

# Terms of Service

## 1. Definitions

“**E. Studios**” means the company *E. Studios Pty Ltd* (ABN 60 639 293 879).

“**Client**” means the person or entity who ordered an E. Studios Service.

“**Service (or Services)**” means any E. Studios service the Client has agreed to use in accordance with a Service Agreement.

“**Service Agreement**” means the specifics of a Service, and may include a creative brief, payment schedule, list of Deliverables, and any relevant correspondence or attachments from E. Studios or the Client at the time of agreement.

“**Deliverables**” means any works to be delivered to the Client as a final outcome for a Service Agreement.

“**Working Files**” means any digital project files used to create and modify preliminary works for the Service Agreement (e.g. a Photoshop project file).

“**Ideal Outcome**” means the Client’s idealised vision for how Deliverables should physically or digitally manifest, especially in appearance. Usually, a Client’s Ideal Outcome is not fully realised at the start of Service, and develops as Service progresses.

“**Feedback**” means any comments, directions, edits or critiques from the Client on work produced for a Service Agreement.

“**Revision (or Revisions)**” means the process and outcome of producing revised work for a Service Agreement based on Feedback supplied by the Client.

“**Alteration**” means any substantive change to a Service that falls outside the scope of the existing Service Agreement.

“**Third Party Content/Service**” means a proprietary work or service from an external party, including (but not limited to) audio, video, stock photography, illustrations, copywriting, sound production, or website hosting.

## 2. General

- 2.1. E. Studios is governed by the laws and regulations of the State of Queensland and Commonwealth of Australia and their Courts hold exclusive jurisdiction on E. Studios, its Services, policies, and Terms of Service.

### 3. Acceptance

- 3.1. The Client signifies acceptance of these Terms of Service on acceptance of a Service Agreement with E. Studios and payment of the deposit defined in the Service Agreement.
- 3.2. E. Studios, in accepting a Service Agreement, will provide Service(s) as defined in the Service Agreement, but cannot warrant it can, or will, meet requirements not expressly defined in the Service Agreement.
- 3.3. In accepting a Service Agreement, the Client also accepts that:
  - i. E. Studios provides a creative service.
  - ii. A creative service is subject to design and artistic interpretation, and an Ideal Outcome cannot be guaranteed through the scope of an E. Studios service.
  - iii. However, E. Studios will aim for a suitable outcome within scope of the Service Agreement and these Terms of Service.
- 3.4. Should the Client exhaust the scope of the Service Agreement before E. Studios can achieve their Ideal Outcome (e.g. free Revisions exhausted), the Client can choose to:
  - i. Finish the Service Agreement and be provided with Deliverables based on the most suitable version of work completed; or
  - ii. Purchase a Service to extend the Service Agreement (e.g. purchase additional Revisions as defined in *Feedback, Revisions & Alterations* [see Section 6]); or
  - iii. Cancel the Service Agreement as defined in *Cancellation, Suspension or Termination of Service* (see Section 9).

### 4. Client Responsibilities

- 4.1. The Client warrants that any information supplied by the Client to E. Studios is true, lawful and conforms to applicable industry standards.
- 4.2. The Client accepts responsibility for the correctness of any information supplied to E. Studios and that the information supplied is up to date.
  - i. E. Studios shall not be held liable for errors in works or content supplied by the Client, including (but not limited to) syntactic or grammatical errors, misspellings, faults in media, or outdated content.
- 4.3. The Client warrants that any information supplied for inclusion into Deliverables do not infringe on intellectual property rights and is lawful for the Client and E. Studios to use and reproduce. This includes (but is not limited to) any Third Party Content/Service, written content, media, or the name of a company, brand or product.
- 4.4. The Client accepts responsibility for the clarity, accuracy and extensiveness of Feedback, and accepts that the quality of Feedback directly affects the effectiveness of any consequent Revision.
- 4.5. E. Studios does not provide any marketing or promotional advice in a professional capacity, and the Client agrees to accept responsibility on these matters and seek professional advice as appropriate.

## 5. E. Studios Responsibilities

- 5.1. E. Studios will supply its Service(s) with due care and professional skill, but cannot guarantee our Service(s) will be error free.
- 5.2. E. Studios will strive to supply continuous availability of Service(s), but shall not be held liable for Service interruptions, suspensions, or downtime that may occur due to:
  - i. unpaid invoices; or
  - ii. lack of correspondence from the Client; or
  - iii. scheduled holidays; or
  - iv. breaches of the Service Agreement; or
  - v. unforeseen circumstances.
- 5.3. E. Studios shall inform the Client of any Third Party Content/Service that the Client may need to purchase if not already specified in the Service Agreement.
  - i. The Client can purchase the Third Party Content/Service at their own expense, or, for a fee, negotiate for E. Studios to purchase the Third Party Content/Service on their behalf.
  - ii. E. Studios shall not be held liable for the need to purchase any Third Party Content/Service or for faults in any Third Party Content/Service.

## 6. Feedback, Revisions & Alterations

- 6.1. The Client agrees that any Feedback or Alteration requests must be sent in writing to E. Studios (E. Studios prefers email or WhatsApp).
  - i. Feedback or Alteration requests may be discussed verbally. However, no Revision or agreement on an Alteration (see Clause 6.3) will be carried out until the Feedback or Alteration request is submitted in writing.
- 6.2. The Client accepts that the Service Agreement pays only for the amount of free Revisions defined in the Service Agreement and reflects the cost for E. Studios to supply only the defined amount of free Revisions.
  - i. The Client can engage E. Studios for an additional amount of Revisions at a fee quoted in the Service Agreement (usually specified as “Extra Revisions” in a payment schedule), or if not already quoted in the Service Agreement, at a fee negotiated with E. Studios.
- 6.3. E. Studios understands that a Client’s requirements may evolve as Service progresses. However, any Alteration has a cost to E. Studios.
  - i. Alteration requests, or any Feedback that also amounts to an Alteration request, shall first be negotiated with E. Studios.
  - ii. E. Studios is under no obligation to work on an Alteration until the applicable Alteration request is accepted by both the Client and E. Studios into an amended Service Agreement.

## 7. Billing & Quotation

- 7.1. The Client agrees to pay fees as defined in the Service Agreement (usually in the payment schedule) and any fees incurred additionally by the Client with E. Studios.
  - i. E. Studios fees are in Australian Dollars and inclusive of applicable taxes unless otherwise stated.
- 7.2. E. Studios allows **14 days** for Clients to pay an invoice. The Client agrees to pay an E. Studios invoice within **14 days**, or:

- i. pay a **Late Payment** fee defined in the *Fee Schedule* (see Section 15) for each “follow-up” invoice issued to chase payment.
- 7.3. In addition, the Client accepts that:
  - i. E. Studios shall issue the Client a final warning to pay **on a third follow-up invoice**.
  - ii. E. Studios may turn the debt over to a third party collections agency, or engage the Client in litigation to collect the debt **on non-payment of a third follow-up invoice**.
  - iii. E. Studios shall repossess applicable works and intellectual property rights from the Client **on unsuccessful collection efforts**, and the Client forfeits any rights to use or reproduce the E. Studios works. E. Studios may pursue legal action to enforce these terms.
- 7.4. Quotes provided will last a total of **14 days**.
- 7.5. General quotes are free and most prices can be found on the E. Studios website, but if the client requests a more detailed and itemized quote, E. Studios will charge a non-refundable, **Detailed Quotation** fee as defined in the *Fee Schedule* (see Section 15).
- 7.6. The **Detailed Quotation** fee will be waived and credited towards the project if the client agrees to continue with the service.

## 8. Refunds

- 8.1. E. Studios shall have discretion to process refunds in line with these Terms of Service and Australian Consumer Law (see the Australian Competition & Consumer Commission's published [policies and guidelines](#)).
  - i. The Client agrees they shall not be entitled to a refund if they breach the Service Agreement or these Terms or Service.
  - ii. The Client agrees that paid deposits are non-refundable once Service has commenced.

## 9. Cancellation, Suspension or Termination of Service

- 9.1. The Client can request cancellation of a Service Agreement for any reason.
- 9.2. E. Studios may suspend or terminate a Service Agreement if:
  - i. the Client has unpaid invoices; or
  - ii. the Client has ceased any correspondence with E. Studios for a period of more than **14 days**; or
  - iii. the Client bullies, harasses, is disrespectful, or does not act in good faith towards E. Studios or any of its staff; or
  - iv. the Client is in breach of the Service Agreement or these Terms of Service; or
  - v. the Client has become insolvent or bankrupt.
- 9.3. E. Studios will restore a suspended Service Agreement on remedy of the reason for suspension. Any clients who's service has been restored will need to pay invoices upfront instead of the 14 days.
- 9.4. E. Studios may restore a terminated Service Agreement subject to negotiation with the Client and on character of the Client, but is under no obligation to restore a Service Agreement after termination.

- 9.5. The Client agrees that any outstanding invoices are still payable on and after cancellation, suspension or termination of a Service Agreement, with late fees still applicable as set forth in *Billing* (see Section 7).

## 10. Artwork Rights

- 10.1. E. Studios retains ownership and copyright to all works, Working Files, concepts and drafts originally owned or created by E. Studios, unless otherwise defined in a written contract or specified in these Terms of Service.
- i. When supplied to E. Studios, the Client retains ownership and copyright of works, Working Files, concepts and drafts originally owned or created by the Client unless otherwise defined in a written contract.
- 10.2. The Client shall have ownership and copyright of Deliverables at the conclusion of the Service Agreement and after payment of all outstanding fees.
- i. E. Studios is under no obligation to supply to the Client any Deliverables prior to the payment of all outstanding fees.
  - ii. It is the Client's responsibility to secure their own intellectual property rights on Deliverables or its contents, including (but not limited to) trademarks on logos, brand names, or company names.
- 10.3. E. Studios reserves the right to exhibit Deliverables for a portfolio or the promotion of our Service(s) unless exclusion is explicitly requested by the Client in written form.
- 10.4. E. Studios is under no obligation to supply to the Client any Working Files owned by and copyrighted to E. Studios. However, if available, E. Studios can supply a Client with Working Files at a **Working File Release** fee defined in the *Fee Schedule* (see Section 15).
- i. E. Studios tailors Working Files individually for each Client, and, in accordance with these Terms of Service and the *Privacy and Confidentiality* terms (see Section 13), will only supply Working Files to the Client they were tailored for and not to any third parties.
  - ii. If supplied, E. Studios grants the Client permission to use the E. Studios Working Files as a means to reproduce or modify the work, but does not grant the Client any copyright to the Working Files.
  - iii. Rights to works contained in any supplied Working Files is determined by intellectual property laws, and it is the Client's obligation to ensure they use and reproduce the works in accordance with these laws.

## 11. Data Management

- 11.1. The Client has sole responsibility to maintain backups of their data and will not hold E. Studios liable for incomplete, out of date, or corrupt data recovered from the Client's or E. Studios' backups and archives.
- 11.2. If available, E. Studios can supply a backup of the Client's data at a **File Restoration Service** fee defined in the *Fee Schedule* (see Section 15).
- 11.3. E. Studios holds no obligation to maintain a backup of the Client's data following the cancellation or termination of the Service Agreement for any reason.

## 12. Relationship of the Parties

- 12.1. The Client agrees not to engage, solicit, or employ on any basis any E. Studios staff for the duration of a Service, unless otherwise agreed upon in a written contract with E. Studios.
- 12.2. E. Studios shall not be held liable for any damages or lost profits to the Client as a result of the Client's decisions or operations, even if the damages or lost profits were consequential to the Client's use of an E. Studios work or Service, including (but not limited to):
  - i. lost profits from a Client's failed promotional campaign which uses E. Studios work.
  - ii. litigation damages (e.g. due to defamation or misleading conduct) from content the Client requested E. Studios to produce.
- 12.3. The Client agrees to immediately notify E. Studios of any changes to their business position, financial or otherwise, which may affect their ability to meet their obligations in a Service Agreement or these Terms of Service.

## 13. Privacy and Confidentiality

- 13.1. E. Studios adheres to the *Privacy Act 1988* (Commonwealth of Australia).
- 13.2. E. Studios or the Client shall not disclose to any third party private information or information declared confidential by E. Studios or the Client, other than:
  - i. for the purpose of the Service Agreement or these Terms of Service; or
  - ii. on written agreement; or
  - iii. under lawful direction by authorities.

## 14. Communication

- 14.1. The Client agrees to receive from E. Studios any correspondence related to their Service(s), including (but not limited to) emails, SMS, WhatsApp messages, or social media conversations.
- 14.2. If opted in, the Client agrees to receive marketing and promotional emails from E. Studios to the contact details they have supplied.
  - i. The Client may unsubscribe to these marketing and promotional emails by notifying E. Studios.

## 15. Fee Schedule

Detailed Quotation fee	\$80.00
Late Payment fee	\$15.00
Working File Release fee	\$150.00
File Restoration Service fee	\$100.00