses on a fortnightly basis, unless otherwise specified in the Letter of Engagement
- 3.5. **Expenses** – You agree to pay any reasonable expenses we incur in connection with the services, plus GST at the prevailing rate (to the extent applicable).
- 3.6. **Compliance costs** – If we are required to provide information regarding you or the services to comply with a statutory obligation, court order or other compulsory process, you agree to pay the reasonable costs and expenses

we incur in doing so. This includes time spent by professional staff and our reasonable legal costs.

4. Refunds and Returns

- 4.1. Given the nature of our products and services, we do not offer returns or refunds unless required under Australian consumer law. If you deem a product or service to be significantly different to that described in our Letter of Engagement, please contact our Director. We do not accept returns or provide refunds for change of mind.
- 4.2. Our services come with guarantees that cannot be excluded under the Australian consumer law. Nothing in these terms purports to modify or exclude the conditions, warranties, undertakings and legal rights under the Australian Competition and Consumer Act and other local laws. Any and all other warranties or conditions are expressly excluded, including liability for incidental or consequential damages caused by breach of any express or implied warranty or condition.

5. Intellectual Property

- 5.1. Our website and its content including our products and services, may represent or contain intellectual property owned by us, including trademarks, copyrights and proprietary information.
- 5.2. You may not modify, publish, transmit, participate in the transfer or sale of, create derivative works from, distribute, display, reproduce or perform, or in any way exploit in any format whatsoever any of our intellectual property, in whole or in part, without our prior written consent.

6. Confidentiality and privacy

- 6.1. **Confidential information** – The parties agree not to disclose each other’s confidential information under any circumstances, except for disclosures required by law or as stipulated in the Letter of Engagement.
- 6.2. **Referring to you and the services** – We may wish to refer to you and the nature of the services we have performed for you when marketing our services. You agree that we may do so, provided we do not disclose your confidential information.
- 6.3. **Privacy** – You agree to comply with the Privacy Act 1988 (Cth) when providing us with information. The parties agree to co-operate with each other in addressing our respective privacy obligations in connection with the services.

7. Conflict of Interest

- 7.1. **Conflict** – We may engage in other work during the term, provided it does not conflict with our obligations as stipulated in our Engagement Letter.
- 7.2. **Notice & resolution** – If we become aware of any conflict of interest between the agreement that we have with you and any other work we have been offered or are undertaking, we must inform you immediately in writing and take all steps as reasonably agreed with you to resolve the conflict.

8. Liability

- 8.1. **Indemnity** – The parties agree to indemnify and hold harmless the other, and its respective affiliates, officers,

agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this agreement. This indemnification will survive the termination of this agreement.

- 8.2. **No liability to third parties** – We accept no liability or responsibility to any third party in connection with our services. You agree to indemnify us against any liability (including legal costs) that we incur in connection with any claim by a third party arising from your breach of this agreement.

9. Electronic communications and tools

- 9.1. **Electronic communications** – The parties agree to take reasonable precautions to protect their own information technology systems, including implementing reasonable procedures to guard against viruses and unauthorised interception, access, use, corruption, loss or delay of electronic communications.
- 9.2. **Electronic tools** – We may develop or use electronic tools (e.g. spreadsheets, databases, software) in providing the services. We are not obliged to share these tools with you, unless they are specified as a deliverable in the Letter of Engagement. If they are not a specified deliverable, and we do share them with you, you agree that:
 - a. they remain our property
 - b. we developed them solely for our use
 - c. you use them at your own risk
 - d. you may not provide them to any third party.

10. Brand visibility

- 10.1. **Communications** – We reserve the right to use our own branding on all communications conducted in the course of our engagement, including those sent to your clients on your behalf.
- 10.2. **Documentation** – We reserve the right to place a discrete statement in the footer of any prepared document that states: “Prepared by H C Maia Services” followed by the year of production.

11. Termination

- 11.1. **By notice** – The parties may terminate this agreement by giving the other party at least 14 days’ notice in writing. This agreement terminates on expiry of that notice.
- 11.2. **Breach of terms** - Without prejudice to any other right or remedy available to us, if we consider that you have breached these terms or we otherwise consider it appropriate, we may immediately and without notice, suspend or terminate your access to our services.
- 11.3. **Fees payable on termination**
 - a. Where we have agreed on a fixed project fee for services, and the services are not completed before termination, you agree to pay us for the services that we have performed on the basis of the time spent at

our current hourly rate at the time of termination, up to the amount of the fixed fee.

- b. Subscriptions terminated before the contracted termination date will incur a **termination penalty** equal to 50% of the unpaid portion of the original contract.

12. Resolving disputes

- 12.1. For us to waive a right under these terms, the waiver must be in writing.
- 12.2. If a dispute arises, before any proceeding is commenced, the party claiming that a dispute has arisen must give 14 days' notice to the other party setting out the dispute and seeking discussion and compromise to resolve the dispute.
- 12.3. If after 14 days, the dispute is not resolved then it must be referred to mediation on the same terms as those ordered by the Supreme Court of NSW and the costs of the mediation shall be borne by the parties equally.
- 12.4. Notwithstanding the preceding provisions of this clause, we must continue to provide the services and perform our obligations under this agreement pending resolution of the dispute.
- 12.5. Nothing in this clause will prevent either party from seeking urgent interlocutory relief.

13. Relationship

- 13.1. We are your independent contractor. You agree that we are not in a partnership, joint venture, fiduciary, employment, agency or other relationship with you. Neither party has power to bind the other.

14. Force majeure

- 14.1. Neither party is liable to the other for delay or failure to fulfil obligations (other than an obligation to pay) to the extent that the delay or failure arises due to an unforeseen event

beyond their reasonable control which is not otherwise dealt with in this agreement.

- 14.2. The parties agree to use reasonable endeavours to remove or overcome the effects of the relevant event without delay.

15. Assignment

- 15.1. Neither party may assign or deal with our rights under this agreement without the other's prior written consent.

16. Applicable law

- 16.1. Unless our Letter of Engagement states otherwise, the law applying to this agreement is the law of the State of New South Wales, Australia.
- 16.2. The parties submit to the exclusive jurisdiction of the courts of the state stipulated in §16.1, and waive any right either party may have to claim that those courts do not have jurisdiction or are an inconvenient forum.
- 16.3. If any part or provision of these terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If a modification is not possible, the part or provision must be treated for all purposes as severed from these terms. The remainder of these terms will be binding on you.

17. Definitions

- 17.1. In this agreement the following words and expressions have the meanings given to them below:
 - a. this Engagement – these terms of service and the Letter of Engagement to which they are attached.
 - b. you – the client named in our Letter of Engagement.
 - c. we/us – **H C Maia Services.**
 - d. party/the parties – the parties named in the Letter of Engagement.