

General Commission Terms and Conditions

- Acceptance of Terms

This Terms & Conditions 3 page document may be accompanied with a signed Brief, Purchase Order or Cost Estimate. For speed & simplicity, It is strongly advised that the Client sign & return the form provided.

The Client may prefer not to use the accompanying stationery and use their own system provided that all relevant items on the accompanying (above mentioned) form are addressed.

In this case the deposit of monies to the Artist to commence the Commission will indicate acceptance of these Terms & Conditions.

Important> Cost Estimates

Due to the nature and complexity of pricing Creative engagements client changes and indecision is a fact of the Creative Industry. Cost Estimate(s) if noted on P1 of this Order Form, now or later, is not a Quote, even if the term "Quote" is given in writing or general discussion, but is the best minimum price given based on the Client's information to date.

- Diligence: Wayne Fleming (the Artist from hereon) will undertake to apply his skill and experience to provide the service and will use all diligence in completing the task according to the client's Brief in a timely manner.

- Drafts

(i) The client understands that the draft supplied is based on the Artist's interpretation of the Brief and/or any notes from consultations that may have taken place.

(ii) While the Artist agrees to exercise due diligence no guarantees to client satisfaction can be given at the draft stage and subsequently further drafts may be required before proceeding to finished art. Where these additions and alterations occur they will appear as additions to the final account. **If in doubt, it is advised to add 25% to the cost estimate, see also 'Payment (iii)**

(iii) The client shall give written approval of the draft before proceeding to finished art, or by signing the draft and returning to the artist.

(iv) IMPORTANT

Drafts submitted to a client remain the full Copyright property of Wayne Fleming until payment for the finished art is received by the Artist. If the draft is not approved or the job is put on hold, the Client may not use the draft or submit to another artist without permission from Wayne Fleming, normally for a Copyright Release fee of 50% of the Total Estimated price of the job had it proceeded to finished art. See also clause Payment (v) & (vi) below.

- Copyright

The Artist retains all Copyright to the artwork until all payments are cleared and is subject to a range of parameters which must be discussed with the artist to be evaluated in determining the cost estimate or quote.

For drafts see Payment Clause (iv) below.

Generally speaking the implied copyright is extended to the particular intended use of the design as revealed by the client thru various correspondence, and any non-commercial use (say a specific birthday card)

If there are purposes for use of the design(s) not mentioned in The Brief or discussions with the Artist, it may be deemed as Unlicensed and unlawful use of the designs.

In these cases the Artist must be notified of the intended further uses and prices can be amended for an agreed consideration.

Design Commissions that the Client requires to opt for that involve Royalty payment instead, or in addition to, the Finished Art fee would also require a Design & Commission Agreement Form to be completed by both parties and will include details based on correspondence.

- Deadlines

All care will be taken to complete the work according to deadline. However the ability to complete the service on time is subject to receiving the essential information from the briefing party at the start of our work. If this is not available, changes to our program will be discussed and a new completion time will be set See Urgency Loading: next page.

- Payment

(i) The paying party identified on this contract, whose signature appears on the quote or purchase order, will undertake to pay 50% up front the Cost Estimate or Quoted price, and C.O.D the remaining, on receipt of evidence of the completed work.

If the client chooses to not submit a signed Contract, the full estimated cost will apply, upfront before work proceeds.

(ii) Unless otherwise stated, the quote *does not include* the costs of printing, alterations, additions, couriers, international phone calls/faxes, travel, reference & research.

Where these expenses are incurred they will appear, at cost, as disbursements on the final account.

(iii) Quote/Cost Estimate includes first draft sketch. Further drafts are charged additionally on merit but at no more than \$50 which includes scan & upload.

If in doubt add average 30% to the quoted fee for possible alterations, or administrative fees. If it is evident that particular changes were due to The Artist, not following directives in job correspondence when correspondence was received in a timely manner, fees will not apply .

Further drafts are charged additionally on merit but at an average of \$70 each which includes one scan & digital upload.

(iv) Calculation of the Fee is based on:

a) Amount of studio time and administration.

b) Limitations of Copyright License released to the client for use of the artwork. Such limitations may be the *extent of media copied or printed onto, * private or commercial use, *timespan, *geographical *see Brief & Order Form if supplied.*

If no mention is made of License requirements by the Client to the Artist the Cost Estimate that is given is deemed as non-Exclusive License and is a flat-fee estimate meaning royalty free.

c) Value Added Options (see below)

Cost Estimates are given based on information given in correspondence, and may be subject to variation due to alterations or additions usually due lack of clarity within the brief given by the client, whether through general correspondence, or completion of the Brief & Order Form submitted to the Client by the Artist.

d) Miscellaneous expenses (see below)

(v) Late Payment: Where the account is overdue by 14 days of the due date interest shall be charged at 30% pa calculated daily.

(vi) Option worth considering

For an upfront fee of average of \$70, draft sketches may be purchased prior to this order. This is especially useful if the client wishes to see a preview before committing to the Finished Art. This fee is reimbursed off the final account if the draft proceeds to finished art.

Copyright to drafts still remain the property of Wayne Fleming-Illustrator ABN 70 551 906 713 even if the draft does not proceed to Finished Art
In some circumstances where the client may be happy with the draft as Finished Art, or if the client wishes for any reason, to submit the draft to another Artist, the Copyright may be released for a nominal fee normally, but not limited to, approximately 50% of the Cost estimate/ Quote given if the draft had proceeded to finished art. Penalties apply for unauthorized use of drafts, including the full Cost Estimate / Quote given, if the draft had proceeded to finished art, plus interest (see Late Payment Clause above), legal costs and damages.

• **Value Added Options:**

1. TRADITIONAL ART, (non-digital)
Digital scanning, saving to disk, digital uploading applies to traditional "hard copy" art. Prices vary
2. DIGITAL ART sometimes may attract up to 25% discount if the client is satisfied that that some content may contain clip-art either cannibalised from The Artists own illustration data-base or Outsourced images. Conversely some outsourced images may attract royalty or download fees, but still are generally much cheaper than the Artist's original illustration content.
The Client must advise the Artist if he/she requires only all Original Art, thru out all the content of the Artwork, in which instance, no discounts will apply.
3. FRAMING
4. ADDITIONAL OPTIONS requested by the client post original quote (see Miscellaneous & Additional Services below).

These charges may be costed as a separate fee from the original work fee or invoice and payable on completion of the work before work is delivered or received by the client.

• **Miscellaneous fees & Additional Services**

1. URGENCY LOADING
In the event that Wayne Fleming is required to work overnight or on a weekend or Public Holiday period, a surcharge of up to 100% of the original fee may be charged. This applies where the client has requested us to do so, briefing material has not been received in time, or changes occur during the production period requiring a delay to our work but where the original deadline must be adhered to. Where over normal work time is required because Wayne Fleming have caused delay then no surcharge shall apply.
2. ALTERATIONS to drafts or finished art, due to the change in design, viewpoint or scope of the work. Where changes are requested of a subjective nature and the work to be changed is deemed to be of a proper and correct standard then a charge will be levied for the time taken to respond to those changes. Charges for alterations at the draft level will be based on merit and advised to the client if required.
3. RESAMPLING
Of poor reference material as deemed necessary, from \$10 for sizes up to A3.
All effort is made to advise the client but where the client does not respond in a reasonable time Wayne Fleming will apply those services in the interest of meeting deadlines.
4. REFERENCE & RESEARCH
Subject matter
Where illustration work involves subject matter that needs reference material and research and the client cannot or does not provide this. This can include Internet or Library searches,
Typical examples are man-made subject matter, such as structures, vehicles, obscure items, geographic, or other art that the client would like to submit (but doesn't) to help explain requirements
Particularly where the subject matter is very specific in detail, such as a particular make of car, where a simple generic cartoon figure is not appropriate.
Clients are urged to supply certain images where possible, or even a basic stick diagram is all assistance to keep fees in check.
Education
Where the Artist will need to familiarise himself with a broad scope of knowledge to familiarise with the Brief. Typical instances are industry specific content, learning new software programs, studying books, correspondence (also see below), internet searches & any related expenses). These Costs may also apply to giving Cost Estimates or Quotes to extremely large briefs where subject matter education & searches are necessary. (also see Administration below)
5. ROYALTY OR DOWNLOAD FEES for (i) clipart required, or (ii) obscure fonts that are integral to a client's requirements, that are not available in the Artist private database.
6. CONSULTATION
Generally limited to in person appointments Wayne Fleming grants up to 15 minutes free for a no-obligation Cost Estimate or Quote and after that time is charged as Consultation @ \$100 ph, if the client has a reasonably accurate Brief of their requirements.
Where the Client needs Intellectual input into their requirements the charge has no free bracket and the appointment may be deemed as a full Consultation with or without a Quote or Cost Estimate, and is charged at \$150 ph.
The Artist may also communicate ideas by what is termed in the Creative Industry as 'thumbnail sketches'.
Where such Intellectual or Artistic input is requested by the Client, the Client must be prepared to sign a Confidentiality Agreement and/or agree to a conversation Dictaphone recording of the minutes in order to protect the Artist's Intellectual and/or Artistic Property Rights.
7. CANCELLATION
Where a commission is terminated by a client, Wayne Fleming shall apply charges equal to the value of the work done including administration time & expenses e.g. Paperwork & Correspondence, up to the date of cancellation.
Wayne Fleming reserves the rights to withdraw his professional services at any stage if work becomes untenable or demands become unreasonable subject to Clause1 (Diligence) and will not be liable for any claim for consequential damages, and charges apply equal to the value of the work done including administration time & expenses e.g. paperwork & correspondence, to the date of cancellation, as Wayne Fleming deems appropriate and relevant.
8. LATE PAYMENT
Where the account is overdue by 14 days of the due date interest shall be charged at 30% per annum calculated daily.
Legal costs and damages will also apply in the event of engaging legal practitioners for the recovery of monies owing.

9. TRAVEL

In circumstances where the requirement was not requested in the brief. If travel is not included in the Commission an average of \$25 ph applies.

10. POSTAGE & HANDLING

If not stated the Cost Estimate or Quote may not include Postage & Handling. Postage & Handling fees if not stated are set to the minimum un-insured rate. Premium postage services can be provided on request for extra cost depending on location.

11. ADMINISTRATION

Outside of one Cost Estimate or Quote per request, extraneous administration may incur additional costs if due to reasons out of the Artist's control, but can be minimized by reasonable Client judgement and respect of a business operators time costs. Typical examples may be (but not limited to)

a) Commission Enquiries

Duplicate Quotes or Cost Estimates due to Client's indecision, Change of mind, Contractual disputes or misinterpretation.

b) Payment

Incorrect payment details, returned cheques, incorrect Credit Card Details or Bank refusal of Credit Card processing, Invoice resending and Payment Reminders after the contracted account payment period usually stated on the Artist's invoice. Usual cost is \$5 per bounced transaction, but may be charged at the Studio Admin rate (see paragraph below)

c) Research

Where any initial or subsequent Quote or Cost Estimate is deemed to require extensive Reference & Research time (see above), an average fee of 50% of the Studio time of \$150 per hour may apply. This particularly applies if travel is involved and Flight Plans & Accommodation need to be calculated.

d) Official Clearances

Typical of Large Organisations, Time & Stationery Costs for

Safety Induction paperwork & printing costs, Extraneous Insurance requirements outside of the Public Liability Insurance provided by the Artist.

In all instances, best intentions to make the client aware of these miscellaneous fees may be given, however, due to the scope, complexity and variability of the detail of Client requirements, it may not always be stated and is strongly advised that the Client raise the question if in doubt, particularly for large Briefs.

12. CORRESPONDANCE

For all platforms over and above the normal deemed correspondence that any Service Provider would agree to supply these services.

Typical examples include duplicate correspondence to more than one parties, (unless thru email BCC & CC facility) phone calls or messages to confirm receipt of unanswered correspondence, international correspondence including Apps.

• ***Important note for work involving cartoon caricatures:**

Caricatures are a complex creative field and satisfaction may be subject to many variables, such as quality and age of the photo, individual interpretation & conjecture about the likeness(which can differ wildly from person to person), just to name a couple.

In view of this, all expertise is implemented from a background of 25 years in the field **but guarantees cannot be given** and payment is made by the client, upfront on good faith in, primarily, **the artist's interpretation** of the subject.

In view of this, cost creep is reduced by a careful system of drafts (mentioned above), before going to finished art, and also by the clients giving clarity with details about the subject, such as>

- a) Preferences of level of caricature i.e. (i) more towards a portrait? (Safer) or (ii) more comical thru exaggeration? (Riskier but far more skill exercised)
- b) Preferences about expressions that reflect their character such as happy, serious, cute, glamorous, vain etc.

Please be aware that drafts are just that, and naturally there will still be changes and differences, but they will be deemed by the artist as improvements, such as tidier line work etc.