

# Terms and Conditions for Caricature Commission

## **1. Acceptance of Terms**

This document may be accompanied with Stationery such as a Brief, Purchase Order or Cost Estimate form. For speed & simplicity, it is strongly advised that the Client sign & return the Stationery provided.

The Client may prefer to not to use the accompanying Stationery and use their own system on the provisions 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 Stationery mentioned in para 1, 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.

## **2. 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.

## **3. Drafts**

(i) The client understands that the draft supplied is based on the Artist's interpretation of the Brief, Images 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.

(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.

## **4. Copyright**

The Artist retains all Copyright to the artwork until all payments are cleared

The fee for the Work is subject to a range of Copyright parameters which must be discussed with the artist to be evaluated in determining the cost estimate or quote.

For Copyright on drafts see Payment Clause (vi) below.

Generally speaking the implied copyright is extended to the particular intended use of the design as revealed by the client thru the Brief and various correspondence.

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.

Similarly if there is no mention of Copyright in the Client's Brief, the commission is deemed, by default, to be for only for private purposes and no Copyright fee is added. (E.g. a birthday card).

The Artist may use the Work for publicity purposes of WayneFleming-Illustrator.com unless specifically requested otherwise by the Client,

Design Commissions that the Client requires 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.

## **5. 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. (Also see Urgency Loading on p2)

## **6. Payment**

- a) (i) For Work under \$300 > the Cost Estimate in advance and any remainder on completion.  
(ii) For Work over \$300 > 50% up front the Cost Estimate, and C.O.D the remaining, on completion.  
(iii) If the client chooses to not submit a signed Purchase Order, the full estimated cost will apply, upfront before work proceeds.
  - b) 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.
  - c) Quote/Cost Estimate includes first draft sketch. Further drafts are charged additionally on merit at an average of \$35 per subject which includes scan & upload.
  - d) Allow average 25% to the Cost Estimate for possible alterations. If it is evident that particular changes were due to The Artist's failure to follow directives in Correspondence when Correspondence was received in a timely manner, fees will not apply.  
Further drafts are charged additionally on merit 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.  
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 licensed to reproduce for private non-commercial purposes and general enjoyment.

- c) Value Added Options (see below)
- 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 from \$35 per subject, 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 70% 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 for if the draft had proceeded to finished art, plus interest (see Late Payment Clause above), legal costs and damages.

## 7. Value Added &/or Discount Options

- a) TRADITIONAL ART, (this refers to any non-digital art, such as any painted media, also referred to as 'Hard Copy')
  - i. Traditional Art may be also digitally copied either by scanning, professional photography and then digitally uploaded via email or disk to the Client. Prices vary
- b) DIGITAL ART sometimes may attract up to 20% discount if the client is satisfied that that some content may contain clip-art content 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, lesser discount of around 10% may apply.
- c) FRAMING Prices Vary
- d) PRINTING Prices Vary
- e) 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.

## 8. Miscellaneous fees & Additional Services

Cost Estimates are given based on information given in correspondence, and may be subject to variation due to Additions or Alterations due to poor clarity of the directives given by the Client, whether through general correspondence, or completion of the Brief & Order Form submitted to the Artist.

In all instances below, the best intentions to make the client aware of these miscellaneous fees may be given, however, due to the scope, complexity and variability 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.

- a) URGENCY LOADING
 

In the event that Wayne Fleming is required to work overnight or on a weekend or Public Holiday period, a surcharge of double time of the hourly rate for that portion of time necessary to complete the work. 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.
- a) 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.
- b) RESAMPLING
  - i. Of poor reference material as deemed necessary, from \$10 for sizes up to A3.
  - ii. 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.
- c) REFERENCE & RESEARCH
  - i. Subject matter
  - ii. Where illustration work involves subject matter that needs reference material and research and the client cannot or does not provide this.
  - iii. This can include Internet or Library searches,
  - iv. 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
  - v. 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.
  - vi. Clients are urged to supply certain images where possible, or even a basic stick diagram is all assistance to keep fees in check.
  - vii. Education
  - viii. 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).
  - ix. 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)
- d) ROYALTY OR DOWNLOAD FEES for DIGITAL ART (i) clipart, or (ii) obscure fonts that are integral to a client's requirements that are not available in the Artist private database.

- e) **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.
- f) **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, but as deemed appropriate and based on all fairness, as in, not unreasonable extraneous costs.
- g) **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.
- h) **TRAVEL**  
 In circumstances where the requirement was not requested in the brief. If travel is not included in the Cost Estimate vehicle travel is calculated at an average of \$25 ph and \$3 per km
- i) **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.
- j) **ADMINISTRATION**  
 Extraneous administration may incur additional costs if due to the Clients deliberations that could be minimized by reasonable Client judgement and respect of The Artist's business operation time costs.  
 Typical examples may be (but not limited to)
- i. Commission Enquiries  
**Duplicate** Officially Written Quotes or Cost Estimates to
    - a. other parties,
    - b. thru change of requirements
 Handwritten alterations to Quotes via MMS or telephone can be given to avoid these charges.
  - ii. 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)
  - iii. 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.
  - iv. Official Clearances  
 Typical of Large Organisations, Time & Stationery Costs for Safety Inductions and Extraneous Insurance requirements outside of the Public Liability Insurance provided by the Artist.
- k) **CORRESPONDANCE**  
 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 tracking receipts, international correspondence including Apps.

## 9. 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.
- c) More on Drafts  
 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.  
 In rare instances where the Client is satisfied with the 'loose' style of the draft as complete artwork the Client may sign off on the work for a nominal fee normally 70% of the Cost Estimate of the original Finished Art given by the Artist prior Draft stage.