

1. Agency Providing Services
  - 1.1 Agency to Provide Services

The Agency will provide the Services to the Client in accordance with these Terms and any other conditions agreed between the Agency and the Client.
  - 1.2 Agreed Hourly Rate

If the Agency provides any Services to the Client then, unless those Services, together with such other incidental services as the Agency may consider necessary for the proper performance of such Services (together called "the Works"), are documented as being "no-fee preliminary services", such Services shall be chargeable to the Client at an agreed hourly rate.
  - 1.3 No-fee Preliminary Services

Acceptance by the Agency of any "no-fee preliminary service", identified as such by the Agency to the Client, shall be in consideration for the Client's agreement to the following terms and conditions:

    - (a) on request by the Agency at any time after agreement by the Agency to provide "no-fee preliminary service", advise the Agency of the number of other Contractors requested to supply such services. The Agency may, if the Client fails to answer the Agency's request or has engaged more than 2 Contractors including the Agency and always in the Agency's discretion, elect to terminate the agreement to provide any "no-fee preliminary service" and such termination shall not give rise to any claims by the Client for any no-fee services performed or yet to be performed;
    - (b) to accept such services on the basis that any copyright material will not in any way be disclosed to any competing agency; and
    - (c) to otherwise preserve the trade secrets of the Agency.
2. Standard Of Skill, Care And Diligence

The Agency shall perform the Services in accordance with the reasonable standard of skill, care and diligence generally exercised by the profession in New Zealand subject to any financial, physical, time or other restraints imposed by the Client or necessarily resulting from the nature of the engagement.
3. Inspection
  - 3.1. General Responsibilities

Where the Agency is required to inspect the work of others arising out of the Works then, unless otherwise agreed in writing, this service shall be limited to periodic visits to assist in interpreting the creative or design and to observe whether such work is being carried out at a stage of completion in general accordance with the applicable contract documents. Unless specifically engaged in writing to do so the Agency is not engaged to project manage, survey quantities, determine or confirm quality, test or certify the works of others, ensure work place safety or ensure compliance with any law affecting any owner, occupier or contractor in relation to any interest in land or buildings.
  - 3.2. Agency Not Responsible For Obligations Of Contractor

Neither inspection nor the issuing of any certificate by the Agency to a Contractor under the terms of any contract between the Client and the Agency shall impose upon the Agency any responsibilities in respect of the obligations of the Contractor to carry out the Contractor's works.
4. This Agreement Shall Bind The Principal
  - 4.1. Owner Of Works Bound If Not Client

These Terms shall be binding on the owner of the Works or other party for whose ultimate benefit the services are to be performed (referred to as "the Principal") whether or not the Principal is the Client and the Client shall ensure that these Terms are brought to the attention of the Principal.
  - 4.2. Relationship Of Client To Principal

Where the Client is an adviser to the Principal or some other representative of the Principal, then the adviser or other representative undertakes that he will contract with the Principal, for the benefit of the Agency and of the parties referred to in Clause 14, to the effect that these Terms shall apply to the Principal as if the Principal were the Client, and the adviser or other representative shall be liable to the Agency and the parties referred to in Clause 14 for any failure to obtain the benefit of such a contract.
- 4.3. Effect Of Inclusion Of Principal As Party

Both the obligations imposed by this clause and the provisions of any contract with the Principal entered into in accordance with this clause, shall be enforceable at the suit of any such party.
5. Job-Related Costs

The Client shall pay the Agency for all other job related costs, including disbursements and telecommunication, reproduction, illustration, model building, testing and travelling expenses. The Agency may add a service charge of twenty per cent of invoiced costs where payment to others has been made on behalf of the Client.

The term "job related costs" does not include the supply of product or the services of others unrelated to a process of creative or design or supplied as part of creating a derivative work such costs being "job costs". If the Agency orders product or services charged to the Agency's account or paid by the Agency to be on charged to the Client, the Client is on notice that, unless otherwise agreed in writing, the Agency may be acting, in supplying such product and services, as a commission agent of the original supplier. The Agency shall not be required to account to the Client for any commissions received when so acting as a commission agent and the property in such commissions shall be the Agency's.
6. Unpaid Fees And Job Costs - Client To Indemnify Agency

The Client shall be responsible for payment of all fees and job costs and undertakes to indemnify the Agency for any unpaid fees or job costs of persons other than the Agency, whether or not the Client is to be reimbursed for such fees by the Principal.
7. Payments Of Fees, Job Related Costs And Job Costs

The Agency shall be entitled to progress payments of fees and other job related costs in the following manner:

  - (a) The Agency requires a 50% deposit paid in advance from the Client on approval of the project or campaign, to start with production.
  - (b) payment of invoices for job costs (as against fees or job related costs) on presentation without deduction or setoff;
  - (c) payment of invoices rendered on completion of stages for fees and job related costs, but only as defined in writing, within 7 days of delivery of invoice unless other terms are agreed;
  - (d) for any invoice not due if the Client is issued with proceedings for any recovery of any debt owed by the Client immediately on demand by the Agency. It is an implied term of any invoice of the Agency that ownership of any product, goods or derivative works (called "the assets") shall remain with the Agency until payment in full has been received by the Agency. The Client shall until payment is made in full for the assets, keep the assets apart, hold the assets as agent for the Agency, not part with possession of the assets and, if requested, if payment is overdue, deliver the assets up to the Agency or the Agency's nominee for sale or if possession has been parted with, recover possession of the assets. The Agency may enter on to the Client's premises to recover or take possession (to the exclusion of the Client) of the assets.

The Client shall not be entitled by virtue of the provisions of this clause to return the assets and where the assets are recovered or the Agency takes possession of the assets the Client remains responsible for the cost of storage or the cost of the premises in which the assets are situated. The risk in any asset passes to the Client on delivery by the Agency. If any asset is or is to be delivered by others then the risk is the Client's.
8. License To Client

All intellectual property rights, including the copyright in all documents, and in the Works executed from them and any moral rights remains the property of the Agency. The Agency does not accept commissions to create copyright works. The Client shall be entitled, on payment of all fees and other job costs due to the Agency, to a license to use the documents for the specific purpose for which they were prepared, but for no other purpose. Unless the right to reproduce or to create derivative works is otherwise set out in writing, the right of the Client shall be to use the licensed works to create one derivative work only and to make such copies of the copyright material as are necessary for completion of that derivative work and any statutory compliance associated with it.

The license to use comes into effect on the first payment by the Client to the Agency and remains in force so long as all payments required from the Client are made on time. The Agency may suspend or revoke the license if the Client fails to make any payment and such suspension or revocation shall cause the suspension of the derivative works if uncompleted. Any reference to the works of the Agency shall be accompanied by full attribution to the Agency in a form to be approved by the Agency.

9. Duties Of Agency To Be Accurately Described  
The Client shall not enter into any contract with, nor make any representations to, any third party which describes the Agency's duties and responsibilities in a manner inconsistent with these terms and conditions.
10. Agency Not Liable For Losses  
Except as provided for the in the Consumers Guarantees Act 1993 for any work for a consumer as defined in that Act, the Agency shall not be liable for -
  - (a) the commercial performance of the Works;
  - (b) any loss or damage arising by reason of any delay in completion of the Works;
  - (c) any loss of profits; or
  - (d) any indirect or consequential loss of whatever nature.
11. Liability Of Agency Limited  
Except as provided for the in the Consumers Guarantees Act 1993 for any work for a consumer as defined in that Act, if the Agency or any sub-consultant shall be found liable to the Client (whether under the express or implied terms of this Agreement, in negligence, or otherwise at common law) for any costs, loss or damage suffered by the Client, however caused and of whatever nature, arising out of or connected with the performance or failure of performance of Services by the Agency or any sub-consultant, then the maximum amount of liability for all such claims against the Agency and any sub-consultant shall be twice the amount of fees paid by the Client to the Agency.
12. Mitigation Of Agency's Liability  
The liability of the Agency or a sub-consultant to the Client against loss or damage as aforesaid shall be reduced proportionately to the extent that any act or omission of the Client (whether amounting to a breach of these terms and conditions or not) has contributed towards any such loss or damage.
13. Supply For Business Purposes  
Where the services of the Agency are supplied to the Client for business purposes the Consumers Guarantees Act 1993 shall not apply.
14. Agency And Sub-Consultant Includes Their Employees  
For the purposes of Clauses 10, 11 and 12 of these terms and conditions-
  - (a) the expression "Agency" shall include all employees of the Agency; and
  - (b) the expression "sub-consultant" shall include every party engaged by the Agency or by any other subconsultant to perform any part of the services and all employees of any sub-consultant. The terms of Clauses 10, 11 and 12 shall be construed as conferring a benefit on, and being enforceable at the suit of, every person referred to in this clause.
15. Agreements May Be Postponed Or Terminated On Notice  
Any agreement between the Agency and the Client for services pursuant to these terms and conditions, unless otherwise set out in writing, may be postponed or terminated by either party, on the expiration of reasonable notice given in writing.
16. Action Taken By Agency Upon Receipt Of Notice  
Upon receipt of such notice from the Client, the Agency shall take immediate steps to bring the services to a close and to reduce expenditure to a minimum.

17. Entitlement To Payment Upon Postponement Or Termination  
Upon postponement or termination of the services, the Agency shall be entitled to payment of fees and other job costs up to the effective date of postponement or termination and further fees and costs incidental to the orderly termination of the services.
18. Arbitration - Single Arbitrator
  - 18.1. All Disputes To Arbitration  
All disputes and differences between the parties shall be referred to arbitration in accordance with the Arbitration Act 1996.
  - 18.2. Commencement Of Arbitration  
The arbitration shall be commenced by either party giving to the other notice in writing stating the subject matter, details of the dispute or difference and that party's desire to have the matter referred to arbitration.
  - 18.3. Agreement On Arbitrator  
The arbitration shall be by one arbitrator to be agreed upon by the parties and, failing agreement within one month of the notice given pursuant to Clause 18.2, to be nominated by the Chairperson or President for the time being of the Designers Institute of New Zealand Inc.
  - 18.4. Awards To Be Final  
The award in the arbitration shall be final and binding on the parties.
19. Access To Finished Projects  
The Client will on the reasonable request of the Agency for a period of 6 months from completion permit the Agency to come onto the Client's premises for the following purposes:
  - (a) photographing or filming the Works created from the designs for the purpose of publicising the services of the Agency; and
  - (b) inspection of the Works for the purpose of any professional award or requirement to submit work for review on application to professional memberships for any category of membership.The Agency shall:
  - (i) prior to exercising such right first obtain the agreement of the Client to such visit which shall not be unreasonably withheld; and
  - (ii) observe and obey any reasonable terms and conditions the Client may set for such a visit including without limitation any limit on the number of persons that may come onto the premises.
20. Other Conditions  
The Agency, its directors, shareholders, Contractors, agents and sub-consultants are not liable and/or not responsible for any legal/court action based on claims or messages made about the Client's product or service and/or any other information given to the Agency in the production of any advertising or design campaign and communications completed for the Client. The Client is solely responsible for any information and/or messages conveyed in or given to the Agency in the use throughout any advertising or design campaign carried out by the Agency for the Client. The Client fully indemnifies the Agency for any loss, damage, cost or expense (including legal or other costs) suffered or incurred by the Agency directly or indirectly from any information supplied to the Agency by the Client.
21. Defined Terms  
In these Terms, the following terms have the following meanings (unless the context otherwise requires):  
Assets is defined in clause 7.  
Agency means Run Limited.  
Client means the person to whom the Agency provides the Services.  
Contractors means any person engaged by the Agency to assist in providing the Services to the Client.  
Principal is defined in clause 4.1.  
Services means the design, creative, marketing or advertising services to be provided by the Agency to the Client.  
Works is defined in clause 1.

Signed for and on behalf of:

\_\_\_\_\_  
RUN Limited

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Client Name

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Date