

Boy Oh Boy Limited. Terms and Conditions

Application of these terms

1. These terms and conditions shall apply in respect of all services (“the Project”) we (“Boy Oh Boy”) supply to you (“the Client”) whether specified or otherwise (“the Service”). Except to the extent that these terms and conditions are varied by mutual consent they together with the brief and quotation shall constitute the entire agreement between us and shall prevail over your own terms and conditions. The Client agrees that in entering into this agreement, the Client shall not rely on any representation or understanding, whether oral or in writing, which is not included or referred to in these terms and conditions.

Delivery

2. The Service shall be delivered to the Client in accordance with the brief agreed at the outset of the Project either through concept meetings or in written proposals.

3. The Client must advise of any specific completion deadlines prior to the Project start date. Boy Oh Boy will advise what is possible and provide a detailed schedule of work for the Project.

3.1. On full payment, a royalty-free, automatic licence granted to all Clients in connection with Deliverables commissioned and permitting the use of those Deliverables for the purposes, channels/platforms and territories defined and agreed in the Brief only.

3.2. Under the Standard Licence, Boy Oh Boy shall retain the right to use the Deliverables for the purposes of advertising or otherwise promoting Boy Oh Boy and its interests.

3.3. As per the Intellectual Property Office of New Zealand, all Intellectual Property Rights in connection with the Deliverables shall be the property of Boy Oh Boy as per NZ Copyright Law. The Client shall have no Rights in relation to any Source Material (such as, but not limited to, video rushes or RAW camera files), including software-generated project files (such as, but not limited to, video edit project files e.g. Adobe Premiere Pro project files), unless otherwise agreed between the parties in writing.

Client Feedback & Boy Oh Boy Amendments

4. Unless stated otherwise, each Client Project shall accommodate a maximum of two rounds of Client feedback and Boy Oh Boy amendments.

4.1. At any of the Client's feedback stages, the Client will confirm any and all changes (accompanied by adequate reference imagery/files) within the time period agreed at the outset of the Project. If the Client does not communicate feedback in a timely, clear and concise manner, this is likely to result in Project delays and potentially additional costs. Please note that feedback periods are typically delayed when the Client fails to explain required changes in a manner that can clearly be understood, resulting in Boy Oh Boy having to ask for clarification of Client points. Further delay can be caused if (during feedback) the Client is reliant on a third party.

4.2. The Client acknowledges that any delay to the Project caused by the Client (or the Client's stakeholders) will result in delays to other Project milestones and ultimately to the completion date agreed at the outset of the Project. Such delays by the Client may have an exponential effect on the actual Project completion date as Boy Oh Boy will have to amend the schedule of work for the Client Project, the Boy Oh Boy team and other Boy Oh Boy (client) projects also with deadlines.

4.3. Client Project amendments will be made and a new version of the Product supplied to the Client with a minimum turnaround time of 3 Working Days. Boy Oh Boy reserves the right to alter the duration in which the Project amends will be turned around and a new version supplied to the Client.

4.4. Boy Oh Boy will not proceed with a round of feedback until ALL collated feedback has been presented to Boy Oh Boy by the Client. Delayed feedback will potentially delay the Project delivery date, Boy Oh Boy will not turnaround an amendment stage in less duration than previously agreed due to a Client providing feedback at a later date than agreed.

4.5. Any and all feedback relating to a given production stage should be confirmed at the corresponding Client feedback stage. A single round of feedback must be provided by a single Client Contact via a single (all-encompassing) email, or via appropriate documentation and/or software sent out by Boy Oh Boy. Should any further information be provided by the Client after this point, the Client will be charged for both assessing the information provided and any resulting implementation. This point is to help avoid delays to the Project and to ensure efficient use of Boy Oh Boy project manager time. By providing carefully considered and conclusive feedback all at one point in time, Boy Oh Boy can provide a full and robust response to all Client concerns & requests.

Acceptance and Changes

5. Changes to the brief or otherwise that result in additional work being carried out will be chargeable at the relevant daily rate; this shall include the following:

5.1. Changes that result from inaccurate or misleading information having been supplied by the Client in preparation of the brief;

5.2. Changes that result from your failure to obtain consent from any third parties or employees necessary in the delivery of the Service;

5.3. Changes that result from a significant change to the brief;

5.4. Additions to the original brief in the form of extra variations or edits of the originally planned piece, such as shorter 'highlights' edits or specific web versions that are not agreed at the outset.

Payment

6. Payment terms will be set out in the relevant quotation issued by Boy Oh Boy to the Client. Where payment terms are not set out in the relevant quotation:

6.1. Payment is due 15 days after the invoice date and is of the essence. We will not consider payment to be received until it is represented by cleared funds. Time for payment shall be of the essence. We reserve the right to charge 3% interest per month on any unpaid balances. Any fees incurred by us in recovering payment will be chargeable.

6.2. Payment to be made in New Zealand Dollars.

7. Once Boy Oh Boy agrees to completing a Project for the Client, Boy Oh Boy ensures adequate resources are available to deliver an outstanding Product within an agreed time-frame. Boy Oh Boy asks that Clients show commitment by fully engaging with Boy Oh Boy during the planning stages of the Project but also by paying 20% of the quoted Project Price, where the project exceeds NZD\$2500.00. Once the Client has made a financial commitment to a Project, Boy Oh Boy then feels comfortable when committing considerable resources and money to a Project. Boy Oh Boy primarily makes money by charging its Clients for Employee time, by committing resources Boy Oh Boy is committing time which results in a cost to Boy Oh Boy.

7.1. At the stage where Boy Oh Boy asks a Client to financially commit to a Project, Boy Oh Boy will have often invested a considerable amount of time discussing a Project with the Client, quoting for the Project and in some cases outline planning. If the Client confirms it wishes to proceed with a Project but is not prepared to commit financially, this causes Boy Oh Boy concern and will usually result in Boy Oh Boy having to reluctantly decline to begin a Project for the Client.

8. If payment is overdue and/or the Client is in breach of obligations set out in this agreement Boy Oh Boy reserve the right (without prejudice) to stop or postpone delivery or performance under this agreement and we will not be liable for any loss the Client may suffer as a result of application of this clause.

9. Payment is to be made in full without any discount deduction, set off or abatement.

10. Additional expenses relating to a Client Project that have not been identified or a cost specified prior to the Project commencing will be added to the final invoice if not included in the initial quote or pre-project invoice; these charges may include but are not limited to:

- Licensable assets required to complete the Project
- Client requested Fonts
- Music licensing
- Accommodation
- Travel costs
- Parking
- Production/planning meetings
- Additional personal or subcontractors

10.1 Prepayment of expenses Flights, vehicle rental and accommodation must be paid for in full by the Client either direct to the supplier (airline/travel company etc.) or to Boy Oh Boy, at least 5 Working Days prior to a Project commencing.

11. 5 Working Days after the Project link has been Delivered to the Client, Boy Oh Boy will send the Client an invoice for the Project. This invoice must be paid in full within 15 days of the date of the invoice. Interest charges of 3% per month shall accrue on accounts where the balance is outstanding after 30 days. These are the Boy Oh Boy Limited terms of payment, if any element of these terms are not acceptable then the Client must email all comments to hello@boyohboy.co.nz prior to either payment being made or the Project commencing. By agreeing to commence in business the Client is agreeing to the above conditions of payment.

11.2 Non-payment after 52 days. In the event of non-payment, 52 days after the invoice date, Boy Oh Boy retains ownership of all materials produced and reserves the right to repossess materials (physical, digital or virtual).

11.3 A Client that takes longer than 60 days to process payment will be required (on any future Project) to make a Pre-Project payment to the value of 100% of that Project.

11.4 During the Project lifecycle there will be occasions where Boy Oh Boy will need further information from the Client in order to proceed. Boy Oh Boy will email the Client with such requests. After 10 working days of Boy Oh Boy not receiving the information required for Boy Oh Boy to continue work on the Project, Boy Oh Boy will issue a final email stating that if full information is not supplied by the Client within the next 5 working days Boy Oh Boy will submit the final invoice for the Project. The Client will pay Boy Oh Boy in accordance with the standard Boy Oh Boy Terms of Payment. Boy Oh Boy will still honour and complete the Project when the Client is able to provide the necessary information.

Cancellation, Safety and Insurance

12. Dates for production are agreed in advance and confirmed by the Client. Where these dates are cancelled whether due to a request or an amendment from the Client that results in a cancellation the following charges will apply where the cancellation notice is given or is caused:

- 12.1. Within 48 hours of shoot date – 50% of daily shoot rate
- 12.2. Within 24 hours of shoot date – 100% of daily shoot rate
- 12.3. For Real Estate only, Within 3 hours of the shoot time – \$100

13. Where the shoot shall take place at Client premises or a location designated by the Client the responsibility for ensuring said location is safe and that adequate insurance is in place shall be vested in the Client

13.1. Boy Oh Boy maintains employers, public and products liability insurance cover. The policy is underwritten by *Gallagher Insurance Limited*. and the extent of cover is provided below:

- Specialist Equipment (Cinesure Global)
- Public Liability + Aviation extension for Drone (*Vero Liability Insurance Limited*.)
- Statutory Liability

A certificate of Boy Oh Boy's liability insurance can be made available to the Client upon request.

Our Copyright Policy

14. Boy Oh Boy operates a fair approach to copyright. All copyright vested in the media produced by Boy Oh Boy shall be assigned to the Client subject to the following:

- 14.1. Payment in full is received from the Client for all outstanding invoices;
- 14.2. All design concepts such as logos, themes, plans, models together with all copyright in any music shall remain vested in Boy Oh Boy and shall be made available to the Client on licence save that the Client shall only be permitted to use such material and design concepts for the purpose identified in the brief;
- 14.3. Enforcement of the above conditions is subject to Boy Oh Boy adhering to the Storage Policy as outlined below.

Storage Policy

15. All media produced by Boy Oh Boy on behalf of the Client will be stored as follows:
 - 15.1. All footage will be captured in Hi-Definition (as standard) and stored on professional format digital media and transferred to our studio for onlining to hard drive array;
 - 15.2. All footage on a hard drive is retained at our studio on password protected computer systems until completion of the post production process;
 - 15.3. Following completion the Project footage and imagery is then archived.

Note: Storing footage long term will incur a cost based on the size and amount of footage held, to be discussed between the Client and Boy Oh Boy.

Warranties and Liability

16. Boy Oh Boy guarantees that we will use all due skill and care in providing the Client with the Service. Other than as expressly provided for in these terms and conditions no warranty, guarantee or other term relating to the provision of the Service whether implied by statute, common law or otherwise is given.

16.1. Boy Oh Boy shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any materials supplied by the Client to Boy Oh Boy or instructions supplied by the Client which are incomplete, incorrect, inaccurate or illegible, or arising from their late arrival or non-arrival, or any other fault of the Client.

Note: Cover Boy Oh Boy gear malfunctioning (corrupted files, camera overheating, etc.) to no fault of their own.

16.2. Except in respect of death or personal injury caused by our negligence we shall not be liable to you by reason of any representation (unless fraudulent) or any implied warranty, condition or other term or any duty at common law or under the express terms of this agreement for any loss of profit or any indirect or consequential loss, loss of goodwill, any destruction of data, damage, costs or expenses whether or not such losses were in the contemplation of the parties and at the date of this agreement, which arise out of or in connection with the provision of the Service.

16.3. Except in respect of death or personal injury our entire liability in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement between us shall not exceed either the amount of the price payable by you in respect of the services, goods and/or materials we supply to you or in respect of a valid claim the amount claimable under the terms of the appropriate insurance policy we hold.

16.4. The Client agrees to indemnify and hold Boy Oh Boy harmless for all liabilities, loss, claims and expenses that may arise from any breach of these terms and conditions by the Client, including any third party liabilities incurred by Boy Oh Boy.

16.5. Any claim that the Client may have against Boy Oh Boy must be notified to us in writing within one month of the claim arising.

Severance

17. If any provision of these terms and conditions (whether in part or in whole) is held by a Court or jurisdiction to be illegal, or unenforceable the parties shall agree to amend the relevant provision as shall be necessary to ensure its application and the remaining provisions of the Contract shall remain full force and effect.

Waiver

18. Any waiver by Boy Oh Boy of any breach of or any default under any provision of this agreement will not be deemed a waiver of any subsequent breach or default and will in no way affect the terms of this agreement.