

**FX Marketing Limited wants you to be absolutely delighted with our service, and we make every effort to operate in a fair and reasonable manner at all times. So these terms and conditions are intended to make all parties aware of their obligations and set the basis of a happy working relationship.**

All work is carried out subject to our Terms of Business: these may be updated from time-to-time without prior notice, so we suggest that you check them before briefing us with any work. If we are instructed to go ahead with any work, it will be deemed that it is in acceptance of our current Terms of Business.

### **Relationship of the Parties**

The parties intend that an independent contractor relationship will be created by this contract, and that no partnership, joint venture or employee/employer relationship is intended or implied.

### **Project Process**

Following discussions and briefings, FX Marketing Limited will provide an indication of costings and timings. The client will receive a copy of this and the client is to inform FX Marketing Limited within of any incorrections, alterations, inaccuracies or other problems. Any quotes, estimates or costings provided remain valid for 30 days. One-off projects are subject to a minimum charge of 2 hours.

FX Marketing Limited will endeavour to work within the time frames scheduled, provided you supply us with all the relevant information pertaining to the contract.

Depending upon the nature of the work undertaken by FX Marketing Limited, the client will have the opportunity to make any changes. However if the brief is changed or cancelled after work on the project has begun, this will be chargeable to the client.

### **Disbursements/Additional Charges**

Any additional costs (e.g. courier fees; postage; car parking fees; additional printing/finishing work, flights, hotel accommodation, etc.) not included in the briefing/contact document or other communications may be charged for, subject to prior verbal approval by the client.

### **Marketing Packages, Marketing Success Programmes and Retainers**

Payment for these will be invoiced each and every calendar month, payable in advance.

If you need additional work, the client can purchase additional time at the same rate as their marketing package, marketing success programme or retainer. Payment for additional work is due within seven days of invoice date.

The value of marketing packages, marketing programmes and retainers cannot be used towards printing, advertising or other out-sourced costs.

### **Terms of Payment**

New clients will usually be required to an upfront deposit before any work is commenced. You'd be advised of this, plus the amount of the deposit, in any written estimates or proposals.

If we have agreed to invoice you in arrears, FX Marketing Limited will invoice clients promptly upon completion of the project. Projects which take longer than one month to complete may be invoiced for progress payments (between 50% and 100%), especially where we have already done a significant part of the work.

**Our payment terms are strictly seven days of invoice date.** No statements will be issued. All work will remain the property of FX Marketing Limited until paid for in full.

FX Marketing Limited reserves the right to charge interest on overdue accounts, which will be in line with Westpac New Zealand Limited's credit card interest rate for Visa standard card. We also reserve the right to withdraw consultancy services to overdue accounts.

All monetary amounts described are in New Zealand dollars unless specifically stated otherwise.

The client is responsible for any costs incurred in recovering outstanding amounts from them, including any debt collection and legal fees and FX Marketing's administration time.

## **GST**

All prices are quoted exclusive of GST. GST is payable by New Zealand residents; this cost does not apply to overseas orders.

## **Proofing**

FX Marketing Limited will apply due diligence to the provision of error-free copy and to proof read the project throughout. However it is the sole responsibility of the client to review all material prior to production and to attest for its accuracy. FX Marketing Limited will not be liable for production charges or legal cases related to any error in copy, edited or not. The client has final approval and responsibility for accuracy of materials. Written client approval will be sought on all work prior to production.

## **Delegation**

We may subcontract the performance of any of our responsibilities under this contract to another party. Any subcontractors will have an agreement in place with FX Marketing and be expected to deliver the high quality service you deserve. This work is backed by our "110% Satisfaction Guarantee".

## **Value-added services**

Work that is outsourced (e.g. graphic design, database, letterbox drop, advertising or printing services) will be invoiced up-front, together with a 15% handling fee. The supplier will be briefed once FX Marketing Limited has received the cleared funds in full in our bank account. FX Marketing Limited is acting as your agent, and it is the responsibility of the client to assess the suitability of any suppliers, services or products suggested to them. FX Marketing Limited makes no warranty that these products or services will meet your requirements or be error-free. FX Marketing Limited accepts no responsibility for any loss or damage resulting from any sub-contracted work. Our "110% Satisfaction Guarantee" does not apply to outsourced, value-added work. We will attempt to resolve any disputes in a fair and amicable manner; if this does not meet your requirements then you would be encouraged to resolve the matter with the supplier directly.

## **Copyright**

Work produced by FX Marketing Limited will remain the property of FX Marketing Limited until such time as payment has been made in full whereupon they will become the property of the client. Any electronic files produced become the property of the client, and are available on CD at any time after payment has been made, for a fee of \$20 plus GST per CD to cover administrative costs.

The parties acknowledge that FX Marketing Limited may accept jobs from other clients to develop work in the same or similar industries and that FX Marketing Limited may replicate and exploit all techniques used for the creation of work. FX Marketing Limited retain royalty-free rights to use the completed project and any preliminary concepts for the purpose of marketing its business.

In the event of a client supplying images or photographs, FX Marketing Limited will assume that any copyright issues related to those images have been satisfied and that the client is providing them with the permission of the originator of the images. The client will take full responsibility for any copyright issues resulting from the use of the images.

If any images or photographs are supplied by FX Marketing Limited, it is acknowledged that copyright of the same is retained by FX Marketing Limited.

## **Liability**

You agree that FX Marketing Limited will not be liable for any indirect or consequential damages, including but not limited to, loss of profits or for any claim made on the client by any other party, even though FX Marketing Limited may have been notified of such damage or claims.

We shall not be liable to you for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods or failure to perform its obligations under this agreement where such delay is caused directly or indirectly by natural disaster (fire, storm, flood, earthquake, volcano eruption); armed conflict; labour dispute; civil commotion; intervention of a government; inability to obtain labour, materials or manufacturing facilities; breakdown or malfunction of machinery/equipment; outages in telecommunications, radio communications or power networks; theft; accidents/illness; bankruptcy/liquidation of a supplier; interruptions of, or delay in, transportation; any act or omission of any third party; or any other cause beyond our control.

The client agrees to defend, indemnify and hold us harmless from and against any and all claims, losses, liabilities and expenses (including attorneys' fees) related to or arising out of the services provided by us to you under this agreement,

**FX Marketing Limited**

**46 Belle Vue Avenue, Northcote Point, Auckland Tel: 09 419 6560 Email: info@fxmarketing.co.nz**

including without limitation claims made by third parties (including your 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 us. If, despite the other provisions of this agreement, FX Marketing Limited is found to be liable to the client then its liability for any single event or series of related events is limited to the fees.

## **Confidentiality**

FX Marketing Limited shall keep in confidence: all confidential information it has received from the client. FX Marketing Limited shall take all reasonable steps to protect any sensitive information and trade secrets provided, however the client should brief FX Marketing Limited fully on additional security required above and beyond this.

## **Intellectual Property Rights**

FX Marketing Limited shall have a complete and permanent right to and the use of all work produced, developed or created for the client. This includes ownership of intellectual property of such work.

## **Privacy Act, Data Protection and other Laws**

Personal information whether contained in this application or otherwise obtained may be used by FX Marketing Limited to:

- Carry out any work which the client has asked us to do, where subcontractors or third parties require this information;
- To administer and maintain the client's account and to communicate for any purpose.

The personal information provided in the Account Application is collected by and will be held by FX Marketing Limited.

Though FX Marketing Limited will do their best to keep you on the right side of the law, the responsibility lies with the client for ensuring that applicable laws (not limited to, but including the Privacy Act and Unsolicited Electronic Messages Act) are adhered to. FX Marketing Limited are not able to give legal advice: if such is sought, please contact a lawyer.

## **Termination of Services**

FX Marketing Limited will attempt to resolve any conflicts in a professional and amicable manner. FX Marketing Limited reserves the right to cease immediately without liability to provide the service and to terminate this agreement if the client goes into liquidation or bankruptcy, or if the client fails to meet any obligation in accordance with this agreement.

We reserve the right to terminate this contract at any time without notice. In such event no monies would be payable by the client for work undertaken prior to termination and FX Marketing Limited would not be responsible for any consequences of the termination of the contract.

## **110% Satisfaction Guarantee**

If you're not completely, totally and utterly thrilled with our work – then our work is not complete. Whether we're working with you every month or just on a specific project, we'll work on every marketing piece until you approve it at no additional cost (until the revision time allowed in the original estimates is reached), unless:

- You request changes and alterations which were not part of the original brief.
- An excessive number of amendments are requested (we consider more than three revisions – i.e. 4 sets of copy including the initial draft – to be excessive).

In return we ask that you:

- Provide us with a detailed brief of your all your requirements at the outset.
- Implement the campaign as suggested, and make sure that all staff have the relevant scripts, training etc. to get the result you want.
- Be prepared to test different campaigns to find the winning formula for your business.
- Measure the results in a suitable, quantitative manner so that we can learn and make educated decisions in the future.

## **Applicable Law**

This agreement shall be deemed to be an agreement made in New Zealand and shall be subject to, governed by and interpreted in accordance with the laws of New Zealand.

Last updated: 16<sup>th</sup> November 2009

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