

OUTBOX LIMITED

TERMS OF TRADE

1.0 Scope and Application

- 1.1 These Terms constitute a legal binding and enforceable contract between us and you. The Terms will apply to the use of our Website, as well as the order, purchase, and delivery, of our Products and/or Services. By accessing and using this Website and accepting a Quote for our Products and/or Services you will be deemed to have read, understood, and accepted, these Terms.
- 1.2 We may from time to time amend, update, or change our Website, including these Terms, without prior notice. Each time you visit our Website and before placing an order, you will be deemed to have accepted and agreed to the most recent version of these Terms then displayed.
- 1.3 Unless otherwise expressly agreed in writing by us, these Terms, in conjunction with the Quote, express the entire understanding and agreement between you and us.

2.0 DEFINITIONS

2.1 In these Terms:

- (a) **Amount Owning** means the price of the Products and/or Services, plus all costs, damages, charges, insurance charges, expenses, disbursements and penalties for which you are liable to pay us;
- (b) **CGA** means the Consumer Guarantees Act 1993 and its amendments;
- (c) **CCLA** means the Contract and Commercial Law Act 2017 and its amendments;
- (d) **Customer, you** or **your** means the purchaser of any Products and/or Services from us and shall include any representative, agent or employee;
- (e) **Default** includes you or any guarantor(s):
- (i) being unable to pay any Amount Owning as and when they fall due;
 - (ii) failing to comply with these Terms;
 - (iii) having an application made (or resolution passed) for a receiver, liquidator, administrator or other statutory manager to be appointed;
 - (iv) being convicted of a criminal offence;
 - (v) doing any act that in our opinion causes or threatens the risk, safety, condition or safekeeping of any Products and/or Services we supply to you;
 - (vi) ceasing to carry on business or suffering a material adverse change which in our opinion changes your financial position or creditworthiness; or
 - (vii) indicating by notice or conduct that you no longer intend to comply with your obligations under these Terms with us.
- (f) **FTA** means the Fair Trading Act 1986 and its amendments;
- (g) **Force Majeure** means any event outside our reasonable control including acts of God, declared or undeclared war, fire, flood, storm, slide, earthquake, hurricanes, cyclones, riot, power failure, industrial action, defaults of manufacturers and suppliers, the inability to obtain Products, equipment or other facilities that are not caused by a failure to pay, labour disputes, theft, any criminal act or other similar events beyond our control that may prevent or delay our supply of the Products and/or Services to you;
- (h) **GST** means Goods and Services Tax as defined in the Goods and Services Tax Act 1985;
- (i) **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 our business, Services and Products;

- (j) **Products** means the goods we advertise on our Website from time to time, referred to in the Quote or otherwise reasonably required;
- (k) **SGA** means the Sale of Goods Act 1908 and its amendments;
- (l) **Services** means any services provided by us as identified in the Quote or otherwise reasonably required;
- (m) **Quote** means any offer or tender provided by us;
- (n) **Terms** means these Terms of Trade;
- (o) **Website** means www.outbox.co.nz; and
- (p) **We, us, or our** means Outbox Limited.

3.0 CUSTOMERS AUTHORITY

3.1 You warrant that:

- (a) you are either the Customer or the authorised agent of the Customer; and
- (b) you are authorised to accept and you accept these Terms personally and also as agent for and on behalf of the Customer.

3.2 You shall not assign all or any of your rights or obligations under these Terms unless we expressly agree in writing. You shall advise us of any alteration to your entity structure and/or of any revocation of an agent's authority to purchase. Until such written confirmation is received and expressly accepted by us in writing, you shall remain liable for any Amount Owing and our conduct shall not be deemed acceptance or affirmation of any assignment or revocation.

4.0 QUOTE

4.1 A Quote is available for acceptance for thirty (30) days (or any longer period stated in the Quote) from the date of the Quote, after which it will be subject to our written approval. Your acceptance should be confirmed in writing prior to our supply of the Products and/or Services, but in the absence of written acceptance for urgent matters, our commencement of supply will be taken as your acceptance by conduct.

4.2 We reserve the right to alter the Quote at any time due to circumstances beyond our control and/or for additional Products and/or Services provided.

4.3 An order or letter of acceptance that contains terms or conditions in conflict with our Quote or these Terms will not establish a binding contract except at our sole discretion.

4.4 You agree to pay the sum invoiced by us irrespective of any variation from the Quote and in accordance with these Terms.

5.0 PRICE

5.1 Our prices are in New Zealand Dollars and exclude GST.

5.2 Unless specifically stated as a fixed price, the price (including any Quote) will be increased by the amount of any GST and other applicable taxes and duties.

5.3 Our prices are subject to alteration without notice at any time. For example, we may increase the price as a result of any and all costs incurred as a result of your method of payment including without limitation any credit card costs and you authorise us to deduct the price and the applicable delivery charge(s) from such card.

5.6 Credit from us, as an alternative form of payment, *may* be available upon request. In order to assess a credit application, we reserve the right to request that you complete a Credit Application Form. You acknowledge that neither these Terms nor the Credit Application Form shall be construed to be a consumer credit contract as defined by section 11 of the Credit Contracts and Consumer Finance Act 2003.

6.0 PAYMENT

- 6.1 You must pay the price indicated on any invoices issued by us for the Products and/or Services.
- 6.2 All invoices are due for payment 10 days from the date on which we issue an invoice.
- 6.3 Notwithstanding clause 6.2, where a Quote relates to the supply of a new website, upon acceptance of the Quote you agree to immediately transfer an amount equivalent to 30% of the price specified in the Quote to our nominated bank account. Please note work will not commence until payment is made of non-refundable deposit. The balance will be payable upon completion of the website in accordance with clause 6.2, save as to include, if the development time for the website extends beyond 6 weeks due to any unreasonable resulting from your failure to provide the information as specified in clause 7.4 or for circumstances outside of our control, we reserve the right to change 50% of the outstanding balance will be payable within 12 weeks from the date on which you accepted the Quote. Any amendments required after completion of the website will be charged at an hourly rate as specified in quote plus GST and disbursements.
- 6.4 You must not deduct, withhold or set-off any amount from or against any monies payable to us.
- 6.5 The accepted forms of payment are cash, direct bank transfer, credit cards (Visa or Mastercard) or PayPal account. By providing this information you authorise us and/or our third party payment provider to deduct the price and any applicable charges.
- 6.6 By receiving any payments from you, we will not be bound by any conditions or qualifications or other terms which you may have attached to those payments.

6.1 VARIATIONS

- 6.1 Any changes required to the Products and/or Services quoted, or to the work reasonably foreseeable by us at the date of Quote, shall be a variation. Variations include without limitation any change to the scope, quality or timing of the work (including, but not limited to, attendances of an urgent nature, on a Public Holiday or outside normal business hours), any circumstance that changes the cost of supplying the Products and/or Services that were not reasonably foreseeable at the time of Quote or any other circumstance which is stated in these Terms to be a variation whether arising out of any oral or written instruction from you or your representative or otherwise.
- 6.2 We will advise you as soon as practicable of any change to the price arising out of any variation. Variations will generally be valued on the same basis or rates as corresponding Products and/or Services quoted. Where work does not directly correspond to the Quote or cannot be performed in the most economic manner variations may at our sole discretion be priced on the basis of time and materials (charge-up) at our normal rates and margins current at the time of performing the work.
- 6.3 Your acceptance of any variation should be confirmed in writing prior to commencement of the supply, but in the absence of written acceptance our supply of the Products and/or Services pertaining to the variation will be taken as your acceptance by conduct.
- 6.4 We shall be entitled to be paid progressively for the reasonable value of any variation whether or not the value of it has been agreed.

7.0 SUPPLY OF PRODUCTS AND/OR SERVICES

- 7.1 We will supply the Products and/or Services as specified within the Quote and any variation.
- 7.2 All Services will be performed in a proper and competent manner.
- 7.3 We reserve the right to sub-contract the supply of the Products and/or Services. We shall be responsible for the supply of the Products and/or Services undertaken by all sub-contractors which we engage.
- 7.4 You agree to:
 - (a) provide suitable access, information, documents and facilities required by us to properly complete or co-ordinate the supply of the Products and/or Services;

- (b) provide or obtain all consents or other authorities required for the supply including approvals from owners, occupiers and others, including (but not limited to) any third party providing Intellectual Property or domain name;
- (c) assume liability and indemnify us for any damage caused by us as a result of us supplying the Products and/or Services.

7.5 Any unreasonable delay resulting from your failure to comply with sub-clause 7.4 above shall be a variation. We will not be liable for any consequences as a direct or indirect result of your failure to comply with clause 7.4.

8.0 CANCELLATION

8.1 Any request made by you to cancel or reschedule the supply of the Products and/or Services must be in writing and received by us 7 days in advance of the scheduled commencement date. If sufficient notice of your intention is received, we may refund or waive the amount payable, at our sole discretion. If the required notice pursuant to clause 8.1 is not provided, we reserve the right to charge the Amount Owing in full.

8.2 We may at any time and without reason or notice to you cancel without liability any agreement either in whole or part for the supply of the Products and/or Services to you. This clause shall not affect our claim against you for any Amount Owing.

9.0 DISPUTES

9.1 No dispute or difference shall exist between either party until such time as one party gives written notice to the other party setting out the reasonable particulars of the matter in dispute the remedy sought (**Notice**).

9.2 If a dispute arises both parties will initially attempt to resolve the dispute by amicable negotiation between senior representatives of each party.

9.3 The parties may by agreement endeavour to resolve any dispute through mediation, or adopting other alternative dispute resolution procedures and agree to consider such proposals in good faith.

9.4 If the parties are unable to resolve the dispute by negotiation or mediation, or other alternative dispute resolution procedures within 7 days from the date on which the Notice was served or such other extended period as mutually agreed in writing and if either of us wishes to take the issue further, the dispute shall be referred to arbitration.

9.5 Arbitration shall be before a single arbitrator in accordance with the provisions of the Arbitration Act 1996 or any Act and amendment thereto or substitution thereof.

9.6 Each party shall use its best endeavours to ensure that, where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimum effect on the ability of any party to perform its obligations in accordance with these Terms.

9.7 Notwithstanding the above, nothing in clause 9 shall prevent any party from seeking urgent equitable relief before an appropriate Court.

10.0 DEFAULT

10.1 In the event of your Default of any of these Terms (and until the Default is corrected):

- (a) we may immediately suspend or terminate any Products and/or Services you have with us. You will be liable for all costs and losses including loss of profit arising out of such suspension or termination;
- (b) any discounts may be disallowed and we reserve the right to withhold or refuse any warranty service until you correct the default;
- (c) any Amount Owing will immediately become due and payable notwithstanding that the due date has not yet arisen;

- (d) we may charge you interest on the Amount Owing at the rate of 15% per day;
- (e) you shall be liable for all costs incurred by us in recovering the Amount Owing including debt collection agency commission and full legal costs; and
- (f) we may take possession of any Products and/or Services and otherwise exercise in relation to the Products and/or Service any rights whether those rights are as owner purchase money security interest holder and/or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way.

11.0 PRIVACY ACKNOWLEDGEMENT

11.1 Where you and the Guarantor are an individual you understand the information provided is being collected in accordance with the Privacy Act 2020 and that you have rights of access to and correction of personal information held by us. The privacy of your personal information is important and we are committed to protecting it. You agree and authorise us to obtain or divulge any information about you (including adverse information) from or to any third party (including credit reporting and debt collection agencies) in the course of our business activities including credit assessment, debt collection and direct marketing activities. Please read our Privacy Policy [<https://www.outbox.co.nz/privacy-policy-2/>] for more information.

12.0 WARRANTIES AND LIMITATIONS

- 12.1 Nothing in these Terms excludes, limits, restricts or is intended to derogate from any right or remedy which you may have pursuant to the CGA if you are a consumer as defined in the CGA who requests the Products and/or Services for personal use. However, the guarantees contained in the CGA are expressly excluded where you acquire the Products and/or Services from us for the purposes of a business in terms of section 2 and 43 of that Act.
- 12.2 Our liability under any statutory right or any condition or warranty, including any implied by the CGA, FTA, SGA, CCLA or similar Act or regulations is, to the maximum extent permitted by law, excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 12.3 To the maximum extent permitted by law we shall not be liable to you or any Guarantor(s) (or any agents or employees) whether in contract, tort, breach of statutory duty or otherwise for:
- (a) any consequential, indirect or special loss, damage or injury; or
 - (b) any delays in delivery, loss of profits, revenue, business opportunity, anticipated savings, wasted overheads or damage to goodwill regardless of whether in the circumstances it is deemed direct, indirect, consequential or special losses.
- 12.4 You shall indemnify us against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of our negligence of or otherwise, brought by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the performance of these Terms.
- 12.5 If contrary to the disclaimer of liability contained in these Terms we are deemed liable to you, our maximum aggregate liability to you arising out of any claim for loss or damages however arising shall not exceed the lesser of:
- (a) the price specified in the Quote; or
 - (b) the value of the Products and/or Services which are the subject of the claim.
- 12.6 Nothing in clause 12 shall excuse payment of the Amount Owing as it becomes due under these Terms.

13.0 FORCE MAJEURE

13.1 Without limiting any other provisions of these Terms we shall not be liable for any claims resulting from our delay or failure in the performance of any obligation or the exercise of any right as a result of a Force Majeure event.

13.2 Nothing in this clause shall excuse payment of any Amount Owing due or which becomes due under these Terms and the occurrence of a Force Majeure event shall not give you a right to cancel any agreement with us.

14.0 INTELLECTUAL PROPERTY

14.1 You shall own or have the rights in all of the Intellectual Property provided by you and you warrant that you own or have sufficient rights in such Intellectual Property to enable us to supply the Products and/or Services, without breaching any third party rights.

14.2 We own or have the rights in all of the Intellectual Property introduced by us and such Intellectual Property shall remain our sole and absolute property, unless otherwise licenced in writing. You warrant and acknowledge that you may not use, alter, reverse engineer or otherwise interfere with our Intellectual Property in any way, without our prior written consent.

14.2 You shall indemnify us against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of our negligence of or otherwise, brought by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the performance of these Terms.

15.0 GENERAL

15.1 These Terms shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

15.2 Any reference to legislation is a reference to that legislation as amended, re-enacted or replaced and includes any subordinate legislation or statutory instrument issued pursuant to that legislation as it may have been amended, re-enacted or replaced.

15.3 You may not assign all or any of your rights or obligations under these Terms without our prior written consent.

15.4 You consent to receive communications and notices from us electronically and agree that all communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. You agree to be bound by any agreement reached through electronic communications in terms of the CCLA.

15.5 Where we have 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.

15.6 Our failure to enforce any of the Terms shall not be deemed to be a waiver of any of the rights or obligations we have under these Terms.

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

Signed by the Customer or for and on behalf of the Customer:

Signature

Signature

Full Name

Full Name

Position

Position