



## **Circul8 Standard Terms**

1. Circul8 provides these Standard Terms with each estimate of costs document issued to a prospective client and offers to provide services on the basis of that estimate document and these Standard Terms. Client must approve the scope of services and estimate of costs contained in the estimate document and, following that approval, an agreement between Circul8 and client arises on terms contained in the estimate document, these Standard Terms and any other terms and conditions expressly agreed in writing by Circul8 and client.
2. At any time following client's approval of an estimate document, if client requires additional work or changes in scope that involve additional work, Circul8 will issue a revised or supplemental estimate to client for approval. On client's approval of that estimate, the parties are bound by the revised or supplemental estimate by way of deemed amendment to the original agreement.
3. Client acknowledges that: (1) for those services relating to the production of content, Circul8's scope of services includes one amendment made at the client's request and, unless otherwise specified in the estimate document, additional amendments are subject to additional charges at Circul8's standard rates; and (2) for those services relating to the development of an application (including for use on mobile devices or on the social media website known as facebook), Circul8 will require client to test and approve the application before launch and following launch, Circul8 will fix any bugs or other defects in the application that are identified within 7 days of the date of launch and thereafter at client's costs based on Circul8's time and materials costs.
4. Client is responsible for any increases in third party materials and services costs that are beyond Circul8's reasonable control.
5. Unforeseen out-of-pocket expenses (such as couriers, materials, etc) and Circul8's associated administration fees are not included in and are additional to the estimate.
6. All specifications of time provided by Circul8 to client are guides only and while Circul8 makes every effort to follow them, Circul8 accepts no responsibility for delays.
7. For each calendar month, Circul8 may issue invoices for work in progress, out-of-pocket expenses and third party supplies for the previous calendar month. If a client suspends work on a project for more than 10 business days, Circul8 may issue an invoice for all work done to the date of suspension. Client must pay each invoice within 30 days of the date of the invoice. Circul8 may charge client interest on overdue invoices at 2% per month.
8. Unless all outstanding invoices are fully paid, Circul8 reserves the right to defer commencement, cease or withhold any work and to charge for any future work that is within the scope of services.
9. Client must notify Circul8 in writing of any disputed invoice, including reasons for dispute, within 30 days of receipt. Otherwise, client will be deemed to have accepted the invoice.
10. Before commencing work, Circul8 requires payment of a deposit of 50% of the total costs or any other amount stipulated in the estimate document. Circul8 will not proceed to commence work until it has received payment of the deposit as well as written approval of the estimate document.
11. All amounts charged by Circul8 are exclusive of GST and if GST is payable on an amount (a taxable supply) the party making the payment must also pay GST in respect of the taxable supply. The supplier must provide a tax invoice or adjustment note to the recipient.
12. Circul8 will provide services to client within the agreed scope of services with due care, skill, diligence and professionalism.
13. Client acknowledges and agrees that Circul8 is not responsible or liable for third party actions or omissions relating to the following: (1) that any website or any page, blog, tool or other facility located on or used by accessing any website is continuously available or that it is error-free or virus-free; (2) any changes in or the operations of any website, email service provider or third party platform (including any changes in the application protocol interface (API) used by any such website or platform); (3) the failure to properly send or receive communications via the internet, or to make available any content on any website, due to any interference or failure; (4) the contents of any website or any component of a website (including for any published content that is defamatory or in contempt of any legal or other proceedings; indecent, obscene, vulgar, pornographic, offensive or of doubtful propriety; of a menacing character; discriminatory to any group of persons including groups defined by reference to colour, race, sex, origin, nationality or ethnic or national origins; or offensive or denouncing of political or religious beliefs); (5) any third party claim, action, demand or proceeding that the publication of content on a client's website infringes a third party's intellectual property rights (however, Circul8 will use reasonable efforts to provide customary accreditation for third party content published on client's website and facilitate prompt pull-down following receipt of a third party rights infringement notice). Circul8 may unpublish content from any website, application or other platform (including a page published on facebook) in its discretion.
14. Subject to clause 15, all express or implied warranties, representations, statements, terms and conditions relating to the agreement that are not contained in these Standard Terms are excluded to the maximum extent permitted by law.



15. Nothing in the agreement excludes, restricts or modifies a guarantee, term, condition, warranty, right or remedy implied or imposed by any Australian statute (for example, the Australian Consumer Law) or regulation which cannot lawfully be excluded or limited under the terms of that statute or regulation. If such a provision applies to the agreement and Circul8 is entitled at law to limit client's remedy for breach, then Circul8's liability is limited to the supply of services again or the payment of the cost of having the services supplied again, at Circul8's option.

16. Subject to clauses 15 and 17, to the maximum extent permitted by law, Circul8's maximum aggregate liability for all claims under or relating to the agreement which arise at any time, whether in contract, tort (including negligence), in equity, under statute, under an indemnity or on any other basis (Any Legal Basis), is limited to the amount equal to 50% of the aggregate amount of fees that Circul8 has received from client in relation to the relevant project.

17. Subject to clause 15, to the maximum extent permitted by law, Circul8 is not liable for special, indirect, consequential, incidental or punitive damages or damages for loss of profits, goodwill, anticipated savings or loss or corruption of data on Any Legal Basis.

18. Intellectual Property Rights means all intellectual and industrial property rights throughout the world including rights in respect of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trade marks, service marks, whether or not now existing and whether or not registered or registrable. Circul8 is the exclusive owner of all Intellectual Property Rights in all materials and content created by Circul8 in the performance of its obligations under and relating to the agreement (including all materials and content that are presented or proposed to client but not approved by client for implementation). If the agreed scope of services includes services for the development of an application (including for use on mobile devices or facebook), Circul8 grants client a nonexclusive, non transferable, non-assignable limited license to use the source code and object code in that application throughout the world for its intended purpose of perpetual duration terminable by Circul8 by notice to client with immediate effect if client fails to pay any amount owed by client to Circul8 under the agreement. If the agreed scope of services includes services for the creation of unique content that is published on a website or otherwise available to the public or to client's customers through the use of an application: (1) Circul8 grants client a nonexclusive, non transferable, non assignable limited license to use that content on the relevant website or using the relevant application to the extent of Circul8's right, title and interest in the Intellectual Property Rights of such content and for the period ending on the earlier of Circul8's termination of that license by notice to client with immediate effect if client fails to pay any amount owed by client to Circul8 under the agreement or on the date that the following assignment takes effect; and (2) Circul8 assigns to client, by way of future assignment, all of Circul8's right, title and interest in the Intellectual Property Rights in such content with effect on the date that Circul8 last receives payment of all amounts payable by client to Circul8 under the agreement.

19. The term of the agreement continues until the earlier completion of the agreed services and termination by either party. Either party may terminate the agreement by giving at least one month written notice to the other party. If the agreement is terminated by either party before completion of the agreed services, client must pay for all services, materials and costs used or incurred up to that point (including termination and cancellation fees charged by third party suppliers and services fees charged at Circul8's ordinary rates for all work done by Circul8 in relation to the project).

20. The relationship between the parties is one of independent contractors and not one of agency or partnership. Circul8 may use subcontractors for the provision of any services to client.

21. The Agreement is governed by the laws of New South Wales, Australia. The parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales, Australia.

22. Confidential Information means any information (whether or not in material form) of whatever kind disclosed or revealed by one party to the other party in relation to the agreement that is by its nature confidential or is designated by the disclosing party as confidential excluding information that is published or has otherwise entered the public domain without a breach of the agreement or other obligation of confidence, is obtained from a third party who has no obligation of confidentiality to the disclosing party or is independently developed or obtained without breach of the agreement. During and after the term of the agreement, each party must only use the other party's Confidential Information for the purposes of exercising its rights or performing its obligations under the Agreement. Otherwise, each party must keep the other party's Confidential Information confidential and not disclose, or cause or permit the disclosure of, the Confidential Information except with the prior written consent of the other party.

23. Without limiting and subject to Circul8's obligations of confidentiality under clause 22, Circul8 may publicise the provision of its services to clients (by including by way of inclusion in case studies or other marketing materials).