

# Terms & Conditions

**By engaging us to act you accept The Content Room's terms and conditions below.**

For queries, please contact Andrea Matson at 027 333 8897. Upon receiving our letter of engagement you can send a signed copy of the authority to act to [andrea@thecontentroom.co.nz](mailto:andrea@thecontentroom.co.nz).

## 1. Definitions

1.1 "Company" shall mean "The Content Room Limited" its successors and assigns or any person acting on behalf of and with the authority of The Content Room Limited.

1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Company to the Client.

1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.

1.4 "Services" shall mean all services supplied by the Company to the Client and includes any advice or recommendations.

1.5 "Price" shall mean the price payable for the Services as agreed between the Company and the Client in accordance with clause 3 of these terms and conditions.

## 2. Acceptance

2.1 Any instructions received by the Company from the Client for the supply of services and/or the Client's acceptance of services supplied by the Company shall constitute acceptance of the terms and conditions contained herein.

2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Company.

## 3. Price And Payment

3.1 At the Company's sole discretion the Price shall be as indicated on invoices provided by the Company to the Client once work has been completed, or as indicated on periodic interim invoices for ongoing work, unless otherwise agreed in writing between the parties.

3.2 Normal hours of business are between Monday to Friday, 9am to 5pm. Emergency or time sensitive work (work required to be completed within 3 business days or less), work done on a public holiday, or work done outside of normal business hours is subject to an After Hours Fee of an additional 20% of the normal Price for the Company's products and services, at the Company's discretion.

3.3 Time for payment for the contracted work shall be of the essence and must be paid in full within 7 working days of receipt of the invoice, unless otherwise agreed in writing between the Company and the Client.

3.4 Payment will be made by direct bank transfer only, unless otherwise agreed in writing by the parties.

3.5 The Company may, at its sole discretion, require that a non-refundable deposit be paid before they commence with providing the agreed upon products and services. If a deposit invoice is sent and remains unpaid before the commencement date, the Company may suspend or terminate the supply of products and/or services to the Client and any of its other obligations under this Contract. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company has exercised its rights under this clause.

3.6 Discounts applied to the Client's account are administered at the Company's discretion.

3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

3.8 Services provided on a public holiday will be charged at the full rate plus 50%.

## 4. Variations

4.1 The Company reserves the right to change the Price in the event of a variation to the Services. Variations include, without limitation, any change to the scope, quality or timing or the work, any circumstance that changes the cost of performing the work from that reasonably foreseeable at the time of the quotation.

4.2 The Company will advise the Client as soon as practicable of any change to the contract price arising out of any variation. The Company may at their sole discretion on written notice withhold performance of any work that the Company reasonably considers to be a variation until the Company has received the Client's written instruction.

4.3 If the Client requires any additional work to be done after a task has already been completed, then that additional work will incur additional fees at the standard rate.

4.4 If the Client requires any changes to a design after it has already been approved, these changes will incur additional fees at the standard rate.

## 5. Cancellation

5.1 Either party may terminate this agreement on 14 days written notice to the other party.

5.2 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the supply of services to the Client and any of its other obligations under the terms and conditions.

5.3 The Company will not be liable to the Client for any loss or damage the Client suffers because the Company or the Client have exercised their rights under this clause to cancel the agreement.

5.4 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any Services which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:

(a) any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to meet its payments as they fall due; or

(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

5.5 Cancellation of this contract shall not affect the Client's obligation to pay the Company all fees for any services performed until that cancellation.

5.6 If the Client accepts the Company's quote for services, but the project then does not proceed for any reason before the Company begins work, an administrative fee of \$200.00 plus GST and any disbursements and office service charges will be invoiced to the client in due course upon the Company receiving notice from the Client not to proceed.

## **6. Default & Consequences Of Default**

6.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of ten percent (10%) per calendar month plus any costs, including legal costs, the Company incurs in recovering the overdue payment (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

6.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Company.

6.3 Discounts may be revoked and the full amount owing may be charged to the Client if an invoice remains unpaid for more than 21 days or any other agreed upon date.

## **7. Intellectual Property**

7.1 The Client confirms that it holds the appropriate copyright and trademark permissions for any text, images audio, and other materials it supplies to the Company for inclusion in the Client's website, digital project, or marketing plan. The ownership of such materials will remain with the rightful copyright or trademark owner. The Client agrees to fully indemnify and hold the Company free from harm in any claims resulting from the Client in not having obtained all the required copyright, and/or any other necessary permissions.

7.2 Should the Company, or the Client supply an image, text, audio clip or any other material believing it to be copyright and royalty free, which is later found to have copyright or royalty usage limitations, the Client will agree to allow the Company to immediately remove and/or replace the material.

7.3 The copyright for all graphics, photographs, text and marketing plans provided by the Company will remain the property of the Company until such time as the Company receives full payment, whereupon they will become the property of the Client.

7.4 All software will remain at all times the intellectual property of the Company or creator of the software. The Client will be granted license to the software or log in details relating to their Website. The client may not sell

or redistribute the software code, or log in details without the Company's prior written consent.

7.5 All of the Company's working files, marketing templates and software templates (including those provided as a part of a Website or marketing plan) remain the intellectual property of the Company. A licence for the use of this material is granted to the Client solely for the project defined in the scope or request and not for any other purpose, unless agreed by the parties in writing prior to these materials being used for other purposes. The Company may charge for the additional usage of these materials.

7.6 Any third-party materials (such as software, code, plugins) used in a web or digital project remains the property of the creator and any ongoing licence fees or fees for upgrades are the responsibility of the Client, not the Company unless otherwise agreed in writing.

7.7 The parties acknowledge that the Company may accept jobs from other clients to provide services and/or products with the same or similar functionality to the services provided to the Client, and that the Company may replicate all techniques, structures, designs and code used in the creation of those services and products.

## **8. Limited Liability**

8.1 The Company makes no warranties of any kind, express or implied, for the products and services that it supplies. The Company will not be held responsible for any damages, costs, or losses resulting from products and services it supplies. The Company accepts no responsibility for the performance or quality of services for any and all costs, damages, loss of business, profit, or reputation incurred directly or indirectly arising from this. The Client agrees not to hold the Company responsible for any such costs, loss or damage.

8.2 As part of the Services, the Company may, on behalf of the Client, copywrite, content write, make posts, and/or advertisements ("Posts") to the Client's social or digital media, or website. The Posts will be provided to the Client prior to posting for their approval. The Company is not responsible for any errors in the Posts that have been approved by the Client, nor for any and all costs, damages, loss of business, profit, or reputation incurred directly or indirectly as a result of the Post.

8.3 Further to clause 8.2 above, the Client may elect to have the Company make the Posts on their social and digital media or website without the Client's prior approval by providing confirmation of this in writing to the Company. By giving this approval, the Client agrees and acknowledges that the Company is not liable for any and all costs, damages, loss of business, profit, or reputation incurred directly or indirectly as a result of the Posts it makes on the Client's behalf.

8.4 The Client acknowledges that many factors that govern Search Engine Optimization ("SEO") are outside the direct control of the Company. Search Engines are third party systems with unknown variables, algorithms and indexing decisions that can change at any time and without notice. The Client acknowledges that the Company has no control over these variables or changes. The Company will use best efforts, techniques and accepted standards to improve the Client's Search Engine Ranking but cannot guarantee a high ranking of Client's

website on any major Search Engine for any particular keyword, phrase, or search term.

8.5 Any variation made by solely by the Client to the services and products provided by the Company are made at the Client's own risk, and the Company takes no responsibility for any and all costs, damages, loss of business, profit, or reputation incurred directly or indirectly as a result of the Client's actions.

### **9. Client Acknowledgments**

9.1 The Price for Services is based on a rate agreed to between the Client and the Company.

9.2 If the Client terminates the agreement, the client will not be entitled to claim any amount by way of liquidated damages or other payments as a consequence of the termination.

9.3 On termination of the agreement, the Client agrees to pay all outstanding sums due under the agreement. The parties agree that any and all indemnities provided by the Client and all rights of the Company survive termination.

### **10. Privacy Act 1993**

10.1 The Client and the Guarantor/s (if separate to the Client) authorises the Company to:

(a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and

(b) disclose information about the Client and/or Guarantors, whether collected by the Company from the Client and/or Guarantors directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client and/or Guarantors.

10.2 The Client and/or Guarantors shall have the right to request the Company for a copy of the information about the Client and/or Guarantors retained by the Company and the right to request the Company to correct any incorrect information about the Client and/or Guarantors held by the Company.

### **11. General**

11.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

11.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

11.3 The Company shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Company of these terms and conditions.

11.4 In the event of any breach of this contract by the Company the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services provided by the Company.

11.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.

11.6 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.

11.7 The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Client of such change.

11.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, pandemic, fire, flood, drought, storm or other event beyond the reasonable control of either party.

11.9 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.