

**1. Acceptance**

1.1 Any instructions received by Jared Farr (referred to as “we” or “us”) from you for the supply of Services shall constitute acceptance of these terms of engagement. These terms of engagement can only be amended with our written consent.

**2. Services & Process**

2.1 The Services are as described in our email proposal to you, our quotation or initial invoice which is based on the background information that you have provided to us.

2.2 Once you have received our email proposal and quotation and instructed us to proceed, we will begin work on your account on the basis that the proposal is accepted.

2.3 If you advise us of any requested changes to the Services or request any additional work, it may be necessary for us to re-price our email proposal, quotation, or reissue our initial invoice. Any change to the Services must be agreed by you and us in writing.

2.4 Where either you or we become aware of anything that will materially affect the scope or timing of the Services, that must be brought to the other party’s attention as soon as practicable.

**3. Payment**

3.1 Specific payment terms will be outlined in our email proposal, quotation or invoice.

3.2 Unless agreed otherwise in writing, all accounts must be paid within fourteen days of the date of invoice. We reserve the right to cease our Services without notice where any invoice is overdue for payment. For the avoidance of doubt we will not take any action in respect of suspending your Google Ads account, this remains in your control at all times.

3.3 All payments must be made in full and without any deduction or set off.

3.4 We will also invoice to you all agreed expenses and/or third party costs we incur in the provision of the Services and which are not paid directly by you. On request we will provide you with records of such expenses and third party costs.

3.5 All fees and expenses are subject to GST (where applicable) and for New Zealand clients GST is payable by you on all payments to us in accordance with the tax invoice provided.

3.6 If you fail to pay us when payments are due:

(a) we reserve the right to demand that you pay interest at 15% per annum (calculated on a daily basis) on the amount outstanding from the due date until the date payment in full is received; and

(b) you indemnify us from and against all costs, expenses and disbursements incurred by us in collecting the outstanding amount (including our legal costs and any debt collection agency fees); and

(c) we may suspend provision of any further Services until we are paid in full.

**4. Your Obligations**

4.1 You must advise us if any material or information that you provide to us is confidential. If you do this then we will keep that material or information confidential except where it is reasonably necessary to do otherwise so that we can complete the Services.

**5. Intellectual Property**

5.1 Intellectual property prepared or created by us in carrying out the Services and provided to you as a deliverable (“New Intellectual Property”) shall be owned by you. You shall grant to us an unrestricted royalty-free licence in perpetuity to copy or use the New Intellectual Property. Your rights under this clause are subject to you paying all amounts due and payable to us under these terms of engagement.

5.2 Intellectual property owned by either you or us prior to the commencement of these terms of engagement, or created independently of these terms of engagement, remains the property of the applicable party.

5.3 You acknowledge that we retain all intellectual property rights in the processes and applications that we use in providing the Services and that we may use these same processes and applications for other clients in the future without requiring your consent or incurring any liability to you.

**6. Warranties & Liabilities**

6.1 We take care and effort to ensure that our Services are carried out and performed in accordance with the degree of skill, care and diligence reasonably expected of a professional consultant providing services similar to the Services.

6.2 You acknowledge that in providing the Services, you authorise us to prepare PPC campaigns and that the costs of these campaign are yours as the advertiser. You acknowledge that there are risks and costs associated with the use of the Google Ads platform and the Microsoft/Bing Ads platform for all advertisers. This risk is yours as the advertiser and not ours as your PPC service provider. In providing the Services, we will comply with our Risk Management Policy (a copy of which is available on our website) and notwithstanding any other provision of this agreement, provided we comply with that policy we shall have no liability for any costs overspends or overruns.

6.3 In performing the Services:

(a) we will if available, use a function provided by Google called ‘Set a Monthly Spend Limit Across All Campaigns’. We will use this function if it is available in your Google Ads account at the time of commencing the campaign or Services;

(b) at times, it may be in your interest for us to increase the Daily Spending Limit without consulting you. If we do this, we will not increase the Daily Spending Limit by any more than 30% above the agreed Daily Spending Limit without consulting with you first; and

(c) if we add a Conversion Action to your Google Ads account, we will set this on Secondary (which is similar to an observation mode) and test and monitor this until it is clear the Conversion Action is working as intended. When it is clear that it is working as intended, only then will we change the Conversion Action from Secondary to Primary (Primary is where the Conversion Action is no longer in observation mode, and is live).

- 6.4 We shall not, without your prior written consent, use information provided by you for purposes unrelated to the Services.
- 6.5 Subject to clause 6.7 where we breach these terms of engagement, our liability to you is limited to reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach.
- 6.6 Any claims by you for breach of these terms of engagement or any other loss must be made in writing within 12 months of the provision of Services.
- 6.7 Our maximum liability to you under these terms of engagement shall be the amount paid by you for the Services for one month.
- 6.8 We shall have no liability to you for any delay in provision of the Services or any consequential or indirect loss suffered by you arising out of any act or omission of us in the provision of the Services.
- 6.9 Neither party shall be liable for any default due to war, terrorism, strike, lockout, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party including any lockdown due to pandemic.
- 6.10 You indemnify us for any loss or costs we incur as a result of you breaching these terms of engagement.
- 6.11 Where the Services are requested by an agent (or person purporting to be an agent) on your behalf both the agent and you will be jointly and severally liable for payment of all fees and expenses payable to us.
- 6.12 Except as expressly set out in this Agreement, all representations, warranties and conditions, express or implied and however arising, are excluded to the maximum extent allowed by law.
- 6.13 The parties agree that no warranties or guarantees or other terms are to be implied into this agreement, including under the Consumer Guarantees Act 1993, the Fair Trading Act 1986 and the Contract and Commercial Law Act 2017 or otherwise. We and you agree that we are supplying and you are acquiring goods and services for business purposes, and are each in trade, and pursuant to the Fair Trading Act 1986 (FTA), section 5D the parties contract out of FTA sections 9, 12A, 13 and 14(1) and pursuant to Consumer Guarantees Act 1986 (CGA), section 43 the parties agree that the provisions of the CGA do not apply to this Agreement.

## **7. Termination**

- 7.1 You may terminate the Services at any time by providing seven days written notice (unless otherwise agreed between the parties).
- 7.2 We may terminate the Services at any time by providing thirty days written notice (unless otherwise agreed between the parties).
- 7.3 Upon termination, we shall issue an invoice for all time and expenses incurred up until the date of termination. Where you have paid a deposit or fees in advance, we shall deduct the value of our invoice before refunding you any remaining funds.
- 7.4 In the event that our time and expenses up until the date of termination exceed the funds held by us in advance, the remaining balance of any invoices shall become immediately due and payable.

## **8. Disputes**

- 8.1 If a dispute arises between us and we are unable to resolve that dispute within 10 working days of it being raised in writing, then the matter may be referred by either of us to mediation pursuant to clause 8.2.
- 8.2 Mediation may be initiated by either of us writing to the other and identifying the dispute and suggesting an

appropriate mediator. If we are unable to agree upon a mediator within seven days of the written request for mediation then either of us may request the Arbitrators and Mediators Institute of New Zealand to appoint a mediator.

## **9. Privacy and Confidentiality**

- 9.1 You authorise us to:
  - (a) collect, retain and use any information about you, for the purpose of assessing your creditworthiness or marketing products and services to you; and
  - (b) disclose information about you (whether collected by us directly from you or obtained from any other source) to any credit reporting agency for the purposes of obtaining a credit reference or for debt collection purposes.
- 9.2 Each party agrees to ensure that any confidential information about the Services or the other party that is disclosed or obtained as part of these terms of engagement or the provision of Services is kept confidential and will remain confidential after the completion of the Services.

## **10. General**

- 10.1 If any provision of these terms of engagement shall be invalid or unenforceable for any reason then the validity and enforceability of the remaining provisions shall not be affected.
- 10.2 These terms of engagement shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 10.3 If we delay enforcing any provision of these terms of engagement that shall not mean that we waive that provision nor shall it affect our right to enforce that provision later on.
- 10.4 We do not assume any responsibility imposed on you under the Health and Safety at Work Act 2015. Where we need to enter your premises or, at your direction, another party's premises you must advise us of any hazards that we need to be aware of at those premises.
- 10.5 You agree that unless otherwise advised, we may contact you via email in relation to the Services.
- 10.6 If there is any inconsistency between these terms of engagement and the email proposal, quotation or specific terms in an invoice then the terms in the email proposal, quotation or invoice (as applicable) will prevail.