

Terms of Service Agreement

2026.3.4-V1-PR

These Terms of Service govern the provision of services by **Storm IMC Limited** (“Storm IMC”, “we”, “our”, or “us”) to the Client. By accepting a Proposal, Activity Schedule, Statement of Work or otherwise instructing Storm IMC Limited to commence Services, the Client agrees to be bound by these Terms.

1. Definitions

“**Agreement**” means these Terms of Service together with any Proposal, Activity Schedule, Statement of Work or other written agreement between Storm IMC Limited and the Client.

“**Background Technology**” means any technology, technical documentation, inventions, algorithms, software, architecture, logic, source code, computer programs, backend and background elements, files and features incorporated into or utilised in the delivery of Services, which are developed or owned by Storm IMC Limited independent of this Agreement.

“**Business Day**” means any weekday excluding public holidays in New Zealand.

“**Client**” means the person or entity engaging Storm IMC Limited to provide the Services.

“**Client Works**” means materials supplied by the Client including images, text, video, logos, data and other content.

“**Defect**” means a defect, error or bug having a material adverse effect on the appearance, operation or functionality of a Deliverable, but excluding any defect, error or bug caused by or arising from:

- a) an act or omission of the Client or its employees, officers, agents or subcontractors;
- b) an incompatibility between any Deliverable and any other process, application, program or software; or
- c) inaccurate, ambiguous or flawed information included as part of the Client brief or Client Works, or issues arising from the Client failing to correct or clarify matters reported to them in a timely manner.

“**Deliverables**” means work product specifically produced for the Client under an accepted Proposal.

“**Effective Date**” means the date a Proposal is accepted by the Client or the date Storm IMC Limited commences Services, whichever occurs first.

“**Fees**” means charges payable by the Client under a Proposal or Schedule.

“**Force Majeure Event**” means an event beyond a party’s reasonable control including cyber attacks, ransomware, pandemics, war, riots, government restrictions and infrastructure outages.

“**Insolvency Event**” means any one or more of the following circumstances where a party:

- a) is dissolved or ceases to conduct all or substantially all of its business;
- b) is or becomes unable to pay its debts as they fall due;
- c) is in liquidation, becomes insolvent or is declared insolvent;
- d) convenes a meeting or makes or proposes any arrangement or composition with its creditors;
- e) has an administrator, liquidator, receiver, trustee or similar appointed over any of its assets;
- f) is subject to an order for winding up, or passes a resolution for winding up (other than for a solvent reorganisation); or
- g) where the party is an individual, dies or becomes incapable of managing their own affairs due to illness or incapacity.

“**Minimum Term**” means the contractual minimum service period defined in the Proposal or Schedule.

“**Prohibited Content**” means:

- a) material which breaches any applicable laws, regulations or legally binding codes, or infringes any third party intellectual property rights, or may give rise to any form of legal action against Storm IMC Limited, the Client or any third party;
- b) objectionable, pornographic or lewd material; or
- c) messages or communications which are offensive, abusive, indecent or obscene, are likely to cause annoyance or anxiety to another internet user, or constitute spam or bulk unsolicited mail.

“**Proposal**” means a quotation, proposal, activity schedule or scope of work issued by Storm IMC Limited describing the Services and associated fees.

“**Services**” means marketing, advertising, digital marketing, consulting, design, development or related services provided by Storm IMC Ltd.

“**Warranty Period**” means the period of twenty (20) Business Days following acceptance of a Deliverable by the Client.

2. Acceptance of Proposal

- 2.1 Proposals remain valid for ten (10) Business Days unless otherwise stated.
- 2.2 A Proposal is accepted when the Client signs the Proposal, confirms acceptance by email, instructs Storm IMC Limited to commence work, or makes payment relating to the Services.
- 2.3 By accepting a Proposal the Client agrees to be bound by these Terms of Service.

3. Services

- 3.1 Storm IMC Limited will perform the Services described in the Proposal using reasonable skill and care.
- 3.2 Storm IMC Limited does not guarantee specific marketing results, rankings, conversions, traffic or revenue outcomes.
- 3.3 The Client acknowledges that marketing outcomes depend on factors beyond Storm IMC Limited's control including advertising platform algorithms, market conditions, competitor behaviour and user behaviour.

4. Client Responsibilities

- 4.1 The Client must provide all information, materials, approvals, instructions and access credentials required for Storm IMC Limited to perform the Services.
- 4.2 The Client is responsible for ensuring that all information supplied is accurate and lawful.
- 4.3 The Client warrants that it will not require Storm IMC Limited to deliver Services that involve the publication of Prohibited Content, and that no Deliverable will be used in any way associated with Prohibited Content.
- 4.4 Storm IMC Limited is not responsible for delays, reduced performance or inability to deliver Services resulting from the Client's failure to provide required information or approvals.

5. Deliverables and Acceptance

- 5.1 Deliverables include strategies, campaigns, websites, reports and marketing assets created by Storm IMC Limited as specified in the Proposal.
- 5.2 The Client must provide written feedback within ten (10) Business Days of delivery. If no response is received within this period, the Deliverable will be deemed accepted.

6. Authority to Commit

- 6.1 Upon approval of a Proposal or Deliverable, Storm IMC Limited may reasonably commit resources, purchase materials and enter supplier agreements required to deliver the Services.

7. Subcontracting

- 7.1 Storm IMC Limited may engage subcontractors, specialist providers or consultants to perform portions of the Services where appropriate.
- 7.2 Storm IMC Limited remains responsible for the delivery of the Services under this Agreement.
- 7.3 Subcontractors engaged by Storm IMC Limited are independent contractors and are not employees of Storm IMC Limited.

8. Intellectual Property

- 8.1 Upon full payment of all Fees, Deliverables created specifically for the Client become the Client's property, unless otherwise agreed in writing.
- 8.2 Reserved Agency Materials and Background Technology: All methodologies, frameworks, templates, processes, systems, tools, scripts, code libraries, campaign structures, reporting templates, algorithms, source code, software architecture, backend and background elements and other materials developed or owned by Storm IMC Limited independent of the Services remain the exclusive property of Storm IMC Limited. Nothing in this Agreement transfers ownership of these materials to the Client.
- 8.3 Portfolio Use: Storm IMC Limited may display work created for the Client in its portfolio, website, marketing materials or industry awards unless the Client expressly requests otherwise in writing or unless subject to written NDA obligations.
- 8.4 Case Studies: Storm IMC Limited may refer to the Client's name, campaign performance, results or outcomes for case study purposes unless the Client expressly requests otherwise in writing.
- 8.5 Speculative Work: Any strategies, concepts, creative work or materials created by Storm IMC Limited during a pitch or proposal process remain the property of Storm IMC Limited unless otherwise agreed in writing.
- 8.6 Strategy Ownership: Marketing strategies, campaign structures, frameworks and methodologies developed by Storm IMC Limited remain the intellectual property of Storm IMC Limited.
- 8.7 First Right of Refusal: If the Client wishes to utilise any Deliverable, Background Technology or Reserved Agency Materials for any purpose outside the scope of this Agreement, the Client must first offer Storm IMC Limited the right to perform such work. If Storm IMC Limited declines, any third party engaged by the Client to perform such work must comply with any express limitations on use of those materials specified by Storm IMC Limited.

9. Revocation of Licences

- 9.1 Any licences or assignments granted by Storm IMC Limited to the Client are conditional on full payment of all Fees.
- 9.2 If Fees remain overdue after written notice, Storm IMC Limited may revoke any licences granted and ownership of Deliverables will revert to Storm IMC Limited until payment is received in full.

10. Confidentiality

- 10.1 Both parties must keep confidential any confidential information received from the other party and use it only for the purposes of performing this Agreement.
- 10.2 Confidentiality obligations continue for two (2) years following termination of this Agreement.

11. Client Materials and Copyright Indemnity

- 11.1 The Client warrants that any materials, content, images, video, audio, trademarks, logos or other works supplied to Storm IMC Limited are owned by the Client or properly licensed for use.
- 11.2 The Client agrees to indemnify and hold harmless Storm IMC Limited from any claims, costs or damages arising from the use of Client supplied materials.

12. Fees and Charges

- 12.1 Fees for Services will be set out in the Proposal or Activity Schedule.
- 12.2 Fees may be updated by Storm IMC Limited with twenty (20) Business Days written notice to the Client.
- 12.3 If the Client requests additional work outside the agreed scope, Storm IMC Limited may charge additional fees at its standard agency rates or any agreed client rate.
- 12.4 All Fees stated in or in relation to this Agreement are exclusive of GST unless explicitly stated otherwise.

13. Payment Terms

- 13.1 Invoices are payable on the 20th of the month following the invoice date, or in accordance with the payment terms stated on the invoice.
- 13.2 Storm IMC Limited may suspend Services if invoices remain unpaid for ten (10) Business Days after the due date.
- 13.3 Storm IMC Limited is not responsible for performance impacts caused by suspension due to non-payment.
- 13.4 The Client must pay all outstanding invoices before any handover or transition assistance is provided.
- 13.5 Storm IMC Limited may charge interest of 2% per month on overdue invoices, calculated daily until payment is received.
- 13.6 Where an overdue invoice remains unpaid, Storm IMC Limited may refer the debt to a collection agency and recover all reasonable costs of collection including legal fees.

14. Advertising Spend

- 14.1 The Client remains responsible for all advertising platform charges incurred on its accounts including Google Ads, Meta and other advertising platforms.
- 14.2 Storm IMC Limited acts as an intermediary in managing advertising campaigns and is not responsible for advertising platform billing behaviour, automated bidding behaviour, algorithm changes or overspend generated by advertising platforms.

15. Third-Party Platforms

- 15.1 Storm IMC Limited is not responsible for outages, failures, policy changes or operational changes imposed by third-party platforms including advertising platforms, hosting providers, analytics platforms, software providers and social media platforms.

16. Platform Suspension

- 16.1 Storm IMC Limited is not responsible for the suspension, restriction or termination of advertising, analytics or other third-party platform accounts including Google Ads, Meta or similar platforms.
- 16.2 Storm IMC Limited will make reasonable efforts to assist the Client in resolving such issues but cannot guarantee reinstatement of any account.

17. Data Loss

- 17.1 Storm IMC Limited is not responsible for the loss of data, campaign history or account configuration resulting from third-party platform changes, client account modifications, platform migrations or account suspensions.

18. Artificial Intelligence and Automation

- 18.1 Storm IMC Limited may use artificial intelligence tools and automation systems to assist in delivering the Services.
- 18.2 Client data will not be used to train third-party AI models unless expressly authorised by the Client in writing.

19. Privacy

19.1 Storm IMC Limited will comply with its obligations under the Privacy Act 2020 and the applicable Information Privacy Principles.

20. Warranties

- 20.1 Storm IMC Limited warrants that it will perform Services with reasonable skill and care consistent with generally accepted industry standards.
- 20.2 Storm IMC Limited does not guarantee marketing outcomes, search rankings or advertising performance.
- 20.3 Storm IMC Limited warrants that any Deliverables will be fit for purpose for the Warranty Period following acceptance by the Client.
- 20.4 Storm IMC Limited's sole liability for any breach of the warranty in clause 20.3 will be, at Storm IMC Limited's election, to re-perform the deficient Services or remedy the Defect within twenty (20) Business Days of the Client notifying Storm IMC Limited of such deficiency or Defect within the Warranty Period, or if unable to do so within that period, to render the relevant invoice or part thereof void.
- 20.5 Storm IMC Limited will have no warranty obligation if:

- a) the claim is notified after the Warranty Period has expired;
- b) the Defect was caused by an act or omission of the Client or a third party; or
- c) the claim arises from an event for which Storm IMC Limited has no liability under this Agreement.

20.6 The Client warrants that it has the authority to enter into this Agreement and that all Client Works supplied are legally owned or properly licensed.

21. Limitation of Liability

- 21.1 To the maximum extent permitted by law, Storm IMC Limited's total aggregate liability arising under or in connection with this Agreement will not exceed the greater of: (a) NZD \$10,000; or (b) the total Fees paid by the Client to Storm IMC Limited in the three (3) months preceding the event giving rise to the claim.
- 21.2 Storm IMC Limited will not be liable for any indirect, consequential, special or exemplary loss, loss of profits, loss of data or loss of business opportunity.

22. Force Majeure

- 22.1 Neither party is liable for failure to perform obligations due to a Force Majeure Event.
- 22.2 If a Force Majeure Event continues for more than thirty (30) days, either party may terminate this Agreement by written notice.

23. Termination

- 23.1 Either party may terminate this Agreement by providing forty-five (45) Business Days written notice, or the notice period specified in the Proposal, whichever applies.
- 23.2 Either party may terminate immediately upon written notice if the other party commits a material breach that is not remedied within twenty (20) Business Days of written notice, or upon an Insolvency Event.
- 23.3 Upon termination, Storm IMC Limited may provide transition assistance at its standard agency rates.
- 23.4 All outstanding Fees remain payable on termination. Storm IMC Limited may withhold Deliverables until all outstanding Fees are received.

24. Early Termination Charges

24.1 If termination occurs before the Minimum Term expires, Early Termination Charges apply calculated as: $0.8 \times \text{remaining contract value (excluding committed third-party media)} \times \text{percentage of Minimum Term remaining}$

25. Survival

25.1 The following clauses survive termination or expiry of this Agreement: Clauses 8, 9, 10, 11, 12.4, 13, 16, 17, 20.4, 20.5, 21, 25 and 26.

26. Dispute Resolution

- 26.1 The parties will attempt to resolve any dispute through good faith negotiation.
- 26.2 If unresolved within fourteen (14) days, the parties agree to attempt mediation before commencing court proceedings.

27. Non-Solicitation

27.1 The Client will not directly or indirectly solicit, engage or employ any employee, subcontractor or consultant of Storm IMC Limited who was involved in the delivery of Services, during the term of this Agreement or for twelve (12) months following termination.

28. Consumer Law

- 28.1 If the Client acquires Services for business purposes, the Consumer Guarantees Act 1993 does not apply to the extent permitted by law.
28.2 Nothing in this Agreement limits rights under the Fair Trading Act 1986.

29. Variation of Terms

- 29.1 Storm IMC Limited may update these Terms by providing twenty (20) Business Days written notice.
29.2 Changes apply only to new Services or renewals of existing Services unless otherwise agreed.

30. Assignment

- 30.1 Storm IMC Limited may assign or transfer this Agreement to a related entity or successor in the event of business sale, merger or restructuring.

31. Governing Law

- 31.1 This Agreement is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts.

32. Entire Agreement

- 32.1 This Agreement together with any accepted Proposal or Schedule constitutes the entire agreement between the parties and supersedes all prior arrangements, representations or understandings.
32.2 Nothing in this Agreement creates a partnership or employment relationship between the parties.

