

Graphic Design Contract #2

THIS AGREEMENT is dated _____ .

PARTIES

(1) _____ (Designer Company) whose location is at
_____ (Address).

(2) _____ (Customer) whose location is
at _____ (Customer address).

BACKGROUND

The parties have agreed that the Designer shall provide the Customer with graphic design services on the terms and conditions set out in this agreement.

In providing the services as set out in Schedule 1 (Services), the Designer may use:

Any equipment, facilities, materials, information, photography, writings and other creative content provided by Customer (Customer Content);

Any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form together with information and materials provided by the Customer relating to the Services, including data, reports, graphics, illustrations and specifications (In Put Materials); and

All documents, information and materials provided by the Designer relating to the Services which existed prior to the commencement of this agreement, including data, reports, graphics, illustrations and specifications (Pre-existing Materials).

Using all these inputs, the Designer shall provide graphic art prepared by the Designer or its agents, subcontractors, consultants and employees in relation to the Services in any form, including drafts (Deliverables).

BUSINESS TERMS

COMMENCEMENT AND DURATION

The Designer shall provide the Services to the Customer on the terms and conditions of this agreement.

The Designer shall provide the Services from the date first noted above.

Services shall continue to be supplied under this agreement until all the Deliverables required to be supplied by the Designer to the Customer as set out in Schedule 1 are supplied.

DESIGNER'S RESPONSIBILITIES

The Designer shall provide the Services, and deliver the Deliverables to the Customer, in accordance with Schedule 1, and shall allocate sufficient resources to the Services to enable it to comply with this obligation.

Time is of the essence as to, timelines specified in Schedule 1 and the Designer shall meet these. If the Designer fails to do so, the Customer may (without prejudice to any other rights it may have):

- terminate this agreement in whole or in part without liability to the Designer;
- refuse to accept any subsequent performance of the Services which the Designer attempts to make;
- purchase substitute services from elsewhere;
- hold the Designer accountable for any loss and additional costs incurred; and
- have all sums previously paid by the Customer to the Designer under this agreement refunded by the Designer.

The Designer shall:

- co-operate with the Customer in all matters relating to the Services;
- ensure that the Designer's team use reasonable skill and care in the performance of the Services.

The Designer shall:

observe, and ensure that the Designer's team observe, all applicable rules and regulations and any other reasonable requirements that apply to the provision of Services;

notify the Customer as soon as it becomes aware of any legal compliance hazards or issues which arise in relation to the Services; and

before the date on which the Services are to start, obtain, or have the Customer obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:

the Services; and,

the use of Pre Existing Material.

CUSTOMER'S OBLIGATIONS

The Customer shall:

co-operate with the Designer in all matters relating to the Services and appoint;

provide such access to the Customer's data as may reasonably be requested by the Designer; and,

provide the Customer Content and In-put Material reasonably necessary, in order to carry out the Services, in a timely manner, and ensure that it is appropriately licensed, consented, permitted and accurate in all material respects.

CHARGES AND PAYMENT

In consideration of the provision of the Services by the Designer, the Customer shall pay the charges as set out in Schedule 2.

Where Services are provided on a time and materials basis:

the charges payable for the Services shall be calculated in accordance with the Designer's standard daily fee rates for the Designer's team;

the Designer's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day;

the Designer shall not be entitled to charge on a pro-rata basis for part-days worked by the Designer's team unless it has the Customer's prior written consent to do so;

all charges quoted to the Customer shall be exclusive of VAT/GST, which the Designer shall add to its invoices at the appropriate rate. Here VAT: value added tax chargeable under EU law for the time being and any similar, additional tax, chargeable under applicable law. Here GST: tax chargeable under Australian law and any similar, additional tax, chargeable under applicable law.

the Designer shall ensure that the members of the Designer's team complete time sheets recording time spent on the Services. The Designer shall use such time sheets to calculate the charges covered by each monthly invoice; and

the Designer shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT/GST where appropriate) for the month concerned.

Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in Schedule 2. The total price shall be paid to the Designer in instalments, as set out in Schedule 2, with each instalment being conditional on the Designer achieving the corresponding milestone.

Any fixed price and daily rate contained in Schedule 2 excludes VAT/GST, which the Designer shall add to its invoices at the appropriate rate.

The Customer shall pay each invoice which is properly due and submitted to it by the Designer, within _____ days of receipt, to a bank account nominated in writing by the Designer.

If the Customer fails to pay any amount payable by it under this agreement, the Designer may charge the Customer interest on the overdue amount from the due date up to the date of actual payment, after as well as before judgment, at the rate of _____% per annum compounded quarterly.

Invoices covering payment in respect of materials purchased by, or services provided to, the Designer, or for reimbursement of expenses, shall be payable by the Customer only previously approved by the Customer and if accompanied by relevant receipts.

The Designer shall maintain complete and accurate records of the time spent and materials used by the Designer in providing the Services in such form as the Customer shall approve. The Designer shall allow the Customer to inspect such records at all reasonable times on request.

Each party may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the other party against any amounts payable by it to the other party.

QUALITY OF SERVICES

The Designer warrants to the Customer that:

the Designer will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;

the Services will conform with all descriptions and specifications provided to the Customer by the Designer, as set out in Schedule 1; and

the Services and Deliverables will be provided in accordance with all applicable legislation from time to time in force, and the Designer will inform the Customer as soon as it becomes aware of any changes in that legislation.

The provisions of this clause 4 shall survive any performance, acceptance or payment pursuant to this agreement and shall extend to any substituted or remedial services provided by the Designer.

OWNERSHIP

Intellectual Property Rights shall mean all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off, all subsisting in the Deliverables.

All Intellectual Property Rights in the Deliverables arising in connection with this agreement shall be the property of the Customer, and the Designer hereby irrevocably assigns all such Intellectual Property Rights to the Customer, subject to payment of all the Designer's charges as per clause 3. The parties shall execute all documents necessary to give effect

The Designer hereby licenses all such Intellectual Property Rights to the Customer subject to payment of all the Designer's charges as per clause 3:

On an exclusive basis

With full usage and modification rights

For any use

With the option to sublicense

ACCEPTANCE OF DELIVERABLES

If Deliverables are to be directly dispatched to a third party for printing by the Designer, the Customer shall have the right to approve these Deliverables before they are so dispatched.

If such approval is not secured by the Designer, the Customer shall not be obligated to pay the Designer's charges as per clause 3.

GENERAL LEGAL TERMS

WARRANTIES

Each of the parties warrants to the other that it has full power and authority to enter into and perform this agreement.

The Designer shall perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards.

The Designer warrants that use of the Deliverables will be uninterrupted and free of any encumbrances or charges.

LIMITATION OF REMEDIES AND LIABILITY

Nothing in this agreement shall operate to exclude or limit either party's liability for any liability which cannot be excluded or limited under applicable law.

Neither party shall be liable to the other for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.

INTELLECTUAL PROPERTY RIGHTS

The Designer shall indemnify the Customer against all damages, losses and expenses arising as a result of any action or claim of infringement of Intellectual Property Rights of a third party.

The indemnity in clause 9.1 is subject to the following conditions:

the Customer promptly notifying the Designer in writing of the claim;

the Customer making no admissions or settlements without the Designer's prior written consent;

the Customer giving the Designer all information and assistance that the Designer may reasonably require; and

the Customer allowing the Designer complete control over the litigation and settlement of any action or claim.

The Designer shall not use or re-create the look and feel of the Deliverables or anything substantially similar to it.

TERM AND TERMINATION

This agreement shall commence on the Effective Date and shall (subject to earlier termination pursuant to this clause) terminate automatically on acceptance of the Deliverables by the Customer and payment of all outstanding sums.

Either party may terminate this agreement immediately at any time by written notice to the other party if:

that other party commits any material breach of its obligations under this agreement which (if remediable) is not remedied within 14 days after the service of written notice specifying the breach and requiring it to be remedied; or

that other party becomes insolvent or there is a change of control at the other party, or the other party ceases to trade; or

that other party has been subject to a Force Majeure Event (As defined below) for a continuous period of more than 90 days.

On expiry or termination of this agreement:

all licences granted to the Designer under this agreement shall terminate immediately;

the Designer shall promptly return all Customer Content and all copies of the Deliverables, as is, to the Customer; and

all provisions of this agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

DATA PROTECTION

The Designer warrants that, to the extent it processes any Personal Data on behalf of the Customer:

it shall act only on instructions from the Customer; and

it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

FORCE MAJEURE

Force Majeure Event shall mean any event arising which is beyond the reasonable control of the affected party (including any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war).

A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this agreement shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue. The affected party shall take all reasonable steps to mitigate the effect of the Force Majeure Event.

CONFIDENTIALITY

Confidential Information shall mean all information whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

identified as confidential at the time of disclosure; or

ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

The obligations set out in this clause shall not apply to Confidential Information which the receiving party can demonstrate:

- is or has become publicly known other than through breach of this clause; or
- was in possession of the receiving party prior to disclosure by the other party; or
- was received by the receiving party from an independent third party who has full right of disclosure; or
- was independently developed by the receiving party; or
- was required to be disclosed by governmental authority, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

The obligations of confidentiality in this clause shall not be affected by the expiry or termination of this agreement.

This clause supersedes the terms of any Non-Disclosure Agreement between the Designer and the Customer, which is hereby terminated.

NOTICES

A notice given under this agreement:

- shall be in writing in the English language (or be accompanied by a properly prepared translation into English);
- shall be sent for the attention of the person, and to the address, fax number or e-mail address given in this clause (or such other person, address, fax number or e-mail address as the receiving party may have notified to the other, such notice to take effect five days from the notice being received); and
- shall be:
 - delivered personally; or
 - sent by fax or e-mail; or
 - sent by pre-paid first-class post, recorded delivery or registered post; or
 - (if the notice is to be served or posted outside the country from which it is sent) sent by registered airmail.

The addresses for service of notice are:

Customer:

Address: _____

Name: _____

E-mail: _____

Designer:

Address: _____

Name: _____

E-mail: _____

To prove service, it is sufficient to prove that the notice was transmitted by e-mail address of the relevant.

PUBLICITY

All media releases, public announcements and public disclosures by the Designer relating to this agreement or its subject matter, including promotional or marketing material, shall be co-ordinated with the Customer and approved by the Customer prior to release.

ASSIGNMENT

The Designer may not assign or transfer any of its rights or obligations under this agreement. The Customer may assign or transfer any of its rights or obligations under this agreement, provided it gives prior written notice to the Designer.

ENTIRE AGREEMENT

Except as provided in this clause, neither party shall have any remedy in respect of any untrue statement (whether written or oral) made to it on which it relied in entering into this agreement (Misrepresentation), and neither party shall have any liability other than pursuant to the express terms of this agreement. Nothing in this agreement shall exclude or limit either party's liability for any Misrepresentation made knowing that it was untrue. Each party's liability for Misrepresentation as to a fundamental matter, including as to a matter fundamental to that party's ability to perform its obligations under this agreement, shall be subject to the limit set out in the Limitation of Liability clause.

THIRD PARTY RIGHTS

The right of the parties to terminate, rescind, or agree any amendment, variation, waiver or settlement under this agreement is not subject to the consent of any person who is not a party to this agreement.

This agreement is made for the benefit of the parties to it and is not intended to benefit, or be enforceable by, any other person.

VARIATION AND WAIVER

A variation of this agreement shall be in writing and signed by or on behalf of both parties to this agreement.

A waiver of any right under this agreement is only effective if it is in writing, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.

Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

SEVERANCE

If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the original commercial intention of the parties.

This agreement has been entered into on the date stated at the beginning of it.

Services (Schedule 1)

(Schedule 2 found on next page.)

Pricing (Schedule 2)
