

Web Wonks Limited Terms of Trade- 2023

Agreed Terms

1. Definitions and Interpretation

The following definitions apply to the Contract:

Additional Fees means any amounts payable pursuant to clause 5.2, 5.3 or 5.4.

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

Confidential Information means the Contract and any non-public financial, business or commercial information relating to a Party (in any form) which the other Party may receive or obtain in connection with the Contract or any Services provided.

Contract means the Quote and these Terms of Trade, as amended from time to time.

Connected Services means the Services and such other tasks agreed to be provided between You and Web Wonks on an ongoing basis until terminated by either Party.

Default Rate means 10% per annum, calculated daily and capitalised monthly.

Deliverables means all materials and content developed by Web Wonks and provided to You, or to which Web Wonks has given You access.

DHK Services means a Data Health Kit package provided by Web Wonks as part of the Services.

Fees means the fees payable by You to Web Wonks for providing the Services as set out in the Quote.

Force Majeure Event means the occurrence of an event during the Term of the Contract that is beyond the reasonable control of a Party which cannot reasonably be avoided or overcome by that Party and which is not attributable to the actions of that Party, including:

- a) cyber warfare, cyber-attacks, ransomware attacks or cyber sabotage;
- b) war, invasions, acts of foreign enemies or civil war;
- c) rebellion, terrorism, revolution, insurrection, military or usurped power or riots;
- d) operation of the forces of nature such as earthquakes, hurricanes, lightning, typhoons or volcanic activity;
- e) outbreaks of disease, epidemics, pandemics or quarantine;
- f) instances of exceptionally adverse weather; and
- g) acts of government authority, whether lawful or unlawful.

Intellectual Property means all intellectual property, proprietary and industrial rights (whether existing in statute, at common law or in equity), including:

- a) all copyright (including in source code, object code and HTML code), rights in databases, know-how, trade secrets, methods (including business methods), technical and non-technical information, processes, characteristics, trademarks, trade names, business names, domain names, inventions, patents, design rights, discoveries, formulae and moral rights;
- b) all designs, design details and specifications, concepts, sketches, photographs, working drawings, models and presentation materials;
- c) all improvements and enhancements to any of the foregoing rights; and
- d) all applications to register, and all renewals of, any of the foregoing rights.

Loss means any loss, liability, damage, compensation, cost, interest, fees, penalty, fine and expense, and includes taxes, and Losses shall have a corresponding meaning.

Material Issue means an issue in relation to the Services which requires Web Wonks to spend four or more hours to resolve, remedy or fix.

Parties means You and Web Wonks and **Party** means either of them.

Project Services means Services that are to be provided within a six month period or such other period agreed between the Parties.

Project Plan means the project plan provided to You by Web Wonks.

Quote means the quote provided by Web Wonks and accepted by You.

Related Parties means, in relation to a Party:

- a) any director, officer, employee or agent of, or professional adviser to, that Party;
- b) and any related company (as defined in section 2(3) of the Companies Act 1993) of that Party.

Reserved Agency Material means any material, content or other Intellectual Property that:

- c) is already owned and/or used by Web Wonks prior to it providing the Services;
- d) is subsequently created, developed, owned and/or used by Web Wonks other than in the course of providing the Services; or
- e) constitutes generic or re-usable materials or content, including any proprietary software, applications, tools, templates, frameworks, code, systems, technologies, property, reports, strategies, manuals, know-how, financial approaches, business processes and methodologies and any Intellectual Property vested therein.

Restraint Period has the meaning given to that term in clause 9.5.

Retainer Services means Services and such other tasks as are agreed between You and Web Wonks that are to be provided for a 12 month period or such other period agreed between the Parties.

Services means the services set out in the Project Plan and Quote to be provided by Web Wonks to You, as amended from time to time.

SDPD means the Strategic Data Plan Dashboard for business metrics provided to You by Web Wonks as part of its DHK.

Term means the period specified in the Quote for the provision of the Services unless the Contract is terminated earlier in accordance with these Terms of Trade, or such other date as is agreed between the Parties.

Terms of Trade means these terms of trade as amended from time to time.

Web Wonks means Web Wonks Limited (company number 4172918).

You means the person receiving the Services and **Your** shall have a corresponding meaning.

1.1 The following rules of interpretation apply to the Contract:

- a) References to persons include natural persons and any other body corporates (wherever incorporated).
- b) References to the Parties include their respective executors, administrators, successors and permitted assignees.
- c) Headings have been inserted for convenience only and will not affect the interpretation of the Contract.
- d) References to clauses are to those in these Terms of Trade.
- e) References to the words including, include or similar words do not imply any limitation.
- f) References to written or in writing shall include all modes of presenting or reproducing words, figures and symbols in a visible form (including via email).

2. Our Standard Terms

These Terms of Trade and the Quote apply to our current and future services to You except to the extent we agree with You otherwise in writing. There is no need for You to sign these Terms of Trade to accept them. You will be deemed to have accepted these Terms of Trade by continuing to instruct us to work for You.

We can amend these Terms of Trade by writing to You or by placing new terms on our website.

Any new terms will apply to the Services we provide You after the earlier of the date we write to You or put the new terms on our website.

These Terms of Trade prevail over anything to the contrary contained in, or that may be in conflict or inconsistent with, the Quote or the Project Plan.

3. Services

- 3.1 Web Wonks will provide the Services in accordance with the Contract.
- 3.2 You acknowledge that the Services are affected by many factors which are outside Web Wonks' control. Web Wonks will use its best efforts, techniques and accepted standards to help You achieve Your desired result. However, Web Wonks does not guarantee any specific results from the use of the Services or that You will achieve Your desired result.
- 3.3 If a task specified in a Project Plan cannot be completed, as determined by Web Wonks in its sole discretion, Web Wonks may replace that task with a task that it considers (acting reasonably) to achieve an identical or substantially similar outcome.
- 3.4 In its performance of the Services, Web Wonks will provide You with monthly job activity reports and full project reports.
- 3.5 While Web Wonks will endeavour to meet any quoted time frames, it reserves the right (at its sole discretion) to extend these time frames, including if You do not meet Your obligations under the Contract or if there is a change in Your requirements or expectations, and Web Wonks will not be liable for any delay outside its control.
- 3.6 Web Wonks may request instructions from You within a reasonable period prior to providing any Services and may defer taking action pending receipt of those instructions. You shall promptly respond to any such request. Actions taken by Web Wonks in accordance with Your instructions shall constitute proper conduct within the scope of Web Wonks' authority under the Contract.

4. Your Obligations

- 4.1 To assist Web Wonks in providing the Services, You shall provide Web Wonks with:
 - (a) accurate, true, complete and up to date information about You to enable it to perform the Services;
 - (b) administrative/backend access to the relevant website for analysis of content and structure;
 - (c) permission to make changes to Your website and marketing material and tools for the purpose of optimisation, and to communicate directly with any third parties;
 - (d) access to existing traffic statistics of the relevant website; and

(e) such other information that Web Wonks may reasonably request from You to enable it to comply with its obligations under the Contract, including source code, diagnostic information and statistical information.

4.2 You will give Web Wonks 20 Business Days' written notice prior to approaching or engaging any third party that competes with the business of Web Wonks for the purpose of:

- (a) providing services in substitution to the Services; or
- (b) reviewing the Services; and
- (c) prior to engaging such third party, You agree to, in good faith, consult with Web Wonks in relation to any concerns relating to the Services.

5. Payment for our Services

5.1 In consideration for its provision of the Services, You will pay to Web Wonks the Fees.

5.2 Web Wonks' Fees only cover its provision of the Services. Any and all third-party costs will be charged to You unless specifically otherwise provided for in the Quote.

5.3 Any additional services provided by Web Wonks to You that are not included in the Services shall be charged and invoiced separately and in addition to the Fees, including Google Ads, Facebook Ads, Automation/EDM software, and any other tool that is required to provide the Services.

5.4 If a Material Issue arises in relation to the provision of the Services that did not arise as a result of an act or omission of Web Wonks, Web Wonks reserves the right to charge You for all time spent by Web Wonks in connection with resolving or remedying the Material Issue.

5.5 Web Wonks will send invoices to Your nominated email or postal address for the Fees and any Additional Fees:

- (a) for DHK Services, promptly following acceptance of the Quote for the Fees; and
- (b) for Project Services, Retainer Services and Connected Services, at the end of each month.

5.6 The Fees will be paid by You:

- (a) for DHK Services, within 7 days following the date of receipt of the invoice provided to You under clause 5.5;
- (b) for Project Services, in six equal payments on or before the 20th day of the month following the date of receipt of the invoice provided to You under clause 5.5;
- (c) for Retainer Services:

- (i) 30% of the Fees promptly following the date of acceptance of the Quote, and in any event, within two Business Days of that date; plus
 - (ii) twelve equal payments of the remaining 70% of the Fees on or before the 20th day of the month following the date of receipt of the invoice provided to You under clause 5.5; and
- (d) for Connected Services, on or before the 20th day of the month following the date of receipt of the invoice provided to You under clause 5.5.
- 5.7 Any Additional Fees will be paid by You on or before the 20th of the month following the date of receipt of the invoice provided to You under clause 5.5.
- 5.8 All sums payable by You under the Contract must be paid:
- (a) in New Zealand dollars;
 - (b) in cleared funds;
 - (c) into the bank account specified in writing by Web Wonks; and
 - (d) free and clear of any restriction, condition, set-off, deduction or withholding.
- 5.9 For the purposes of clause 5.8(b), You agree to establish a direct debit with Your bank in favour of Web Wonks.
- 5.10 If a sum required to be paid by You under the Contract is not paid to Web Wonks by its due date:
- (a) You shall also pay interest on that sum at the Default Rate for the period beginning on the due date and ending on the date that the sum (including all accrued interest) is paid by You;
 - (b) Web Wonks shall not be obliged to perform further Services unless and until such outstanding amounts are paid to Web Wonks in accordance with clause 5.7; and
 - (c) Web Wonks reserves the right to retain ownership of any or all of the online accounts created to deliver the Services.
- 5.11 If You dispute all or part of an invoice, You must notify Web Wonks in writing of this fact within five business days of receipt of the invoice, setting out in reasonable detail the reasons for the dispute. You must pay any undisputed balance of an invoice. If You do not dispute an invoice within five Business Days of receipt, You will be deemed to have accepted the invoice in full.
- 5.12 All sums payable under the Contract are exclusive of GST and/or government levies and charges, which You shall be liable for.

6. Website Build-Related Terms

Website Build / Hosting / SSL

- 6.1 Web Wonks builds websites in the most current version of WordPress which includes a core install, base module build, theme install, backup schedule and the creation of four pages that represent the basic content requirement for a go-live – Home | About | Contact | Services.
- 6.2 You must pay directly for hosting. Web Wonks can offer recommendations on the best solution for You, or You can choose Your own host. Web Wonks is in no way responsible for the uptime of the server and You will retain full ownership of Your website at all times.
- (a) Web Wonks strongly recommends You encrypt Your website. Web Wonks will apply a free SSL certificate; however, this does not carry strong security and Web Wonks recommends that You buy a 256bit or higher encryption certificate which will be charged by Your host.

Content Loading / Copywriting

- 6.3 Content loading is typically the most difficult part of any website build and Web Wonks recommends that You get started on this as soon as You get the base build. The website build process includes 5 hours of content framework strategy. Web Wonks will either:
- (a) put together a basic framework from scratch if You don't have a website; or
- (b) port over the base minimum for the site to be viable if You already have content.
- 6.4 You are responsible for the generation of new content on Your website and Web Wonks is in no way responsible for the quality of editing or copywriting of Your website. If necessary, Web Wonks can offer copywriting services for a fee. However, You should use a specialist copywriter if You have trouble generating content.

Finished Build / Go Live

- 6.5 Web Wonks deems the website build finished after all tasks in the project are completed as per Web Wonks' internal project management system. The completion of these phases ensure a minimum viable product for You to go live with.
- 6.6 Web Wonks will allot 4 hours of time to assist with the go live of Your website. This includes, but is not limited to creating redirects, verifying backups, installing tags, updating search console, updating SEM accounts and updating GA.
- 6.7 You do not need to go live once Web Wonks has closed the job in its system – Web Wonks will complete the go-live process when You are ready.

Backups

- 6.8 To mitigate the potential for issues to arise, Web Wonks has a local backup included in the website build.
- 6.9 At the completion of the base build phase of Your website, Web Wonks will create a local backup of Your website.

Billing

- 6.10 Upon acceptance of the Quote, Web Wonks will generate a 30% deposit invoice against the core website build phase of the work – the job will begin once this invoice has been paid. Web Wonks will then split the remainder of the amount evenly over the two proceeding months regardless of go live date.

Service Agreement

- 6.11 Unless Web Wonks is providing You with Project Services or Retainer Services, Web Wonks will not actively monitor Your website. A minimum of 2 hours website management is required to ensure monitoring of Your site build, module updates, faults and support. If You contact Web Wonks after the go-live without the minimum support in place, Web Wonks will charge a minimum of 3 hours website maintenance to resolve any issues, while also carrying out best practice due diligence.

7. Intellectual Property

- 7.1 Web Wonks will own all Intellectual Property in the Deliverables (excluding the **SDPD**).
- 7.2 Subject to clause 5.10(b), You will own the Intellectual Property in the **SDPD**.
- 7.3 Web Wonks hereby grants to You an irrevocable, royalty free, non-transferable, exclusive license to use the Deliverables in New Zealand.
- 7.4 You agree not to copy, modify, alter, publish, broadcast, distribute, sell or transfer the Intellectual Property provided by Web Wonks to You without Web Wonks' prior written consent.
- 7.5 The Parties agree that, in connection with the provision of the Services, Web Wonks may be required to use Reserved Agency Material. Web Wonks will own all Intellectual Property in the Reserved Agency Material.
- 7.6 You agree that all Intellectual Property subsisting in any material, content, presentations, submissions and creative concepts or ideas that are presented, suggested or proposed to You by Web Wonks that are not accepted or adopted by You, will be and remain owned by Web Wonks.
- 7.7 You agree to take all actions as may be reasonably required by Web Wonks to perfect or enforce Web Wonks' title to its Intellectual Property, which shall include signing and delivering any document required in order to perfect or enforce such title (including, for the avoidance of doubt, a deed of assignment of Intellectual Property).

8. Liability and Indemnity

- 8.1 You agree that to the maximum extent permitted by law, Web Wonks and its Related Parties shall not in any way be liable to You for any Loss of any nature arising from Web Wonks' provision of the Services. If in any circumstance Web Wonks is found liable to You, its total aggregate liability to You is limited to the aggregate Fees received by Web Wonks from You in the three month period immediately prior to the liability arising.
- 8.2 Web Wonks will not be liable for any Loss which it is not notified of within the three month period immediately following the provision of the Services.
- 8.3 Web Wonks will not be liable for any loss incurred by You (or Your Related Parties) which results from:

- (a) any changes, variations, delays, input, instructions or directions given by the You (or Your Related Parties) in connection with the Services;
- (b) any negligent act or omission by the You (or Your Related Parties) in connection with the Services; or
- (c) a substantial change in the use of the Services beyond what was contemplated by this Contract.

- 8.4 You agree to indemnify and hold Web Wonks (and its Related Parties) harmless from any Loss, including reasonable legal fees, arising out of or related to Your use of the Services or breach of the Contract or any law or the rights of a third party.
- 8.5 You agree to indemnify Web Wonks for all costs that it incurs in the recovery of any Fees from You that You have not paid in accordance with clause 5.6.
- 8.6 Subject to clause 8.5, neither Party shall be liable for any indirect, consequential or special loss or damage, loss of revenue, economic loss or damage, loss of business or profits or anticipated business or profits, loss of goodwill, loss of anticipated savings or for any business interruption, whether or not that loss was, or ought to have been, contemplated by the Party in breach.

9. Termination

- 9.1 Either Party may, at any time after the expiration of the Term, terminate the Contract for any reason by giving the other Party not less than 30 days' prior written notice, provided that, if You terminate the Contract You shall be responsible for any costs associated with such termination.
- 9.2 Web Wonks may terminate the Contract immediately if:
- (a) You breach any provision of the Contract and You do not remedy the breach within 10 business days after being required to do so by Web Wonks;
 - (b) You breach any provision of the Contract and the breach cannot be remedied;
 - (c) You fail to pay the Fees when due;
 - (d) You become insolvent or otherwise cannot pay Your debts when they fall due, Your business goes into liquidation or has a receiver or manager appointed over any of its assets, You become insolvent or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction; or
 - (e) in the case that You are a natural person, You die.

- 9.3 Upon the termination of the Contract (for whatever reason):
- (a) You shall, within five Business Days, pay to Web Wonks all sums due and owing to Web Wonks under the Contract;
 - (b) each Party shall promptly return all property belonging to the other Party which are in that Party's possession or control; and
 - (c) all rights granted under the Contract shall immediately cease, except where they are expressed to survive termination under clause 14.7.
- 9.4 Termination of the Contract will not affect any accrued rights or obligations of any of the Parties.
- 9.5 During the Term and for a period of six months after the Contract is terminated in accordance with clause 9 (the **Restraint Period**), You shall not directly or indirectly contact, induce or solicit (or assist any Person to contact, induce or solicit) for employment any person who is, or at any time was during the Restraint Period, an employee, contractor or consultant of Web Wonks.

10. Dispute Resolution

- 10.1 If any dispute arises under or in relation to the Contract, the Services or the Deliverables, both Parties agree to negotiate in good faith to resolve the dispute. If the dispute is not resolved within 10 Business Days, either party may refer the dispute to the courts of New Zealand in accordance with clause 14.8.

11. Force Majeure

- 11.1 Neither Party shall be liable to the other, or be deemed to be in breach of the Contract, as a result of any delay or failure to perform its obligations due to any Force Majeure Event, provided that it provides written notice of the nature and extent of the Force Majeure Event and the likely delay to the other Party as soon as reasonably practicable.
- 11.2 This clause 11 shall cease to apply in respect of a Force Majeure Event when:
- (a) that Force Majeure Event no longer has any effect on the performance of the Party's obligations in the Contract; and
 - (b) that Party has given written notice to the other Party that the Force Majeure Event has ceased.

12. Confidentiality

- 12.1 Except as permitted in this clause 12, no Party will disclose, communicate or distribute to any third party any Confidential Information.
- 12.2 Each Party may disclose Confidential Information to its Related Parties, but only where they have agreed in writing to comply with at least the same obligations of confidentiality under this clause 12. The Parties agree that they will be wholly responsible for all acts and omissions of their Related Parties concerning any Confidential Information disclosed to them.
- 12.3 A Party may disclose Confidential Information when:
- (a) the other Party gives its prior written consent to the disclosure;
 - (b) the disclosure is required by law;
 - (c) disclosure is necessary to enable a Party to perform its obligations under the Contract; or
 - (d) the Confidential Information is at the time of disclosure in the public domain otherwise than by breach of any duty of confidentiality under the Contract.

13. Notices

- 13.1 All notices and other communications to be given under the Contract must be in writing and be delivered to the physical address or email address from time to time designated by that Party in writing to the other Party for such purpose.
- 13.2 Any notice or communication given under the Contract shall be deemed to have been received:
- (a) at the time of delivery, if delivered by hand;
 - (b) three Business Days after the date of mailing, if sent by ordinary post or courier within New Zealand;
 - (c) 10 Business Days after the date of mailing, if posted, couriered or delivered from overseas;
 - (d) if sent by email, on the date and time at which it enters the recipient's information system, as evidenced (if required by the recipient, where delivery is disputed) in a confirmation of delivery report from the sender's information system which indicates that the email was sent to the email address of the recipient.
- 13.3 Any notice or communication received or deemed received after 5.00pm or on a day which is not a Business Day in the place to which it is delivered, posted or sent will be deemed not to have been received until the next Business Day in that place.

14. General Provisions

- 14.1 The Contract constitutes the entire agreement and understanding of the Parties relating to the matters dealt with in the Contract and supersedes and extinguishes any previous agreement (whether oral or written) between the Parties in relation to such matters. Nothing in this clause 14.1 operates to limit or exclude any liability for fraud.
- 14.2 The Parties acknowledge and agree that Web Wonks is and shall at all times remain an independent contractor.
- 14.3 You may not assign or transfer, or agree to assign or transfer, any of Your rights or obligations under the Contract without the prior written consent of Web Wonks.
- 14.4 No Party will be deemed to have waived any right under the Contract unless the waiver is in writing and signed by that Party.
- 14.5 If any provision of the Contract is found by a court or other competent authority to be void or unenforceable, such provision will be deemed to be deleted from the Contract and the remaining provisions of the Contract will continue in full force and effect.
- 14.6 Unless otherwise expressly provided in the Contract, the rights and remedies set out in the Contract are in addition to, and not in limitation of, any other rights and remedies under or relating to the Contract (whether at law or in equity).
- 14.7 The Parties agree that the provisions of clauses 6, 8, 9 and 12 shall survive the termination of these Terms of Trade.
- 14.8 The Contract will be governed by and construed in accordance with the laws of New Zealand and the Parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to the Contract.