

T&Cs: 'the Fine Print'

Terms and Conditions - Smokeylemon Limited

1. TERMS AND CONDITIONS

1.1 These Terms and Conditions, as amended or replaced from time to time, govern the supply of services ("Services") by Smokeylemon Limited ("Smokeylemon") to any company, organisation or individual ("Client"). By completing and returning the Acceptance Return Form, the Client agrees to engage Smokeylemon on these terms. Any additional or different terms the Client stipulates or states in any communication with Smokeylemon are hereby negated and will not bind Smokeylemon unless Smokeylemon agrees in writing.

2. ESTIMATED PRICING

2.1 Prices are estimates only and may be altered without prior notice.
2.2 Where an estimate includes an estimate of hours needed to complete a Service, Smokeylemon bears no responsibility if the actual number of hours differs from that estimated and reserves the right to revise the estimated price. However, if it becomes clear during the course of providing the Service that the number of hours needed to complete the task will exceed the number of hours estimated, Smokeylemon will notify the Client at the earliest time possible to discuss an updated estimate.
2.3 Unless otherwise stated, any estimate given by Smokeylemon does not include the purchase of domain names, marketing and any other options not specified in the estimate.
2.4 All estimates are exclusive of GST. Services supplied by Smokeylemon are subject to GST.
2.5 On all our marketing estimates, prices are subject to change. They're based on the current requirements set by Google, Facebook and other digital platforms. These requirements are out of our control. Should these requirements change after the estimate has been signed, the price may be affected.

3. PAYMENT

3.1 A deposit of 50% of the estimated price is required before the commencement of any work unless otherwise agreed in writing. The Client shall pay a further 50% of the estimated price within 7 days of the website going live or service completed. The Client shall pay the remaining outstanding fee plus any other costs or disbursements upon handover of the product. Certain costs or disbursements may be billed to the Client immediately. For example, purchase of a domain name.
3.2 Where Services provided extend over a period of a month, Smokeylemon may submit a detailed payment claim at intervals not less than one month for Services performed up to the end of each month. The value of Services so performed shall include the value of any variations, whether or not the value of such variations has.
3.3 Unless otherwise agreed in writing, payment must be made within 7 days following the date of invoice. Accounts in default are subject to a penalty interest rate of 2.5% calculated on a daily basis on any amounts outstanding. If payment is not made within the agreed terms, Smokeylemon may suspend or terminate the supply of Services to the Client and may also remove the site from the web and/or suspend hosting services for email.
3.4 Payment can be made either by cash, Paypal or cheque. Where there are monthly ongoing costs, payment must be made either through credit card or direct debit.
3.5 If Smokeylemon incurs any expenses in recovering any monies due from the Client, the Client shall, on demand, pay those expenses.

3.6 All Services provided shall remain the property of Smokeylemon until all amounts owing for the Services have been paid.

4. QUALITY ASSURANCE AND BROWSER COMPATIBILITY

4.1 Smokeylemon makes every effort to ensure the website works on tablets and smartphones, and in the latest version of the common browsers available for a fully supported operating system. The website will still work in older browsers, however if you want the website to adapt for these, this will be an additional cost.

5. DELIVERY OF SERVICES

5.1 Delivery of Services occurs upon completion of the Services (even if ownership is retained by Smokeylemon).
5.2 Smokeylemon's failure to deliver shall not entitle either party to treat this contract as repudiated.
5.3 Smokeylemon shall not be liable for any loss or damage whatsoever due to Smokeylemon's failure to deliver the Services (or any of them) promptly or at all.

6. CLIENT REVIEW

6.1 During the developmental stage of the service, Smokeylemon may at intervals provide the Client with an opportunity to review the appearance and content of the materials. Such materials will be deemed to be approved by the Client, unless the Client notifies Smokeylemon either in writing or email within 5 days. Once approval or deemed approval has been given, any changes requested by the Client shall incur additional costs. If we have delays by the client of more than 1 month, Smokeylemon reserves the right to charge a re-establishment fee to get the project underway.
6.2 Where design is requested, Smokeylemon will provide up to 2 revisions as part of the estimated cost. Thereafter additional costs will be incurred.
6.3 The client agrees to make available as soon as is reasonably possible to Smokeylemon all materials required to complete the project to the agreed standard and within the set deadline.
6.4 Smokeylemon will not be liable for costs incurred, compensation or loss of earnings due to the failure to meet agreed deadlines.

7. LIMITATION OF LIABILITY

7.1 Where the Client acquires the Services for business purposes, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 are excluded. Otherwise, all warranties implied by statute shall apply to the supply of these Services.
7.2 The Client agrees to defend, indemnify and hold Smokeylemon harmless from and against any and all claims, losses, liabilities and expenses related to or arising out of the Services provided by Smokeylemon under this agreement, including without limitation, claims made by third parties (including the Client's customers) related to any false advertising claims, liability claims for products or services sold by the Client, claims for patent, copyright or trademark infringement, claims due to disruption or malfunction of services provided hereunder, or for any content submitted by the Client for publication by Smokeylemon.
7.3 Smokeylemon cannot and does not accept responsibility for any alterations by a third party occurring to the Client's web pages once installed.

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8. DESIGN CREDIT

8.1 Smokeylemon reserves the right to include a link to its website discretely in small type at the bottom of each website page of the Client's website.

9. SMOKEYLEMON'S OBLIGATIONS

9.1 Upon entering into an agreement to supply Web Services to the Client, Smokeylemon will:

- a. use its best endeavors to develop the website in accordance with the proposal; and
- b. as far as is possible, design a website that is expandable, functional and one that adheres to the W3C Standards in Website Application Development.

10. THE CLIENT'S OBLIGATIONS

10.1 The Client shall be responsible for the provision of all materials (including data, logos, designs and graphic) required. All materials supplied by the Client must be in electronic format and of sufficiently high standard. Additional expenses may be incurred and will be invoiced accordingly for any corrective work or conversion of media.

10.2 The Client must ensure that all materials provided will not (and could not reasonably be considered to) be in breach of any statute or any applicable law or applicable industry code.

10.3 The Client warrants that all designs or instructions provided to Smokeylemon will not cause Smokeylemon to infringe any copyright, patent, registered design or trademark in the execution of the Client's order.

10.4 TEMPLATE SITES should we not receive content from you within two weeks (or agreed time frame) Smokeylemon reserves the right to put in generic content and proceed to make the site Live.

11. CANCELLATION

11.1 Either party may cancel this agreement after the minimum period as agreed in the service contract. 60 days notice must be given to the other party in writing, notifying the intention to do so ("Cancellation Notice"). Where the Client has cancelled this agreement and work has already been undertaken, the Client shall be liable for 10% of the estimated price plus all costs incurred (including time spent and materials purchased) in development of the assets undertaken up to the date of the Cancellation Notice.

11.2 Where no minimum period has been agreed, either party may cancel the agreement anytime after the work has been commenced, by giving 60 days notice to the other party in writing, notifying the intention to do so ("Cancellation Notice"). Where the Client has cancelled this agreement and work has already been undertaken, the Client shall be liable for 10% of the estimated price plus all costs incurred (including time spent and materials purchased) in development of the assets undertaken up to the date of the Cancellation Notice .

12. PRIVACY LAW

12.1 The Client authorises Smokeylemon to collect, retain, and use personal information about the Client for the following purposes:

- a. assessing the Client's creditworthiness;
 - b. administering, whether directly or indirectly, Smokeylemon's agreements and enforcing Smokeylemon's rights in them; and
 - c. marketing products and Services provided by Smokeylemon.
- 12.2 The Client has a right under the Privacy Act 1993 to obtain access to and to request correction of any personal information concerning it held by Smokeylemon. Smokeylemon may charge reasonable costs for providing access to that information.

13. GOVERNING LAW

13.1 These Terms and Conditions are governed by and construed in accordance with the laws of New Zealand and the Courts of New Zealand shall have exclusive jurisdiction to determine any disputes arising under these Terms and Conditions.

14. SERVICES

14.1 Smokeylemon will use reasonable endeavors to perform the Services in accordance with the timetable set out in the proposal; however Smokeylemon does not guarantee that that timetable will be met.

14.2 Smokeylemon will perform all Search Engine Optimisation Services to the best of its abilities as set out in the proposal; however Smokeylemon cannot guarantee the position or inclusion of the website within Search Engine rankings or results.

14.3 Where any or all of the Services above are not expressly outlined in the Proposal, they will not form any part of the Agreement.