

# Terms of Business

PLATOCREATIVE

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**Prepared by:**

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# Terms of Business

## Firstly thank you and welcome to Plato Creative

**We're looking forward to working with you and your team.**

If you wish, you can alternatively accept our Terms of Business online, just visit **platocreative.co.nz** and select the 'Terms of Business' link in the footer.

**Here's to good business.**

### 1. GENERAL

The Terms of Business set out below are designed to provide certainty to both Plato Creative Design Limited trading as Plato Creative ("the Company") and you ("the Client") to avoid any misunderstanding.

Please carefully read through these Terms of Business and seek clarification if you are unclear on any points. These terms shall prevail over any other and apply to the provision of all of our services including those of any of our sub brands and or any of our subsidiary companies.

## 2. INTERPRETATION

### In these Terms of Business:

- **Company** means Plato Creative Design Limited
- **Conditions** means these Terms of Business to be read and construed with each Estimate, Quote, Proposal or Outline of Products/Services provided by the Company
- **Client** or **Customer** means the purchaser of products and/or services from the Company
- **Contract** means an agreement between the Client and the Company comprising of an Estimate, Quote, Proposal or Request for Services
- **Products** and/or **Services** means any work commissioned and provided by the Company to the Client

### Formation of the contract

Estimates, Quotes and Proposals remain valid for acceptance within 30 days unless otherwise specified. No contract shall come into existence until the Client's order has been accepted by the Company.

The Client may place an order by either:

- a. Accepting the Estimate, Quote or Proposal via phone, in person, email, txt or other digital message
- b. Paying a deposit (if any)
- c. Requesting products and/or services to be delivered in absence of an Estimate, Quote or Proposal

The Client cannot cancel a contract after an order has been accepted by the Company and are bound to pay the estimated or quoted price.

## 3. PRICES

Prices in all investment Estimates, Quotes and Proposals are estimated in New Zealand Dollars and are exclusive of GST.

The price for the delivery of projects are estimated based on the interpretation of the scope and detail provided by the Client and are subject to change based on any of the following situations arising:

- a. Further details being learnt and/or revealed by either party
- b. A change in Client requirements and/or brief
- c. Rounds of amends or changes outside the original estimation
- d. Content or requests not being supplied together as a concise set
- e. The timeframe for the project changing and/or being delayed
- f. Human errors contained in prices or specifications
- g. Supplier price changes
- h. Exchange rate fluctuations

## **Fees**

Invoices paid by Credit Card will incur an additional 2.9% fee. This charge will appear on your invoice as an itemised fee when you select to 'Pay Online' via Credit Card.

A small margin is charged on external 'production' items to cover financing and administration including; print, signage, media and digital marketing. Margin will be included within the prices quoted. The Client can, by prior arrangement in advance, choose to pay production items directly.

## **4. INVOICES**

### **Progress Invoices**

The Company will progress invoice all work completed to date at the end of each month.

Invoices are payable on the 20th of the month following the date of invoice, unless otherwise agreed.

## **5. NON-PAYMENT & DEFAULT**

### **Non-payment of Invoices**

The Company has the right to charge Late Payment Fees on overdue invoices that include;

- Interest at 15% p.a
- Administration fees

Late Payment Fees will be exclusive of GST and shall be payable fortnightly until the date when the payment is received.

In the event that the Client fails to pay invoices;

- a. The Company reserves the right to stop working for the Client immediately and will not be liable for any loss they may suffer as a result of such discontinuance.
- b. The Company reserves the right to withhold the supply of any files, products or services until full payment is received.
- c. The Company reserves the right to initiate debt collection and/or legal action

The Client shall be liable for all expenses and costs, including legal fees in relation to the Company enforcing or attempting to enforce these Terms of Business.

## **Default**

In the event that:

- a. the Client fails to meet any obligation to the Company under any Contract or agreement
- b. The Client becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management
- c. The Client no longer carries on business or threatens to cease carrying on business
- d. The ownership or effective control of the Client is transferred or the nature of the Clients business is materially altered

The Company shall be entitled to cancel all or any part of any Contract with the Client which remains unperformed, in addition to and without prejudice to its other remedies; and all amounts outstanding under this Contract or any other Contract shall immediately become due and payable.

## **6. INTELLECTUAL PROPERTY**

### **Protection of Intellectual Property**

Trademarking, protection and management of of IP and infringements are the sole responsibility of the Client. The Company will not be liable for any costs or losses, real or otherwise, that may be incurred.

### **Ownership of IP**

On completion and full payment being received, the intellectual property rights of final files for the Clients work will transfer to the Client. Until that time, the Company shall retain all intellectual property rights until full payment is received.

The Client will be entitled to use the work produced for the purpose for which it was intended however the Client (or any other person or entity) are not permitted to make use of, modify and on-sell any of the Company's IP, processes or documents received as part of the process.

Concepts and ideas not chosen as part of the project will remain the property of the Company.

As part of the creative nature of our work, we will often present proactive concepts, ideas and initiatives. These remain the property of the Company unless accepted and paid for. This includes work delivered in 'pitches'.

## 7. PRIVACY & SECURITY

Plato Creative will collect, use and hold information for the purpose of providing products or services and the effective marketing and management the Company.

- a. The Company may share information to any person/company who can assist it with providing products or services to the Client
- b. The Company can use any work for their portfolio and case studies, including draft concepts, before and after examples, results of successful campaigns, testimonials and messages of endorsement and appreciation received unless the Client has requested them to be kept confidential.
- c. The Company can use credit checks and reporting agencies' monitoring services to receive updates of information held about the Client and it's Directors if payment obligations are not met.

### **Security of Company Assets, Tools and Accounts**

Access to the Company's accounts will not be granted to any Clients or their suppliers which includes; servers, hosting environments, marketing tools, Google, Facebook and other business accounts of the Company.

## 8. FONTS & LICENSING

We may be required to purchase fonts, software or licensing to be able to execute your projects. The investment in these items may not be transferable, should you wish to gain supply of these fonts for your own in-house use. The terms of use will be individual to the supplier and the licence will be in relation to our own use. It's important that if you do receive copies of fonts and other licensed items that the licence terms continue to be met for the purpose you're asking for these to be supplied or that you purchase additional licences as required.

### **Licensing**

All licences will continue to be renewed unless advised otherwise in advance to ensure we can provide continuity in service. This includes but isn't limited to domains, software and subscriptions purchased on your behalf. Please advise us in advance of any planned changes as subscriptions and licences are not refundable.

## 9. EMAIL MARKETING

In using the Company's email marketing platform PlatoMail, the Client agrees to:

- a. not send any unsolicited emails and to comply to New Zealand's Anti- Spam Policy legislation
- b. be responsible for the security and supply of their own database
- c. not hold the Company liable for any emails sent including any errors within content or databases

The Company will not be liable for any loss that may be incurred in relation to the services provided, third party Apps, hosting or discontinuance of service.

### **Managing Scope and Assumptions**

All technical, mandatory requirements and assumptions are required to be clearly itemised and disclosed by the Client prior to the initiation of the project to ensure all expected features and functionality have been correctly estimated and scoped for in both investment and time required to complete the project.

In the event that additional work is requested or required outside of the original estimate/scope, the Company has the right to re-estimate the services and time-frame required to complete the project at any stage.

Not all development work can or will be previewed with designs prior to development. Therefore if any specifications are required or necessary to be met, it is required that the Client clearly communicate this prior to development.

Client amends are expected to be minimum; styling, text or content updates and are to be received in batches in-line with the stage of project and number of amends stipulated in the Estimate, Project or Scope. If this is not identified, the assumption of one round of amends will be adopted.

Also refer to section "3. Prices" for a list of situations that will incur additional time/cost.

### **Completion of Project**

Approval to 'go live' on the internet is considered approval and completion of the project.

All work ongoing from that point is considered ongoing maintenance unless otherwise agreed in advance and will be charged on a time-taken basis.

### **Hosting**

If the Client retains the Company to host a website, domain or App it is acknowledged and understood that:

- a. hosting is not guaranteed to be live 100% of the time due to its dependancy on servers that require software upgrades and possible technical challenges which may interrupt its service.
- b. the Company will charge fees for hosting, and domain registration that is non-refundable. If unpaid, the Company reserves the right to shut down the website/App until such time as full payment is received.
- c. to protect all Clients, access to our server will not be given to any Client or their IT supplier. Any updates required to the setup, files or records will be made on behalf and charged on a time-taken basis.
- d. any website/App that the Company deems posing a risk to either the security of their server and/or other client sites, may be advised that the service will be immediately discontinued and requested to find an alternative host at their own cost.
- e. the Company will not be liable for any loss that may be incurred in relation to the services provided, third party Apps, hosting, hacks or breaches of security.
- f. packaging and supplying website files or domain records for transfer or taking a website down will incur a cost of \$250+gst and will be payable by the Client prior to the supply of files.

## 11. DIGITAL THIRD PARTY PLATFORMS - CMS & BROWSERS

Digital third-party platforms including CMS platforms, browsers, plugins or licensed products can become out-of-date and unsupported by their providers over time. These situations are entirely out of the Company's control.

The Company will not actively build or develop on unsupported digital third-party platforms and will advise suitable upgrades or alternatives which will involve investment if required. Maintenance in some circumstances may still be available for short-term fixes however no responsibility can be taken by the Company for the security or stability of such work.

## 12. PROOFING

Proofs of work may be submitted for Clients approval. In the situation where the Client asks the Company to sign off on proofs on its behalf or proceed directly to print and/or placement, the Company shall incur no liability for any errors. The Company shall also not be held accountable for any errors not corrected by the Client.

## 13. DIRECTOR GUARANTEE

In consideration of the Company entering into a Contract with the Client, the Guarantor:

- a. Guarantees payment of all monies owed by the Client to the Company
- b. Guarantees the performance by the Client of all obligations and responsibilities

The Guarantor agrees that in the event of default by the Client in any payment, obligation, responsibility or covenant under the these Terms of Business or a Contract, the Guarantor may be treated as the Client by the Company who shall be under no obligation to take proceedings against the Client before taking proceedings against the Guarantor, and the Guarantor will execute a mortgage over his/her or its property to secure payment of all monies owed and outstanding by the Client to the Company if requested by the Company.

Should there be more than one Guarantor then their liability as Guarantors under this Guarantee shall be joint and several.

## 14. MISCELLANEOUS

- a. Failure by the Company to insist upon strict performance by the Terms of Business or any of the Conditions shall not be a waiver of any rights of the Company on any subsequent occasion.
- b. The Client may not assign or transfer any of its rights or obligations under or in connection with the Contract to another entity without prior agreement.
- c. The Company shall not be liable for any delay or failure to perform any of its obligations if impacted by an event beyond reasonable control ('force majeure') and will be entitled to a reasonable time extension.
- d. The Company will not be liable for any costs or losses, real or otherwise, that may be incurred in relation to services provided, third party providers, hosting or hacks.
- e. The Client shall pay the costs and expenses including legal fees incurred by the Company in exercising any of its rights or remedies or enforcing any of the Conditions.
- f. Any notice given by one party to the other shall be deemed to have been delivered five (5) working days after posting to the recipients registered office or last known address and immediately if forwarded by email.
- g. Packaging and supplying files will incur a cost and will be payable in advance of files being supplied.
- h. These Terms of Business may be varied and updated by the Company and will be published online at <https://www.platocreative.co.nz/terms-of-trade/>.

## 14. LAW

These Terms of Business shall be governed by the laws of New Zealand and shall be construed in all respects as a New Zealand contract.

## APPROVAL

I/we agree to Plato Creative's Terms of Business

Company name:

Your name:

Signature:

Date: