

# Terms and Conditions

Last Updated: February 15, 2012

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. USE OF THE HEXI DESIGN SERVICE IS CONDITIONAL ON YOU AGREEING TO THE TERMS OF THIS AGREEMENT.

Your use of the Hexi Design Service is subject to Your agreement to and compliance with the terms of this Agreement. In using the Hexi Design Service You indicate Your acceptance of the terms of this Agreement; and You are of or over eighteen (18) years of age.

Further, We reserve the right, in Our sole discretion, to modify this Agreement anytime. All such updates and changes shall come into effect as soon as these are posted on this web page. Your continued use of any of the service(s) offered on this Website expresses your implied consent to the acceptance of the modified Agreement. Any substantial changes or updates to this Policy shall be notified to the registered users of the Website. However, We strongly recommend You to periodically check this page for latest updates to this Agreement.

## Eligibility

If you use Hexi Designs services, you expressly represent to us that you can lawfully enter into and form binding contracts, conditions, obligations, affirmations, representations and warranties. Before you may become a member of the Site, you must read and accept all of the terms and conditions in this Agreement. Hexi Design reserves the right to accept or reject the registration application of any user at its sole discretion without assigning any reason to anyone.

If you do NOT accept the Terms and Conditions, then please discontinue your use of the Site.

## Description of Services

Hexi Design is an online community of talented designers from around the world thriving in one creative hive – Providing small and large businesses with logo, stationery and website design. Clients 'buyers' can place their graphic design requirements for registered designers to compete for the award offered, encouraging them to create innovative new designs.

## Use of the Services

You are solely responsible for the content that you post on or through the Site, and any material or information that you transmit to other users.

We assume NO responsibility or liability arising from the content of any such Postings nor for any error, defamation, libel, slander, omission, falsehood, obscenity, pornography, profanity, danger, or inaccuracy contained in any information within such Postings on the Site. You are strictly prohibited from posting or transmitting any unlawful, threatening, libelous, defamatory, obscene, scandalous, inflammatory, pornographic, or profane material that could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability, or otherwise violate any law.

Without limiting the foregoing, the following behaviors are strictly prohibited:

**Submit material that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless you are the owner of such rights or have permission from the rightful owner to post the material and grant us all of the license rights under this Agreement;**

Strong, vulgar, obscene or otherwise harmful language; Racially, ethnically or otherwise, objectionable language; Register under a false name or use an invalid or unauthorized email or physical address;

Violate any laws, third party rights, or our rights; Harassing, intimidating, stalking or threatening other community members; Libelous, defamatory or otherwise tortious language; Fail to provide to a buyer final deliverables required by the buyer if you are the winning creative, unless the buyer has materially changed the project's scope or description after you were selected as the winning creative, a clear typographical error is made, or you are unable to communicate with the buyer; Impersonation of another person; Posting, distributing, transmitting or promoting illegal content; Actions that are hurtful to minors; Posting, providing, transmitting or otherwise making available any materials or information infringing on the rights of a third party; Posting, providing, transmitting or otherwise making available any junk mail or spam, and Posting, uploading, emailing or otherwise transmitting any material that contains any malicious computer code, or reverse engineering or hacking any materials on the Site. We may reject, refuse to post or delete any content for any or no reason, including content that in our sole judgment violates these Terms or which may be offensive, illegal or violate the rights of any person or entity, or harm or threaten the safety of any person or entity; Use another's account without permission; Post a project on the Site for substantially the same design or written work that you are concurrently sourcing on another site; Use an invalid or unauthorized payment method; Post false, inaccurate, misleading, defamatory, or libelous content (including personal information); Distribute viruses or any other technologies that may harm us, or the interests or property of our users; Copy, modify, or distribute content from the Site and/or our copyrights and trademarks; or harvest or otherwise collect information about users, including email addresses, without their consent.

## Special Terms for Designers

Designers also undertake to abide by the following terms:

1. You agree and undertake to abide by and comply with all the applicable laws, rules, and regulations while interacting and dealing with the Contest Holders via any of the features offered through this Website.
2. If You win a Contest, You shall be solely responsible to deliver to the Contest Holder all the deliverables within an agreed upon period of time. However, in case the Contest Holder has materially changed the scope of the Contest after You were selected as the winner of the Contest or You are unable to communicate with the Contest Holder, You shall have no liability towards the Contest Holder. Further, in such an event, You agree to contact Us immediately for remedial action.
4. All logos must be created in vector format. You may not include any raster based elements.
5. You warrant and represent that You own or otherwise have license to all the legal rights to the deliverables.
6. All rights to the design vest with the Contest Holder once You have been fully paid for the designs by the Contest Holder. You agree to release all rights in such design including, without limitation, copyrights, patents, design rights, trademarks, etc. Further, You agree and undertake not to resell or offer to resell such design to anyone. In case of a private Contest specifically posted for the designer, the designer can seek written permission from the Contest Holder to display the design as part of his or her portfolio.
7. You agree not to communicate or attempt to communicate with the Contest Holder outside the interactive features afforded on the Website. Further, You warrant that You shall not reveal any contact information including, without limitation, Your email address, IM name, phone number, fax number, physical address, etc., to the Contest Holder.
8. You are expressly prohibited from resorting to personal attacks, negative or unfair criticism or other forms of discourteous and unprofessional online conduct or practices

through any of the features offered through this Website. Further, any illegal act, including but not limited to, pornography in general, child pornography, defamation, profanity, etc. is strictly prohibited from being transmitted or propagated through any of the features offered through this Website. We reserve the right to remove such content from the Website at any time without any notice to anyone.

9. Once a user's account is suspended or terminated for violation of any clause of this Agreement, such user is prohibited from opening a new account on this Website. If it is found that a suspended or terminated user is operating through another account, he or she shall forfeit the balance of all his or her accounts, and all funds will be returned to the original Contest Holder(s).

### **Special Terms for Contest Holders**

Contest Holders also undertake to abide by the following terms:

1. You agree and undertake to abide by and comply with all the applicable laws while interacting and dealing with the designers through any of the features offered through this Website.
2. You are expressly prohibited from resorting to personal attacks, negative or unfair criticism or other forms of discourteous and unprofessional online conduct or practices through any of the features offered through this Website. Further, any illegal act, including but not limited to, pornography in general, child pornography, defamation, profanity, etc. is strictly prohibited from being transmitted or propagated through any of the features offered through this Website. We reserve the right to remove such content from the Website at any time without any notice to anyone.
3. You are expected to provide as much information as you can about your requirements in the Contest so that the designers can make informed decisions.
4. You agree to provide us confirmation regarding the receipt of all deliverables from the designer as soon as feasible.
5. You agree to provide ratings and feedback to the submitted designs.
6. You are expressly prohibited from sharing an idea and/or concept of one designer and ask the other designer to copy or modify such design.
7. Any contest that goes (30) thirty calendar days past the expiration date with no action or contact from "you" the client/contest holder will be considered abandoned and prize amount will be split between the top rated designs in that contest.

### **Intellectual Property**

You represent and warrant that:

You own the content posted by you on or through the Site or otherwise have the right to grant the license set forth below, and the Posting of your content does not violate the privacy rights, publicity rights, copyrights, contract rights or any other rights of any person or entity. You agree to pay all royalties, fees and any other monies owing any person or entity by reason of any content posted by you on or through the Services.

By displaying or posting content on the Site, you hereby grant us a nonexclusive global license to publish the content submitted by you to the Site. You also grant us global nonexclusive adaptation and resale rights over any content and material submitted to the Site. These nonexclusive publishing license and resale/adaptation rights extend to any materials submitted "for publication" within the Site, including both message board postings and content submitted for uploading and subsequent publishing within non-message board portions of the Site. Neither we nor our staff will be responsible for any misleading, false or otherwise injurious information and advice communicated on the Site or for any results obtained from the use of such information or advice. We will not be liable for any loss or damage suffered by a user through the user's reliance on information and advice gained on the Site.

Designers shall be solely responsible for your own entries

and all content you post on the Site, and the consequences of posting or publishing entries or content. When uploading entries or comments to the Site, you affirm, represent and/or warrant that: you own or have the necessary licenses, rights, consents and permissions to use and authorize us to use all patent, trademark, trade secret, copyright, or other proprietary rights in and to any and all of your entries of content, to enable inclusion and use of your entries and content in the manner contemplated on the Site and in this Agreement.

### **Links**

The Site may provide links to other websites or resources. Because we have no control over such sites and resources, you acknowledge and agree that we are not responsible for the availability of such external sites and resources, and do not endorse and is not responsible or liable for any content, advertising, products or other materials on or available from such sites or resources. You further acknowledge and agree that we shall not be liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use or reliance on any such content, goods or services available on or through any such site or resource.

### **Designer/Client contract**

You acknowledge that on selection by Client (or Us) of a Winning Work submitted by a Designer:

Designer and Client will be deemed to have entered into a legally binding agreement with each other that governs the originality of work and the transfer of copyright from Designer to Client in respect of the Work(s). Hexi Design is not a party to the Designer/Client Contract.

### **Payment Terms**

All withdrawals in a currency other than US dollars will be made at an exchange rate determined by the Company in its sole discretion. You agree to bear all risks in relation to any loss suffered on account of the exchange of US dollars to another currency.

All payments must be made in US dollars, Australian dollars or Euro.

We reserve the right to fix a minimum and/or maximum amount for all withdrawals. The payment of all applicable taxes payable by the Contest Holders and the designers participating in the Contest offered through this Website shall be the sole responsibility of the respective Contest Holders and designers. The Company shall have no liability whatsoever towards such taxes, levies, or charges due to any governmental or non-governmental authority.

In case of a suspected breach of any of the terms contained herein, the Company reserves the right to withhold all withdrawals till such breach is rectified in accordance with the terms contained herein or the applicable law. We further reserve the right to make any chargeback or reversal payment from the designer's account in case any refund is payable to the Contest Holder pertaining to the sale of design by the designer.

You must notify Us as soon as possible in respect of any changes to Your billing and account information.

You acknowledge that Fees are processed via a third party payment processing service and will be subject to the applicable terms and conditions offered by such third party.

The Fees are exclusive of GST (where applicable). Without limiting the foregoing, You shall be liable for any taxes, duties or charges imposed in respect of the Hexi Design Service (other than taxes imposed on the income of Hexi Design). In order to launch a Project, Buyers must first:

1 pay to Us a Project Posting Fee; and  
2 pay to Us an amount equal to the relevant Project Budget, in accordance with the Fees Schedule.

Designer acknowledges that if it has any Work(s) selected as a Winning Work, Designer is liable to pay to Us the Commission Fees in respect of such Work(s). Designer directs Us to deduct and retain an amount equal to the Commission Fees from the amount of the relevant Project Budget that is payable to Designer in accordance with the Fees Schedule. Accordingly, We will first automatically deduct the Commission Fees from any payment a Designer receives.

You acknowledge that payment of the amount of the Project Budget to Us is not considered a payment to Us but is a payment to the successful Designer(s) in accordance with this Agreement, subject to the deduction of the Commission Fees.

### **Refund Policy**

Hexi Design offers 100% Money Back Guarantee.  
Our refund policy is as follows:

Client is eligible for and can request a full refund of its Project Budget (excluding any Project Posting Fees and Upgrade Fees paid to Us and excluding the applicable transaction fee(s)) in respect of a Project if:

- 1 It has not selected a Winning Design from the entries (if any) in response to a Brief;
- 2 The Refund Request is made within 60 days of launching the relevant Project.
- 3 Project Posting Fees - Client is eligible for and can request a full refund of its Project Posting Fees and Upgrade

Fees (excluding the applicable transaction fee(s)) in respect of a Project if:

- 1 No Submissions are made by any Designers prior to the Deadline.
- 2 None of the Submissions provided by Designer(s) meets the requirements outlined in Client's Brief; or
- 3 None of the Submissions provided by Designer(s) meets Hexi Design's Design Standards.

### **Release of Liability**

You will not hold us liable to you or any other member for any special, indirect, consequential or punitive damages pursuant to this agreement, including but not limited to, loss of profits, loss of business opportunities or loss of goodwill or reputation, even if advised of the possibility of such damages.

### **Third Party Content**

This Website may also contain third party links belonging to Our advertisers, partners, and/or affiliates. The content on such linked websites is not managed or controlled by the Company. Therefore, We disclaim any liability for any transaction or dealing by You with any of the linked third party websites. All such cases may be governed by the legal practices and policies of such linked websites.

### **Privacy**

All personal information We collect from You is subject to Our privacy policy, a copy of which is accessible via the Hexi Design Site.

### **Indemnity**

You agree to indemnify and hold the Company and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees, harmless from any claim or demand, including reasonable attorney's fees, made by any third party due to, or arising out of, the content You submit, post, transmit or make available through this Website, Your use of

this Website, Your violation of this Agreement, Your violation of any rights of any other person, or any other loss suffered by the company on account of Your direct or indirect conduct.

### **Intellectual property rights and submissions**

By submitting Your Content to the Hexi Design Site or in connection with the Hexi Design Service:

You grant Us a worldwide, non-exclusive, royalty-free, transferable licence to use, reproduce, alter, amend, publish, and display the submission (including without limitation the Briefs, Submissions and Works and any part thereof) on and in connection with the Hexi Design Site; and Designer grants Client a non-transferable, non-exclusive, royalty-free licence to reproduce and display the Work(s) (including to third parties for the purposes of on-selling the Work(s)) prior to (as applicable):

Upon purchasing any Work and becoming the owner of the rights in the Work pursuant to the Designer/Client Contract, Client grants Us a perpetual, worldwide, irrevocable, non-exclusive, royalty-free, transferrable licence to use, reproduce, alter, amend and display the Work (and all parts thereof) for promotional purposes on the Hexi Design Site and in connection with the Hexi Design Service (including without limitation in marketing materials, the press and on other websites owned or operated by Us).

Abuse of Copyright. You agree that You will report all intellectual property problems, offensive material or property violations to Us. If You believe Your rights have been infringed, You agree to email Us at support@hexidesign.com.

### **Disclaimers and Limitation of Liability**

EXCEPT IN JURISDICTIONS WHERE SUCH PROVISIONS ARE RESTRICTED, IN NO EVENT SHALL THE COMPANY BE LIABLE TO ANY USER OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT DAMAGES ARISING FROM YOUR USE OF THE SERVICES, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE COMPANY'S LIABILITY TO USERS FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL, AT ALL TIMES, BE LIMITED TO THE AMOUNT PAID, IF ANY, BY THE USERS TO THE COMPANY FOR THE SERVICES DURING THE TERM OF MEMBERSHIP.

The following rules of interpretation apply unless the context requires otherwise:

- headings are for convenience only and do not affect interpretation;
- the singular includes the plural and conversely;
- a gender includes all genders;
- where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- a reference to a person includes a body corporate, an unincorporated body or other entity and conversely;
- a reference to a clause or schedule is to a clause or schedule to this Agreement.