

TERMS & CONDITIONS



PRIVACY & NON-DISCLOSURE

I am respectful of your privacy needs and will not disclose sensitive information shared during consultation. Marketing strategies, product descriptions, research and development data, financial information, and current or future business plans will be kept confidential.

LICENSING & COPYRIGHT

Preliminary Art versus Final Art

Early in each project, I produce many sketches, rough drafts, visualizations and comps. These elements are Preliminary Art created to demonstrate possible design solutions. Some of these ideas will be rejected, while some will be modified and refined. You do not receive licensing for or permanent possession of Preliminary Art. Usually only one concept will be taken through to completion and upon your approval it is designated as your Final Art.

Original Artwork

As an artist, I retain all rights and titles to any original artwork comprising both the Preliminary Art and the Final Art, including the rights to display or sell the artwork. All original artwork should be returned to me within 30 days of the project's completion.

Licensing

A license is a limited granting of rights from me to you to use the intellectual property comprising the Final Art in a specific way. Unless otherwise specified in our contract, I will grant a license for limited usage. This means that you will not be permitted to modify the work or license it to a third party without my permission. In our preliminary contract, we will define whether your license is valid for specific products, in particular media, for print, interactive or environmental purposes.

We must also negotiate whether your license will be exclusive or nonexclusive. If your license is exclusive, it means that although I will retain ownership of the work, I will not grant anyone else permission to use the deliverables – only you will have permission to use them. Purchasing an exclusive license is a good way to protect your brand! Unless your license is specified as exclusive in your contract, it will be considered non-exclusive, which means that I retain the right to grant license to others who would like to use the work.

Code as Intellectual Property

I retain ownership of all code written to develop, run, display or use your final deliverables. Upon receipt of payment, I will grant you a non-exclusive license to copy and use the code.

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Accreditation

All displays or publications of the Final Art must bear copyright or credit to PenceLdesign.com and/or L. Pence.

Records of the Project

I am entitled to access all completed designs, displays, installations, or exhibits under optimal circumstances in order to document, photograph or otherwise record the work for promotional purposes.

Portfolio Use

I retain the right to reproduce, publish and display preliminary designs as well as samples of the completed project in my portfolio, website, and marketing materials. I may choose to submit the work to competitions, galleries, periodicals, or other avenues for professional advancement.

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PAYMENT POLICIES

Fees

I charge an hourly rate, plus expenses, for most creative services. Expenses include, but are not limited to, printing, shipping and handling, font licensing, stock image licensing, necessary software purchases, photography supplies, film development costs, and coffee. (Okay, not really the coffee part; I'm just checking to see if you're still awake.) Expenses will be itemized on each billing invoice.

Sales Tax

Most expenses, as defined above, are subject to Indiana sales tax unless you are a nonprofit organization, and then proper paperwork must be filled out PRIOR to the tax-exempt purchase. You are responsible for any sales tax applicable to an expense, even if it is calculated after the project's completion (for example, during a subsequent audit of PencilDesign's tax returns). On the bright side, most design work is exempt from sales tax, since services and intangible property are generally exempt.

Estimates

An estimate is just that: an approximate calculation of the fees for the design work to be done. Ultimately, charges may be more or less, depending on the time spent and the cost of materials needed for the job. My guarantees to you are that I will keep you informed of the expenses incurred as the design process progresses, and I will never go over the original project estimate without your explicit consent.

An estimate is valid for 30 days from the date it was issued.

If you request work beyond the scope of an estimate, I will notify you of the additional fees through a change order, which is essentially a mini-proposal describing the amount of time and money required to fulfill your new request. Your approval is required before I begin work on a change order. I will send you a separate invoice for each change order.

Deposits

A deposit equal to 25% of the total cost calculated in the proposal is required at the beginning of each project. This deposit will be applied to your first bill.

Payment Schedules

For large-scale projects, I am happy to work out a monthly or bi-monthly payment plan. This plan must be agreed upon in the project proposal before work can begin.

Full payment of a bill is due within 30 days of the date listed on the invoice, a.k.a. Net 30. Late payments incur penalties of 1.5 percent per month (the industry standard).

Contract Termination

I ask that you do not unreasonably withhold acceptance of, or payment for, your project. If, for any reason, your project must be canceled, notify me in writing as soon as possible (an e-mail is acceptable). You will be held financially responsible for the fees and expenses incurred prior to the cancellation. Upon official termination of the project, your initial deposit will be refunded less the amount owed.

In case of a terminated contract, I will retain the rights to all art created during the design process, and should you use any of these design elements I will take legal action. You will be held responsible for the expenses and attorney's fees in any action brought to recover payment.

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REFUND POLICIES

Defective Goods

I offer full refunds or replacements on faulty or defective goods. If your item is not delivered as originally described, if it is not of satisfactory quality, or if it does not match the design sample you approved, please send me a refund or replacement request in writing (an e-mail is acceptable). After you return the physical item to me, I will issue your refund or replacement. You are responsible for the cost to ship the item to me, but I will happily pay for the shipment of your replacement item. Refunds will be issued via check or money order.

Non-Tangible Goods

While I do not offer refunds on non-tangible, irrevocable goods such as design consultation and labor, I am proud to provide a 100% satisfaction guarantee on my art, meaning I will work tirelessly to refine your preliminary artwork until you are satisfied with the results. (Tireless work is subject to standard hourly rates and expenses, of course.)

Errors & Omissions

I do not offer refunds on work containing errors or omissions. It is your responsibility to check proofs carefully for accuracy in all respects, ranging from spelling to technical illustrations. I am happy to provide a referral to a local, professional proofreader/copy editor if you have concerns about the accuracy of your content.

Third-Party Goods & Services

I cannot offer refunds on third-party items such as domain names, stock photography or software plug-ins. You must contact these vendors directly if you are dissatisfied with their products or services.

LICENSING AGREEMENT

IP 2.A (1) (a) License for limited usage, no modification rights:

IP 2.1 For ___ print, ___ online/interactive, ___ three-dimensional media:

Upon completion of the Services, and expressly subject to full payment of all fees, costs and out-of-pocket expenses due, Designer grants to Client the rights in the Final Art as set forth below. Any additional uses not identified herein require an additional license and may require an additional fee. All other rights are expressly reserved by Designer. The rights granted to Client are for the usage of the Final Art in its original form only.

Client may not crop, distort, manipulate, reconfigure, mimic, animate, create derivative works or extract portions or in any other manner, alter the Final Art.

Category of use: _____

Medium of use: _____

Duration of use: _____

Geographic territory: _____

Initial press run: _____

With respect to such usage, Client shall have (check one)

Exclusive / Nonexclusive rights

OR

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IP 2.A (1)(b) Exclusive license, no modification rights:

IP 2.2 For ___ print, ___ online/interactive, ___ three-dimensional media:

Designer hereby grants to Client the exclusive, perpetual and worldwide right and license to use, reproduce and display the Final Art solely in connection with the Project as defined in the Proposal and in accordance with the various terms and conditions of this Agreement. The rights granted to Client are for usage of the Final Art in its original form only. Client may not crop, distort, manipulate, reconfigure, mimic, animate, create derivative works or extract portions or in any other manner, alter the Final Art.

By their execution below, the parties hereto have agreed to all of the terms and conditions of this Agreement effective as of the last date of signature below, and each signatory represents that it has the full authority to enter into this Agreement and to bind her/his respective party to all of the terms and conditions herein.

DESIGNER:

Laura Pence DBA PenceLdesign
1969 Birdie Galyan Rd. Bloomington, IN 47408

Signed: _____ Date: _____

CLIENT:

Client name: _____

Address: _____

Signed: _____ Date: _____