

Standard Terms & Conditions

1. Terms

- 1.1. All goods and services supplied by Smartpresence Limited to the customer will be upon these terms of trade unless otherwise agreed in writing. These terms of trade supersede any previous standard terms and conditions agreed between the parties and governing the provision of services and/or goods by Smartpresence Limited to the customer.
- 1.2. Smartpresence Limited's agents or representatives have no authority to make any oral representations, statements, warranties, conditions or agreements that conflict with these terms of trade.

2. Payment

- 2.1. The price for the goods and services will be as quoted in writing by Smartpresence Limited to the customer. In the absence of a written quote, Smartpresence Limited's standard charge applies.
- 2.2. All quotes and charges are expressed as exclusive of GST and GST will be payable by the customer in addition to such payment.
- 2.3. All freight, couriers, travel costs, and any other charges in relation to the service provided will be in addition to the quoted price and will be payable by the customer.
- 2.4. Where Smartpresence Limited organises services with other businesses on your behalf, an additional fee may apply
- 2.5. Payment for all goods and services must be made by the customer to Smartpresence Limited **14 days** following the date of Smartpresence Limited's invoice. Smartpresence Limited may at its option issue a monthly interim invoice for work where the delivery of services is over a period exceeding one month.
- 2.6. Smartpresence reserves the right to request part payment or complete payment upon receipt of the order.
- 2.7. If the customer fails to make payment on the due date Smartpresence Limited reserves the right to impose a late penalty fee calculated at 8% of the total balance outstanding by the customer.
- 2.8. Any expenses, disbursements and legal costs incurred by Smartpresence Limited in the enforcement of any rights contained in these terms of trade will be paid by the customer, including any reasonable solicitor's fees or debt collection agency fees.

3. Service Variables

- 3.1. Smartpresence Limited endeavours to be as accurate as possible in all work undertaken. Because of the numerous variables that may be involved from third parties, Smartpresence Limited can accept no responsibility for results which differ from those estimated.
- 3.2. Smartpresence Limited (as accurately as possible) predicts the time required to complete various projects on behalf of the client. Where a project time and price has been previously agreed to before undertaking work on behalf of, Smartpresence Limited will **not** alter the contract by either increasing **or** decreasing invoicing totals to compensate for a change in completion time.
- 3.3. However, where additional services are required which have not been outlined in the contract, Smartpresence Limited reserves the right to invoice for extra time and/or services.

4. Provision of Services

- 4.1. Smartpresence Limited will:
- Use all reasonable skill and care in providing the goods and services in a timely and efficient manner.
 - Not be liable for any delay or non-performance providing goods or services if the delay or non-performance is attributable (directly or indirectly) to circumstances beyond its reasonable control.
 - Not be obliged to accept any order for goods or services made by the Customer and will be entitled, in its sole discretion, to refuse to provide or perform all or any such goods and services.
- 4.2. Smartpresence Limited may withdraw a quotation for the provision of goods and services at any time before it is accepted by the customer. All quotations will lapse without notice 30 days after given.
- 4.3. All quotations for goods Smartpresence purchases in USD are subject to the exchange rate at the time of order. As such, Smartpresence reserves the right to adjust the quote to reflect any change in the NZD/USD exchange rate.
- 4.4. The customer will not cancel any contract or service package (in full or in part) without first obtaining the written consent of Smartpresence Limited.

5. Liability and Indemnity

- 5.1. With the exception of express warranties contained in these terms of trade, all warranties and representations in respect of goods and services supplied are excluded to the extent permitted by law.
- 5.2. In no event will Smartpresence Limited be liable to the customer or any other party for any loss or damage arising directly or indirectly in connection with Smartpresence Limited's services and goods, their use, misuse or otherwise including (but without limitation) any loss of profit, business, revenue, goodwill or anticipated savings.
- 5.3. Smartpresence Limited will not be liable to the customer or any other party for consequential, special, punitive or exemplary loss, damage or liability arising directly or indirectly out of or related to the agreement and provision, performance of or failure to perform the services by Smartpresence Limited whether in contract, tort (negligence), for breach of statutory duty or any other principle of legal liability.

6. Termination

- 6.1. These Terms of Trade may be terminated by notice in writing as follows:
- By Smartpresence Limited if the customer commits any act of bankruptcy, enters into any arrangement with its creditors or (in the case of a company does any act which would render it liable to be liquidated), or if a resolution is passed or proceedings commenced for the liquidation or voluntary administration of the customer or if a receiver is appointed in respect of all or any of the customers assets.
 - By Smartpresence Limited if the customer is in breach of these terms and conditions.
 - By Smartpresence Limited upon completion of the delivery of the services and goods and payment in full by the Customer
 - By mutual agreement of the parties.
 - Where there is no fixed term period, or the relevant fixed term period has expired, either party may terminate all or part of this agreement by giving 60 days' notice in writing.

7. Intellectual Property

- 7.1. The customer agrees and acknowledges that Smartpresence Limited is the owner and/or licensee of the intellectual property rights in systems and documentation, know-how and other intellectual property which may be utilised in the provision of the services or goods provided to the customer and that the customer obtains no rights and or interests in such intellectual property by virtue of its purchase of the services and /or goods from Smartpresence Limited
- 7.2. You understand that all written copy used in the process of implementation of your goods and services remains the property of Smartpresence Limited. You release Smartpresence Limited from any responsibility for legal or other problems that may arise from the use of any written copy produced on your behalf.
- 7.3. Smartpresence Limited will sometimes use existing templates in our service to you.

8. Confidential Information

- 8.1. Due to the nature of work conducted, access to confidential business information may be required. All such information and documentation will be treated with utmost security.
- 8.2. Unless specified, Smartpresence Limited reserves the right to work with other businesses in similar industries. If you'd prefer that Smartpresence Limited does not work with other companies you deem to be in competition with your own, please say so prior to engaging in any long term agreement. Wherever possible we will endeavour to accommodate your requests.
- 8.3. Neither party will disclose information which is confidential to the other party to a third party unless compelled to do so by law.
- 8.4. Smartpresence Limited reserves the right to use 3rd party contractors where necessary to add capacity to current workload. Contractors employed by Smartpresence Limited are qualified to carry out their role, highly professional and comply with standard employee confidentiality requirements as detailed above.

9. Miscellaneous

- 9.1. Neither party may assign any of its rights or obligations under these Terms of Trade without the prior written consent of the other.
- 9.2. Every notice given under these terms and conditions will be sufficiently given if delivered personally, posted or successfully emailed to the intended recipient at his/her or their last known address or email address
- 9.3. Neither party will be liable for any delay or failure for the performance of any of the obligations imposed on them under these Terms of Trade if such failure is beyond the reasonable control and without fault or negligence of that party, provided that this clause will not extend to excuse the consequences of insolvency or financial difficulty.
- 9.4. These Terms of Trade constitutes the entire agreement between the parties which supersedes any prior arrangement or understanding whether written or oral relating to the subject matter of this agreement.
- 9.5. These Terms of Trade will be governed by the laws in New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.