

FX Marketing Limited (trading as 'Words By Cornelia' and 'Baywatcher.nz') wants you to be absolutely delighted with our service, and we make every effort to operate in a fair and reasonable manner at all times. So these terms and conditions are intended to make all parties aware of their obligations and set the basis of a happy working relationship.

All work is carried out subject to our Terms of Business: these may be updated from time-to-time without prior notice, so we suggest that you check them before briefing us with any work. If we are instructed to go ahead with any work, it will be deemed that it is in acceptance of our current Terms of Business.

Relationship of the parties

The parties intend that an independent contractor relationship will be created by this contract, and that no partnership, joint venture or employee/employer relationship is intended or implied.

Project process

Following discussions and briefings, FX Marketing Limited shall provide an indication of costings and timings. The client will receive a copy of this and the client is to inform FX Marketing Limited within of any corrections, alterations, inaccuracies, or other problems. Any quotes, estimates or costings provided remain valid for 30 days. One-off projects are subject to a minimum charge of 2 hours. All the time spent working on your project is billable; this includes travel time, phone calls, preparation time, liaison and project management. Time is billable in increments of 5 minutes.

FX Marketing Limited will endeavour to work within the time frames scheduled, provided you supply us with all the relevant information pertaining to the contract.

Depending upon the nature of the work undertaken by FX Marketing Limited, the client will have the opportunity to make any changes. However if the brief is changed or cancelled after work on the project has begun, this will be chargeable.

Disbursements/additional charges

Any additional costs (e.g. courier fees; postage; stationery, toll calls, car parking fees; additional printing/finishing work, flights, hotel accommodation, etc.) not included in the briefing/contact document or other communications may be charged for. Where possible FX Marketing Limited shall obtain prior permission from the client before incurring such charges.

Marketing retainers

Payment for these will be invoiced each and every calendar month, payable in advance.

If you need additional work, the client can purchase additional time at the same rate as their marketing retainer. Payment for additional work is due within seven days of invoice date.

The value of marketing retainers cannot be used towards printing, advertising, or other out-sourced costs.

Terms of payment

New clients will usually be required to an upfront deposit before any work is commenced. You'd be advised of this, plus the amount of the deposit, in any written estimates or proposals.

If we have agreed to invoice you in arrears, FX Marketing Limited will invoice clients promptly upon completion of the project, or at key milestones. Projects which take longer than one month to complete may be invoiced for progress payments, especially where we have already done a significant part of the work.

Our payment terms are strictly seven days of invoice date. No statements will be issued. All work will remain the property of FX Marketing Limited until paid for in full (see also separate section about Copyright).

If, after accepting a proposal based on seven-day payment terms, you wish to change the payment terms, this will be subject to the following fees:

- **20th of the month immediately after invoicing:** \$20 admin fee (plus GST) plus an additional 5% added on to the original amount invoiced or estimated.
- **20th of the following month:** \$20 admin fee (plus GST) plus an additional 10% added on to the original amount invoiced or estimated.
- **Any other period:** \$20 admin fee (plus GST) plus an additional 10% added on to the original amount invoiced or estimated.

If your account is overdue, and you would like us to complete further work for you, (a) work may be withheld until the overdue amount is paid, and/or (b) future work will be invoiced in advance.

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FX Marketing Limited reserves the right to charge interest on overdue accounts, which will be in line with Westpac New Zealand Limited's credit card interest rate for a Visa standard card. We also reserve the right to withdraw services to overdue accounts.

All monetary amounts described are in New Zealand dollars unless specifically stated otherwise.

The client is responsible for any costs incurred in recovering outstanding amounts from them, including any debt collection and legal fees, and FX Marketing's administration time.

GST

All prices are quoted exclusive of GST. GST is payable by New Zealand residents; it does not apply to overseas orders.

Audio recording

Accuracy is an important aspect of FX Marketing Limited's work; for that reason, briefing meetings (whether face-to-face, phone, or video) are usually recorded. This is solely so FX Marketing Limited can complete your work with high accuracy, and the recordings will be kept confidential, and not used for any other purpose. If you do not wish for a conversation to be recorded, please notify FX Marketing Limited in advance.

In instances where FX Marketing Limited has a conversation with a third-party (e.g. a client of yours, for a case study), FX Marketing Limited will always ask the third-party's permission to record a conversation in advance and honour their request.

Proofing

FX Marketing Limited will apply due diligence to the provision of error-free copy and to proof read the project throughout. However it is the sole responsibility of the client to review all material prior to production and to attest for its accuracy. FX Marketing Limited will not be liable for production charges or legal cases related to any error in copy, edited or not. The client has final approval and responsibility for accuracy of materials. Written client approval will be sought on all work prior to production.

Delegation

We may subcontract the performance of any of our responsibilities under this contract to another party. Any subcontractors will have an agreement in place with FX Marketing and be expected to deliver the high quality service you deserve.

Value-added services

Work that is outsourced will be invoiced to you directly by the supplier, with your prior agreement. Therefore FX Marketing Limited is not party to the contract between yourself and the supplier. It is the responsibility of the client to assess the suitability of any suppliers, services or products suggested to them. FX Marketing Limited makes no warranty that these products or services will meet your requirements or be error-free. FX Marketing Limited accepts no responsibility for any loss or damage resulting from any suppliers we put you in contact with. If you have any issues with the supplier, the client will need to resolve them with the supplier directly.

Copyright – copy/documents

Written work produced by FX Marketing Limited will remain the property of FX Marketing Limited until such time as payment has been made in full whereupon they will become the property of the client. Any electronic files produced become the property of the client. If a client wishes to re-request files at a later date, the time FX Marketing Limited spends locating and supplying these documents is chargeable at the client's normal hourly rate.

The parties acknowledge that FX Marketing Limited may accept jobs from other clients to develop work in the same or similar industries and that FX Marketing Limited may replicate and exploit all techniques used for the creation of work.

FX Marketing Limited retains royalty-free rights to use the completed project and any preliminary concepts for the purpose of marketing its business.

Copyright – photographs

In the event of a client supplying images or photographs, FX Marketing Limited will assume that any copyright issues related to those images have been satisfied and that the client is providing them with the permission of the originator of the images. The client will take full responsibility for any copyright issues resulting from the use of the images. If a client wishes to re-request photographic files at a later date, the time FX Marketing Limited spends locating and supplying these files is chargeable at the client's normal hourly rate.

If FX Marketing Limited takes any photographs for your business, the copyright remains with FX Marketing Limited in perpetuity, though the client has unlimited rights to use the photos however they wish.

Supply of stock photographs

If the client requests that FX Marketing Limited purchases stock photographs on their behalf, these will be on-charged at cost price (plus GST where applicable). Time spent selecting, purchasing and downloading photographs, and processing

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the payments, will be charged to the client at the hourly rate FX Marketing Limited has been engaged at. The client shall receive copies of the stock photograph files via email at the image resolution they have been purchased at.

Liability

You agree that FX Marketing Limited will not be liable for any indirect or consequential damages, including but not limited to, loss of profits or for any claim made on the client by any other party, even though FX Marketing Limited may have been notified of such damage or claims.

We shall not be liable to you for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods or failure to perform its obligations under this agreement where such delay is caused directly or indirectly by natural disaster (fire, storm, flood, earthquake, volcano eruption); armed conflict; labour dispute; civil commotion; intervention of a government; inability to obtain labour, materials or manufacturing facilities; breakdown or malfunction of machinery/equipment; outages in telecommunications, radio communications or power networks; theft; accidents/illness; bankruptcy/liquidation of a supplier; interruptions of, or delay in, transportation; any act or omission of any third party; or any other cause beyond our control.

The client agrees to defend, indemnify and hold us harmless from and against any and all claims, losses, liabilities and expenses (including attorneys' fees) related to or arising out of the services and products provided by us to you under this agreement, including without limitation claims made by third parties (including your customers) related to any false advertising claims, liability claims for products or services sold by the client, claims for patent, copyright or trademark infringement, claims due to disruption or malfunction of services provided hereunder, or for any content submitted by the client for publication by us.

If, despite the other provisions of this agreement, FX Marketing Limited is found to be liable to the client then its liability for any single event or series of related events is limited to the fees.

Confidentiality

FX Marketing Limited shall keep in confidence all confidential information it has received from the client. FX Marketing Limited shall take all reasonable steps to protect any sensitive information and trade secrets provided, however the client should brief FX Marketing Limited fully on additional security required above and beyond this.

Intellectual property rights

FX Marketing Limited shall have a complete and permanent right to and the use of all work produced, developed or created for the client. This includes ownership of intellectual property of such work.

Privacy Act, data protection, and other laws

Personal information whether contained in this application or otherwise obtained may be used by FX Marketing Limited to:

- Carry out any work which the client has asked us to do, where subcontractors or third parties require this information;
- To administer and maintain the client's account and to communicate for any purpose.

The personal information provided in the Account Application is collected by and will be held by FX Marketing Limited.

Though FX Marketing Limited will do their best to keep you on the right side of the law, the responsibility lies with the client for ensuring that applicable laws (not limited to, but including the Privacy Act and Unsolicited Electronic Messages Act) are adhered to. FX Marketing Limited are not able to give legal advice: if such is sought, please consult with a lawyer.

Termination of services

FX Marketing Limited will attempt to resolve any conflicts in a professional and amicable manner. FX Marketing Limited reserves the right to cease immediately without liability to provide the service and to terminate this agreement if the client goes into liquidation or bankruptcy, or if the client fails to meet any obligation in accordance with this agreement.

FX Marketing Limited reserves the right to terminate work on client projects at any time without notice. Work completed for the client prior to the termination is payable in full. FX Marketing Limited would not be responsible for any consequences of the termination of any contract or project.

Satisfaction guarantee

If you're not completely, totally and utterly thrilled with our work – then our work is not complete. FX Marketing Limited works hard to get things right first time. If you are not happy with the work for any reason, please let us know immediately so we can rectify the matter in a mutually-agreeable manner.

Applicable law

This agreement shall be deemed to be an agreement made in New Zealand and shall be subject to, governed by and interpreted in accordance with the laws of New Zealand.

Last updated: 21st July 2022

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