
Terms and conditions

1. Acceptance

1.1 These Terms and Conditions (Terms) are between Sherry Design Australia Pty Ltd (ABN 31 150 868 965), its successors and assignees (referred to as “we”, “us” or “our”) and you, the person, organisation or entity who has purchased services from us (referred to as “you” or “your”), and collectively the Parties. These Terms apply to all Services provided by us to you. These Terms are also available on our Website, www.sherrydesign.com.au.

1.2 You have requested the Services set out in the attached Proposal. You accept the Proposal and these Terms by either:

- (a) confirming by email that you accept the Terms; or
- (b) instructing us to proceed with the Services; or
- (c) paying a Deposit or part or full payment for the Services.

1.3 You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully. Please contact us if you have any questions using the contact details in the Proposal. Purchasing Services from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older.

1.4 We will not commence performing the Services until you have paid the Deposit or first instalment of our Fees, unless otherwise agreed.

2. Services

2.1 We agree to perform the Services with due care and skill.

2.2 We reserve the right to refuse any request that we deem inappropriate, unreasonable or illegal.

2.3 The estimated period for us to perform the Services is set out in the Proposal (Service Period). The Service Period is an estimate only and you agree to hold us harmless and indemnify us against any loss or harm suffered by you or third parties as a result of our inability to provide the Services, in full, before expiry of the Service Period, due to your delay.

2.4 We may provide the Services to you using our employees, contractors and third party providers, and they are included in these Terms.

2.5 Third parties who are not our employees or our direct contractors (Third Parties) will be your responsibility. We are not responsible for the services provided by Third Parties.

2.6 Delivery of digital products: If we create any digital works for you in the course of providing Services to you, any such works will be delivered in a digital PDF, AI or JPEG format via email to your nominated email address or via a drop box facility.

Terms and conditions

2.7 Delivery of other products: We deliver worldwide. Delivery costs will be charged separately. We normally dispatch deliveries within [X] Business Days of receiving your written assent to the final draft/proof of materials we have created for you. If you need to change the delivery date or address, please contact us as soon as possible to see if it is possible. If you are not available to take delivery on the agreed delivery date, you may be charged a delivery fee for each additional attempt for delivery. We may deliver the products via a range of delivery methods. All deliveries must be signed for. If neither you nor your authorised representative is at the delivery address to accept delivery you will be notified, generally by the delivery company leaving a card with contact details, so that you can arrange delivery time and date.

2.8 Style: You acknowledge and accept that we will use our own unique creative style in providing the Services and any works forming part thereof.

3. Price, Invoicing & Payment

3.1 You agree to pay us the Fees and Expenses, including any Deposit, for the Services that you have requested, by way of direct deposit or such other payment method advised by us from time to time (Price). All amounts are stated in Australian dollars. All amounts exclude Australian GST (where applicable).

3.2 The Price payable under these Terms is an estimate only and is subject to increase on agreement on the exact scope of work. We may increase the Price if additional reasonable expertise, skills, time and/or materials are required to provide the Services or the Price includes third party costs which are increased for any reason. We will endeavour to inform you of any material variation as it becomes apparent.

3.3 If it is necessary to increase the Price we will provide you with 1 weeks' notice and you may choose to accept or reject the increase. If you reject the increase these Terms will terminate, subject to clause 9.6.

3.4 If you request amended or additional services, including but not limited to changes to the Proposal, scope, variations or additional rounds of comments, workshops or reports (Variation), we have discretion as to whether we perform this work for you and whether an adjustment to the Fee may be required in respect of the same. If we are unable to accommodate the Variation, we may request that we be paid for Services performed to date and terminate these Terms.

3.5 If we agree to perform a Variation, then we will inform you of any additional cost (Variation Fee). You need to approve the Variation and Variation Fee before we commence work. We will invoice you accordingly for the Variation.

3.6 The Price payable will be invoiced to you and may be payable up front, once the Services have been provided in full or in accordance with a payment schedule.

3.7 You agree to pay our invoices within 14 days of receipt (Payment Date). If an invoice is unpaid for more than 14 days after the Payment Date, we may cease to provide the Services to you until we receive payment of the invoice.

Terms and conditions

3.8 We may charge interest at the rate of [2]% per month on any amounts unpaid after the Payment Date.

3.9 If invoices are unpaid after this period, we have the right to engage debt collection services for the collection of unpaid and undisputed debt, and the right to commence legal proceedings for any outstanding amounts owed to us.

3.10 We reserve the right to report bad debts to independent credit data agencies.

4. Obligations & Warranties

4.1 You warrant that you will not canvass, employ, induce or attempt to employ, induce, solicit or entice away from us, any employee or contractor that was employed by or contracted to us during the term that we provide Services to you or the prior 12 month period.

4.2 You warrant that throughout the term of these Terms that:

(a) there are no legal restrictions preventing you from agreeing to these Terms;

(b) you will cooperate with us, and provide us with information, feedback and instructions that are reasonably necessary to enable us to perform and/or progress the Services, as requested by us from time to time, and comply with these requests in a timely manner;

(c) you will proof read and sign off on all drafts provided to you and will do so in writing and in a timely manner;

(d) the information you provide to us is true, correct and complete;

(e) you will not infringe any third party rights in working with us and receiving the Services;

(f) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns;

(g) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;

(h) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you;

(i) if applicable, you hold a valid ABN which has been advised to us; and

(j) if applicable, you are registered for GST purposes.

4.3 We warrant that throughout the term of these Terms that:

(a) save for any material that is provided to us by you, any work we create for you in the course of providing Services to you will be our original work and will not be copied in whole or in part from any other sources;

(b) where relevant, we have secured the rights to any third-party content incorporated into final works created for you; and

(c) the works we created for you will not violate the Intellectual Property rights of any third parties.

Terms and conditions

5. Our Intellectual Property

5.1 The work and materials that we provide to you in carrying out the Services contains material which is owned by or licensed to us and is protected by Australian and international laws (Materials). We own the Intellectual Property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.

5.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any Intellectual Property rights in our Materials, except as stated in these Terms or with our written permission.

5.3 Your use of our Materials does not grant you a licence, or act as a right to use any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.

5.4 You must not breach our Intellectual Property rights by, including but not limited to:

- (a) altering or modifying any of the Materials;
- (b) creating derivative works from the Materials; or
- (c) using our Materials for commercial purposes such as on-sale to third parties.

Our material assigned to you:

5.5 We will assign ownership of any design materials we create for you in the course of providing Services to you, upon full payment of our invoices.

Our material licensed to you:

5.6 We will license to you [list any materials that you licence to the client] (Licensed Material), upon full payment of our invoices.

5.7 We grant you a perpetual, non-exclusive, revocable, worldwide and non-transferable licence to use the Licensed Material for your internal business purposes only.

5.8 Subject to clause 5.5, you warrant that any documents we provide to you in editable format must not be materially changed or provided to third parties without our written permission. We are not responsible or liable for any changes that we did not review or assent to.

5.9 For the avoidance of doubt we will not assign or licence to you any preliminary, draft or proposed works that have not been reduced into their final form.

5.10 This clause will survive the termination of these Terms.

Terms and conditions

6. Your Intellectual Property & Moral Rights

6.1 You agree to provide information including any Intellectual Property to us to enable us to provide the Services. You:

- (a) warrant that you have all necessary rights to provide the Intellectual Property to us;
- (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the Intellectual Property in any way we require to provide the Services to you; and
- (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.

6.2 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:

- (a) irrevocably consent to any amendment of the Intellectual Property in any manner by us for the purposes of providing Services to you;
- (b) irrevocably consent to us using or applying the Intellectual Property for the purposes of providing Services to you without any attribution of authorship;
- (c) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
- (d) agree that your consent is a genuine consent under the Copyright Act 1968 (Cth) and has not been induced by duress or any false or misleading statements.

6.3 This clause will survive the termination of these Terms.

7. Confidential Information

7.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than where necessary, to third party suppliers, or as required by law); to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you and ancillary business purposes, and not for any other purpose.

7.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.

7.3 These obligations do not apply to Confidential Information that:

- (a) is authorised to be disclosed;
- (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
- (c) is received from a third party, except where there has been a breach of confidence; or
- (d) must be disclosed by law or by a regulatory authority including under subpoena.

Terms and conditions

7.4 You must correctly attribute authorship to us for any works we create for you in the course of providing Services to you.

7.5 This clause will survive the termination of these Terms.

8. Feedback & Dispute Resolution

8.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.

8.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:

(a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (Initial Meeting).

(b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.

8.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

8.4 This clause will survive the termination of these Terms.

9. Term & Termination

9.1 This agreement will commence when the Deposit or first instalment of our Fees is received (Start Date) and will end when the Services are provided and paid for in full (End Date), unless terminated earlier in accordance with this clause or otherwise agreed by the Parties.

9.2 Either Party may terminate these Terms without cause by providing the other Party 30 days' notice in writing.

9.3 Either Party may terminate these Terms if there has been a material breach of these Terms, subject to the dispute resolution procedure in these Terms.

9.4 We may terminate these Terms immediately, at our sole discretion, if:

(a) we consider that a request for the Service is inappropriate, improper or unlawful;

(b) you fail to provide us with clear or timely instructions, feedback or information to enable us to provide the Services;

Terms and conditions

(c) we consider that our working relationship has broken down including a loss of confidence and trust;

(d) for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe; or(e) you fail to pay an invoice within 30 days of the payment date.

9.5 On termination of these Terms you agree that any Deposit or payments made are not refundable to you, and you are to pay all invoices for Services rendered to you.

9.6 If you terminate these Terms before the End Date, you must pay for all Services provided prior to termination, including print production setup costs and any Services which have been performed and have not yet been invoiced to you.

9.7 Subject to clause 5.5, on termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.

9.8 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property.

9.9 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.

9.10 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.

10. Consumer Law, Limitation of Liability & Disclaimers

10.1 Australian Consumer Law (ACL): If you are a consumer as defined in the ACL, the following applies to you: “You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the services remedied if they are not rendered with due care and skill or they are not fit for purpose and the failure does not amount to a major failure”. To the extent we are able to exclude liability; our total liability for loss or damage you suffer or incur from our Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.

10.2 Delay: Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out in the Proposal where it is affected by your delay in response, or supply of incomplete or incorrect information.

10.3 Referral: We may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.

Terms and conditions

10.4 Warranties: To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.

10.5 Liability: To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees and terms relating to the Services and these Terms, except those set out in these Terms, including but not limited to:

- (a) the Services and our website www.sherrydesign.com.au (Site) being unavailable; and
- (b) any loss, damage, costs (including legal costs), expense (whether direct, indirect, incidental, special, consequential and/or incidental), loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruptions or otherwise, suffered by you or claims made against you, arising out of or in connection with your inability to access or use the Services and/or Site, and the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.

10.6 Limitation: To the extent permitted by law our total liability arising out of or in connection with the Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the total fees paid by you to us in the twelve (12) month period prior to the event giving rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made, as applicable.

10.7 This clause will survive the termination of these Terms.

11. Indemnity

11.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:

- (a) any information provided by you that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) this engagement and any breach of these Terms;
- (c) any misuse of the Services from or by you, your employees, contractors or agents; and
- (d) your breach of any law or third party rights.

11.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

11.3 This clause will survive the termination of these Terms.

Terms and conditions

12. General

12.1 Privacy: We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the Privacy Act 1988 (Cth) and any other applicable legislation or privacy guidelines.

12.2 Publicity: You consent to us using advertising or publically announcing that we have undertaken work for you and you further consent to us displaying the works that we have created for you in the course of providing Services to you.

12.3 Email: You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.

12.4 GST: If and when applicable, GST payable on the Services will be set out on our invoices. By accepting these Terms, you agree to pay us an amount equivalent to the GST imposed on these charges.

12.5 Relationship of parties: These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.

12.6 Assignment: These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).

12.7 Severance: If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.

12.8 Force Majeure: We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 Business Days' notice in writing.

12.9 Notices: Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to you at the address in the Proposal. Our address is set out in the Proposal. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

12.10 Jurisdiction & Applicable Law: These terms are governed by the laws of New South Wales and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales.

12.11 Entire Agreement: These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.

Terms and conditions

13. Definitions

13.1 Business Day means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales, Australia.

13.2 Claim/Claims includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise.

13.3 Confidential Information includes confidential information about you, your credit card or payment details, the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, technology, and other information of either Party whether or not such information is reduced to a tangible form or marked in writing as “confidential”.

13.4 Deposit is set out in the Proposal.

13.5 Expenses are set out in the Proposal.

13.6 Fees are the estimate or fixed fees for the Services set out in the Proposal.

13.7 GST means GST as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.

13.8 Intellectual Property includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions, patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.

13.9 Moral Rights means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the Copyright Act 1968 (Cth).

13.10 Proposal means the brief which sets out the project specific activities, deliverables, timelines and costs (whether estimate or fixed) in respect of the Services.

13.11 Services means the brand design, web design and printing services particularised in the Proposal.

Unless otherwise defined herein or the context otherwise requires, capitalised terms used in these Terms will have the meanings given to them in the Proposal.

Contact details

Sherry Design (Australia) Pty Ltd

ABN 31 150 868 965

Email: sue@sherrydesign.com.au

Last update: 10th April 2019

LegalVision ILP Pty Ltd owns the copyright in this document and use without permission is prohibited.