



Hogarth Terms & Conditions

Hogarth Pty Limited ABN 89 083 177 440 (“**Hogarth**”) and the client (“**Client**”) agree the below terms and conditions (“**Terms**”) apply to the supply by Hogarth of the production services (“**Production Services**”) and deliverables (“**Deliverables**”) specified in the Estimate:

1. Engagement

- 1.1 The Client engages Hogarth to provide Production Services and supply the Deliverables in accordance with these Terms.
- 1.2 These Terms constitute the entire terms and conditions between the parties. If the parties are subject to a Master Services Agreement (**MSA**) relating to the Production Services, to the extent of any inconsistency the terms of the MSA prevail.

2. Provision of Production Services

- 2.1 Hogarth will:
 - (a) perform the Production Services in a diligent and professional manner;
 - (b) perform the Production Services and deliver the Deliverables in accordance with the Estimate.
- 2.2 Hogarth will not be required to provide any items listed as exclusions.
- 2.3 As soon as practicable after becoming aware of any matter which is likely to cause a significant delay in delivering the Production Services, Hogarth will notify the Client of the cause and likely duration of the delay. Hogarth must make all reasonable endeavours to minimise any delay.

3. Compliance

- 3.1 The Client acknowledges that preparatory Materials have not been prepared as cleared for print, broadcast or other publication. Hogarth only accepts responsibility for final and approved versions of Deliverables. Any use by the Client of any Deliverables which are not final and approved versions of Deliverables shall be at Client’s own risk.
- 3.2 Unless specified otherwise in the Estimate (including as a Client responsibility) and subject to clause 3.1., Hogarth is responsible for (if applicable):
 - (a) ensuring that each person depicted or referred to prominently in any final Deliverable gave written consent to the depiction or reference;
 - (b) obtaining all releases from actors, artists, photographers, models, musicians,

athletes, professionals and/or any other persons or talent required to permit the Client to use the Deliverables as contemplated by the Estimate.

- 3.3 The Client acknowledges that Advertising Law varies greatly between jurisdictions and that compliance is challenging where Deliverables will be made available on the Internet or otherwise used by the Client in multiple jurisdictions. Hogarth will not be responsible for ensuring that the final Deliverables are compliant with Advertising Law in any jurisdiction unless otherwise specified. ‘**Advertising Law**’ means any law in that is directly applicable to advertising including guidelines and codes issued by any statutory or regulatory body responsible for regulation of advertising.
- 3.4 If any other checks or approvals are required in connection with the Production Services (including police or working with children checks) the requirement and the responsible party will be set out in the Estimate.

4. Client Responsibilities and approval

- 4.1 The Client is responsible for:
 - (a) providing the Materials and carrying out the tasks listed as “Client Responsibilities” in the Estimate; and
 - (b) obtaining approval for any product claims made within the Deliverables produced by Hogarth.
- 4.2 Hogarth shall submit to the Client for approval: creative material, press releases, articles, photographs and captions, copy, layouts, and artwork and scripts relating to the Production Services.
- 4.3 Deliverables will be submitted to the Client for final approval.
- 4.4 Where the Client causes a delay the final delivery date will be extended by the period of the delay and Hogarth may charge the Client for any additional time spent/expense incurred due to the delay.

5. Fees and Expenses

- 5.1 The Client shall pay the Fees and any additional expenses payable pursuant to clauses 5.4, 5.5 and 6 and as set out in the Estimate. The Client will pay Hogarth’s invoices within 30 days of receipt. Significant production costs (greater than A\$10,000) will be invoiced 50% upfront and payable within 7 days of receipt – Hogarth will have no obligation to commence pre-production until the relevant amount is paid by the Client.
- 5.2 Except where express provision is made to the contrary, any amount that may be payable is exclusive of GST. If the one party (“**Payee**”) makes a Taxable Supply then the other party (“**Payor**”) must also pay, at the same time and in the same manner the amount of any GST payable in respect of the Taxable Supply. The Payee’s right to payment under this clause is

subject to a valid Tax Invoice as appropriate, being delivered to the Payor.

- 5.3 In this clause the terms “GST”, “Input Tax Credit”, “Tax Invoice” and “Taxable Supply” have the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 5.4 Any item identified in the Cost Estimate as being a variable expense, is not included in the fixed Fees and will be charged separately.
- 5.5 The Client will pay Hogarth any additional expenses incurred by Hogarth due to production being frustrated by bad weather; causes beyond Hogarth’s reasonable control, including, but not limited to, war, terrorist attack, acts of God, strikes, injury, illness or non-appearance of key talent, unavailability of necessary utilities, blackouts or acts of regulatory agencies; or the Client’s failure to meet its responsibilities.

6. Variation process

- 6.1 Hogarth is entitled to seek a variation to the Fees if the Client:
- (a) requests a change to the Production Services (including the Deliverables); or
 - (b) requires Hogarth to acquire goods or services that are not part of the Costs Estimate or alters a budgeted requirement so that Hogarth is required to incur more cost.
- 6.2 Hogarth will provide the Client with a cost quotation for its approval in writing.

7. Intellectual Property

- 7.1 Subject to clause 7.2 and 7.3, Hogarth assigns all Intellectual Property in the Deliverables to the Client on payment of the Fees or, where the Fees are to be paid in instalments, the final instalment of the Fees.
- 7.2 Nothing in this clause 7 affects the ownership of any pre-existing Material. Hogarth grants the Client a permanent, irrevocable, royalty-free non-exclusive licence to use, reproduce, adapt, modify, publish and exploit any pre-existing Material incorporated in the Deliverables as contemplated by these Terms.
- 7.3 Hogarth will use reasonable endeavours to obtain an assignment and /or licence of any third party Intellectual Property incorporated into the Deliverables as required by clauses 7.1 and 7.2. If Hogarth is unable to do so it will advise the Client of the terms on which the third party will licence the Intellectual Property and seek the Client’s approval before incorporating the third party Intellectual Property into the Deliverables.
- 7.4 The Client grants Hogarth a licence to use, reproduce, adapt, modify and publish any Material provided by the Client for inclusion in the Production Service (including the Deliverables) solely for the purpose of Hogarth providing the Services.
- 7.5 **‘Materials’** means any words, documents, literature, copy, questionnaires, fonts, pictures, photographs, drawings, artwork,

story boards, designs, devices, promotional items, samples, representations, films, tapes, sound recordings, domain names, website content, data, software or other things or materials in any media.

8. Termination

- 8.1 The Client may terminate the Services by providing 14 days written notice to Hogarth. Any prepaid Fees will not be refunded.
- 8.2 The Client is responsible for payment of Production Services provided up to the date of termination, any Estimated Costs incurred to that date or which cannot be cancelled and any third-party cancellation charges (**Termination Costs**). Hogarth will invoice the Client for the Termination Costs (less any prepaid Fees retained under clause 8.1)
- 8.3 Either party may terminate these Terms if the other breaches any material term of these Terms and fails to remedy the breach within 30 days of notice specifying the breach.
- 8.4 Either party may terminate these Terms immediately by giving notice to the other party if:
- (a) the other party ceases to carry on business;
 - (b) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the other party’s assets or business;
 - (c) any step is taken to appoint a receiver, a receiver and manager, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the other party’s assets or business;
 - (d) the other party disposes of the whole or any part of its assets, operations or business other than in the normal course of business; or
 - (e) the other party ceases to be able to pay its debts as they become due and payable.
- 8.5 Termination by either party is without prejudice to any accrued rights or remedies of that party and will not release the other party from liability in respect of any breach or non-performance of any obligation.

9. Indemnity

- 9.1 Subject to clause 11, each party (**Indemnifier**) agrees to indemnify the other party and that party’s Personnel (**Indemnified Persons**) from and against any direct Loss incurred or suffered by an Indemnified Person arising from:
- (a) any negligent or unlawful act or omission by the Indemnifier in connection with these Terms;
 - (b) any breach by the Indemnifier of its obligations or warranties under these Terms; or
 - (c) material developed or provided by the Indemnifier and included in the Deliverables infringing the Intellectual Property rights of a third party.



9.2 The Indemnifier's liability to indemnify the Indemnified Persons under this clause will be reduced proportionately to the extent that any default or negligent act or omission of an Indemnified Person caused or contributed to the relevant liability, loss or damage, or loss or expense.

(c) professional indemnity insurance to the limit of \$5,000,000.

10. Limitation of liability

10.1 To the extent permitted by law:

- (a) each party's maximum liability under or in connection with these Terms however arising (whether under statute, in contract, tort or otherwise), and including in respect of the indemnities given shall be limited to the aggregate amount paid to Hogarth under this Estimate; and
- (b) neither party is liable for any consequential, indirect or incidental losses, special damages, damages for loss of profits or business interruption arising out of or in connection with the performance of its obligations under these Terms (whether under statute, in contract, in tort or otherwise). These subclasses do not exclude liability for any loss or damage which would fairly and reasonably be considered to arise naturally, that is according to the usual course of things, from a breach of agreement.

10.2 Nothing in these Terms shall limit or exclude the liability of either party for death or personal injury resulting from its unlawful or negligent act or omission or that party of its Personnel.

11. General

11.1 These Terms are governed by the laws of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State and any courts that may hear appeals from those courts in respect of any proceedings in connection with these Terms.

11.2 Any modification to these Terms must be in writing and signed by both parties.

11.3 A party ("**Recipient**") must not, without the prior written consent of the other party ("**Discloser**"), disclose any confidential Information of the Discloser to a third person, except to the extent that the confidential information is:

- (a) disclosed by the Recipient to its advisers and financiers on a confidential basis;
- (b) disclosed by the Recipient to its employees, officers or agents in order to carry out its obligations, or enforce its rights, under these Terms; or
- (c) authorised or required to be disclosed by law or under these Terms.

11.4 Hogarth must obtain and maintain for the term, unless otherwise agreed with the Client:

- (a) public liability insurance to the limit of \$10,000,000;
- (b) workers' compensation insurance for its employees; and