

# LW Creative

## Terms and Conditions of Trade

### 1. GENERAL

- 1.1. In these Terms and Conditions:
- (a) "Agreement" means any order relating to the Services, and these Terms and Conditions.
  - (b) "We" or "Us" means Elizabeth Webb trading as LW Creative and her successors and assigns.
  - (c) "You" means the person, firm, company or entity buying Services from us.
  - (d) "Services" means all Services we will supply to you under an estimate, quotation, proposal, order or invoice relating to the design and build of websites, content writing, photography, and graphic design.

### 2. PRICE

- 2.1. **Price plus tax:** You will pay the price indicated on the invoice, order form or other similar document issued by us ("Price"), together with the amount of any Goods and Services Tax or any other tax which may be payable in respect of the supply of Services or otherwise under these Terms and Conditions.
- 2.2. **Quotation:** Any quotation we have made for the supply of Services constitutes an invitation to treat and not a binding offer. All quotes lapse after 14 days but we reserve the right to change or withdraw any quote without notice at any time. Quotes are based on the anticipated creative, consultation services time and production requirements and our expectations of client co-operation in provision of content, meeting deadlines and approval.
- 2.3. **Office expenses:** Unless otherwise agreed in writing we reserve the right to add a charge for office expenses such as travel and printing.
- 2.4. **Third party expenses:** Fees for Services performed by third parties will either be payable to them directly or through us. Where we are responsible for payment we will not instruct a third party to start work until we receive the money from you.
- 2.5. **Change of Rates:** We reserve the right to change any previously notified hourly rate for casual work on 60 days' written notice to you.
- 2.6. **Price variations:** The Price may be revised during provision of the Services in circumstances including but not limited to:
- (a) You request that the Services be provided urgently, which means we need to make changes to other work schedules;
  - (b) delays caused by you;
  - (c) you request additional work after sign-off;
  - (d) you choose to purchase additional Services;
  - (e) additional third party costs being incurred;
  - (f) where you request changes to the final work product; or
  - (g) other circumstances outside our control.
- If the Price is likely to deviate significantly from the estimate we will inform you wherever possible. We recommend you add a 10% to 15% contingency to the Price when you begin a project.
- 2.7. **No deductions:** All payments by you will be full, free and clear of any deduction, withholding, set-off, counterclaim or other claim.
- 2.8. **Cancellation:** You may cancel this Agreement at any time, by email. Where cancellation occurs before we start our work any deposit paid may be refunded at our sole discretion. If cancellation (or termination under clause 5.12) occurs after we have started to perform the Services we reserve the right to invoice you for work that has already been done where:
- (a) the amount of any deposit paid is not enough to compensate us for that work; or
  - (b) you have not paid a deposit.

### 3. PAYMENT

- 3.1. **Deposit:** In order to confirm a booking for Services you will be required to pay a deposit of:
- (a) Where the estimated price is \$1000 plus GST or less 100% of the Price;
  - (b) Where the estimated Price is over \$1000 plus GST: 10% to reserve your project start date followed by 40% of the Price;
- and (except for the 10% deposit) those deposits will need to be paid at least 14 days before we are scheduled to start the Services.
- 3.2. **Payment of balance:** We will issue you with invoices in accordance with the agreed timeline or at our discretion. All our invoices are payable within 7 days. We reserve the right to not publish or deliver our work to you until your account has been paid in full. If the Services are to be performed in stages, we may require you to pay for a stage in full before we will start on the next stage. We reserve the right to issue interim invoices where a project has become inactive for 30 days or more.
- 3.3. **Expenses:** Agreed third party expenses will be invoiced to you in advance and we reserve the right not to progress the associated Services until we receive these payments or evidence that you have paid them directly in full.
- 3.4. **Acceleration:** Notwithstanding such credit period, full payment for all unpaid Services will become due immediately upon:
- (a) You or any guarantor becoming insolvent or bankrupt;
  - (b) The commencement of any act or proceeding in which your or any guarantor's insolvency is involved; or
  - (c) You or any guarantor resolving to wind up or being ordered to be wound up or having a receiver, liquidator or official manager appointed in respect of all or any of your assets; or
  - (d) You or any guarantor ceasing to trade.

### 4. LATE PAYMENT

- 4.1. **Suspension of Services:** Where any payments are overdue we reserve the right to remove your website or other work in progress from any third party platforms or services until all payments are up to date.
- 4.2. **Default interest:** Failure by you to make payment in full of any amount payable pursuant to this Agreement on the due date constitutes a default and, without prejudice to any other rights or remedies available to us, simple interest at 1.5% per month will be payable upon demand and from the due date until payment.
- 4.3. **Legal costs:** You will indemnify us against all loss, costs and expenses, including legal costs on a solicitor/client basis, which we may suffer or incur as a result of any failure by you to make due and punctual payment.

### 5. PERFORMANCE OF THE SERVICES

- 5.1. **Commencement:** Unless otherwise agreed in writing we will start performing the Services on receipt of your deposit payment.
- 5.2. **Time:** We undertake to use reasonable endeavours to deliver the Services within the time specified by us but dates we give for performance will be indicative only. No date specified by you will be binding on us without our written agreement.
- 5.3. **Inclusions:** The Price includes:
- (a) Options: one round of presented work. If you are not happy with the presentation we will work with you to revise the brief and re-estimate the Price;
  - (b) Revisions: one set of revisions (which are minor changes only), after which additional charges may become payable;
  - (c) Meetings: one meeting at the start of the project. Additional meetings may incur extra charges.

- 5.4. **Use of reports:** Any work product or reports prepared or procured by us as part of the Services are to be used only by you.
- 5.5. **Services to be supplied:** You acknowledge and agree that the Services are limited to those set out in the invoice, order form or other similar document issued by us. We may, at our discretion, supply you with the final work product but we do not supply the original artwork files, links, development files or other material generated.
- 5.6. **Declining Services:** We reserve the right to decline any request for work that We consider is contrary to Our professional standards or that in Our view may be harmful to your or Our reputations. If you object to Us declining any work under this clause We have the right to terminate this Agreement with immediate effect.
- 5.7. **Portfolio:** You agree that We may use samples of the work we have prepared on your behalf for the purposes of marketing our services and our business.
- 5.8. **Copyright:** Unless otherwise agreed, we retain intellectual property rights in all original work we have prepared on your behalf as part of the Services until the Price is paid in full. We do retain copyright in all photography and in unused or rejected content generated in the course of performing the Services.
- 5.9. **Websites:** All websites are created using a website builder. For this reason, you will retain 100% ownership of the web page design only.
- 5.10. **Webhosting:** All websites delivered are hosted by Rocketspark Limited and is subject to their terms and conditions. You enter into direct hosting agreements with Rocketspark, and we take no responsibility for any matters arising from the hosting services.
- 5.11. **Archiving:** Digital content you supply, and our work product will be archived within two weeks of project completion. Archiving is a free service to our clients, but we do not guarantee it for digital backup. It is your responsibility to retain a copy of any information or works before archiving. If you require retrieval of information or work after it has been archived there will be a retrieval fee of \$70+GST payable on request. Designer working files can be supplied on request, at an additional cost.
- 5.12. **SEO Performance:** Any SEO work completed (SEO website basics and Organic SEO) is done to the best of our ability. However, we cannot guarantee a position in search engine results (page rank) as this is dependent on the level of competition in the market and other factors outside our control.
- 5.13. **Exclusions:**
- Unless itemised in our estimate the Price excludes: stock library images, photography or video outside of our in-house resources; bespoke illustration; copywriting; website hosting or backups; translation services; travel and accommodation outside of Papamoa; talent (models and actors etc.); props for photographs, any third-party media, production, distribution, couriers, proofs, mock-ups, proof reading or printing that may be required; other third-party costs incurred (payment charges) etc.
- 5.14. **Termination:** We reserve the right to terminate this Agreement or any specific project with immediate effect in the following circumstances:
- You do not respond to us either by phone or email after five attempts of contact over 14 working days;
  - You do not provide us with the material and content we have requested on schedule without adequate communication;
  - You or your staff are disrespectful or verbally abusive;
  - You are no longer an appropriate fit for our business.

## 6. YOUR OBLIGATIONS

- 6.1. **Nominated person:** You will nominate one person in your organisation to be our primary point of contact. That

person will be responsible for complying with your obligations as set out in this clause, including obtaining sign-offs. We are entitled to rely on instructions and sign-offs given by that person and are not required to make further inquiry at any time.

- 6.2. **Timelines:** You will comply with the timeline agreed for your project. If you cause any delays to the agreed timeline we have the right to do any of the following:
- Amend the timeline to suit our schedule and other work;
  - Withdraw our quoted Price and complete the rest of the Services at our current hourly rate.
- 6.3. **Content:**
- You will provide us with any relevant information or material required to enable us to perform the Services. Unless otherwise agreed you will supply the majority of the copy and images. Copywriting services or copy advice, illustration and photography can be provided for an additional cost. Where we source royalty-free stock images or where you supply us a large file of images to sort through we will charge for our time doing so;
  - Where information you give us is incorrect and we are required to undertake additional work we reserve the right to charge for such additional work;
  - Where you supply us with images, logos and digital design elements, they must be of suitable quality or resolution. If they are not we may decline to use them;
  - When we send you drafts or proofs you will check them thoroughly. We will not finalise work or send it to publication or production until we are satisfied with your written sign-off. Once final proofs/materials have been signed off, we cannot be held responsible financially or otherwise for any errors or omissions in the end product;
  - Proofs are for positional purposes only. Due to the inconsistencies associated with viewing files on various monitors, the actual colours produced in printing may vary from proofs as viewed on your screen. If you have provided PMS colours, we will make every effort to achieve a consist colour within the parameters of the print process undertaken;
  - Requests for changes to text must be made in writing, and supplied in an editable file. We cannot guarantee that textual changes requested orally will be implemented;
  - You agree to ensure all advertising material we create for you conforms to the New Zealand standards of the Advertising Standards Authority (ASA). We accept no liability for any design work that is held to be in breach of these advertising standards.
- 6.4. **Third Party Rights:** You warrant that:
- you own any material you provide to us, free of any claims or encumbrances and are entitled to provide that material to us; and
  - any material you provide to us is yours and does not violate any existing intellectual property rights including, without limitation, copyright, trade mark, or any other proprietary or contractual rights.
- 6.5. **Intellectual Property Protection:** It is your responsibility to seek intellectual property protection if desired for any creative/intellectual property we supply to you.
- ## 7. OUR WARRANTIES
- 7.1. We warrant that:
- We have the right to enter into this Agreement;
  - We will perform the Services to a reasonable standard of care and skill;
  - We will perform the Services in accordance with relevant laws.

- 7.2. We cannot guarantee you exclusivity of any marketing concept, strategy, design or other intellectual property provided. Therefore we will not accept liability for any alleged claim by you or any third party as the result of unintentional similarity in part or whole of a third party's copyright protected or registered trademark or brand, identity, tagline, colour usage, image style and content, product or otherwise.

## **8. LIABILITY**

### **8.1. Limitation of liability:**

- (a) Claims: We will have no liability for unsatisfactory Services or work product unless you notify us in writing of your claim within 14 days after delivery of the final work product or each stage of the project (as appropriate);
- (b) We will have the option, exercisable at our discretion, to replace or give credit for any services in respect of which any claim is made or proven or to refund a portion of the price paid for the Services, thereby fully discharging all our legal liability;
- (c) If either party is liable for direct losses arising from a breach of this Agreement or for negligence, the liable party's obligation to pay damages or losses is limited to the Price paid for Services under this Agreement in the three months immediately prior to the event to which the liability relates. This limitation does not apply to any loss or damage caused by fraud, wilful breach or wilful damage;
- (d) We are not liable for any loss caused by you, or any loss that results from your failure to take reasonable steps to avoid or minimise your loss. In particular, we are entitled to rely on the written sign-off of your nominated primary point of contact, which confirms all work is approved and ready for production;
- (e) Notwithstanding any other provision of this agreement, neither party will be liable for indirect, special, consequential or similar damages or losses, including but not limited to loss of profit or revenues or other financial or economic losses of any kind and whether or not the other party has been advised of the potential for such damages.
- 8.2. **Indemnity:** You will be liable for, and will indemnify Us against, any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by us, whether direct or consequential (including without limitation any economic loss or other loss of profits, business or goodwill), arising out of any dispute or contractual, tortious or other claim or proceeding brought against us arising from any third party claim including but not limited to claims that the work infringes a third party's intellectual property rights.

## **9. GENERAL**

- 9.1. **Variations:** We reserve the right to change these Terms and Conditions at any time with effect from the time we notify you.
- 9.2. **Events outside our control:** If any cause beyond our reasonable control including but not limited to order of a government or other authority, strike, lockout, labour dispute, delays in transit, difficulty in procuring components or equipment, embargo, accident, emergency, act of God interfere with our performance of any of our obligations under these Terms and Conditions then we may at our sole discretion suspend our performance of any such obligation or cancel any contract for the purchase of Services and we will not be liable to you in any respect.
- 9.3. **Waiver:** These Terms and Conditions remain in force notwithstanding any neglect, forbearance or delay in enforcement. We will not be deemed to have waived any condition unless such waiver will be in writing and such waiver will only apply to the particular transaction to which it refers.
- 9.4. **Severability:** If any clause or provision of these Terms and Conditions will be held illegal or unenforceable by any judgment of any Court or Tribunal having competent jurisdiction, such clause will not apply to this Agreement. The remaining provisions of this Agreement will remain in full force and effect as if the clause or provision held to be illegal or unenforceable had not been included.
- 9.5. **Privacy Policy:** Any personal information collected by us in connection with this Agreement will only be used or disclosed for the purposes of ensuring performance of this Agreement and any future like arrangement or arrangements. This may include disclosure within our organisation and to other parties involved in performing the Services. We agree to comply with relevant privacy laws in respect of any personal information collected in connection with the provision of the Services and any future like arrangement or arrangements.
- 9.6. **Electronic Communications:** You consent to receive commercial electronic messages from Us. If you wish to opt out of receiving these messages tell us in writing and we will remove you from the mailing list.
- 9.7. **Confidentiality:** Each party must keep confidential during the term and after termination of this Agreement all information of a confidential or sensitive nature supplied by the other party to this Agreement except to the extent that disclosure is required by law or where such information is or becomes available in the public domain without breach by a party of its confidentiality obligations under this Agreement. A party may disclose such information to its legal and other advisers, bankers and other persons who are subject to an obligation of confidentiality.