

ONLINE TERMS AND CONDITIONS**1. ACCEPTANCE**

- 1.1 These Terms are between Dorne Creative Pty Ltd (ABN 80 345 295 106), its successors and assignees (referred to as “we” and “us”) and you, the person, organisation or entity that purchases Services from us (referred to as “you”), each a “Party” and collectively the “Parties”. These Terms apply to all sales made by us to you.
- 1.2 You have requested the Services, described on and able to be ordered via our Site. You accept these Terms by:
- ticking the online acceptance box;
 - confirming by email that you accept the Terms;
 - instructing us to proceed with the Services; or
 - paying any Deposit required, or making part or full payment for the Services, set out in our tax invoice to you (**Invoice**).
- 1.4 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Please contact us if you have any questions using the contact details at the end of these Terms. Using or purchasing our Services indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older.
- 2.3 We will not commence performing the Services until you have paid the Deposit or first instalment of our Fee.

2. SERVICES

- 2.1 You can request our Services by submitting an enquiry form on the Site, emailing us at hello@dorne.com.au or contacting us by telephone using the contact details on the Site. Upon receipt of a Services request we will issue you with a Quote for the Services. Quotes are valid for 30 days from the date of issue.
- 2.2 We agree to perform the Services with due care and skill.
- 2.3 We reserve the right to refuse any request that we deem inappropriate, unreasonable, illegal or outside of our capabilities.
- 2.4 The estimated period for us to perform the Services is set out on our Quote.
- 2.5 We may provide the Services to you using our employees, contractors and third party providers and they are included in these Terms.
- 2.6 Third parties who are not our employees or our direct contractors will be your responsibility.

- We are not responsible for the products or services provided by those third parties.
- 2.7 If you request Variations, we have discretion as to whether we accept them and whether an adjustment to the Fee may be required. If we are unable to accommodate the Variation, we may request that we be paid for Services performed to date and terminate these Terms.
- 2.8 If we agree to perform a Variation, we will inform you of any Variation Fee. You must pay the Variation Fee before we commence the Variation. We will invoice you accordingly for the Variation.
- 2.9 Access to some of our Services will require you to access an account we have set-up for you. It is your responsibility to keep the details of your account, including user name and password, confidential.
- 3. FEES, INVOICING AND PAYMENT**
- 3.1 You agree to pay us the amounts set out on our Quote and/or invoices, including any Deposit required. All amounts are stated in Australian dollars. All amounts exclude Australian GST (where applicable). Payment may be made by way of electronic funds transfer into our nominated bank account, PayPal or such other payment methods as set out on the Site or as advised by us from time to time.
- 3.2 You agree to pay our invoices by the payment date set out on the invoice. If you do not pay by the payment date, we may cease to provide the Services to you until we receive payment.
- 3.3 We may charge interest at the rate equal to the Reserve Bank of Australia cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid after the payment date.
- 3.4 If invoices are unpaid after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debts, and the right to commence legal proceedings for any outstanding amounts owed to us.
- 3.5 We reserve the right to report bad debts to independent credit data agencies.
- 3.6 These Terms may be amended from time to time at our discretion. The changes will apply to you for Services provided to you after the date of the change. You may terminate these Terms if you do not agree with the change and we will refund any unused Fees to you.
- 4. ACKNOWLEDGMENTS AND WARRANTIES**
- 4.1 You warrant that you will not employ, canvass, solicit, entice, induce or attempt to employ any employee or contractor that was employed by or contracted to us during the time that we provide Services to you or the 12 month period prior to that time.

- 4.2 You warrant that throughout the term of these Terms that:
- (a) there are no legal restrictions preventing you from agreeing to these Terms;
 - (b) you will complete our design questionnaire at the start of each project and will further cooperate with us and provide us with such information, instructions and feedback that is reasonably necessary to enable us to perform the Services as requested by us from time to time, and will comply with these requests in a timely manner;
 - (c) you will review and approve drafts we provide to you in a timely manner;
 - (d) where you have engaged us to undertake web design works as a part of the Services, you will provide us with your website login information including but not limited to passwords and usernames;
 - (e) the information you provide to us is true, correct and complete;
 - (f) you will not infringe any third party rights in working with us and receiving the Services;
 - (g) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns;
 - (h) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;
 - (i) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you;
 - (j) if applicable, you hold a valid ABN which has been advised to us; and
 - (k) if applicable, you are registered for GST purposes.
- 4.3 You acknowledge and agree that where you have engaged us to provide copywriting or design Services you are responsible for proofing any content, artwork or design. You agree to indemnify and hold us harmless against any loss or damage occasioned to you or a third party claiming through you as a result of an error in such content, artwork or design.
- 4.4 Where you have authorised us to forward works we have created for you or made available to you as a part of the Services to a third party services provider for printing, you acknowledge and agree that we do not take responsibility for printing errors but will use our best endeavours to obtain a re-print for you free of charge. You agree to indemnify and hold us harmless against any loss or damage suffered by you or a third party claiming through you as a result of such printing errors.
- 4.5 Where you have engaged us to provide website design and/or development Services you acknowledge and agree that we are not responsible for any errors or faults subsisting in the website (including but not limited to design or operational errors or faults) after the website has been handed over to you, unless it can be reasonably established that the errors or faults were in existence prior to handover or are directly attributable to our efforts. You agree to indemnify and hold us harmless against any loss or damage suffered by you or a third party claiming through you as a result of such errors or faults.
- 5. OUR INTELLECTUAL PROPERTY**
- 5.1 We do not offer a design or trademark search as part of our Service and we are not responsible for any infringement of third party Intellectual Property rights or liability.
- 5.2 The Materials contain material which is owned by or licensed to us and is protected by Australian and international laws. We own the Intellectual Property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.
- 5.3 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any Intellectual Property rights in our Materials, except as stated in these Terms or with our written permission.
- 5.4 Your use of our Materials does not grant you a licence, or act as a right to use, any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 5.5 You must not breach our Intellectual Property rights by, including but not limited to:
- (a) altering or modifying any of the Materials;
 - (b) creating derivative works from the Materials; or
 - (c) using our Materials for commercial purposes such as on-sale to third parties.
- 5.6 Unless otherwise agreed by the Parties, we will assign ownership in the the final copy of any designs and/or artworks we create for you as a part of the Services to you upon full payment of our invoices. You grant us a limited licence to use any materials we assign to you under this clause for the purpose of promoting our business.
- 5.7 We retain the Intellectual Property rights in any working files or draft of any designs and/or artworks that we create for you as a part of the Services.

- 5.8 Any designs and/or artworks that we create for you as a part of the Services will be made available to you in a flattened format at the completion of Services.
- 5.9 Subject to clause 5.6, we grant you a perpetual, non-exclusive, revocable, worldwide and non-transferable licence to use the Licensed Material for your internal business purposes upon full payment of our invoices.
- 5.10 We may grant you a limited and revocable licence to use our corporate logo for the purpose of publicising that we have provided Services to you or have entered into a partnership or collaborative arrangement with you.
- 5.11 If you wish to obtain editable branding artwork files created for you or provided to you as a part of the Services, we reserve the right to charge a release fee.
- 5.12 You warrant that any documents or files we provide to you in editable format must not be materially changed or provided to third parties without our written permission. We are not responsible or liable for any changes that we did not review or assent to.
- 5.13 This clause will survive the termination of these Terms.
- 6. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS**
- 6.1 If you provide information including any Intellectual Property to us, then you:
- (a) warrant that you have all necessary rights to provide the Intellectual Property to us;
 - (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the Intellectual Property in any way we require to provide the Services to you; and
 - (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.
- 6.2 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:
- (a) irrevocably consent to any amendment of the Intellectual Property in any manner by us;
 - (b) irrevocably consent to us using or applying the Intellectual Property without any attribution of authorship;
 - (c) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
 - (d) agree that your consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statement.
- 6.3 This clause will survive the termination of these Terms.

7. CONFIDENTIAL INFORMATION

- 7.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than where necessary, to a third party supplier, or as required by law); to use all reasonable endeavours to protect your Confidential Information from any unauthorised disclosure; only to use your Confidential Information for the purpose for which it was disclosed by you to provide better quality services to you and not for any other purpose.
- 7.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect our Confidential Information from any unauthorised disclosure; and only to use our Confidential Information for the purpose for which it was disclosed or provided by us to you, to provide better quality services to you and not for any other purpose.
- 7.3 These obligations do not apply to Confidential Information that:
- (a) is authorised to be disclosed;
 - (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
 - (c) is received from a third party, except where there has been a breach of confidence; or
 - (d) must be disclosed by law or by a regulatory authority including under subpoena.
- 7.4 This clause will survive termination of these Terms.
- 8. FEEDBACK AND DISPUTE RESOLUTION**
- 8.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.
- 8.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
 - (b) If the Parties cannot agree how to resolve the dispute at the initial meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Victoria to appoint a mediator. The mediator will decide the time and place for mediation. The Parties

- must attend the mediation in good faith, to seek to resolve the dispute.
- 8.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 9. TERMINATION**
- 9.1 Either Party may terminate these Terms without cause by providing the other Party with 7 days' notice in writing.
- 9.2 Either Party may terminate these Terms if there has been a material breach of these Terms, subject to following the dispute resolution procedure.
- 9.3 We may terminate these Terms immediately, at our sole discretion, if:
- we consider that a request for the Services or works forming part of the Services is or may result in the creation of deliverables which we regarded as inappropriate, improper, offensive or unlawful;
 - you fail to provide us with clear or timely information, instructions or feedback to enable us to provide the Services;
 - we consider that our working relationship has broken down including a loss of confidence and trust;
 - you act in a way which we reasonably believe will bring us, our Services or our Site into disrepute;
 - you provide us with incorrect payment details or any other incorrect information;
 - an invoice is overdue and you fail to pay an invoice within 30 days of a written demand for payment; or
 - for any other reason outside our control which has the effect of compromising our ability to perform the Services within the required timeframe.
- 9.4 On termination of these Terms you agree that if we have commenced work on your project any Deposit paid is not refundable to you, and you are to pay for all Services provided prior to termination, including any Services which have been performed and have not yet been invoiced to you. If we have not commenced work on your project we will refund you the full Fees (including any Deposit) paid by you within 14 days into a bank account nominated by you.
- 9.5 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.
- 9.6 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property.
- 9.7 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 9.8 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 10. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 10.1 **ACL:** If you are a consumer as defined in the ACL, the following applies to you: *You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the services remedied if they are not rendered with due care and skill or they are not fit for purpose and the failure does not amount to a major failure.* To the extent we are able to exclude liability; our total liability for loss or damage you suffer or incur from our Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.
- 10.2 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out on the Site where it is affected by your delay in response, or supply of incomplete or incorrect information.
- 10.3 **Referral:** We may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or their failure to advise or provide services.
- 10.4 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly exclude all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 10.5 **Availability:** To the extent permitted by law, we exclude all liability for:
- the Services being unavailable; and

- (b) any Claims (whether direct, indirect, incidental, special, consequential and/or incidental), for loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption or otherwise, suffered by you or made against you, arising out of or in connection with your inability to access or use the Services, or the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.
- 10.6 **Limitation:** Our total liability arising out of or in connection with the Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the total fees paid by you to us in the twelve (12) month period prior to the event giving rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made, or the amount recovered or recoverable under any of our business insurance policies, whichever is the greater.
- 10.7 This clause will survive termination of these Terms.
- 11. INDEMNITY**
- 11.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
 - any breach of these Terms by you;
 - any misuse of the Services, the Site or the Materials by you, your employees, contractors or agents; and
 - your breach of any law or third party rights.
- 11.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 11.3 This clause will survive termination of these Terms.
- 12. GENERAL**
- 12.1 **Good faith:** The Parties must at all times act toward each other with good faith.
- 12.2 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 12.3 **Publicity:** Unless otherwise agreed by the Parties in writing, you consent to us advertising or publically announcing that we have provided Services to you, including but not limited to mentioning you on our Site and in our promotional material and displaying the works we have created for you as a part of the Services in our corporate portfolio.
- 12.4 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 12.5 **GST:** If and when applicable, GST payable on the Fee for the Services will be set out on our invoices. You agree to pay the GST amount at the same time as you pay the Fee.
- 12.6 **Relationship of parties:** These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.
- 12.7 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 12.8 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 12.9 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 Business Days' notice in writing.
- 12.10 **Notice:** Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed to you at the address provided at the time you order our

Services. Our address is set out at the end of these Terms. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

12.11 **Jurisdiction & Applicable Law:** These terms are governed by the laws of Victoria and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria.

12.12 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.

13. DEFINITIONS

13.1 **ACL** means the Australian Consumer Law.

13.2 **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Victoria, Australia.

13.3 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise.

13.4 **Confidential Information** includes our Quotes, confidential information about you, your credit card or payment details, and the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information of either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".

13.5 **Deposit** means the deposit required for the Services, as set out on our Site or otherwise communicated to you.

13.6 **Fees** are our fees for the Services.

13.7 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.

13.8 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs (whether or not registered or registrable), any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.

13.9 **Licensed Material** means any content, documents, images and reports we make available to you as a part of the Services but excludes any designs and/or artworks assigned to you pursuant to clause 5.6.

13.10 **Materials** means work and materials that we provide to you in carrying out the Services.

13.11 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).

13.12 **Quote** means our quote to you including any proposal.

13.13 **Services** means graphic design, brand identity, design strategy, business naming, responsive website design and website development and copywriting services described on our Site and such other services agreed by the Parties, in writing, from time to time.

13.14 **Site** means our website at www.dorne.com.au

13.15 **Terms** means these terms and conditions.

13.16 **Variation** means amended or additional Services other than those particularized in our quote to you, including but not limited to changes in the scope, character or type of Services or works forming part of the Services.

13.17 **Variation Fee** means the additional cost for a Variation.

Contact details:

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