

Zan & Co Creative

## TERMS & CONDITIONS

### 1. INTRODUCTION

**1.1** For the purposes of this agreement, "the Designer" is Kellie Peard ABN 48570768765 trading as Zan & Co Creative and "the Client" is the business named on the Quote and/or Client Information Form provided by the Designer to the Client. In this Agreement "Goods" mean completed graphic design and other associated products specified in the Designer's Quote; "Quote" means the Designer's quote for Goods and Services pursuant to these terms and conditions; and "Services" mean design services as specified in the Designer's Quote.

### 2. QUOTE

#### 2.1 Designer's Quote

The Designer shall give the Client a Quote specifying the work required to be done in order to fulfill the Client's instructions and an estimate of the Designer's charge for the performance of such work.

#### 2.2 Acceptance by the Client

Where the Designer has given the Client a Quote:

- a) the Designer need not commence work until the Quote has been accepted by the Client;
- b) the Client shall accept the Quote by signing and returning a true copy of the Quote accompanied with a purchase order number if applicable;
- c) the Client warrants that it has not relied on any representation by the Designer and its employees and agents other than as supplied in writing in the Quote; and
- d) a Quote is valid for thirty (30) days only unless an extension has been authorised by the Designer.

#### 2.3 Revision of the Quote

The Designer may amend the Quote before the Services has been completed to take into account any rise or fall in the cost of performing the Services and the Designer shall notify the Client of such amendment as soon as practicable thereafter.

#### 2.4 Cancellation of the Quote

The Client shall indemnify the Designer from any costs, expenses or losses incurred by the Designer should the Client cancel an accepted Quote. The time for payment for such cancellation shall be seven (7) days from the Designer's tax invoice.

### 3. PROOFS

**3.1** The design proofs must be checked promptly by the Client and the Client must confirm the proof is correct and accepted in written form. If a mistake is subsequently discovered the Client must immediately notify the Designer.

**3.2** When sign off has not been obtained from the Client and the Designer has been instructed by the Client to proceed the Client shall indemnify the Designer from any errors or omissions resulting from those instructions.

**3.3** The Client may be charged by the Designer for alterations required by the Client after the signing off of the proofs.

**3.4** A printed proof from the supplier is part of the design process where necessary. This will be mandatory on substantial jobs. If a job is requested as a rush order and no time for a proof is allowed the client will take full responsibility of the print outcome and cover any re print costs in full.

### 4. CLIENT ACKNOWLEDGEMENT

**4.1** The Client is expected to make timely responses to requests by the Designer for information or approvals.

**4.2** Because of differences in equipment, processing, paper, ink, pigments and other conditions between colour proofing, computer monitors and production pressroom operations, a reasonable variation in colour between proofs and the completed job shall constitute acceptable delivery.

### 5. VARIATIONS

**5.1** Variation notices will be issued to confirm tasks or requests outside the agreed scope of services specified in the Designer's Quote. These notices serve as advice of a variation of work and expenses to be charged. All variations must be approved by the Client in writing prior to such work commencing.

**5.2** The Designer shall determine if the variations are charged at an hourly rate or a lump sum.

### 6. DELIVERY

**6.1** Delivery of the Goods will be made by the Designer to the Client or its agent or to a third party nominated by the Client. The risk in the Goods shall pass to the Client upon delivery of the Goods to the Client or its agent or to a third party nominated by the Client.

### 7. ERRORS/RETURN OF GOODS

**7.1** The Client shall inspect the Goods on delivery and shall within twenty four (24) hours of delivery notify the Designer of any alleged shortage in quantity, damage or failure to comply with the description. The Client shall afford the Designer an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with these terms and conditions and free from any damage.

### 8. INTELLECTUAL PROPERTY AND OWNERSHIP OF CREATIVE MATERIALS

#### 8.1 Ancillary

Unless the Designer and Client agree otherwise in writing, drawings, sketches, paintings, photographs, designs, typesetting, dummies, models, negatives, positives, blocks, engravings, stencils, dies, plates or cylinders, electros, stereos, disks, tapes, compact disks or any other media and other material produced by the Designer in the course of or in the preparation for performing the Services (whether or not in fact used for the purposes of performing the Services) are the property of the Designer.

#### 8.2 Copyright

The copyright in all artistic and literary works authored by the Designer shall be the property of the Designer.

**8.2.1** The Client warrants that it has copyright or a licence to authorise the Designer to reproduce all artistic or literary works supplied by the Client to the Designer for the purposes of the Services and the Client hereby expressly authorises the Designer to reproduce all and any of such works for those purposes.

**8.2.2** The Client must indemnify the Designer against all liability, losses or expenses incurred by the Designer in relation to or in any way directly or indirectly connected with any breach of copyright or of any rights in relation to copyright.

**8.2.3** The Client is hereby granted a non-exclusive licence to use the copyright in any literary and/or artistic works authored by the Designer for the purposes of the Services provided that the exercise of such a licence is conditional upon the Designer having received all monies due to the Designer under these terms and conditions.

#### 8.3 Intellectual Property Rights

The Client warrants that the use by the Designer of any designs or instructions supplied by the Client will not infringe any intellectual property of any other person and the Client indemnifies the Designer against any claim relating to or arising from the infringement of any intellectual property of any other person.

#### 8.4 Illegal Matter

The Designer is not obliged to print any illegal or libelous matter and the Client agrees to indemnify the Designer against any claim relating to or arising from the printing of such matter.

#### 8.5 Artwork

The Client acknowledges and agrees that it is liable to pay for artwork prepared by the Designer as instructed by the Client whether such artwork is used or not.

#### 8.6 Electronic/Magnetic Media

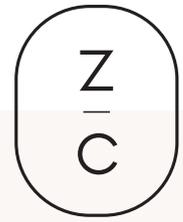
All disks, tapes, compact disks or other media (other than media supplied by the Client) used by the Designer to store data for the purposes of completing the Services are the property of the Designer. The Client cannot require the Designer to supply to the Client any data so stored, but in the event that the Designer agrees to do so, the Designer may charge for supplying such data to the Client.

#### 8.7 Storage of Electronic Data

The Designer will not be responsible for storing any data on disk, tapes, compact disks or other media when the Services have been completed. If the Designer agrees to store such data, the Designer may charge for doing so.

#### 8.8 Marketing Purposes

Zan & Co Creative always retains the right to use the completed project and any preliminary designs for the purpose of design competitions, future publications on design, educational purposes and marketing materials on but not limited to social and website platforms.



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### 9. PAYMENT

#### 9.1 Time of Payment

The Client must pay for each stage completed and delivered, within the time specified in the Designer's Quote and tax invoice.

#### 9.2 Late Fees

The Designer may charge interest/late fee on outstanding amounts not paid within the time specified in the Designer's tax invoice.

#### 9.3 Deposit

The Designer will require a deposit from the Client as specified in the Quote. The Client acknowledges the Designer is under no obligation to start any work as requested by the Client until the deposit is received by the Designer in full and when all details pertaining to contract are finalised. In the event of default as to payment owing to the Designer on the part of the Client, the Designer shall be entitled to forfeit the deposit and claim any profit or margin contemplated by or allowed for in the contract in addition to any remedy available to the Designer at law or in equity.

#### 9.4 Damages

The Client must pay to the Designer any costs, expenses or losses incurred by the Designer as a result of the Client's failure to pay to the Designer all sums outstanding as owed by the Client to the Designer including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

### 10. RETENTION OF TITLE

#### 10.1 Title

Not with standing the delivery of the Goods, title in any particular Goods shall remain with the Designer regardless of whether the Goods are on- sold by the Client until the Client has paid and discharged any and all monies owing pursuant to any invoice issued by the Designer for the Goods, including all applicable GST and other taxes, levies and duties. Any payment made by or on behalf of the Client which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge the Designer's title in the Goods nor the Client's indebtedness to the Designer and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

#### 10.2 Bailment

The Client acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods is made pursuant to clause 10.1 and until that time:

- a) the Client is not entitled to sell the Goods but only in the ordinary course of business;
- b) the Client must not encumber or otherwise charge the Goods; and c) the Client shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery of the Goods to the Client.

#### 10.3 Repossession

The Client hereby irrevocably grants to the Designer the right, at its sole discretion, to remove or repossess any Goods from the Client and sell or dispose of them, and the Designer shall not be liable to the Client or any person claiming through the Client and the Designer shall be entitled to retain the proceeds of any Goods sold and apply same towards the Client's indebtedness to the Designer. If the Client commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the Designer may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Client on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing the Designer by the Client.

### 11. WARRANTY

**11.1** The Designer gives those warranties implied by consumer protection legislation in relation to the Goods. All other warranties are excluded to the extent permitted by law.

**11.2** The Designer reserves the right to make null and void the warranty should the Goods be modified, altered, damaged or put to any undue stress other than in the way the Goods were designed to perform.

**11.3** In respect of all claims the Designer shall not be liable to compensate the Client for any delay in replacing the Goods or in properly assessing the Client's claim.

### 12. LIABILITY

#### 12.1 Non-Excludable Rights

The parties acknowledge that, under the Australian Consumer Law, certain conditions and warranties may be implied in these terms and conditions and there are rights and remedies conferred on the Client in relation to the provision of goods or of services which cannot be excluded, restricted or modified by the agreement ("Non-Excludable Rights").

#### 12.2 Disclaimer of Liability

The Designer disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Client, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of the Designer for a breach of a Non-Excludable Right is limited, at the Designer's option, to the supplying of the Goods and/or any Services again or payment of the cost of having the Goods and/or Services supplied again.

#### 12.3 Indirect Losses

Not with standing any other provision of these terms and conditions, the Designer is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Client for:

- a) any increased costs or expenses;
- b) any loss of profit, revenue, business, contracts or anticipated savings;
- c) any loss or expense resulting from a claim by a third party; or
- d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Designer's failure to complete or delay in completing the Services or to deliver the Goods.

#### 12.4 Force Majeure

The Designer will have no liability to the Client in relation to any loss, damage or expense caused by the Designer's failure to complete the Services or to deliver the Goods as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Designer's normal suppliers to supply necessary material or any other matter beyond the Designer's control.

#### 12.5 Client's Property

Any property of the Client held by the Designer is at the Client's own risk.

### 13. PRIVACY

**13.1** The Client hereby authorises the Designer to collect, retain, record, use and disclose commercial and/or consumer information about the Client, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Designer, a debt collector, credit reporting agency and/or any other individual or organisation which maintains credit references and/or default listings.

**13.2** The Designer may give information about the Client to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the Client's credit file. This information may be given before, during or after the provision of credit to the Client and will be in accordance with the Privacy Act 1988 and subsequent amendments.

### 14. GENERAL MATTERS

#### 14.1 Severability

Any provision in these terms and conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that 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 terms and conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

#### 14.2 Governing Law & Jurisdiction

These terms and conditions are governed by the laws of the State of Queensland and all disputes arising between the Client and the Designer will be submitted to the Brisbane registry of any court as is competent to hear the matter.