



1. Definitions - In these terms:

- 1.1 "AMD" means Aaron McClintock trading as **Aaron McClintock Designs**.
- 1.2 "Excess Work" means all work required by you not included in the Submission, outside the scope of works or work completed (as approved by you in writing) which must be further amended.
- 1.3 "Submission" means the cover letter, overview, project timeframe, quotation and acceptance form accompanying these terms of business.
- 1.4 "Project" means the totality of all the work outlined in the Submission, or such part as is accepted by you.
- 1.5 "Materials" means all items or things created, provided or obtained by AMD to complete the project, including any drawings, sketches, artwork, photographs, computer disks, digital files or otherwise.

2. Agreement

- 2.1 Upon you appointing AMD to do the Project, an agreement will come into existence comprising these terms and AMD's Submission, as varied with AMD's written approval.
- 2.2 Subject to the specific details of AMD's relevant Submission, these terms cover all ongoing and future work undertaken by AMD for you unless varied with AMD's written consent.

3. Proposals and/or Pitches

Where Materials are submitted to you for any reason where terms of business have not been agreed to, their provision is made on the basis that AMD retains copyright and all other intellectual property rights in the Materials and that the recipient of the Materials will keep them confidential and will return them complete and uncopied if the Submission (pitch or project proposal) is unsuccessful.

4. Instructions

You will use your best endeavours to ensure that all instructions are in writing and, in particular, you will sign off on all work produced. AMD will not be liable for any errors or omissions resulting from oral instructions or from a failure on your part to sign off on any work.

5. Deposit, Fees and Expenses

- 5.1 - Before the commencement of work, you agree to pay a deposit of 60% of the quotation provided in the Submission.
- 5.2 - Unless agreed in writing by AMD, all remaining fees and expenses are payable immediately on delivery of the final work.
- 5.3 - If staged payments are agreed to, AMD reserves the right to cease work until all outstanding amounts are paid.
- 5.4 - If you request Excess Work, AMD reserves the right to charge you additional fees at the rate of \$90 per hour or higher depending AMD's current hourly charge out rate.
- 5.5 - Unless otherwise stated, goods and services tax ("GST") will be charged in addition to the quoted fees and on all expenses where it applies.
- 5.6 - If AMD contracts the services of outside parties as part of the scope of work, their fees will form part of AMD's account (unless agreement is reached that they be billed direct to you) and will include an additional fee for super vision, outlined in the Submission.
- 5.7 - If any payments under this clause remain unpaid for more than 14 days, AMD in its absolute discretion reserves the right to charge interest at the rate of 5% above the Reserve Bank of Australia Cash Rate calculated daily and compounded monthly but in no circumstances will the interest charged exceed 20% per annum

6. Timelines And Cancellation

- 6.1 - While every effort will be made by AMD to meet agreed timelines, AMD will not be responsible for delays caused by unforeseeable events, changes to your instructions or circumstances beyond AMD's control. To avoid doubt, time shall not be of the essence for any work performed by AMD.
- 6.2 - If you cancel the project for any reason (which cancellation must be in writing), you must pay all fees and expenses incurred by AMD to the date of such cancellation, plus 50% of AMD's profit cost for the project.

- 6.3 - If AMD does complete all work required for the Project but awaits content or details from you and AMD has requested these details and you have not answered its request within 14 days, AMD can invoice you for 90% of the total invoice value of the Project.

7. Copyright and Intellectual Property

- 7.1 - The ownership of copyright in all Materials produced by AMD which are not ultimately used in the project remains with AMD.
- 7.2 - AMD will maintain the confidentiality of any information supplied by you, but only if you advise in writing that such information is confidential.
- 7.3 - No copyright or any other intellectual property rights in the Materials will be licensed to you until AMD has been paid in full all fees and expenses due.
- 7.4 - Once all AMD's fees and expenses have been paid, AMD will licence to you copyright in the Material, limited to the purpose and media described in the Submission. AMD's fees are based upon this limited licence of copyright. If you require a more-encompassing licence or assignment, this must be the subject of further negotiations between you and AMD. An assignment of copyright will only be granted if AMD provides this in writing.
- 7.5 - In all other respects AMD retains copyright and all other intellectual property and moral rights (including the right of adaptation) in the Materials. In particular, AMD may use the project or any of the Materials for any self-promotional or competitive purpose.

8. Warranties and Indemnities

- 8.1 - AMD will obtain all necessary consents and approvals to ensure that the Materials may be lawfully used by you, but AMD will not be responsible for any misrepresentation made by independent contractors or third parties involved in the Project.
- 8.2 - You will indemnify AMD against all claims arising from AMD's use of any information or documents supplied by you or for any act or thing done by AMD on your instructions or with your approval.
- 8.3 - AMD makes no warranty regarding the suitability or otherwise of any of the Material for your purposes and it is your responsibility to ensure that the Materials comply with the requirements of any legislation regarding marketing, labelling, packaging or otherwise.
- 8.4 - Unless included in the Submission or Project, AMD is not responsible for print management or other procedures applying the work or Project created by AMD.

9. Exclusion of Liability

- 9.1 - AMD will not be liable to you for any indirect or consequential loss or loss of profit or loss of business arising out of delay of completing the work, errors or defects in the work or any data errors by AMD.
- 9.2 - Neither party shall be liable to the other for any indirect or consequential loss (including but not limited to goodwill, loss of business, loss of anticipated profits or savings and/or other pure economic loss) arising out of or in connection with this Agreement.
- 9.3 - AMD's total liability and contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the agreement shall be limited to the aggregated amount of fees received.

10. Retention of Files

All client files will only be kept for a maximum of six years from the date of completion of the project. If files are required to be kept for a longer period, AMD reserves the right to charge an appropriate fee for that purpose.

11. Governing Law

You and AMD agree that this agreement is governed by, and will be interpreted in accordance with, the laws of the State of New South Wales.