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SHOUT&CO. MARKETING LIMITED Terms and Conditions of Trade

1. GENERAL

1.1 In these Terms and Conditions:

- (a) "Agreement" means any order or engagement letter relating to the Services, and these Terms and Conditions.
- (b) "We" or "Us" means Shout&Co. Marketing Limited.
- (c) "You" means the person, firm, company or entity buying Services from us.
- (d) "Services" means all Services We will supply to you under a proposal, order or invoice relating to digital marketing advice and/or product, food styling and photography.

2. PRICE

- 2.1 Price plus tax: You will pay the price indicated on the invoice, order form or other similar document issued by us ("Price"), together with the amount of any Goods and Services Tax or any other tax which may be payable in respect of the supply of Services or otherwise under these Terms and Conditions.
- 2.2 Quotation: Any quotation we have made for the supply of Services constitutes an invitation to treat and not a binding offer. All quotations lapse after 10 days but We reserve the right to change or withdraw any quotation without notice at any time.
- 2.3 Change of Rates: We reserve the right to change any previously notified hourly rate for casual work on 60 days' written notice to you.
- 2.4 No deductions: All payments by you will be full, free and clear of any deduction, withholding, set-off, counterclaim or other claim.
- 2.5 Cancellation: Where cancellation occurs, any deposit paid may be refunded at our sole discretion. No refund will be made where cancellation occurs within 24 hours of the time set for performance of the Services.
- 2.6 For any work requested over and above the agreed services, these will be charged out at the relevant rate per hour as stipulated on our website based on the

additional services being requested. The current rates can be found on each service page at www.shoutandco.com

3. PAYMENT

- 3.1 Deposit: In order to confirm a booking for Services we may require you to pay a deposit of 50% of the Price.
- 3.2 One-off Services: We will invoice you for one-off Services following completion of the relevant Services and we reserve the right to not release our report or work to you until the account has been paid in full.
- 3.3 On-going Services: Where we have agreed to provide our Social Media packages to you on an ongoing basis we will invoice you for each month's Services in advance. If you do not wish to continue the Agreement on this basis you must give us not less than 30 days' written notice of termination. Should you sign up for either our ongoing Photography or Videography retainers, you agree that the minimum agreement period is 3 months given the special rate offered for these services. Should you wish to terminate the retainer work, please let us know in writing – we will invoice you for the balance of the 3 months remaining and complete the work. Should you not pay the outstanding balance on receipt of invoice, we will seek debt collection services and will add any related debt collection fees to the outstanding invoice. We will provide 7 days notice should we seek debt collection services.
- 3.4 Payment terms: You agree to pay your account within 7 days of the date of invoice.
- 3.5 Expenses: Agreed out of pocket expenses will be invoiced in advance and We reserve the right not to progress the associated Services until we receive these payments.
- 3.6 Acceleration: Notwithstanding the above credit period, full payment for all unpaid Services will become due immediately upon:
 - (a) You or any guarantor becoming insolvent or bankrupt;



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- (b) The commencement of any act or proceeding in which your or any guarantor's insolvency is involved; or
- (c) You or any guarantor resolving to wind up or being ordered to be wound up or having a receiver, liquidator or official manager appointed in respect of all or any of your assets; or
- (d) You or any guarantor ceasing to trade.

4. PENALTY FOR LATE PAYMENT

- 4.1 Default interest: Failure by you to make payment in full of any amount payable pursuant to this Agreement on the due date constitutes a default and, without prejudice to any other rights or remedies available to us, simple interest at Our bank's current overdraft rate will be payable upon demand and from the due date until payment. Should full payment not be made on due date, we reserve the right to outsource the recouping of those outstanding costs to a debt collection agency of our choosing whereupon we will add a 15% debt collection fee onto the outstanding invoice. We will inform you in writing 7 days before this happens.
- 4.2 Legal costs: You will indemnify us against all loss, costs and expenses, including legal costs on a solicitor/client basis, which We may suffer or incur as a result of any failure by you to make due and punctual payment.

5. PERFORMANCE OF THE SERVICES

- 5.1 Time: We undertake to use reasonable endeavours to deliver the Services within the time specified by us but dates we give for performance will be indicative only. No date specified by you will be binding on us without our written agreement.
- 5.2 Use of reports: Any reports prepared or procured by Us as part of the Services are to be used only by you.
- 5.3 Services to be supplied: You acknowledge and agree that the Services are limited to those set out in the invoice, order form or other similar document issued by us.
- 5.4 Declining Services: We reserve the right to decline any request for work that We consider is contrary to Our professional standards or that in Our view may be harmful to your or Our reputations. If you object to Us declining any work under this clause We have the right to terminate this Agreement with immediate effect.

- 5.5 Copyright: Unless otherwise agreed, We will retain intellectual property rights in all original work we have prepared on your behalf as part of the Services. You will have the right to use the original work for the purpose for which it was intended. You will not have the right to modify the work or use it for any other purposes without Our written agreement.

- 5.6 Portfolio: You agree that We may use samples of the work we have prepared on your behalf for the purposes of marketing our services and our business.

6. YOUR OBLIGATIONS

- 6.1 Information: you will provide us with any relevant information required to enable us to perform the Services. Where information provided by you is incorrect and we are required to undertake additional work we reserve the right to charge for such additional work.
- 6.2 Third Party Rights: You warrant that:
 - (a) you own any material you provide to us, free of any claims or encumbrances and are entitled to provide that material to us; and
 - (b) any material you provide to us is yours and does not violate any existing intellectual property rights including, without limitation, copyright, trade mark, or any other proprietary or contractual rights.

7. OUR OBLIGATIONS AND WARRANTIES

- 7.1 We warrant that:
 - (a) We have the right to enter into this Agreement;
 - (b) We will perform the Services to a reasonable standard of care and skill;
 - (c) We will perform the Services in accordance with relevant laws.

8. LIABILITY

- 8.1 Limitation of liability:
 - (a) Claims: We will have no liability for unsatisfactory Services unless you notify us in writing of your claim within 3 days after performance of the Services;
 - (b) We will have the option, exercisable at our discretion, to replace or give credit for any services in respect of which any claim is made or proven or to refund a portion of the price paid for the



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Services, thereby fully discharging all our legal liability;

- (c) If either party is liable for direct losses arising from a breach of this Agreement or for negligence, the liable party's obligation to pay damages or losses is limited to the Price paid for Services under this Agreement in the three months immediately prior to the event to which the liability relates. This limitation does not apply to any loss or damage caused by fraud, wilful breach or wilful damage;
 - (d) We are not liable for any loss caused by you, or any loss that results from your failure to take reasonable steps to avoid or minimise your loss. This includes loss caused by you providing us with incorrect information or by your delay leading to our Services becoming obsolete due to matters outside our control;
 - (e) We are not liable for any loss or damage to your property, including items you send to us for product styling. You agree to insure your property as needed;
 - (f) Notwithstanding any other provision of this agreement, neither party will be liable for indirect, special, consequential or similar damages or losses, including but not limited to loss of profit or revenues or other financial or economic losses of any kind and whether or not the other party has been advised of the potential for such damages.
- 8.2 Indemnity: You will be liable for, and will indemnify Us against, any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by Us, whether direct or consequential (including without limitation any economic loss or other loss of profits, business or goodwill), arising out of any dispute or contractual, tortious or other claim or proceeding brought against Us arising from any third party claim that the Work infringes a third party's intellectual property rights.
- 8.3 Business purposes: If you hold yourself out as acquiring the Services for business purposes, you acknowledge that the provisions of the Consumer Guarantees Act 1993 will not apply and are expressly excluded.

9. DISPUTE RESOLUTION

- 9.1 If any dispute/difference arises between the parties then we will, acting in good faith, endeavour to resolve

that dispute by negotiation. If the dispute/difference is not resolved within seven (7) working days of the party alleging the dispute/difference having given written notice of it to the other party, then the dispute/difference will be referred to mediation conducted in accordance with LEADR protocols. If the parties cannot agree on the appointment of a Mediator then a Mediator shall be appointed by the President for the time being of the New Zealand Law Society. The mediation will be conducted not later than twenty (20) working days after the notice of dispute/difference was first given. If mediation fails, or a party elects to opt out of the mediation process, then the dispute/difference may be submitted by a party to the jurisdiction of the appropriate Court of New Zealand. No party may issue any legal proceedings (other than for urgent interlocutory relief) in respect of such dispute/difference, unless that party has first taken all reasonable steps to comply with this clause.

10. PERSONAL GUARANTEE

- 10.1 Where stated in your order or engagement letter, the person identified as Guarantor under this Agreement guarantees that You will perform Your obligations under this agreement, including the payment of all moneys on the due dates. The Guarantor agrees to indemnify Us against all losses that we may suffer under this Agreement as a result of Your acts or omissions.

11. GENERAL

- 11.1 Events outside our control: If any cause beyond our reasonable control including but not limited to order of a government or other authority, strike, lockout, labour dispute, delays in transit, difficulty in procuring components or equipment, embargo, accident, emergency, act of God interfere with our performance of any of our obligations under these Terms and Conditions then we may at our sole discretion suspend our performance of any such obligation or cancel any contract for the purchase of Services and we will not be liable to you in any respect.
- 11.2 Waiver: These Terms and Conditions remain in force notwithstanding any neglect, forbearance or delay in enforcement. We will not be deemed to have waived any condition unless such waiver will be in writing and such waiver will only apply to the particular transaction to which it refers.



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- 11.3 Severability: If any clause or provision of these Terms and Conditions will be held illegal or unenforceable by any judgment of any Court or Tribunal having competent jurisdiction, such clause will not apply to this Agreement. The remaining provisions of this Agreement will remain in full force and effect as if the clause or provision held to be illegal or unenforceable had not been included.
- 11.4 Privacy Policy: Any personal information collected by us in connection with this Agreement will only be used or disclosed for the purposes of ensuring performance of this Agreement and any future like arrangement or arrangements. This may include disclosure within our organisation and to other parties involved in performing the Services. We agree to comply with relevant privacy laws in respect of any personal information collected in connection with the provision of the Services and any future like arrangement or arrangements.
- 11.5 Electronic Communications: You consent to receive commercial electronic messages from Us. If you wish to opt out of receiving these messages tell us in writing and we will remove you from the mailing list.
- 11.6 Confidentiality: Each party must keep confidential during the term and after termination of this Agreement the existence and terms of this Agreement and all information of a confidential or sensitive nature supplied by the other party to this Agreement except to the extent that disclosure is required by law or where such information is or becomes available in the public domain without breach by a party of its confidentiality obligations under this Agreement. A party may disclose such information to its legal and other advisers, bankers and other persons who are subject to an obligation of confidentiality.
- 11.7 For ongoing monthly retainer services, we reserve the right to amend the monthly retainer fee, notified in writing, within the first 30 days of the agreement commencing, to ensure the services are accurately being accounted for.