

Standard Terms and Conditions – Aoraki Development Ltd

1. Definitions

- a. “Designer ” shall mean the Fine Art, Graphic Design and Photography business operated by Geoff Cloake and Roselyn Cloake, their employees or agents.
- 1.2 “Client” shall mean the client, or any person acting on behalf of and with the authority of the Client, or any person purchasing Work from the Designer.
- 1.3 “Work” shall mean all creations of designs, artwork, photographs, literary or other artistic work by the Designer, and any products, goods, services, materials and advice provided by the Designer to the Client in relation to the Work.
- 1.4 “Fee” shall mean the cost of the Work as agreed between the Designer and the Client subject to clause 5 of this Agreement.
- 1.5 “Terms and Conditions” shall mean these terms and conditions together with any other specific terms and conditions that may be agreed to in writing by the Designer and the Client.

2. Acceptance

- 2.1 The Designer shall not be bound to provide any Work until the Designer confirms its agreement to do so by commencing performing the work contemplated by this Agreement. Once the Designer agrees to provide the Work the Designer will:
 - a. Provide the Work in accordance with these Terms and Conditions, including providing the Work specified in any job sheet or quote that the Designer has provided to the Client; and
 - b. Liaise with the Client in the course of performing the Work to assist in meeting the Client’s requirements.
- 2.2 Notwithstanding clause 2.1, the Designer may by written notice to the Client alter or replace these Terms and Conditions. All Work performed upon the altered or replaced terms and conditions, unless agreed otherwise in writing.

3. Designer’s Commitment

- 3.1 The Designer will:
 - a. perform the Work with reasonable skill, care and diligence in a professional manner;
 - b. endeavour to ensure the Work is performed in accordance with the time frames agreed with the Client;
 - c. deliver the Client original work, except to the extent that the Client requires, or requests, third party or pre-existing work to be incorporated or used in the Work;
 - d. perform the Work on a non exclusive basis, and the Designer will be free to perform the same or similar work for others without restriction.

4. Client’s Commitment

- 4.1 The Client will give all reasonable assistance to enable the Designer to perform the Work by:
 - a. giving clear instructions;
 - b. providing information, artwork or other materials, including content, to the Designer in a timely manner.

5. Fee

- 5.1 The Designer will invoice the Client for the Fee, being the fee specified in any job sheet or quote that the Designer has agreed with the Client, together with any other fees that the Designer may reasonably charge to the extent that:
 - a. fees for the Work have not been agreed in advance;
 - b. work is performed in addition to the initial instructions, which may include a variation to the initial brief or instructions; and
 - c. the Designer incurs expenses or costs on the Client’s behalf or which are reasonably necessary to carry out the Works and Services.

6. Quotes

- 6.1 Where a quotation is given by the Designer for Work:
 - a. the quotation shall be valid for thirty (30) days from the date of issue; and
 - b. the quotation shall be exclusive of any taxes unless specifically stated to the contrary.
- 6.2 Where Work is required in addition to the quotation the Client agrees to pay for the additional cost of such work.

7. Invoicing

- 7.1 The Designer may require the Client to pay a deposit before commencing the Work.
- 7.2 The Designer may invoice the Client (at its discretion) on completion of the Work, or on a monthly basis, or at other intervals, as the Work progresses.

8. Payment

- 8.1 Payment for the Work shall be made in full on or before the 20th day of the month following the date of the invoice (“the due date”); or
 - a. interest may be charged on any amount owing after the due date at the rate of 5% per month or part month; and
 - b. any expenses, disbursements and legal costs incurred by the Designer in the enforcement of any rights contained in this Agreement shall be paid by the Client, including any reasonable solicitor’s fees or debt collection agency fees.
- 8.2 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

9. Outstanding Fees and Cancellation

- 9.1 If the Client does not pay any amounts payable to the Designer when due the Client will be in default and the Designer may, without limiting any other rights or remedies:
 - a. stop performing the Work;
 - b. require the Client to pay all outstanding Fees, including work not already performed but owing under the Agreement, and cease using any of the Work provided by the Designer until all Fees are paid;
 - c. charge default interest as detailed in clause 8 above.
- 9.2 The Designer may also, without liability to the Client, cancel this Agreement at any time upon notice to the Client if the Client:
 - a. fails to pay the Fees by the due date;
 - b. ceases to carry on business;
 - c. becomes insolvent, has a receiver appointed over some or all of its property, or a resolution is passed for the Client’s liquidation.

10. Ownership

- 10.1 Subject to clause 11 below, the Designer is and will remain the exclusive owner everywhere in the world of all intellectual property rights and interests (including copyright and all other statutory and common law rights and interests) in the Work, and any other work performed by the Designer for the Client, as first owner of those intellectual property rights and interests.
- 10.2 The Designer shall retain exclusive worldwide ownership at all times of its artistic styles, methods of working, techniques, general creative ideas and skills.
- 10.3 The Designer’s staff assert their right to be identified as the author(s) of all Work created by them for the Client and the Designer’s staff do not waive any of their moral rights in any Work created for the Client, and without limitation the Client must:
 - a. attribute all Work to the Designer to the extent that the Work is of a type where attribution can reasonably be given;
 - b. not attribute the Work to anyone other than the Designer or remove any of the Designer’s trademarks, signatures, monograms, devices and the like from the Designer’s Work; and
 - c. not alter, modify or adapt in any way the Designer’s Work without the Designer’s express written consent.

11. Copyright

- 11.1 Upon payment of all Fees to the Designer in accordance with the Terms and Conditions of this Agreement, the Designer assigns to the Client the copyright in the final form of any Work which the Designer has specifically created for the Client for the countries and for the purposes as specified in the quote or instructions, or if not specified, for the countries and for the purposes which would be reasonably expected by in light of the nature of the Client’s request for the Work.

12. Portfolio

- 12.1 The Client agrees that the Designer may use the Work and the Client’s name and identity as part of its portfolio of works for the purposes of promoting and advertising the Designer’s business.

13. Liability

- 13.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may impose warranties, conditions or obligations upon the Designer which cannot by law (or which can only to a limited extent by law) be excluded. Other than as expressly provided for in these Terms and Conditions, the Designer excludes all such imposed warranties, conditions or obligations to the extent permitted by law.
- 13.2 Except for as expressly provided for in these Terms and Conditions, the Designer excludes any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 13.3 Except as expressly otherwise provided by clause 13.1, or 13.2, the Designer shall not be liable for:
 - a. any loss or damage of any kind whatsoever (including consequential loss whether suffered or incurred by the Client or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly) from Work provided by the Designer to the Client; and
 - b. the Client shall indemnify the Designer against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of the Designer or otherwise, brought by any person in connection with any matter, act, omission, or error by the Designer its agents or employees in connection with the Work.

14. Consumer Guarantees Act 1993

- 14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires Work from the Designer for the purposes of a business in terms of section 2 and 43 of that Act.

15. Others’ Intellectual Property

- 15.1 The Client confirms that by providing the Work in accordance with the Client’s brief or instructions, the Designer will not infringe the rights of any third party, or breach any law, and the Designer will not be exposed to any claim from any person whatsoever.
- 15.2 The Client will indemnify and keep indemnified the Designer from and against any and all claims, liabilities, obligations, expenses (including legal costs) or damages that the Designer may suffer or incur as a result of the Client’s breach of clause 15.1.

16. Collection and Use of Personal Information

- 16.1 The Client authorises the Designer to collect, retain and use any information about the Client for the purpose of assessing the Client’s credit worthiness and enforcing any rights under this Agreement.
- 16.2 The Client authorises the Designer to disclose any information obtained to any person for the purposes set out in clause 16.1.
- 16.3 Where the Client is a natural person the authorities under clauses 16.1 and 16.2 are authorities or consents for the purposes of the Privacy Act 1993.

17. Disputes

- 17.1 Any claim or dispute arising hereunder shall be subject to arbitration in accordance with the Arbitration Act 1996. However, nothing in this clause prevents either the Designer or the Client from taking immediate steps to seek equitable relief before an appropriate Court.

18. Assigning Rights

- 18.1 The Client may not assign, transfer or charge these Terms and Conditions, any rights or obligations arising under these Terms and Conditions or the provision of any Work, or the Client’s interest in the Work without the Designer’s prior written consent.

19. Force Majeure

- 19.1 The Designer shall not be liable for delay or failure to perform its obligations under this Agreement if the cause of the delay or failure is beyond its control.

20. No Waiver

- 20.1 Failure by the Designer to enforce any of the Terms and Conditions contained in this Agreement shall not be deemed to be a waiver of any of the rights or obligations the Designer has under this Agreement.

21. Severance

- 21.1 If any provision of this Agreement shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

22. Governing Law

- 22.1 This Agreement will be governed by the laws of New Zealand, and the parties submit to the jurisdiction of the Courts of New Zealand.