

ByAPRIL.CO

# TERMS AND CONDITIONS

THESE TERMS & CONDITIONS WERE CORRECT AT TIME  
OF DOCUMENT CREATION.

V1.1 • JULY 2021

THE FOLLOWING TERMS constitute an agreement (the "Agreement") between you as the ("User"/"Client") and Zanzera Co PTY LTD. (Trading as ByApril.co) ("we", "us") and contain the terms and conditions that apply to your access and use to The Services provided by Us.

**GENERAL**

Please read the below terms carefully. By engaging ByApril.co, you agree to our Terms and Conditions. The Terms and Conditions herein will be valid and binding as of the date of signing, and will continue to be valid and binding until both the Client and ByApril.co agree in writing, that services of ByApril.co. are no longer required. The below conditions will apply to all individuals, businesses or companies ("Client") who engages the services of ByApril.co, its contractors or sub contractors unless otherwise agreed in writing by both parties.

**PAYMENT**

Payment of services and/or products will be in Australian Dollars (AUD) via Credit Card, Paypal or Internet Bank Transfer. Initial payment (50% of Quotation) is due before any design work begins and final payment is due before any digital files or site is launched or within 3 Months regardless of launch of Website, or files deliverable. All other invoices are payable within thirty (30) days of receipt. An additional fee, of 10% (of the total project fee), is payable on all overdue balances after five (5) days following the due date. Invoices shall list any expenses and additional costs as separate items. All grants of any license to use or transfer ownership of any intellectual property rights (including but not limited to designs completed by ByApril.co or its contractors or sub contractors) under this agreement are conditioned on full payment, including all outstanding additional costs, expenses, fees, or any charges.

**PROPOSAL**

Quotations for Services with ByApril.co are generated on the basis of the brief provided by the Client and expected time investment by ByApril.co, and may change if additional work is required. Quotes provided are valid for thirty (30) business days, whereby following the expiry such date, ByApril.co reserves the right to amend prices. No quoted service delivery dates are guaranteed, and can vary.

**BOOKINGS**

All bookings for services with ByApril.co are only confirmed when the Client pays a 50% non-refundable deposit fee. This is non-refundable for it is used to confirm a spot in ByApril.co schedule. Once the deposit is received, an email will be sent to the Client to confirm and make arrangements for the commencement of the project. The final 50% will be payable upon project completion, or on the scheduled date of completion as agreed between ByApril.co and the Client (whichever date happens first) to ensure our project aligns with our timeline.

**COMMENCEMENT AND TERMINATION**

This agreement shall begin when the client accepts a quote and pays the corresponding deposit invoice for a ByApril.co service and shall continue until all services are complete and delivered, or until the agreement is terminated. Either party may terminate this agreement at any time, on written notice to the other party, if the other party ceases to conduct business in its normal course; makes an assignment for the benefit of creditors; is liquidated or otherwise dissolved; becomes insolvent; files a petition in bankruptcy; or a receiver, trustee, or custodian is appointed for it. In the event of termination, client shall pay ByApril.co for all services performed through the date of termination in the amount of a prorated portion of the fees due. For clarity purposes halfway (50% of a project) would be the website has all pages created, placeholder (or singed off images) are in, content is added.

**DELAYS & PROJECT EXPIRATION**

Client shall use all reasonable efforts to provide required information, materials and approvals for the project. Any delay by client will result in a day-for-day extension of the due date for all deliverables. Each party shall use reasonable efforts to notify the other party, in writing, of a delay. Projects that are not completed (due to lack of information or reasonable attempts from the client to assist the advancement of the Project or Client circumstances which inhibits the completion of the Project) within 12 months will expire and any payments or deposits the Client has paid will be forfeited and cannot be redeemed or transferred to another Project. Conditions beyond the reasonable control of the parties include, but are not limited to, natural disasters, acts of government after the date of agreement, power failure, fire, flood, acts of god, labour disputes, riots, acts of war, terrorism and epidemics/pandemics.

## COMPENSATION

Client agrees to pay designer the fees listed in the project proposal, including all taxes. Pricing in the project proposal includes only designer fees. Any other costs, such as hosting, printing, art licensing or photography, will be billed to Client.

## TECHNOLOGICAL ADVANCEMENTS

The Client is to refer to hosting and domain name providers for queries regarding the following services: Domain names, Hosting and registration, SSL certificates, Email addresses and Email hosting. The Client is to refer to their technical support company for queries regarding the following services and their applicable Terms & Conditions: Set up of email addresses, Emails going to Spam/Junk, Email not functioning and Email Signatures. ByApril.co holds no responsibility if: (a) your email addresses are targeted with spam as it is outside of our control or (b) the Client's email account details are obtained and used to send spam or malicious material. ByApril.co build and design websites to the best of their knowledge at the time of completion. We shall not take responsibility if the Client's site is "hacked" or maliciously attacked in form. ByApril.co will not be held responsible and is not liable for any loss of income to arise from the Client's web site "going down", being hacked or otherwise.

## DESIGN

The Client agrees to allow: (a) ByApril.co to add a small credit on the Client's website. This will be in the form of a small line of text, and will be placed towards the bottom of the web page; (b) ByApril.co to place its designs and work, along with a hyperlink to the Client's site on ByApril.co own website for self-promotional services, unless agreed to the contrary in writing by both parties. Removal of our Credit on your website will attract a fee of \$1200 inc.gst.

The Client understand that ByApril.co does not take any responsibility for Trademarking of any kind and that it is the Client's responsibility to check trade-marking laws and existing Trademarks for availability.

For Branding, ByApril.co will provide the Client with three (3) rounds of minor refinements with no extra cost within seven (7) days of submission to the Client for review. ("Review Period"). Minor refinements include colour changes (to others mentioned as per the brief), font swapping between concepts or a minor font change (to another style as mentioned in the brief), changes to size or hierarchy, and adding or removing of a graphic element. Request for minor changes are to be made via e-mail. ByApril.co will presume that the Client has accepted the original draft with no changes, if no emails requesting changes were made within seven (7) days of the commencement of the review period.

For Website Designs, ByApril.co will provide the Client with one (1) round of minor refinements per page with no extra cost within seven (7) days of submission to the Client for review. ("Review Period"). Minor refinements include colour changes, font changes, switching out images, textual changes, small alterations to movement of elements on the website, change of images. Minor refinements do not include adding extra pages, custom CSS, third party plugin integration, extra content uploads that were not originally covered under the original project brief or updating spelling mistakes that are the direct result of Client providing their own Copy.

Request for minor changes are to be made via e-mail. ByApril.co will presume that the Client has accepted the original draft with no changes, if no emails requesting changes were made within seven (7) days of the commencement of the review period.

## CHANGES TO PROJECT SCOPE

If client wants to change the scope of work after acceptance of this agreement, client shall send designer a written change order (detailed, in one email) describing the requested changes in detail. Within ten (10) days of receiving a change order, designer will respond with a statement proposing designers availability, additional fees, changes to delivery dates, and any modification to the terms and conditions. Designer will evaluate each change order at its standard rate and charges. Client will be billed on a time and materials basis at ByApril.co hourly rate of \$50 per hour inc. gst.

Such charges shall be in addition to all other amount payable under this agreement, despite any maximum budget, contract price or final price identified. Designer may extend or modify any delivery schedule or deadlines in the agreement as may be required by such changes. Client will have ten (10) days to respond in writing accepting or rejecting the new proposal. If client rejects the proposal, designer will not be obligated to perform any services beyond those in the original agreement.

If the proposal for the amended project scope from ByApril.co is rejected by the Client, ByApril.co is not obliged to perform any services beyond those in the Original Agreement. ByApril.co reserves the right to extend or modify any delivery schedule or deadlines in the agreement as may be required by such changes.

### **RUSH SERVICES**

If the Client requires design work expedited (outside of project scope and agreed upon time frames), ByApril.co will try to accommodate you, but please know that good design cannot be rushed. We have other clients booked in that have paid for our time and their spot in the queue and we will need to be financially compensated for working overtime.

Any requests for work to be expedited before my earliest calendar start date (defined by any project or work requiring me to work after regular business hours, weekends and/or on Australian national holidays or know vacation times) will incur an additional 50% fee of the branding and/or website package cost.

### **EVALUATION AND ACCEPTANCE**

Client shall, within ten (10) business days after receiving each deliverable, notify ByApril.co in writing of any failure to comply with the specification of the project proposal or of any other objections, corrections or changes required. ByApril.co shall, within ten (10) business days of receiving client's notification, correct and submit a revised deliverable to client. Client shall, within fifteen (15) business days of receiving a revised deliverable, either approve the corrected version or make further changes. If after three (3) refinements or corrections by us, you as the client finds the deliverables not unsatisfactory between both parties, the client may terminate this agreement subject to the termination clauses of this agreement. If client fails to provide approval or comments during any approval period, those deliverables will be considered approved and accepted.

### **CONFIDENTIAL INFORMATION**

All material considered confidential by either party shall be designated as confidential.

### **RELATIONSHIP OF THE PARTIES**

No agency, partnership, joint venture, or employee-employer relationship is intended or created by this agreement. Neither party is authorised to act as agent or bind the other party except as expressly stated in this agreement. ByApril.co and the work product or deliverables prepared by us shall not be deemed a work for hire as defined under copyright law. All rights granted to client are contractual in nature and are expressly defined by this agreement.

### **NO WARRANTY**

ByApril.co services are provided on an "as is" basis, and without any warranty or condition, express or implied.

### **INDEMNIFICATION AND LIABILITY**

Client shall indemnify designer from any and all damages, liabilities, costs, losses, expenses or attorney fees arising out of any claim, demand, or action by a third party due to materials included in deliverables at the request of the client. The services and the work product of designer are sold "as is." in all circumstances, the maximum liability of designer, its directors, officers, employees, design agents and affiliates ("designer parties"), to client for damages for any and all causes whatsoever, and client's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the net profit of designer. In no event shall designer be liable for any lost data or content, lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the materials or the services provided by designer, even if designer has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy.



## PRELIMINARY WORKS

We as the designer shall retain all rights in and to all preliminary works. All designer tools are and shall remain the exclusive property of designer. Designer grants client a nonexclusive, nontransferable, perpetual, worldwide license to use the designer tools solely to the extent necessary with the final deliverables for the project.

## SUPPORT SERVICES

Once the final files are sent and website is launched any other revisions are supported at my hourly rate of \$50.00 inc, gst. The Designer does not host/maintain/or support the website. The Designer was hired for design and customisation only.

## ALTERATIONS

Alteration of any deliverable is prohibited without the express permission of designer. ByApril.co will be given the first opportunity to make the required alterations. Unauthorised alterations shall constitute additional use and will be billed accordingly.

## DISPUTE RESOLUTION

Parties agree to attempt to resolve any dispute by negotiation between the parties. If parties are unable to resolve the dispute by negotiation, either party may start mediation and/or binding arbitration in a forum mutually agreed to by the parties. The prevailing party shall be entitled to recover its attorney's fees and costs in any dispute resolved by binding arbitration or litigation.

## CHOICE OF LAW

The agreement herein is governed by the law in force in Australia and you any other courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms of Conditions. If any of these Terms and Conditions are invalid or unenforceable, they may be struck out and the remaining Terms of Use will continue to be of full force and effect.

I, the undersigned client, hereby warrant that I am competent to contract in my own name. I confirm that I have read the herein agreement prior to its execution and I am fully familiar with the contents thereof. This agreement shall be binding upon me and my heirs, legal representatives and assigns.

## DETAILS

Please read these Terms and Conditions ("Terms", "Terms and Conditions") carefully before using the [www.byapril.co](http://www.byapril.co) website (the "Service") operated by ByApril.co ("us", "we", or "our").

Your access to and use of the Service is conditioned on your acceptance of and compliance with these Terms. These Terms apply to all visitors, users and others who access or use the Service.

By accessing or using the Service you agree to be bound by these Terms. If you disagree with any part of the terms then you may not access the Service.

By contracting ByApril.co for work, you agree that you have read the terms and conditions.

## INTELLECTUAL PROPERTY

The Service and its original content, features and functionality are and will remain the exclusive property of ByApril.co and its licensors. The Service is protected by copyright, trademark, and other laws of both the Australia and foreign countries. Our trademarks and trade dress may not be used in connection with any product or service without the prior written consent of ByApril.co .

Where ByApril.co . creates any product, system, website or graphic, the intellectual property rights for that product, system, website or graphic, remain the property of ByApril.co. unless express permission and agreed in writing that the rights should pass to the customer. All work completed by ByApril.co is subject to copyright and terms and conditions of trade. Reproduction or issue to third parties in any form is not permitted without authority from ByApril.co.

## LINKS TO OTHER WEBSITES

Our Service may contain links to third-party web sites or services that are not owned or controlled by ByApril.co. ByApril.co. has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party web sites or services. You further acknowledge and agree that ByApril.co. shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such web sites or services.

### **LIMITATION OF LIABILITY**

In no event shall ByApril.co. nor its directors, employees, partners, agents, suppliers, or affiliates, be liable for any indirect, incidental, special, consequential or punitive damages, including without limitation, loss of profits, data, use, goodwill, or other intangible losses, resulting from (i) your access to or use of or inability to access or use the Service; (ii) any conduct or content of any third party on the Service; (iii) any content obtained from the Service; and (iv) unauthorised access, use or alteration of your transmissions or content, whether based on warranty, contract, tort (including negligence) or any other legal theory, whether or not we have been informed of the possibility of such damage, and even if a remedy set forth herein is found to have failed of its essential purpose.

### **DISCLAIMER**

Your use of the Service is at your sole risk. The Service is provided on an "AS IS" and "AS AVAILABLE" basis. The Service is provided without warranties of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, non-infringement or course of performance. ByApril.co and its subsidiaries, affiliates, and its licensors do not warrant that a) the Service will function uninterrupted, secure or available at any particular time or location; b) any errors or defects will be corrected; c) the Service is free of viruses or other harmful components; or d) the results of using the Service will meet your requirements.

### **GOVERNING LAW**

These Terms shall be governed and construed in accordance with the laws of Australia, without regard to its conflict of law provisions.

Our failure to enforce any right or provision of these Terms will not be considered a waiver of those rights. If any provision of these Terms is held to be invalid or unenforceable by a court, the remaining provisions of these Terms will remain in effect. These Terms constitute the entire agreement between us regarding our Service, and supersede and replace any prior agreements we might have between us regarding the Service.

### **CHANGES**

We reserve the right, at our sole discretion, to modify or replace these Terms at any time. If a revision is material we will try to provide at least 30 days notice prior to any new terms taking effect. What constitutes a material change will be determined at our sole discretion.

By continuing to access or use our Service after those revisions become effective, you agree to be bound by the revised terms. If you do not agree to the new terms, please stop using the Service.

### **CONTACT US**

If you have any questions about these Terms, please contact us.