



UNLEASHING POTENTIAL

Terms & Conditions

www.unleashingpotential.co.nz

Terms & Conditions

1. Definitions

In these terms and conditions:

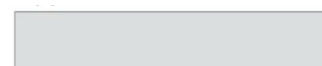
- 1.1 "Application" means the application form between the Supplier and Customer in relation to the supply of the Services.
- 1.2 "Calendar days" means all consecutive days including Saturdays and Sundays but excluding public holidays.
- 1.3 "Customer" means the person, firm, company, partnership, trust or entity named as the Customer on the Application.
- 1.4 "Services" means all services which are supplied by the Supplier under any contract for sale, purchase agreement, or arrangement with the Customer, and includes any goods supplied by the Supplier incidental to the Services.
- 1.5 "PPSA" means the Personal Property Securities Act 1999, and in these Terms, unless the contrary intention appears, the terms "at risk", "financing statement", "financing change statement", "proceeds", "security interest" and "verification statement" each have the meaning given to that term in the PPSA.
- 1.6 "Premises" means the Customer's main place of business.
- 1.7 "Project" means the series of tasks involved in the website design and development process undertaken by the Supplier.
- 1.8 "Supplier" means Unleashing Potential Limited and its successors and assigns.
- 1.9 "Terms" means these terms and conditions.
- 1.10 "Website" means the digital product created, managed or targeted by the Supplier and the associated ongoing maintenance requirements.
- 1.11 "CMS and Plugin" means the compulsory periodic software updates to the Website.

2. General

- 2.1 These Terms apply to all offers, estimates, and agreements entered into between the Supplier and the Customer for the supply of Services.
- 2.2 The placement of an order or request for Services shall be deemed to be acceptance of these Terms by the Customer.
- 2.3 Unless otherwise agreed to in writing by the Supplier, in the case of any conflict arising between these Terms and any other terms between the Customer and the Supplier, these Terms shall prevail.
- 2.4 Where any specific agreement or contract between the Supplier and Customer is void or bereft of any or all of the provisions that are contained in clauses 3 and 9 of these Terms, then those clauses, or parts thereof, will apply.
- 2.5 The Application forms part of the Terms.
- 2.6 Reference to:
 - 2.6.1 any legislation includes its successor or amendment legislation; and
 - 2.6.2 the singular includes the plural and vice versa.

3. Payment and Price

- 3.1 Payment for the Services shall be made:
 - 3.1.1 within 7 calendar days after the date of the invoice; and
 - 3.1.2 for the full amount stated on the Supplier's invoice (without any deduction or set-off) and in cleared funds;
 - 3.1.3 but immediately where there has been a default under these Terms.
- 3.2 Where full payment has not been received in accordance with this clause, the Customer agrees to pay to the Supplier a penalty fee the greater of \$15.00 or 2% interest per month on the outstanding amount.
- 3.3 Where only part payment has been made, or any payment made where full payment has not been made for Services previously supplied, the Supplier may apply the payment received from the Customer towards any of the Services supplied at the Supplier's sole and absolute discretion.
- 3.4 The Customer will pay to the Supplier on a full indemnity basis all costs and expenses (including costs on a solicitor and client basis) that the Supplier incurs in general administration, delivery of Services, securing its position, repossessing, enforcing, or attempting to enforce any of the Supplier's rights under these Terms.
- 3.5 All prices are exclusive of goods and services tax, unless otherwise stated, and the amount of goods and services tax shall be added to the price payable by the Customer.



Initial

- 3.6 Where the Supplier is required to travel for the purpose of supplying the Services, the Supplier shall be entitled to charge all actual and reasonable travel costs.
- 3.7 Where the Customer requires the Supplier to provide Services outside of the Supplier's normal work hours of 8:30am to 5pm Monday to Friday, the Supplier may at their sole and absolute discretion decline to undertake these Services until normal work hours commence. In the event the Supplier agrees to provide Services outside of their normal work hours, the Customer acknowledges that they will be charged 1.6 times the Supplier's normal charge out rate for the Services. If the Customer is on a retainer, Services conducted outside of normal work hours will be considered to be outside the scope of the retainer and the Customer will incur additional charges at a rate of 1.6 times the Supplier's normal charge out rate.
- 3.8 Prices for Services are subject to change without notice.
- 3.9 The Customer is liable for full payment of any order for Services subsequently cancelled by the Customer.
- 3.10 Customer acknowledges and agrees that all payments made in respect of the Services provided will be non-refundable (whether payment(s) is/are made in whole or in part).

4. Web Hosting

- 4.1 The Customer acknowledges and agrees that:
 - 4.1.1 where payment of the Supplier's webhosting invoice is overdue by 20 calendar days, the Supplier shall be entitled to take down the Customer's Website at their sole and absolute discretion;
 - 4.1.2 the Supplier is entitled to charge for the reinstatement of webhosting and any reasonable system upgrades that in the Supplier's sole and absolute discretion may be required from time to time;
 - 4.1.3 where their Website has been taken down pursuant to clause 4.1.1, they shall have no right to the files created by the Supplier and the Supplier shall have no liability for the security of these files.

5. Marketing Services

- 5.1 The Customer acknowledges and agrees that any and all marketing based services (including but not limited to Google Ads) supplied by the Supplier and the associated obligations of the Customer are expected to be seen through to full completion of the campaign, regardless of the results generated.
- 5.2 The Customer is entitled to pause their campaign but acknowledges that the Supplier's management fee remains payable during the period the campaign is paused.
- 5.3 The Customer is entitled to cancel the campaign upon providing the Supplier 30 calendar days' notice in writing.
- 5.4 The Customer acknowledges that the Supplier's management fee will remain payable during this 30 calendar days' notice period and any subsequent instructions to resume the campaign will incur further reinstatement costs.

6. Web Design and Development

- 6.1 The Customer acknowledges and agrees that:
 - 6.1.1 where they fail to reasonably engage with the Supplier for a period of more than three weeks, the Supplier shall be entitled to archive their Project;
 - 6.1.2 whilst their Project is archived, the Supplier will cease supplying any Services in connection with their Project;
 - 6.1.3 they will be charged for all Services supplied up to the point their Project is placed into archive status;
 - 6.1.4 they will continue to be charged the webhosting fee during the period their Project is archived;
 - 6.1.5 an additional fee will be charged to move their Project from archive to active status;
 - 6.1.6 the Supplier is entitled to cancel their Services pursuant to clauses 8 and 9 of these terms in the event their Project has been archived three or more times.

7. Customer Obligations

- 7.1 The Customer will:
 - 7.1.1 provide the Supplier with all necessary information, materials and feedback on the Services in a timely manner that the Supplier may reasonably require, ensuring such information, materials and feedback are complete and accurate in all material respects;
 - 7.1.2 ensure all information and materials provided to the Supplier do not infringe any copyright, trademark, patent, common law, or rights of others;
 - 7.1.3 cooperate with the Supplier in relation to the provision of the Services;

Initial

- 7.1.4 inform the Supplier of any change made by them or any third party to any Website in relation to which the Services are being provided;
- 7.1.5 only use the Services for the express purpose for which they have been supplied and will not use the Services for any purpose that is illegal or prohibited by these Terms; and
- 7.1.6 promptly pay for the Services supplied by the Supplier in accordance with clause 3.

8. Default

- 8.1 The Customer acknowledges it shall be deemed to be in default under these Terms if
 - 8.1.1 any amount payable by the Customer is overdue; or
 - 8.1.2 the Customer fails to meet any obligation under, or there is a breach of any provision or warranty in these Terms, or if there is a breach of any obligation under any other contract or deed between the Customer and the Supplier; or
 - 8.1.3 the Customer becomes or is likely to become insolvent or an arrangement is made with its creditors; or
 - 8.1.4 a receiver is appointed in respect of any assets of the Customer; or
 - 8.1.5 the Customer no longer carries on business or threatens to cease carrying on business; or
 - 8.1.6 the Supplier has reasonable grounds to believe the Services (where goods are involved) are at risk.
- 8.2 Following any default under these Terms, the Supplier shall be entitled to do any or all of the following:
 - 8.2.1 refuse to supply any Services; and/or
 - 8.2.2 call up all amounts owing by the Customer to the Supplier as immediately due and payable; and/or
 - 8.2.3 cancel all or any part of any contracts (including these Terms) with the Customer; and/or
 - 8.2.4 enter the Premises to recover any of the Services (whether they are affixed, attached, or stored in any way) or enter any other premises where the Supplier believes the Services are stored at any time and without notice (the Customer irrevocably authorises and indemnifies the Supplier and any of its agents for this purpose); and/or
 - 8.2.5 (where goods are involved) appoint any person or persons to be receiver of all or any of the Services. A receiver has (in addition to the powers conferred by the Receiverships Act 1993, at law or otherwise and except to the extent expressly excluded by his or her terms of appointment) all the powers in relation to the Services to do anything the Customer (or a person with absolute ownership of the Services and carrying on the business for its own benefit) could do and to exercise such powers on such terms and conditions as the receiver thinks fit.
- 8.3 The enforcement, partial enforcement, waiver of rights, invalidity, or grant of time, of any of the Supplier's rights under these Terms shall not be deemed to be a waiver or invalidity of any other of the Supplier's rights under these Terms.

9. Suspension/Cancellation of Services

- 9.1 The Customer acknowledges and agrees that the Supplier will have the right to:
 - 9.1.1 suspend and/or refuse to provide any Service in the event of any non- payment or default by the Customer under the Terms;
 - 9.1.2 cancel registration of the Customer's domain name in the event that the same is part of the Services to be provided by the Supplier; and
 - 9.1.3 cancel and/or suspend (at the Supplier's sole discretion) all web hosting facilities and services together with any Social Media Management services.
- 9.2 In the event of the Supplier exercising any of its rights to cancellation of services as set out above due to the Customers breach of any of these Terms, the Supplier will give the Customer 14 calendar days' notice prior to such cancellation thereof.

Initial

10. Cancellation by Customer

- 10.1 Unless otherwise stated in in these Terms or the Supplier's proposal for the supply of Services, the Customer shall be entitled to cancel the Services upon providing the Supplier 30 calendar days' notice in writing.
- 10.2 The Customer acknowledges that the right of cancellation does not apply to Services to be provided for a set term.
- 10.3 The Customer acknowledges that all recurring fees (including but not limited to fees for Web Hosting and annual licensing) will continue to be payable until such time as written notice of cancellation has been received by the Supplier and the 30 calendar days' notice period has lapsed.

11. Delivery and Risk

- 11.1 The Supplier undertakes to use all reasonable endeavours to deliver or perform the Services within the time requested, but the time of delivery or performance shall not be treated as a condition of sale. The Supplier shall not be liable in any way to the Customer or any other party for loss resulting from delay.
- 11.2 The Supplier reserves the right to deliver or perform the Services by instalments and each instalment shall be deemed to be a separate contract governed by these Terms,
- 11.3 Delivery shall occur when the Supplier (or a third party on instruction by the Supplier) hands possession or control of the Services to the Customer (or a third party on instruction by the customer) at which point the Services shall be at the sole risk of the Customer. The Supplier shall not be liable for any damage to the Services (where goods are involved) once risk has passed.
- 11.4 The Supplier shall not be liable for any loss or damage suffered by the Customer due to the non-performance, non-delivery, or delay in delivery of the Services howsoever arising through no fault of the Supplier.
- 11.5 The Supplier accepts no responsibility for the ongoing existence or functioning of any of the products/tools used in the supply of Services and the continued viability of the Services provided.

12. Exclusion of Liability

- 12.1 The Supplier is not liable to the Customer or any other person for:
 - 12.1.1 any cost, loss or liability (including loss of profit or any other consequential damages) arising from the Supplier's supply of or failure or delay in supplying the Services including as a result of the Supplier's own negligence;
 - 12.1.2 any cost, loss or liability incurred by the Customer arising directly or indirectly from the Customer's failure or delay in performing any of its obligations under these Terms;
 - 12.1.3 the content and/or confidentiality of any communications made using the Service.
- 12.2 The Supplier does not provide support for any third party software including software downloaded from the internet. The Supplier will not be liable for any system errors, the quality or performance of any third party software or any acts or omissions in the operation of any third party software.

13. Limitation of Liability

- 13.1 Except as provided for below, all terms, warranties, undertakings and representations (whether written or verbal, express or implied), relating to the provision of Services or goods by the Supplier are expressly excluded and the Supplier will not be liable for any loss or damage suffered (including consequential loss of damage) howsoever caused (whether by negligence or otherwise) in respect of any Service inclusive of any software material hosted or designed by the Supplier.
- 13.2 Subject to any liability that cannot be excluded by law, the Supplier's total aggregate liability shall be limited to the price paid by the Customer for the relevant Services.

14. Breaches

- 14.1 The Customer shall indemnify the Supplier against any loss (including loss of profit) incurred by the Supplier as a result of any breach of the terms of any agreement with the Supplier including damages in respect of any period up to and including the date of actual termination.

Initial

15. Indemnity

- 15.1 To the extent permitted by law, the Customer hereby indemnifies the Supplier in respect of all claims, expenses, damages, loss of income or other liabilities arising directly or indirectly from the Services provided including but not limited to:
- 15.1.1 Any information provided by the Customer that is inaccurate, incomplete, complete or misleading;
 - 15.1.2 Any damage to the reputation of the Supplier as a consequence of the Customer's breach of these Terms; or
 - 15.1.3 Any breach by the Customer of these Terms.

16. Title

- 16.1 Except for any trademarks, designs, or other types of intellectual property supplied by the Customer, the Supplier will own all intellectual property in relation to the Services.
- 16.2 The Supplier will own all pre-existing rights in relation to existing intellectual property that is used in performing the Services.
- 16.3 The Customer acknowledges and agrees that the Supplier owns all Website related files until such time as payment of all outstanding amounts due to the Supplier have been paid in full.
- 16.4 Subject to the Customer performing its obligations under these Terms, the Customer is not authorised to use or disclose to anyone (disclosure includes failing to properly store or protect) any of the Supplier's intellectual property in relation to the Services without the expressed written authority of the Supplier in writing. Where such consent is given the consent will be as licensee and non-transferable, and for a limited time period only.
- 16.5 Any new intellectual property borne or created out of the Services will remain the sole property of the Supplier.
- 16.6 The Customer warrants and represents that it holds all necessary rights to the intellectual property supplied by the Customer to the Supplier for use in providing the Services. The Customer indemnifies and holds harmless the Supplier from and against any claim, cost, proceeding or liability brought against or incurred by the Supplier resulting from any intellectual property claim by a third party.
- 16.7 For the purposes of these Terms, "intellectual property" means any property of a creative, branding, or innovative nature including (as an example and without limitation) trademarks, designs, copyright, methods of business or manufacture, information of a confidential character, and goodwill protected by passing-off law.

17. Representations and Warranties

- 17.1 The Customer represents and warrants that:
- 17.1.1 All information provided in the Application is correct.
 - 17.1.2 All additional information provided to the Supplier is correct.
 - 17.1.3 The Customer is acquiring the Services for business purposes and that the Consumer Guarantees Act 1993 does not apply to the supply of the Services.
- 17.2 The above representations and warranties apply to every supply of Services under these Terms.
- 17.3 The only warranty given by the Supplier is the express warranty supplied to the Customer by the Supplier in respect of the specified Services.

18. PPSA

- 18.1 The Customer grants to the Supplier a security interest in all present and after acquired Services by the Supplier to the Customer and all proceeds of the Services for the purposes of the PPSA and as security for the payment of the Services and any amount owing by the Customer to the Supplier from time to time.
- 18.2 On the request of the Supplier, the Customer shall promptly execute any documents and do anything else required by the Supplier to give effect to these Terms and to ensure that the security interest created under these Terms constitutes and remains a first ranking perfected security interest over the Services.
- 18.3 The Customer:
- 18.3.1 Shall notify the Supplier in writing of a change of its name at least 14 calendar days prior to the date on which the change of name becomes effective;
 - 18.3.2 Shall provide any information the Supplier reasonably requires to complete a financing statement or a financing change statement; and
 - 18.3.3 Waives any right to receive a copy of a verification statement under the PPSA.
- 18.4 The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms.
- 18.5 The Customer agrees that its rights as debtor in section 116, 120(2), 121, 127, 129 and 131 of the PPSA shall not apply to these Terms.

Initial

19. Miscellaneous

- 19.1 The Customer authorises the Supplier to collect from any person, search any database, and to hold and release to any person, personal information concerning the Customer for the purposes of processing the Application, determining credit worthiness, communicating promotional activities and product information, debt collection, reporting to any crediting reporting or referencing agency any breach by the Customer of any obligation to the Supplier, and enabling the Supplier to sell or assign to any person any obligation the Customer may have to the Supplier. The Customer authorises any person from whom the Supplier requests information concerning them to release that information to the Supplier. The Customer understands that under the Privacy Act 1993 the Customer has the right of access to, and may request correction of, personal information held by the Supplier about the Customer. This clause also relates to any guarantor of the Customer.
- 19.2 These Terms shall be governed by and construed in accordance with the laws of New Zealand and each of the parties submits to the non-exclusive jurisdiction of the courts of New Zealand.
- 19.3 The Supplier shall be entitled to amend these Terms at its sole discretion upon 30 calendar days' notice in writing to the Customer. Such amended terms shall apply to all orders placed by the Customer at the expiry of the 30 calendar days' notice period.
- 19.4 The Customer may not assign its rights under these Terms, the Application, and any other document between the Customer and the Supplier without written consent of the Supplier.
- 19.5 Where any provision of these Terms becomes illegal, invalid or unenforceable the remaining provisions of the Terms will be unaffected.

20. Guarantee

- 20.1 In consideration of the Supplier providing Services to the Customer or agreeing for a period of one day not to sue the Customer for moneys owed to the Supplier, the director(s), partner(s), trustee(s) and/or any other person who has signed the Application ("Guarantor") hereby jointly and severally guarantees the due and prompt payment by the Customer to the Supplier ("Guarantee"), in the manner and at the times agreed upon between the Supplier and the Customer, or in the absence of any such agreement then upon demand, of all moneys which are owing now or in the future to the Supplier by the Customer, in relation to the Services given by the Supplier, or which may otherwise become payable by the Customer to the Supplier, and including all costs which are set out in these Terms.
- 20.2 The Guarantor's liability under the Guarantee is as a principal debtor also and not solely as a surety.
- 20.3 The Guarantor agrees that the Guarantee is a continuing guarantee and will operate until either full payment of all amounts owing by the Customer to the Supplier (including costs and interest) or a written discharge is given despite:
- 20.3.1 the Customer and the Supplier agreeing to a material alteration to the Terms or any other agreement;
 - 20.3.2 any release of the Customer from any debt or liability under these Terms or any other contract;
 - 20.3.3 any change in circumstance in either the Customer or a co-guarantor (including for example, and without limitation, a change of shareholding, change in directorship, death, insolvency);
 - 20.3.4 any release of a co-guarantor;
 - 20.3.5 the Supplier prejudicing any securities held by the Supplier in respect of the Customer or a co-guarantor;
 - or
 - 20.3.6 any other action which at law would have the consequence of releasing the Guarantor from any obligations under these Terms.
- 20.4 The Guarantor agrees that:
- 20.4.1 the Guarantee shall bind the Guarantor's respective personal representatives;
 - 20.4.2 if any amounts paid by the Guarantor are subject to any claw back provisions, then, the parties will be restored to their positions as if those amounts were never paid; and
 - 20.4.3 the Guarantor will not compete with the Supplier for payment in the event of liquidation or insolvency of the Customer.

Initial

21. CMS, theme, Plugins and other security or software updates

- 21.1 In the event of the Supplier providing web hosting services of any nature whatsoever to the Customer, the Customer hereby irrevocably agrees to and authorises the Supplier to perform and carry out all and any periodic CMS, theme, Plugin security and software updates to the Customer's Website and at the sole cost and expense of the Customer.
- 21.2 The Supplier undertakes to charge the Customer only for the reasonable costs of the performance of these compulsory periodic updates and provide the Customer with a breakdown of the services performed in this regard. The Customer hereby agrees to pay such reasonable costs immediately when called upon by the Supplier to do so.
- 21.3 The Customer acknowledges that the compulsory periodic updates are necessary in order to mitigate the risk to the security of their Website and the server.

22. Force Majeure

- 22.1 The Supplier shall not be liable for any delay in performing its obligations under these Terms due in whole or in part by force majeure which shall include (but is not limited to) an act of God, New Zealand government direction or decree, weather conditions, natural disasters, strikes, lockouts, fire, war, suit, civil commotion, inability to obtain goods, services or supplies or any other cause beyond the reasonable control of the Supplier.

Name (please print)

Title

Signature

Date