

Harper Digital Limited Terms of Trade

This document outlines the terms on which Harper Digital Limited agrees to provide Services to you as our client. By accepting our proposal to perform services for you, you will be treated as having accepted these Terms. If you have already engaged us prior to receiving these Terms, your continued instruction of us after receiving these Terms will constitute your acceptance of them.

In these terms, "Harper Digital", "we", "us" and "our" refers to Harper Digital Limited. "Client" and "you" refers to the party receiving our Services. "Party" and "parties" refers to both you and us.

1. Definitions

For the purposes of these Terms of Trade, the following terms shall have the meanings described below:

"Business Day" means a day (other than a Saturday, Sunday, or public holiday) on which registered banks are open for general banking business in Auckland, New Zealand.

"Client" means any entity or individual that accepts a proposal presented by Harper Digital or otherwise instructs Harper Digital to perform Services.

"Minimum Term" means the minimum period of time for which the Client is required to engage Harper Digital for a particular Service, as specified in these Terms.

"Proposal" means the proposal for Services we present to you (whether in formal documentation or otherwise), either prior to or alongside these Terms.

"Services" means all work and deliverables to be provided by Harper Digital for the Client under these Terms, including but not limited to digital marketing services, web development, graphic design, and any other services agreed upon.

"Terms" means these Terms of Trade.

2. Our Services

We provide four main types of service with varying fee structures and Minimum Terms, as detailed below. Any specific details, scope, or deliverables applicable to the Services to be performed for the Client will be outlined in our Proposal.

a) Digital Advertising

Online advertising, which may include advertising on Google, Meta, LinkedIn, Pinterest, Programmatic, Bing, Facebook, and other online providers, as agreed with you.

Fees and Invoicing: Fees are payable in advance as a monthly retainer and may be structured in one of two ways: (i) as a monthly retainer charged by us to you, or (ii) we on-charge you for your actual spend with the applicable media providers, and add our margin. The specific Fee will be outlined in our Proposal. Harper Digital will issue invoices to you on a monthly basis.

Minimum Term: Digital Advertising Services are subject to a minimum term of 4 months from the commencement of Services, unless otherwise expressly agreed by Harper Digital in writing.

b) Search Engine Optimisation (SEO) Services

This includes organic search optimisation services and other SEO-related services aimed at improving the Client's online visibility through non-paid search results.

Fees and Invoicing: Fees are payable in advance as a monthly retainer. The specific fee will be outlined in our Proposal. Harper Digital will issue invoices to you on a monthly basis.

Minimum Term: SEO Services are subject to a minimum term of six months from the commencement of Services, unless otherwise expressly agreed by Harper Digital in writing.

c) Website Hosting

We provide website hosting services as a reseller of third-party hosting providers, such as WP Engine Inc. and Open Host (Internet Services Group Limited). The provision of services is subject to the applicable third party terms and conditions.

Fees and Invoicing: Fees are payable in advance as a monthly retainer. The specific fee will be outlined in our Proposal. Harper Digital will issue invoices to you on a monthly basis.

Minimum Term: Hosting Services are subject to a minimum term of 12 months from the commencement of Services, unless otherwise expressly agreed by Harper Digital in writing.

d) Website builds and other one-off projects

Harper Digital may undertake specific project-based work, including website builds, website redesigns, and other discrete projects as outlined in our Proposal.

Fees and Invoicing: The specific Fee will be outlined in our Proposal and will be payable in three tranches: 40% upon acceptance of the Proposal, 40% upon the Client approving the website (or other project) design, and 20% upon project completion. Harper Digital will issue invoices to you upon completion of each payment milestone.

Minimum Term: No minimum term applies. The Services conclude upon completion and delivery of the project as specified in our Proposal. Our Fee is based on the likely duration of the project as reasonably assessed at the time of our Proposal. In the event a project exceeds 12 months' duration due to delays caused by the Client, we reserve the right to propose a reasonable adjustment to the Fee to reflect any increase in costs we have incurred, or expect to incur, as a result of the delay.

Our Proposal is based on the information you provide to us and our reasonable assessment of what is needed to deliver the Services. Any changes to the scope, quality, or timing of the Services set out in our Proposal, or any circumstances that change the cost of performing our Services from what is reasonably foreseeable at the time our Proposal is presented may result in an adjustment to our Fee.

We will advise you as soon as reasonably practicable of any proposed adjustment to the Fee. You may decline any proposed variation and Fee adjustment, in which case we will provide only the Services as originally agreed in our Proposal.

3. Our fees and payment terms

Invoices for the Services rendered will be issued by Harper Digital as specified under each service type above. You are required to make payment of the invoiced amount within seven days of receiving the invoice, unless otherwise expressly agreed by Harper Digital in writing.

Unless otherwise stated in a Proposal, all payments shall be made in New Zealand dollars without set-off or deduction.

Unless otherwise stated, all amounts quoted are exclusive of Goods and Services Tax (**GST**). Our invoices will include any GST applicable to the supply of Services. If you are required by law to make any withholdings or deductions from any amounts payable to us under our invoices, you will gross-up those amounts so that we actually receive the amounts we would have received if those withholdings or deductions had not been required.

If any invoiced amount for Services performed remains unpaid more than 30 days after the due date for payment, Harper Digital reserves the right to charge you interest at the rate of 2.5% per month calculated daily and compounding monthly on the outstanding amount from the original due date for payment, as well as any collection costs and legal fees reasonably incurred in attempting to recover the Fee. Unless there is a genuine dispute regarding the unpaid invoice, we also reserve the right to suspend Services or withhold deliverables until payment is received.

Harper Digital may increase its Fee to account for any costs we incur (or expect to incur) as a direct result of your method of payment including (but not limited to) any credit card costs, and you authorise us to deduct the price and the applicable delivery charge(s) from such card.

4. Your general obligations

In order to facilitate the effective provision of our Services, we ask that you:

- a) Review and confirm that the scope of Services as outlined in our Proposal is satisfactory for your purposes. You must notify us promptly if the agreed scope of Services requires adjustment.
- b) Provide us with relevant, complete, and accurate information. You must notify us as soon as possible if any information you have provided to us is incomplete, incorrect, or otherwise insufficient in any way, and promptly provide us with updated information.
- c) Provide us with access to an appropriate contact person and reasonable assistance to allow us to provide the Services to you. You must give prompt access to any information, facilities, premises, and other personnel we require to carry out the Services.
- d) Respond in a timely fashion to our requests for information or content (including logos, fonts, text and images) and promptly provide us with any directions, instructions, and decisions as we reasonably require in order to carry out the Services.

You acknowledge that in order for us to provide Services to you, we will be relying on you to meet these responsibilities. You accept that any delay in your response may delay our ability to supply the Services to you, and this may extend any deadlines we have agreed to by a period equal to the delay caused by your failure to meet your obligations. We will notify you promptly if we consider that your delay is affecting our ability to meet agreed deadlines.

5. Pausing our Digital Advertising and SEO Services

You may pause our Digital Advertising or SEO Services, although only after the applicable Minimum Term for the Services has ended. To pause your Services, you must provide written notice to us specifying the date from which you wish to pause and (if known) the expected duration of the pause.

For pauses lasting less than 28 days, no additional fees will be charged for the pause period.

Should the pause extend beyond 28 days, we reserve the right to charge a technology maintenance fee of \$50 plus GST per month for each month (or part thereof) following the initial 28 day pause. This fee covers our ongoing costs including but not limited to call tracking, dashboard maintenance, and administration.

6. Terminating our Services

You may terminate the Services in the following circumstances:

- a) If a Minimum Term applies to the Services, you may terminate the Services at any time after the Minimum Term has expired, in which case Services will continue for one more month and one further monthly invoice for the applicable Fee will be issued to and payable by you following the date notice of termination is given.
- b) You may terminate the Services during any applicable Minimum Term by providing 14 days' written notice, in which case you will be liable to pay an early termination fee equal to 50% of the monthly retainer multiplied by the number of months remaining in the Minimum Term. This represents a genuine pre-estimate of the loss that Harper Digital stands to suffer as a result of early termination, including lost revenue, administrative costs, and the costs of reallocating resources.

- c) For Website builds and other one-off projects with no Minimum Term, you may terminate the Services at any time on 30 days' notice. If termination occurs at least seven days prior to the anticipated commencement of Services, Harper Digital will refund any amounts paid, less any expenses already incurred. If termination occurs less than seven days prior to commencement, or after Services have commenced, Harper Digital will retain all amounts paid (including any deposit) and the Client will remain liable for all Services performed and expenses incurred up to and including the date of termination, plus any costs reasonably incurred by Harper Digital as a direct result of the termination (including any non-refundable costs paid to third party suppliers and termination fees).
- d) The Client may otherwise terminate the Services if Harper Digital commits a material breach of these Terms and does not remedy that breach (if capable of remedy) within a reasonable period of time having regard to the nature of the breach, in which case Harper Digital will charge the Client for all Services performed and expenses incurred up to and including the date of termination and no further sums will be payable by the Client.

Notice of termination must be sent by email to your usual Harper Digital point of contact.

Harper Digital may terminate the Services by providing written notice to you (and will be relieved of any further obligation to provide Services to you) in the event you breach any of your obligations under these Terms, and:

- a) the breach is not capable of being remedied; or
- b) the breach is capable of being remedied and you fail to remedy the breach within 15 Business Days after written notice has been given to you requiring the breach to be remedied.

Importantly, upon termination of Website Hosting Services, your website will no longer be available on the web and you will need to engage a new provider (at your own cost) to keep your website live. You may request an export of your website content and databases from us within 60 days of our Services terminating, charged at a rate reasonably determined by Harper Digital. This service is an export only Harper Digital accepts no responsibility for the manner in which your new provider configures or loads your website.

Harper Digital does not transfer ownership of any customer accounts it creates on your behalf with third party media providers (such as Google or Meta) for the purposes of Digital Advertising Services. If Harper Digital has created an account on your behalf, upon termination of Digital Advertising Services you will need to set up your own account with the relevant provider if you wish to continue receiving their services. You may request an export of your account content from us within 60 days of our Services terminating, charged at a rate reasonably determined by Harper Digital.

7. Our third party providers

You acknowledge that we may utilise third party providers to deliver our Services and as such, we may be bound by their rules and associated terms and conditions.

Our third party Website Hosting providers may also experience downtime outside of our control, which may result in some or all of our Services being unavailable. We agree to communicate promptly any planned server maintenance or issues of which we become aware that may adversely impact the provision of Hosting services to you.

8. Confidentiality

Each party will keep confidential all Confidential Information that is provided or made available by or on behalf of the other party. Confidential Information shall be used or disclosed solely to the extent necessary or desirable to enable the provision of Services or to exercise rights and fulfil obligations under these Terms.

Each party may disclose the other party's Confidential Information:

- a) to their respective professional advisers, insurers, and other third party providers who assist in providing services or otherwise assist with internal business functions, on a confidential basis;
- b) if required by law; or
- c) if the other party provides permission for such disclosure.

Neither party will be required to keep confidential any information which:

- a) is or becomes public knowledge other than by a breach of this clause;
- b) is already lawfully in its possession before receiving it from the other party;
- c) is independently received from a third party with full rights to disclose; or
- d) it is required by law to disclose.

For the purposes of this clause, "Confidential Information" means all information, documents, and material whether provided orally or in writing, either identified as confidential or which by its nature could reasonably be regarded as confidential. This includes, but is not limited to a party's business and marketing plans, technology and technical information, product plans and designs, business processes, know-how, trade secrets and other proprietary information.

9. Intellectual property

Subject to full payment of all Fees, Harper Digital assigns to the Client all Intellectual Property (**IP**) Rights in custom deliverables specifically created for the Client under the Services, including custom website builds, bespoke graphic design, and original written content created exclusively for the Client.

The Client retains all IP Rights in any materials, content, branding, logos, images, data, and other intellectual property provided by the Client to Harper Digital. The Client grants Harper Digital a non-exclusive, royalty-free license to use such materials solely for the purpose of providing the Services.

To avoid doubt, Harper Digital retains all IP Rights in its:

- a) pre-existing materials, templates, frameworks, methodologies, processes, tools, and software;
- b) generic or reusable materials not specifically created for the Client; and
- c) know-how and techniques developed or used in providing the Services.

To the extent any of Harper Digital's IP is incorporated into the deliverables, Harper Digital grants the Client a non-exclusive, royalty-free, perpetual license to use such IP as incorporated in the deliverables for the Client's business purposes.

Third-party intellectual property (including stock images, fonts, plugins, and platform technologies) remains subject to applicable third-party license terms.

10. Personal information

Before providing Harper Digital with any personal information, the Client will do all things necessary to ensure that such information has been collected and disclosed in accordance with the Privacy Act 2020. This includes, but is not limited to, obtaining all appropriate consents from individuals, to ensure that Harper Digital may lawfully use that personal information in connection with the provision of Services and for any other purposes reasonably contemplated by the Client at the time of disclosure.

Harper Digital will comply with the Privacy Act 2020 in collecting, using, and disclosing any personal information that it receives in the course of the provision of Services. Please refer to [Harper Digital's Privacy Policy](#) for further information regarding accessing and correcting any personal information Harper Digital holds.

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.

11. Consumer Guarantees Act

If you are acquiring the Services for the purposes of a business or trade, you agree that the provisions of the Consumer Guarantees Act 1993 (**CGA**) are excluded in their entirety pursuant to section 43 of the CGA.

If you are acquiring the Services wholly or partly for personal, domestic, or household purposes (and not for business or trade), the CGA cannot be excluded and will apply to the supply of Services. In such cases:

- a) to the extent it conflicts with the CGA, the Limitation of Liability clause in these Terms does not apply; and
- b) nothing in these Terms limits or excludes any guarantees, rights, or remedies you have under the CGA.

If you do not specify that the Services are being acquired for personal, domestic, or household purposes, Harper Digital is entitled to treat the Services as being acquired for business purposes unless the nature of the Services or your circumstances clearly indicate otherwise.

12. Limitation of Liability

To the fullest extent permitted by law, the liability of Harper Digital under or in connection with these Terms and the provision of Services, whether arising from contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited as follows:

- a) Harper Digital's total aggregate liability to the Client for any claims arising out of or in connection with any particular Service shall not exceed:
 - i. for Services paid on a monthly retainer basis: an amount equal to 12 times the monthly fee payable for that Service; or
 - ii. for Services not paid on a monthly basis (including one-off projects): the total sum payable for that Service.
- b) Under no circumstances shall Harper Digital be liable for any indirect, special, incidental, consequential, or punitive damages, including but not limited to loss of profits, data, use, goodwill, or other intangible losses, even if Harper Digital has been advised of the possibility of such damages.
- c) The limitations on liability outlined above shall not apply to liability resulting from Harper Digital's gross negligence or wilful misconduct, or any liability that cannot be excluded or limited by law.

This limitation of liability clause is intended to apply to the maximum extent permitted by applicable law and shall survive the termination of these Terms.

13. Disputes

Before initiating any formal legal proceedings, you agree to first attempt to resolve any dispute arising out of or related to these Terms or the Services through good faith negotiations. This includes providing Harper Digital with a reasonable opportunity to re-perform any Services that you deem unsatisfactory.

If good faith negotiations fail to resolve the issue, the parties shall attempt mediation administered by Resolution Institute before commencing any court proceedings.

Notwithstanding the above, if there is any dispute regarding any amount invoiced (whether in respect of a current or prior invoice), you agree to pay the amount of any undisputed portion of the invoice within the required timeframe. Unless there is a genuine dispute regarding the unpaid invoice, in addition to charging interest Harper Digital reserves the right to terminate or suspend the Services or withhold deliverables, until payment is received.

Nothing in this clause prevents either party from seeking urgent equitable relief before an appropriate court.

14. Force Majeure

Neither party shall be liable for any failure to perform its obligations under these Terms if such failure is caused by the occurrence of any unforeseen event beyond its reasonable control, including without limitation, acts of God, natural disasters, pandemics, wars, insurrections, riots, terrorism, government actions, embargoes, or any other major event that is declared as a force majeure event under New Zealand law ("**Force Majeure Event**").

Upon occurrence of any Force Majeure Event, the affected party shall promptly notify the other party in writing, detailing the nature of the Force Majeure Event, its anticipated duration, and the effect on its ability to perform its obligations under these Terms. Both parties shall then engage in good faith negotiations to find a mutually satisfactory solution to mitigate the impact of such event.

If the Force Majeure Event continues for a period exceeding 60 days, either party may terminate these Terms upon written notice to the other party, without any liability for such termination. Any obligations that arose before the occurrence of the Force Majeure Event shall remain in effect until fulfilled, unless otherwise agreed by the parties.

15. General

Harper Digital may amend these terms from time to time and will provide you with at least 30 days' written notice of the amended terms. Continued acceptance of our Services after the date the amendments take effect will constitute your deemed acceptance of the amended terms. If you do not wish to accept the amended terms, you may terminate these Terms by providing written notice to Harper Digital at any time prior to the effective date of the amendments, provided that you will be required to pay all amounts owing to Harper Digital for Services provided up to the termination date.

All notices under these Terms must be in writing and sent to the parties' last known contact details. Notices are deemed received on delivery if sent personally or by email, or on the date recorded as delivered if sent by registered mail.

Harper Digital provides Services to the Client under these Terms as an independent contractor. Nothing in these Terms is intended to, or shall be deemed to, create an employment, joint venture, agency, partnership or fiduciary relationship between Harper Digital and the Client, or between Harper Digital's personnel and the Client.

Neither party may transfer, novate or assign these Terms or any rights or obligations under these Terms without the other party's prior written consent, such consent not to be unreasonably withheld. Harper Digital may subcontract the performance of Services without the Client's consent, provided that Harper Digital remains responsible for the performance of such subcontracted Services and the acts and omissions of its subcontractors.

If any provision within these Terms is held to be illegal, invalid or unenforceable, it may be severed without affecting the legality, validity or enforceability of the remaining provisions.

No waiver by either party of any breach of these Terms shall be considered a waiver of any other breach or of any subsequent breach of the same or any other provision. Any waiver must be in writing and signed by the party granting the waiver to be effective.

These Terms are governed by the laws of New Zealand and each party submits to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these Terms.