

Terms of Service

1. General

In these Terms of Service:

- (a) "Designer" means Claire Nichols.
- (b) "Client" means the purchaser of the Services.
- (c) "Services" means the services described (but is not limited to) in any invoices, design estimate, work authorisation, or any other forms which are provided by the Designer to the Client.
- (d) Any Services supplied or completed the Designer for the Client will be supplied on these Terms of Service.

2. Design estimates

- (a) All design estimates provided are valid for thirty (30) days.
- (b) Prices current at the date of the design estimate are subject to alteration after 30 days or in the event of supplier price variation.
- (c) The Designer may charge a premium of two (2) times the estimated rate in relation to the provision of urgent Services.
- (d) Unless otherwise agreed in writing, design estimates do not include the Designer's travel and accommodation costs (where applicable).
- (e) Design estimates are based on hours required not tasks performed.
- (f) Once a design estimate is accepted verbally or in writing, this is also confirmation of acceptance of the Designer's Terms of Service.
- (g) A replacement design estimate shall be issued in the event that the Client wishes to alter the Services.
- (h) All design estimates are provided subject to the Designer's review of the Client's final brief.
- (i) Unless otherwise agreed in writing, all design estimates are for design services only.

3. Price And Payment

- (a) The price shall be as indicated on invoices provided by the Designer to the Client in respect of the Services supplied ("Price").
- (b) Time for payment for the Services shall be of the essence and will be stated on the invoice, fee estimate or any other order forms. If no time is stated then payment shall be due on delivery of the Services.
- (c) The method of payment of the Price shall be that stated on the Designer's invoice.
- (d) The Price shall be increased by the amount of any GST and other taxes and duties, which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Designer.
- (e) The Designer reserves the right to request payment for the Services in full or in part prior to commencement of the Services.
- (f) The Client shall be responsible for the cost of bank transfer fees (if any).

4. Cancellation

- (a) The Client may cancel the Services by providing written notice to the Designer. The Client shall be responsible for the cost of Services completed by the Designer at the time of cancellation, together with any costs or expenses incurred by the Designer. The Designer may apply funds paid by the Client in advance to her abortive costs and expenses.

5. Default & Consequences of Default

- (a) Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of fifteen percent (15%) per annum.
- (b) The Designer reserves the right to refer any amounts overdue for more than thirty (30) days to a debt collection agency. The Client acknowledges that such information will be loaded on to the debt collection agency's database and that information may be provided to third parties such as, but not limited to, credit reference companies who may provide credit default information to other parties.
- (c) If the Client defaults in payment of any invoice when due, the Client shall indemnify the Designer from and against all costs and disbursements incurred by the Designer in pursuing the debt including legal costs on a solicitor and own client basis and the Designer's collection agency costs.
- (d) The Designer reserves the right to cease Services if payments fall in arrears.

6. Disputes

- (a) The Client shall forthwith notify the Designer of any alleged defect, error, omission or failure to comply with the description or design estimate. The Client shall afford the Designer an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be free from any defect or damage.
- (b) For defective Services, which the Designer has agreed in writing that the Client is entitled to reject, the Designer's liability is limited to rectifying the Services provided that the Client has complied with the provisions of clause 6(a).

- (c) In the event that any part of an invoice is disputed the amount not in dispute will be paid promptly in accordance with the payment terms. Thereafter, the parties agree to use their best endeavours to promptly resolve any dispute of difference between them and the Designer may, at its discretion, require the Client to submit to mediation with the assistance of a qualified mediator.

7. Privacy Act 1993

- (a) The Client authorises the Designer to:
 - (i) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
 - (ii) to disclose information about the Client, whether collected by the Designer from the Client directly or obtained by the Designer from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- (b) Where the Client is an individual the authorities under (clause 7(a)) are authorities or consents for the purposes of the Privacy Act 1993.
- (c) The Client shall have the right to request the Designer for a copy of the information about the Client retained by the Designer and the right to request the Designer correct any incorrect information about the Client held by the Designer.

8. Intellectual Property

- (a) The Designer reserves all intellectual property rights in respect of preliminary designs.
- (b) Copyright in the Services remains the property of the Designer until the Client has paid the Price paid in full.
- (c) The Client agrees to the Designer displaying completed Services in her print and online portfolio.
- (d) A credit line in favour of the Designer suitable to the size of the page (web or print) will be included in all design work.
- (e) The Client shall indemnify the Designer in respect of any claims, costs and/or expenses arising from the use of any illegal or libellous matter or any infringement of copyright, patent or design in the Services.

9. Commencement and completion of Services

- (a) The Designer is not obliged commence the Services until the Client has accepted the design fee estimate, contract, these terms of service, and provided all relevant information, including, but not limited to, a full brief, copy, compliant "anti-spam" email lists, and any images in a suitable format.
- (b) The Designer will use her best endeavours to complete the Services within the timeframe agreed by the parties. The Client however acknowledges and agrees that:
 - (i) unexpected delays to the delivery of the Services may arise due to the creative nature of design work; and
 - (ii) the Designer is dependent on the Client providing instructions, feedback, materials and approvals in a clear and timely fashion.
- (c) The Designer is not responsible for any failure or delay in performing an obligation if it is due to a force majeure circumstance (i.e. any circumstances outside the Designer's reasonable control).

10. No Exclusivity

- (a) The Designer may provide design services to other Clients.

11. Limitation of liability

The Client agrees and acknowledges that the Designer shall not be liable for any losses, costs, or damages that may be suffered by the Client, including but not limited to losses, costs or damages in respect of:

- (a) the Client's use of the Services.
- (b) unexpected delays to the completion and delivery of the Services;
- (c) intellectual property disputes arising from content displayed on the website created by the Designer for the Client;
- (d) the unauthorised access of the Clients personal data or payment details either stored or transferred from the Client's website;
- (e) failure by the Client's hosting company to backup website data;
- (f) the quality of third party services facilitated by the Designer including but not limited to web hosting (including but not limited to website downtime, hosting performance or other issues associated with the hosting), domain names (including but not limited to cancellation due to the Client's failure to pay renewal fees) and printing;
- (g) search engine optimisation issues;
- (h) Google Apps email failure;
- (i) any technical problem, including but not limited to viruses, hacking and hardware failure; and
- (j) the use of email lists supplied by the Client;