
Terms of Engagement

Tamlyn Creative Pty Limited

1 Establishment of agreement & appointment

1.1 Establishment of agreement

- (1) Thank you for choosing Tamlyn Creative as your consultant to provide the Services.
- (2) The terms and conditions that are set out below are the conditions under which Tamlyn Creative will provide the Services to you.

1.2 Agreement and Appointment

- (1) By clicking the 'I accept' button through the 'Hello Sign' or placing digital signature in 'Proposify' software Tamlyn Creative sends to you with these terms and conditions, you agree that a binding agreement is formed between Tamlyn Creative and you on the terms and conditions set out below (**Commencement Date**).
- (2) On the Commencement Date:
 - (a) you appoint Tamlyn Creative as your consultant to provide the Services; and
 - (b) Tamlyn Creative accepts its appointment as a consultant and agrees to provide the Services to you,on the terms and conditions set out below.

1.3 Term

The appointment referred to in clause 1.2 will continue until it is terminated under the terms and conditions below.

2 Initial consultation and Quotation

2.1 Initial consultation

Tamlyn Creative will attend an initial consultation with you for up to forty five (45) minutes to determine an agreed brief/service package for the provision of the Services. This can be held via phone or in person.

If you are a new client, the initial consultation will be free of charge, otherwise Tamlyn Creative may charge you for the initial consultation in accordance with its normal rates and charges.

2.2 Quotation

- (1) Prior to commencement of the Services, Tamlyn will provide you with a quotation for delivering the Services (**Quotation**).
- (2) The Quotation will be generated by Tamlyn Creative on the basis of the brief/service package agreed under clause 2.1 and expected time investment by Tamlyn Creative.
- (3) If additional work outside the scope of the Services is required by you, clause 12 will apply.
- (4) All turnaround times specified in the Quotation are estimates and are based on business days. No quoted printing, artwork or delivery dates are guaranteed and may vary.

3 Payment

3.1 Deposit

If Tamlyn Creative asks you for a deposit before it begins performing the Services then it may, at its discretion, not begin performing the Services until that deposit is paid.

You have no Claim against Tamlyn Creative for any delay in the finalisation of the Services which arises as a result.

3.2 Invoicing

Tamlyn Creative may invoice you for the cost of the Services at any of the following times:

- (1) In accordance with the Quotation.
- (2) Prior to the commencement of printing and/or sending you the Works.
- (3) If the Works are deemed to be automatically accepted by you (see clause 9.3).
- (4) At different stages during the conduct of the Services.
- (5) On a monthly basis.

3.3 Lien until full payment

You grant Tamlyn Creative a lien over:

- (1) your file; and
- (2) the Works,

and Tamlyn Creative reserves the right to:

- (3) not proceed with the Services; and/or
- (4) not provide you with the Works,

until payment of all money owed by you to Tamlyn Creative has been paid in full.

3.4 Payment terms

- (1) You must pay Tamlyn Creative:
 - (a) within the time stipulated on the invoice provided to you by Tamlyn Creative; or
 - (b) if there is no such date on the invoice, within seven (7) days of the date of the invoice.
- (2) Interest will be payable by you to Tamlyn Creative on any overdue amount:
 - (a) at the rate of 10% per annum; and
 - (b) calculated daily from the due date for payment until the overdue amount is paid by you.
- (3) Tamlyn Creative may also charge you for any fees incurred relating to commencement of collection and recovery processes for any invoices that remain unpaid in excess of thirty (30) days.

4 Suspension of the Services

4.1 Suspension

If:

- (1) you fail to comply with these terms and conditions or with any reasonable direction of Tamlyn Creative concerning the provision of the Services; or
- (2) Tamlyn Creative becomes aware of any Claim relating to any material provided to Tamlyn Creative by you, then

Tamlyn Creative may:

- (3) from time to time without notice suspend the provision of the Services: and/or
- (4) not provide you with the Works until such time as the relevant matter is rectified by you.

4.2 Automatic extension

- (1) Any suspension under clause 4.1 will result in an automatic extension of any specified deadlines for completion of the Works by Tamlyn Creative under these terms and conditions.
- (2) The extension in paragraph (1) will be for the period starting from the date of suspension and ending when the suspension is lifted.

5 Intellectual Property

5.1 Ownership

You agree that all Intellectual Property in the Works, or which arises from the conduct of the Services remains the property of Tamlyn Creative until all amounts due and payable under these terms and conditions have been paid in full by you.

5.2 Assignment of Intellectual Property

Subject to clause 6 below, Tamlyn Creative agrees, upon full payment of any amounts due and payable by you under these terms and conditions for the Services, to assign to you all rights, title and interest in the Intellectual Property in the Works, excluding:

- (1) draft concepts;
- (2) working notes and any other internal written materials;
- (3) preliminary drafts, drawings, illustrations, photographs and designs;
- (4) preliminary electronic works including website drafts, source code, development tools, programs, multimedia applications and programmers' notes;
- (5) draft videos, sound recordings; outtakes, storyboards, scripts, screenplays, and character lists;
- (6) designs which are rejected by you; and
- (7) source files.

5.3 Works already subject to trade mark

If the Works (once completed) infringe an existing trade mark, Tamlyn Creative will undertake the Works again at no additional cost to you, however is not otherwise liable to you on account of any such infringement.

5.4 No warranty in relation to third party IP rights

Tamlyn Creative:

- (1) does not warrant that the Works (once completed) will not breach the Intellectual Property rights of any third parties; and
- (2) will not be liable to you for any Claim made by a third party in relation to any breach under paragraph (1).

6 Licence to Tamlyn Creative

On completion of the Works, you grant an exclusive, fee free and perpetual licence to Tamlyn Creative to use and reproduce the Works for the purpose of:

- (1) promoting Tamlyn Creative's skills and services, including by entering the Works in competitions or design publications relating to professional quality and recognition in the graphic design industry; and
- (2) the display of the Works in Tamlyn Creative's portfolio of work including for the purpose of soliciting new work from third parties.

7 Moral Rights

In relation to all materials in which copyright subsists which are produced by Tamlyn Creative in the course of providing the Services, you agree that you will not engage in acts or

omissions that are contrary to any of the present or future moral rights of the employees of Tamlyn Creative under Part IX of the *Copyright Act 1968* (Cth).

8 Instructions

- (1) You must provide Tamlyn Creative with reasonable, clear and concise written instructions in a timely manner to allow Tamlyn Creative to perform the Services.
- (2) Tamlyn Creative will not be liable for any Claims arising as a result of complying with your instructions when providing the Services.

9 Acceptance of the Works

9.1 Timing for delivery of the Works

Tamlyn Creative will deliver the Works to you:

- (1) upon completion of the Works; and
- (2) otherwise in accordance with the milestones agreed between the parties from time to time.

9.2 Acceptance, rejection and delivery of the Works

- (1) Following receipt of the Works, you agree within thirty (30) days of delivery to examine the Works and to give Tamlyn Creative notice of:
 - (a) acceptance or rejection of the Works; and
 - (b) if you reject the Works, the changes or revisions which you require to be made.
- (2) All changes or revisions will be charged to you by Tamlyn Creative on a time and materials basis in accordance with its normal rates and charges.
- (3) The day upon which you give Tamlyn Creative notice of acceptance of the Works is deemed to be the delivery date (**Delivery Date**).

9.3 Automatic acceptance

Tamlyn Creative may declare the Works as accepted by you if no response is received from you confirming such acceptance within the time specified in clause 9.2 above.

10 Printing

10.1 Costs of printing

If you instruct Tamlyn Creative to print the Works, Tamlyn Creative will charge a printing fee for the costs incurred by it in doing so, including the costs in preparing and formatting the Works into print-ready form (**Printing Fees**).

10.2 Commencement of printing

Tamlyn Creative will not commence printing the Works until full payment for:

- (1) the Works; and
- (2) the Printing Fees,

is received by Tamlyn Creative from you in accordance with these terms and conditions.

10.3 Submission of Works for printing by you

- (1) If you choose to prepare the Works in print-ready form yourself, you are solely responsible for the end result of printing and you are not entitled to make a Claim against Tamlyn Creative in that regard.
- (2) Tamlyn Creative will print your submission as requested, however Tamlyn Creative:
 - (a) is not responsible for any mistakes made by you; and

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- (b) will not be liable to you for any Claim for damages arising as a result of those mistakes.
 - (3) You are reminded that when Works (if artworks) are trimmed, the bleed cut can vary in position up to 2-3mm, hence a 7mm internal margin from the bleed line is required if you are supplying Works for printing.

10.4 Timing

- (1) The turnaround time for printing of the Works by Tamlyn Creative varies depending on the complexity of the job, however commences on the later of:
 - (a) the Delivery Date; or
 - (b) the date payment for the Works under these terms and conditions is made by you in full.
- (2) All turnaround time quotations are estimates and are based on business days. No quoted printing, artwork or delivery dates are guaranteed and may vary.

10.5 Colour variation

With all printing there may be some colour variations from electronic visual representations of the Works in previous orders to the final printed Works. Tamlyn Creative will not be liable for any loss caused as a result of any such variation.

10.6 Delivery

Tamlyn Creative will not be liable to you for printed Works that are damaged, lost or delayed when delivered by post or courier.

11 Future print requests and archive retrievals

If you request a:

- (1) re-print of the Works; or
- (2) any retrieval of the Works (including in electronic or other format),

Tamlyn Creative will charge an archive retrieval and/or print management fee which must be paid by you before Tamlyn Creative is obliged to adhere to the request.

12 Expansion of the Scope of Work

12.1 Additional Work

Work falling outside of the scope of the Services which is requested by you from time to time, either orally or in writing, will incur charges in addition to the Quotation. Work falling outside of the scope of the Services includes, but is not limited to:

- (1) additions to the list of Works;
- (2) alterations to text supplied by you for use in the Works;
- (3) additional drafts required in the provision of the Services;
- (4) changes to your instructions or the brief;
- (5) changes to any of the Works after the Delivery Date;
- (6) additional consultations; and
- (7) conversion, adjustment or manipulation of images.

12.2 Urgent Work

Urgent work requested which is required outside of ordinary business hours will be subject to additional charges.

13 Undertakings and Warranties

13.1 Your Warranties

By accepting these terms and conditions you undertake and warrant that:

- (1) while Tamlyn Creative will exercise reasonable care, honesty and diligence in providing the Services, you will exercise control over the Works. You warrant that you are responsible for ensuring that the Works are not contrary to law, including:
 - (a) ensuring that the Works do not infringe the copyright or moral right of any person in relation to any material you have provided to Tamlyn Creative;
 - (b) ensuring that the Works do not infringe the trade mark rights of any person, including by undertaking the trade mark searches where appropriate;
 - (c) ensuring that the Works are not by law defamatory of any person;
 - (d) ensuring that the Works are not obscene, blasphemous, offensive or discriminatory; and
 - (e) ensuring that the Works do not constitute conduct that is in breach of the provisions of the *Competition and Consumer Act 2010* (Cth) or that gives rise to an action in passing off, including by undertaking trade practices clearances where appropriate;
- (2) you must ensure that all statements purporting to be facts in the Works are true and correct and that no advice or instructions in the Works will, if followed or implemented by any person, cause loss, damage or injury to them or any other person; and
- (3) you will use and publish the Works at your own risk.

13.2 Tamlyn Creative

Tamlyn Creative:

- (1) does not provide business, commercial or any other advice; and
- (2) does not warrant that the Services or the Works will meet your requirements or will be effective in increasing the success of your business, and you are not entitled to make any Claim against Tamlyn Creative in that regard.

14 Limitation of liability

- (1) The liability of Tamlyn Creative under these terms and conditions or with respect to the Services and the Works, which cannot be lawfully excluded, is limited to the amount paid by you to Tamlyn Creative for the Services and the Works.
- (2) Where such liability arises, Tamlyn Creative will at its option:
 - (a) provide you with a refund for the amount paid in respect of the Services and the Works by you; or
 - (b) provide the Services and the Works again to the same value.

15 Termination

15.1 Termination by you

- (1) You may terminate these terms and conditions by providing Tamlyn Creative with fourteen (14) days written notice.
- (2) In the event of termination under paragraph (1), Tamlyn Creative will:
 - (a) determine the cost of the Services already provided to you including any work in progress on your file up to the date of the notice; and
 - (b) invoice you for this amount less any deposits paid in respect of the Services.

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- (3) If the determined monies payable under paragraph (1) is less than the deposit paid by you (if any), a refund or credit will be issued by Tamlyn Creative to you for the difference.

15.2 Termination for breach

Without prejudice to any other right or action or remedy, either party may terminate these terms and conditions, by written notice to the other with immediate effect, if:

- (1) the other party commits a breach of these terms and conditions or is in default of any warranty and the defaulting party fails to correct such breach or default within seven (7) days of receiving notice specifying such breach or default;
- (2) the other party is insolvent or otherwise unable to pay its debts as and when they fall due; or
- (3) an administrator, trustee in bankruptcy, receiver, liquidator or controller is appointed to the other party.

15.3 Payment of outstanding amounts on termination

If these terms and conditions are terminated under clause 15.2, you agree to pay Tamlyn Creative all amounts accrued and owing under these terms and conditions within seven (7) days of that termination.

16 Confidentiality

16.1 Non Disclosure

Each party agrees not to disclose to any third party anything about these terms and conditions (including the Services and the Works) or any of its contents unless:

- (1) it has the prior written consent of the other party; or
- (2) it is required to do so by law; or
- (3) a third party needs to know the information in order to perform these terms and conditions.

16.2 Tamlyn Creative's obligations in relation to Confidential Information

- (1) Tamlyn Creative agrees that during the operation of these terms and conditions, it may have access to your Confidential Information, and agrees to both during and after the operation of these terms and conditions, maintain the Confidential Information and to prevent its unauthorised disclosure to or use by any other person, firm, or company, unless or until authorised in writing to disclose any Confidential Information by you.
- (2) Tamlyn Creative agrees that it must not, both during and after the operation of these terms and conditions, make improper use of your Confidential Information to gain directly or indirectly an advantage for itself or for any other person or to cause detriment to you.

16.3 Your obligations in relation to Confidential Information

- (1) You agree that during the operation of these terms and conditions, you may have access to Tamlyn Creative's Confidential Information, and agree to both during and after the operation of these terms and conditions, maintain the Confidential Information and to prevent its unauthorised disclosure to or use by any other person, firm, or company, unless or until authorised in writing to disclose any Confidential Information by Tamlyn Creative.
- (2) You agree that you must not, both during and after the operation of these terms and conditions, make improper use of Tamlyn Creative's Confidential Information to gain directly or indirectly an advantage for yourself or for any other person or to cause detriment to Tamlyn Creative.

16.4 Breach of this clause

In the event of a breach of this clause the parties agree that damages are not an adequate remedy, and will not contest any application for an urgent interlocutory injunction relating to such a breach and will pay all costs incurred by the other party in bringing any such applications on a solicitor-client basis.

17 Restraint

- (1) You agree that in order to protect the goodwill of Tamlyn Creative you will not directly or indirectly at any time, for a period of:
 - (a) one (1) year after the Delivery Date; or, in the event that this term is deemed unenforceable;
 - (b) six (6) months after the Delivery Date; or, in the event that this term is deemed unenforceable; and
 - (c) three (3) months after the Delivery Date,employ or solicit to employ any person who is or has in the period of one (1) year prior to the Delivery Date been an employee of Tamlyn Creative.
- (2) Paragraph (1) has effect as comprising each of the separate provisions which results from each combination of a period described therein.
- (3) If any separate provision referred to in paragraph (1) is unenforceable, illegal or void that provision is severed and the next sequential provision is in force. Each of the parties acknowledge that each of those separate provisions read separately but set out in this way is a fair and reasonable restraint of trade.

18 Force Majeure

Tamlyn Creative will not be liable for any failure or delay in supply or delivery of the Works or Services where such failure or delay is wholly or partly due to any cause or circumstances outside the reasonable control of Tamlyn Creative including but not limited to war, strikes, lockouts, industrial disputes or unrest, government restrictions or transport delays, fire, power outages, failure attributable to hosting suppliers, breakdown of plant, theft, vandalism, riots, civil commotions, accidents of any kind, natural disasters of any kind, or act of terrorism.

Definitions

Claim	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Confidential Information	means: <ul style="list-style-type: none">(a) these terms and conditions; and(b) financial information: information regarding costs, profits, markets, sales and other financial information; and(c) business information: information regarding business relationships and strategies, development plans, marketing, product concepts, trade secrets and other business information the business of the disclosing party and the disclosing party's clients or third party suppliers; and(d) personal information: any personal information relating to the officers (as defined in s9 of the <i>Corporations Act 2001</i>), partners, employees, agents, contractors or clients of the disclosing party; and(e) information obtained through performance: all information which becomes known to a party as a consequence of it performing the obligations under these terms and conditions (without limitation) all records, documents, accounts, plans, specifications, price lists, customer lists, correspondence, photos and papers of every description relating to the disclosing party; and(f) technical information: information regarding designs, development processes and tools, hardware specifications, know-how, production, research, software specifications, data bases and software developed or used by a party whether as owner or under licence from any person and other technical information; and(g) disclosed information: any other information disclosed by a disclosing party that:<ul style="list-style-type: none">(i) is identified as being confidential; or(ii) would be apparent to a reasonable person that such information was disclosed in confidence by the disclosing party.
Delivery Date	has the meaning ascribed to it in clause 9.2(3).
Intellectual Property	means all intellectual property rights conferred by law including (without limitation): <ul style="list-style-type: none">(a) patents, designs, formulas, plans, specifications or other documents created in connection with the business of the relevant party; and(b) copyright, trademark, trade business, company names, business names, websites, URLs or email addresses; and(c) all other proprietary rights and all other intellectual property defined in Article 2 of the Convention establishing the World Intellectual Property Organisation (July 1967).
Quotation	means a quotation provided by Tamlyn Creative for the provision of the Services/Works under clause 2.2.
Services	means the services Tamlyn Creative agrees to provide to you from time to time in accordance with the agreed brief/services package attached to the Quotation, and which includes any Works.
Works	means the works (if any) created as a result of providing the Services as set out in the agreed brief/services package attached to the Quotation.