

The small print

As at November 2022.



Here are our Terms and Conditions. In the interests of saving a lot of headaches, this document contains lots of information and the bare minimum of legal jargon to be legally enforceable. So please, read on, and let's talk if there are parts you don't understand or aren't comfortable with. Once you've instructed us to start work, this document will legally bind both of us, except where expressly acknowledged by Fluid.

Consultation Charges

Fluid may offer the first consultation (up to one hour) with the client for free. Additional one-on-one consultations of any duration, including travel time, and any phone consultations over 30 minutes are billable at the applicable hourly rate in increments of 15 minutes.

Estimates and Quotes

All creative time is estimated based on our understanding of the project at hand. All estimates include two rounds of amends. Fluid reserves the right to treat any amends beyond this point as client alterations and a supplementary item in addition to the original estimate.

Estimates are provided in good faith. A fixed price can only be supplied as a quote once all aspects of the project have been finalised.

Costs for production can be given as quoted fixed prices where suppliers provide them.

Major changes to any project may require a re-estimate. If this happens, we will discuss it with you as soon as we can.

We reserve the right to charge a 20% surcharge on all hours recorded on unscheduled urgent turnaround work.

Instructions and Project Management

Fluid uses industry-leading Project Management tools for all jobs, large or small. We require written confirmation of all instructions and orders to make this process useful. Verbal instructions are risky, and Fluid isn't liable for any misinterpretation or oversight arising from verbal instructions.

Taxes

Prices offered are exclusive of GST. If a Client believes a project is exempt or zero-rated for GST, the Client must advise Fluid before the project begins, and the Client must pay GST if it is due and payable under New Zealand law.

Limitation of Liability

If we are liable to you for any reason, our maximum liability is capped at \$10,000. We are not liable for any consequential or indirect loss you suffer from third-party claims because of errors in the work or delivery delays.

Payment Terms

Unless a prior agreement exists between Fluid and the Client, Fluid's invoices are due on the 20th of the month following the invoice. If you have questions or concerns about our invoice, you must raise these with us in writing at least five working days before the Invoice is due. If you don't, you accept our invoice is due and payable. If you don't pay our invoice by the due date, we will charge interest compounding at 5% per month on the outstanding amount until we receive payment. We will also charge you all costs of recovery, legal and collection fees we incur in collecting payment from you. Fluid also reserves the right to suspend work in lieu of payment on overdue accounts.

All branding and website projects worth more than \$5,000+GST will require a 33% deposit payable on approval of our proposal. A deposit may also be required on all large production jobs and for new clients.

Proofing

The final responsibility of all proofing lies with the client and Fluid accepts no responsibility for unapproved work. All Client requested changes, amendments or feedback on a project must be provided in writing. We do not in any circumstances accept changes over the phone.

Provision of Artwork

Fluid provides all files for third-party production in good faith. If Fluid makes a mistake, Fluid will correct the mistake and not charge for Fluid's time. Fluid is not liable for the costs of any third-party production work. That risk sits with the Client and this is why all proofs must be signed off in writing by the Client.

Intellectual Property / Copyright

Fluid is not liable for any intellectual property or copyright issues resulting from the use of client-supplied resources, or resources collected on client instruction.

Until the Client makes full payment, Fluid retains ownership of all original artwork, website architecture or parts contained therein (other than material supplied by the Client), whether preliminary or final. Once full payment has been made the client will retain usage and ownership for purposes outlined in the project invoice only and for the purposes in which it was created. Any other usage not discussed will need to be negotiated.

This granting of copyright does not extend to the use of design proposals and concepts submitted. These remain the intellectual property of Fluid.

Final artwork indicates the final artwork as a whole. Fluid does not hand over any source files, fonts or originals of illustrations. We will supply final flattened, printable, or distributable files for the client to use. The Client does not have rights to use, modify or distribute any individual elements, i.e.. photos, illustrations etc. or to modify and resell this artwork.

Fluid reserves all rights to certain elements including fonts, patterns, stock images, textures, colour palettes and other non-exclusive items. Stock photos purchased by Fluid are licensed to us only. They may be used in projects that are created by us only. We cannot transfer any license of images and you do not have any rights to use, distribute or sell them beyond the final art files as supplied.

Archiving and Storage

Fluid archives all files we create. Fluid does not guarantee that it will continue to hold all Client files once a project is completed. Clients should take their own precautions to hold secure copies of files. If a Client requests material for use by a third party, Fluid reserves the right to charge an hourly rate for the search and retrieval of files.

Payment Structure

For projects above \$10,000+GST, the Client agrees to our payment structure below unless otherwise agreed prior:

- 33% non-refundable deposit of the quoted amount to commence the design project.
- 33% is due upon approval of the design.
- 34% is due on the provision of the beta site or completion of the project.

For "short" projects above \$10,000+GST (likely to be completed within one month) the Client agrees to our payment structure below:

- 50% non-refundable deposit of the quoted amount to commence the design project.
- 50% upon completion of the project.

The project deposit is non-refundable. If a project is canceled by the Client, for whatever reason, Fluid may retain the deposit to compensate for losses arising from the cancellation. Fluid may also charge a pro-rated payment based upon the time spent if it exceeds 50% of the quoted work. If a deposit was not paid, in the event of cancellation by the Client, the Client will be obligated to pay all fees and expenses associated with the work performed up to the date of cancellation calculated at our hourly rate for time spent on the project.

If the client terminates the contract after Fluid has begun to work on the project, all booking fees, delivery fees, design commencement fees, or other progress payments paid to Fluid are non-refundable.

The Client shall have 30 days to respond to each draft/request for information submitted. If the client hasn't responded after 30 days, Fluid will deem the project complete, issue an Invoice for all fees and expenses incurred and Fluid will have no further obligation to the client.

Standard Service Level Agreement (SLA)

Our basic website hosting SLA defines office hours as 9am – 5pm, Monday to Friday New Zealand standard time.

Hosting queries and support will be administered during those times in an ASAP fashion.

We endeavour to address or respond to critical issues within four business hours. Critical issues must be reported via email and phone/text.

After hours support is classified as anything outside of the above office hours. Due to timing we may not be able to provide a quote before beginning work, nor can we guarantee availability unless explicitly stated within an SLA.

More involved SLA's are available for clients with additional requirements.

Fluid Hosting Servers

For a breakdown of the inclusions and costs of Fluid's various hosting options please contact our digital team. Any change from selected hosting options need to be made in writing, 30-days in advance. A credit will be applied to any pre-invoiced hosting over and above the 30-day notice period.

Our servers receive routine software maintenance. This involves upgrading software where applicable to the latest (most secure) versions, checking on hard drive space and a number of other housekeeping procedures.

Our cloud hosting capability is provided by SiteHost in Auckland, New Zealand and are supported by Amazon Web Services in a variety of ways.

Many of our projects are also supported by Cloudflare as a DNS and caching provider.

Software

We are primarily a PHP software agency and use a fairly traditional LAMP stack with some key performance enhancements.

Security / Chargeable Updates

Fluid takes no responsibility for open or closed source software and plugins outside of our development. Our responsibility only lies with the workability of the site in the platform at the time of the build. If a website is compromised by insecure passwords, outdated or installation of extra plugins, support will be provided at Fluid's standard hourly rate.

Content Management Frameworks

We work with a range of propriety development frameworks appropriate to the needs of the project.

Client Account and Data Access

Fluid provides a wide range of digital marketing services that requires access to client information and/or existing accounts.

The granting and implementation of access to any existing

account is the responsibility of the client. Time spent attempting to gain access to accounts will be treated as billable.

Fluid is not responsible for any lost access or data loss within an account. Before a project starts, clients can request that they maintain all ownership of data, accounts and properties beyond the completion of the project.

All access to client data is strictly confidential and will not be shared with external parties unless required for the project.

When required, the client is responsible for providing user confidentiality information, GDPR and CCPA compliance information.

Malicious Traffic

Fluid takes industry standard levels of password protection to mitigate malicious traffic, but Fluid is not responsible for any bot traffic that may affect reporting and data.

Google Ranking

Fluid is not responsible for search engine ranking that occurs on account of changes in hosting, CMS platforms, URL or integrations.

Your ranking is determined by a complicated proprietary algorithm by providers such as Google and the process takes a significant amount of time. It is not uncommon for some pages to take 6-10 months to rank. .

Client Marketing

The Client also agrees to allow Fluid to showcase any/all work created during a project as part of our portfolio (unless the client asks for privacy explicitly).

Fluid maintains the right to use statistics for marketing purposes but will never utilise specific sales data or associate the data with your business unless expressly agreed.

All eCommerce data is generalised and not to be used for income or revenue purposes. All sales data should be rectified with payment provider.