

Jag Creative Ltd Terms and Conditions

1. Definitions and interpretation

- 1.1 In these Conditions, unless the context requires otherwise:
- (a) **Client** means the person who engages Jag to provide Services.
 - (b) **Conditions** means these Terms and Conditions and any additional Terms and Conditions for Hosting or Website Development.
 - (c) **Delivery Date** means the date specified by Jag when an Order will be completed.
 - (d) **Designs** means designs, logos, artwork, websites, marketing plans, ideas and other non print media.
 - (e) **Hosting** means the hosting of a Client website by Jag.
 - (f) **Jag** means Jag Creative Limited and any other associated, related or subsidiary companies which supply Services to the Client.
 - (g) **Order** means a request (either verbal or in writing, and confirmed in writing by Jag) by the Client for Jag to supply Services and includes specifications and project briefs agreed between Jag and the Client.
 - (h) **Price** means the price for the Services plus GST (if any).
 - (i) **Print Media** means all print media which Jag supplies as part of an Order, and where relevant, includes related digital files.
 - (j) **Services** means the services which Jag supplies to the Client, including production of Designs, supply of Print Media or provision of Hosting
 - (k) **Website Development** means the development of a Client website by Jag.
- 1.2 "Includes" or similar phrases used in these Conditions imply no limitation.

2. Conditions apply to all Services

- 2.1 These Conditions shall apply to all Orders, to the exclusion of all other terms and conditions, including any terms and conditions which the Client may purport to apply under any purchase order, confirmation of order or similar document
- 2.2 All Orders shall be deemed to be an offer by the Client to engage Jag pursuant to these Conditions. Jag shall not be obliged to complete any Order unless it has accepted the Order in writing
- 2.3 Acceptance of delivery of Print Media or the commencement of Services by Jag pursuant to an Order shall be deemed conclusive evidence of the Client's acceptance of these Conditions.
- 2.4 Where Jag provides Website Development, Jag's Additional Terms and Conditions for Website Development shall apply in addition to these Conditions.
- 2.5 Where Jag provides Hosting, Jag's Additional Terms and Conditions for Hosting shall apply in addition to these Conditions.
- 2.6 A variation to any Order or these Conditions must be agreed in writing by the parties.

3. Orders

- 3.1 The Client shall use its best endeavours to ensure that any Orders are sufficiently detailed and specific to allow Jag to complete such Orders to the satisfaction of the Client.
- 3.2 Client understands and agrees that Jag will provide Services in accordance with information provided by Client. Jag will have no liability to Client for any failure or defect in the Services where incorrect or incomplete information provided to Jag has contributed to that failure or defect.
- 3.3 Each Order shall constitute a separate contract, incorporating the terms of the Order and these Conditions between Jag and the Client.
- 3.4 Where there is any inconsistency between a term in an Order and a term in these Conditions, the term in these Conditions shall prevail.

4. Project Work

- 4.1 Where Jag is supplying Services on an ongoing project basis for the Client, the Client shall appoint a representative ("Client Representative") to act as the principal point of contact between the parties who shall be responsible for ensuring adequate and timely instructions or assistance is provided to Jag.
- 4.2 Jag may produce proofs at various stages of the project and it shall be the Client Representative's responsibility to carefully check and sign such proofs before Jag is obliged to move to the next stage of the project. Any failure by the Client Representative to sign a proof shall not affect the Price payable and Jag shall not be liable for an errors in an Order where the Order corresponds with a proof signed by the Client.
- 4.3 Additional charges may be levied for any variations to the original Order on a time and materials basis at the rate of \$125 + GST per hour or as otherwise advised in writing by Jag.

5. Intellectual Property

- 5.1 Copyright in any Designs will pass to the Client on payment in full of the Price.
- 5.2 The Client warrants to Jag that any material provided to Jag, whether

for inclusion into a website, Print Media or otherwise, does not infringe any 3rd party intellectual property right, is not offensive nor in breach of any law. Client shall indemnify, and keep indemnified, Jag against any claim, loss or damage Jag may incur which arises from a breach of this clause.

6. Price as per price list or estimate

- 6.1 The Price shall be calculated in accordance with Jag's published price list current at the date of performance of the Services. Delivery charges may be charged and are in addition to the Price.
- 6.2 From time to time Jag may provide an estimate for Services to be carried out. Estimates will be based upon the number of hours Jag anticipates the job will take having regard to the instructions given by the Client. Estimates will not be binding on Jag. Charges in respect of printed colour lasers, presentations and other forms of proofing shall be in addition to any estimate provided.
- ## 7. Payment
- 7.1 Unless otherwise agreed in writing by the parties, payment of the Price shall be due on invoice.
- 7.2 Jag may require payment of a deposit or staged payments each month or at significant milestones during the project. Jag is under no obligation to commence or continue with Services until such deposits or staged payments are paid in full. A request by Jag for a staged payment does not necessarily mean that Services up to that stage will have been completed at the time of the request. All deposits are non refundable.
- 7.3 Payment may be made by cash, cheque or direct credit.
- 7.4 Time for payment shall be of the essence.
- 7.5 If the Client disputes any part of an invoice, the Client must notify Jag in writing of the nature of the dispute within 5 working days of the date of the invoice.
- 7.6 The Client may not withhold payment of any invoice or other amount due to Jag by reason of any right of set off or counterclaim which the Client may have, or allege to have, or for any reason whatever.
- 7.7 If Client fails to pay any amount when due, Jag may charge interest on that amount at the rate of 2.5% per month (or part month) from the due date until the date of payment in full.

8. Breach

- 8.1 Where:
- (a) the Client fails to make payment of the Price or commits any other breach of these Conditions;
 - (b) any distress or execution shall be levied upon any of the Client's assets;
 - (c) the Client offers to make any arrangement with its creditors;
 - (d) any bankruptcy petition is presented against the Client;
 - (e) the Client is unable to pay its debts as they fall due;
 - (g) the Client is a Limited Company and any resolution or petition to wind up the Client (other than for the purposes of amalgamation or reconstruction without insolvency) is passed or presented;
 - (h) a receiver, administrator, administrative receiver, or manager shall be appointed over the whole or any part of the Client's business or assets; or
 - (i) the Client shall suffer any analogous proceedings under foreign law, then Jag may, at Jag's sole option, suspend or terminate all or any Services and all sums outstanding in respect of all Services up to the date of termination shall become payable immediately.
- 8.2 If Jag exercises its discretion to terminate all or any Services under clause 8.1, and Client has agreed to receive any of those terminated Services for a fixed term, the Client must pay Jag, upon demand, 75% of the fees that the Client would have been liable to pay Jag until the end of that fixed term.

9. Time for performance

- 9.1 Whilst Jag will use its reasonable endeavours to ensure completion of any Order by the Delivery Date and achievement of agreed milestones by the dates agreed, having regard to the availability of personnel, supplies, facilities and commitments to other clients, any dates quoted for the commencement or completion of an Order are estimates only and time shall not be of the essence.
- 9.2 Delivery of Print Media shall be made to the Client's address on the Delivery Date. Print Media may be delivered in advance of the Delivery Date upon the giving of reasonable notice to the Client. The Client shall make all arrangements to take delivery of the Print Media whenever it is tendered for delivery.
- 9.3 Jag shall not be liable to the Client for late delivery or short delivery of the Print Media.
- 9.4 Jag may sub contract any part of the supply of Services.

10. Acceptance and rejection

- 10.1 The Client shall be deemed to have accepted:
- (a) the Print Media 48 hours after delivery to the Client;
 - (b) Designs 7 days after delivery to the Client, unless the Client notifies Jag in writing that it does not accept the Print Media or Designs (as the case may be).
- 10.2 The Client shall not be entitled to reject any Print Media or Designs which have been provided in accordance with the Order.
- 10.3 Where the Client validly rejects any Print Media or Designs, Jag's liability to the Client (if any) shall be limited to the Price paid for that Print Media or Designs (as applicable).

11. Archiving

- 11.1 Providing all sums owing to Jag have been paid, Jag will digitally archive all Print Media and Designs ("Archived File") on behalf of the Client free of charge.
- 11.2 If the Client wishes to retrieve an Archived File, Jag may charge a reasonable fee (to be quoted at the time of request) to cover the cost of retrieving the Archived File.
- 11.3 Whilst all care is taken to archive Print Media and Designs, Jag accepts no responsibility for any loss or damage to an Archived File (howsoever caused), nor any consequential loss occasioned by the Client arising from such loss or damage.

12. Warranties and Liability

- 12.1 Jag warrants that:
- (a) Print Media supplied will, at the time of delivery, correspond to the proof signed by the Client;
 - (b) Services will be performed by competent persons and will be carried out with reasonable care and skill;
- 12.2 Except as expressly set out above, Jag makes no warranties whatsoever to the Client and all other warranties (whether statutory or otherwise) are excluded to the fullest extent permitted by law.
- 12.3 The parties agree that the provisions of the Consumer Guarantees Act 1993 (Act) do not apply to the Services or these Conditions and:
- (a) Jag and the Client are, and all Services are supplied and acquired, in trade; and
 - (b) Jag and the Client agree to contract out of the provisions of the Act; and
 - (c) it is fair and reasonable that the parties are bound by this clause 12.2.
- 12.4 Jag shall be under no liability whatever to the Client for any indirect or consequential loss or expense, loss of profit or loss of business suffered by the Client arising out of Jag's performance or non-performance of the Services.
- 12.5 Jag's liability in respect of its performance or non-performance of the Services, shall be limited to an amount equal to the Price paid by the Client in respect of that part of Services from which that liability arose.
- 12.6 The Client shall indemnify Jag for all loss or damage arising by reason of the negligence of the Client, its employees or contractors, or any breach by the Client of these Conditions.
- 12.7 Jag accepts no responsibility or liability for defects in any website supplied where such defects arise from changes made to the website by the Client after delivery.

13. Force majeure

- 13.1 A party shall not be liable for any default (other than a failure to pay money) due to any act of God or civil disturbance, malicious damage, strike, lock-out, industrial action, fire, flood, drought, extreme weather conditions, power shortage, compliance with any law or governmental order, rule, regulation, direction, shortage or failure of supply or any other circumstance beyond the reasonable control of that party (force majeure event);
- 13.2 Each party shall give notice forthwith to the other upon becoming aware of a force majeure event, the notice to specify details of the circumstances giving rise to the force majeure event.
- 13.3 If any force majeure event continues for 30 days or more Jag may, without liability to the Client, terminate the affected Services or Order upon written notice.

14. Notices

- 14.1 Any notice in connection with these Conditions must be in writing and served by hand on a party, posted or sent by recorded delivery to the trading address of the party, or at or to such other address that may be subsequently notified by one party to the other.

15. Privacy

- 15.1 Jag may request and collect personal information about the Client before agreeing to supply Services in order to carry out such credit checks or references as it thinks appropriate. Any failure to provide information requested by Jag shall entitle Jag to decline any Order or terminate the Services.
- 15.2 The Client has the right to access, and request correction of, personal

information collected by Jag, subject to the provisions of the Privacy Act 1993.

- 15.3 The Client agrees that its personal information may be used by Jag to advise the Client of Jag's services.
- 15.4 The Client authorises the disclosure of personal information held by any other party to Jag regarding any previous sale agreements entered into by the Client and/or any information in relation to the financial position of the Client.
- 15.5 The Client agrees that Jag may release to other parties information regarding this contract in order to enforce the terms and conditions of this contract.
- 16. Law**
- 16.1 These Conditions shall be governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand Courts.

Additional Terms and Conditions for Website Development

1. **Definitions.** Capitalised terms have the meanings set out below, or given to them in the Jag Creative Ltd Terms and Conditions.
- (a) **"Background Technology"** means computer programming or formatting code or operating instructions developed by or for Jag and used to create or develop the Client website, including any files necessary to make forms, buttons, checkboxes, and similar functions and underlying technology or components, such as style sheets, animation templates, interface programs that link multimedia and other programs, customized graphics manipulation engines, and menu utilities, whether in database form or dynamically driven. Background Technology does not include any Client Content.
- (b) **"Client Content"** means all content or information in any medium, provided by Client to Jag, including any text, music, sound, photographs, video, graphics, data, software, design, logo or other mark.
- (c) **"Client website"** means the Client's website(s) developed by Jag.
- (d) **"Third-Party Materials"** means any content, software, or other computer programming material that is owned by an entity other than Jag, and licensed by Jag or generally available to the public, including Client, under published licensing terms, and that Jag will use to display or run a Client website.
2. **Provision of Website Development.** Jag will provide Client with Website Development as set out in the relevant Order. Client will pay Jag's Website Development fees in accordance with the Jag Creative Ltd Terms and Conditions.
3. **Rights to the Client website and Client Content.** With the exception of any Third-Party Materials and Background Technology, Client owns the Client Content.
4. **Limited license to Background Technology.** Client may not duplicate or distribute any Background Technology to any third party without the prior written consent of Jag. All rights to the Background Technology not expressly granted to Client under these Conditions are retained by Jag. Without limiting the foregoing, Client agrees not to reverse-engineer, reverse-assemble, decompile, or otherwise attempt to derive any source code of the Background Technology.
5. **Limited license to content.** Client hereby grants Jag a limited, non-exclusive, royalty free license to copy, distribute, transmit, display, perform, create derivative works from, modify, and otherwise use the Client website or any Client Content provided to Jag, solely for the purpose of providing Hosting.
6. Client Content standards. Client must not provide Client Content that:
- (a) infringes any person's intellectual property or other rights;
- (b) violates any applicable law or regulation;
- (c) is defamatory, violent, clearly harmful, or obscene or pornographic; or
- (d) contains any viruses, Trojan horses, worms, time bombs, cancel bots, or other computer programming routines that are intended to damage or interfere with any system, data, or personal information. Jag reserves the right to refuse any other content it deems inappropriate.
7. Client responsibilities.
- (a) The Client must:
- provide all data to be incorporated into the Client website;
 - provide all logos, designs, graphic and related materials to be incorporated into the Client website; and
 - provide all other information, ideas or suggestions which are to be expressly considered by Jag in developing the Client website.
- (b) The Client will provide Jag with all information and assistance as Jag may reasonably require to enable Jag to construct and maintain the Client website.
- (c) The Client is responsible for advising Jag of any specific requirements for web browsers (mobile or other). Unless otherwise agreed in writing by Jag, the choice of web browsers and technology used in the development of the Client website shall be at the sole discretion of Jag. Jag supports the following web browsers as standard:

- IE v8+
 - Chrome v3+
 - Safari v3+
 - Firefox v3.5+
- (d) If Client has any additional requirements for web browsers or other functionality for the Client website that are not specified in the Order, Jag may revise the Price once the Client has supplied, and Jag has agreed, the scope of the additional requirements.
- (e) Jag will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Client website which is attributable to:
- incorrect information provided by the Client;
 - failure by the Client to provide relevant information; or
 - Third Party Materials.
- (f) Unless specifically provided for in the Order:
- proofs, mock-ups, layouts, samples or dummies or printed, typewritten or other good copy and/or edits, this shall be invoiced at Jag's hourly rate
 - All work carried out whether experimentally or otherwise at the Client's request will be charged to the Client.
 - Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Client and shown as extras on the invoice.
 - Unless otherwise agreed, the Client shall bear the cost of fonts, or colour proofs, or artwork, specially bought at the Client's request for the job.
 - Where the performance of any contract with the Client requires Jag to obtain products and/or services from a third party, the contract between Jag and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to Jag, and the Client shall be liable for the cost in full including Jag's margin of such products and/or services.
- (g) Whilst every effort will be taken by Jag to match virtual colours with physical colours, Jag will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Client's computer and/or the final product. Should a physical sample be required this will be provided on request by the Client and will be charged as an additional cost.
- (h) Whilst every care is taken by Jag to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading. Jag shall be under no liability whatever for any errors not corrected by the Client in the final proof reading. Should the Client's alterations require additional proofs this shall be invoiced as an additional cost.
8. Support.
- Where Client is provided with Hosting as well as Website Development, support will be provided as part of the Hosting. Where Client is not provided with Hosting, the support set out at paragraph 7 of Jag's Additional Terms and Conditions for Hosting will be provided as part of the Website Development.

Additional Terms and Conditions for Hosting

1. **Definitions.** Capitalised terms have the meanings set out below, or given to them in the Jag Creative Ltd Terms and Conditions.
- (a) **"Background Technology"** means computer programming or formatting code or operating instructions developed by or for Jag and used to host or operate the Client website or a web server in connection with a Client website, including any files necessary to make forms, buttons, checkboxes, and similar functions and underlying technology or components, such as style sheets, animation templates, interface programs that link multimedia and other programs, customized graphics manipulation engines, and menu utilities, whether in database form or dynamically driven. Background Technology does not include any Client Content.
- (b) **"Client Content"** means all content or information in any medium, provided by Client to Jag, including any text, music, sound, photographs, video, graphics, data, hyperlink, software, design, logo or other mark.
- (c) **"Client website"** means the Client's website(s) developed and/or hosted by Jag (as applicable).
- (d) **"Third-Party Materials"** means any content, software, or other computer programming material that is owned by an entity other than Jag, and licensed by Jag or generally available to the public, including Client, under published licensing terms, and that Jag will use to display or run a Client website.
2. **Provision of Hosting.** Jag will provide Client with Hosting as set out in the relevant Order. Client will pay Jag's Hosting fees in accordance with the Jag Creative Ltd Terms and Conditions.
3. **Rights to the Client website and Client Content.** With the exception of any Third-Party Materials and Background Technology, Client owns the Client Content.
4. **Limited License to the Background Technology.** Client may not

duplicate or distribute any Background Technology to any third party without the prior written consent of Jag. All rights to the Background Technology not expressly granted to Client under these Conditions are retained by Jag. Without limiting the foregoing, Client agrees not to reverse-engineer, reverse-assemble, decompile, or otherwise attempt to derive any source code of the Background Technology.

5. **Limited License to Content.** Client hereby grants Jag a limited, non-exclusive, royalty free license to copy, distribute, transmit, display, perform, create derivative works from, modify, and otherwise use the Client website or any Client Content provided to Jag, solely for the purpose of providing Hosting.

6. Client Content Standards. Client must not provide Client Content that:

(a) infringes any person's intellectual property or other rights;

(b) violates any applicable law or regulation;

(c) is defamatory, violent, clearly harmful, or obscene or pornographic; or

(d) contains any viruses, Trojan horses, worms, time bombs, cancel bots, or other computer programming routines that are intended to damage or interfere with any system, data, or personal information.

Jag reserves the right to refuse any content it deems inappropriate.

7. Support.

- (a) Jag will provide reasonable technical support by email [or phone] to Client during Jag's normal technical support hours (Support).
- (b) Up to 20 minutes per calendar month of Support will be provided free of charge as part of the fees for Hosting (Included Support). Included Support not used in a month cannot be carried over to subsequent months.
- (c) Jag may charge for any Support in addition to Included Support requested by Client at Jag's time and materials rate current at the time.
- (d) Jag offers monthly Support packages –if you continuously exceed your Included Support please ask Jag for a competitive quote.
- (e) Jag makes no warranty that Hosting will be uninterrupted or error free. Jag may, at its sole discretion, limit or deny access to Hosting if Jag believes that is necessary to assure the security of its or any supplier's network, the integrity of any network structure, or to prevent damage to any network.

8. Client's Obligations.

- (a) Unless specifically provided for in the Order:
- the Client is responsible for the development and maintenance of the Client website
 - the Client is responsible for providing the content to Jag, in such form as reasonably prescribed by Jag from time to time, and hereby grants Jag a non-exclusive, worldwide, irrevocable licence to use such content for the purposes of hosting the Client website;
 - do all things reasonably necessary to enable Jag to host the Client website on Jag's webserver;
- (b) The Client will not:
- logon to an account that the Client is not authorised to access;
 - access data or take any action to obtain services not intended for the Client;
 - attempt to probe, scan or test the vulnerability of any system, subsystem or network;
 - tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation;
 - transmit any Client Content that breaches paragraph 6 of this appendix;
 - do anything that prevents or hinders Jag from providing Hosting to any other person.

9 Network Traffic

Network traffic will be measured by Jag and may include all forms of traffic to and from the Client website. Jag reserves the right to suspend Hosting (at any time and without notice to the Client) for what it deems to be excessive traffic usage by Client.