

StudioEleven Limited
Terms and Conditions of Service

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 StudioEleven Limited and its 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, proposal, order or invoice relating to creative design, website design, build and support, and other related services.

2. PRICE

2.1 Price plus tax: You will pay the price indicated on the proposal, 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 Estimate: Any estimate we have made for the supply of Services constitutes an invitation to treat and not a binding offer. All estimates lapse after 30 days but we reserve the right to change or withdraw any estimate without notice at any time. Estimates are based on the anticipated creative, consultation services time and delivery 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.

2.4 Change of Rates: We reserve the right to change any previously notified hourly rate for casual work on 60 days' written notice to you.

2.5 Price variations: The Price may be revised during provision of the Services in circumstances including but not limited to:

- (a) delays caused by you;
- (b) you request additional work after sign-off;
- (c) you choose to purchase additional Services;
- (d) additional third party costs incurred;
- (e) where you request changes to the final work product; or
- (f) other circumstances outside our control.

If the Price is likely to deviate significantly from the estimate we will inform you wherever possible. No deductions: All payments by you will be full, free and clear of any deduction, withholding, set-off, counterclaim or other claim.

2.6 Cancellation: Where cancellation occurs before we start our work any deposit paid may be refunded at our sole discretion. No refund will be made where cancellation occurs within 24 hours of the time set for commencement of performance of the Services. If cancellation 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 or instalment paid is not enough to compensate us for that work; or
- (b) you have not paid a deposit.

3. PAYMENT

3.1 Deposit: We may require you to pay a deposit before we confirm your order for Services or start performing the Services.

3.2 Payment of balance: You will pay your account as stated on our proposal, invoice or as otherwise agreed in writing. 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 Hosting Services will be payable on a monthly basis. We reserve the right to take your website down if your account is in arrears for over 30 days without prior arrangement.

3.4 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.

4. PENALTY FOR LATE PAYMENT

4.1 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.

4.2 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 accepted proposal and 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: presentation of a minimum of two creative options per brief for you to choose from. In the unlikely event that you are not satisfied with the first round of presented work, we will develop a further round of additional creative development and presentation. If after this third round there is still no agreement on direction we will work with you to revise the brief and re-estimate the Price;
- (b) Revisions: up to two sets of revisions. after which additional charges may become payable;
- (c) Meetings: meetings only as we consider reasonably necessary. Some meetings may incur extra charges.

5.4 Services to be supplied: You acknowledge and agree that the Services are limited to those set out in the proposal, 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.

5.5 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.

5.6 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.

5.7 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 also retain copyright in unused or rejected content generated in the course of performing the Services.

5.8 Websites: For all web related projects, unless specifically stated, you will retain 100% ownership of the website design only (ownership is not applicable to proprietary software and programs or source code, such as databases, e-commerce and/or content management systems, web application source code or flash files/animations).

5.9 Webhosting: We offer a web hosting service to host the websites we have built for our clients. This is recommended in order to ensure ongoing quality of service and is a mandatory requirement for websites incorporating a content management system (CMS) or e-commerce system. Although the standard of our hosting packages are high, the agency is unable to guarantee 100% up-time (as no web host would) nor accept any responsibility for any error, omission or misrepresentation in relation to the websites hosted or for any loss, damage, cost or expense (whether direct, indirect, consequential or otherwise) suffered by any user of the websites hosted. We make no warranties or representations of any kind that hosting will be uninterrupted, error-free or that the website or the server that hosts the website are free from viruses or other forms of harmful computer code. In no event will we, our employees, contractors or agents be liable for any direct, indirect or consequential damages resulting from the hosting of websites on our servers.

5.10 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 Auckland; talent (models and actors etc.); 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.

6. YOUR OBLIGATIONS

6.1 You will nominate a person or persons in your organisation to be our 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. Where there is more than one point of contact we are entitled to rely on instructions from any one of those persons.

6.2 Content:

- (a) You will provide us with any relevant information or material required to enable us to perform the Services.
- (b) 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 we may pass on charges for our time doing so;
- (c) 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;
- (d) Where you supply us with images they must be of suitable quality or resolution. If they are not we may decline to use them or, at your

- request, correct/recreate the images and revise the Price in accordance with clause 2.5;
- (e) When we send you drafts or proofs you will check them thoroughly. We will not finalise work or send it to publication 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;
- (f) Requests for changes to text must be made in writing, either by email, notes on pdf file, or scanned written notes on hard copy. We cannot guarantee that textual changes requested orally will be implemented.
- 6.3 Third Party Rights: You warrant that:
- (a) you own any material you provide to us, free of any claims or encumbrances and are entitled to provide that material to us; and
- (b) 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.
- 6.4 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 OBLIGATIONS AND WARRANTIES
- 7.1 We warrant that:
- (a) We have the right to enter into this Agreement;
- (b) We will perform the Services to a reasonable standard of care and skill;
- (c) 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 trade mark or brand, identity, strapline, 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. Changes that are not detrimental to you will take 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 the Agreement 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 the existence and terms of this Agreement and 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.