

1. GENERAL

These Terms and Conditions shall apply to the provision of all of Mint Design's services.

2. INTERPRETATION

In these Terms and Conditions and in any Contract to which these terms and conditions apply, unless the context otherwise requires:

- a)** Mint Design means Mint Design Limited;
- b)** Conditions means these Terms and Conditions to be read and construed with each Estimate/Quotation provided by Mint Design;
- c)** Client or Customer means the purchaser of products and/or services from Mint Design;
- d)** Contract means an agreement between the Client and Mint Design comprising of the Estimate/Quotation and the Conditions and any variation agreed to in writing by Mint Design;
- e)** Products and services means the products sold by Mint Design to the client;
- f)** Unless Mint Design and the Client otherwise agree in writing:
 - i. In the event of any conflict arising between these Conditions and any agreement or contract these Terms and Conditions shall prevail; and
 - ii. Estimates/Quotations by Mint Design remain open for acceptance for 28 days from the date of the Estimate or Quotation.

2a. FORMATION OF THE CONTRACT

No contract shall come into existence until the Client's order has been accepted by Mint Design. The Client may place an order by either:

- a)** Accepting the Estimate or Quotation via Mint Design's website, by telephone, by email, in person or in writing; or
- b)** Paying the deposit (if any) referred to in the Estimate or Quotation; or
- c)** Communicating its order to Mint Design in a manner otherwise than in accordance with (a) above.

The Client cannot cancel a contract after an order has been accepted by Mint Design and is bound to pay the estimated or quoted price.

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3. PAYMENT

- a)** Prices are estimated and quoted in New Zealand Currency and shall be exclusive of GST.
- b)** Mint Design will invoice the Client upon completion of the work unless the work is ongoing (past the end of any month) in which case Mint Design will invoice the Client on a monthly time-taken basis. Invoices are payable within seven (7) days of the date of that invoice.
- c)** Payment of the products and services shall be made within seven (7) days following the date of invoice. Mint Design reserves the right to require the Client to pay for Products and/or Services prior to their supply.
- d)** If the Client does not pay their account by the due date and has not entered into any payment arrangement (which is at Mint Design's sole discretion), Mint Design reserves the right to stop working for the Client immediately and will not be liable to the Client for any loss that they may suffer as a result of such discontinuance.
- e)** Mint Design reserves the right to correct any typographical or clerical errors contained in the prices or specifications.
- f)** Time for payment is of the essence and, without prejudice to any other rights of Mint Design, if the Client fails to pay any sum payable pursuant to any Contract when due:
 - i. Mint Design may treat the Contract as repudiated by the Customer or may until payment in full is made, suspend delivery of products without incurring any liability whatsoever to Mint Design;
 - ii. The Client shall (if so required by Mint Design) pay interest to Mint Design at the default interest rate of fourteen percent (14%) per annum. Interest shall be payable daily until the date when the payment is received; and
 - iii. The Client shall be liable for all the expenses and costs (including indemnity legal costs) in relation to Mint Design enforcing or attempting to enforce a Contract or these Terms and Conditions.

4. DEFAULT

- a)** In the event that:
 - i. The amounts payable by the Client to Mint Design are overdue, or the Client fails to meet any other obligation to Mint Design, under this or any other Contract or agreement or in Mint Design's opinion the Client is likely to be unable to meet any payment or other obligations to Mint Design; or
 - ii. The Client becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management; or
 - iii. The Client no longer carries on business or threatens to cease carrying on business; or
 - iv. The ownership or effective control of the Client is transferred or the nature of the Client's business is materially altered; then

Mint Design shall be entitled to cancel all or any part of any Contract with the Client which remains unperformed, in addition to and without prejudice to its other remedies; and all amounts outstanding under this Contract or any other Contract shall, whether or not due for payment, immediately become due and payable.

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5. INTELLECTUAL PROPERTY

- a)** Unless otherwise agreed, Mint Design shall retain copyright and intellectual property rights in all documents, reports, records, media, electronic files, drawings and designs prepared for and on the Client's behalf.
- b)** The Client will be entitled to use the documents and any copies for the purposes for which they were intended however the Client (or any other person or entity) is not permitted to make use of, or modify any such document for any other purpose without Mint Design's agreement in writing. Concepts not chosen will remain the property of Mint Design.
- c)** On completion and full payment of branding projects the intellectual property rights of the Client's logo design will transfer to the Client.
- d)** Where Mint Design provides access to design files, access will be provided in PDF, JPG or PNG format. Access to design files in other formats may incur additional costs for the Client.
- e)** Trademarking is the sole responsibility of the Client.

6. LIABILITY

- a)** The Client agrees that Mint Design 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 Mint Design may have been notified of such damage or claims.
- b)** In particular, Mint Design shall not be liable for any loss or damages arising, either directly or indirectly, from search engine rankings or social media marketing, including but not limited to any losses resulting from changes in search engine rankings, the closure of social media accounts and non-compliance with social media provider guidelines.
- c)** Mint Design shall not be liable to the Client 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 to the Client where such delay or failure is caused directly or indirectly by the Client (for example, by changing its requirements, not providing timely feedback or approval of proofs) or by an act of God, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour, materials or manufacturing facilities, accidents, interruptions of, or delay in, transportation, weather conditions or any other cause beyond Mint Design's control.
- d)** The Client agrees to defend, indemnify and hold Mint Design harmless from and against any and all claims, losses, liabilities and expenses (including legal costs) related to or arising out of the services provided by Mint Design to the Client, including without limitation claims made by third parties (including the Client's 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 by Mint Design, or for any content submitted by the Client for publication by Mint Design.
- e)** If, despite the above, Mint Design 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 paid by the Client to Mint Design for those particular services.
- f)** Due to the public nature of the Internet, all material submitted by the Client for publication will be considered publicly accessible. Mint Design does not screen in advance any Client material submitted to Mint Design for publication. Mint Design's publication of material submitted by the Client does not create any express or implied approval by Mint Design of such material.

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7. WEBSITES

- a)** Where Mint Design has created or designed a website for the Client, the Client must make payment in full prior to the website 'going live' on the internet. Should payment not be made in full, Mint Design reserves the right to shut down that website until such time as it receives payment in full. In the event that the website is already live, Mint Design reserves the right to take the website down from the internet until such time as it receives payment in full.
- b)** The Client acknowledges and agrees that it will be liable for all of the costs restoring the website to the internet where it has been shut down due to non-payment.
- c)** If the Client has retained Mint Design to host its website, Mint Design will charge monthly fees, and if the Client falls into arrears in relation to those monthly payments, Mint Design reserves the right to shut the website down and will not be liable for any consequences which might arise in the event of such a situation arising.
- d)** The Client agrees that it will be charged for any work it requests Mint Design to complete or undertake that is outside of the scope of the estimate/ quote and the approved design. After going live, updates or changes the Client wishes to make to the website will also be chargeable.
- e)** Packaging and supplying website files for transfer or taking a website down will incur a cost and will be payable by the Client.

8. STREET VIEW TRUSTED 360 TOURS

- a)** Where the Client has engaged Mint Design to create a Streetview Trusted 360 Tour, the Client must make payment in full prior to the 360 Tour 'going live' on the internet. Should payment not be made in full, Mint Design reserves the right to shut down that 360 Tour and if it has already gone live on the internet, to take it down, until such time as it receives payment in full.
- b)** The Client acknowledges and agrees that it will be liable for all of the costs restoring the 360 Tour to the internet where it has been shut down due to non-payment.
- c)** The Client acknowledges and agrees that Mint Design will not be liable to the Client for any losses in the event that Google makes any changes to Streetview Trusted, including but not limited to Google changing the way that Streetview Trusted operates or discontinuing the Streetview Trusted product.

9. PROOFING

- a)** Proofs of all work may be submitted for Clients approval and Mint Design shall incur no liability for any errors not corrected by the Client in proofs submitted. Additional charges shall be made for any additional proofs that are required as a result of alterations required by the Client.

10. GUARANTEE

- a)** In consideration of Mint Design entering into a Contract to supply Products and/or Services to the Client, the Guarantor:
 - i. Guarantees payment of all monies owed by the Client to Mint Design, and
 - ii. Guarantees the performance by the Client of all obligations, responsibilities and covenants under the Contract.

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- b)** The Guarantor agrees that in the event of default by the Client in any payment, obligation, responsibility or covenant under the estimate or quotation, these Terms and Conditions or a Contract, the Guarantor may for all purposes be treated as the Client by Mint Design who shall be under no obligation to take proceedings against the Client before taking proceedings against the Guarantor, and the Guarantor will execute a mortgage over his/her or its property to secure payment of all monies owed and outstanding by the Client to Mint Design if requested by Mint Design.
- c)** Should there be more than one Guarantor then their liability as Guarantors under this Guarantee shall be joint and several.

11. MISCELLANEOUS

- a)** If any Condition or part of any Condition is held to be invalid or unenforceable the invalidity or unenforceability shall be deemed eliminated or modified to the minimum possible extent necessary to make the remainder of the Conditions enforceable.
- b)** Failure by Mint Design to insist upon strict performance by the Client of any of the Conditions shall not be a waiver of any rights of Mint Design on any subsequent occasion.
- c)** These Terms and Conditions and the Contract may only be varied by Mint Design in writing at its discretion.
- d)** The Client may not assign or transfer any of its rights or obligations under or in connection with the Contract to any other person whatsoever.
- e)** Mint Design reserves the right to sub-contract the performance of the Contract or any part of the Contract to any other party or person.
- f)** Neither party shall be liable for any delay, alteration or failure to perform any of its obligations under a Contract where occasioned by an event beyond that party's reasonable control ("force majeure") and such party shall be entitled to a reasonable extension of time for the performance of any such obligations.
- g)** The Client shall pay the costs and expenses including indemnity legal costs incurred by Mint Design in exercising any of its rights or remedies or enforcing any of the Conditions. All Contracts made between Mint Design and the Client shall be governed by and construed in accordance with the laws of New Zealand and the Client agrees to submit to the nonexclusive jurisdiction of the New Zealand Courts.
- h)** Any notice given by one party to the other shall be deemed to have been delivered 48 hours after posting to the recipients registered office or last known address and immediately if forwarded by facsimile or email. Packaging and supplying files will incur a cost and will be payable by the Client in advance of files being supplied.

12. LAW

These Terms and Conditions shall be governed by the laws of New Zealand and shall be construed in all respects as a New Zealand contract.

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