

# Cazazz Terms and Conditions of Service

By placing an order with Cazazz, you confirm that you are in agreement with and bound by the terms and conditions below.

**The Client** (also referred to as "you"): The company or individual requesting the services of Cazazz

**Cazazz** (also referred to as "we/us"): Designer or business owner and any employees or affiliates.

## 1. Provision of Services

- 1.1. Cazazz (address 14 Ashwood Court, Samford Valley, Qld 4520, Australia, ABN 87 386 652 134) will carry out work only where an agreement is provided either by email, mail, fax or other digital text format. An '**Order**' is deemed to be a written contract between Cazazz and the client; this includes written proposals and email agreements.
- 1.2. Cazazz may provide services directly or via a third party. Third party services may be subject to specific agreements as supplied by them. By applying or using any service offered by Cazazz you must agree to this agreement and any agreement of our third party suppliers.
- 1.3. Only those services mentioned in the Order will be provided by Cazazz and any amendments, add-ons or schedule changes must be agreed to in writing. This and the following clauses are the General terms and conditions on which those services are supplied and together with the agreed Order form the total agreement between us.

## 2. Costs and Payments

- 2.1. You must pay all charges as set out in the Order and associated invoices. Cost estimates are valid for a period of 30 days. Please request confirmation of costs if accepting an estimate after that period.
- 2.2. You will remain liable for all fees during any period when Services have been discontinued or suspended due to a failure on your part to comply with these terms and conditions
- 2.3. You will be invoiced according to the payment schedule in your Order. All accounts are payable before delivery of final files or uploading website files to a web server. Cazazz may require a personal guarantee from the Director of a company in cases where final files required before payment.
- 2.4. You are liable to pay overdue interest at 5% per month on any amounts not paid within 14 days of invoice unless different payment terms have been specified in the proposal. All intellectual property rights remain with Cazazz until payment. We are entitled to recover (on a full indemnity basis) any costs, fees and charges (including legal costs) incurred in recovering any amounts owing by you to Cazazz.
- 2.5. You must pay Cazazz's charges without any set-off, counter claim or deduction unless agreed in writing between us.
- 2.6. Agreed costing is conditional on your supplying information or feedback at agreed stages of the project. Cazazz reserves the right to revise costings if that condition is not met.
- 2.7. No final files will be delivered until invoices are paid in full. Payment by cheque will entail waiting for clearance before supply of files. Delivery is defined as: Supply of final artwork digital files to printer, on disk, via email or uploaded to nominated server. Original design/development files remain the property of Cazazz unless arranged otherwise.
- 2.8. Liaison with external suppliers such as printers, web hosting companies and Internet Service Providers (ISPs) is charged at our current rate per hour, unless specified otherwise in the proposal or as part of a Support Agreement.

## 3. Limitation of Liability

- 3.1. All terms conditions, warranties, undertakings inducements and representations, whether express or implied, statutory or otherwise relating to the provision of services by Cazazz not contained in the Agreement are excluded and Cazazz WILL NOT ACCEPT LIABILITY FOR ANY LOSS OR DAMAGE (INCLUDING CONSEQUENTIAL LOSS OR DAMAGE) HOWEVER CAUSED (WHETHER BY NEGLIGENCE OR OTHERWISE) WHICH MAY BE SUFFERED OR INCURRED OR WHICH MAY ARISE DIRECTLY OR INDIRECTLY with respect to the service.
- 3.2. Where any applicable legislation implies any term, condition or warranty into the Agreement or in respect of Cazazz's relationship with you, or otherwise gives you a particular remedy against Cazazz and the legislation or any other legislation renders void or prohibits provisions excluding or modifying the application of, exercise of, or liability under such implied term, condition, warranty or remedy will be deemed to be included in the Agreement or as the case may require apply to the relationship between Cazazz and you. However, Cazazz's liability for any such breach of such implied term, condition or warranty or under such remedy, will be limited, at Cazazz's option, in any one or more of the ways permitted in that legislation, including, where so permitted if the breach relates to Services the supplying of those services again or the payment of the cost of having those Services supplied again.
- 3.3. You acknowledge that websites cannot be guaranteed to be 100% error free in construction and acknowledge that the existence of errors falling short of a complete failure of consideration in the site shall not constitute a reason to terminate this agreement.

## 4. Suspension of Services

- 4.1. Cazazz reserves the right to suspend services in any case where you fail to perform your obligations under this agreement. If payment for services is not received within the terms of payment stipulated by us websites may be taken down until payment is confirmed. You acknowledge that should we not receive renewal payment prior to the date of expiry we reserve the right to suspend services immediately without notice. We may provide a 30 day grace period whereby we will hold your information and data on our servers. Should this period expire without payment we reserve the right to terminate our service and purge all data pertaining to your account with us.
- 4.2. Cazazz may from time to time and without notice or liability to you suspend any of the services if the reason for doing same is an event beyond the reasonable control of Cazazz.

## 5. Termination

- 5.1. Cazazz may discontinue services if an amount payable to Cazazz is overdue, or take down a website permanently in any case where an amount payable is overdue by more than 30 days. In any such event, you remain liable for the total cost of the contract including all disbursements; unless otherwise agreed between the parties.

## 6. Contents of Web Pages and Undertakings

- 6.1. You will be solely responsible for the content of your Web Page/undertakings. Cazazz is not responsible for proofreading any content for websites, marketing materials or other undertakings unless specifically agreed.

- 6.2. Cazazz makes no representations to you concerning the content or functionality of your Web Site. It is your responsibility to ensure that it meets your requirements.
- 6.3. If you provide Cazazz with goods, material, photographs, film, data or information to be used in any form, you hereby warrant that these do not infringe the rights of third parties and indemnify Cazazz against any action taken against Cazazz by any such third party.
- 6.4. Without limiting the generality of the foregoing, you agree not to infringe the copyright trademark, privacy or personal or proprietary rights of third parties, supply libellous, abusive, obscene material or disparage the products or services of any third party.
- 6.5. Cazazz undertakes not to knowingly infringe the rights of third parties in activities conducted on your behalf.
- 6.6. You are solely responsible for dealing with persons who access your data or webpage and warrant that you will not refer complaints or enquiries in relation to such data to us.

## **7. Web Hosting, Domain names and Technical Support**

- 7.1. If you choose to organise your web hosting arrangements yourself, final sites will be uploaded by Cazazz to your preferred host company and website support and/or backups will be provided by the hosting company according to their terms and conditions of service. Website construction files can be supplied by Cazazz on request based on fees negotiated for your project. It is your responsibility to pay for and renew website hosting and to ensure the web hosting meets the technical requirements for your website. Cazazz can provide guidance for technical requirements on request.
- 7.2. If you choose to organise your domain names yourself, you are responsible for ensuring these are renewed and paid for on time. Cazazz cannot be held responsible for website downtime or loss of domain name ownership due to your failure to renew the domain or pay domain renewal invoices.
- 7.3. If Cazazz organises your web hosting and/or domains, you will receive an invoice in advance of the renewal date. You must pay this invoice before the renewal date, otherwise Cazazz cannot guarantee your services will be renewed.
- 7.4. Technical support via telephone or email for domains and web/email hosting services arranged by Cazazz will be offered. Queries taking more than 15 minutes to deal with, or site maintenance, will be charged at hourly rates or via an agreed Support Contract. Please note Cazazz cannot provide 24/7 support. Support is generally provided during standard business hours only, unless your Support Contract specifies otherwise. There may be periods during which support by Cazazz is not available, for example due to illness or holiday, in which case Cazazz will provide you with contact details for the Service supplier.
- 7.5. Please note that Cazazz accepts no responsibility for delays, down time, breakdowns or data loss caused by Internet Service Providers (ISPs), hosting/telecoms companies or other suppliers.

## **8. Dispute Resolution**

- 8.1. The parties agree that if any dispute should arise under this agreement, attempts in good faith by both parties will be made to resolve the matter fairly before resorting to court procedures. In doing so, each party agrees to use its best endeavours to:
  - Clearly communicate in writing the background facts leading to or causing the dispute
  - Set out clearly what action is required to settle the dispute
  - Select a way of resolving the dispute and explain why that way of resolving the dispute can be said to be a fair resolution
  - Discuss specific means of avoiding such disputes in the future
- 8.2. Attempts to resolve the dispute must follow the following procedure:
  - The person complaining shall set out in writing the background, issues and outcome desired.
  - The person to whom the complaint is addressed will reply in writing within 10 business days to each issue in dispute setting out its perspective on the issue and the outcome desired.
  - If the dispute is not resolved in accordance with this exchange of written issues and outcomes, then the complainant will raise the matter with a neutral professional adviser or Alternative Dispute Resolution (ADR) provider listed in a relevant publication of the Department of Workplace Relations and Small Business or similar government department within 10 business days.
- 8.3. If the dispute is not resolved in accordance with such reference, the matter shall be referred to a single agreed arbitrator within 10 business days; whose decision shall be final.
- 8.4. In the case of disagreement on the appointment of a single arbitrator, then the parties shall be entitled to nominate one independent arbitrator with 7 days of disagreement and a coin will be tossed by an independent person to decide which will act as arbitrator of the dispute.
- 8.5. Action taken to settle the dispute at each stage must be undertaken promptly and the parties shall equally share the costs associated with the dispute settlement procedure.

## **9. Intellectual Property**

- 9.1. All creation files remain the property of Cazazz unless agreed otherwise by separate negotiation.
- 9.2. Cazazz retains the Copyright in and the right to use all artwork created in advancing the profile of Cazazz and to be recognized for artwork created by Cazazz.
- 9.3. Cazazz shall be free to reproduce, use, disclose, display, exhibit, transmit, perform, create derivative works, and distribute any item created by Cazazz for you unless specifically agreed otherwise. Further, Cazazz shall be free to use any ideas, concepts, know-how or techniques acquired in construction of your website or other undertakings for any purpose whatsoever, including but not limited to developing, manufacturing and marketing products and other items incorporating such information unless specifically agreed otherwise.
- 9.4. Cazazz observes Privacy Laws and guidelines relating to personal data.

## **10. General**

- 10.1. If any of these terms and conditions (or part of them) is void or unenforceable, it is taken to be removed and no longer forms part of the Agreement between us. The remaining terms and conditions remain in full force and effect.
- 10.2. Written communications between us may take the form of letters, formal documents, faxes, text messages, social/business networking messages, or emails.