

These Terms govern your engagement of AG Designer Jeweller (**we** or **us**) to provide you with our bespoke jewellery design and crafting services.

1. Acceptance of Terms

1.1 Acceptance

You may accept these Terms in any of the following ways:

- (a) signing the Quote to which these Terms are attached or with which they are provided;
- (b) paying part or all of the Deposit; or
- (c) other conduct by you, such as oral acceptance, indicating you have accepted these Terms.

1.2 Formation and composition

You agree to be bound by:

- (a) these Terms of Service; and
- (b) any additional terms contained in a Quote accepted by you pursuant to clause 1.1,

(together, the **Terms**).

1.3 Precedence

In the event of any conflict or inconsistency between these Terms of Service and any terms contained in a Quote, the terms contained in the Quote take precedence.

2. Our Services

2.1 Services

- (a) Subject to and in accordance with these Terms, we agree to provide the Services as detailed in any applicable Quote.
- (b) You agree that, subject to any express requirements contained in a Quote, we are not subject to your direction or control regarding the manner in which the Services are performed.

3. Payment

3.1 Deposit

You must pay the deposit detailed in each applicable Quote (**Deposit**) into our bank account detailed above before we start providing the Services to you.

3.2 Further instalments

Unless specified otherwise the Quote, you agree to pay:

- (a) 50% of the balance amount payable as detailed in the Quote within 14 days of the first consultation; and
- (b) the remaining balance amount on completion of the relevant Services, before we are required to deliver the Products to you.

3.3 Delivery

You acknowledge that you must pay the remaining balance under clause 3.2(b) and take possession of the Product within 30 days after we notify you that the Services have been completed.

3.4 No refund of Deposit

You acknowledge and agree that, if you terminate this agreement after we provide or have been instructed to provide any of the Services, we will suffer loss not capable of recovery by us, and we are entitled to keep your payment of the Deposit (in the aggregate amount you have paid up to the termination date) as fair compensation for our loss.

3.5 Failure to pay balance

- (a) Failure to pay the balance in accordance with your obligations under clauses 3.2(b) and 3.3 gives us the right to immediately terminate this agreement.
- (b) Upon termination of this agreement we will suffer loss not capable of recovery by us, and we are entitled to:
 - (1) retain possession of the Product and deal with it (including offering for sale or re-distribution) in our sole discretion; and
 - (2) retain the Deposit (in the aggregate amount you have paid up to the termination date) or any part thereof where we are unable to sell the item of jewellery to a third party within [3] months of the date of termination as fair compensation for our loss in undertaking the Services and re-distributing the Product.

4. Consultations and variations

4.1 In person consultations

Where your initial dealings with us are via attendance at our retail stores, you are entitled to the following consultations with us in connection with our provision of the Services to you:

- (a) where we are engaged to provide you with Design Services solely:
 - (1) an initial 30 minute, in-person consultation before payment of the initial Deposit; and
 - (2) a further 30 minute "progress update" consultation at a stage in the design process deemed appropriate by us; or
- (b) where we are engaged to provide you with Production Services solely, an initial 30 minute, in-person consultation before payment of the initial Deposit; or
- (c) where we are engaged to provide you with both Design Services and Production Services:
 - (1) an initial 30 minute, in-person consultation before payment of the Deposit; and
 - (2) a further 30 minute consultation prior to the commencement of Production Services.

4.2 Online dealings

Where we are engaged by you via an online enquiry or email correspondence, and it is not practical for you to



attend our retail stores for consultations, you are entitled to request one round of variations to each Design, prior to commencement of any related Production Services, if applicable.

4.3 Changes and additional work

You agree that if you request:

- (a) changes to a Design or Product as detailed in any applicable Quotes, beyond any changes permitted pursuant to clause 4; or
- (b) additional consultations or variations in excess of those prescribed in clause 4 (or a larger amount prescribed in a Quote, if applicable),

we may require the payment of additional fees equivalent to the costs of the additional labour and materials required to meet your request.

5. Shipping

5.1 Shipping

- (a) You agree to pay for all postage, delivery and/or shipping costs relating to the Products, as applicable.
- (b) Where you request that shipping and/or postage of the Products is insured:
 - (1) you must make us aware of this request prior to paying the final instalment due pursuant to clause 3.2(b);
 - (2) you agree to reimburse us for any costs incurred by us in completing this request; and
 - (3) you agree that we have full discretion regarding choice of insurer.
- (c) You agree that, until we receive payment in full from you in respect of the Products, we are entitled to withhold delivery of the Products.

6. Intellectual Property Rights

6.1 No transfer

- (a) You agree that no rights of ownership to:
 - (1) the Intellectual Property Rights in the Designs or Products (as applicable); and
 - (2) any related Materials (subject to clause 6.1(b)),are transferred under these Terms.
- (b) Unless otherwise specified in the Quote, you are only entitled to a copy of any final Designs resulting from the provision of our Design Services in the form deemed appropriate by us.
- (c) Any licence to use any Designs must be agreed between you and us in writing.
- (d) For the avoidance of doubt, your engagement of us to provide Design Services does not grant you any implied licence to the use of the resulting Design(s) for any purpose that would otherwise constitute an infringement of our Intellectual Property Rights.

6.2 Prohibited activities

- (a) You must not do, or permit, or omit to do, any act which infringes our Intellectual Property Rights.
- (b) Where you have engaged us to provide Production Services solely, you must not direct us to use, copy or make derivative works of a third party's design without the express written permission from that third party to do so.

7. Warranty

7.1 Our warranty to you

We warrant to you that:

- (a) we have full right and title to enter into these Terms and to grant the rights set out to you; and
- (b) we will perform the Services with due care and skill.

7.2 Your warranty to us

You warrant to us that:

- (a) you have full right and title not to enter into these Terms and to grant the rights set out to us;
- (b) no information has been withheld from us which may affect our decision to perform the Services for you;
- (c) you have satisfied yourself of the contents of these Terms and, if necessary, obtained independent legal advice from a relevant expert to confirm same before entering into it; and
- (d) if you have engaged us for Production Services solely—our performance of the Production Services as directed by you will not infringe the Intellectual Property Rights of any third party. You agree to indemnify us against any Claim that our performance of the Services or any Products created by us in connection with the Services infringes any third party's Intellectual Property Rights.

8. Liability

8.1 Exclusion of liability

- (a) To the extent permitted by law, in no event will we be Liable to you for Consequential Loss, even if we have been made aware of the possibility of such Consequential Loss prior to entering into these Terms.
- (b) You agree that we are not Liable for any Losses suffered by you as a result of any delays in our provision of the Services due to an event of Exceptional Circumstance, and any such delay does not constitute a breach by us of these Terms.
- (c) You agree that, upon successful delivery to you of any Products under these Terms, you release us from any responsibility or Liability in relation to said Products.

8.2 Implied terms

- (a) To the full extent permitted by law, any term which would otherwise be implied into these Terms is excluded.
- (b) In the event any law implies or imposes terms into these Terms which cannot be lawfully excluded, such terms will apply, save that our liability for breach of any such term will be limited in accordance with clause 8.3(a).

8.3 Limitation of liability

- (a) Re-performance

To the extent we are found Liable in connection these Terms, our Liability will be limited (at the option of us) to any of the following:

- (1) re-supplying the Services to which the Liability relates or the supply of equivalent services; or
- (2) reimbursing you (subject to clause 8.3(b)) for paying someone else to supply the Services to which the Liability relates.

- (b) Liability cap

If we are found Liable in connection with these Terms (whether in contract, tort, right of indemnity, or statute), then irrespective of anything else in these Terms, our cumulative Liability in the aggregate (to the fullest extent permitted by law) will in no event exceed the sum of the amounts paid by you to us for the Services.

8.4 Third parties

You agree that we are not liable to any third party under this agreement.

9. GST

9.1 GST Exclusive

Unless expressly stated to the contrary, all amounts expressed in these Terms are exclusive of GST.

9.2 Recipient to pay Supplier

- (a) If a party (the Supplier) is obliged under the GST Law to pay an amount of GST for a taxable supply made by the Supplier to another party (the Recipient) under these Terms, the Recipient must pay the Supplier an amount equal to the GST payable on the supply by the Supplier.
- (b) The Recipient must pay the amount referred to in clause 9.2(a) and any interests, penalties, fines or expenses relating to the GST, in addition to and at the same time as the consideration otherwise payable by the Recipient for the supply.

9.3 Tax Invoice

If requested by the Recipient, the Supplier must provide the Recipient with a Tax Invoice on or before payment of the amounts required by clause 9.2.

10. Miscellaneous

10.1 Governing law and jurisdiction

These Terms are governed by and construed in accordance with the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland.

10.2 Exercise rights

A single or partial exercise or waiver by you or us of any right under or relating to these Terms will not prevent any other exercise of that right or the exercise of any other right.

10.3 Variation

An amendment or variation to these Terms is not effective unless it is in writing and signed by you and us.

10.4 Whole agreement

These Terms:

- (a) are the entire agreement and understanding between you and us relating to the subject matter of these Terms; and
- (b) supersede any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.

11. Definitions and interpretation

11.1 Definitions

In these Terms:

Consequential Loss means any of the following: loss of revenue; loss of profits; loss of opportunity to make profits; loss of business; loss of business opportunity; loss of use or amenity, or loss of anticipated savings; special, exemplary or punitive damages; and any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this Agreement, including any of the above types of loss arising from an interruption to a business or activity.

Claim means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:

- (a) it is present, unascertained, immediate, future or contingent;
- (b) it is based in contract, tort, statute or otherwise; or
- (c) it involves a third party or a party to this agreement.

Deposit has the meaning given to that term in clause 3.1.

Design means a design, sketch, drawing or concept created for you (via electronic means or otherwise) as a result of the Design Services.

Design Services means the creation (via electronic means or otherwise) of a Design for a Product.

Exceptional Circumstance means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under this agreement. Such circumstances include:

- (d) adverse changes in government regulations;
- (e) any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (f) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, cyber attacks, viruses or malware, data loss as a result of the actions of a third party;
- (g) strikes or industrial disputes;
- (h) materials or labour shortage; and
- (i) acts or omissions of any third party network providers (such as internet, telephony or power provider).

GST means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or associated Commonwealth legislation, regulations and publicly-available rulings.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions, plant breeder's rights and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Liability means any liability, debt or obligation, whether actual, contingent or prospective, present or future, qualified or unqualified or incurred jointly or severally with any other person. **Liable** has a corresponding meaning.

Loss means any loss (including Consequential Loss), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect, consequential or otherwise.

Material means property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, requirements, user manuals, notes, user guides, draft sketches, drawings and concepts, instructions, and the subject matter of any category of Intellectual Property Rights.

Production Services means the crafting, manufacture, development and/or production of a Design.

Product means a jewellery product created for you as a result of the Production Services.

Quote means a quotation or proposal for Design Services and/or Production Services.

Services means the Design Services and the Production Services.

Tax Invoice means a "tax invoice" compliant with the requirements of the GST Law.

Terms has the meaning given to that term in clause 1.2.

11.2 Interpretation

- (a) Unless the contrary intention appears, a reference in these Terms to:
 - (1) these Terms or another document includes any variation or replacement of it despite any change in the identity of the parties;
 - (2) one gender includes the others;
 - (3) the singular includes the plural and the plural includes the singular;
 - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;
 - (5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, these Terms and a reference to these Terms includes any schedule or attachment;
 - (6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
 - (7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
 - (8) money is to Australian dollars, unless otherwise stated; and
 - (9) a time is a reference to Brisbane time unless otherwise specified.
 - (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
 - (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
 - (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of these Terms.
 - (e) A provision of these Terms must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of these Terms or the inclusion of the provision in these Terms.
- ## 11.3 Parties
- (a) If a party consists of more than one person, these Terms binds each of them separately and any two or more of them jointly.
 - (b) An agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.

Terms of Service



- (c) An agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.