

GENERAL TERMS OF TRADE

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APPLICATION OF THESE TERMS

Unless otherwise agreed in writing, these Terms of Engagement ("Terms") will apply to, are incorporated into and govern every contract entered into between Be Creative Limited ("BCL") and the Client for the performance of services by BCL for the Client ("Contract"), every instruction received by BCL from the Client ("Instruction") and every service performed by BCL for the Client ("Service"). BCL can revise these Terms at any time by providing a copy of the revised Terms to the Client or referring the Client to the revised Terms as displayed on its website at www.thewaytobe.co.nz, and the revised Terms will apply to every new Contract, Instruction or Service commencing after the date of such revision.

FEE PROPOSALS

In relation to each project BCL will, where reasonably requested, prepare a Brief & Cost Estimate for the Client's approval prior to commencement of work. Such fee proposal will summarise all components of such project (which may include, without limitation, strategy, creative development, design implementation, expenses and project management) and will detail BCL's estimated fees and expenses for such components.

All fee proposals prepared by BCL will remain valid for 30 days from the date of issue, and must be approved in writing by the Client before BCL will commence work on the relevant project. By approving a fee proposal, the Client agrees to these Terms and any other terms and conditions set out in such fee proposal.

PROJECT SCOPING

BCL reserves the right to charge the Client at BCL's usual hourly rates (as advised by BCL from time to time) for scoping work completed prior to commencement of work on a project. Where a project does not proceed, and BCL does not charge for scoping work, the Client will not own and may not use any documentation, material or concepts prepared or developed by BCL as part of the scoping process and the Client must immediately return any and all such items to BCL.

EXPENSES

BCL is entitled to charge for actual expenses incurred in connection with each project, regardless of any estimates as to expenses that may have been supplied by BCL.

ADDITIONAL FEES/ EXPENSES

BCL reserves the right to charge, at BCL's usual hourly rates (as advised by BCL from time to time), for additional work undertaken in relation to a project and not outlined in the original brief and/or not included in any relevant fee proposal, as a result of changes by the Client to project specifications, strategy or any process of artwork, together with further meetings attended and expenses incurred in connection with such additional work. Unless reasonably requested, a revised fee proposal will not be submitted during a project.

RETAINER

BCL may require a retainer before commencing work on any project. BCL will hold any retainer until the conclusion of the relevant project. Until then, the Client must pay every BCL invoice on its due date until the completion of that project. If the Client fails to do so, BCL may deduct the amount outstanding from the retainer and require further funds to be deposited. The retainer (or any balance) will be applied against the final account, with any surplus being refunded.

INVOICING AND PAYMENT

Invoicing will take place at the end of each month. All fees for work and expenses will be charged to the Client on the basis agreed with the Client and otherwise in accordance with these Terms. The Client will pay all charges invoiced, together with GST chargeable on the relevant work and without any deduction, deferment or set off, on or before the 14th day following the date of the relevant tax invoice. For new client projects, or stages as part of staged projects, BCL reserves the right to invoice and receive payment of 50% of estimated fees prior to commencement of work in respect of such new project or stage (as the case may be). Remaining fees will be invoiced on a work-in-progress basis until completion.

Accounts not paid in full by their due date will incur interest at the rate of 2% per month on the outstanding balance, from the due date until the date of payment. All costs, including legal expenses, incurred in recovery of debts owed to BCL are to be paid by the Client. BCL reserves the right to discontinue any work in hand for the Client in the event of non-payment of

any accounts by their due date and to retrieve any creative and/or artwork, none of which may be used by the Client in such circumstances.

PROJECT CANCELLATION

If a project is terminated before completion, the Client will compensate BCL for all fees and expenses incurred by BCL up to the date of termination.

CLIENT APPROVAL/ PROOFING

BCL may request the Client to conduct a final proofing and checking of any material (whether written, graphic or otherwise) produced by BCL in the course of performing work for the Client from time to time, and confirm to BCL whether the Client finally approves such material or, alternatively, requires BCL to carry out further work on such material. In such case the Client shall complete such proofing and checking, and provide such confirmation to BCL, in an efficient and timely manner and where the Client fails to do so within seven days of BCL's request the Client shall be deemed to have finally approved the relevant material. The Client assumes sole and entire responsibility for, and indemnifies and saves harmless BCL from, any and all losses, expenses or damages which the Client may suffer as a result of any spelling, grammatical, typographical, graphical, colour or other errors or issues whatsoever which are present in any such material following the Client's final approval of such material.

COPYRIGHT AND INTELLECTUAL PROPERTY

All intellectual property conceived, discovered, developed, made, perfected, improved, modified or altered by BCL in the course of scoping, pitching or performing work for the Client (other than trade marks owned by the Client), whether alone or in conjunction with the Client or any other parties or capable of being patented or registered or not, shall be the absolute property of BCL, may be exploited or used by BCL in any manner in BCL's absolute discretion, and shall not be used by the Client except pursuant to these Terms or as otherwise agreed in writing by BCL.

Upon (but not before) the Client making payment in full of an invoice presented by BCL, together with any other amounts owing to BCL by the Client at any time prior to the date of payment of such invoice, the intellectual property in any printed or digital material to which that invoice relates shall become the Client's absolute property, provided that BCL reserves the right to use any material, concepts or intellectual property created for the Client, and which is in the public domain, for BCL's own marketing purposes, and provided further that all intellectual property in and relating to concepts developed by BCL in the course of scoping, pitching or performing work for the Client, but not selected or accepted by the Client or not forming part of the final digital or printed material provided to the Client, remains the sole and absolute property of BCL, may be used by BCL for any purpose whatsoever, and may not be held or used by the Client under any circumstances.

If the Client supplies any intellectual property to BCL, whether in connection with the performance of services by BCL or otherwise, the Client warrants that it owns or is entitled to use such intellectual property and that BCL will not be in breach of any third party's intellectual property rights by utilising such intellectual property in connection with the performance of services for the Client or for any other purpose authorised by the Client, and the Client indemnifies BCL against any direct or indirect costs, losses (including consequential losses and loss of profits), damages, claims or liabilities that BCL may suffer or incur as a result of its use or possession of such intellectual property.

EXCLUSION OF LIABILITY

BCL shall not be liable to the Client or any third parties for any loss, damage, expenses or any other liability arising directly or indirectly from the performance of work for the Client by BCL pursuant to these Terms or as otherwise agreed, or from the Client's use of any material or intellectual property prepared by BCL in connection with such work. To the fullest extent permitted by law, BCL excludes all warranties or conditions implied by statute, at law, by trade, custom or otherwise.

CONFIDENTIALITY

All work undertaken for the client is to be treated in strict confidence, and BCL and the Client will use their best endeavours to prevent the unauthorised use, copying, publication or disclosure of the content or nature of such work, or the arrangement between BCL and the Client, until the information becomes public knowledge or such work is implemented.