

ALEXANDER MORAN – YOWIE IT
STANDARD TERMS AND TRADING CONDITIONS

1. Definitions and Interpretation

“Australian Consumer Law” means the Australian Consumer Law as stated in Schedule 2 of the Competition and Consumer Act 2010 (Cth) as amended from time to time.

“Agreement” means the agreement between the parties, and includes the Trading Conditions (this document).

“Commencement Date” means the date of commencement of the Services as specified in the Project Brief, Work-Order or Quotation.

“Contractor” means Alexander Moran ABN 61 569 100 921, trading as Yowie-IT or First Page Search, his successors and assigns and any person acting on behalf of and with the authority of Alexander Moran.

“Customer” means the person or entity named on the Project Brief, Work-Order, Quotation or Work Authorisation.

“Goods”, “Services” and “Goods and Services” includes, but is not limited to, Lead Generation and Internet Marketing (LGIM); Australian Cloud based Computing Systems (IAAS); Website Development; Cloud Based Email Solutions; Business Online Backup; Backup Imaging Solution with Rapid restore; SOHO and Home Online Folder Sync; Cloud in a Box; On-Site IT Services; Pay-Per Click Campaigns; Copywriting; Link Baiting; any other associated goods or services as described on the Contractor’s quotes, tax invoices and other documents supplied to the Customer.

“Initial Term” means 12 months from Commencement Date for Lead Generation and Internet Marketing services, and for other Services as specified in the Project Brief, Work-Order or Quotation.

“LGIM” means Lead Generation and Internet Marketing.

“Site” means the place where the Contractor’s work will be carried out.

“Standard Terms and Trading Conditions” also referred to as “Trading Conditions”, means this document.

2. Acceptance of Trading Conditions

The Customer agrees and acknowledges that it has received the Trading Conditions, understands the Trading Conditions, and agrees to be bound by the Trading Conditions.

3. Quotes/ Products and Services Specification

- 3.1 The Contractor may provide a quote to the Customer, which will specify the work required to be completed and an estimate of the Contractor's charge for the performance of the work.
- 3.2 The Contractor may request a deposit from the Customer, as specified in the quote.
- 3.3 The Customer shall accept the quote by signing and returning a copy of the quote or Work Authorisation form. The Customer can return the copy of the signed quote or Work Authorisation by facsimile, email (scan), or any other acceptable method of electronic communication and these methods will be accepted by the Contractor and binding upon the Customer.
- 3.4 The Contractor need not commence work until the quote has been accepted in writing by the Customer, and the required deposit or payment made to the Contractor.
- 3.5 The Commencement Date for delivery of the Goods and Services is an estimate only. The Commencement Date shall not be of the essence in these Trading Conditions.
- 3.6 The Customer warrants that it has not relied on any representation by the Contractor other than as supplied in writing in the quote.
- 3.7 The Contractor shall not be liable for any losses caused, either directly or indirectly, by any delay of the Contractor in delivering the Goods and Services to the Customer.
- 3.8 All quotes are valid for 30 days from date of quote unless specified otherwise in writing by the Contractor. The Contractor reserves the right to amend quotes for any reason, including changes in the price of raw materials.

4. Variations

Variations to an accepted quote or contract may incur additional costs to the Customer.

5. Cancellation

The Customer shall reimburse the Contractor for any and all costs, expenses or losses incurred by the Contractor if the Customer cancels an accepted quote or Work Authorisation.

6. Customer Obligations

The Customer:

- (a) shall provide the Contractor with all requested and necessary information and details, including but not limited to, source codes, website content, specifications and drawings; and website access;
- (b) shall indemnify the Contractor for any extra cost, loss or damage for any variation in price caused by inaccurate information provided to the Contractor;

- (c) shall indemnify the Contractor for the cost of Goods if the Contractor orders Goods based upon the inaccurate information and those Goods are not suitable for the work.

7. Delivery of Goods

- 7.1** Where required delivery of the Goods shall be made to the Customer's nominated address, and the Customer shall make all necessary arrangements to take safe delivery. The Customer may nominate a third party address for delivery of Goods, and in that case delivery to that third party is deemed delivery to the Customer for the purpose of this agreement.
- 7.2** The Contractor is deemed to have satisfied its delivery obligations upon delivering the Goods and obtaining from the person at the delivery address nominated by the Customer a receipt or a signed delivery docket. By signing a receipt or delivery docket the Customer warrants that the Goods were delivered undamaged, in proper quantities and in good and clean condition.
- 7.3** The failure of the Contractor to deliver the Goods shall not entitle the Customer to repudiate this agreement. The Contractor shall not be liable for any loss or damage due to the failure to deliver the Goods, or part of them, promptly or at all.
- 7.4** The Customer shall indemnify the Contractor for any costs, loss or damages incurred by the Contractor should site access not be available and as a consequence the Contractor is unable to deliver the Goods.

8. Site Access

- 8.1** The Customer must ensure that the Contractor has clear and unimpeded access to the Site until the Work has been completed and the Contractor paid in full.
- 8.2** The Customer shall indemnify the Contractor for all additional costs, charges, penalties or other imposts if the completion of the Works is delayed due to the Contractor not having clear and unimpeded access to the Site.

9. Ability to Appoint Agents, Sub-contractors and Third Parties

The Contractor may contract, either in its own name as principal or agent for the Customer, with any agent, sub-contractor or third party for the provision of Goods and services pursuant to or ancillary to these Trading Conditions. Any such contract may be made upon the terms of contract used by the agent, sub-contractor or third party with whom the Contractor may contract and may be made upon the terms and subject to the conditions of any special contract which the agent, sub-contractor or third party may in any particular case require, including in every case that the agent, sub-contractor or third party may employ any person, firm or company for provision of the Goods or performance of the services.

10. Risk

The risk in the Goods shall pass to the Customer upon delivery to the Customer, or to a third party nominated by the Customer, and/ or installation of the Goods at the Site.

11. Payment

11.1 The Customer must pay the Contractor the total amount set out in the Contractor's invoice and within the time stated on the Contractor's invoice, quotation or any other order forms. If no time is stated then payment is due seven (14) days following invoice date. The Customer shall pay and reimburse the Contractor for all disbursement costs incurred in performing the Services.

11.2 The Contractor may require a deposit from the Customer. If a deposit is required the Contractor is under no obligation to commence work until the deposit funds are received.

11.3 The Contractor may charge interest to the Customer at the rate of two percent (2%) above the commercial lending rate of the Contractor's bank or financial institution. Interest will be calculated on a daily basis on outstanding amounts.

11.4 If the Customer's payment is declined, or is otherwise not made to the Contractor within terms, the Contractor will suspend the Customer's account and halt any further work, and a reactivation fee of \$100 may apply.

11.5 If the Contractor's invoices remain outstanding in excess of 30 days, it might result in the termination of the Services and any LGIM work will be removed.

11.6 The Customer shall pay to the Contractor all costs, expenses or losses incurred as a result of the Customer's failure to pay all sums outstanding by the due date for payment. Without limiting the generality of the foregoing these costs include any costs incurred by the Contractor in collecting the debt using the services of a third party debt collection agency or solicitor, and any subsequent legal costs incurred in taking legal proceedings and enforcing judgment on a solicitor/ client basis.

12. Contractor's Indemnity

12.1 The Customer, or the Customer's nominated representative, shall remain on site during the performance of the Contractor's work.

12.2 At the conclusion of the work, the Customer shall sign off that the work has been completed by the Contractor in accordance with the quote or Work Authorisation.

12.3 If the Customer does not comply with clauses 11.1 or 11.2 the Customer shall indemnify the Contractor from any claims or charges relating to damage and or loss of property from the site.

13. Retention of Title

13.1 Title in any and all Goods shall remain with the Contractor until the Customer has paid in full all monies owing pursuant to any invoice issued by the Contractor, including all GST, notwithstanding the delivery or installation of the Goods. If the Customer has on sold the Goods,

the Customer will hold the proceeds of such sale upon trust for the Contractor and shall account to the Contractor for these funds.

- 13.2** If payment by the Customer is later avoided by law, then that payment shall be deemed to have not discharged the Contractor's title in the Goods nor the Customer's indebtedness to the Contractor.
- 13.3** Until such time that payment has been made in full the Customer is in possession of the Goods solely as Bailee, and during that time the Customer must not encumber or otherwise charge the Goods, and the Customer is liable to the Contractor for any loss or damage however caused to the Goods following delivery and or installation of the Goods.
- 13.4** If the Customer fails to pay invoices issued by the Contractor for Goods and services, the Contractor may remove or repossess any Goods from the Customer and sell or dispose of the Goods. The proceeds of any sale shall be applied towards the Customer's indebtedness to the Contractor. The Contractor shall not be liable to the Customer or to any person or entity claiming through or on behalf of the Customer.

14. Lien and Stoppage in Transit

Where the Contractor has not received payment as agreed from the Customer, or the payment has been dishonoured, the Contractor, its servants or agents shall have a special and general lien on the Goods and a right to sell the Goods whether by public or private sale or auction without notice to recover all monies dues under this contract. In addition, the lien shall cover the costs and expenses of exercising the lien including without limitation, the costs of sale and reasonable legal fees.

15. Personal Properties Securities Act 2009 ("PPSA")

- 15.1** Throughout this clause the following words have the same meanings as contained in the PPSA; Financing Change Statement, Financing Statement, Proceeds, Register, Security Agreement, Security Interest, and Verification Statement.
- 15.2** These terms and Conditions create a Security Agreement that creates a Security Interest in all Goods and Proceeds supplied to the Customer or to be supplied in the future. The Security Interest is a continuing Security Interest in all Goods and Proceeds which will operate until the Contractor signs a release.
- 15.3** The Customer waives its rights pertaining to the sections listed in sub-section 115(1) of the PPSA which will not apply to the Security Agreement as created by these Terms and Conditions.
- 15.4** The Customer will keep all Goods free of any charge, lien or Security Interest (except as required under these Terms and Conditions) and shall not deal with the Goods in a way that may prejudice any rights that the Contractor has under these Terms and Conditions or the PPSA.

- 15.5** The Customer will sign any further documents and provide further information so that the Contractor may register a Financing Statement, Financing Change Statement, or any other document required to be registered by the PPSA.
- 15.6** The Customer will indemnify the Contractor for all fees and costs, including legal fees, incurred by the Contractor in registering any Financing Statement or Financing Change Statement on the Register, and in enforcing the Security Interest.
- 15.7** The Customer shall not register a Financing Statement or Financing Change Statement over the Goods or Proceeds in favour of a third party without the prior written consent of the Contractor.

16. Warranty

Any warranty on the Goods is limited to the written warranty provided by the manufacturer to the Customer on or before installation of the Goods. Any warranty may be null and voided if the Goods are modified, damaged or altered by the Customer in a manner the Goods were not designed to perform. Warranty will not be provided by the Contractor on any Goods supplied by the Customer to be used in the Work. The Contractor shall not be liable for any loss or damage as a result of any delay in replacing or repairing the workmanship or Goods.

17. Liability/ Australian Consumer Law

- 17.1** Under the Australian Consumer Law various conditions and warranties may be implied into these Terms and Conditions. There are also rights and remedies conferred on the Customer which cannot be excluded, restricted or modified by the Agreement (“Non-excludable Rights”). Other than any Non-excludable Rights, the Contractor disclaims all conditions and warranties, express or implied, and all rights and remedies conferred on the Customer by statute, common law, equity or otherwise.
- 17.2** To the extent permitted by law, the liability of the Contractor for a breach of a Non-excludable Right is limited to either supplying the Goods and services again, or the payment of the cost of having the Goods and services supplied again, at the Contractor’s option.
- 17.3** The Contractor will not be liable to the Customer for any loss or damage caused by the Contractor’s failure to deliver the Goods or provide the services, as a result of earthquake, fire, flood, riot, civil disturbance, theft, crime, strike, lockout, war, the inability of the Contractor’s supplier to supply the required material, or any other circumstance beyond the Contractor’s control.

18. Privacy

- 18.1** The Customer authorises the Contractor to collect, retain, record, use and disclose commercial information about the Customer, in accordance with the Privacy Act 1988 (Cth), for the following purposes;
- (i) Provision of Goods and services
 - (ii) Verifying and checking the Customer’s credit

(iii) Processing of payment instructions, direct debit or credit facilities

18.2 The Contractor may provide commercial information about the Customer, in accordance with the Privacy Act 1988 (Cth), to obtain a consumer credit report about the Customer.

19. Security, Caveat and Charge

The Customer charges all equitable and legal property, present or future, of the Customer in respect of any and all monies that might be owing by the Customer to the Contractor, and hereby authorises the Contractor or its solicitors to execute any consent form as its attorney for the purposes of registering a caveat over any real property owned by the Customer.

20. Dispute Resolution

20.1 Any dispute or difference whatsoever arising out of or in connection with this contract shall be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.

20.2 If the dispute or difference is not settled within 30 days of the submission to mediation (unless such period is extended by agreement of the parties), it shall be and is hereby submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Expedited Commercial Arbitration Rules. For disputes in which the quantum is less than \$50,000 arbitration shall take place using the submission of documents alone unless both parties agree otherwise.

21. Confidentiality

Except as otherwise permitted herein, neither party may disclose to third parties the contents of this Agreement or any information provided by or on behalf of the other that ought reasonably to be treated as confidential and/ or proprietary.

22. Intellectual Property Rights

22.1 The Contractor may use data, software, designs, utilities, tools, systems, models and other methodologies and know-how (Materials) that we own in performing the Services. Notwithstanding the delivery of any reports to the Customer, the Contractor retains all intellectual property rights in the Materials (including any and all additional improvements or knowledge developed while performing the Services), and ownership of any working papers, data, reports or other document or thing compiled in connection with the Services (but excluding client information contained in them).

22.2 Upon full payment for the Services, the Customer may use any reports, and the Material contained in those reports, as permitted by this Agreement.

23. No Waiver

A right or power is not waived solely because the party entitled to exercise that right or power does not do so. Moreover a single exercise of a right or power will not preclude any other or further exercise of that right or power, or of any other right or power. A right or power may be waived only in writing, signed by the party to be bound by the waiver.

24. Severability

Any provision in these Trading Conditions which is invalid or unenforceable must be read down if possible, so as to be valid and enforceable. If the provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Trading Conditions.

25. Force Majeure

Neither the Customer nor Contractor shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond the reasonable control of the Customer or Contractor.

26. Term and Termination

26.1 This Agreement applies to all Services performed at any time, including Services performed before the date of this Agreement.

26.2 For LGIM Services this Agreement shall terminate at the expiration of the Initial Term.

26.3 For all other Services performed and charged at an hourly rate, the Agreement shall terminate on the completion of the Services by the Contractor. Either party may terminate an hourly rate Agreement upon 14 days prior written notice to the other party. The Customer shall pay to the Contractor all charges and costs for work-in-progress, Services already performed, and expenses incurred by the Contractor up to and including the effective date of the termination of this Agreement.

27. Governing law and Jurisdiction

These Trading Conditions are governed by the law in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.

LEAD GENERATION AND INTERNET MARKETING (“LGIM”)

28. Lead Generation and Internet Marketing

The following clauses relate to the provision by the Contractor of Lead Generation and Internet Marketing (LGIM) services to the Customer, and are to be read in addition to, and in conjunction with, the above clauses.

29. Customer’s Obligations

- 29.1** The Customer will provide the Contractor with direct and remote access to its website, which includes providing the Contractor with the source code and other statistical or diagnostic information required to enable the Contractor to comply with its obligations.
- 29.2** The Customer authorizes the Contractor to make changes to the Customer's website for the purposes of optimization. The Customer will indemnify the Contractor for any loss or damage incurred, however caused, as a result of those changes.
- 29.3** The Customer authorized the Contractor to communicate directly with the Customer's web designer, web agency, hosting company or other nominated third party, for the purposes of performing the Services. The Customer will indemnify the Contractor for any loss or damage incurred, however caused, as a result of those communications.
- 29.4** The Customer authorizes the Contractor to have unrestricted access to existing website traffic statistics and information for analysis and tracking purposes.
- 29.5** The Customer authorizes the Contractor to use Customer pictures, logos, trademarks, web site images, pamphlets, content and any other document or thing, as is required and deemed necessary by the Contractor, for the purposes of conducting the Services.
- 29.6** The Contractor may request the Customer to provide a critique of approximately 500 words relating to the Customer's products, goods or services. This is non-compulsory but will assist the Contractor to achieve better results for the Customer.
- 29.7** The Contractor will require the Customer's website to contain an appropriate amount of text content and relevant URLs, and if it doesn't the Contractor may request the Customer to provide additional website content. If the Customer requires the Contractor to develop the additional website content the Customer agrees to pay the Contractor's costs of supplying this additional service. Alternatively the Customer may elect to engage its own website designer at its own expense.

30. Contractor's Obligations

- 30.1** The 'Off-page' LGIM Services provided by the Contractor include, but are not limited to, the following;

 - 30.1.1** During the Initial Term the Contractor will provide back-linking and reporting services with the aim to raise the Customer's URL into the top 10 positions of the Google Australia Search Engine Results Page for the selected Keyword.
 - 30.1.2** After the Initial term the Customer may elect to further engage the Contractor on a month by month basis, during which time the Contractor will continue to provide the Services. A monthly fee will be charged to the Customer.
 - 30.1.3** All back-linking will be generated from public sources, for example; Web 2.0 properties, Business Directories, Wiki's, forum profiles, Web 2.0 profiles, and social media.

30.1.4 All back-linking will be Google penalty proof for the version of Google's penalty algorithms.

30.1.5 The Contractor will not provide back-linking reports. The Customer acknowledges that provided the Customer ranks within targets for a Keyword phrase, then that ranking is a direct result to the back-linking provided by the Contractor.

30.2 The 'On-page' LGIM Services provided by the Contractor include, but are not limited to, the following;

30.2.1 The Contractor will edit and optimize text for various html tags, Meta data, page titles, and page text as necessary (one page per pack).

30.2.2 If necessary the Contractor will recommend additional web pages for the purposes of performing mini campaigns in the situation that insufficient URLs are available.

30.2.3 The Contractor will if requested by the Customer research keywords and phrases to select appropriate and relevant search terms (one report per mini campaign).

30.3 The 'Reporting' LGIM Services provided by the Contractor include, but are not limited to, the following;

30.3.1 The Contractor will create and provide to the Customer monthly search engine ranking reports.

30.3.2 The Contractor will create regular traffic analysis reports that track the following data and statistics; total visitors, links, new and regular visitors, search engine used, keywords searched, pages viewed, time spent on website, bounce rate and geography of visitor.

30.4 The Contractor will promote the Customer's website using best techniques, efforts and standards with the aim of achieving the following targets;

- Local 5 Campaign: Any 2 of the 5 Keyword phrases the Customer agrees to optimize,
- Local 10 Campaign: Any 3 of the 10 Keyword phrases the Customer agrees to optimize,
- Local 15 Campaign: Any 5 of the 15 Keyword phrases the Customer agrees to optimize.

30.5 Should the above targets not be achieved within the Initial Term, the Contractor agrees to perform the Services again free of charge to the Customer for a two month period.

30.6 Keywords are selected by the Contractor, with the Customer involved in the keyword selection process.

31. Disclaimer and Limitation of Liability

- 31.1** The Contractor employs strict ethical standards, and will not use any Black-Hat techniques (for example hidden texts). Subsequently the Contractor shall not be responsible for any search engine suspension or ban as a result of the Customer using such techniques.
- 31.2** The Customer acknowledges that search engines are third party systems with unknown variables, algorithms and indexing decisions that can change at any time and without notice. The Contractor does not guarantee, warrant or represent that the Customer's URLs will achieve a first page target, nor the position on the results page. The Contractor cannot control or guarantee which search engines will accept the submission of the Customer's website.
- 31.3** The Contractor does not guarantee, warrant or represent that its Services will increase business profits or sales.
- 31.4** The Contractor is unable to predict when and by what circumstances the Customer may fall off the first page. The Contractor has no control over the policies of search engines with respect to the type of sites and/ or content that the search engines accept now or in the future. The Customer's website may be excluded from any directory or search engine at any time at the sole discretion of the search engine or directory.
- 31.5** Google has been known to hinder the rankings of new websites, or website pages, until those websites or website pages have proven their viability to exist for more than a certain amount of time. Such practice is referred to as Google Sandbox. The Contractor will not be liable to the Customer for any loss or damage caused by ranking, indexing or traffic issues related to Google Sandbox penalties.
- 31.6** Linking to 'bad neighbourhoods' or getting links from 'link farms' may damage the Contractor's ability to provide LGIM Services. The Contractor will not be liable to the Customer for any loss or damage caused by the Customer placing links on the Customer's website.
- 31.7** The Contractor is not responsible for, and will not be liable to the Customer for any loss or damage caused by the Contractor appointing another contractor to provide LGIM Services, including but not limited to changes made to the Customer's website by third parties. The Contractor may charge an additional fee to the Customer to re-optimize to the first page of Google.
- 31.8** The Contractor is not responsible for changes made to the Customer's website by third parties that adversely affect the search engine rankings of the Customer's website.
- 31.9** The Contractor is not responsible for the Customer overwriting the Contractor's work to the Customer's website. The Customer will be charged an additional fee for re-constructing content.
- 31.10** The Customer acknowledges and agrees that the Customer's website ranking may lose it priority, and The Contractor will not be liable to the Customer for any loss or damage caused by such loss of priority.

- 31.11** The Customer acknowledges that the Contractor requires between two and four months from the commencement of the Initial Term to optimize a set of 5 keyword phrases for the organic results. The Customer must provide or approve a set of Keywords within this time frame.
- 31.12** The Customer warrants and guarantees that it owns, or has the right to use, any and all text, graphics, photos, designs, trademarks or any other document or things provided to the Contractor for inclusion on the Customer's website. The Customer will indemnify the Contractor for all claims, loss or damage incurred because of a breach of a third parties copyright, intellectual property, or trade secrets.
- 31.13** Services additional to the LGIM Services (for example managing pay per click campaigns, copywriting, link baiting and additional keyword reports) may be provided if requested by the Customer. Additional costs will be payable for additional services.

The Customer agrees and acknowledges that it has received the Trading Conditions, understands the Trading Conditions, and agrees to be bound by the Trading Conditions.

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Customer

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Date