



## MARKETING SERVICES TERMS AND CONDITIONS

These Terms and Conditions apply when engaging the services of Angela Purcell T/A Pulse Media ("Pulse Media", "we"). The client ("you", "your") means the person, company or other entity, buying the goods or services from Pulse Media. You agree that these Terms and Conditions ("Agreement") and any subsequent terms and conditions issued by Pulse Media shall apply to all orders for the goods and the services made by you.

### OVERALL SERVICES

#### 1 CLIENT ACKNOWLEDGEMENTS. You acknowledge and agree that:

- 1.1 Quotes and estimates provided by Pulse Media may exclude GST.
- 1.2 **Project/Scope of Work** - The Client is hiring Pulse Media to do as agreed in the Marketing Proposal/Scope of Work/Quote/Invoice.
- 1.3 **Acceptance** - Any instructions received by Pulse Media from the Client for the supply of Goods or Services and/or the Client's acceptance of Goods or Services supplied by Pulse Media shall constitute acceptance of the terms and conditions contained herein.
- 1.4 Pulse Media has the right to use work developed for you, as well as your company name and logo(s), in its promotional material, in the context of showing its portfolio of work and clients.
- 1.5 Pulse Media endeavours to be thorough in checking all files before production, however you hold the ultimate responsibility for signing off all proofs as production-ready. Once you have signed off on a proof, Pulse Media is not liable for any charges that may occur due to errors.
- 1.6 **Authority to Sign**- Each party promises to the other party that it has the authority to enter into this Contract and to perform all of its obligations under this Contract.
- 1.7 **Assignment**- Pulse Media may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 1.8 **Independent contractor** - The Client is hiring Pulse Media as an independent contractor. The following statements accurately reflect their relationship:
  - Pulse Media will use its own equipment, tools, and material to do the work.
  - The Client will not control how the job is performed on a day-to-day basis. Rather, Pulse Media is responsible for determining when, where, and how it will carry out the work.
  - The Client will not provide Pulse Media with any training.
  - The Client and Pulse Media do not have a partnership or employer-employee relationship.
  - Pulse Media cannot enter into contracts, make promises, or act on behalf of the Client.
  - Pulse Media is not entitled to the Client's benefits (e.g., group insurance, retirement benefits, retirement plans, vacation days).
  - Pulse Media is responsible for its own taxes.
  - The Client will not withhold taxes or make payments for ACC for Pulse Media or any of Pulse Media's employees or subcontractors.
- 1.9 **Schedule** - This Contract can be ended by either Client or Pulse Media at any time, for any reason by sending an email or letter to the other party, informing the recipient that the sender is ending the Contract and that the Contract will end in 14 days.

If you are paying monthly for services or recurring services, all balances on your account must be paid in full and you will be invoiced your outstanding balances due. This must be paid within 7 days. (See Section 7)

- 1.10 **Price**- At Pulse Media's sole discretion the Price shall be either:
  - a) as indicated on invoices provided by Pulse Media to the Client in respect of Goods or Services supplied; or
  - b) Pulse Media's quoted Price which shall be binding upon by Pulse Media provided that the Client accept Pulse Media's quotation either in writing or accepting digitally.

## 2 CLIENT RESPONSIBILITIES. For the purposes of providing services, you agree:

- 2.1 To authorise Pulse Media to edit content on your website or social channels for the purpose of fulfilling the services you have requested.
- 2.2 You will identify clearly to Pulse Media the approval process required, if any, or utilise Pulse Media's approval process/solutions when Pulse Media makes changes to your content. If no approval process is specified, Pulse Media will act in good faith when making website changes and will seek verbal or written approval for changes it deems you should be consulted on.

## 3 INTELLECTUAL PROPERTY, LIABILITY AND COPYRIGHT

- 3.1 **Client Owns All Work Product-** Within the scope of this contract, Pulse Media is creating "work product" for the Client. To avoid confusion, work product is the finished product, as well as drafts, notes, materials, mock-ups, hardware, designs, inventions, patents, code, and anything else that Pulse Media works on—that is, conceives, creates, designs, develops, invents, works on, or reduces to practice—as part of this project, whether before the date of this Contract or after. Pulse Media hereby gives the Client this work product once the Client pays for it in full. This means Pulse Media is giving the Client all of its rights, titles, and interests in and to the work product (including intellectual property rights), and the Client will be the sole owner of it. The Client can use the work product however it wants, or it can decide not to use the work product at all. The Client, for example, can modify, destroy, or sell it, as it sees fit.
- 3.2 You represent and warrant that any elements of text, graphics, photos, designs, trademarks, or other artwork provided to Pulse Media for inclusion on the website(s) are owned by you, or that you have received permission from the rightful owner(s) to use each of the elements, and will hold harmless, protect, and defend Pulse Media and its subcontractors from any liability or suit arising from the use of such elements.
- 3.3 If you intentionally or unintentionally include the names of your competitors or trademarked terms in your website or advertising, you do so at your own risk and accept all liability associated with such action. Without limiting the above, Pulse Media may, but is not obliged to, at any time and in its sole discretion, remove competitor names or trademarked terms from advertising campaigns.
- 3.4 **Pulse Media's IP That Is Not Work Product-** During the course of this project, Pulse Media might use intellectual property that Pulse Media owns or has licensed from a third party, but that does not qualify as "work product." This is called "background IP." Possible examples of background IP are pre-existing code, type fonts, properly licensed stock photos, and web application tools. Pulse Media is not giving the Client this background IP. But, as part of the Contract, Pulse Media is giving the Client a right to use and license (with the right to sublicense) the background IP to develop, market, sell, and support the Client's products and services. The Client may use this background IP worldwide and free of charge, but it cannot transfer its rights to the background IP (except as allowed in Section 1.7 (Assignment)). The Client cannot sell or license the background IP separately from its products or services. Pulse Media cannot take back this grant, and this grant does not end when the Contract is over.
- 3.5 **Indemnification-**You, the client, agree to defend, indemnify and hold Pulse Media, its sub-contractors, partners, and the respective directors, officers and employees of each, harmless from and against any and all claims, losses, damages, liabilities and costs (including, without limitation, reasonable attorneys' fees and court costs) arising out of or relating to your breach of any of these Terms or use by you or any third party of the services, except to the extent the foregoing directly result from Pulse Media's own gross negligence or wilful misconduct. Pulse Media reserves the right, at its own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by you, the client.

#### 4 FEES. You agree to pay Pulse Media any and all fee(s) for services provided.

- 4.1 Payments are due according to the terms specified on each invoice. If terms are omitted from any invoice, that invoice is due 7 days from the date of invoice.
- 4.2 Setup and Onboarding Fees are due prior to the specified work beginning. All setup fees are non-refundable as they are applied to costs immediately incurred by Pulse Media, in initiating services
- 4.3 Once a payment or deposit is made, it is non-refundable. If a project is cancelled or postponed, all monies paid are retained by Pulse Media and if applicable, a fee for all work completed beyond what was already paid for shall be paid by the client.
- 4.4 Pulse Media reserves the right to delay starting work, or to pause existing work, if a payment is overdue. When payment is made, the normal work process will resume.
- 4.5 **Late Fees** on overdue invoices will be added from 7 days after due payment until the date of payment at a rate of 2.5% per calendar month.
- 4.6 Pulse Media reserves the right to refer any unpaid account to a Debt Collection Agency. Once the matter has been referred to a Debt Collection Agency, you will be liable for all collection fees including the Agency fees and commission(s) Pulse Media would have to pay for this service.
- 4.7 **Expenses**- Client agrees to reimburse Pulse Media for any of the following expenses necessary in completion of the Work: (e.g. Fonts, Templates, Proofs, Props, Software, Stock photography, Travel, Printing Services etc). Pulse Media must obtain the Client's written approval before purchasing or ordering any goods or services, materials or equipment on behalf of the Client.
- 4.8 **Chargebacks** - If we receive a chargeback or payment dispute (i.e. PayPal/Stripe Dispute) from a credit card company or bank, your service and/or project will be suspended without notice. A \$50 chargeback fee (issued to recover fees passed on to us by the credit company), plus any outstanding balances accrued as a result of the chargeback(s) must be paid in full before service is restored, files delivered, or any further work is done. Instead of issuing a chargeback, please contact us to address any billing issues. Requesting a chargeback or opening a PayPal dispute for a valid charge from us is tantamount to fraud and is an inappropriate (and possibly illegal) legal means of obtaining a refund. Please read and make sure you fully understand our refund policy prior to making a payment.
- 4.9 **Request Procedure** - Refunds must be requested by sending an email to [accounts@pulsemedia.nz](mailto:accounts@pulsemedia.nz) . Requests received by any other method including direct email to a staff member or forum private message cannot be considered or processed.

#### ORDERING SERVICES

**5 PLACING AN ORDER: You acknowledge and agree that:**

- 5.1 Services can be ordered from Pulse Media through a variety of methods including, but not limited to: signed contracts, order forms or quotes, email requests, online proposal acceptance and verbal requests.
- 5.2 Where a fixed quote is not provided for a job, both parties will act in good faith. Pulse Media will track time spent on the work and charge an hourly rate.

**6 CANCELLATION OF SERVICES PRIOR TO COMPLETION**

- 6.1 Once a signed agreement, quote or order has been accepted by Pulse Media, you will be responsible for full payment of all Fees specified on the agreement, quote, invoice or order. If you cancel the services for any reason prior to completion (other than as a consequence of Pulse Media' material breach of this Agreement or under your rights in clause 7.5), all Fees specified shall be immediately due and payable. If a Minimum Term is specified for any service, the Fees for the remaining Minimum Term shall be immediately due and payable.
- 6.2 For any work undertaken where an agreement, quote or order has not been approved, or where one has been approved but the work is to be charged at an hourly rate, if you decide to cancel the requested work prior to completion, you must give notice of cancellation in writing. Pulse Media will reconcile the hours worked, and will be entitled to payment for all outstanding Fees within 7 days.

**7 TERMINATION OF RECURRING SERVICES. You acknowledge and agree that:**

- 7.1 Recurring services include any service where a fee is recurring, such as, but not limited to, website hosting, SEO, social content management, online advertising campaigns, or domain renewal etc. The recurrence may be monthly, bi- monthly, quarterly, half-yearly, annually, or any other recurrence frequency.
- 7.2 You must give written notice to Pulse Media to terminate the services. The final day that the services will be provided ("Termination Date") will be either the last day of the Minimum Term, or the last day of the month following the month the notice was received, whichever is later.

- 7.3 If any service is designated as having an Early Termination Option, or if the quote states that we will not hold you to the minimum term, you can cancel the service prior to the Minimum Term, without needing to pay for the remainder of the Minimum Term, and with no other financial penalty, provided that (i) You are genuinely dissatisfied with either the results or Pulse Media' performance of the service; (ii) You discuss your dissatisfaction with Pulse Media verbally; (iii) You then give Pulse Media at least 21 days to fix the areas in which you are dissatisfied, and (iv) if, at the end of that period you are still genuinely dissatisfied, you give Pulse Media 14 days written notice that the services are to be terminated. This clause supersedes clause 7.1.
- 7.4 Services are terminable by the client only in accordance with the above provisions (7.1 – 7.3), or as a consequence of Pulse Media' material breach of this Agreement.
- 7.5 Pulse Media may terminate this Agreement and access to the services, with or without cause of any type or nature, with 14 days' notice.
- 7.6 All provisions of this Agreement that by their sense or nature should survive termination of this Agreement (including, without limitation, all limits of liability, indemnity obligations, and confidentiality obligations) shall so survive. In the event of any termination, you shall remain liable for any amount due for services delivered by Pulse Media prior to the Termination Date.
- 7.7 You must pay all Fees that accrue prior to the Termination Date.

## 8 GENERAL.

- 8.1 If any provision of this agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this agreement and shall not affect the validity and enforceability of any remaining provisions.
- 8.2 **Governing Law** – This Agreement is subject to New Zealand law. References to dollars are references to New Zealand dollars unless otherwise stated. Any arbitration or court proceedings about this Agreement, or the Services, must be brought and heard in New Zealand. Pulse Media promises that the manner it does this contract, its work product, and any background IP it uses comply with applicable laws and regulations.
- 8.3 The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.
- 8.4 You may not assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of Pulse Media.
- 8.5 No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.
- 8.6 No provision of this Agreement shall be interpreted against any party because such party or its legal representative drafted such provision.
- 8.7 **Confidentiality**-This Contract imposes special restrictions on how the Client and Pulse Media must handle confidential information. These obligations are explained in this section.
- 8.8 **Client Obligations**– The Client must keep all Confidential Information relating to Pulse Media confidential and only use it for the purposes it was made available; and not disclose Confidential Information relating to Pulse Media without Pulse Media's written approval, unless it is necessary for the purposes of the Services or the Works to disclose it to any appropriate third party, or as required by law.
- 8.9 **Pulse Media Obligations**– Pulse Media must keep all Confidential Information relating to the Client or the Client's Project confidential and only use it for the purposes it was made available; and not disclose any Confidential Information relating to the Client or the Client's Project or the Works without the Client's written approval, unless it is necessary for the purposes of the Services or Works to disclose it to any appropriate third party, or as required by law.
- 8.10 If the Client is subject to the Official Information Act 1982, the Local Government Official Information and Meetings Act 1987 or the Privacy Act 1993 then Pulse Media acknowledges that, pursuant to those Acts, the Client may be required to release information about the Services, the Client's Project or this Agreement.

- 8.11 If either Party is legally bound to disclose Confidential Information, that Party must first advise the other Party what information will be provided and limit the information to that required by the law. Pulse Media and any Subcontractors personnel may be required to disclose Confidential Information if required by their code of professional ethics. In such cases, Pulse Media shall advise the Client of this requirement and limit the information disclosed to that necessary to comply with the applicable code of ethics.
- 8.12 **Return of Confidential Information-** Upon request, Pulse Media must promptly return to the Client or destroy all Confidential Information which is in Pulse Media's possession or control
- 8.13 **Force majeure-**Neither party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected party will give prompt written notice to the other party and will use commercially reasonable efforts to minimise the impact of the event.

## SEO SERVICES

### 9 CLIENT ACKNOWLEDGEMENTS FOR SEO SERVICES. SEO Services are intended to provide your website with improved positioning in selected search engines. If engaging Pulse Media for SEO Services you understand, acknowledge and agree that:

- 9.1 PULSE MEDIA HAS NO CONTROL OVER THE OVER THE POLICIES AND RANKING ALGORITHMS OF SEARCH ENGINES WITH RESPECT TO THE HOW THEY CHOOSE TO RANK WEBSITES IN SEARCH RESULTS, NOW OR IN THE FUTURE.
- 9.2 While it is unlikely that search engines will exclude a full site from search results, it is common for search engines to take some time before new websites are included in results, and it is very common that even established sites will not have all pages from the website included in search results.
- 9.3 Pulse Media makes no representations, warranties or guarantees of any kind as to the level of sales, purchases, clicks, sales leads, search engine rankings or other performance that you can expect from the SEO Services provided by Pulse Media.
- 9.4 Website search engine rankings can fluctuate any day, any time, and between different users because of on-going changes in the ranking algorithms, SEO efforts made by the competitors, and other factors.
- 9.5 Newly edited websites may experience a temporary boost in ranking for some targeted keywords for a short period of time, before the rankings settle to a lower level. This is known as 'freshness boost effect'. You acknowledge that if this happens to your site, the subsequent drop in rankings is not poor performance by Pulse Media, and is instead a common occurrence.
- 9.6 For the duration of this Agreement you agree not to engage any other SEO Services, whether one-off services or ongoing services, without written agreement from Pulse Media in advance.
- 9.7 Pulse Media is authorised to use of all your logos, trademarks, website images, and the like, on your website and other websites, to create content that Pulse Media deems may be useful for search engine positioning and optimisation of your website(s).
- 9.8 **EXCLUSIVITY.** For SEO Services, if any keywords are agreed to be 'Exclusive' ("Exclusive Keywords"), a geographical region for this exclusivity ("Exclusive Region") will be defined in writing. Pulse Media warrants that it will not undertake any SEO Services for those Exclusive Keywords for any other company targeting the Exclusive Region, prior to termination of this Agreement.

## ONLINE ADVERTISING SERVICES

**10 PAID ONLINE ADVERTISING. Online Advertising Services refers to all online advertising that has a direct cost for clicks, impressions or inclusion, which Pulse Media organises and/or manages on your behalf. This includes, but is not limited to, Google Ads and Facebook advertising (“Ads”). For these Ads you agree that:**

- 10.1 You will agree with Pulse Media on a budget for spending on the campaign. The agreed budget for spending on the Ads can be changed at your discretion whenever you choose, through either verbal or email instruction to Pulse Media. Pulse Media will confirm with you when the changes wappplied.
- 10.2 Pulse Media only charges for management fees. Your Adspend Budget, costs of the Ads are not included you will need to pay these directly to the companies that own the publishing networks, such as, but not limited to, Google and Facebook (“Publishers”).
- 10.3 Pulse Media reserves the right to modify Ads, including the associated keywords, target geographies and Publishers, consistent with your objectives, at any time.
- 10.4 While Pulse Media will take all reasonable efforts to promote the various products and services that you have selected to promote, it makes no guarantee – financial or otherwise – that all such products and services will be advertised, particularly if advertising all such products and services would result in exceeding the campaign budget you have set.
- 10.5 You may select certain individual words or word phrases (“Keywords”) to be used in the campaign. While Pulse Media will take all reasonable efforts to promote these Keywords at the Publishers, it makes no guarantee – financial or otherwise – that all Keywords will be advertised, particularly if advertising all Keywords would result in exceeding the campaign budget or produce low quality results. Pulse Media is permitted to choose Keywords to add to the campaigns that it believes may benefit you.
- 10.6 You agree that the rules for displaying Ads when certain Keywords are entered by a user at a Publisher are controlled by the Publisher and as such, you agree that Pulse Media makes no guarantee – financial or otherwise – about when or where Ads will be displayed when certain Keywords are entered by a user at a Publisher.
- 10.7 You agree that, while Pulse Media will use its best efforts to place Ads in the target geographies specified by you, Pulse Media does not control the system that displays the Ads and, as such, cannot guarantee that your Ads will only or primarily be displayed to people in the target geographies. You acknowledge that Publishers may use varying means to detect where people are located when determining whether to display an Ad, including, but not limited to: (i) IP targeting; (ii) user registration information; and
- 10.8 (iii) explicit geographic search queries made by the user.



## 11 WEBSITE HOSTING SERVICES

- 11.1 **DISK SPACE.** Hosting accounts are allocated a disk space allowance. This allowance varies depending on the hosting package you purchase. Should your account exceed the allocated amount your website may stop working. We will provide pricing for upgrading your hosting package to a larger disk space allowance.
- 11.2 **TRAFFIC.** Pulse Media does not set arbitrary limits on the amount of visitor traffic a website can receive. However, if your monthly website traffic is considerably higher than expected for two or more consecutive months, Pulse Media reserves the right to renegotiate the hosting plan charges, in good faith, to a higher rate.
- 11.3 **GUARANTEED BACKUPS.** When hosting your website with Pulse Media, Pulse Media guarantees to backup your data that is stored on the web servers. Data that will be backed up includes website files and SQL databases. The guarantee does not include emails stored on a mail server. The backups are for the purpose of enabling the website to be restored to a recent functional version.
- 11.4 If a disaster occurs and data needs to be restored from the backup for the website to be functional again, reasonable time must be allowed for the restoration.
- 11.5 If a disaster occurs and the data is not backed up, and the website is left in a non-functional state, the penalty for Pulse Media will be limited to (i) restoring and/or rebuilding the website to a state that is comparable to the website's functionality anytime in the one month prior to the disaster, at no cost to you, and (ii) providing free website hosting to you for that website for the following 12 months.
- 11.6 **NOT FOR ARCHIVE STORAGE.** Website hosting accounts with Pulse Media are not to be used for archives of files that consume more than 100MB. If files that Pulse Media deems fall into this category, are found on the hosting account we will give you 7 days' notice to remove the files. If you do not remove the files Pulse Media reserves the right to delete the offending files.
- 11.7 **NON-PAYMENT.** If your website or DNS is hosted with Pulse Media and payment for your website hosting, or any other service by Pulse Media, is overdue Pulse Media will send an Invoice Unpaid Reminder 1 day after the due date and 3 days after the due date. If the account remains overdue 7 days later a third warning notice will be sent. If any part of your account with Pulse Media remains overdue 8 days after the first warning notice, Pulse Media reserves the right to suspend your hosting account and DNS. This means that your website will stop working and, potentially, your emails might stop working too. Your website data will be protected and the website reinstated when the account is paid. If the account remains overdue for 60 days after the second notice is sent, the hosting service will be terminated and Pulse Media reserves the right to delete all your data from its servers.
- 11.8 **DATA RETENTION.** Pulse Media shall not be responsible for retaining any of your data after account termination. After the account is terminated all data may be deleted from the servers and from backups during scheduled back-up rotation. Pulse Media is under no obligation to restore, provide on any storage media or send out any data pertaining terminated accounts.

## 12 WEB DESIGN SERVICES

- 12.1 **PROCESS** – Pulse Media follows a design process and it is divided into stages. For each stage, specific deliverables are produced for the client. A task, job, or project is considered complete where either the Client approves the task, job, or project as complete, or where Pulse Media determines that the task, job or project is complete according to the project scope.
- 12.2 **ESTIMATED DELIVERABLES** - Unless otherwise agreed upon with the client, the timescale for completion of work may vary and can take from 1 to 6 months after approval of design and plan, depending on the scale of the work. Time-frames for the project will be discussed with the client, before the project commences. Pulse Media will do their best to complete the project as soon as reasonably possible. Any delays will be communicated with the client.
- 12.3 **CLIENT DELIVERABLES** – The client is to provide Pulse Media with all necessary information/content/Imagery and materials in a timely manner that Pulse Media may reasonably require in order to complete the project. Any changes required after you have sent content to Pulse Media, will be billed additionally.
- 12.4 **DESIGN** – The project will include one main design. The client will be able to make 3 minor revisions. Major revisions will be billed additionally at our hourly rate.
- 12.5 **COPYWRITING/CONTENT** – If you require Pulse Media to provide Content – our copywriting will be billed additionally. All assets purchased to complete your project will be followed as per section 4.7.