

HARPER DIGITAL LIMITED

Terms of Trade

These Terms of Trade apply to all contracts for the supply of Services between Harper Digital Limited a company incorporated under the laws of New Zealand (Company Number: 6090258) and the Customer.

In the event of any inconsistency with these Terms the Schedules shall prevail.

1. DEFINITIONS

- 1.1 **"Amount Owing"** means the price of the Services plus GST, all costs, damages, charges, insurance charges, expenses, disbursements, penalties and all the other moneys for which you are liable to pay us.
- 1.2 **"CCA"** means the Contract and Commercial Law Act 2017.
- 1.3 **"CGA"** means the Consumer Guarantees Act 1993.
- 1.4 **"Customer", "you" or "your"** means the person, firm, organisation, partnership, corporation, trust or other entity contracting with us.
- 1.5 **"Terms"** means the terms of trade as contained in this document which may be updated by us from time to time.
- 1.6 **"Default"** includes you, or any Guarantor(s):
- (a) Being unable to pay your debts as they fall due;
 - (b) Failing to comply with these Terms or any other agreement with us;
 - (c) Having an application made (or resolution passed) for a receiver, liquidator, administrator or other statutory manager to be appointed;
 - (d) Being convicted of a criminal offence;
 - (e) Doing any act that in our opinion causes or threatens the risk, safety, condition or safekeeping of any Goods or Services we supply to you;
 - (f) Ceasing to carry on business or suffering a material adverse change which in our opinion changes your financial position or creditworthiness; or
 - (g) Indicating by notice or conduct that you no longer intend to comply with your obligations under any agreement with us.
- 1.7 **"Guarantor"** means all signatories who have signed our order form.
- 1.8 **"Harper Digital Limited", "we" or "us"** means Harper Digital Limited, registered office at 1H Park Avenue, Takapuna, Auckland, 0622.
- 1.9 **"Hosting"** means any of our Services that we may carry out in relation to the hosting of any website on your behalf.
- 1.10 **"Minimum Term"** means the minimum timeframe you have to engage us for each Service as set outlined Schedule Two.
- 1.11 **"Projects"** means any services carried out by us to be delivered to you, as a one-off Project. Generally, this refers to website development and website

refresh services. Project does not refer to Subscription Services.

- 1.12 **"Quote" or "Quoted"** means the initial quotation provided by us as an estimation of the costs for supplying the particular Service to you.
- 1.13 **"Services" or "Services"** means the Hosting, Projects and Subscription Services.
- 1.14 **"Subscription Services"** means paid ads (for example Google /Meta/LinkedIn/Pinterest/Programmatic/Bing/Facebook, and other media publishers) and SEO.
- 1.15 **"Statutory Holidays"** means any public holiday in New Zealand as defined in the Holidays Act 2003.
- 1.16 **"Working Day"** means any day other than Saturday, Sunday or a Statutory Holidays. A Working Day is deemed to commence at 9am and terminate at 5pm.

2. INFORMATION AND DELAY

- 2.1 The Customer warrants that:
- (a) You will endeavour to respond in a timely fashion, to all requests by us for information or content items (such as logos, fonts, text and images).
 - (b) You accept any delay in your response may hold up in us supplying the Services to you, and this may void any deadlines agreed to by us.
- 2.2 You shall advise us of any alteration to your entity structure which has the potential to affect your performance under these Terms and/or of any revocation of an agent's authority to engage our Services. Until such written confirmation is received and expressly accepted by us in writing, you shall remain liable for any Amount Owing and our conduct shall not be deemed acceptance or affirmation of any assignment or revocation.

3. PRICING AND QUOTES

- 3.1 We will provide you with a Quote prior to the Services being carried out.
- 3.2 Unless specifically stated all the prices (including any Quote) will be increased by the amount of any GST and other applicable taxes and duties unless expressly agreed by the parties.
- 3.3 Unless withdrawn in writing our Quote is available for acceptance for thirty days (or any longer period stated in the Quote) from the date of the Quote, after which it will be subject to our written approval. Your acceptance should be confirmed in writing prior to our supply of Services, but in the absence of written acceptance for urgent matters, our commencement of supply will be taken as your acceptance by conduct.
- 3.4 We may increase the price as a result of any and all costs incurred as a result of your method of payment including without limitation any credit card costs and you authorise us to deduct the price and the applicable delivery charge(s) from such card.

- 3.5 There may also be an associated cost with using third party provider as defined in clause nine that will be payable by you.
- 3.6 We reserve the right to alter the Quote at any time due to circumstances beyond our control and/or for additional Services provided.
- 3.7 An order or letter of acceptance that contains terms or conditions in conflict with our Quote or these Terms will not establish a binding contract except at our sole discretion.

4. **RETAINER**

- 4.1 Before commencing any Services, we may require an advance against fees, disbursements and other charges ("**Retainer**").
- 4.2 This Retainer will be deposited into our nominated bank account.
- 4.3 Unless otherwise agreed between the parties, we will require a Retainer equivalent to:
- (a) 50% of the Quote for the Project and further progress payments; and/or
 - (b) 100% of the first month for Subscription Services; and/or
 - (c) 100% of the Quote for Hosting.
- 4.4 The Retainer is non-refundable except where it exceeds the total invoices issued by us, when all Services have been provided.
- 4.5 The parties agree that the Retainer will be used to pay any invoice rendered by us.

5. **PAYMENT**

- 5.1 Our prices are based on costs and charges at the date of supply unless specifically stated otherwise all our prices are in New Zealand dollars.
- 5.2 All invoices provided are due and payable within seven Working Days from the invoice date unless otherwise stated or agreed between the parties.
- 5.3 You agree that you shall not deduct, withhold or set-off any amount from or against any monies payable to us.

6. **VARIATIONS**

- 6.1 Any changes required to the Services Quoted, reasonably foreseeable by us from the date of Quote, shall be a variation. Variations include without limitation:
- (a) Any change to the scope, quality or timing of the Services (including, but not limited to, attendances of an urgent nature, on a Public Holiday or outside normal business hours);
 - (b) Any circumstance that changes the cost of performing our Services from that reasonably foreseeable at the time of Quote; or
 - (c) Any other circumstance which is stated in these Terms to be a variation whether arising out of any oral or written instruction from you or your representative or otherwise.

- 6.2 We will advise you as soon as practicable of any change to the price arising out of any variation. Variations will generally be valued on the same basis or rates as corresponding Services. Where Services do not directly correspond to the Quote or cannot be performed in the most economic manner, variations may at our sole discretion be priced on the basis of time and Services (charge-up) at our normal rates and margins current at the time of performing the Services.

- 6.3 Your acceptance of any variation should be confirmed in writing prior to commencement of the supply, but in the absence of written acceptance our supply of the Services pertaining to the variation will be taken as your acceptance by conduct.

- 6.4 We shall be entitled to be paid progressively for the reasonable value of any variation whether or not the value of it has been agreed.

7. **CANCELLATION**

- 7.1 Unless otherwise expressly specified in Schedule One or otherwise agreed, you may not cancel any Services in whole or part without our written consent.

- 7.2 Any request made by you to cancel or reschedule the supply of the Services must be in writing and received by us seven days in advance of the scheduled commencement date. If sufficient notice of your intention is received, we may, at our sole discretion, refund your Retainer. If the required notice pursuant this clause is not provided, we reserve the right to retain any amount paid in advance and any other rights we have, including (but not limited to) requiring you to meet all costs and/or losses (including profit and time) incurred by us as a result of you cancelling any order.

- 7.3 We may at any time and without reason or notice to you and/or any Guarantor(s) cancel without liability any agreement either in whole or part for the supply of the Services to you. This clause shall not affect our claim against you for any Amount Owing.

8. **TERMINATION**

- 8.1 Without prejudice to any other right or remedy it may have, whether under this Agreement, under statute or otherwise, we may terminate this Agreement and be relieved of any further obligation to provide any Services to the Customer if:

- (a) The Customer breaches any of its obligations under this Agreement; and
 - (i) The breach is not capable of being remedied; or
 - (ii) The breach is capable of being remedied and the party in breach fails to remedy the breach within five Working Days after notice in writing has been given to the

- party in breach requiring such breach to be remedied; or
- (iii) an Insolvency Event occurs in respect of the other party.

9. PRIVACY ACT CONSENTS AND RIGHTS

- 9.1 You acknowledge any information provide by you to us is being collected and will be maintained in accordance with the Privacy Act 2020, and that you have rights of access to and correction of personal information held by us.
- 9.2 You agree and authorise us to obtain or divulge any information about you (including adverse information) from or to any third party (including credit reporting and debt collection agencies) in the course of our business activities including credit assessment, debt collection and direct marketing activities.
- 9.3 We are not responsible to you or any third party for unauthorised access to your information or privacy breach unless the unauthorised access or privacy breach results from our failure to meet our security obligations. If your data security is breached by act or omission of a third party, we will take immediate steps to contain the breach, analyse its extent and report the breach in accordance with our obligations under the Privacy Act and take all steps to protect your data to the best of our abilities.

10. HOSTING

- 10.1 You acknowledge that we may utilise third party providers to deliver our Subscription Services and as such, we may be bound by their rules and associated Terms and Conditions (these third party provider solutions may also experience downtime outside of our control, which may result in some or all of our Subscription Services being unavailable).
- 10.2 We provide Hosting to you as a reseller of both WP Engine Inc. and Open Host (Internet Services Group Limited). The relevant Terms and Conditions can be viewed below:
- (a) Open
Host: <https://store.openhost.net.nz/information.php>; and
- (b) WP Engine:
<https://wpengine.com/legal/terms-of-service/>
- 10.3 We agree to communicate promptly any planned server maintenance or issues with the provision of Hosting services to you.

11. DISPUTES

- 11.1 You will notify us promptly of any defects discovered in our Services. We will remedy any defect in our Services at our sole discretion rectify the issue reported to us in writing within 30 days of completion of the supply. This warranty is in addition to any rights you may have as a consumer under the CGA.
- 11.2 You agree that any dispute arising in connection with these Terms (**a Dispute**) other than relating to

payments shall in the first instance be subject to the following resolution process:

- (a) A party shall not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first complying with the provisions of clauses 10.2 (b) to 10.2 (g);
- (b) If a party considers that a Dispute has arisen, it may issue a written dispute notice to the other Party (**Notice**), setting out reasonable particulars of the matter in Dispute. For a period of 30 days after a party receives a Notice, the parties shall use best endeavours and in good faith negotiate to attempt to resolve the Dispute and shall (subject to privilege) furnish to the other party all information with respect to the Dispute which is reasonably requested by the other party;
- (c) If the Dispute has not been resolved within 30 days after receipt of the Notice, or within such further period as the parties agree in writing, the parties shall attempt to settle the Dispute by mediation administered by Resolution Institute (or, if for any reason Resolution Institute does not exist or is unable to act, then a mediator selected by the current President of the New Zealand Law Society), before having recourse to any other dispute resolution processes which may be available to the parties;
- (d) The mediation described in clause 10.2 (c) shall be conducted in accordance with Resolution Institute Guidelines as from time to time in force;
- (e) If the Dispute has not been resolved within 30 days, or within such further period as the parties agree in writing, after the commencement of mediation, then either party may exercise any legal rights which may be available to it;
- (f) Each party shall use its best endeavours to ensure that, where a Dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimum effect on the ability of any party to perform its obligations in accordance with these Terms;
- (g) Notwithstanding the above, nothing in this clause 10 shall prevent any party from seeking urgent equitable relief before an appropriate court.

12. DEFAULT

12.1 In the event of your default of any of these Terms (and until the default is corrected):

- (a) We may immediately suspend or cancel our Services, but without releasing you from any liability in respect of any breach

or non-observance of any of these Terms with prejudice to our right to retain the Retainer and to claim damages.

- (b) You will be liable for all costs and losses including loss of profit arising out of such suspension or termination. Any discounts may be disallowed and we reserve the right to withhold or refuse any Services until you correct the default;
- (c) Any Amount Owing will immediately become due and payable notwithstanding that the due date has not yet arisen;
- (d) We may charge you interest on the Amount Owing at the rate of 2.5% per month; and
- (e) You shall be liable for all costs incurred or to be incurred by us in recovering the Amount Owing including debt collection agency commission and full legal costs.

13. **FORCE MAJEURE**

13.1 Without limiting any other provisions of these terms we shall not be liable for any claims resulting from our delay or failure in the performance of any obligation or the exercise of any right as a result of a **Force Majeure** event.

13.2 Force Majeure means any event outside our reasonable control including acts of God, declared or undeclared war, fire, flood, storm, slide, earthquake, hurricanes, cyclones, riot, power failure, industrial action, defaults of manufacturers and suppliers, the inability to obtain Materials, equipment or other facilities that are not caused by a failure to pay, labour disputes, theft, any criminal act or other similar events beyond our control that may prevent or delay our supply Services to you.

13.3 Nothing in this clause shall excuse payment of any Amount Owing due or which becomes due under these Terms and the occurrence of a Force Majeure event shall not give you a right to cancel any Service with us.

14. **LIMITATION OF LIABILITY**

14.1 Notwithstanding any other provision of this Agreement, we shall not be liable to you, under the law of contract, tort, equity or otherwise (including breach of statutory duty), for any damages arising out of or in connection with this Agreement that are indirect (meaning not arising in the ordinary course as a direct, natural or probable consequence of the act or omission complained of), regardless of the cause of such damages or whether you had been advised of the possibility of such damage, including loss of profits, loss of savings, loss of revenues, or loss of data.

14.2 Subject to clauses 13.1 and 13.3, our liability to you for damages (under the law of contract, tort, equity or otherwise) arising out of or in connection with this Agreement will be limited in aggregate to the amount received by us from you for the performance of the Services.

14.3 Our liability under any statutory right or any condition or warranty, including any implied by the CCA the Fair Trading Act 1986, the CGA or similar Act is, to the maximum extent permitted by law, excluded and you acknowledge that the Services are, for the purposes of the CGA acquired in trade.

15. **PERSONAL GUARANTEE AND INDEMNITY**

15.1 You indemnify us and our directors, employees and personnel from all costs, losses, claims, expenses, damages and liabilities that may arise now and in the future as a result of us providing Services to you.

15.2 Where the you are:

- (a) A registered Company, we reserve the right to require all obligations, unlimited guarantees and indemnities from the directors or major shareholders of that Company. Where you are a subsidiary Company, we require a guarantee from the parent Company of that subsidiary and/or the directors or major shareholders of the parent Company;
- (b) A Trust, we reserve the right to require all obligations, unlimited guarantees and indemnities from each trustee; or
- (c) A Partnership, we reserve the right to require all obligations, unlimited guarantees and indemnities from each partner.

any such Guarantor(s) hereby guarantee all the obligations of the Customer on the Terms set out in this clause.

15.3 In consideration of us supplying the Services to you, the Guarantor(s) guarantee and indemnify the due performance and observance of all the your obligations contained in these Terms including upon demand, the payment of all Amounts Owing which are or may become due to us by the Customer.

15.4 The Guarantor(s) acknowledge:

- (a) This is a continuing Guarantee;
- (b) Their obligation to us is as a principal debtor;
- (c) If there is more than one Guarantor their liability shall be joint and several;
- (d) If more than one person is named and/or intended to sign as a guarantor but not all such persons sign as a guarantor each signatory agrees to be bound and liable for the full amount owed to us;
- (e) Their liability under the guarantee shall not be effected or discharged by the granting of time, or by the release, abandonment or waiver of any rights against the Customer, or the liquidation or bankruptcy of the Customer (including where any payment made by you to us is recovered by a liquidator or a trustee in bankruptcy as a preference);

- (f) This Guarantee is in addition to and not in substitution of any other guarantee or security or other rights which we may presently have or may subsequently acquire and may be enforced without the necessity of making demand or enforcing any such other guarantees, securities or rights; and
- 15.5 The Guarantee shall continue in full force until we agree to release them in writing and even if the Customer's obligations to us has been fully paid, satisfied or performed or we release any other party from partial or total liability..
- 16. NOTICES**
- 16.1 Any written notice given under these Terms shall be deemed to have been given and received:
- (a) By handing the notice;
 - (b) By leaving it at the address of the other party as stated in this Contract;
 - (c) By sending it by registered post to the address of the other party as stated in this Contract;
 - (d) If sent by email to the other party's last known email address;
- 16.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown:
- (a) In the case of a notice transmitted by facsimile, or delivered after 5.00 p.m. on a Business Day or at any time on a non-Business Day, at 9.00 a.m. on the next Business Day; or
 - (b) In the case of any letter on the third Business Day after posting;
 - (c) In the case of an email, 8 hours following the sending of the email, provided the sender has received no error messages in respect of that email in that time and, in the case that the message would be deemed by this clause to be received on a non-Business Day, it shall instead be deemed to be received at 9 a.m. on the first Business Day thereafter.
- 17. GENERAL**
- 17.1 These Terms shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand,
- 17.2 Any reference to legislation is a reference to that legislation as amended, re-enacted or replaced and includes any subordinate legislation or statutory instrument issued pursuant to that legislation as it may have been amended, re-enacted or replaced.
- 17.3 You may not assign all or any of your rights or obligations under these Terms without our prior written consent.
- 17.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Part 4 of the CCA
- 17.5 Where we have rights and remedies at law or otherwise in addition to the rights set out in these Terms, those rights and remedies will continue to apply.
- 17.6 Our failure to enforce any of the Terms shall not be deemed to be a waiver of any of the rights or obligations we have under these Terms.
- 17.7 If any of these Terms or part thereof are held to be invalid, illegal, unenforceable or void for any reason or reasons, all of the remaining Terms (or part thereof) shall remain in full force and effect.
- 17.8 By using us and our Services you acknowledge that you have read these Terms of Trade and agree to be bound by them.
- 17.9 For more information on these Terms and Conditions you are welcome to contact us via: team@harperdigital.co.nz or in writing at 1H Park Avenue, Takapuna, Auckland 0622.

Schedule One

Cancellation of Subscription Services

Subscription Services may be cancelled by giving notice in writing at any time after the end of the Minimum Term and paying the subsequent billing cycle (effectively one more final invoice) in advance. For the avoidance of doubt, if an invoice has already been issued when notice is received, then the final invoice will be the one following that already issued.

You have the right to suspend (pause) your Subscription Services, however, should this pause last for longer than twenty-eight days, we reserve the right to charge \$50.00 plus GST per month following the twenty-eight days in technology costs (including but not limited to call tracking, dashboard, administration).

You may suspend (pause) your account with us for a hold fee, however, if the you wish to cancel any Subscription Service in accordance with this clause, you will need to pay notice period at the amount of the previous full invoice unless otherwise agreed.

Cancellation of Hosting

You may cancel your Hosting at any time after the end of the Minimum Term, by providing us at least twenty eight Working Days' written notice. Upon cancellation of the Hosting, your website will no longer be live on the web.

You have the option to migrate your website to a new hosting provider, by requesting an export of your website content and databases, this service will be billed at a reasonable rate by us.

The parties agree that this service is an export only, and no responsibility is taken by us with regard to migrating and loading the website with your new provider.

Schedule Two

Minimum Term for Subscription Services

Paid Ads
Minimum Term: 4 months

Search Engine Optimisation (SEO)
Minimum Term: 6 months

Phone Call Tracking and Lead Tracking
Minimum Term: 6 months

Conversion Rate Optimisation
Minimum Term: 6 months

Minimum Term for Projects

Minimum Term: 12 months

At the end of the Minimum Term, the above Projects will move onto a month-by-month contractual term

Minimum Term for Hosting

Website Hosting minimum of twelve (12) months