

All quotations given by Stoker Creative (“Stoker” and “we”) are conditional upon your [signed] acceptance of the following terms and conditions.

These terms and conditions supersede any previous versions and apply to all present and future projects unless otherwise agreed in writing. Stoker reserves the right to change or modify these terms at any stage, with immediate effect. By agreeing to these terms, your statutory rights are not affected.

Please ensure you have read and fully understand what is written below. Please contact us if anything is not clear to you.

PRICE QUOTATIONS

- 01 All price quotations exclude GST where applicable and are valid for thirty days from the date of the quotation.
- 02 All price quotations are guide prices based upon what Stoker anticipates the creative, time and production requirements to be. These requirements are based on previous experience and on typical processes, plus client co-operation in provision of content, meeting deadlines and approval. Within reason, additional charges may be payable, in which case Stoker will give you at least 1 week’s prior notice.
- 03 No creative or developmental work will commence until Stoker has received written approval of the quotation (by hand or by email) and a minimum deposit of 30% of the agreed price (unless otherwise agreed in writing). This ensures Stoker is fully equipped to provide the very highest levels of service and expertise, from project inception through to completion.

PAYMENT

- 04 Your obligation to pay on time is of essence to these terms, and you will pay any invoiced amounts without setoff or deduction.
- 05 For projects quoted or estimated less than NZD\$600 (excl.), Stoker reserves the right to invoice prior to project commencement and full payment is expected immediately (or before project commencement).
- 06 Unless otherwise agreed in writing, the balance of all invoiced amounts will be due in full on the 20th day of the month following project completion. “Project completion” differs for each client, and as such this date will be set by mutual written agreement between Stoker

and you.

- 07 If any project surpasses the estimated project completion date (“Completion Date”), or extends beyond twelve weeks from time of approval of the Completion Date (whichever occurs first), Stoker reserves the right to invoice 30% of any outstanding balance, with the remaining 70% payable on completion.
- 08 Where necessary, any third-party services with costs incurred to Stoker will require a minimum up-front payment of 75% of those third-party costs (this figure will be at the discretion of Stoker and may in some cases be as much as 100%).
- 09 Unless payment of invoiced amounts is mutually agreed to be pursuant to clause 5 above, or previously agreed otherwise in writing, all invoices are due on the 20th day of the month following invoice date.
- 10 Unless otherwise agreed to in writing, Stoker will invoice clients for hosting services quarterly. The balance of all invoiced amounts will be due in full on the 20th day of the month following invoice date.

WORK PROCESS AND COMPLETION

- 11 Unless otherwise agreed in writing, work will usually commence within ten working days of deposit receipt. The Completion Date is subject to options chosen and client co-operation in provision of information, resource (logos, images etc.) and approval. Stoker will do its best to ensure that agreed timelines are adhered to, but please be aware that circumstances, revisions requested, or additional requirements may potentially result in delays. Time lines and Completion Dates provided are estimated, but Stoker will not be held liable if any project over-runs schedule due to delays caused by the client, client approval time, or any third party issues.
- 12 Prices quoted allow for presentation of a minimum of two creative concepts per brief for you to choose from. In the unlikely event that you are not satisfied with the first round of presented work, Stoker will develop a further round of additional creative concepts and presentation. If after a three rounds of concepts there is still no agreement on direction, Stoker Creative reserves the right to bring to an end any agreement with you, with no refund of deposit or any payments made previously.
- 13 Prices quoted allow for a maximum of three sets of concept revisions, after which time additional charges may become payable, in which case Stoker will give you at least 1 week’s prior notice (unless otherwise agreed by Stoker).
- 14 At the end of any set process, you will be required to “sign off” your approval to Stoker, either orally, or by hand or by email, before any next steps are taken (including but not limited to, before sending an item to print, or publishing a website). No further development of the project can be undertaken until Stoker is in receipt of such sign off. Any revisions to work after sign off may incur additional charges, in which case Stoker will give you prior notice.

- 15 Prices quoted allow for occasional meetings at key stages for a reasonable length of time between Stoker and you. Some meetings may incur additional charges for time spent, in which case Stoker will give you prior notice.
- 16 It is assumed that unless otherwise agreed, copy and images will be provided by the client, however Stoker may contribute to a project (for example by providing headlines, and top-line messages) as part of the creative process. Stoker can provide you with a full copy-writing service, or copy advice, as well as illustration and photography, all at an additional charge. Purchased royalty-free stock images from our standard sources (if required) will generally incur an additional cost of between \$20 and \$50+ GST per image (dependent on source, image size and quality). Specific image requirements which are not satisfied by our standard sources will incur an additional cost of charged cost of image + GST, with prior notice given to you.

PRINT

- 17 In the interests of quality control, Stoker highly recommends that you use our preferred suppliers for print. Stoker can provide competitive quotations to ensure high quality and service are maintained until delivery of the final product. We always seek a number of quotations from our trusted print suppliers, and can provide a complete management service: from print-sourcing to print-liaison to proof checking. If you choose to use your own print supplier, Stoker will provide artwork directly to you to manage and forward, and will not monitor, direct or take any responsibility for the process or final output.
- 18 You should be aware that due to a variety of factors there will often be variance in colours shown between in-house proofs, colours on screen, printer's proofs, and final printed items. These factors are determined by the source of the print or visuals, the types of inks or make-up of colours, the type of print process, printing substrate used, individual preferences and several other reasons. As a result of this Stoker cannot guarantee 100% consistency and accuracy of colour on all items and may not always be able to achieve the exact colour result expected by the client. Stoker does not accept any responsibility for colour variations as a result of these indeterminate factors. Stoker will strive to represent chosen colours accurately and will have hard copy proofs approved where possible.

INTELLECTUAL PROPERTY

- 19 Until payment is received in full, all designs, artwork and rights to design and artwork (whether in digital or printed format) remain the intellectual property of Stoker. Full copyright and ownership of all 'commissioned' work will reside with Stoker until full payment of all amounts invoiced to you have been received, at which point Stoker will surrender ownership and copyright rights in the final work produced to you (not including alternative designs, concepts, options, files, images or documents developed throughout the process).

This agreement is subject to appropriate credit and acknowledgment appearing on the final work produced, and your agreement that Stoker has the right to use the final work produced for the purposes of self-promotion in its portfolio, in presentations, and in advertising, whether in print or online.

- 20 Stoker will not knowingly infringe any copyright or trademark and will deliver, to the best of knowledge, creative solutions that are unique and authentic. Unless otherwise agreed in writing, it is your responsibility to ensure that no copyright or trademark has been infringed in any materials provided to Stoker, and the final work produced, and to register (where applicable) and enforce your intellectual property rights in the final work produced.
- 21 If requested, Stoker will (at its discretion) provide you with end-artwork in its final form (e.g. print-ready PDF; outlined EPS file etc.). Unless otherwise agreed in writing, Stoker will not provide you with original artwork or HTML code (for example an InDesign file, layered Photoshop file or HTML source file) or any working or development files, rejected concepts and designs, images or documents generated throughout the project. Ownership and copyright of all unused or rejected files, documents and designs will reside with Stoker for non-exclusive future use.

CONFIDENTIALITY

- 22 Stoker will not at any time or in any manner, either directly or indirectly, use for our personal benefit or divulge, disclose or communicate in any manner any information that is proprietary to the client. We will act reasonably to protect such information and treat it as strictly confidential.

INDEMNIFICATION AND LIABILITY

- 23 You agree to indemnify, defend, and hold Stoker harmless from and against any claims, actions, proceedings, losses, liabilities, damages, costs, or expenses suffered or incurred in relation to any work or services provided, and to pay any costs and expenses incurred by Stoker to enforce your obligations. Stoker is not liable for any losses that may occur before, during or after the development of any projects undertaken. Stoker will not be held responsible for any delays, errors or losses arising from any third party. The client agrees to alert Stoker in writing to any defects or problems in relation to work and services provided, within 30 days of the final invoice date. Stoker will not be liable for any claims made after this period.

WEB RELATED PROJECTS

STOKER

TERMS & CONDITIONS

info@stoker.co.nz

www.stoker.co.nz

- 24 For all web related projects, unless specifically stated, you will retain 100% ownership of the web page design only (ownership is not applicable to proprietary software and programs or source code, such as databases, e-commerce and/ or content management systems, web application source code or flash files/animations).
- 25 Stoker offers a web hosting service to host the websites we have built for our clients. This is recommended in order to ensure on-going quality of service and is a mandatory requirement for websites incorporating a content management system (CMS) or e-commerce system. Although the standard of our hosting packages are high, Stoker cannot guarantee 100% up-time, and accepts no responsibility for any error, omission or misrepresentation in relation to the websites hosted or for any loss, damage, cost or expense (whether direct, indirect, consequential or otherwise) suffered by any user of the websites hosted. Stoker makes no warranties or representations of any kind that hosting will be uninterrupted, error-free or that the website or the server that hosts the website is free from viruses or other forms of harmful computer code. In no event shall Stoker, its employees or agents be liable for any direct, indirect or consequential damages resulting from the hosting of websites on our servers.

CREDIT AND ACKNOWLEDGMENT

- 26 Appropriate credit and acknowledgment for work produced by Stoker should be employed where possible (for instance, text on the back of a printed item or at the bottom of a website), and may be referenced for Stoker's promotional purposes, unless otherwise (in exceptional circumstances) prearranged with the client.
- 27 These terms and conditions of business supersede any previous versions and apply to all present and future projects unless otherwise agreed in writing. Stoker Creative reserves the right to change or modify these terms at any stage with immediate effect. By agreeing to these terms, your statutory rights are not affected.

CONSUMER GUARANTEES ACT

- 28 You agree that you are acquiring all work and services from Stoker for business purposes, and accordingly, that the Consumer Guarantees Act 1993 does not apply to the supply of work and services to you.

FORCE MAJEURE

- 29 Stoker shall not be liable for any delay or failure to perform where such timely performance is beyond the reasonable control of Stoker, including, without limitation, acts of God, acts

of governmental authorities, changes in applicable law, fire, flood, labour dispute, shortage, insurrection, war, terrorism, or inability to obtain export or import licenses.

- 30 During force majeure, all of Stoker's obligations shall be suspended. Should the period in which Stoker cannot fulfil its obligations as a result of force majeure continue for a period longer than ninety days, both you and Stoker can terminate in writing without there being an obligation to pay any compensation whatsoever arising out of or in connection with the force majeure.

GOVERNING LAW

- 31 Any dispute will be construed to fall within the exclusive jurisdiction of New Zealand and shall be construed in accordance with New Zealand law.

SEVERABILITY

- 32 If any provision of these terms and conditions is held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired.

ASSIGNMENT AND WAIVER

- 33 You may not assign any agreement or invoice without the prior written consent of Stoker, which consent shall not be unreasonably withheld or delayed. Assignment without such consent is void. A waiver of any default hereunder or failure to enforce any of these terms and conditions shall not be construed as a waiver of any right available to either Stoker or you.