

The Fine Print

This agreement is like most agreements: long but necessary. It is designed to protect us both by ensuring we understand and respect the process we are about to embark on together and the part we both play in a successful outcome. Much of the Agreement is about costs and schedules, extra work, extra costs, approvals, changes and cancellations. It's all important but copyrights, usage rights and trademarking are super important. If you intend on providing materials for me to use in your project, you must make sure you understand the rights involved. Please read on.

DESIGN AGREEMENT

This Agreement is between Genevieve Ginty of Simplify It Pty Ltd (ABN: 29 434 277 394) (Us/We/Our) and You, the Client (You/Your) whereby You wish to hire Us to provide services relating to Your design requirements. We have agreed to provide such services as set out in the Design Proposal according to the terms of this Agreement.

SCOPE OF WORK

You agree to pay the total amount for the scope of work included in the Design Proposal.

PROFESSIONAL STANDARDS

We will provide the services identified in the Design Proposal in a professional manner, and in accordance with applicable professional standards. We agree to maintain high-level ethics and standards of behaviour.

PAYMENT

All invoices are payable within 14 days of invoice date.

We may choose to cancel the project immediately and suspend work until payment is received (including stopping ongoing work, removing unpaid material, and taking down the website).

PROJECT SCHEDULE

Once the first payment has been made, the project start date will be determined by the schedule set out in the Design Proposal or by mutual agreement between the parties.

We will use commercially reasonable efforts to perform the services within the schedule outlined in the Design Proposal.

Our delivery time frame depends upon Your prompt response to any questions or requests for Your materials. Any delays in communication or delivery of information on Your part may incur delays in completion of the project.

PROOFS, CHANGES, REVISIONS AND ADDITIONAL WORK

The provided Design Proposal includes one Design Strategy Presentation and up to two rounds of minor revisions per design deliverable.

Requests for additional changes or alterations beyond those two, will be billed as Additional Costs as agreed between the parties.

Schedule and costs for any work beyond the scope of the Design Proposal sought by You will be agreed between the parties prior to commencement of any additional work.

You must assume that all additions, revisions, changes in content, layout or design brief changes requested by You will alter the schedule.

CHANGE REQUEST

The Design Estimate set out in the Design Proposal is based on the information provided by You. If information provided by You is inaccurate or additional information is provided that causes the project specifications to change, then the Design Estimate may change.

A "Change Request" is any request for work outside the scope of the Design Proposal deliverables list and approved Design Brief. If You inform Us of changes or new ideas which need to be accommodated, We will notify You that it is a Change Request. If You still wish to proceed with the Change Request, We may submit a new proposal to You, or will bill the work at a rate to be negotiated between the parties prior to commencement of work. We may also extend the delivery schedule to accommodate changes.

THIRD-PARTY VENDORS

We may purchase or license from third party vendors materials used in Your project (including source code, software programs, fonts, icons, photographs, illustrations etc.). Where We license such material, the intellectual property rights in the licensed material remain the property of the third-party vendors.

ADDITIONAL COSTS

You shall reimburse Us for all additional and approved expenses arising from this project.

We will provide a separate estimate which will be billed as Additional Costs to You. Such Additional Costs can include, but are not limited to the following:

- Photography, photographic art direction
- Stock photography searches/image purchases
- Print production
- Digital image manipulation or retouching
- Copywriting, editing or text inputting
- Domain name, web, or email hosting
- Animation
- Illustration
- SEO Research and implementation

Additional and approved costs that are outsourced by You may be billed by the external supplier directly to You.

DELIVERABLES AND ELECTRONIC FILES

We will provide deliverables to You in professional design formats. If You would like your deliverables in a file format not specified in the Design Proposal deliverables list, the preparation of additional files will be billed to You as additional costs.

APPROVAL OF PROOFS

We will make every reasonable effort to ensure the accuracy of the material produced, but it is Your responsibility to carefully check all proofs for errors prior to production. We will not be held accountable for any Additional Costs incurred if the project has to be reproduced due to errors that were not corrected in the final proofs approved by You.

CANCELLATION

Either party may cancel the contract at any time through written request. You shall, upon cancellation, pay Us 100% of the hours already completed for the project at the time of cancellation.

If You are inactive or do not respond to Us within 60 days for any reason, We have the right to terminate the project and bill for all work completed to date and no refunds will be given. This includes not providing information, instructions, materials, deliverables or anything else necessary for the project to proceed.

In the event of cancellation of this project, ownership of all copyrights and the original artwork shall be retained by Us.

PROMOTION, PORTFOLIO RIGHTS AND CREDIT LINES

We reserve the right to display all aspects of work created, including sketches, work-in-progress designs and the completed project on websites, social media, magazine articles, books, galleries, exhibitions, or other promotional purposes. Likewise, We may publicly describe Our role in the Project.

A credit line suitable to the design and size of the deliverables will be used for both print and digital publications including websites developed by Us. This may include the words similar to 'Designed by Genevieve Ginty' which will electronically link to Our website. If you do not wish the credit line to be included in the deliverables, compensation for this must be agreed by the parties before commencement of the services. We reserve the right to include screen shots of the completed work in Our portfolio. Our credits will not be incorporated into any logo designed for You.

MATERIALS PROVIDED BY YOU

If needed, You will supply Us with photographs either in digital or printed format. If You choose to buy stock photographs, We can suggest vendors of stock photography. Any time We spend searching for or arranging original appropriate photographs will be charged at a pre-agreed fee. Any images, other than the deliverables, arranged or supplied by Us shall be licensed only for use on the project and not in any other form without Our prior written approval. eg. if you wish to use an original photograph or artwork provided by Us for your website on any other digital or print reproduction, then a separate license must be obtained for such usage.

Where You provide Us with materials in the course of the project, You guarantee that You own them or have been given permission to use them. Ownership of these materials will remain with You (or the persons who licensed them to You) at all times.

You grant a royalty-free license for Us to use them for the project and to retain copies in business records.

We will not be responsible for any damage or consequences if the materials You provided infringe someone else's rights or are unlawful or illegal.

You will indemnify Us and pay for all damages, costs, fees, expenses and legal fees on an indemnity basis that We incur due to materials being infringing, unlawful or illegal in any country.

USAGE RIGHTS

When We receive full payment, copyright is automatically granted to You as follows:

Where applicable, You own the Final Design that We create for You for this project. The Final Design includes only the final, deliverable design as a whole and not any preliminary work or sketches, or separate parts or elements of the whole designs delivered. For the avoidance of doubt, a website design includes the design elements (including font, colour choices, images and placement of all content). The website design does not include the coding platform, database or CMS which is provided by a third-party vendor.

You may not modify the Final Design nor use elements or parts of the Design outside of the Final Design without Our prior written agreement on such terms as may be negotiated in good faith.

Software and fonts used for the project remain Our property and will not be released to You. We retain the rights to project files, preliminary concepts, sketches and works in progress, whether the project is completed or cancelled.

Any photographs arranged or supplied by Us shall be licensed only for use on the project and not in any other form without a separate license agreement between Us and You.

Any photographs arranged and supplied by Us specifically for your design or other photography requirements shall be licensed to you in a separate license agreement between Us and You.

TRADEMARKING

We will take all care to create a unique and individual design for You, however We cannot be responsible for claims/actual breaches of trademark (™). We recommend You conduct a thorough search of trademarks used by competitors & relevant competitors available.

LIMITS OF LIABILITY

We will provide deliverables to You on an as-is basis, and We make no promise or guarantee that they will be fit for, or achieve, any particular purpose.

We cannot promise or guarantee that services or products purchased or licensed from third party vendors will be free from interruption or failure or that they will remain available for use for any specific period.

We will not be liable to You for lost profits or other special or consequential damages of any kind, nor will We be liable to You for direct damages

unless caused by Our gross negligence or fraud. The maximum damages payable to You in any event will not exceed the amount of fees invoiced and paid to Us in connection with the project in question.

Specifically, We will not be responsible or liable to You for damages or loss caused by:

Your use of the designs and deliverables in ways that are not covered by the licenses We granted to You;

anything done by Us on Your instructions, or using material You provided to Us;

any breach of these terms and conditions by You;

any legal, governmental, contractual or other approvals that were required but which You did not obtain, and

You will keep Us indemnified for all damages, costs, fees, expenses and legal fees that We incur due to any of these specific actions and omissions.

The amount of liability recoverable for any cause of action that arises under this agreement shall not exceed the amount paid for services outlined in this agreement, regardless of whether the cause of action is based in tort, contract or any other theory of liability. Under no circumstances will We be liable for special, incidental, indirect, or consequential damages of any kind, or for any loss of use, business interruption, costs of procurement or substitute goods or services, lost profits, or lost data, even if You have been advised of the possibility of such damages.

NON-DISPARAGEMENT

Both Parties agree to not take any actions, make any statements, whether oral or in writing, that negatively impact the other party's business, services, products, or reputation.

SEVERABILITY

If any term in this Agreement is found to be void or voidable, the remaining terms of the Agreement are unaffected, and deemed to remain in full force and effect, including those terms that are similar.

WARRANTIES

Both the parties warrant that they have full authority to enter into this Agreement. We warrant that Our services will be provided by qualified people and in a competent manner in accordance with industry standards. You warrant that You have any necessary permission, licenses, rights, and releases to lawfully execute your duties set forth in this Agreement.

CONFIDENTIALITY

"Confidential Information" means information that is marked as secret or confidential, or which, based on the circumstances in which it was disclosed, ought to be treated as confidential. If either party receives from the other Confidential Information, the receiving party agrees to keep the Confidential Information secret, ensure that its agents and employees keep it secret, and not disclose it to any other person, organisation or entity (unless absolutely necessary). Confidential information does not include information that: (a) was in Our possession prior to it being furnished by You; (b) is generally known to the public or in Our industry; (c) is obtained by Us from a third party, without breach of any obligation to You; (d) is independently developed by Us without use of or reference to Your confidential information; or (e) that We are required by law to disclose.

FORCE MAJEURE

Either party may invoke Force Majeure to excuse the failure of its timely performance, if such failure was caused by: fire; flood; hurricane, tornado, or other severe storm; earthquake; act of war; sabotage; terrorism; riot; interruption or failure of electrical or telecommunications service (for example, Internet failures); or failure of suppliers, subcontractors, and carriers to substantially meet their performance obligations. Failure to make a payment may only be considered a Force Majeure event if caused by an interruption in a third-party payment systems that otherwise qualifies as a Force Majeure event.

MODIFICATIONS

Modifications of the terms of this Agreement must be written and authorised by both parties, involving the implementation of a new version of the Agreement as a whole, following standard procedures of documentation and approval.

OUTRO

You made it! Now we can proceed with your beautiful design. You can close this page and return to the email now.

August 2021