

# Blue Ink Limited

("Blue Ink")

[blueink.co.nz](http://blueink.co.nz)

## Terms of Trade

### 1. NATURE AND SCOPE OF TERMS OF TRADE

- 1.1 These terms of trade ("Terms") form a contract that applies between Blue Ink and the Client for the supply of marketing services, including copywriting, social and digital media set up and management, marketing strategy and planning, branding and style, document creation and/or editing in all hardcopy and/or digital formats and all associated or related services ("Services") and end work in any format ("End Work") and any other Incidentals provided by Blue Ink to the Client.
- 1.2 From time to time, Blue Ink may issue updated Terms which shall be deemed to be accepted 10 Business Days following Blue Ink sending such updated Terms to the Client. Any order of Services, End Work or other Incidentals following that date shall be governed by the updated Terms.
- 1.3 Blue Ink and the Client may agree in writing on special terms and conditions that either vary or are additional to these Terms. Blue Ink may vary these terms in a Letter of Engagement or on 10 Business Days written notice to the Client. Otherwise these Terms will apply to all transactions between Blue Ink and the Client.
- 1.4 By the Client engaging Blue Ink's Services or continuing to instruct it after receiving or being notified of these Terms, and by providing Blue Ink work, the Client agrees to and is deemed to immediately accept the Terms (unless Blue Ink receives written notification from the Client otherwise and such change is expressly agreed to by Blue Ink in writing).
- 1.5 No waiver by Blue Ink of a Term shall be deemed to be a waiver of any other term or subsequent breach.
- 1.6 These Terms constitute the entire understanding between Blue Ink and the Client.

### 2. PROVISION OF SERVICES

- 2.1 Blue Ink shall take all reasonable steps to complete Services, End Work or other Incidentals within stipulated timeframes and areas agreed with the Client. However, Blue Ink will not be liable for any delay or failure to provide Services, End Work or other Incidentals whatsoever:
- (a) If the Client fails to provide all necessary resources and information requested by Blue Ink in a timely manner;
  - (b) If the Client fails to pay or perform any matter agreed to be paid or performed;
  - (c) Due to any matter outside of Blue Ink's reasonable control, including strikes, lock outs, power cuts, third party interference, fire, flood, earthquake, acts of God or terrorism.
- 2.2 Blue Ink shall take all reasonable steps to complete Services, End Work or other Incidentals error free and proof read. However, it is the sole responsibility of the Client to review all material prior to publication and be satisfied of its accuracy. Blue Ink will not be liable for cost or charges related to any error.

### 3. CONFIDENTIALITY

- 3.1 All information received by Blue Ink about the Client which comes into its possession pursuant to or as a result of any

contract between them, whether such information relates to the business, sales, marketing or technical operations of the Client will be kept strictly confidential during the continuance of this contract and after termination of this contract ("Confidential Information").

- 3.2 Blue Ink agrees to restrict access to Confidential Information to those of Blue Ink's clients, agents, officers, employees and third parties who strictly require access to it or other persons authorised by the Client in order to give effect to the Client's instructions, or if disclosure is required by law.
- 3.3 Both Blue Ink and the Client agree to keep the terms of this contract and all matters relating to it confidential at all times.
- ### 4. PRICE, PAYMENT, DISPUTED PAYMENT AND NON-PAYMENT
- 4.1 Quotations and estimates provided by Blue Ink to the Client will only be valid for 20 Business Days from their date of issue. Quotations are based on rates and charges in effect at the date of the relevant quotation. Any increase in rates or charges (including the cost of Services, End Work or other Incidentals) may result in an equivalent increase in the quoted price.
- 4.2 The price payable by the Client for Services, End Work or other Incidentals shall be the price agreed to between Blue Ink and the Client at the time the Services are agreed in a Letter of Engagement by Blue Ink or in the absence of such agreement the price notified to the Client by Blue Ink on the date the Services, End Work or other Incidentals are supplied. The onus is on the Client to confirm prices prior to provision of Services, End Work or provision of other Incidentals.
- 4.3 Blue Ink will ordinarily require Clients to pay an advance against fees. This retainer will be payable 20 Business Days in advance prior to Blue Ink commencing the supply of Services, End Work or other Incidentals. The amount of this advance will be advised to the Client by Blue Ink. Blue Ink shall be entitled to ask the Client to make further retainer payments from time to time if Blue Ink considers the earlier retainer payment held is insufficient to meet future payments for Services.
- 4.4 Blue Ink will deliver to the Client an invoice at the end of each month for any Services, End Work or other Incidentals, whether completed or not, undertaken in that month.

- 4.5 If a retainer has not been provided in advance, payment of each invoice shall be made by the Client in the same currency as the currency recorded on the invoice within 10 Business Days from the date of the invoice:
- (a) Into such bank account as Blue Ink notifies the Client or by way of direct debit if required by Blue Ink;
  - (b) Free of any deduction or withholding, and with no right of set-off on account of any taxes or other duties, currency controls or any other matter;
  - (c) The Client agrees that these Terms are an authority to direct debit if Blue Ink so requires and shall upon request by Blue Ink sign any further bank authorities or documents that may be required to enable the

Client's account to be direct debited to pay amounts owing to Blue Ink.

**4.6** Notwithstanding any other provision of these Terms, Blue Ink reserves the right to change payment terms at any time (including requiring progress payments for Services which are estimated to take longer than 20 Business Days). Blue Ink also reserves the right to vary its charges from time to time.

**4.7** If the Client fails to pay an amount due under these Terms, Blue Ink may charge the Client:

- (a) Interest on that amount from its due date until the date of payment at 12.5% per annum; and
- (b) All legal and other costs, charges and expenses incurred in connection with the recovery of all outstanding amounts including Blue Ink's administration costs, solicitor costs, costs of any debt collection agency employed by Blue Ink;
- (c) Blue Ink's right to require payment of interest and other costs under this clause 4.7 does not affect any other rights or remedies it may have relating to any failure to pay an amount due under these Terms; and
- (d) Without limiting this clause or clause 4.5, the Client's payment obligation to Blue Ink in accordance with these Terms is unconditional, and the Client's failure to pay any invoice on the due date shall be an automatic default of these payment terms and Blue Ink shall not be required to give the Client any prior notice of default.

**4.8** Without prejudice to any other remedies which Blue Ink might have:

- (a) In the event of failure by the Client to pay for Services, End Work or other Incidentals in accordance with these Terms;
- (b) If the Client otherwise fails to comply with these Terms;
- (c) If Blue Ink deems the Client's credit to be unsatisfactory;
- (d) If the Client becomes bankrupt or enters into liquidation, whether compulsorily or voluntarily (other than for the purposes of amalgamation or reconstruction);
- (e) If the Client has a receiver, administrator, or administrative receiver appointed in respect of the Client or any of the Client's assets or property;
- (f) If the Client becomes subject to statutory management or any similar regime; or
- (g) If the Client compounds with its creditors or takes or suffers any similar action or proceeding in consequence of debt:

Blue Ink shall be entitled to cease providing Services or other Incidentals or withhold delivery of End Work to the Client.

Upon such cancellation and without prejudice to any other remedies which Blue Ink might have, all payments outstanding will become immediately due and payable to Blue Ink.

**4.9** In accepting any payments from the Client, Blue Ink will not be bound by any conditions or qualifications or other terms which the Client may have attached to those payments.

**4.10** If the Client does not agree with an amount set out in an invoice, the Client must:

- (a) No later than 5 Business Days after receipt of the invoice it disputes, deliver to Blue Ink a written notice setting out full details of the amount in dispute and the basis for the dispute;

- (b) Pay the undisputed amount of the invoice amount; and
- (c) Resolve the dispute in accordance with clause 11 of these Terms.

## **5. GST**

**5.1** Blue Ink's prices referred to in these Terms and in any quotation which may have formed the basis of an order are exclusive of GST (unless expressly stated otherwise). The Client shall pay GST on the goods and services that are the subject of these Terms, as invoiced by Blue Ink on the payment terms on that invoice and, if rendered on the same date or on the same invoice as the goods supplied, at the same time as payment for the goods to which the GST relates.

**5.2** International orders will generally be zero rated or exempt from GST except in certain circumstances as set out in the Goods and Services Tax Act 1986. However, when any Client (whether placing an international order or otherwise) is not charged GST by Blue Ink, either on an exempt basis or on a zero rated basis, the Client making the order agrees to indemnify Blue Ink for any GST that is determined by the Commissioner of Inland Revenue of New Zealand to be payable in respect of the order.

## **6. COMPLETION OF SERVICE**

**6.1** Completion of service is deemed to be effected:

- (a) When the Services as set out in the Letter of Engagement are completed;
- (b) When the Client or the Client's agent is given possession of the End Work at Blue Ink's premises or elsewhere (the End Work is then at the Client's risk); or
- (c) When the End Work arrives at the Client's premises; whichever is the earlier.

**6.2** On completion of service Blue Ink retains full rights in the Services, End Work or other Incidentals until payment is made in accordance with clause 4.5.

**6.3** Where the Client requests a particular method of delivery and if Blue Ink agrees (in writing) then the Client will cover the cost of delivery by that method from the point of dispatch of the End Work by Blue Ink and the risk of such delivery shall be borne entirely by the Client unless otherwise agreed by Blue Ink and the Client in accordance with these Terms.

**6.4** Any quotations of completion of Services or End Work delivery times agreed by Blue Ink are made in good faith but are estimates and not commitments and no delay in delivery will entitle the Client to refuse to accept delivery or cancel the Services, End Work or other Incidentals or otherwise entitle the Client to any Damages whatsoever.

## **7. THE CLIENT'S COVENANTS AND WARRANTIES**

**7.1** The Client agrees that it shall:

- (a) Provide to Blue Ink all necessary resources and information requested by Blue Ink in a timely manner;
- (b) Pay or perform any matter agreed to be paid or performed;
- (c) Pay all invoices rendered by Blue Ink within 10 Business Days from the date the invoice is issued in accordance with clause 4.5;
- (d) Promptly, and in no case less than 10 Business Days from the alleged default in service or the delivery of any End Work, submit to Blue Ink complaints relating to the Services, End Work or other Incidentals,

together with all available evidence and other information relating to those complaints;

- (e) Comply with all Legislation relevant to the client's business, sales, marketing or technical operations.
- (f) No later than 5 Business Days after receipt of the invoice, if the Client does not agree with an amount set out in an invoice, deliver to Blue Ink a written notice setting out full details of the amount in dispute and the basis for the dispute in accordance with clause 4.10.
- (g) Not cancel a contract for services without giving Blue Ink 30 Business Days prior written notice.

## 8. LIMITATION OF WARRANTY/LIABILITY

**8.1** Where the Client acquires the Services, End Work or other Incidentals for the Client's business use or investment purposes all implied warranties, guarantees and remedies in the Consumer Guarantees Act 1993 are excluded. The Client further agrees that the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by the common law will not apply and are expressly excluded from these Terms.

**8.2** Blue Ink is very concerned about client satisfaction and will endeavour to take all reasonable care in its supply of Services, End Work or other Incidentals. However, the parties agree that Blue Ink and its officers, employees or contractors shall not in any case whatsoever be liable for:

- (a) Any special, incidental, indirect, punitive or consequential Damages; loss of profit, revenue, goodwill, use or the costs of procuring substitute End Works or Services.
- (b) Damages, in the aggregate, exceeding the value of the payments actually received by Blue Ink from the Client under these Terms in the preceding 12 months; or
- (c) Damages in respect of any claim made:
  - (i) more than 6 months from the date the Client becomes aware of the circumstances leading to that claim; or
  - (ii) more than 12 months after the relevant cause of action arose;
  - (iii) The Client's failure to comply with relevant Legislation and legal requirements relevant to the client's business, sales, marketing or technical operations;
  - (iv) Any matter related to the events stipulated in clause 8.3.

**8.3** From time to time Blue Ink may recommend, suggest or introduce to the Client a third party supplier. The parties agree that any contracts entered into by the Client with third party suppliers are contracts directly between the Client and the third party supplier ("Third Party Contracts"). The parties agree that Blue Ink shall not in any case whatsoever be liable for Damages in respect of Third Party Contracts.

## 9. INDEMNITY

**9.1** The Client indemnifies Blue Ink from and against Damages Blue Ink or its directors, principals, employees, contractors or agents sustains or incurs (directly or indirectly) arising out of or resulting from:

- (a) Any breach of these Terms including without limitation, any warranty, provided by the Client;
- (b) Any claim by any third party arising from any act or omission of the Client in connection with these Terms (whether negligent or not),
- (c) Without limiting the foregoing, any negligent, wilful, reckless or unlawful act or omission of, or any

intentional misconduct by the Client in connection with these Terms; or

- (d) Any claim by the Client, to the extent that such claim is beyond the scope of Blue Ink's liability to the Client under these Terms.

## 10. HEALTH AND SAFETY

**10.1** To the extent that Blue Ink is working from its own premises or sites owned or controlled by Blue Ink, it will be responsible for its own health and safety in the workplace and will comply with the requirements of the Health and Safety in Employment Act 1992 and all current health and safety legislation.

**10.2** To the extent that Blue Ink is working from a site that is not owned or controlled by Blue Ink as required or directed by the Client, the Client will bear the cost for any compliance with all relevant health and safety matters in respect of Blue Ink and Blue Ink's personnel and to the extent that the Client controls or owns the relevant site, the Client shall be fully responsible for all health and safety obligations.

## 11. DISPUTE RESOLUTION

**11.1** Either party may give the other party notice of any dispute arising in respect of, or in connection with, these Terms ("Dispute").

**11.2** In the event of a notice being given pursuant to clause 11.1 above, then the parties must:

- (a) Meet at senior management level to discuss the Dispute and make a genuine effort to resolve the Dispute;
- (b) If no resolution of the Dispute has occurred within 10 Business Days from the date of the giving of the notice in accordance with clause 11.1 above, then either party may take whatever steps they see fit to resolve the dispute.

**11.3** Nothing in this clause shall prevent a party making application to a court for an injunction or other urgent interlocutory relief.

## 12. OWNERSHIP OF INTELLECTUAL PROPERTY

**12.1** The Client shall own or have rights in all of the Intellectual Property provided by the Client to Blue Ink to enable Blue Ink to complete Services in accordance with these Terms and warrants that it owns or has sufficient rights in such Intellectual Property to enable Blue Ink to perform the Services without breaching any third party rights.

**12.2** Blue Ink owns or has rights in all of its Intellectual Property introduced by Blue Ink to complete the Services and licences such rights in Blue Ink's Intellectual Property in the End Work to the Client to the extent required to complete the Services and provide the End Work that has been agreed with the Client.

**12.3** Notwithstanding clauses 12.1 and 12.2, neither party may utilise the Intellectual Property of the other than to the extent agreed or required to complete or utilise the Services without the prior written consent of the other.

## 13. PRIVACY ACT 1993 AND ELECTRONIC COMMUNICATION

**13.1** The Client authorises Blue Ink to:

- (a) Collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or supplying Services, End Work or other Incidentals to the Client; and

(b) Disclose information about the Client, whether collected by Blue Ink directly or obtained by the Seller from any other source to any credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

**13.2** The Client shall have the right to request that Blue Ink provides the Client a copy of the information about the Client retained by Blue Ink and the right to request Blue Ink correct any incorrect information about the Client held by Blue Ink.

**13.3** The Client acknowledges and agrees that Blue Ink may send to the Client product information and information about sales or special offers or other related product information (including third party information) by email or otherwise. The Customer may unsubscribe from receiving such email correspondence by utilising the "unsubscribe" function in the first or any subsequent email sent as authorised by this clause.

## **14. GENERAL**

**14.1** To be effective, any waiver of any or all of the terms and conditions in any agreement the Client has with Blue Ink must be in writing.

**14.2** The Client may not assign all or any of its rights or obligations under these Terms without the prior written consent of Blue Ink.

**14.3** Blue Ink may license or sub-contract all or any part of its rights and obligations without the Client's consent.

**14.4** Blue Ink is not bound, unless otherwise stated in these terms, by any error or omission on any invoice, estimate, quotation, or other document or statement issued by Blue Ink.

**14.5** Where Blue Ink has rights and remedies at law or otherwise in addition to the rights set out in these Terms, those rights and remedies will continue to apply.

**14.6** Failure by Blue Ink to enforce any of the terms and conditions shall not be deemed to be a waiver of any of the rights or obligations Blue Ink has under these Terms.

**14.7** If any of these Terms or part thereof are held to be invalid, illegal, unenforceable or void for any reason or reasons, all of the remaining Terms (or part thereof) shall remain in full force and effect.

**14.8** These Terms are governed by the law of New Zealand and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand.

## **15. DEFINITIONS AND INTERPRETATION**

**15.1** In interpreting these Terms:

"Business Day" means any day not being a Saturday or Sunday or statutory holiday.

"Letter of Engagement" means a letter from Blue Ink to the Client confirming the scope of the Services agreed upon by Blue Ink and the Client, including terms and conditions that vary or override these Terms.

"Damages" means all liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis) whether incurred by or awarded against a party) including those associated with any third party claim,

and whether arising under contract, tort (including negligence) or otherwise.

"End Work" means the outcome of any Services in any format including final copies of marketing and communications, end results of social and digital media processes, marketing strategy and planning processes and branding and style processes, and documents created and/or edited in all hardcopy and/or digital formats.

"GST" means Goods and Services Tax payable in accordance with the Goods and Services Tax Act 1986.

"Incidentals" means incidentals, work or services provided by Blue Ink to the Client, including telephone calls, meetings, travel time, toll calls, postage and stationery items.

"Intellectual Property" includes (whether in visible, electronic or any other form) all brands, contracts, goodwill, logos, formulae, techniques, know-how, specifications, designs, drawings, copyright, manufacturing processes, patents and trademarks (if any) whether registered or not, software (in source and object code), business strategies, confidential business information including market and marketing strategies, business contracts and intellectual property relating to the business of, or goods or Services of a party.

"Legislation" means any Act of Parliament, statutory regulation, subordinate legislation, deemed regulation (including local government or authority rule, regulations and bylaws) and includes any modification, amendment or re-enactment of any of the foregoing.