

# Terms of Service

Below is Pixel & Palette Marketing's standard Terms and Conditions. Please take time to read through our Terms and Conditions thoroughly and ensure you understand them before you commence a project with us. By requesting designs and/or services from Pixel & Palette Marketing, you agree to our Terms and Conditions and you are aware that you are entering a binding contract – payment is required.

The below conditions have been construed under Australian Law and apply to all individuals, businesses or companies (Client/s) engaging the services of Pixel & Palette Marketing, its contractors, subcontractors and employees (the Business) unless otherwise agreed to in writing by both parties.

## **General Conditions of Contract**

1. These Terms and Conditions cover all Contracts entered into by a Client with the Business for services relating to design, printing, copywriting, visual media, web sites, brand identity, illustrations, images and photography (Artwork)
2. These Terms and Conditions are subject to change without notification by the Business.
3. These Terms and Conditions apply to the Business and all of its contractors and subsidiaries.

## **Original Visual Brief, Variations and Guarantee**

4. The Business and the Client will attend an initial consultation at no charge to the Client. This can be held via phone or email. A (Visual Brief) will be constructed through the collection of logos and designs and whatever else is required. This will assist in the evaluation and formulation of the Client's business design requirements.

5. If no delivery date for final Artwork is decided upon and noted during the initial consultation, payment will be required at the time/s detailed in clause (11); the length of time between consultation and delivery of final Artwork will have no effect on the requirement to remit funds on invoicing.

6. The Business does not offer a set number of revisions to logo Artwork under the original Visual Brief.

7. The Business will not charge for additional revisions of logo Artwork provided that the Client's requests for revision conform to the original Visual Brief and are communicated within the agreed timeline (if provided).

8. Any additional work, revisions or variations outside of the original Visual Brief will be charged at the rate of \$120 per hour, billed in 15 minute increments. All prices exclude GST. Additional expenses will be charged accordingly.

## **Quotations**

9. Quotations are generated by the Business on the basis of the Visual Brief and expected time investment. Quotations may be subject to change if additional work is required.

10. All time quotations are an estimate and are based on calendar working (business) days. No quoted Artwork delivery dates are guaranteed and can vary.

## **Payment**

11. The Business reserves the right to request a deposit from the Client prior to starting work on their project or Artwork. If a deposit is requested by the Business, an invoice will be generated and delivered to client via email and payment is expected. By remitting deposit funds to the Business, the

Client is accepting the Terms and Conditions and entering a contract with the Business.

12. If a deposit is not requested, the Client is considered to accept the Terms and Conditions upon request of services/work from the Business.

13. The Business will invoice the Client for the remaining cost of the Artwork and associated services prior to the commencement of web site construction or printing. The Business reserves the right to not proceed with these services until payment has been received in full from the Client.

14. The Business reserves the right to invoice prior to the time detailed in clause (11) if the Client has been uncontactable / unresponsive for more than 30 days – refer Cancellation & Variation Policy – begins clause (19)

15. The Business reserves the right to invoice for work completed if the project exceeds 60 days.

16. The Client reserves the right to request a payment plan which may be accepted by the Business at its discretion. All payment plans must be agreed to both parties in writing.

17. All prices quoted on the Business's web site and advertising material include delivery and exclude GST.

18. All payments are to be made within 30 days of invoicing.

19. The Business is entitled to charge the Client for any fees incurred relating to commencement of collection and recovery processes for accounts that remain unpaid in excess of 30 days.

20. The Business reserves the right to delete web sites with accounts more than 90 days outstanding payment.

## Cancellation and Variation Policy

21. The Business reserves the right to charge additional costs if the Client requests amendments to the original Visual Brief, the original project outcome is altered or further Artwork is requested – refer clause (5).

22. If the Client requests the cancellation of a Contract, The Business will determine the cost of Artwork and services provided. The Client will be invoiced this amount minus any deposits paid on the project to date. In the instance of Social Media Services the Client MUST provide a month's notice from the monthly contract date in writing, if notice is not provided the client will be liable to pay a month's fee.

a) If the determined monies payable is less than the deposit paid, a refund will be issued by the Business to the Client for the difference.

23. The Business will declare a project completed if no response is received from Client within 30 days of providing a concept Artwork and this Artwork will be determined as the final accepted Artwork. The Business will then invoice the Client for final payment of total project and non-payment will result in collection processes. Legal action may also be taken by the Business to recover all monies owed.

## Approving Proofs/ Designs/Printing

24. The Client is held responsible for approving all Artwork proofs and ensuring accuracy and suitability. This includes, but is not limited to; design, spelling, grammar, illustrations, images and quantity. It is the responsibility of the Client to request another copy if the proof is difficult to read or changes are required.

a) The Client's final accepted proof is the Artwork that will be submitted for prints and/or web construction. There will be no reprints or web development at our expense. Printout of Client proof is supplied at intended final print size (100%) to assist in confirming colours, design, bleed, size and type. You shall indemnify the Business, its directors and representatives from and against all actions, claims, damages, liabilities or costs (including legal costs) arising from, or directly or indirectly related to provision of Materials, use of Services by you or anyone else, or otherwise arising.

## Limitation of liability

25. The Client agrees and accepts that The Business is not legally responsible for any loss or damage suffered or incurred related to use of any of The Companies services, whether from amendments, errors or omissions in documents, designs, information or any goods or services we be offered by The Business. This includes the Clients use or reliance on any third party content, links, comments or advertisements. The Clients use of, or reliance on, any information or materials The Business produces, amends or designs is entirely at your own risk, for which we shall not be liable.

26. It shall be the clients own responsibility to ensure that any products, services or information you use meet their specific requirements.

27. The Client acknowledges that such information and materials may contain inaccuracies or errors and expressly exclude liability of The Business for any such inaccuracies or errors to the fullest extent permitted by law.

## Submission of Client artwork

28. Clients who choose to submit their own Artwork, files and/or images are solely responsible for the end result of printing. Customers are reminded to submit print-ready Artwork with the correct specifications. We will print the Client's submission as requested however the Business is not responsible for Artwork mistakes. The Business is also not liable for supplied file errors. There will be no reprints at our expense.

29. Clients are reminded that when Artwork is trimmed, the bleed cut can vary in position up to 2-3mm, hence a 7mm internal margin from the bleed line is required if the Client is supplying Artwork.

30. It is the Client's responsibility to ensure that any Artwork, images, files and text submitted does not violate Australian copyright laws. The Business and its contractors assumes all written and visual content

adheres to copyright laws and all correct permissions have been sought and/or royalties paid for use.

## Copyright

31. Ownership of copyright over all concepts and draft Artwork remains with the Business. This includes, but is not limited to; logos, symbols, compositions and copy. Unlawful use of these Artworks by the Client is strictly prohibited. The use of Artwork prior to payment is illegal.

32. For more information visit <http://www.copyright.org.au/information>

33. Artwork designed will remain the property of the Business until account is paid in full. Future re-print requests of the same Artwork will only incur a print management fee. Upon full payment of account, copyright ownership will be transferred to the Client. The Business and their designers retain rights to utilise Artwork and all design elements for portfolio/self-promotion.

34. The Business does not take any responsibility for Trade marking of any kind. It is the clients responsibility to check trade marking laws and existing Trademarks for availability.

## Printing

35. Printing will not commence until full payment for Artwork and print services is received. The current turnaround time for printing is 5-10 working days dependant on the product type. This period commences at date of Client approval of Artwork proof and payment.

36. All time quotations are an estimate and are based on calendar working (business) days. No quoted printing, Artwork and delivery dates are guaranteed and can vary.

37. With all printing there may be some colour variations from electronic visual representations of Artwork and previous orders to the final printed Artworks. This is due to the nature of CMYK printing and bulk-run printing system. There will be no reprints at our expense.

## Delivery

38. The Business cannot be held liable for printing products that are damaged, lost or delayed when delivered by post or courier although the utmost care will be taken to ensure the products arrive on time and undamaged.

## Web Site Design

39. The Client agrees to allow the Business to add a small credit on the customer's website. This will be in the form of a small line of text placed towards the bottom of the page.

40. The Client also agrees to allow the Business to place websites and other designs, along with a link to the Client's site on the Business's own website for self-promotional purposes., unless agreed to by both parties in writing beforehand.

## Web Site Design Post-Completion Alterations

41. Upon completion of web site build, the Business will provide the Client with opportunity to review the resulting work. The Business will make one set of minor changes at no extra cost within 14 days of submission to Client for review ('review period').

42. Minor changes include small textual changes and small adjustments to placement of items on the page. Minor changes do not include alteration or replacement of images, colour schemes or any navigation features.

43. The Business can be notified of any minor requested changes by e-mail. The Business will consider that the Client has accepted the original draft if

no notification of changes is received in writing from the Client within 14 days of the start of the review period.

## SEO Search Engine Optimisation & Search Engine Listings

44. The Business builds web sites according to the trends of SEO at the time of building. We will help you to explore your key words/key phrases; however final key phrase choice is the responsibility of the Client.

45. The Business cannot guarantee, and is indemnified by the Client against any claims regarding the following: presence of Google or search engine listing, the position of web site in any search engines, which or if any of the web pages will be listed in any search engines, the time it will take for any search engines to list the web site and effectiveness of key words/key phrases.

46. If the Client is dissatisfied with web site listings, the Client can complete steps out lined in our "helping yourself" worksheet. Client can then contact the Business to arrange an evaluation of web site.

47. Relating to clause (25), the Business take no responsibility for duplicate content found on the Clients website or if the website is search engine black listed due to the written content or images of their site.

## Technological advancements

48. 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.

49. The Client is to refer to their technical support Business 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



50. The Business does not provide the following services: Domain names, Hosting and registration, SSL certificates, Email addresses, Email hosting, Setup of email addresses, Emails errors of any kind and Email Signatures

51. The Business holds no responsibility if your email addresses are targeted with spam as it is outside of our control. The Business holds no responsibility if the Client's email account details are attained and used to send spam or malicious material.

52. The Business build and design websites to the best of their knowledge at the time of completion. The Business cannot take responsibility if the Client's site is "hacked" or maliciously attacked in form. The Business will not be held responsible and is not liable for any loss of income to arise from the clients website "going down", being hacked or otherwise. The Business does not provide software updates or take responsibility if the software used becomes out of date and obsolete. The Business does not take responsibility for any unforeseen advancements in technology that may have negative effects on any aspects of the Client's site or system.

53. To extent permitted by law, the Business, its directors and employees hereby expressly exclude: (a) all conditions, warranties and other terms which might otherwise be implied by statute, common law or equity; (b), any liability for loss of income or revenue; loss or interruption of business; loss of uptime; loss of profits; loss of or damage to software; loss of anticipated savings; loss of data; loss of goodwill; wasted management; or any liability for any direct, indirect or consequential loss or damage incurred by you or any end user in connection with Services, or use of Services; and (c) any other loss or damage of any kind, however arising and whether caused by tort (including negligence), breach of contract or otherwise, even if foreseeable. You shall indemnify the Business, its directors and representatives from and against all actions, claims, damages, liabilities or costs (including legal costs) arising from, or directly or indirectly related to provision of Materials or Site Software, use of Services or Site by you or anyone else, or otherwise arising.

## CMS Content Management Systems

54. CMS Content Management Systems websites are delivered in an agreed working order. Any changes to the working files or configuration of the CMS that are done by a third party to The Business are the responsibility of the site owner.

55. Web sites are built using the latest software available at the time. All website terms and conditions also apply to CMS.

56. The Business does not hold responsibility for any content posted on the client's website. Any changes to the CMS after delivery will be charged accordingly. Any repercussions of the advancements in the CMS or server/hosting technology are not the responsibility of The Business.

57. The Business does not hold any responsibility for misuse of the CMS or website.

58. The Business does not back up web site content and cannot be held liable for partial or complete loss of data. It is the Client's responsibility to back up their web site.

## Force Majeure

59. The Business shall not be liable for any failure or delay in supply or delivery of Artwork or services where such failure or delay is wholly or partly due to any cause or circumstances whatsoever outside the reasonable control of the Business including but not limited to war, strikes, lockouts, industrial disputes or unrest, government restrictions or transport delays, fire, power outages, failure attributable to hosting suppliers, breakdown of plant, theft, vandalism, riots, civil commotions, accidents of any kind or act of terrorism.