



www.martinvavrla.com

WEBSITE TERMS OF USE

JUNE
2017

Developed by
Martin Vavrla

INTRODUCTION

Below are **Martin Vavrla's** (*Martin Vavrla, MV, Martin Vavrla Design, Martin Vavrla Marketing, MVD, MVM, I, me, we, us, the Designer, the Graphic Designer, the Marketer, the Marketing Specialist, the Administrator*) **standard terms and conditions**.

It is vital that **you** (*the User, the Client, Client, the Customer, Customer*) please take time to read through thoroughly and ensure you fully understand these terms and conditions and their implications before you commence any project with Martin Vavrla.

Please also note that from time to time these terms and conditions may need to be altered without notice.

My, our, MV's, Martin Vavrla's web, website or webpage mentioned in this document means www.martinvavrla.com, [martinvavrla.com](http://www.martinvavrla.com), <http://www.martinvavrla.com>, <https://www.martinvavrla.com>, all third and lower domain names of previously mentioned or online site where this document is published or linked.

These terms and conditions are integral to each agreement between Martin Vavrla and Client.

All references to \$ or dollars are references to Australian Dollars (AUD).

Feel free to contact me if you do not understand any of the terms or conditions in this document.

WEBSITE TERMS & CONDITIONS

These Terms and Conditions govern your access and use of the Martin Vavrla's website. By accessing or using the Martin Vavrla's website you agree to be bound by these Terms and Conditions and to any additional guidelines, restrictions, or rules that may be posted in connection with specific sections or services of the Martin Vavrla's website. All such additional posted guidelines, restrictions, or rules are hereby incorporated by reference into these Terms and Conditions.

DISCLAIMER

Graphic design, strategy, photography and marketing are all highly creative and subjective art forms. As such Martin Vavrla takes every possible care with professional advice offered and any suggested creative concepts and/or their implementation, however Martin Vavrla cannot be held responsible for variations between expectation and outcome.

WEBSITE DISCLAIMER

All information contained in this website is intended for general information purposes only. The information is provided by Martin Vavrla. We try to keep the information up-to-date and ensure that it is correct, however, we make no warranties of any kind concerning the accuracy, completeness, suitability, reliability, or availability of the information contained in this website, or any products, services, links, or graphics that may be found on this website. Use this information at your own risk. MV will not be held liable for any loss or damage, or loss of data from your use of this website, or in connection with this website. This includes indirect or consequential loss or damage. MV has no control over websites that are linked to on this website. Those third party websites are under the control of their owners, and MV will not be held liable for your use of those websites. By linking to these sites, we are not endorsing or recommending any information or views expressed in the content on those sites.

REMUNERATION

- (a) In consideration for the Designer providing the Services the Client will pay the Designer all fees in the manner set out in an agreement.
- (b) Where an agreement provides for an upfront payment to be paid by the Client prior to the Designer commencing providing the Services, that payment is strictly non-refundable.
- (c) The Client will reimburse the Designer for such out-of-pocket expenses incurred by the Designer in the course of providing the Services.

ASSIGNMENT OF COPYRIGHT

- (a) The ownership of copyright in all Works produced by the Designer which are not ultimately used remains with the Designer. The Designer also retains copyright in the following:
- (i) Draft concepts;
 - (ii) Working notes and any other internal written materials;
 - (iii) Preliminary drafts, drawings illustrations, photographs, artworks, graphics and designs;
 - (iv) Intellectual property;
 - (v) Preliminary electronic works including website drafts, source code development tools, programs, multimedia applications and programmers' notes;
 - (vi) Draft videos, sound recordings, outtakes, storyboards, scripts, screenplays, and character lists;
 - (vii) Designs which are rejected by the Client; and
 - (viii) Source files;
- unless otherwise stated or agreed in writing.
- (b) No copyright or any other intellectual property rights in the materials will be licensed to the Client until the Designer has been paid in full all of the Designer's Fee.
- (c) Once the Designer's Fee is paid in full by the Client, the Designer will licence to the Client copyright in the Works, limited to the purpose and media described in the Services set out in agreement. The Designer's Fee is based upon this limited licence of copyright. If the Client requires a more encompassing licence or assignment, this must be the subject of further negotiations between the Client and Designer. An assignment of copyright will only be granted if the Designer provides this in writing.
- (d) In all other respects, the Designer retains copyright and all other intellectual property and moral rights (including the right of adaptation) in the Works.
- (e) Draft images can be watermarked, and as such are protected by Copyright Law. Watermarks will not be present in final approved artwork.
- (f) Draft images may not be used for any other purpose than viewing. They may not be copied, edited or distributed to any other person or company, other than those directly in negotiation with Martin Vavrla without prior permission from the Graphic Designer. To do so will be a breach of copyright.
- (g) Artwork or Work supplied by Martin Vavrla may not be used for any other purpose than the original application at any other time without prior permission from the Designer.
- (h) In the event of cancellation of the project, ownership of all copyrights and the original Artwork and disks shall be returned and retained by the Martin Vavrla.
- (i) By supplying text, images and other data for inclusion in a client's website or other medium, the Client declares that it holds the appropriate copyright and/or trademark permissions. The ownership of such materials will remain with the Client, or rightful copyright or trademark owner.
- (j) Martin Vavrla reserves the right to reuse or resell Work undertaken in the case of payment default.

SELF-PROMOTION BY DESIGNER

The Designer retains the right to use and reproduce the Works for the purposes of:

- (a) promoting the Designer's skills and services, including by entering the Works in competitions or design publications relating to professional quality and recognition in the Designer's industry; and
- (b) display of the Works in the Designer's portfolio of work (printed or digital), including for the purpose of soliciting new work from third parties.
- (c) this right remains with Designer even if the Client holds the full copyright of the Work.

MORAL RIGHTS

In relation to all materials in which copyright subsists produced by the Designer in the course of providing the Services, the Client agrees that it will not engage in acts or omissions that are contrary to any of the present or future moral rights of the Designer under Part IX of the Copyright Act 1968 (Cth).

TYPEFACE

- (a) If, in its provision of the Services, the Designer is required to create an original typeface for use in the Works, then the Designer retains all rights in relation to that typeface;
- (b) The Designer may, at its discretion, licence any original typeface referred to in the preceding clause to be used by the Client or any third party. Any such licence is not and does not form part of standard Client Service Agreement;
- (c) If, in the provision of the Services, the Designer is required to use an original typeface belonging to a third party, then the Client must:
 - (i) pay any licence fees to the third party; and
 - (ii) acquire a license to use the typeface.

CLIENT'S PERFORMANCE

The Client must provide the Designer with clear and concise written instructions in a timely manner to allow the Designer to perform the Services in accordance with agreement.

ACCEPTANCE AND APPROVAL

- (a) The Designer will deliver the Works to the Client:
 - (i) upon completion of the Works; or
 - (ii) otherwise in accordance with the milestones set out in Schedule 1.
- (b) Following receipt of the Works the Client agrees within 14 days of delivery to examine the Works and to give the Designer notice of acceptance or rejection of the Works or advise the Designer of the changes or revisions which the Client requires to be made. All changes or revisions will be charged to the Client by the Designer on a time and materials basis as set out in agreement. This clause is subject to Clause *Expansion of the Scope of Work* (b) herein;
- (c) The day upon which the Client gives the Designer notice of acceptance of the Works is deemed to be the Delivery Date.
- (d) Drafts or proofs are sent for approval, for both design and content, including the possibility of typographical errors, spelling mistakes, or incorrect information. It is the client's responsibility to check that there are no errors, and if so, corrections must be advised in writing.
- (e) Before closing the project and delivering it to the Client, the Client has to approve the Design by signing the Design Proof Document.

THE FINAL WORK DELIVERY

- (a) Charges for artwork, or artwork production, are for just that. The working files used to create that artwork are not provided to the Client.
- (b) If any client artwork is required on CD/DVD or USB, an administration fee for the medium plus courier/postage will be payable. Delivery Date is the date of collection by courier or post and the Designer is not responsible for the delivery time or any delays.
- (c) If there is a period to do, sign, approve etc. after the delivery of the Work and the Work is sent by post or courier, then the first day of this period is the day when courier or post deliver the Work to the Client.

PRICE QUOTE

- (a) Any written quotes provided are valid for 30 days if the quote document does not say different information.
- (b) The Designer has a right to change the final price of the project up or down and up to 10 % of the quoted price without GST and does not have to notify the Client about this change.
- (c) If the Client has extra design requirements during a project, or extra files upon completion of a project, it can cause the price increasing. The client will be informed that the alterations or changes requested fall outside the scope of the original estimate. If the client wishes these alterations to be made they must agree in writing, and a fee will be payable.

SCOPE OF WORK

- (a) The scope of work is defined in agreement.
- (b) A logo design does not include full branding or design of any other items other than a logo.
- (c) The Client agrees to supply all text and pictures required for the inclusion of any items to be designed.
- (d) It is expected that all text supplied has been checked for typographical and grammatical errors, and has been approved by all parties that will have a final say in the sign-off of any items produced. Additional expenses may be incurred for any necessary action, including, but not limited to, photography searches, media conversion, digital image processing and editing, or data entry services.
- (e) The client agrees that changes and alterations may be made to text and images mentioned in clause *Scope of Work d* (with their approval) to improve the design of any items produced.
- (f) If web administration is part of the service than the Client agrees that they may need to provide passwords and usernames to access domain and / or web hosting services that are already established, in order to edit existing websites. Complete privacy is assured, no username or passwords will ever be used for any purpose other than that it was supplied for, and only with the permission of the Client.
- (g) If social media site administration is part of the service than the Client agrees that they may need to provide passwords and usernames to access those sites that are already established, in order to edit existing sites. Complete privacy is assured, no username or passwords will ever be used for any purpose other than that it was supplied for, and only with the permission of the Client.
- (h) If social media site establishing is a part of service than the Client has to provide all details and information that are necessary to register a requested site. Complete privacy is assured, no details will ever be used for any purpose other than that it was supplied for, and only with the permission of the Client. However these details will be given to the social site provider under its terms & conditions and privacy policy and Martin Vavrla is not responsible for the way how that subject treat client's details and information.

EXPANSION OF THE SCOPE OF WORK

- (a) Work falling outside of the scope of the Services requested by the Client, either orally or in writing, will incur charges additional to the Designer's Fee. Work falling outside of the scope of the Services includes, but is not limited to:
- (i) additions to the list of Works;
 - (ii) alterations to text supplied by the Client for use in the Works;
 - (iii) additional drafts required in the provision of the Services;
 - (iv) changes to the Client's instructions or the brief;
 - (v) changes to any of the Works after the Delivery Date;
 - (vi) additional consultations; and
 - (vii) conversion, adjustment or manipulation of images;
- (b) Where additional work requested outside of the scope of the Services, is in the sole and exclusive discretion of the Designer, substantial, a Schedule of the additional Services and the additional Works must be annexed to the agreement. The provision of those Services and Works will be subject to the terms of the agreement;
- (c) Urgent work requested outside of the scope of the Services which is required an extra work will be charged at a rate set out in Additional Part of the Agreement.

RETRIEVAL OF WORK

- (a) The Designer retains electronic archives of completed Works for a period of not exactly specified time. If the Client requests retrieval and delivery of the Works again after confirmation of receiving that for the first time, and the Designer provides those services, then the Client must pay the Designer a service charge for those services;
- (b) To the fullest extent permitted by law, the Designer accepts no liability for any loss or damage that may occur to archived work.
- (c) The Designer is not obligated to keep and store files or source documents after delivering the final artwork to the Client and the delivery is being confirmed by the Client.
- (d) If any client artwork is required on CD/DVD or USB, an administration fee for the medium plus courier/postage will be payable.

CLIENT'S UNDERTAKINGS AND WARRANTIES

By signing this Agreement the Client undertakes and warrants that:

- (a) the Client will exercise control over the Works. The Designer will exercise reasonable care, honesty and diligence in providing the Services. The Client nonetheless warrants that it is responsible for ensuring that the Works are not contrary to law, including:
- (i) ensuring that the Works do not infringe the copyright or moral right of any person in relation to any material the Client has provided to the Designer;
 - (ii) ensuring that the Works do not infringe the trade mark rights of any person, including by undertaking trade mark searches where appropriate;
 - (iii) ensuring that the Works are not by law defamatory of any person;
 - (iv) ensuring that the Works are not obscene, blasphemous, offensive or discriminatory; and
 - (v) ensuring that the Works do not constitute conduct that is in breach of the provisions of the Competitions and Consumer Act 2010 (Cth) or that gives rise to an action in passing off, including by undertaking trade practices clearances where appropriate;

- (b) the Client 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;
- (c) the Client will use and publish the Works at its own risk.
- (d) The Client will indemnify the Designer against all claims arising from the Designer's use of any information or documents supplied by the Client or for any act or thing done by the Designer on the Client's instructions or with the Client's approval.

LIABILITY

- (a) Although the Designer will take all care in providing the Services, it accepts no liability to the fullest extent of the law regarding:
 - (i) any consequential loss, damage or injury, however it may arise;
 - (ii) any punitive, additional or exemplary damages;
- (b) If the Designer is found to be liable for any claims, losses, damages, costs or injuries arising out of the agreement, the quantum of the sum of all liability or liabilities is strictly limited to the value of the agreement.
- (c) No refunds or reprints are given after a final approved design has been done by the Client.
- (d) With all printing there may be some colour variations from what you have seen on screen, to what the final product looks like, and previous orders. This is due to the nature of CMYK printing and bulk-run printing system. There will be no reprints at the expense of Martin Vavrla.
- (e) Martin Vavrla is not responsible for any issues, not technical only, that can happen during or after a client's website administration.
- (f) Martin Vavrla is not responsible for any issues, not technical only, that can happen during or after a client's social media site administration.
- (g) Martin Vavrla is not responsible for the way how that social media providers treat client's details and information.

FORCE MAJEURE

Martin Vavrla shall not be liable for any failure or delay in supply or delivery of products/services where such failure or delay is wholly or partly due to any cause or circumstances whatsoever outside the reasonable control of MV 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 or act of terrorism.

TERMINATION FOR BREACH

- (a) Without prejudice to any other right or action or remedy, either party may terminate the agreement, by written notice to the other with immediate effect, if:
 - (i) the other party commits a breach of the agreement or is in default of any warranty and the defaulting party fails to correct such breach or default within 7 days of receiving notice specifying such breach or default;
 - (ii) the other party is insolvent or otherwise unable to pay its debts as and when they fall due; or
 - (iii) an administrator, trustee in bankruptcy, receiver, liquidator or controller is appointed to the other party;
- (b) If the agreement is terminated under the preceding Clause, the Client agrees to pay the Designer all amounts accrued and owing in accordance with the agreement within 14 days of that termination.

TERMINATION OF SERVICES

- (a) The Designer may terminate the agreement for any reason whatsoever by giving the Client 30 days' notice in writing;
- (b) If the Designer terminates the agreement under the preceding Clause, the Client agrees to pay the Designer all amounts accrued and owing in accordance with the agreement within 14 days of the expiry of the period of notice.
- (c) In the event of the Client cancelling a project after a project has commenced, the advance payment (deposit) will be forfeited in lieu of compensation to Martin Vavrla. This is to cover design and administration work and other costs.
- (d) If the Client cancels a project and the project is more than 50% completed (this is determined by the Designer and the Client by negotiation) a pro-rata payment is payable for the work that has been done until cancellation notice.
- (e) If a project is cancelled by the Designer, due to unforeseen circumstances and a deposit has been paid, the deposit will be refunded in full to the client in a timely manner.

CONFIDENTIALITY

- (a) Each party agrees not to disclose to any third party anything about the agreement or any of its contents unless:
 - (i) it has the prior written consent of the other party; or
 - (ii) it is required to do so by law; or
 - (iii) a third party needs to know the information in order to perform the agreement;
- (b) The Designer agrees that during the term of the agreement it may have access to the Client's Confidential Information, and agrees to both during and after the Term 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 the Client;
- (c) The Designer agrees that it must not, both during and after the Term, make improper use of the Client's Confidential Information to gain directly or indirectly an advantage for itself or for any other person or to cause detriment to the Client;
- (d) The Client agrees that during the term of this Agreement it may have access to the Designer's Confidential Information, and agrees to both during and after the Term 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 the Designer;
- (e) The Client agrees that it must not, both during and after the Term, make improper use of the Designer's Confidential Information to gain directly or indirectly an advantage for itself or for any other person or to cause detriment to the Designer;
- (f) 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.
- (g) All contractors employed by Martin Vavrla are held to a strict confidentiality and non-disclosure agreement.

RELATIONSHIP OF PARTIES

- (a) The Designer's relationship with the Client is that of an independent contractor;
- (b) Neither the Designer nor the Client will have (and must not represent that it has) the power, right or authority to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other or in the other's name;
- (c) Nothing stated in the agreement should be construed as constituting the Designer and the Client as partners, in a joint venture, or as creating the relationship of employer and employee, master and servant or principal and agent between the parties;
- (d) During the Term the Designer may provide, in any capacity, to any third parties, works or services of any description.

RESTRAINT OF TRADE

- (a) The Client agrees that in order to protect the goodwill of the Designer the Client will not directly or indirectly at any time, for a period of:
 - (i) 1 year after the Delivery Date; or, in the event that this term is deemed unenforceable:
 - (ii) 6 months after the Delivery Date; or, in the event that this term is deemed unenforceable:
 - (iii) 3 months after the Delivery Date; employ or solicit to employ any person who is or has in the period of 1 year prior to the Delivery Date been an employee of the Designer;
- (b) Clause *Restraint of Trade* (a) has effect as comprising each of the separate provisions which results from each combination of a period described therein;
- (c) If any separate provision referred to in Clause *Restraint of Trade* (a) is unenforceable, illegal or void that provision is severed and the next sequential provision is in force. Each of the parties acknowledges that each of those separate provisions read separately but set out in this way is a fair and reasonable restraint of trade.

TERMS OF PAYMENT

- (a) The Client agrees to pay appropriate fees for services provided by Martin Vavrla.
- (b) The Client agrees to pay appropriate fees for the excess work, outside the scope of the original agreement once has acknowledge that work to be done.
- (c) Martin Vavrla can required deposit payment before commencement of work.
- (d) Martin Vavrla can required a deposit for just part of the project – for example printing.
- (e) All payments have to be done online by bank transfer.
- (f) Banking details are included in each invoice or can be provided on request.
- (g) Banking details are not publicly mentioned on the website.
- (h) Due date is stated on each invoice and it is a date (inclusive) the invoice has to be paid to.
- (i) Pay an invoice late means giving a transfer of payment order after a due date stated on invoice. Martin Vavrla can ask for a copy of payment order if has not received a payment until due date and a date on this document determines if payment has been late or not.
- (j) If a payment is delayed a penalty can be applied.
- (k) A penalty amount can be specified in a written agreement. If it is not than clause *Terms of Payment* (l) is applied.
- (l) If a penalty amount it is not specified in the agreement than it is 0.1 % of balance due per every day after due to date when the invoice is not paid.

GENERAL

website terms of use

- (a) All notices and consents required or permitted to be given under the agreement must be in writing and given by personal services, pre-paid postage, facsimile transmission at the addresses of the parties set out in the agreement or to such other address as either party may designate to the other by written notice;
- (b) The agreement must not be assigned or otherwise transferred without the prior written consent of the Parties;
- (c) The agreement is governed by the laws of New South Wales and the Parties submit to the jurisdiction of that State;
- (d) The agreement may be modified only in writing and signed by duly authorised persons for both parties;
- (e) All and any amendments to the terms and conditions outlined in this submission must be provided in writing by the Client and signed by an authorised representative – Martin Vavrla – prior to the commencement of work outlined in this submission.
- (f) If any provision of the agreement is held to be invalid in any way or unenforceable, the remaining provisions are not in any way affected or impaired and this Agreement must be construed so as to give effect to the intent of the parties as it was originally executed;
- (g) Clauses
 - (i) Assignment of Copyright
 - (ii) Self-promotion by designer
 - (iii) Moral Rights
 - (iv) Retrieval of Work
 - (v) Client's undertakings and Warranties
 - (vi) Liability
 - (vii) Force Majeure
 - (viii) Confidentiality
 - (ix) Relationship of Parties
 - (x) Restraint of Tradesurvive termination of this agreement.