



TERMS AND CONDITIONS

The terms of business set out below are designed to provide certainty to both Brigada Limited (“Brigada”) and you (“the Client”) to avoid any misunderstanding.

Please carefully read through these terms of business and seek clarification if you are unclear on any points. These terms shall prevail over any other and apply to the provision of all of our services.

1. DEFINITIONS

In this agreement, the following definitions apply unless otherwise specified:

- ‘Confidential information’ includes:
 - Source code and other aspects of the backend design developed for the client; and
 - Any other material that the client advises Brigada is confidential.
- ‘Confidential information’ does not include material that is already publicly available or lawfully becomes publicly available after it is received from the client.
- ‘Speculative works’ shall include any work submitted to the client or third party by Brigada on a speculative basis.
- ‘Intellectual Property’ means all intellectual property rights including, but not limited to copyright, inventions, patents and patent applications, trademarks, software, source codes, text, images, designs, logos, data sets, and trade secrets.
- ‘Statement of Work’ means the document in an agreed form, including: Statement of Work (SOW), Web Proposal, RFP, Quote, which records the Goods and/or Services which Brigada agrees to provide and (unless otherwise stated in the Statement of Work) incorporates the terms of this Agreement in relation to the supply of those Goods and/or Services.

2. PAYMENT

- For credit accounts, invoices will be issued on the last day of the month with payment due on the 20th of the month following.
- All invoices are emailed only – the client bears the responsibility to regularly check their email.
- If an account reaches 30 days from the time of its receipt, Brigada reserves the right to charge interest at 2% per month in line with current commercial practices.
- If an outstanding balance reaches 60 days past the due date, no new work will commence until the entire outstanding balance is cleared.
- If an outstanding balance reaches 90 days past the due date the outstanding balance will be passed

to debt collection unless prior arrangements have been made. If a client's debt is passed onto a third party, the client will incur ALL associated costs, including debt collection process cancellation fees if incurred.

- Source code will remain the property of Brigada and be stored on Brigada's server until payment is received in full, after which it will be released to the client.

3. PLANNING & CLIENT'S INSTRUCTIONS

- Proposals, estimates and specifications shall be deemed to interpret the client's instructions. Clients are advised to exercise care and attention when checking these documents before work begins.
- Proposals shall lapse unless accepted within 60 days from the day given, unless otherwise stated.
- Work will be developed to meet the requirements of the latest version of a specification or estimate that has been signed off by the client.
- Brigada shall not be held liable for errors and omissions arising from an oversight or a misinterpretation of a client's verbal instructions.
- Brigada reserves the right to review and/or alter pricing in the event of changed client requirements after the acceptance of a quote or proposal.

4. SPECULATIVE WORKS

Speculative Works shall remain the property of Brigada, unless the client agrees to proceed with utilising the work and pays in full for such work, in which case Brigada assigns to the client all rights, including copyright, of these Speculative Works with effect from the date Brigada receives payment for such works. No use of Speculative Works, or any idea obtained from such work, shall be used by the client unless paid for in full or the express written agreement from Brigada is obtained.

5. INACTIVE, SUSPENDED AND CANCELLED PROJECT

If work is held awaiting client instructions for longer than 14 days without prior arrangement, Brigada reserves the right to discontinue the project and invoice work done to date and materials used in that work.

The suspension of any work at the client's request will entitle Brigada to full payment for all work and/or services in progress at the time of suspension and for any work already completed that has payment outstanding. Brigada reserves the right to refuse the quotation for the uncompleted portion of the contract if work is suspended for more than 30 days.

If a project is terminated before completion, Brigada will be compensated for all fees and disbursements incurred up to the date of termination.

6. PROJECT RESCHEDULING

Brigada requires content, design feedback and final launch feedback in a timely manner.

- If a project milestone is rescheduled more than 2 times we reserve the right to charge a rescheduling fee to cover administration costs.

- If a project milestone is rescheduled more than 4 times we reserve the right to put the project on hold, invoice completed work and charge a rescheduling fee when the project is resumed.

7. COPYRIGHT, INTELLECTUAL PROPERTY AND CONFIDENTIALITY

Trademarking, protection and management of IP and infringements are the sole responsibility of the client. Brigada will not be liable for any costs or losses, real or otherwise, that may be incurred.

Except for any third party software or pre-existing software (including but not limited to code libraries and frameworks) belonging to Brigada, all intellectual property developed relating to the Website shall be the sole property of the client.

The client will, upon payment in full for the work, receive a non-exclusive, royalty-free license to utilise to use any pre-existing software belonging to Brigada and any third party software that may be required to operate or maintain the Website.

Upon completion of the project, Brigada will also receive an irrevocable, royalty-free license to utilise the Intellectual Property created by Brigada and employed in the website.

Brigada will treat all confidential information belonging to the client in the strictest confidence and will not, without the prior written approval of the client:

- Disclose the confidential information to any person or organisation outside Brigada; or
- Disclose the confidential information to any director, employee, or agent of Brigada who does not need to know the Confidential Information for the purpose of this Agreement; or
- Use any of the confidential information other than for the purpose of this Agreement or otherwise in any way which will be detrimental to or in conflict with the interests of the client.

8. HOSTING

If the Client retains the Brigada to host a website understood that:

- Hosting is not guaranteed to be live 100% of the time due to its dependency on servers that require software upgrades and possible technical challenges which may interrupt its service.
- Brigada will charge fees for hosting, and domain registration that is non-refundable. If unpaid, Brigada reserves the right to shut down the website until such time as full payment is received.
- To protect all Clients, access to our server will not be given to any Client or their IT supplier. Any updates required to the setup, files or records will be made on behalf and charged on a time-taken basis.
- Any website that Brigada deems posing a risk to either the security of their server and/or other client sites, may be advised that the service will be immediately discontinued and requested to find an alternative host at their own cost.
- Brigada will not be liable for any loss that may be incurred in relation to the services provided, third party Apps, hosting, hacks or breaches of security.

9. CLAIMS FOR REMEDY

Any complaint shall be made in writing within 30 days of receipt of goods or services in order to remedy faults or complaints. Any disputes pertaining to invoices received after 30 days will be null and void.

10. OUTSIDE INFLUENCES

Brigada shall not be responsible for any delay, default loss or damage due to any industrial disputes, accidents, hackers, Acts of God, equipment failure or mischievous damage or other causes beyond Brigada's control.

11. LIABILITY & INDEMNITY

Brigada shall not be liable to the client for direct, indirect, special, incidental, consequential, punitive or exemplary damages of any kind whatsoever including any lost data, lost business, lost profits, injury, claim, liability or damage or failure of security resulting in any way occasioned by errors in carrying out the work or by delay in delivery or by failure in equipment whether foreseeable or not.

If, despite any other provision in these terms, we are determined liable to you for losses, unless otherwise agreed in writing our liability is limited to a maximum amount equal to the total fees paid by you to Brigada under the project's statement of work.

The client shall indemnify Brigada against all claims in respect of any loss or damage including consequential loss sustained by a third party howsoever caused after the receipt of goods or services by the client.

12. TECHNOLOGY

Brigada only supports technologies for browsers and computer settings that were current at the time of development, and up to 6 months post launch. Digital third-party platforms including CMS platforms, browsers, plugins or licensed products can become out-of-date and unsupported by their providers over time. These situations are entirely out of Brigada's control.

We accept no responsibility if technology changes and a product or service is no longer accessible.

Brigada will not actively build or develop on unsupported digital third-party platforms and will advise suitable upgrades or alternatives which will involve investment if required. Maintenance in some circumstances may still be available for short-term fixes however no responsibility can be taken by Brigada for the security or stability of such work.

13. ILLEGAL OR LIBELLOUS MATTER

Brigada shall be indemnified by the client in respect to any claims, costs and/or expenses arising from any matter, which is illegal, libellous in matter or in breach of the Fair Trading Act 1986 or any other statute or any infringement of copyright, patent or design.

14. REMOVAL OF MATERIAL FROM SERVER

Brigada reserves the right at all times to remove without notice a client's material from its server if Brigada deems material on the client's website to be of an illegal and/or libellous nature.

Brigada reserves the right at all times to remove without notice a client's material from its server for failure to pay fees owed in accordance with Brigada's payment terms.

15. SUITABILITY

No guarantee shall be given or implied that the goods or services supplied in accordance with the client's instructions, or designed by Brigada in accordance with those instructions, are suitable for specific market requirements unless those are documented and/or form part of the original Proposal

16. CONSULTATION

Brigada agrees to ensure full consultation with the client throughout the development process.

17. CONSUMER GUARANTEES ACT 1993

In circumstances where Brigada is deemed to be a supplier if the client acquires our goods or services for the purpose of business as defined in the Consumer Guarantees Act 1993, the provisions of the Act do not apply.

18. GOVERNING LAW

This contract shall be governed by New Zealand law and the client and Brigada submit to the exclusive jurisdiction of the New Zealand Courts.

19. DISPUTE RESOLUTION

You will not commence any court or arbitration proceedings relating to a question, difference or dispute relating to this agreement, unless you have first complied with this section.

Where any Dispute arises, you (or your representative) and Brigada will meet and negotiate in good faith in an attempt to resolve the Dispute amicably by good faith discussion.

Where the representatives of the parties do not resolve the Dispute within five (5) Business Days (or as agreed) of initiating negotiations, the relevant parties agree to mediate any Dispute in terms of the Resolution Institute standard Mediation Agreement (NZ version). The mediation will be conducted by a mediator, and the costs of the mediation will be borne by the party raising the dispute unless otherwise agreed or determined by the mediator.

If the parties fail to settle the Dispute by mediation then either party may initiate arbitration (but not litigation) in accordance with the Arbitration Act 1996 to resolve the Dispute.

Nothing in this section will preclude a party from taking immediate steps to seek urgent injunctive or equitable relief before an appropriate court.

20. PRIVACY

The client noting the requirements under the Privacy Act 1993 authorises and directs that Brigada can seek and obtain from and supply any information concerning the credit or business standing of the client to any other person whether trader, merchant, firm, organisation, company or any agency or source whatever including any credit agency or association or the like and directs any such person to supply and receive and record such information to and from Brigada.