

Lavender\*

# \*Terms of business

Valid from 07 April 2006

\*We put consumer self-interest first

## 1. Interpretation

In these Terms -

- 'Agreement' means these Terms, the Cover Letter, the Price List, plus any other annexures of, or schedules attached to, the Cover Letter;
- 'Client' means the person or organisation named on the Cover Letter for whom Lavender\* has agreed to provide the Services in accordance with these Terms;
- 'Communications Brief' means the brief prepared by Lavender\* which sets out the agreed goals and messages for each project or job and which, upon sign-off by the Client, will immediately be incorporated into the Agreement;
- 'Cover Letter' means the letter to which these Terms are attached;
- 'Estimate' means the estimate provided by Lavender in relation to each project or job for the Client, which, upon sign-off by the Client, will immediately be incorporated into the Agreement;
- 'Client's Materials' means any Materials and any data or other information provided by the Client relating to the Services;
- 'Lavender\*' means Lavender\* Communication Group Pty Limited (ABN 18 074 784 862 ACN 079 608 709) of Level 29 25 Bligh Street Sydney NSW 2000;
- 'Lavender\*'s Materials' means any Materials and any data or other information provided by Lavender\* relating to the Services which it owned prior to the commencement of this Agreement;
- 'Lavender\*'s Standard Charges' means the charges for the Services set out in the Price List, as added to or varied from time to time under these Terms;
- 'Materials' includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, video, negative, tape, disc or other device embodying visual and/or audio images and any disc, tape or other device embodying any other data.
- 'Output Materials' means any Materials or any data or other information provided, created or developed by Lavender\* in its performance of the Services;
- 'Price List' means the standard price list for Lavender\*'s Services as annexed to the Cover Letter;
- 'Services' means the Services to be provided by Lavender\* for the Client; and
- The headings in these Terms are for convenience only and will not affect their interpretation.

## 2. Supply Of The Services

- Lavender\* will provide the Services to the Client under this Agreement and subject to these Terms. Any changes or additions to the Services or this Agreement must be agreed in writing by Lavender\* and the Client.
- An Estimate is the preferred means of engagement with Lavender\* to perform a specific project or job for a specific price giving the Client security that Lavender\* only works on a job authorised by the Client.
- An Estimate will include a time contract for each project or job and both parties are to adhere to the allocated timings within the Estimate.
- Each Estimate must be signed off by an authorised representative of the Client.
- An Estimate will not be required where there is a separate agreement that instructs Lavender\* to commence a project or job.
- In order to prepare the Communications Brief Lavender\* aims to develop a creative brief within five working days and to develop the concept within ten working days.
- Each Communications Brief must be signed off by an authorised representative of the Client before work proceeds.
- If the Client decides at any stage to change the Communications Brief, the "clock stops" and the Client will pay for all the work completed and Lavender\* and the client will then agree a new Communications Brief on new terms.
- Lavender\* will prepare all artwork and retouching for concepts developed by Lavender\*.
- Lavender\* will prepare agendas for all meetings and draft contact reports within 48 hours.
- All team members of the Client who work with Lavender\* must complete Lavender\*'s twice-yearly satisfaction survey and Lavender\* will track and analyse the feedback and make all the Client's inputs available.
- The Client will at its own expense supply Lavender\* with all necessary Materials within sufficient time to enable Lavender\* to provide the Services in accordance with any time period provided in the Cover Letter. The Client will ensure the accuracy of all of the Client's Materials.
- The Client will at its own expense retain duplicate copies of all of the Client's Materials and insure against its accidental loss or damage. Lavender\* will have no liability for any such loss or damage, however caused.
- All Output Materials will be at the sole risk of the Client from the time of delivery to or to

the order of the Client.

- Lavender\* may at any time without notifying the Client make any changes to the Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Services.

### 3. Charges

- Subject to any special terms agreed in the Cover Letter or the Estimate, the Client will pay Lavender\*'s Standard Charges and any additional sums which are agreed between Lavender\* and the Client for the provision of the Services or which, in Lavender\*'s sole discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any of the Client's Materials or any other cause attributable to the Client.
- All external suppliers sourced and managed by Lavender\* will incur a 10% fee on the external suppliers' costs, which reflects the administration, credit control and overall management of cash flow for payment of these suppliers provided that all supplier invoices are available for review by the Client on request.
- Lavender\* will be entitled to vary Lavender\*'s Standard Charges from time to time by giving not less than 30 days written notice to the Client.
- All charges quoted to the Client for the provision of the Services are exclusive of any GST, for which the Client will be additionally liable at the applicable rate from time to time.
- Lavender\* will be entitled to invoice the Client following the end of each month in which the Services is provided, or at such other times as may be agreed with the Client.
- Lavender\*'s Standard Charges and any additional sums payable will be paid by the Client (together with any applicable GST, and without any set-off or other deduction) within 30 days of the date of Lavender\*'s invoice.
- If payment is not made on the due date, Lavender\* will be entitled, without limiting any other rights it may have, to charge [interest on the outstanding amount (both before and after any judgment) at the rate of 3% above the base rate from time to time of The Commonwealth Bank of Australia Pty Ltd from the due date/ 1 % per month or part thereof applied to the outstanding amount] until the outstanding amount is paid in full.

## 4. Revision charges

- Any cost estimates provided in an Estimate allow for three sets of low-to-medium level copy revisions between concept and artwork development stages and accommodate changes "within reason" which means simple additions and deletions to copy or small layout changes, being as a general rule, within 15% of the original work.
- Changes greater than those "within reason" will attract the following additional charges:-
  - **Small changes** where the revisions affect 15-30% of the original work will incur a revision charge of 30% of the estimate;
  - **Large changes** where the revisions affect 30-60% of the original work, will incur a revision charge of 45% of the estimate; and
  - **Major changes** where the original work is changed by over 60% will incur a revision charge of 60% of the estimate.

## 5. Rights in their Materials

- The property and any copyright or other intellectual property rights
  - in any Input Material will belong to the Client;
  - any Output Material will belong to Lavender\*, subject only to the right of the Client to use the Output Material for the purposes of utilising the Services during the contract period.
- All Input Material or other information provided by the Client which is so designated by the Client will be kept confidential by Lavender\*.
- All Output Material or other information provided by Lavender\* which is so designated by Lavender\* will be kept confidential by the Client.
- All Lavender\* employees and contractors are employed under a contract that contains a clause that strictly forbids the unauthorised disclosure of information.
- This clause 5 does not apply to any Materials, data or other information which are public knowledge at the time when they are so provided by either party, and will cease to apply if at any future time they become public knowledge through no fault of the other party or if otherwise agreed in writing between the parties.
- The Client warrants that any Input Material and its use by Lavender\* for the purpose of providing the Services will not infringe the copyright or other rights of any third party.
- Subject to clause 7, Lavender\* warrants that any Output Material and its use by the Client

for the purposes of utilising the Services will not infringe the copyright or other rights of any third party.

## **6. Seeking to employ staff**

- Both parties agree not to seek directly or indirectly to employ permanently or temporarily each other's staff or contractors, during the period of this Agreement, any extension thereof or for 12 months after termination or expiry.
- Any such approach will result in payment of fair and reasonable damages for loss of revenue and/or expertise which will not be less than 6 months of the salary to be earned by the staff member or contractor.

## **7. Warranties And Liability**

- Lavender\* warrants to the Client that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the applicable Estimate and Communications Brief and at the intervals and within the times referred to in the Estimate. There are no other express or implied warranties. For any breach of the warranty, the Client's exclusive remedy will be the re-performance of the deficient Services or a recovery of the fees paid to the Supplier for the deficient Services, such remedy to be determined by the Supplier in its absolute discretion.
- Where Lavender\* supplies in connection with the provision of the Services any goods supplied by a third party, Lavender\* does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but will, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to Lavender\*.
- Lavender\* will have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any of the Client's Materials or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
- Lavender\* will not be liable to the Client by reason of any representation or any implied warranty, condition or other term, or any duty in tort or at common law, or under the express terms of the Agreement, for any loss of profit or any indirect, special or

consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of Lavender\*, its officers, employees or agents or otherwise) which arise out of or in connection with the provision of the Services or their use by the Client, and the entire liability of Lavender\* under or in connection with this Agreement will not exceed the amount of Lavender\*'s charges for the provision of the Services.

- Lavender\* will not be liable to the Client or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of Lavender\*'s obligations in relation to the Services, if the delay or failure was due to any cause beyond Lavender\*'s reasonable control.

## **8. Termination**

- In addition to any right of termination provided in the Cover Letter or Estimate, either party may (without limiting any other remedy) at any time terminate the Agreement by giving written notice to the other if the other commits any material breach of these Terms and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, or if the other goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.

## **9. General**

- This Agreement constitutes the entire agreement between the parties, supersedes any previous agreement or understanding and may not be varied unless agreed to in writing by both parties. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- Unless otherwise agreed in writing by both parties these Terms will apply every time Lavender is retained by the Client to perform services at any time in the future.
- Any notice required or permitted to be given by either party to the other under these Terms will be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- No failure or delay by either party in exercising any of its rights under the Agreement will be deemed to be a waiver of that right, and no waiver by either party of any breach of the

# Lavender\*

Agreement by the other will be considered as a waiver of any subsequent breach of the same or any other provision.

- If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question will not be affected.
- Nothing in this Agreement will create or constitute or be taken to create or constitute a partnership, joint venture or agency between the parties.
- The Client may not assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Lavender\*.
- Any term of this Agreement will survive the expiry of termination of this Agreement which in order to give effect to its provisions needs to survive the said expiry or termination.
- The law of New South Wales will apply to the Agreement, and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.