

THE BASICS

Time spent is charged per hour unless otherwise stated or quoted.

- 50% payment is required as a deposit to start work. Balance is to be paid on completion of work, unless a credit account is in place.
- All goods and services remain the property of Black Swan Creative and Kay Robson-Thomas until paid in full.
- If any invoice is unpaid, the debt collection and legal costs will be added onto the unpaid amount.
- Once an order has been confirmed, Black Swan Creative will issue an invoice and proceed with the job after receipt in cleared funds of the deposit into Black Swan Creative’s designated bank account.

HOURLY RATE & TAX

• Australia	\$80.00 AUD. No GST is charged.
• Canada	\$80.00 CAD. No GST/Sales Tax is charged.
• European Union	€60.00 EURO. No GST/Sales Tax is charged.
• New Zealand	\$80.00 NZD. No GST/Sales Tax is charged.
• United States	\$60.00 USD. No Sales Tax is charged.
• United Kingdom	£50.00 POUND. No VAT is charged.

THE FULL TERMS & CONDITIONS

1. Definitions

1.1 **Black Swan Creative** shall mean Kay Robson-Thomas trading as Black Swan Creative.

1.2 **‘Customer’** shall mean the person or entity specified as the customer on the Order, and includes any person acting on behalf of and with the authority of the Customer,

1.3 **‘Goods’** shall mean all goods provided by Black Swan Creative to the Customer under the Order and shall include without limitation advertising, printing and display materials

1.4 **‘Services’** shall mean any services supplied by Black Swan Creative to the Customer under an Order at any time.

1.5 **‘Order’** shall mean the order of the Customer to Black Swan Creative to supply Goods and/or Services.

1.6 **‘Price’** shall mean the cost of the Goods and/or Services as agreed between Black Swan Creative and the Customer or specified on Black Swan Creative’s invoices issued from time to time and includes all disbursements eg charges Black Swan Creative pay to others on the Customer’s behalf subject to clause 3 of this contract.

1.7 **‘Working days’** shall mean Mondays to Fridays, with the exception of statutory public holidays.

1.8 In the event that other terms and conditions are imported into any contractual documentation between Black Swan Creative and the Customer then, unless specifically authorised in writing by Black Swan Creative, these Terms and Conditions shall prevail.

2. Ordering

2.1 Any Order received by Black Swan Creative from the Customer shall constitute acceptance of these Terms and Conditions and creates a legally binding contract between the Customer and Black Swan Creative.

2.2 All Orders must be placed or confirmed by the Customer in writing. Orders should clearly state the Customer’s particular requirements. Black Swan Creative will not be responsible for errors or omissions due to oversight or to misinterpretation of the Customer’s verbal instructions.

2.3 Quotations are for work described in the original specifications of work contained in the quotation or Order. If through the Customer’s error or omission, work has to be redone or alterations or additions to specifications are required, then Black Swan Creative may make an additional charge.

In the event that an Order is cancelled or suspended by the Customer in whole or in part for reasons other than Black Swan Creative’s default, then Black Swan Creative may require the Customer to pay immediately for work done to the date of cancellation or suspension.

2.4 A quotation is valid for 30 days from the date it is given, unless otherwise stated in the quotation.

2.5 Black Swan Creative reserves the right not to undertake any work which in its opinion is or may be unlawful, offensive, or otherwise inappropriate. The Customer shall indemnify and hold Black Swan Creative harmless against all claims, demands, costs, expenses (including but not limited to legal costs and disbursements), losses and damages arising from or suffered or incurred by reason of any material it is instructed by the Customer to produce or include in the Goods or Services being or alleged to be defamatory or otherwise unlawful.

2.6 Where expedited delivery is requested by the Customer, then an extra charge may be added to the quoted price.

3. Prices

3.1 The prices and charges of Goods or Services supplied are as shown on Black Swan Creative’s quotation, acceptance order, invoice, or other document. Black Swan Creative reserves the right to charge additionally for delivery of any Goods.

3.2 GST tax and any other tax duty or impost necessarily incurred (other than Black Swan Creative’s own income tax) or payable in respect of the Goods or Services shall be payable by the Customer in addition to the quoted price, payable upon demand at the then prevailing rate.

3.3 Quoted prices are based on the cost of materials, labour and services as at the date of the quotation. Should there be any increase in these costs, as are necessarily incurred by Black Swan Creative in completing the Order, then such increases may, at Black Swan Creative’s sole discretion, be added to the quoted price, payable at the same time and in the same manner as the balance of the quoted price.

3.4 Where items are required in addition to the Goods or Services specified in the quotation for example but without limitation artwork, film, plates, cutting forms and freight the

Customer agrees to pay for the additional cost of such items.

3.5 Clerical errors or omissions, whether in computation or otherwise in the quotation, acknowledgment or invoice shall be subject to correction.

3.6 In the event that Goods are to be exported then the Customer is responsible for all related costs and compliance with all applicable export and import regulations.

3.7 All prices are in New Zealand dollars unless stated otherwise in the quotation or invoice.

4. Payment Terms

4.1 Payment of invoices for all Goods and Services and all other charges payable by the Customer in connection with the Order shall be made in full within seven (7) days of the date of invoice.

4.2 Black Swan Creative may, at its sole discretion, require payment by the Customer of a deposit (of an amount designated by Black Swan Creative), prior to commencing work under any Order.

4.3 An administration fee may be charged on all overdue amounts in addition to any other charges pursuant to this clause.

4.4 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month and will be calculated on a day by day compounded basis until payment is received in full.

4.5 Any expenses, disbursements and legal costs incurred by Black Swan Creative in the enforcement of any legal rights and remedies shall be paid by the Customer, including any actual solicitor’s fees or debt collection agency fees.

4.6 Progress payments may be required where work is to be completed over an extended period of time or if work is suspended at the request of or delayed through any default of the Customer. After work has been in hand for one month or more, a progress payment of the value of the work completed, materials specially ordered and other additional costs including storage (specifically for suspended or delayed work) may be requested. Further progress payments calculated on the same basis may be required to be paid on a monthly basis until completion of the work.

4.7 If the Customer defaults in any payment or commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or if a receiver is appointed for all or any assets of the Customer, Black Swan Creative may terminate any and all Orders immediately on written notice without prejudice to any other rights it may have and payment of all charges due under such terminated Orders shall immediately become due and payable.

5. Specifications, Delivery and Installation

5.1 Black Swan Creative will use every reasonable endeavour to deliver every order within the time specified (if any) by the Customer, but Black Swan Creative will not be liable for any loss or damage sustained, as a consequence of inability to do so, or any delay caused by a third party.

5.2 Black Swan Creative will not be liable for late delivery due to a Customer delaying the progress of the Order in any way (including but not limited to the Customer not returning proofs by the time specified by Black Swan Creative or failing to make payment by the time such payment is due) (a “Customer Delay”).

5.3 Delivery of work by Black Swan Creative shall be deemed to take place upon collection of the work by the Customer (where the Customer is obliged to collect work) or (where Black Swan Creative is obliged to deliver the work) actual delivery of the work to the Customer by Black Swan Creative. Where the Customer is obliged to collect the work, Customer’s failure to collect the work on the day on which Black Swan Creative is contractually obliged to have it ready for collection shall be classed as a Customer Delay. Where Black Swan Creative is obliged to deliver the work to the Customer but the Customer provides Black Swan Creative with incomplete or incorrect delivery information or is not available to accept delivery, then provided that Black Swan Creative has used reasonable endeavors to deliver the work to the Customer, a failed delivery shall be classed as a Customer Delay

5.4 On delivery of goods the Customer must immediately inspect them to satisfy itself that they meet the order, and are in good condition. If at such time the Customer is not satisfied then it must immediately notify Black Swan Creative in writing. Unless notification is made within three (3) working days of delivery then irrespective of the nature or extent of the alleged defect or deficiency, Black Swan Creative will not be liable in any way in respect of it.

5.5 Unless specifically stated in the body of a quotation, no retentions will be recognised, nor will any other special conditions of contract affect the quotation unless stated.

5.6 If Black Swan Creative do not receive forwarding instructions sufficient to enable delivery within 14 days after notification that the goods are ready for dispatch, the Customer will as from the 15th day be deemed to have taken delivery of goods and payment will become due as if delivery had then occurred. In such circumstances Black Swan Creative will only be obliged to store such goods for so long as it is considered reasonably practicable, having regard to available storage space. During such time goods will be stored solely at the Customer’s risk and any costs of storage will be chargeable to the Customer, in addition to the quoted price.

5.7 Should expedited delivery be agreed Black Swan Creative shall be entitled to make additional charges on a time and materials basis to cover any overtime or any other additional costs involved, including without limitation, the cost of couriers or special delivery post.

6. Risk and Title

6.1 Risk in Goods will pass to the Customer immediately upon delivery. Black Swan Creative will not be responsible for loss, damage or deterioration to the Goods in transit and the Customer is required at its own cost to insure Goods against loss and all other risks immediately following dispatch.

6.2 Where the Customer supplies goods or materials of any kind these shall be held by Black Swan Creative at the Customer’s risk. Whilst reasonable care will be taken by Black Swan Creative, no responsibility is accepted for any damage to these items during such time except damage directly resulting from Black Swan Creative’s negligence. Black Swan Creative reserves the right to dispose of such items if they are not collected by the Customer within one calendar month after Black Swan Creative requests the collection of such items following completion of the Order.

6.3 Title in any Goods supplied by Black Swan Creative passes to the Customer only when the Customer has made payment in full of all charges and sums due for all Goods and Services provided by Black Swan Creative under the applicable Order and all other sums

due to Black Swan Creative by the Customer on any account whatsoever. Until all sums due to Black Swan Creative by the Customer have been paid in full, Black Swan Creative has a security interest in all Goods.

7. Liability

7.1 Subject to the remainder of this clause 7

7.1.1 the total liability of Black Swan Creative and its suppliers for any and all Losses arising from or in any way in connection with an Order shall not exceed in aggregate an amount equal to 110% of the charges received by Black Swan Creative for that part of the Goods and/or Services directly causing the Losses;

7.1.2 Black Swan Creative will not be liable for any Losses unless and only to the extent that the Losses are finally determined to have resulted from the breach of contract or negligence of Black Swan Creative; and

7.1.3. Black Swan Creative will not be liable for any of the following Losses or other consequences of such events:

a) Losses arising out of the use of, or reliance on, the Goods or Services for (i) purposes other than the purpose for which it was supplied by Black Swan Creative or (ii) by persons other than the Customer;

b) Losses to the extent they arise from the acts or omissions of any person other than Black Swan Creative; or

c) Losses arising as a result of the provision of misleading or incomplete Information, or the withholding or concealment or misrepresentation of Information.

7.2 Black Swan Creative will not be liable for any Excluded Losses which may be suffered or incurred by any person, whether or not it was known or ought to have been known, that Excluded Losses would be likely to be suffered or incurred, including in connection with the performance, non-performance or delayed performance by Black Swan Creative of any of its obligations under or in connection with any Order.

7.3 .To the maximum extent permitted by law, the express warranties and undertakings made by Black Swan Creative in these Terms and Conditions are exclusive and in lieu of all other warranties, terms and conditions, expressed, implied or statutory, including without limitation warranties, terms and conditions of merchantability, fitness for a particular purpose, accuracy, correspondence with description, and satisfactory quality, all of which are expressly limited and excluded by Black Swan Creative and its suppliers to the fullest extent permitted by law.

7.4 Nothing in the Terms and Conditions shall exclude, restrict (or prevent a claim being brought in respect of) any liability of a party for (i) death or personal injury caused by the negligence of that party; (ii) any fraudulent pre contractual misrepresentations on which the other party can be shown to have relied; or (iii) any other liability which by the governing law of the contract cannot be limited or excluded.

7.5 Any claim or action brought by the Customer under or in connection with any Order must be brought within 12 months of the date that the Customer first became aware, or ought reasonably to have become aware, of the facts that give rise to the claim action.

7.6 In these Terms and Conditions

7.6.1 Excluded Losses means (i) Losses incurred as a result of third party claims; (ii) loss of profits or of contracts, loss of goodwill or business opportunity, loss of or corruption to data, loss of revenues, or wasted management or staff time, whether direct or indirect; or (iii) incidental, special, punitive, exemplary, indirect or consequential Losses.

7.6.2 Losses means any and all claims, demands, actions, losses, liabilities, damages, costs, charges or expenses (including professional advisers’ costs and legal costs and disbursements) of whatever nature (whether in contract, tort including negligence, under statute or otherwise) howsoever caused and by whomsoever brought and including interest.

7.6.3 Information means any information, documents, materials, facts, instructions or data (including confidential information) provided by or on behalf of the Customer in connection with an Order.

7.7 Whilst reasonable care and attention is undertaken by Black Swan Creative to deliver Goods of a high quality, and to ensure that all components (including vinyl, inks, media, paints and other materials) are purchased from reputable suppliers, Black Swan Creative does not guarantee or warrant the quality of such items. Where any defect or alleged defect is beyond the reasonable ability of Black Swan Creative to control quality, Black Swan Creative has no liability. Any defects due to faulty workmanship must be notified within seven (7) days after delivery or collection of the defective Goods. Any such defects will, at the discretion of Black Swan Creative, be repaired or replaced free of charge.

8. Copyright

8.1 Unless otherwise expressly agreed in writing by Black Swan Creative, the copyright of general artwork, commissioned artwork and illustrations, photographs and anything else whatsoever prepared, developed or created by Black Swan Creative in the course of undertaking the Order (**“Materials”**) shall vest in and belong to Black Swan Creative, and subject to payment in full of the charges payable under the Order the Customer shall have a licence to use the Materials for the Customers own use. If any re-distribution of any of the Materials should be made by or on behalf of the Customer to another organisation/individual then full credit for such Materials is to be given to Black Swan Creative.

8.2 The Customer shall be responsible for obtaining all necessary authorities and consents to reproduce pictures, artwork, photographs, copyright text and/or any other reproducible materials provided by or on behalf of the Customer for use in performance of the Order prior to instructing Black Swan Creative to reproduce the same.

8.3 The Customer shall be responsible for obtaining all necessary authorisations and consents for objects and/or areas to be photographed by Black Swan Creative, which may or may not then be used in some format, in order to complete the Customer’s Order.

8.4 The Customer shall indemnify and hold Black Swan Creative, its employees, agents, suppliers and representatives harmless against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements), losses and damages arising from or suffered or incurred by reason of any claim (including but not limited to the defence of such claim) that the reproduction or use of any materials or items provided by or behalf of the Customer infringes or is alleged to infringe the intellectual property or other rights of any third party or misuses the confidential information of a third party.

9. Collection and use of information

9.1 The Customer authorises Black Swan Creative to collect, retain and use any information about the Customer, for the purpose of assessing the Customer’s credit worthiness, enforcing any rights and remedies or producing any of the Goods and/or Services

9.2 Where the Customer is a natural person the authorisation under clause 9.1 is a authority or consent for the purposes of the Privacy Act 1993.

10. Proofs

10.1 Where proofs of any work produced by Black Swan Creative as part of the Order are submitted for the Customer’s approval, Black Swan Creative shall incur no liability for any errors or omissions not corrected by the Customer after receipt of and in such submitted proofs.

10.2 Additional charges shall be made for any additional proofs that are required as a result of alterations or additions required by the Customer.

10.3 When style, type or layout is left to Black Swan Creative’s discretion, any subsequent changes to such style, type or layout required by the Customer shall be subject to additional charges on a time and materials basis.

10.4 Any documents provided by or on behalf of the Customer for Black Swan Creative to reproduce in any format will need to have been proof read by the Customer prior to sending the documents to Black Swan Creative. Black Swan Creative will not be responsible for any errors or omissions that the Customer has failed to correct or notify Black Swan Creative of prior to printing. Any additional printing required to correct such errors or omissions shall be at the Customer’s expense.

10.5 Should the Customer require Black Swan Creative to perform a proof reading service then this should be clearly notified by the Customer and an additional charge shall be made for such service.

11. Copy

11.1 Where any additional work of whatever nature is necessary as a result of copy supplied by a Customer not being clear and/or legible, Black Swan Creative shall be entitled to make additional charges on a time and materials basis to cover such additional work.

11.2 Quotations are based on all body copy supplied as full, final and correct. Additional charges shall be made for any additional changes required.

12. Colour printing

12. Reasonable efforts shall be made to obtain the best possible colour reproduction on any printed materials provided under an Order. However, variation is inherent in the print process and it is understood and accepted as reasonable that Black Swan Creative shall not be required to guarantee an exact match in colour or texture between the Customer’s photograph, transparency, proof, electronic graphic file, previously printed matter (whether printed by Black Swan Creative or other party) or any other materials supplied by the Customer and the printed article the subject of the Customer’s order.

13. Materials supplied by the Customer

13.1 Black Swan Creative may reject any paper, plates or other materials supplied or specified by the Customer which it considers to be unsuitable and will notify the Customer of the reasons for such rejection. Additional costs incurred if materials are found to be unsuitable during production may be charged.

13.2 Black Swan Creative shall have no liability in respect of any work being of less than reasonably satisfactory quality as a result of defects in or the unsuitability of materials supplied or specified by the Customer.

13.3 Black Swan Creative shall assume that quantities of materials supplied shall be adequate to cover normal spoilage. If the quantities of materials supplied are not sufficient to cover normal spoilage (an “insufficient supply”) then Black Swan Creative shall have no liability for any shortfall in quantity to the extent that such shortfall arises as a result of such insufficient supply.

14. Disputes

14.1 In the event of any dispute arising between Black Swan Creative and the Customer which the parties are unable to resolve within 30 days of the date of written notice of the dispute, such dispute shall in the first instance be referred to mediation for resolution.

14.2 In the event that resolution by mediation is not achieved to the satisfaction of both parties within 30 days of referral to mediation then either party may take legal action to resolve the dispute.

14.3 Nothing in this clause prevents Black Swan Creative from taking legal action to enforce payment of any debt due or preserve a legal remedy, nor either party seeking interlocutory or injunctive relief.

15. Applicable law

15.1 The law applying to any contract arising between Black Swan Creative and the Customer shall be the laws of New Zealand.

15.2 In the event that any provision contained in these Terms and Conditions, or in any other collateral agreement or document between Black Swan Creative and the Customer, is deemed illegal or unenforceable, then such provision shall be deemed to be excluded therefrom, but only to the extent required to remedy the illegality or unenforceability, and these Terms and Conditions, and such collateral document shall in all other respects apply in accordance with their stated terms.

16. Assignment

16.1 The Customer shall not assign or otherwise transfer all or any of its rights or obligations under any Order without the prior written consent of Black Swan Creative.

16.2 Black Swan Creative is entitled at any time to assign to any other party all or any part of a debt which is owing to Black Swan Creative.

16.3 Black Swan Creative may sub-contract any part of the work which is to be performed under any Order.

17. Changes to terms and conditions

17.1 Failure by Black Swan Creative to enforce any of the Terms and Conditions shall not be deemed to be a waiver of any rights or remedies Black Swan Creative has.

17.2 Black Swan Creative may from time to time by written notice to the Customer amend, add to or substitute replacement conditions in respect of an existing Order and such amendment, addition or substitution shall be binding on the Customer thirty days after the date of delivery of such variation notice, unless prior to expiry of such notice the Customer notifies Black Swan Creative that the Order is cancelled.

18. Force Majeure