

terms & conditions : standard terms (print/web)

PLEASE READ THE TERMS & CONDITIONS LAID OUT BY WAGTAIL DESIGNS. WE ARE NOT A LENDING INSTITUTION AND THAT (FOR US TO CONTINUE TO PROVIDE YOU WITH HIGH QUALITY AND EFFICIENT SERVICE AND PRODUCTS) IT IS IMPORTANT YOU ADHERE TO THE CONDITIONS YOU AGREE TO WITHIN.

THESE CONDITIONS, WHICH ARE CONSTRUED UNDER AUSTRALIAN LAW, ARE APPLICABLE TO WAGTAIL DESIGNS AND SHOULD BE READ IN CONJUNCTION WITH OTHER DOCUMENTS AND/OR THE CORRESPONDENCE COMPRISING OUR OFFER.

THE CONTRACT FOR ALL FORMS OF GRAPHIC DESIGN, PRINT MANAGEMENT AND WEB BASED SERVICES ARE TO BE BASED ON THE CONDITIONS HEREIN OR DETAILED IN THE CONTRACTUAL ESTIMATE/QUOTATION(S).

1 GENERAL TERMS

- 1.1 This agreement is entered into between WagTail Designs (hereinafter referred to as "company") and the purchaser of services or goods from the "company" (hereinafter referred to as "Client").
- 1.2 These terms apply to all WagTail Designs clients from the first point of financial contact.
- 1.3 These Terms & Conditions supersede any previous Terms & Conditions distributed in any form. WagTail Designs reserves the right to change any rates and any of the Terms at any time and without prior notice.

2 FEES

2.1 FEE PAYABLE

Accounts will be rendered either monthly as the work proceeds or in stage payments if previously agreed. Payment of all accounts and invoices without retention or discount is required within seven days from the date of invoice.

A 50% deposit is required on all Supplies with a price above \$500 which is at the discretion of WagTail Designs. The amount is non-refundable and is due immediately upon the signing of the contract.

The remaining 50% will be invoiced per stage with progress payments and subject to the terms of Clause 11.4 Approval of Work and Clause 10.1 Termination of Services.

WagTail Designs reserves the right not to begin the Work until the said deposit has been paid in full. No final artwork or files will be delivered until final invoices are paid in full. Payment by cheque or bank transfer will entail waiting for clearance before supply of files.

2.2 FEE ESTIMATIONS

As every project is different, fees may vary per project.

Variables that may affect this are, but not limited to :

- time duration of each project
- amount of information provided by the Client
- amount of resources in images or graphics provided by the Client
- amount of resources in images, graphics or copy provided by WagTail Designs
- research
- imaging services (photo touchups, montages etc)
- file conversions (image to vector)
- third party fees
- billable expenses (eg. travel/research, delivery, photocopying/printing, etc)

3 DESIGN CONTENTS

- 3.1 The Client will be solely responsible for the content of all "Project(s)" undertakings. WagTail Designs is not responsible for proofreading any content unless specifically agreed.
- 3.2 WagTail Designs makes no representations to the Client concerning the content or functionality of Client's "Project(s)" undertaking. It is the Client's responsibility to ensure that it meets Clients requirements.

- 3.3 If the Client provides WagTail Designs with goods, materials, photographs, film, data or information to be used in any or all form, the Client hereby warrant that these do not infringe the rights of third parties and indemnify WagTail Designs against any action taken against the Client by any such third party.

- 3.4 Without limiting the generality of the foregoing, WagTail Designs agree not to infringe the copyright trademark, privacy or personal or proprietary rights of third parties, supply libelous, abuse, obscene material or disparage the products or services of any third party.

- 3.5 WagTail Designs can source a range of (watermarked demo or there alike) stock images for the Clients. These stock images must be purchased prior to use on final project artwork and will be in addition to the original quoted fee, unless otherwise stated.

4 CHANGES TO INITIAL BRIEF

- 4.1 If WagTail Designs sees that any item requested by the Client does not fit within the initial brief or sale agreement, the Client will be notified immediately. These additions will either be quoted separately, or charged as an extra at full hourly rates.

5 DESIGN PROJECT DURATION

- 5.1 Design Project Duration, an indication by WagTail Designs of a design project's duration is to be considered by the Client to be an estimation. WagTail Designs cannot be held responsible for any project over-runs, whatever the cause.

Estimated project duration should be deemed to be from the date that WagTail Designs receives cleared funds for the initial payment or by date confirmed in writing by WagTail Designs.

6 CONTINGENCY TERMS

- 6.1 Services such as printing, website uploading, publishing etc, either contracted on the Clients behalf constitute a separate project and can be treated as a separate charge.

7 PRINT MEDIA TERMS

- 7.1 With all printing there may be some colour variations from what WagTail Designs have seen on screen, to what the final product looks like, and previous orders. This is due to the nature of CMYK printing and bulk-run printing system. There will be no reprints at our expense.

8 RIGHTS AND RESPONSIBILITIES

8.1 RIGHT TO TERMINATE

WagTail Designs reserves the right to refuse or break a contract without prior notice, if it is believed that the Client, their Website, or any material is illegal, immoral or otherwise unacceptable.

8.2 EVENTS BEYOND THE CONTROL OF WAGTAIL DESIGNS

WagTail Designs will not be liable for breach of contract where that breach was due to software, hardware or electrical failure, natural events such as fire or other events beyond the control of WagTail Designs.

8.3 SUPPLY & PRICING OF SERVICES

WagTail Designs reserves the right to use whoever it feels appropriate at the time for third party software and services, and to alter its prices as necessary without prior notice and without affecting existing contractual pricing agreements.

9 SUSPENSION OF SERVICES

- 9.1 WagTail Designs reserves the right to suspend services in any case where the Client failed to perform the obligations under this agreement. If payment for services is not received within the terms of the payment stipulated by WagTail Designs, any design work commissioned from WagTail Designs by the Client, will cease until payment is confirmed and completed.

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10 TERMINATION OF SERVICES

10.1 WagTail Designs may discontinue services if an amount payable is overdue by more than 7 days. In any such event, the Client remain liable for the total cost of the contract including all disbursements, unless otherwise agreed between the parties.

11 COMPLETION OF WORK AND PAYMENT

11.1 COMPLETION OF WORK

WagTail Designs warrants completing the Work in accordance with its *Standard Terms* to the specifications previously agreed with the Client. WagTail Designs will not charge more than the amount previously agreed unless the Client has varied the specifications of the Work since the agreement. WagTail Designs will not undertake changes to the specifications of the Work which would increase the cost, without prior written authorisation from the Client.

WagTail Designs will use all reasonable endeavours to meet quoted completion dates. However, time is not the essence of the Contract and WagTail Designs will not be liable in cases of late reporting, however caused, nor shall lateness be deemed to be a breach of the Contract or an act of negligence.

11.2 SUPPLY OF MATERIALS

The Client is to supply all materials and information required for WagTail Designs to complete the Work in accordance with the agreed specification. Such materials may include, but are not limited to, photographs, written-copy, logos and other printed materials. Where the Client's failure to supply such materials leads to a delay in completion of the work, WagTail Designs has the right to extend previously agreed deadlines for the completion of the Work by a reasonable amount. Where the Client's failure to supply materials prevents progress on the Work for more than 21 days, WagTail Designs has the right to invoice the Client for any part or parts of the Work already completed.

11.3 CLIENT'S ALTERATIONS

Client alterations are any requested changes to : design, structure or content, mechanicals or disks produced correctly; which vary from the original brief or changes requested after approval of that project stage has been received. However, no additional payment shall be made for changes required to conform to the original assignment description.

There shall be no charges to the Client for revisions, corrections or additions made necessary by errors on the part of WagTail Designs. Any changes and additions not due to the fault of WagTail Designs and requested by the Client before the approval of the Work are not considered Client's Alterations.

Any other changes requested by the Client shall be considered Client's Alterations if they are requested after the acceptance of the Work.

The Client shall be responsible for making additional payments at the rate noted herein for any Client's and or any other changes in original assignment requested by the Client. However, no additional payment shall be made for changes required to conform to the original assignment description.

11.4 APPROVAL OF WORK

On completion of the Work, the Client will be notified and have the opportunity to review it. The Client should notify WagTail Designs in writing, of any unsatisfactory points within 7 days of receipt of such notification. Any of the Work which has not been reported in writing to WagTail Designs as unsatisfactory within the 7 day review period will be deemed to have been approved. Once approved, or deemed approved, work cannot subsequently be rejected, and the contract will be deemed to have been completed and the 50% balancing payment under Clause 2.1 Fee Payable will become due. The Contract will remain in effect until all obligations have been completed in terms of this Clause.

11.5 PAYMENT

Upon completion of 7 day review period, WagTail Designs will invoice the Client for the 50% balancing payment in accordance with Clause 2.1 Fee Payable hereof, which, in the absence of agreement to the contrary, is to be paid by the Client within 14 days of the date that the invoice was issued.

11.6 REMEDIES FOR OVERDUE PAYMENT

If payment has not been received by the due date, WagTail Designs has the right to suspend ongoing work for Client, until such time that full payment of the outstanding balance has been received. If full payment has still not been received 7 days after the due date, WagTail Designs has the right to replace, modify and revoke the Client's licence of the Work until full payment has been received. By revoking the Client's licence of the Work, WagTail Designs does not remove the Client's obligation to pay any outstanding monies owing.

12 INTELLECTUAL PROPERTY

12.1 OFFERS & PROPOSALS

Offers and proposals made by WagTail Designs to potential clients should be treated as trade secrets and remain the property of WagTail Designs. Such offers and proposals or the information contained within them must not be passed to third parties or publicly disseminated without prior written authorization from WagTail Designs. This includes, but is not limited to, technical features, functionality, aspects of the design and pricing information.

12.2 WARRANTY BY CLIENT AS TO OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

The Client will obtain all the necessary permissions and authorities in respect of the use of all copy, graphic images, registered company logos, names and trademarks or any other material it supplies to WagTail Designs for inclusion on the Website. The conclusion of a contract between WagTail Designs and the Client shall be regarded as a guarantee by the Client to WagTail Designs that all such permissions and authorities have been obtained and that the inclusion of such material on the Website would not constitute a criminal offence or civil delict. By agreeing to these terms and conditions, the Client removes the legal responsibility of WagTail Designs and indemnifies the same from any claims or legal actions however related to the content of the Client's site.

12.3 Title of any goods purchased does not pass at law until payment in full of the account to which the goods and services relate.

12.4 Notwithstanding Clause 12.1, copyright and all intellectual property rights of artwork prepared by WagTail Designs for the Client shall remain vested in WagTail Designs unless otherwise negotiated. This includes all source files (Adobe Photoshop, InDesign, Illustrator, Flash, etc), in accordance with the Australian Graphic Designers' Association (AGDA) intellectual property guidelines. WagTail Designs is under no obligation to provide the Client with such source files unless specifically negotiated and noted in writing.

13 LICENSES

13.1 All artwork created for the Client by WagTail Designs are assigned a license of use. This license of use cannot be transferred to another 3rd party unless otherwise separately stated by WagTail Designs.

13.2 All creation files remain the property of WagTail Designs. WagTail Designs shall be free to reproduce, use and distribute any item unless specifically agreed otherwise. Further, WagTail Designs shall be free to use any ideas, concepts, know-how or techniques acquired in construction of sites for any purpose whatsoever, including but not limited to developing, manufacturing and marketing products or other items incorporating such information unless specifically agreed otherwise.

13.3 Any design, copywriting, drawing, idea or code created for the Client by Wagtail Designs, or any of its contractors, is licensed for use by the Client on a one-time only basis and may not be modified, re-used or re-distributed in any way or form without the express written consent of WagTail Designs and any of its relevant sub-contractors.

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14 LIABILITIES

- 14.1** Under no circumstances shall WagTail Designs be liable to the Client for an indirect or consequential loss suffered by the Client relying on information included in the artwork prepared by WagTail Designs including (without limitation) loss of profit, loss of Contracts or pure economic loss. Any liability is strictly limited to the direct losses associated with remedial costs of the artwork only, not to include claims for delays, out of sequence working, non productive overtime, award of costs, etc. Liability to any third party for any reasons is specifically excluded unless separately agreed in writing.
- 14.2** The total liability of WagTail Designs is to the Client only whether as to specie, quantum or duration of liability, no other obligations are to be implied into the Contract, whether as to the giving of bonds, warranties or guarantees unless expressly detailed therein.
- 14.3** WagTail Designs will use all reasonable endeavor to meet quoted completion dates. Time is of essence in the Contract. WagTail Designs will make everything possible to comply but not be liable in cases of late reporting, however, caused, nor shall lateness be deemed to be a breach of Contract or an act of negligence.
- 14.4** All terms conditions, warranties, undertakings, inducements and representations, whether express or implied, statutory or otherwise relating to the provisions of services by WagTail Designs not contained in the Contract are excluded and WagTail Designs will not accept liability for any loss or damage (including consequential loss or damage) however caused (whether by negligence or otherwise) which may be suffered or incurred or which may arise directly or indirectly with respect to the service.
- 14.5** The Client will remain liable for all fees during any period when work have been discontinued or suspended due to a failure on Client's part to comply with these Terms & Conditions.

15 DISCLAIMER

- 15.1** WagTail Designs makes no warranties of any kind, express or implied, for any and all products and/or services that it supplies.
- 15.2** WagTail Designs will not be held responsible for any and all damages resulting from products and/or services that it supplies.
- 15.3** WagTail Designs is not responsible for any loss, or consequential loss of data, or non-delivery or products or services, of whatever cause. While we take reasonable steps to investigate the materials we recommend, we accept no responsibility for the performance or quality of materials or any consequential loss arising from their failure.
- 15.4** The Client agrees not to hold WagTail Designs responsible for any such loss or damage.
- 15.5** Any claim against WagTail Designs shall be limited to the relevant fee(s) paid by the customer.
- 15.6** WagTail Designs reserves the right to use the services of sub-contractors, agents and suppliers and any work, content, services and usage is bound by their Terms and Conditions.

15.7 CONSEQUENTIAL LOSS

Under no circumstances will WagTail Designs be responsible or liable for financial or other loss or damage caused by the failure or use or misuse of its software. The Client should ensure that data on their site is regularly backed up and that a contingency plan is in place to minimize possible losses as a result of software failure.

15.8 STATUS AND DURATION OF OFFERS

Proposals and offers are valid for a period of sixty days from the date issued. WagTail Designs is not bound to honour offers that have expired. Offers are not legally binding until an acceptable timetable for the work has been agreed by both parties. This timetable must be agreed within the thirty days that the offer is valid. If an acceptable timetable has not been approved by both parties within thirty days of the offer being made, the offer is deemed to have expired.

16 INTEPRETATION

16.1 CHANGE OF TERMS & CONDITIONS

These Terms & Conditions may change from time to time without prior notice.

16 DESIGN SAMPLES / CREDITS

- 16.1** The Client agrees to supply for free, in addition to fees for service, any number up to 10 of printed samples of every item produced for the Client by WagTail Designs during the course of this project (quantity to be specified by us).
- 16.2** The Client agrees to allow a small credit with a link to the front page at www.wagtaildesigns.com on the footer of any/all pages designed by WagTail Designs. Removal of this credit constitutes a breach of these terms and conditions. This will usually be in the form of a small logo or line of text placed towards the bottom of the page.
- 16.3** The Client also agrees to allow WagTail Designs to showcase any/all work created in the course of a project as part of WagTail Designs portfolio. WagTail Designs acknowledges the confidential nature of projects and agrees to only display project work once product/site has been publicly launched/commenced.

17 DEFINITIONS

17.1 THE COMPANY

WagTail Designs - Product & Services Provider.

17.2 SUPPLY, SUPPLIES, ARTWORK, THE WORK

Graphic design labour, all web services, all hosting services, all print media.