

## SHARP GRAPHIC DESIGN - TERMS OF SERVICE

Kelly Sharples ABN 66 802 991 979 trading as Sharp Graphic Design (“Sharp Graphic Design”) provides broad range of graphic design services including but limited to brand development, logo creation, and graphic design services for websites, social media and product packaging (“graphic design services”). You, the client (“you”, “your”, “yours”) have engaged Sharp Graphic Design to provide the graphic design services, the particulars of which are set out in the most current graphic design services proposal provided to you by Sharp Graphic Design (“proposal”). Sharp Graphic Design agrees to provide you with the graphic design services on the terms of the agreement.

Upon your acceptance of the quote, you agree that you have entered into an agreement consisting of: (1) the quote; (2) all tax invoices issued to you by Sharp Graphic Design in accordance with the graphic design services; and (3) the terms of service below (collectively (1), (2) and (3) are hereon referred to as the “agreement”).

### 1. The Graphic Design Services

#### 1.1 General

Sharp Graphic Design will always endeavour to do its best to provide you with the graphic design services in a professional, courteous and diligent manner. Sharp Graphic Design’s ability to provide the graphic design services is subject to your timely cooperation and you agree to do all things reasonably necessary to ensure that Sharp Graphic Design can meet its obligations in providing the graphic design services to you.

#### 1.2 Scope of graphic design services

Sharp Graphic Design will provide you with a proposal that includes the scope of the graphic design services and an estimate of the fees payable for the graphic design services set out in the proposal. Hours accrued beyond the scope of the graphic design services set out in the proposal will be payable in accordance with the Service Fee set out in clause 2 proposal]

#### 1.3 Print Services

Where the graphic design services include outsourcing of printing services on your behalf, you must pay Sharp Graphic Design for all printing service disbursements in advance of Sharp Graphic Design ordering the printing services on your behalf. You acknowledge and accept that once all concepts and proofs have been approved by you, Sharp Graphic Design is not responsible nor liable for any misspellings or errors in the final print work for which you have given prior approval.

### 2. Service Fee and Payment

#### 2.1 Service Fee

In consideration for Sharp Graphic Design providing the graphic design services to you, you must pay all fees (including disbursements) for the graphic design services in accordance with any proposal and any additional fees due for work provided outside the scope of the proposal but in accordance with your prior instructions, or your approval (“service fee”).

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## 2.2 Payment

- (a) You must pay Sharp Graphic Design the service fee on the payment terms set out in the tax invoice. Where no terms of payment are specified in the tax invoice, you will make payment within 7 days of receiving a valid tax invoice from Sharp Graphic Design, unless otherwise agreed.
- (b) You are liable for payment of all service fees and any disbursements or third party fees and charges incurred during the provision of the graphic design services, as and when such fees and charges fall due.
- (c) If the service fee or a portion of the service fee (eg, deposit) is not paid in full by the due date set out in the tax invoice, then Sharp Graphic Design reserves the right to suspend, cancel or terminate all or any of the graphic design services until all outstanding payments have been received in full. Failure to pay the service fee in full by the due date is a serious breach of this agreement.
- (d) Sharp Graphic Design reserves the right to increase its prices from time to time without prior notice to you. Notwithstanding, Sharp Graphic Design will not increase the service fee proposed to you for graphic design services accepted by you within the timeframe stated in the proposal.

## 2.3 Taxes

- (a) Consideration under the agreement excludes GST, unless expressly specified otherwise. Where GST is payable by an entity in relation to a supply that it makes under or in connection with the agreement, and the consideration for that supply excludes GST, the party providing the consideration will pay an additional amount equal to the GST when any part of the consideration is first payable.
- (b) Subject to clause 2.3(a), the service fee is exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with the agreement. Without limiting the foregoing, you will be liable for any taxes, duties or charges imposed in connection with the agreement, and will pay to Sharp Graphic Design the amount of any tax, duty or charge imposed on Sharp Graphic Design in connection with the agreement.
- (c) "GST" means the Goods and graphic design services Tax levied under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## 3. Intellectual property

- (a) As between the parties, you own all intellectual property provided by you to Sharp Graphic Design and Sharp Graphic Design owns all intellectual property in connection with the graphic design services, with the exception of the copyright in any newly developed material created for you as part of the graphic design services, which vests in and is assigned to you on and from the date Sharp Graphic Design receives full payment of the service fee.
- (b) Sharp Graphic Design grants you a non-exclusive, worldwide licence to use Sharp Graphic Design's intellectual property to the extent necessary for you to use intellectual property in connection with the graphic design services, and the agreement.
- (c) You grant Sharp Graphic Design a non-exclusive licence to use your intellectual property, to the extent necessary for Sharp Graphic Design to provide the graphic design services and for advertising and promoting Sharp Graphic Design's graphic design services.
- (d) You are solely responsible for ensuring that you, your personnel, related parties or any of your licensees have all necessary rights and permissions to use, licence and register, as the case may be, any intellectual property arising from graphic design services including the material.
- (e) You indemnify, release and hold harmless Sharp Graphic Design from and against any

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claims or allegations of intellectual property infringement or breach of any laws as a result of:

- (i) material provided to Sharp Graphic Design by you or your personnel; or
  - (ii) you or your personnel's use of the graphic design services.
- (f) "intellectual property" means any and all intellectual and industrial property throughout the world including rights in respect of or in connection with: confidential information; copyright; inventions (including patents); trade marks (registered and unregistered); and designs, circuit layouts, whether or not now existing, and whether or not registered or registrable and includes the rights to apply for the registration of such right and includes all renewals and extensions.
- (g) "material" means any material in any form such as artwork, online content, logos, instructions, terms and conditions, privacy statements or policies, brochures or other promotional material and includes any other works comprising intellectual property that are used for the graphic design services.
- (h) The rights granted to you in this clause 3 are subject to your compliance with all of your obligations under this agreement.

## 4. Confidentiality

- (a) Except where permitted by clause 5(c), each party will keep confidential and must procure that each of their respective personnel, professional advisers and attorneys keeps confidential, the existence of and the terms of the agreement, all negotiations between the parties in relation to the subject matter of the agreement, and all other information given to it under the agreement.
- (b) Confidential information includes, but is not limited to, matters not generally known in the public domain, such as developments relating to existing and future products and services marketed or used or to be marketed or used, or rejected, by the disclosing party and persons dealing with the disclosing party and also information relating to the general business operations with the disclosing party.
- (c) Nothing in the agreement prevents a person from disclosing matters referred to in clause 5(a):
- (i) with the prior written approval of the party; or
  - (ii) where the matter has come into the public domain otherwise than as a result of a breach by any party of the agreement.

## 5. Liability and indemnity

- (a) You acknowledge that Sharp Graphic Design makes no representation or warranty regarding the graphic design services. To the extent permitted by law, all express or implied warranties, representations, guarantees, statements, terms and conditions relating to Sharp Graphic Design and the graphic design services, not expressly set out in the agreement, are excluded.
- (b) To the extent that Sharp Graphic Design cannot exclude consumer guarantees or terms implied by law, Sharp Graphic Design's total aggregate liability for any breach of those terms is limited at its option to:
- (i) in the case of goods, either replacing or repairing the goods or paying the cost of replacing or repairing the goods; and
  - (ii) in the case of services, either resupplying the services or paying the cost of resupplying of the services.
- (c) To the extent permitted by law and without limiting any other term of the agreement:

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(i) Sharp Graphic Design's liability to You and Your personnel, whether for breach of the agreement, in tort (including negligence) or otherwise, is limited to the total amount of the service fee paid by You to Sharp Graphic Design under the agreement in the 12 months preceding the event giving rise to liability or \$600, whichever is the lesser; and

(ii) Sharp Graphic Design will have no liability to you or your personnel, contractors or licensees for any loss of profits, loss of savings, loss of funds, loss of revenue, loss or corruption of data, or consequential, indirect or special loss.

(d) You agree to indemnify and hold harmless Sharp Graphic Design, its personnel, contractors, and licensors, and their respective personnel, from and against any and all claims and expenses (including legal fees) arising out of Your or Your personnel's use of the graphic design services, including but not limited to Your breach of the agreement.

(e) Nothing in this clause 5 is intended to exclude Sharp Graphic Design's compulsory legal obligations under the Competition and Consumer Act 2010 (Cth) or any other laws for that matter. For the avoidance of doubt, Sharp Graphic Design complies with Australian Consumer Laws.

## 6. Postponement or cancellation

Notwithstanding any other provision of the agreement to the contrary, if You cancel or postpone the graphic design services at any time during the agreement, You are responsible for payment of all expenses incurred up to the date of cancellation or postponement, and You may also be charged up to 50% of Sharp Graphic Design's service fee. However, if notice of cancellation or postponement is given by you less than 1 business day prior to the provision or completion of graphic design services, you may be charged up to 100% of the service fee. All fees charged in accordance with this clause 6 are at Sharp Graphic Design's discretion, acting reasonably.

## 7. Term and termination

### 7.1 Term

The agreement commences from the date of your acceptance and continues until the graphic design services proposed to you are completed and full payment is received, or it is otherwise terminated in accordance with clause 7.2.

### 7.2 Termination rights

Either party may terminate the agreement, in part or whole, immediately by written notice to the other where the other party:

(a) ceases to operate its business or becomes subject to any form of insolvency or bankruptcy administration; or

(b) is in breach of the agreement and, where the breach is capable of being remedied, has failed to remedy the breach within 7 days after being given notice requiring it to remedy the breach; or

(c) there is a serious breach of the agreement including a breach of clauses 2, 3 or 4.

### 7.3 Actions on termination

Upon termination of the agreement:

(a) By Sharp Graphic Design, all rights granted to you herein cease and you and your personnel must immediately stop using the graphic design services including use of any intellectual property of Sharp Graphic Design.

(b) Each party will deliver up the other party's material to the respective owner within 7 days after termination.

## 7.4 Effect of termination

Termination of the agreement will not affect the operation of any clause expressed or intended to operate after termination or any rights or remedies already accrued to a party under, or in respect of any breach of, the agreement.

## 8. General

### 8.1 Assignment

A party will not assign its rights under the agreement without the prior written consent of the other party, which will not be unreasonably withheld.

### 8.2 Entire agreement

The agreement constitutes the entire agreement between you and Sharp Graphic Design in relation to its subject matter.

### 8.3 Compliance

You will comply with all applicable laws, by-laws, regulations, codes of practice, policies and standards ("laws"). You indemnify, release and hold harmless Sharp Graphic Design and its personnel for your or your personnel's breach of any laws.

### 8.4 Force Majeure

If a party is prevented from or delayed in performing an obligation by force majeure and promptly acts to mitigate or remove the force majeure and its effect, then the obligation is suspended during, but for no longer than, the period the force majeure continues and any further period that is reasonable in the circumstances.

In this agreement, "force majeure" means an event beyond the reasonable control of the affected party, which occurs without the fault or negligence of the affected party.

### 8.5 Governing law and jurisdiction

The agreement is governed by and construed in accordance with the laws of Victoria, Australia and the parties irrevocably submit to the jurisdiction of the courts of Victoria, Australia.

### 8.6 Parties' relationship

The relationship between the parties is that of principal and independent contractor. Nothing in the agreement will be taken as establishing you as an agent of Sharp Graphic Design without the express written authority of Sharp Graphic Design.

### 8.7 Severability

If any part of the agreement is or becomes illegal, void or unenforceable, this does not invalidate the rest of the agreement.

### 8.8 Waiver

Failure or omission by a party to require strict or timely compliance with any provision of the agreement will not affect any right of that party to remedies it may have in respect of any breach of a provision.

## 9. Interpretation

(a) In the agreement, unless the context provides otherwise:

(b) A reference to personnel means a party's officers, employees and agents.

(c) An expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity.

(d) A reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.

(e) Words including a singular number or word include plural numbers or words and vice versa; and words including a gender includes all other genders.

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- (f) A reference to a statute (eg, law or regulation) includes all amendments to that statute passed in substitution for that statute.
- (g) A reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of the agreement.
- (h) Except for the purpose of identification, headings have been inserted into the agreement for the purpose of guidance only and are not part of the agreement.
- (i) A reference to 'dollar', '\$', '\$A', 'A\$'; or 'AUD' is a reference to Australian currency.
- (j) A reference to a specific time for the performance of an obligation is a reference to that time in the state or territory where the obligation is to be performed.