



## **TERMS OF TRADE**

### **GENERAL**

#### **1. Application**

1.1 These Terms of Business ("Terms") cover the business activities of Big On Writing, the trading name for Big on Writing Ltd. and the conditions of doing business with us. By employing our services or requesting work of Big On Writing, you are deemed to agree to these Terms of Business.

#### **2. Definitions.**

2.1 "Big On Writing" and "We" shall mean 'Big On Writing, the trading name of Big on Writing Ltd' or any agents or employees thereof.

2.2 "Client" and "You" and "Your" shall mean the client purchasing goods or services from Big On Writing, or any person acting on behalf of and with the authority of the client.

#### **3. Big On Writing's general responsibilities to the Client.**

3.1 We will keep you informed about the progress of your work at all times.

3.2 Where Big On Writing sub-contracts or allocates work for the Client to third party suppliers, we will be responsible for monitoring the quality, timeliness and accuracy of the work supplied.

3.3 Big On Writing and its agents and representatives will not disclose to any third party any information of a confidential or commercially sensitive nature pertaining to the Client's project or to their business generally. At the request of the Client, Big On Writing will sign a Confidentiality Agreement.

#### **4. The Client's general responsibilities to Big On Writing.**

4.1 You will provide a clear and considered brief, containing all pertinent information, at the beginning of a project.

4.2 You will provide all required materials and instructions necessary to advance a project within a reasonable timeframe.

4.3 You will nominate a person or persons from within your business or organization as a 'point of contact' with Big On Writing. That person or persons will be charged with and authorized to maintain leadership and control of your project.

#### **5. The Proposal.**

5.1 Where the goods/services to be supplied are of a complex nature, Big On Writing may provide a Proposal & Costing document ("Proposal"), which is to be read and signed in conjunction with the Terms of Business.

5.2 The Proposal will provide clarity as to the work to be carried out, including projected timelines, and estimated costs.

5.3 From the date the Proposal is accepted in writing by the client, Big On Writing will be authorized to begin work as specified in the Proposal.

5.4 The Proposal is subject to amendment after acceptance, where such an amendment is required by the client, in order to meet any change in costs or to accommodate changes in the work to be carried out, provided this is agreed upon by both parties.

Level 2 371 Parnell Road Auckland New Zealand.



5.5 The Proposal is generally presented in a step-by-step process to ensure client agreement, and is costed in stages. At every stage, verbal agreement from the client shall be taken as approval for Big On Writing to proceed to the next stage.

5.6 The Proposal and costings supplied therein will be valid for 30 days from the date of issue.

## **6. Delivery.**

6.1 The Client shall be deemed to have accepted the goods or services supplied unless the client notifies Big On Writing within 7 days of delivery.

6.2 Should work be suspended at the request of or delayed through any default of the client for a period of 30 days or more, Big On Writing will be entitled to payment for all work completed to date or as specified to that date in the Proposal.

6.3 Website design is deemed delivered when the site goes live; however payment can be requested at intervals as specified in the Proposal. Big On Writing reserves the right to withhold the website from going live until payment is received as agreed.

## **7. Approvals Process.**

7.1 Big On Writing will provide proofs of all finalised work prior to print for official client sign-off. Each time an alteration is requested, the entire work will require new proofing.

7.2 While Big On Writing makes all endeavors to ensure accuracy, Big On Writing can take no responsibility for proofing, for which the entire responsibility lies with the Client.

7.3 Printers' proofs may be available for the Client's approval, and supplied at the Client's cost.

7.4 Where work involves layout of text, finished art or similar, and changes are requested on the work by the Client, they shall be liable for 'author's corrections' fees on a time basis to cover such additional work. Big On Writing Limited reserves the right to proceed with any type of author's correction without indicating the estimated time to carry out author's corrections and the client will be invoiced accordingly to the nearest hour.

7.5 All reasonable efforts will be made to obtain the best possible colour reproduction but the Client acknowledges that variation is inherent in the print process, and that Big On Writing shall not be required to guarantee an exact match in colour between design and final print.

7.6 There shall be no charges to the client for revisions or corrections or additions made necessary by errors on the part of Big On Writing.

## **8. Roles and Responsibility**

8.1 Big On Writing provides access to employees and independent creative consultants, with project management. From time to time, this may mean the client is working closely with Big On Writing employees, independent creative consultants and suppliers. In the event this occurs, Big On Writing shall provide:

- i) Project Management to ensure the job is tracked and deliverables are met.
- iii) Agreed Term of Project;
- iv) Consultant/Supplier cost

8.2 The creative consultant does not have any authority to make representations, statements, warranties or enter into any agreement on behalf of Big On Writing.



8.3 Big On Writing accepts no responsibility for the work undertaken by a contractor/supplier on a project.

8.4 For a period of twelve (12) months from the date of termination of working with Big On Writing, whether by expiration or otherwise, the Client agrees that neither the Client, nor any subsidiaries, associated companies, personnel, firm or any affiliated organisation of the Client, will directly solicit, recruit for employment or offer contracting opportunities to or employ the Big On Writing employee or independent creative consultant without prior notification to Big On Writing and Big On Writing's consent.

8.5 The Client shall be responsible for ensuring that all necessary instructions are provided to the Big On Writing and the Consultant to enable the consultant to complete each Project.

8.6 The Client may from time to time notify Big On Writing that changes or revisions to the terms or length of an project are desired. The parties agree to negotiate in good faith to accommodate the Client's needs and where any alterations are agreed which require the performance of additional services and/or the variation of fees payable for the Project, the parties shall record such variations in writing.

8.7 In the event that a client wishes to offer any Big On Writing employee or independent consultant full time employment, a 'goodwill fee' will be payable to Big On Writing by the client to the amount equal to 20% of the remuneration applicable during the first 12 months of the engagement. GST will be charged on the fee if applicable.

8.9 If the Big On Writing consultant leaves the employment of the Client or the Client terminates their employment within the first four weeks of employment, Big On Writing will offer a full rebate of fees payable (provided agreed payment terms were met) or find a replacement free of charge (excluding expenses). In case of redundancy, there will be no refund. After the first four weeks a sliding scale of rebate will apply for the first three months.

## **9. Price & Payment**

9.1 All work carried out at the Client's request, including work for demonstration, pitch or other purposes, shall be chargeable.

9.2 Big On Writing reserves the right to charge for reasonable disbursements, whether or not included in the Proposal. As a matter of practice, there is a standard 5% disbursement fee of up to \$50 per job on all bills to cover colour copies, couriers, phone bills, art materials and other incidentals (in lieu of individual billing of such items).

9.3 For media bookings and print production, invoices are payable within 14 days from invoice date, or in some cases payment will be required at the time of booking the media or print job. Big On Writing reserves the right to cancel media bookings where payments are overdue. Creative work (including design, packaging, copywriting, TV, radio, or digital production) will be payable 30 days from invoice.

9.4 Unless otherwise agreed, ALL invoices during the first three months for a new client are payable within 14 days from invoice date.

9.5 For all projects over \$NZ10,000, payment will be invoiced by the following installments: 40% upon the client signing the Proposal and prior to commencement, 30% during the project, and 30% on completion. By agreement between the parties, this may change to monthly billing.

9.6 For invoices not paid within the agreed credit terms or for cheques returned unpaid, Big On Writing reserves the right to charge interest on the overdue debt at 5% every additional 30 days to



any balance past due, as well as debt recovery costs, legal costs and any other costs incurred by the default in payment.

#### **10. Licensing and Copyright.**

10.1 The Client will be responsible for obtaining all necessary consents to reproduce pictures, artwork, photographs, logo(s), copyright text and/or any other items supplied, prior to instructing Big On Writing to reproduce the same.

10.2 Any imagery sourced, photographed, manipulated or otherwise supplied, will be the responsibility of the Client and subject to appropriate usage fees as payable by them. Imagery cannot be used for additional reasons unless agreed or licensed according to its use.

10.3 The client shall indemnify Big On Writing and its agents and representatives against all claims, demands, actions, expenses (including but not limited to legal costs and disbursements), losses and damages arising from or suffered or incurred by reason of any claim that the reproduction of the materials by Big On Writing infringes the intellectual property or other rights of any third party or misuses the confidential information of a third party.

10.4 Unless requested and agreed in writing, the copyright of artwork, copywriting, illustrations, photography, website design and anything else whatsoever prepared, developed or created by Big On Writing Limited shall belong to Big On Writing Limited. By agreement with the Client, Big On Writing Limited may use any artwork or other work produced by itself for the purposes of promoting or marketing itself.

10.5 Providing payment for the work has been made in full, the client may request ownership of artwork produced for them by Big On Writing Limited. Electronic copies of work can be supplied and a charge will be made for archive retrieval. Photography, illustrations and other elements provided by outside sources through Big On Writing Limited may be subject to restrictions on use or ownership.

#### **11. Liability.**

11.1 Except as otherwise provided by statute, Big On Writing shall not be liable for any loss or damage of any kind whatsoever whether suffered or incurred by the client or another person whether such loss or damage arises directly or indirectly from good or services or advice provided by Big On Writing to the Client.

11.2 The role of Big On Writing is to connect the client with contractors. This direct access enables cost-efficiencies to the client, however they accept in the process that all contractual obligation rests between the Client and The Contractor. It is the Client's responsibility to provide the contractor with a confidentiality agreement and any other contracts related to the task performance. Except as otherwise provided by statute, Big On Writing may not be liable for any misconduct or gross negligence of any contractor on placement with the client in the performance of or in connection with a Task.

11.3. Big On Writing Limited will, to the best of their knowledge, ensure all music, video, photography, concept or creative materials recommended to the client are free from Copyright infringement. It is the client's responsibility to seek legal advice before using these materials if required. In agreeing to use the material, the client accepts full responsibility for any legal suit



pertaining these supplied materials, and will indemnify Big On Writing for all legal costs or damages.

11.4 The Client also indemnifies Big On Writing against the consequences of any liability, inadvertent social media or media exposure or other damaging situation created by the contractor. It is the client's responsibility to liaise directly with the contractor on these matters.

## **12. Disputes**

11.1 In the event of a dispute arising between Big On Writing and the Client, the parties will attempt to resolve the dispute using the dispute resolution process below.

**Informal resolution:** Either party can initiate the dispute resolution process by giving written notice of the dispute to the other party ("Dispute Notice"). Upon the other party receiving the Dispute Notice, the parties will work together in good faith to resolve the dispute. Pending resolution of the dispute each party will, to the extent it is able, continue to perform its obligations under this Agreement.

**Mediation:** If the parties cannot resolve the dispute by negotiation within ten Business Days following the date of delivery of the Dispute Notice, then either party may, by written notice to the other party ("Mediation Notice"), require the dispute to be submitted to mediation in New Zealand in accordance with the provisions of the then current LEADR New Zealand Incorporated Standard Mediation Agreement ("Mediation").

The Mediation will be conducted by a mediator and at a fee agreed by the parties. If the parties fail to agree such matters within ten Business Days following the date of delivery of the Mediation Notice, the Chair for the time being of LEADR New Zealand Incorporated will select the mediator and determine the mediator's fee. The parties will share equally the cost of the mediator's fee.

**Other remedies:** A party to the dispute will only be entitled to pursue other remedies available to it at law or otherwise, if the parties have failed to resolve the dispute within 20 Business Days after commencement of the Mediation.

## **13. Applicable Law**

11.1 These Terms and any Proposal shall be governed by and construed under the laws of New Zealand, and any proceedings arising may be brought in any court of New Zealand jurisdiction.