BossMan.
Dream it. Create it. Market it.

229 Lennox Street, Richmond VIC 3121
ABN: 27 701 789 535

Standard Terms and Conditions

1. Our Agreement with You

(a) These standard terms and conditions and each Work Order placed by you form our Agreement with you. Please read them carefully as they govern the way in which we will perform the Services for you.

(b) This Agreement commences from the date that you place a Work Order for Services according to clause 4.

(c) If a Work Order includes 'Special Conditions' these will take precedence over our standard terms and conditions if there is any inconsistency.

2. Our Commitment to You

We will:

(a) use reasonable care and skill in providing the Services, however we do not promise they will be continuous or fault free;

(b) ensure that any Creative Works are reasonably fit for the purpose for which they are intended; and

(c) ensure that all work we perform relating to the Services is carried out by competent and suitably qualified personnel.

3. Your Commitment to Us

You:

(a) must provide us with all reasonable assistance and access to your personnel, sites, IT infrastructure and systems, test environments and any relevant commercial, research and marketing material required for us to provide the Services to you;

(b) must ensure that any equipment or personnel supplied by you and required to perform the Services are functional and available;

(c) must not alter, tamper, modify, or adapt any Creative Works without our consent (which we won't unreasonably withhold) or engage any third party to do so;

(d) are solely responsible for selecting, supplying, and maintaining your own facilities, equipment, and personnel;

(e) are solely responsible for the content of any data or information which you provide to us or receive from using the Services and must take reasonable steps to ensure the security of such data or information (including Personal Information);

(f) are solely responsible for any third party's use of our Creative Works or their inputs into the Services;

(g) will not resell our Services to a third party or engage us on behalf of a third party without our consent.

4. Placing a Work Order

(a) We will provide you with a Work Order based on our commercial discussions of your requirements. The Work Order will describe the Services that we will provide, our Fees and any additional terms.

(b) You can place a Work Order by signing or confirming in writing that you accept the Work Order, or continuing to instruct us to perform the Services described in the Work Order after you've had a reasonable time to read and understand this Agreement.

(c) By placing a Work Order, you accept these standard terms and conditions, which form our Agreement with you.

(d) The Work Order will always include two rounds of creative changes by the client. Further changes will be subject to an hourly rate charge.

5. Changing a Work Order

(a) If you want to change a Work Order you must notify us in writing – we may charge you for any change to a Work Order, including for work already done.

(b) If a change results in the cancellation or postponement of film crews up to 10% of the overall work order may be charged to you.

6. Payment Terms

(a) You must pay us our Fees in accordance with these Terms, or otherwise as agreed and described in each Work Order.

(b) Unless you dispute an amount of our Fees, you must pay us the invoiced Fees within fourteen (14) Business Days from the date you receive our invoice.

Upfront Payment

(c) If we agree to enter into an upfront payment arrangement with you we will provide you with a tax invoice before, or within a reasonable time of commencing work.

Periodic Payment or Milestone Payments

(d) If we agree to enter into a milestone payment arrangement, or monthly invoicing arrangement with you we will invoice you at the completion of each milestone or the end of each calendar month (as applicable).

Disputed Invoices

(e) If you dispute an amount of our Fees described in any tax invoice we give you, you must:

(i) notify us within 5 Business Days of the amount of our Fees in dispute and provide us with details about why you dispute our tax invoice;

(ii) Pay us any undisputed amounts that we have invoiced you for in accordance with the Agreement;

(iii) Use reasonable efforts to meet with us and discuss the details of your dispute as soon as possible.

(f) We will use reasonable efforts to meet with you and discuss any disputed tax invoice within 5 Business Day of receiving your dispute notice.

(g) If you do not raise a dispute about a tax invoice that we give you within 5 Business Days of receipt you agree that:

(i) You accept the tax invoice as provided to you;

(ii) You will pay the Fees described in the tax invoice in accordance with these Terms and you will not withhold any amount from payment;

(iii) We are under no obligation to adjust the Fees or otherwise give you an adjusted tax invoice for Fees disputed after 5 Business Days from when you receive our initial invoice, but we may meet with you to discuss your dispute.

(h) If we give you an incorrect tax invoice we will:

(i) Notify you as soon as possible after we become aware of the incorrect tax invoice;

(ii) Provide you with an adjusted tax invoice;

(iii) If you have already paid the Fees in the incorrect tax invoice, provide you with a credit against future Fees for the amount of the error, or if you are not liable to pay any future Fees, make an adjustment payment to you for the amount of the error.

7. GST

(a) Subject to this clause, you must pay all Taxes arising from us providing the Services to you or otherwise incurred by us relating to the Services.

(b) The Fees are expressed exclusive of all Taxes, unless otherwise specifically stated in a Work Order.

(c) Where GST is imposed on a taxable supply made under or relating to our Agreement with you and the recipient of that supply receives a tax invoice for that supply, the recipient must pay an additional amount equal to the GST to the supplier (without deduction, withholding, counterclaim or set-off) by the tax invoice due date.

(d) If one party is required to indemnify, pay or reimburse another party (**Payee**) for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the Payee (or an entity grouped with the payee for GST purposes) is entitled to an input tax credit, but will be increased in accordance with clause 7((c)) if the amount payable is consideration for a taxable supply.

(e) If law requires you to make a deduction or withholding from any payment of our Fees for, or because of Taxes, you must pay us an additional amount so that, after making the deduction or withholding, we receive an amount that is equal to what we would have been paid in Fees if you had not been required to make a deduction or withholding.

8. Warranties and Indemnities

(a) Each party warrants to the other that it has full power and authority to enter into this Agreement and perform its obligations relating to it.

(b) You warrant to us that:

(i) you have not relied on any other representations or warranties by us other than those contained in this Agreement;

(ii) you own, or are entitled to use any material provided to us relating to the Services, including the Intellectual Property Rights in that material;

(iii) you will only instruct us to perform the Services in a way that does not infringe any 3rd party's rights (including any Intellectual Property Rights);

(iv) if any material you provide us contains Personal Information you are authorised to disclose that Personal Information to us.

(c) We warrant to you that:

(i) we will perform the Services with a reasonable degree of care and skill;

(ii) we will comply with any applicable health and safety laws when performing the Services.

(d) You indemnify us for any Loss relating to:

(i) a breach of your warranties;

(ii) any 3rd party claim that the Services or any material we create on your behalf infringes the Intellectual Property Rights of any 3rd party;

(iii) the way you use any material we create on your behalf (including modifying that material or publishing that material other than as agreed in a Work Order);

(iv) anything we do as your agent.

(e) We indemnify you against any Loss arising out of our negligence in performing the Services.

(f) If you inform us, or we become aware of a breach of any term of this Agreement (including a breach of your warranties) we may:

(i) Take any steps that we think are necessary to mitigate any Loss against us or you;

(ii) Modify any Creative Work in a way that does not infringe any 3rd party's rights;

(iii) Remove or delete any publication of Creative Work from any media without the need to obtain your consent;

(iv) Terminate this Agreement or a Work Order without further liability.

9. Limitation of Liability

(a) Subject to clause 9(c), each party's liability to the other is limited to the total amount of the Fees paid or payable under this Agreement.

(b) Neither party is liable to the other for any consequential loss, however this does not exclude Loss that occurs from the direct, ordinary course of business.

(c) You agree that your liability will not be limited in respect to Loss arising from a claim that the Services infringe any 3rd party's rights (including Intellectual Property Rights) to the extent that we provide the Services in accordance with your instructions, or you provide us with material that is subject of a claim.

10. Intellectual Property

(a) Subject to full payment of our Fees and the remainder of this clause 10, we agree that you will own any Intellectual Property Rights in our Creative Work.

(b) Both parties agree that except for clause 10(c) (Our Licence to You) and clause 10(d) (Your Licence to Us) nothing in this Agreement transfers any right in, or creates any licence or obligation to each party's Pre-Existing Intellectual Property.

Our Licence to You

(c) To the extent that any Creative Work includes our Pre-Existing Intellectual Property we grant you a royalty-free, non-transferable, non-exclusive licence to use the Creative Work in Australia (including the right to use any part of the Creative Work that is our Pre-Existing Intellectual Property) subject to you complying with this Agreement.

Your Licence to Us

(d) Subject to our obligations of confidentiality to you, you grant us a royalty free, non-exclusive, perpetual, and irrevocable licence to use the Creative Work:

(i) for advertising our services or to create testimonials about work we perform for you;

(ii) for creating a portfolio of work that can be shown to potential future customers;

(iii) for inclusion in presentations, seminars, or internal documents;

(iv) for creating new Creative Work by adaptation, modification, or enhancement (in which case the Intellectual Property Rights in the new Creative Work belong to us);

(v) for any other purpose that we request, and you agree to, acting reasonably.

(e) Once you have paid our Fees in full, we will transfer the rights and title in the Creative Work that we have created to you. If we are unable to transfer any rights and title in any part of the Creative Work to you, we will take reasonable steps to ensure that you obtain the full use of the Creative Work, as described in the relevant Work Order.

(f) You agree that if you ask us to publish any Creative Work online, including to any form of social media (for example Facebook, Instagram, Snapchat, Pinterest, or blogs) or other website that imposes conditions of use or licence conditions around published Creative Works, you fully accept those terms as they apply to the Creative Works.

(g) If you choose to publish any Creative Works, you agree to acknowledge us as the author by:

(i) For visual publication - including the BossMan logo or our other approved trade mark in the image or film;

(ii) For written publication – by including a written acknowledgement within the publication;

(iii) For audio publication – by including a verbal acknowledgement within the publication.

11. Confidentiality and Privacy

(a) Each party must treat the provisions of this Agreement and the information contained in it as confidential information – this includes any information provided by either party relating to technical, operational, billing, pricing, and commercial matters in relation to the supply of Services.

(b) A party must not disclose the other party's confidential information to any person except:

(i) to its officers, employees, or professional advisors on a 'need to know' basis if they agree to observe the confidentiality of the information;

(ii) with the other party's prior written consent;

(iii) if required by law, directed to disclose the information by a regulatory authority or required to disclose the information according to the rules of a stock exchange; or

(iv) if it is in the public domain.

(c) You agree that we may disclose your confidential information to our Personnel to provide the Services, provided that our Personnel observe the confidentiality of your information.

(d) If we agree to observe any special confidentiality conditions (including your confidentiality policy) we will list these conditions in the relevant Work Order and will ensure that our Personnel observe these special conditions.

(e) If any information you provide us is Personal Information:

(i) We will hold that information, and only use it in accordance with your directions and our privacy policy (or if we do not have a privacy policy at any time, according to the Privacy Principles).

(ii) You will ensure that you have obtained all the necessary consents to use the Personal Information in accordance with clause 11(d)(i).

12. Standards and Laws that apply to the Services

(a) We will provide the Services to you in accordance with any applicable laws, codes or standards that apply.

(b) If you give us any instructions that conflict with any applicable laws, codes, or standards, or we are notified about a complaint by any governing regulatory body (for example, ACMA or CAV) we may:

(i) modify the Services in a way that does not conflict with applicable laws, codes or standards, or cease providing the services without further liability;

(ii) adapt, modify, or remove any Creative Works, or change the scope of Services to comply with a regulatory direction.

(c) Victorian law governs this Agreement.

13. Agency

When we are required to publish any Creative Work as part of a Work Order you agree that we publish that work as your agent. We may accept additional terms

and conditions of any publication on your behalf (for example, relating to rights to use or re-publish Creative Work) and you will be responsible for complying with those terms and conditions.

14. Insurance

(a) We will hold any insurance that we are required to by law for the duration of the Services.

(b) If we agree to hold any specific insurance relating to the Services, we will list that insurance in the relevant Work Order.

15. Termination Rights

(a) Either party can terminate this Agreement for material breach:

(i) 10 Business Days' after one party (**Notifying Party**) gives the other party (**Breaching Party**) notice that they have materially breached this Agreement, and the breach has not been resolved to the Notifying Party's reasonable satisfaction; or

(ii) immediately, if the Notifying Party gives the Breaching Party notice that it has materially breached this Agreement and the breach would not be capable of being resolved in the opinion of a reasonable person.

(b) Either party can terminate this Agreement at any time on 60 Business Days' notice, for any reason.

(c) If this Agreement is terminated for any reason you must pay us any outstanding Fees.

16. Dispute Resolution

(a) The parties agree to use best endeavours to resolve in good faith any dispute concerning this Agreement. Each party must follow the procedures in this clause before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief, or in the case of a dispute about unpaid Fees).

(b) Each party will nominate a representative that can conduct and settle any dispute on their behalf. If a dispute cannot be resolved promptly between the nominated representatives, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet within 7 days of the notice (or another agreed period) to try and resolve the dispute.

(c) If the dispute remains unresolved, the parties must try to resolve it by mediation according to the Australian Disputes Centre's Mediation Guidelines, using a neutral, mutually agreed mediator.

17. Force Majeure

(a) From time to time, an unforeseen event outside of our control may prevent us from performing the Services for you, or may require that we perform the Services in a different way – these events are called a Force Majeure and are listed in the Agreement Dictionary.

(b) If a Force Majeure occurs:

(i) We will notify you as soon as reasonably possible and explain the impact of the Force Majeure on the Services.

(ii) We will not be required to perform the Services for the duration of the Force Majeure, but we will take reasonable steps to overcome the effects of the Force Majeure, which may include modifying the Services by agreement or providing the Services in a limited or partial form.

(c) If the Force Majeure continues for more than 2 weeks, either you or we may terminate this Agreement immediately by written notice.

(d) You will not have to pay for any undelivered Services from the termination date, but you will still have to pay us any outstanding amounts for Services provided up to the date of termination.

18. Notices

(a) If you are required to give us notice of any matter, you must do so in writing addressed to the contact details below.

Email: jan@bossmanmedia.com.au
Mail: Level 3, 534 Church Street Cremorne 3121 VIC

(b) If we are required to give you a notice, we will deliver the notice using the contact details you specify in the Work Order.

19. Assignment

You must not assign your rights and responsibilities under this Agreement to any other party without our prior written consent. We may assign our rights and responsibilities to a third party, but will give you prior written notice before we do.

20. Entire Agreement

This Agreement contains the entire understanding between you and us – once you have accepted this Agreement, any earlier agreement, understanding or preliminary matters will not apply to the business described in this Agreement.

21. No Waiver

Neither party will waive any rights under this Agreement or law unless it gives the other party written notice that it waives that right. For the avoidance of doubt, not exercising a right under this Agreement or a law is not a waiver of that right. If a party does waive it rights for a breach of this Agreement by the other party, that waiver does mean that any other breach is waived.

22. Severability

If any part of this Agreement is illegal or unenforceable for any reason, then the parties agree that part will be severed from this Agreement and the remaining provisions of this Agreement will continue to apply.

23. Surviving Terms

After termination of this Agreement for any reason clauses 6, 7, 8, 9, 10, 11 and 20 continue to apply between the parties.

24. Varying these Terms

We may vary the terms of this Agreement from time to time by giving you prior written notice (which may be in the form of updating our standard terms and conditions online). We will endeavour to limit any variations to matters relating to:

(i) Changes in law, policies, or standards;

(ii) Judgments, orders, or official legal rulings;

(iii) complying with our Privacy Policy.

25. How to Interpret this Agreement & Dictionary

In this Agreement capitalised words have the following defined meanings:

ACMA means the Australian Communications and Media Authority.
Agreement means these standard terms and conditions and each Work Order we enter with you.
Business Days means any day that banks are open for business in Melbourne, Victoria.
CAV means Consumer Affairs Victoria.
Creative Works mean any tangible or intangible item or creative work that carries Intellectual Property Rights (whether by registration or otherwise) that is created by us directly in the course of performing the Services.
Fees means our fees in respect of the Services, set out in each Work Order.
Force Majeure means any event beyond a party's reasonable control.
GST has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
Intellectual Property Rights mean all intellectual property rights at any time recognised by law, including:
(a) patents, copyright (including future copyright), circuit layout rights, designs, trademarks, designs, and business names (whether registered or not), trade secrets, know-how and other intellectual property rights, but not including Moral Rights.
Loss means all liabilities, losses, damages, costs, and expenses (including all legal costs on a full indemnity basis) whether incurred or awarded against a party, disbursements and costs of investigation, litigation, settlement, judgment, interest, fines, and penalties.
Moral Rights has the same meaning as in the *Copyright Act 1968* (Cth).
Personal Information has the same meaning as in the *Privacy Act 1988* (Cth).
Personnel means our officers, employees, agents, contractors, and sub-contractors.
Pre-Existing Intellectual Property means any works, matter or thing (however described) in which a party has Intellectual Property Rights before this Agreement.
Services mean the services described in a Work Order.
Taxes means any tax, levy, duty, charge, deduction or withholding, however described, imposed by law or a government agency, together with any related interest, penalty or fine, including in respect of GST, but excluding income tax.
Work Order means a statement of work or equivalent document that sets out the scope of services and deliverables that we will provide to you and the corresponding Fees payable for our services.