Terms and Conditions

1. DEFINITIONS

1.1 In these terms and conditions:

(a) "Designer" means Jane Comben trading as Pogo Design, and her employees and agents.

(b) "Client" means any person or company at whose request work is performed by the Designer.

(c) "Work" means all creation 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.

2. THIS AGREEMENT

2.1 These terms and conditions apply to all Work performed by the Designer for the Client.

2.2 The Designer will provide a copy of these terms and conditions to the Client. The Client's acknowledgement of receipt of these terms and conditions, or the Client's acceptance of a quote or estimate in which these terms and conditions are attached or are referenced in, will constitute acceptance. Upon acceptance, these terms and conditions will be binding.

2.3 The terms and conditions of this Agreement prevail over the terms contained in any standard conditions of sale or any previous discussion, unless previously agreed.

3. DESIGNER'S COMMITMENT

3.1 The Designer will:

(a) perform the Work with reasonable skill, care and diligence and in a professional manner;

(b) endeavour to ensure the Work is performed in accordance with the time frames agreed with the Client; and

(c) deliver the Client original work, except to the extent that the Client requires or requests that third party or pre-existing work be incorporated or used in the Work.

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; and

(b) providing information, artwork or other materials, including content, to the Designer in a timely manner.

5. NON-EXCLUSIVITY

The Designer performs the Work on a non-exclusive basis, and is free to perform the same or similar work for others without restriction.

6. INVOICING

6.1 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.

6.2 All fees are exclusive of Goods and Services Tax.

7. PAYMENT

7.1 The Client agrees to pay the Designer by the 20th of the month following receipt of invoice, or as otherwise agreed between the Client and the Designer. Please note: We apply a surcharge to payments made using a credit card, which is in line with our cost of acceptance.

7.2 The Designer reserves the right to require either security or payment in advance in some cases before delivery of any particular order.

7.3 If the Client fails to make a payment by the due date of the invoice the Client shall, at the Designer's request, be liable to pay the Designer:

(a) default interest on the amount outstanding calculated at an annual rate of 3% over the Official Cash Rate of the Reserve Bank of New Zealand ruling on the date payment is due; and

(b) all expenses, including collection costs from obtaining the services of a debt collection company and/or legal fees in relation to any overdue amount. These will be added to the Client's account and the Client is liable for their payment.

7.4 In the event that work is postponed at the request or inactivity of the Client for more than 14 days, the Designer shall have the right to bill pro rata for work completed through the date of that request or cessation, while reserving all other rights.

7.5 Title to all deliverables shall remain with the Designer until full payment of all amounts owing by the Client is received.

8. QUOTATIONS AND ESTIMATES

8.1 Where a quotation or estimate is given by the Designer for Work:

(a) the quotation or estimate shall be valid for 21 days from the date of issue; and

(b) the quotation or estimate shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.

8.2 Where additional Work is required in addition to the quotation or estimate the Client agrees to pay for the additional cost of the Work.

9. INTELLECTUAL PROPERTY

9.1 The Designer shall retain the copyright and all other intellectual property and ownership rights in Work until all fees and all other amounts owing by the Client under this Agreement or brief or any other contract with the Designer, have been paid in full.

9.2 Subject to clause 9.6, upon full payment of all amounts owing by the Client, the Designer will transfer the copyright and all other intellectual property and ownership rights in the Work to the Client.

9.3 Where, as part of the Work produced for the Client, the Designer uses work produced by a third party, the Designer will provide the Client with the relevant third party licence terms, which will either be entered into by the Designer or by the Client directly. Where the Designer holds the third party licence, the Designer will prepare the Work in accordance with this licence.

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9.4 The Designer warrants that the Work will not infringe the intellectual property rights of any third party. This warranty will not apply in respect of third party work used in the Work where the Client holds the third party licence directly.

9.5 The Client warrants that by providing material in accordance with the Client's brief or instructions, the Client will not cause the Designer to 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.

9.6 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 9.4.

9.7 Upon acceptance of the Work, the Client grants the Designer a perpetual, royalty free, irrevocable licence to use the Work provided by the Designer to the Client, including the Client's name, for the purposes of business development or marketing the Designer's business.

10. PROOFING

Proofs of all work may be submitted for the Client's approval and the Designer shall incur no liability for any errors not corrected by the Client in proofs so submitted.

11. ACCEPTANCE OF WORK

The Client will notify the Designer of any fault in workmanship within 7 days of delivery. All Work delivered to the Client will be considered accepted, unless notice to the contrary is received within 7 days.

12. CANCELLATION

12.1 In the event of cancellation by the Client the Client shall pay a cancellation fee calculated pro rata for Work completed through the date of the cancellation request and the Designer will, at the Client's request, deliver Work completed at that date. The invoice upon cancellation shall be payable within 30 days of the Client's notification to stop work or the delivery of Work, whichever occurs sooner.

12.2 The Designer shall have the right to cancel the Work if the Client does not meet the Client's commitments, as set out in clause 4. This right will not be exercised unreasonably.

13. THIRD PARTY PROVIDERS, CONTRACTORS AND EMPLOYEES

13.1 The Designer may engage contractors, employees and/or third party suppliers in order to complete the Work. Where the Designer engages contractors at the Client's request, the Designer shall be acting as the agent of the Client, and is not liable for the performance or remuneration of those contractors.

13.2 Where third party goods and/or services are used for the Work, the Designer makes no representation as to, and takes no responsibility for, the quality or fitness for purpose of those goods and/or services (regardless of whether the third party services are brokered or arranged by the Designer). No responsibility is taken by the Designer for third party services (e.g. printers/chain of manufacture/web hosting etc.).

14. DISPUTE RESOLUTION

The Designer will endeavour to resolve any dispute between the Client and itself without the need for Court proceedings. Any such attempt is without prejudice to each party's rights under these terms and conditions.

15. FORCE MAJEURE

The Designer shall not be liable for any loss or damage arising directly or indirectly due to an act of God, fire, armed conflict, labour disputes, civil commotion, intervention of a government, accidents, interruption to transportation or telecommunications, weather or any other cause outside the Designer's reasonable control.

16. CONSUMER GUARANTEES

16.1 The Consumer Guarantees Act 1993, or equivalent legislation, may apply to the Work provided by the Designer if the Client acquires the Work for personal, domestic or household use or consumption. If this Act applies, nothing in this Agreement will limit or exclude the Client's rights under that Act.

16.2 If the Client is acquiring the Work for business purposes, then the Client's rights are subject to this Agreement only and the Consumer Guarantees Act 1993 shall not apply.

17. DESIGNER NOT LIABLE FOR LOSSES

17.1 Subject to clause 16:

(a) The Designer shall not be liable for:

(i) any loss or damage arising by reason of any delay in the completion or delivery of the Work; or

(ii) any loss of profits or anticipated savings or loss of data; or

(iii) any indirect or consequential loss of whatever nature; or

(iv) any loss resulting from any errors or omissions arising from incorrect information provided by the Client, or failure by the Client to provide information, or a misinterpretation of a Client's verbal instructions where these were not followed up in writing.

(b) Aside from as specifically provided in writing, the Designer accepts no responsibility and will not be liable under any circumstances for archiving, storage or backups of the Work or constituent/preliminary materials.

18. LIABILITY CAP

Subject to clause 16, the Designer's liability to the Client for any and all costs, loss or damage suffered by the Client, however caused (including negligence), arising out of or connected with the performance or failure of performance of any Work supplied by the Designer shall not exceed the full value of the payments made by the Client for such Work under this Agreement.

19. ASSIGNMENT

This Agreement shall not be assigned or transferred by the Client without the prior written consent of the Designer. This consent will not be unreasonably withheld or delayed.

20. CURRENCY AND LANGUAGE

Currency amounts are in New Zealand dollars unless otherwise stated, and all communications between the parties must be in English.

21. RELATIONSHIP

21.1 Nothing in this Agreement shall be construed as evidence of a joint venture or partnership between the parties, and no provision of this Agreement shall empower a party to act on behalf of the other in any way, or to incur any liability on behalf of the other.

21.2 The Designer is not an employee of the Client.

22. GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.

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