

The New Black Online Solutions Limited

Terms of Service

1. **GENERAL**
- 1.1 In these Terms of Service:
 - (a) "Agreement" means any Proposal relating to the Services, and these Terms of Service.
 - (b) "We" or "Us" means The New Black Online Solutions Limited and its successors and assigns.
 - (c) "You" means the person, firm, company or entity buying Services from us.
 - (d) "Price" means the price for the Services indicated on the Proposal or an invoice issued by us.
 - (e) "Proposal" means our proposal, engagement letter or similar document provided to you detailing the Services, Price and any other key terms.
 - (f) "Services" means all Services we will supply to you under a Proposal or invoice relating to brand development, website design and hosting, digital marketing or any other services.
2. **PRICE**
- 2.1 **Price plus tax:** You will pay the Price together with the amount of any Goods and Services Tax or any other tax which may be payable in respect of the supply of Services or otherwise under these Terms of Service.
- 2.2 **Estimate or Quotation:** Any quotation or estimate we have made for the supply of Services constitutes an invitation to treat and not a binding offer. All estimates or quotations lapse after 30 days but we reserve the right to change or withdraw any quotation or estimate without notice at any time. Estimates and quotations are based on the anticipated creative, consultation services, time and production requirements and our expectations of client co-operation in provision of content, meeting deadlines and approval.
- 2.3 **Office expenses:** Unless otherwise agreed in writing we reserve the right to add a charge for office expenses such as for in-house colour printing, travel, postage.
- 2.4 **Change of Rates:** We reserve the right to change any previously notified hourly rate for casual work on 30 days' written notice to you.
- 2.5 **Price variations:** The Price may be revised during provision of the Services in circumstances including but not limited to:
 - (a) delays caused by you;
 - (b) you request additional work after sign-off;
 - (c) you make changes to your website, Google account or to social media and other accounts that we manage for you that result in us having to do extra work to remedy issues;
 - (d) you request additional work after sign-off;
 - (e) you choose to purchase additional Services;
 - (f) additional third party costs incurred;
 - (g) where you request changes to the final work product; or
 - (h) other circumstances outside our control.If the Price is likely to deviate significantly from the estimate we will inform you wherever possible. We will obtain your approval where the Price will exceed the estimate by more than 10%.
- 2.6 **No deductions:** All payments by you will be full, free and clear of any deduction, withholding, set-off, counterclaim or other claim.
- 2.7 **Termination:** Unless otherwise stated in our Proposal the following termination terms will apply:
 - (a) In relation to management Services: you may terminate this Agreement at any time on written notice of at least 30 days before your monthly account rollover. During the notice period we will continue providing the Services while preparing to transfer accounts etc back to you. You agree that you will allow us to continue to perform the Services during the notice period including but not limited to not revoking our access to your accounts. If you prevent us from performing the Services, we will be entitled to charge an additional fee for additional work undertaken as a result of your actions. Where termination occurs before we start work any deposit paid may be refunded at our sole discretion. We may terminate this Agreement at any time on at least 2 weeks' notice. In these circumstances we will provide you with handover information to assist your new provider.
 - (b) In relation to design or development Services: termination may only be accepted at our discretion. If we accept termination after we have started to perform the Services, we reserve the right to charge you for work that has already been done where the amount of any deposit paid is not enough to compensate us for that work or you have not paid a deposit.
- 2.8 **Cancellation of Webhosting:** Where your regular payments for webhosting Services are overdue we reserve the right to turn your website off until your account is brought up to date.
3. **PAYMENT**
- 3.1 **Payment terms:** All our invoices are payable as stated in our Proposal or 7 days after the date of our invoice. If a deposit is payable, we will not start performing the Services until that amount is received. We also reserve the right not to release deliverables to you until the account has been paid in full.
- 3.2 **Expenses:** Agreed out of pocket expenses will be invoiced in advance and we reserve the right not to progress the associated Services until we receive these payments.
- 3.3 **Acceleration:** Notwithstanding any credit period, full payment for all unpaid Services will become due immediately upon:
 - (a) You or any guarantor becoming insolvent or bankrupt;
 - (b) The commencement of any act or proceeding in which your or any guarantor's insolvency is involved; or
 - (c) You or any guarantor resolving to wind up or being ordered to be wound up or having a receiver, liquidator or official manager appointed in respect of all or any of your assets; or
 - (d) You or any guarantor ceasing to trade.
4. **PENALTY FOR LATE PAYMENT**
- 4.1 **Default interest:** Failure by you to make payment in full of any amount payable pursuant to this Agreement on the due date constitutes a default and, without prejudice to any other rights or remedies available to us, simple interest at 1.5% per month will be payable upon demand and from the due date until payment.
- 4.2 **Suspension:** If any payments are overdue, we reserve the right to suspend performance of the Service until your accounts is brought up to date.
- 4.3 **Legal costs:** You will indemnify us against all loss, costs and expenses, including legal costs on a solicitor/client basis, which we may suffer or incur as a result of any failure by you to make due and punctual payment.
5. **PERFORMANCE OF THE SERVICES**
- 5.1 **Time:** We undertake to use reasonable endeavours to deliver the Services within the time specified by us but dates we give for performance will be indicative only. No date specified by you will be binding on us without our written agreement. Where you request changes or additions to the Services this will affect the delivery timelines.
- 5.2 **Inclusions:** In relation to website design Services the Price includes:
 - (a) Design: one main design;
 - (b) Revisions: up to two sets of revisions;
 - (c) Meetings: meetings only as we consider reasonably necessary. Some meetings may incur extra charges;If you are not happy with the design at this stage, you will pay the Price in full and then either:
 - (d) This Agreement will be at an end; or
 - (e) You may commission us to make further design revisions at our standard design rates;
- 5.3 **Use of reports:** Any work product or reports prepared or procured by us as part of the Services are to be used only by you.
- 5.4 **Services to be supplied:** You acknowledge and agree that the Services are limited to those set out in the invoice, order form or other similar document issued by us. We may, at our discretion, supply you with the final work product but we do not supply the original artwork files, links, development files or other material generated.
- 5.5 **Declining Services:** We reserve the right to decline any request for work that we consider is contrary to our professional standards or that in our view may be harmful to your or our reputations. If you object to us declining any work under this clause we have the right to terminate this Agreement with immediate effect.
- 5.6 **Portfolio:** You agree that we may use samples of the work we have prepared on your behalf for the purposes of marketing our services and our business.
- 5.7 **Intellectual Property:** Unless otherwise agreed, we retain intellectual property rights in all original work we have prepared on your behalf as part of the Services until the Price is paid in full. We also retain copyright in unused or rejected content generated in the course of performing the Services. All trademarks, copyright and other intellectual property embodied in or in connection with product, service, software and any related documentation are our property or our suppliers' property and cannot be reused or sold by the client without our specific consent. All code parts produced during the work relationship is owned by us and may be reused in future projects, although the actual implementation (website, web app, etc.) of that code is yours. We will not reproduce that same final implementation elsewhere.
- 5.8 **Websites:**
 - (a) For all web related projects, unless specifically stated, you will retain 100% ownership of the web page design only (ownership is not applicable to proprietary software and programs or source code, such as databases, e-commerce and/or content management systems, web application source code or flash files/animations);
 - (b) We will test all our markup and CSS in current versions of all major desktop browsers to ensure that we make the most from them. Users of older or less capable browsers or devices will experience a design that is appropriate to the capabilities of their software.
- 5.9 **Webhosting:** We offer a web hosting service to host the websites we have built for our clients. This is recommended in order to ensure ongoing

- quality of service and is a mandatory requirement for websites incorporating a content management system (CMS) or e-commerce system. Although the standard of our hosting packages is high, the agency is unable to guarantee 100% up-time (as no web host would) nor accept any responsibility for any error, omission or misrepresentation in relation to the websites hosted or for any loss, damage, cost or expense (whether direct, indirect, consequential or otherwise) suffered by any user of the websites hosted. We make no warranties or representations of any kind that hosting will be uninterrupted, error-free or that the website or the server that hosts the website are free from viruses or other forms of harmful computer code. In no event will we, our employees, contractors or agents be liable for any direct, indirect or consequential damages resulting from the hosting of websites on our servers.
- 5.10 **Exclusions:** Unless itemised in our estimate the Price excludes: stock library images, photography or video outside of our in-house resources; bespoke illustration; copywriting; website hosting or backups; translation services; travel and accommodation; talent (models and actors etc.); any third-party media, production, distribution, couriers, proofs, mock-ups, proof reading or printing that may be required; other third-party costs incurred (payment charges) etc.
6. **YOUR OBLIGATIONS**
- 6.1 **Nominated Person:** You will nominate a person in your organisation to be our primary point of contact. That person will be responsible for complying with your obligations as set out in this clause, including obtaining sign-offs. We are entitled to rely on instructions and sign-offs given by that person and are not required to make further inquiry at any time.
- 6.2 **Content:**
- (a) You will provide us with any relevant information or material required to enable us to perform the Services.
- (b) Unless otherwise agreed you will supply the majority of the copy and images. Copywriting services or copy advice, illustration and photography can be provided for an additional cost. Where we source royalty-free stock images we may pass on charges for our time doing so;
- (c) Where information you give us is incorrect and we are required to undertake additional work we reserve the right to charge for such additional work;
- (d) Where you supply us with images they must be in digital format and of suitable quality or resolution. If they are not we may decline to use them;
- (e) When we send you drafts or proofs you will check them thoroughly. We will not finalise work until we are satisfied with your written sign-off. Once final proofs have been signed off, we cannot be held responsible financially or otherwise for any errors or omissions in the end product;
- (f) Requests for changes to text must be made in writing, either by email, notes on pdf file, or scanned written notes on hard copy. We cannot guarantee that textual changes requested orally will be implemented.
- 6.3 **Third Party Rights:** You warrant that:
- (a) you own any material you provide to us, free of any claims or encumbrances and are entitled to provide that material to us; and
- (b) any material you provide to us is yours and does not violate any existing intellectual property rights including, without limitation, copyright, trade mark, or any other proprietary or contractual rights.
- 6.4 **Intellectual Property Protection:** It is your responsibility to seek intellectual property protection if desired for any creative/intellectual property we supply to you.
- 6.5 **Security:** It is your responsibility to back up and secure your data.
7. **OUR OBLIGATIONS AND WARRANTIES**
- 7.1 We warrant that:
- (a) We have the right to enter into this Agreement;
- (b) We will perform the Services to a reasonable standard of care and skill;
- (c) We will perform the Services in accordance with relevant laws.
- 7.2 We do not warrant that we will deliver any increase in revenue for your business.
- 7.3 We cannot guarantee you exclusivity of any marketing concept, strategy, design or other intellectual property provided. Therefore, we will not accept liability for any alleged claim by you or any third party as the result of unintentional similarity in part or whole of a third party's copyright protected or registered trademark or brand, identity, strapline, colour usage, image style and content, product or otherwise.
8. **LIABILITY**
- 8.1 **Limitation of liability:**
- (a) **Claims:** We will have no liability for unsatisfactory Services or work product unless you notify us in writing of your claim within 14 days after delivery of the final work product or each stage of the project (as appropriate);
- (b) We will have the option, exercisable at our discretion, to replace or give credit for any services in respect of which any claim is made or proven or to refund a portion of the price paid for the Services, thereby fully discharging all our legal liability;
- (c) If either party is liable for direct losses arising from a breach of this Agreement or for negligence, the liable party's obligation to pay damages or losses is limited to the Price paid for Services under this Agreement in the three months immediately prior to the event to which the liability relates. This limitation does not apply to any loss or damage caused by fraud, wilful breach or wilful damage;
- (d) We are not liable for any loss caused by you, or any loss that results from your failure to take reasonable steps to avoid or minimise your loss. In particular, we are entitled to rely on the written sign-off of your nominated primary point of contact, which confirms all work is approved and ready for production;
- (e) Notwithstanding any other provision of this agreement, neither party will be liable for indirect, special, consequential or similar damages or losses, including but not limited to loss of profit or revenues or other financial or economic losses of any kind and whether or not the other party has been advised of the potential for such damages.
- 8.2 **Indemnity:** You will be liable for, and will indemnify us against, any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by us, whether direct or consequential (including without limitation any economic loss or other loss of profits, business or goodwill), arising out of any dispute or contractual, tortious or other claim or proceeding brought against us arising from any third party claim including but not limited to claims that the work infringes a third party's intellectual property rights.
9. **GENERAL**
- 9.1 **Variations:** We reserve the right to change these Terms of Service at any time with effect from the time we notify you. Any changes that are detrimental to you will not take effect during the term of the Agreement.
- 9.2 **Events outside our control:** If any cause beyond our reasonable control including but not limited to order of a government or other authority, strike, lockout, labour dispute, delays in transit, difficulty in procuring components or equipment, embargo, accident, emergency, natural event interfere with our performance of any of our obligations under these Terms of Service then we may at our sole discretion suspend our performance of any such obligation or cancel any contract for the purchase of Services and we will not be liable to you in any respect.
- 9.3 **Waiver:** These Terms of Service remain in force notwithstanding any neglect, forbearance or delay in enforcement. We will not be deemed to have waived any condition unless such waiver will be in writing and such waiver will only apply to the particular transaction to which it refers.
- 9.4 **Severability:** If any clause or provision of these Terms of Service will be held illegal or unenforceable by any judgment of any Court or Tribunal having competent jurisdiction, such clause will not apply to this Agreement. The remaining provisions of this Agreement will remain in full force and effect as if the clause or provision held to be illegal or unenforceable had not been included.
- 9.5 **Privacy Policy:** Any personal information collected by us in connection with this Agreement will only be used or disclosed for the purposes of ensuring performance of this Agreement and any future like arrangement or arrangements. This may include disclosure within our organisation and to other parties involved in performing the Services. We agree to comply with relevant privacy laws in respect of any personal information collected in connection with the provision of the Services and any future like arrangement or arrangements.
- 9.6 **Electronic Communications:** You consent to receive commercial electronic messages from us. If you wish to opt out of receiving these messages you can unsubscribe from the mailing list.
- 9.7 **Confidentiality:** Each party must keep confidential during the term and after termination of this Agreement the existence and terms of this Agreement and all information of a confidential or sensitive nature supplied by the other party to this Agreement except to the extent that disclosure is required by law or where such information is or becomes available in the public domain without breach by a party of its confidentiality obligations under this Agreement. A party may disclose such information to its legal and other advisers, bankers and other persons who are subject to an obligation of confidentiality
- 9.8 **Governing law and jurisdiction:** This Agreement is governed by and construed in accordance with the laws of New Zealand in English, and each of the parties submits to the non-exclusive jurisdiction of the Courts of New Zealand.