

## Terms and Conditions

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### *The Black Mark Creative (TBMC) Terms and Conditions:*

#### 1. General Conditions of Contract:

- 1.1 These Terms and Conditions cover all Contracts entered into by a Client with TBMC for services relating to design, printing, copywriting, visual media, web sites, brand identity, illustrations, images and photography (Artwork)
- 1.2 These Terms and Conditions are subject to change without notification by TBMC.
- 1.3 These Terms and Conditions apply TBMC and all of its contractors and subsidiaries.

#### 2. Original Visual Brief:

- 2.1 The initial consultation between TBMC and the Client is at no charge to the Client. This can be held via phone, email, video link or in person. A (Visual Brief) will be constructed through the collection of ideas, logos and designs. Clients may be asked to provide written brief on projects for TBMC to provide a more accurate service. This will assist in the evaluation and formulation of the Client's business design requirements.
- 2.2 Each job is subject to change on the amount of revisions, concepts, turnaround time etc. which is stipulated below in the services that TBMC provide.
- 2.3 Any additional work, revisions or variations outside of the original Visual Brief will be charged at the rate of \$80.00+gst per hour, billed in one hour increments. All prices exclude GST. Additional expenses will be charged accordingly.

#### 3. Quotations:

- 3.1 Quotations are generated by TBMC on the basis of the Visual Brief and expected time investment. Quotations may be subject to change if additional work is required.

3.2 All turnaround time quotations are estimates and are based on calendar working (business) days. No quoted printing, artwork or delivery dates are guaranteed and may vary.

3.3 All quotes expire after 30 days of the quote being generated

#### 4. Payment:

4.1 TBMC reserves the right to request a deposit from the Client prior to starting work on their project or Artwork. If a deposit is requested by the TBMC, an invoice will be generated and delivered to client via email or TBMC's online invoicing program and payment is expected. By remitting deposit funds to TBMC, the Client is accepting the Terms and Conditions and entering a contract with TBMC.

4.2 If a deposit is not requested, the Client is considered to accept the Terms and Conditions upon request of services/work from TBMC.

4.3 TBMC will invoice the Client for the remaining cost of the Artwork and associated services prior to the commencement of web site construction or printing. TBMC reserves the right to not proceed with these services until payment has been received *in full* from the Client.

4.4 The Client reserves the right to request a payment plan which may be accepted by TBMC at its discretion. All payment plans must be agreed to both parties in writing.

4.5 All prices quoted on TBMC's website and advertising material include delivery and *exclude* GST.

4.6 All payments are to be made within 30 days of invoicing. Invoices expire after 30 days of the invoice generation.

4.7 TBMC is entitled to charge the Client for any fees incurred relating to commencement of collection and recovery processes for accounts that remain unpaid in excess of 30 days.

4.8 TBMC reserves the right to delete web sites with accounts more than 90 days outstanding payment.

4.9 TBMC reserves the right to remove web pages from viewing on the Internet until final payment is made. If case collection proves necessary, the client agrees to pay all fees incurred in that process.

#### 5. Cancellation and Variation Policy:

5.1 TBMC reserves the right to charge additional costs if the Client requests amendments to the original Visual Brief, the original project outcome is altered or further Artwork is requested – refer clause (2.3).

5.2 If the Client requests the cancellation of a Contract, TBMC will determine the cost of Artwork and services provided. The Client will be invoiced this amount minus any deposits paid on the project to date. If the determined monies payable is less than the deposit paid, a refund will be issued by TBMC to the Client for the difference.

5.3 TBMC will declare a project completed if no response is received from Client within 30 days of providing a concept Artwork and this Artwork will be determined as the final accepted Artwork. TBMC will then invoice the Client for final payment of total project and non-payment will result in collection processes. Legal action may also be taken by TBMC to recover all monies owed.

## 6. Submission of Clients Own Artwork:

- 6.1 Clients who choose to submit their own Artwork, files and/or images are solely responsible for the end result of printing. Customers are reminded to submit print-ready Artwork with the correct specifications. We will print the Client's submission as requested however TBMC is not responsible for Artwork mistakes. TBMC is also not liable for supplied file errors. There will be no reprints at TBMC's expense.
- 6.2 Clients are reminded that when Artwork is trimmed, the bleed cut can vary in position up to 2-3mm, hence a 7mm internal margin from the bleed line is required if the Client is supplying Artwork.
- 6.3 It is the Client's responsibility to ensure that any Artwork, images, files and text submitted does not violate Australian copyright laws. TBMC and its contractors assumes all written and visual content adheres to copyright laws and all correct permissions have been sought and/or royalties paid for use.

## 7. Copyright and Trademarks:

- 7.1 Ownership of copyright over all concepts and draft Artwork remains with TBMC. This includes, but is not limited to; logos, symbols, compositions and copy. Unlawful use of these Artworks by the Client is strictly prohibited. **The use of Artwork prior to payment is illegal.**  
For more information visit <http://www.copyright.org.au/information>
- 7.2 Artwork designed will remain the property of TBMC until the account is paid in full. Future re-print requests of the same Artwork will only incur a print management fee.
- 7.3 Upon full payment of account, copyright ownership will be transferred to the Client. TBMC and their designers retain rights to utilise Artwork and all design elements for portfolio/self-promotion.

## 8. Graphic Designs/Printing:

- 8.1 Within 10 - 12 *business* days of receiving your brief, company information and deposit, TBMC will create up to three different design concepts for your business. Concepts/designs will be submitted for clients review via E-mail unless otherwise negotiated. Upon receipt of your feedback on these concepts/designs, TBMC will request that you choose your favourite concept of the *three* concepts/designs supplied by TBMC. Complete change of design is not included in the price and will be subject to additional costs. *Three* rounds of revisions on the design/concept selected by the client are included in the quoted price and will be finalised within 7 - 10 business days of receiving the final revision. Further revisions will incur additional costs at TBMC current hourly rate.
- 8.2 Invoices expire after 30 days.
- 8.3 The Client is held responsible for approving all Artwork proofs and ensuring accuracy and suitability. This includes, but is not limited to; design, spelling,

grammar, illustrations, images and quantity. It is the responsibility of the Client to request another copy if the proof is difficult to read or changes are required.

- 8.4 The Client's final accepted proof is the Artwork that will be submitted for prints and/or web construction. There will be no reprints or web development at our expense. Printout of Client proof is supplied at intended final print size (100%) to assist in confirming colours, design, bleed, size and type.
- 8.5 You, the client, have ownership of the final logo design for use in any media application that is beneficial to your business. TBMC retains the right to use the final logo, or any versions of the logo created in the process, within printed and on-line portfolios, including promotional materials such as newsletters and advertisements. The client also gives TBMC permission to use client's full name, business address, and/or website address, for testimonial purposes on her website, or other business related media. The client understands that it is the client's responsibility to copyright the logo design, and/or seek trademark.
- 8.6 Printing will not commence until full payment for services is received. Turnaround time for completion of printing is 10-21 business days (may vary depending on the product type). **This period commences at date of Client approval of Artwork proof and payment.**
- 8.7 All turnaround time quotations are estimates and are based on calendar working (business) days. No quoted printing, artwork or delivery dates are guaranteed and may vary.
- 8.8 With all printing, there may be some colour variations from electronic visual representations of Artwork and previous orders to the final printed Artworks. This is due to the nature of CMYK printing and bulk-run printing system. There will be no reprints at our expense.

#### 9. Delivery:

- 9.1 TBMC cannot be held liable for printing products that are damaged, lost or delayed when delivered by post or courier, although the utmost care will be taken to ensure the products arrive on time and undamaged.
- 9.2 After the final logo design is approved, the logo design will be sent to you as a digital file (.jpg, .pdf, and .eps graphics file formats), via email or other arranged method.

#### 10. Web Site Design:

- 10.1 The Client agrees to allow TBMC to add a small credit on the customer's website. This will be in the form of a small line of text placed towards the bottom of the page.
- 10.2 The Client also agrees to allow TBMC to place websites and other designs, along with a link to the Client's site on TBMC's own website for self-promotional purposes., unless agreed to by both parties in writing beforehand.
- 10.3 The client agrees to give TBMC access (usernames, passwords, and any other required permissions) to existing or future domain registration, hosting accounts, and affiliated service-providers as needed to accomplish the goals set forth in the written proposal. TBMC will not willingly share client's private permissions. The client

also authorizes TBMC to publicize their completed Website to Web search engines, as well as other Web directories and indexes, if this is included in the scope of the project.

10.4 For any website project, a proposal/brief shall be provided to the client which outlines the general scope of the web design project. Additionally, the proposal shall include an estimate of the costs involved to complete the project. Additional work required to the project will incur additional costs. All prices specified in this contract will be honoured for 30 days after both parties agree to this contract. Continued services after that time will require a new agreement and may be subject to price change.

10.5 Client will provide all text to be used in web pages, unless otherwise negotiated.

Client agrees to provide copy and any other submissions in a timely manner.

10.6 TBMC agrees to complete website projects (post payment & excluding additional revisions) within 21 – 36 business days, assuming that TBMC has received all relevant content at the commencement of the project.

#### 11. Web Site Design Post-Completion Alterations:

11.1 Upon completion of web site build, the TBMC will provide the Client with opportunity to review the resulting work. TBMC will make *one* set of minor changes at no extra cost within 14 days of submission to Client for review ('review period'). Any further revisions will be charged at TBMC's hourly rate.

11.2 Minor changes include small textual changes and small adjustments to placement of items on the page. Minor changes do not include alteration or replacement of images, colour schemes or any navigation features.

11.3 TBMC can be notified of any minor requested changes by e-mail. TBMC will consider that the Client has accepted the original draft if no notification of changes is received in writing from the Client within 14 days of the start of the review period.

11.4 TBMC is not responsible for any punctuation or grammatical errors. It is the Clients responsibility to review check over all products supplied by TBMC prior to completion.

#### 12. SEO (Search Engine Optimisation & Search Engine Listings):

12.1 TBMC Websites according to the trends of SEO at the time of building. We will help you to explore your key words/key phrases; however final key phrase choice is the responsibility of the Client.

12.2 TBMC cannot guarantee, and is indemnified by the Client against any claims regarding the following: presence of Google or search engine listing, the position of web site in any search engines, which or if any of the web pages will be listed in any search engines, the time it will take for any search engines to list the web site and effectiveness of key words/key phrases.

12.3 If the Client is dissatisfied with web site listings, the Client can complete steps outlined in our "helping yourself" worksheet. Client can then contact TBMC to arrange an evaluation of web site.

12.4 TBMC takes no responsibility for duplicate content found on the Clients website or if the website is search engine black listed due to the written content or images of their site.

13. Technological advancements:

13.1 The Client is to refer to hosting and domain name providers for queries regarding the following services: Domain names, Hosting and registration, SSL certificates, Email addresses and Email hosting.

13.2 The Client is to refer to their technical support company for queries regarding the following services and their applicable Terms & Conditions: Set up of email addresses, Emails going to Spam/ Junk, Email not functioning and Email Signatures

13.3 TBMC does not provide the following services: Domain names, Hosting and registration, SSL certificates, Email addresses, Email hosting, Setup of email addresses, Emails errors of any kind and Email Signatures

13.4 TBMC holds no responsibility if your email addresses are targeted with spam as it is outside of our control. The Company holds no responsibility if the Client's email account details are attained and used to send spam or malicious material.

13.5 TBMC build and design websites to the best of their knowledge at the time of completion. TBMC cannot take responsibility if the Client's site is "hacked". The Company does not provide software updates or take responsibility if the software used becomes out of date and obsolete. TBMC does not take responsibility for any unforeseen advancements in technology that may have negative effects on any aspects of the Client's site or system.

13.6 TBMC will verify the design and functionality of all websites on the following "current" internet browsers: Internet Explorer, Firefox, and Safari. Should an update or up-version of any of these browsers results in the corruption of the website in part or in whole, the client understands that any revisions or corrections will be made at the client's expense, billed at TBMC's current hourly rate.

14. CMS (Content Management Systems):

14.1 CMS Content Management Systems websites are delivered in an agreed working order. Any changes to the working files or configuration of the CMS that are done by a third party to TBMC are the responsibility of the site owner.

14.2 Web sites are built using the latest software available at the time. All website terms and conditions also apply to CMS.

14.3 TBMC does not hold responsibility for any content posted on the client's website. Any changes to the CMS after delivery will be charged accordingly. Any repercussions of the advancements in the CMS or server/hosting technology are not the responsibility of TBMC

14.4 TBMC does not hold any responsibility for misuse of the CMS or website.

14.5 TBMC does not back up web site content and cannot be held liable for partial or complete loss of data. It is the Client's responsibility to back up their web site.

15. Force Majeure

15.1 TBMC shall not be liable for any failure or delay in supply or delivery of Artwork or services where such failure or delay is wholly or partly due to any cause or circumstances whatsoever outside the reasonable control of TBMC including but not limited to war, staff shortage, paternity/maternity leave, unexpected illness, 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 or act of terrorism.

16. Amendments to these Terms and Conditions

16.1 All and any amendments to the Terms and Conditions outlined in this submission must be provided in writing and signed by an authorised representative of TBMC prior to the commencement of work.

**NOTE:** *Before you confirm your agreement to these terms, please make sure you understand all of the above agreement. Should you have any questions or concerns regarding these terms, please contact your legal representative.*

*By signing this document in the space below or by submitting a deposit payment, you consent to the terms of this contract on behalf of yourself, and/or your organization or business.*

Client Name: \_\_\_\_\_

X

\_\_\_\_\_  
Client Signature

Date: \_\_\_\_\_