

Totally Psyched Limited – Terms and Conditions

Please read these Terms and Conditions carefully, as they set out our and your legal rights and obligations in relation to our services.

1. Definitions and interpretation

1.1. In these Terms and Conditions:

“**Arrangement**” means our contract with you for the supply of Services incorporating these Terms and Conditions, and any amendments to such a contract from time to time;

“**Appointment**” means an appointment for the supply of Services that forms part of an Arrangement;

“**Client**” “**you**” and “**your**” means the client under an Arrangement, as identified in the Client Form;

“**Client Form**” means the document issued by us detailing the scope of the Services and other matters relating to an Arrangement;

“**Effective Date**” means the date when we receive a copy of the Client Form that has been signed by you;

“**Force Majeure Event**” means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

“**Price**” means the price payable by you to us in respect of an Arrangement, which are specified in the Client Form and which may be varied in accordance with Clause 7;

“**Services**” means clinical psychologist assessment and therapy services;

“**Term**” means the term of an Arrangement.

“**We**” “**us**” and “**our**” means Totally Psyched Limited and its successors and assigns or any person acting on behalf of and with the authority of Totally Psyched Limited;

“**Working Day**” means any weekday, other than a bank or public holiday in Auckland;

1.2. In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

1.2.1. that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

1.2.2. any subordinate legislation made under that statute or statutory provision.

1.3. The Clause headings do not affect the interpretation of these Terms and Conditions.

1.4. In these Terms and Conditions, “persons” includes companies, partnerships, limited liability partnerships, unincorporated associations and trusts.

2. Acceptance

2.1. Upon acceptance of these Terms and Conditions by you the Terms and Conditions are irrevocable and can only be rescinded in accordance with these Terms and Conditions or with our written consent.

2.2. These Terms and Conditions are to be read in conjunction with our Client Form as provided by us to you. If there are any inconsistencies between the two documents then the Terms and Conditions contained in this document shall prevail.

3. Arrangements

3.1. Each Arrangement will come into force on its Effective Date and will continue in force indefinitely, unless and until terminated in accordance with Clause 12.

4. Services

4.1. We will supply the Services to you in accordance with the terms of each Arrangement, and at all times in a professional manner and in accordance with appropriate standards.

4.2. The time for delivery of the Services will not be of the essence of the parties' agreement.

4.3. We may suspend the provision of the Services if you fail to pay by the due date any amount due to us in respect of an Arrangement.

4.4. From time to time during the Term we may be unable to supply the Services by reason of personnel illness or personnel shortage, in which case:

4.4.1. we will use reasonable endeavours to engage alternative personnel to supply the Services; and

4.4.2. subject to our compliance with Clause 4.4.1, we will not be in breach of the terms of the Arrangement by virtue of any failure to supply the Services arising out of such inability.

5. Client obligations

5.1. You will indemnify us and will keep us indemnified against any and all losses, costs, expenses, damages and liabilities (including legal expenses and amounts paid in settlement of legal claims or proceedings) arising directly or indirectly out of any breach by you of this Agreement.

6. Price And Payment

6.1. At our sole discretion the Price shall be the Price quoted on our Client Form which shall be binding upon us provided that you shall accept our quotation in writing within thirty (30) days.

6.2. We may, by giving notice to you, increase the Price of the Services to reflect any increase in the cost to us beyond our reasonable control (including, without limitation, increases in taxes or insurance premiums).

6.3. At our sole discretion a deposit may be required. Any deposit taken shall be applied against our first invoice(s).

6.4. Time for payment for the Services, including payment of any excess due in relation to your Southern Cross insurance policy, shall be of the essence and at our sole discretion payment shall be due on the day of each Appointment or within 7 days of the date of the Appointment.

6.5. Payment must be made in cleared funds by direct credit via electronic/online banking to the account specified on our invoice, or by any other method stipulated by us.

6.6. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

7. Warranties

7.1. You warrant to us that you have the legal right and authority to enter into and perform your obligations required by each Arrangement.

7.2. We warrant to you that:

7.2.1. We have the legal right and authority to enter into and perform our obligations required by each Arrangement; and

7.2.2. the Services will be performed with reasonable care and skill.

7.3. If you believe that Services have not been provided in accordance with Clause 7.2.2, then you must:

7.3.1. notify us promptly; and

7.3.2. allow and enable us to review the Services provided and re-perform the relevant Services.

7.4. All of the parties' warranties and representations in respect of the subject matter of the Arrangement are expressly set out in these Terms and Conditions and in the Client Form. To the maximum extent permitted by applicable law and subject to Clause 7.1, no other warranties or representations concerning the subject matter of the Arrangement will be implied into these Terms and Conditions, the Client Form, the Arrangement or any other contract.

8. Limitations and exclusions of liability

8.1. Nothing in these Terms and Conditions will:

8.1.1. limit or exclude the liability of a party for death or personal injury resulting from negligence;

8.1.2. limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;

8.1.3. limit any liability of a party in any way that is not permitted under applicable law;

8.1.4. exclude any liability of a party that may not be excluded under applicable law; or

8.1.5. limit or exclude any statutory rights that a party has as a consumer.

8.2. The limitations and exclusions of liability set out in this Clause 8 and elsewhere in these Terms and Conditions:

8.2.1. are subject to Clause 8.1; and

8.2.2. govern all liabilities arising under the Arrangement or in relation to the subject matter of the Arrangement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

8.3. We will not be liable to you for any losses arising out of a Force Majeure Event.

8.4. Our aggregate liability to you will not exceed the total amount paid and payable by you to us under the Arrangement.

9. Force Majeure Event

9.1. Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations required by any Arrangement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

10. Default and Consequences of Default

10.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at our sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

10.2. If you owe us any money you shall indemnify us from and against all costs and disbursements incurred by us in recovering the debt (including but not limited to our \$25.00 internal administration fee, legal costs on a solicitor and own client basis, our collection agency costs, and bank dishonour fees).

10.3. Without prejudice to any other remedies we may have, if at any time you are in breach of any obligation (including those relating to payment) under these Terms and Conditions we may suspend or terminate the provision of Services to you. We will not be liable to you for any loss or damage you suffer because we have exercised our rights under this clause.

11. Termination

11.1. Either party may terminate an Arrangement at any time by giving at least 14 days' written notice to the other party.

11.2. Either party may terminate an Arrangement immediately by giving written notice to the other party if the other party:

11.2.1. commits any material breach of any provision of these Terms and Conditions or the relevant Client Form, and:

11.2.2. the breach is not remediable; or

11.2.3. the breach is remediable, but the other party fails to remedy the breach within 14 days of receipt of a written notice requiring it to do so; or

11.2.4. persistently breaches these Terms and Conditions and/or the relevant Client Form.

11.3. Either party may terminate an Arrangement immediately by giving written notice to the other party if:

11.3.1. the other party:

is dissolved;

ceases to conduct all (or substantially all) of its business;

is or becomes unable to pay its debts as they fall due;

is or becomes insolvent or is declared insolvent; or

convenes a meeting, or makes or proposes to make any arrangement or composition, with its creditors;

11.3.2. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

11.3.3. an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Arrangement); or

11.3.4. where that other party is an individual that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

11.4. We may terminate an Arrangement immediately at any time by giving written notice to you if you fail to pay in full and on time any amount due to us, whether due in respect of that Arrangement or otherwise.

12. Effects of termination

12.1. Upon termination of an Arrangement, all the provisions of these Terms and Conditions and the Client Form will cease to have effect, save that the following provisions of these Terms and Conditions will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 8, 11, 12, 13, 14, 15, 16, and 17.

12.2. Termination of an Arrangement will not affect either party's accrued liabilities and rights (including accrued rights to be paid) as at the date of termination.

13. Confidentiality

13.1. The provisions of this agreement are strictly confidential to the parties. Neither party may disclose or permit to be disclosed any provision of, or any information (and particularly any financial information) relating to the contract the subject of these Terms and Conditions to any person not a party without first obtaining the written consent of the other party as to both the person to whom disclosure is to be made and the terms of such disclosure.

14. Dispute Resolution

14.1. We will endeavour, but will not be required to resolve all disputes between you and us amicably provided that if we cannot resolve a dispute, then no proceedings will be issued in Court in respect of the dispute without the dispute first being mediated by a single mediator appointed by agreement between the parties and failing agreement and on the application of one of them, by the Chief Executive Officer for the time being of the Resolution Institute of New Zealand.

15. Compliance with Laws

15.1. The parties shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including the Health and Disability Commissioner Act 1994, the Care of Children Act 2004 and the Health Act 1956.

16. Privacy Act 1993

16.1. You authorise us or our agent to:

16.1.1. access, collect, retain and use any information about you;

16.1.2. (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing your creditworthiness; or

16.1.3. for the purpose of marketing products and services to you.

16.1.4. disclose information about you, whether collected by us from you directly or obtained by us from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by you.

16.2. The authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.

16.3. You shall have the right to request a copy of the information about you retained by us and the right to request us to correct any incorrect information about you held by us.

17. General

17.1. Our failure to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect our right to subsequently enforce that provision.

17.2. If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.3. These Terms and Conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

17.4. We shall be under no liability whatever to you for any indirect loss and/or expense (including loss of profit) suffered by you arising out of a breach by us of these Terms and Conditions.

17.5. In the event of any breach of this contract by us your remedies shall be limited to damages. Under no circumstances shall our liability exceed the Price of the Services.

- 17.6. You shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to you by us.
- 17.7. We reserve the right to review these Terms and Conditions at any time. If, following any such review, there is to be any change to these Terms and Conditions, then that change will take effect from the date on which we notify you of such change.
- 17.8. You warrant that you have the power to enter into this agreement and have obtained all necessary authorisations to allow you to do so, you are not insolvent and that this agreement creates binding and valid legal obligations on you.
- 17.9. The Terms and Conditions of an Arrangement may not be varied except by a written document signed by or on behalf of each of the parties.
- 17.10. We may freely assign our rights and obligations under any Arrangement without your consent. Save as expressly provided in this Clause or elsewhere in these Terms and Conditions, neither party may, without the prior written consent of the other party, assign, transfer, charge, license or otherwise dispose of or deal in any rights or obligations under any Arrangement.
- 17.11. Each Arrangement is entered into for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party.