

Melanie Dragovich Wellbeing Coach - Terms of Trade

1. **Definitions**
- 1.1 **"The Provider"** shall mean Melanie Dragovich Spiritual Wellbeing Coach, or any agents, employees, successors or assignees thereof. 3.8
- 1.2 **"Contract"** shall mean the contract between the Client and The Provider. 3.9
- 1.3 **"Client"** means any entity or person(s) engaging OME for services in any estimate, quote contract, scope of works or other document issued by The Provider. These terms of trade include the Client's trustees, executors [if an individual or successors], permitted assignees, and/or administrators, and: 3.10
- a) if there is more than one Client, is a reference to each Client jointly and severally; and 3.11
- b) if the Client is a partnership, it shall bind each partner jointly and severally; and 3.12
- c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- d) includes the Client's executors, administrators, successors and permitted assignees.
- 1.4 **"Services"** shall mean all services supplied by The Provider to the Client and includes any advice or recommendations. 4.
- 1.5 **"Spiritual Wellbeing Coach"** shall mean life coach or wellbeing coach. 4.1
- 1.6 **"Price"** shall mean the cost of the Services as determined by The Provider and any other amounts owing to The Provider by the Client. 4.2
- 1.7 **"Order"** means an agreement between The Provider and the Client to supply Services to the Client. 4.3
- 1.8 **"Quote"** means a written offer from The Provider to the Client to supply Services for a specified Price and subject to these terms and conditions (which shall be paramount) along with any terms and conditions contained in any such offer. 4.4
2. **General**
3. These terms and conditions should be read in conjunction with the Contract. The Client must abide by these Terms of Trade and the Contract. 5.
- 3.1 Headings are inserted for convenience and shall not affect the construction of this contract. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. 5.1
- 3.2 If any provision of this contract shall be invalid or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 3.3 This contract shall be subject to the laws and statutes of New Zealand and subject to the jurisdiction of the court geographically closest to the physical address of The Provider.
- 3.4 The Provider may sub-contract any part of this contract. No subcontractor has any authority to agree to any variation of this contract on behalf of The Provider.
- 3.5 The Provider may assign or transfer all or any part of its rights or obligations under this agreement without the Client's consent.
- 3.6 The Provider's failure or delay in exercising or enforcing any right it has under this contract shall not operate as a waiver of The Provider's rights to exercise or enforce such rights or any other rights in the future. 6.
- 3.7 The Provider may, and the Client may not, vary or replace this contract and it will be a condition of The Provider continuing to supply Services to the Client that the Client agrees to sign any variation or replacement of this contract.
- Any waiver of these terms and conditions by The Provider must be made in writing.
- The Client may not assign all or any of the Client's rights or obligations under this contract without the written permission of The Provider.
- The Provider shall not be bound by any error or omission made by The Provider on any invoice, quotation, estimate, or any other document issued by The Provider.
- The Client shall notify The Provider of any intention to cease trading or of any change in the Clients name, and/or contact details by giving at least seven (7) days-notice in writing prior to any such events taking effect.
- Where Services are provided under these terms for a company, trust, or other entity (incorporated or unincorporated), the The Provider acknowledges that the natural person engaging The Provider is authorised to accept these terms on behalf of the company, trust, or other entity.
4. **Acceptance**
- Any instructions received by The Provider from the Client for the supply of Services shall constitute acceptance of this contract.
- The Provider will only supply Services on these terms and conditions unless agreed otherwise in writing.
- These terms and conditions along with invoices, credit application, quotations, estimates, Order forms, the Contract or any other documents issued by The Provider together form the contract and are the full agreement between the parties.
- Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
5. **Quotations**
- Where a Quotation is given for the Price then:
- a) All Quotes are based on rates and charges in effect at the date of the relevant Quote and are binding (unless otherwise specified) twenty (20) working days after the date of the Quote. Any increases in rates and charges, including but not limited to increases due to exchange rate fluctuations in accordance with clause 7.4, shall result in an equivalent increase in the Quote; and
- b) Where Services are required in addition to the Quote then the Client agrees to pay the Price in effect at the date of the request for additional Services; and
- c) The Provider reserves the right to amend or increase the quotation in the event of circumstances beyond The Provider's control including but not limited to exchange rate fluctuations.
- d) The Provider, in its sole discretion reserves the right to decline, in whole or part, any Order.
6. **Consumer Guarantees Act 1993 & Fair Trading Act 1986**

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- 6.1 Where Services are supplied for the purposes of a business, the Client agrees that the Consumer Guarantees Act 1993 shall not apply.
- 6.2 Nothing in this contract is intended to have the effect of contracting out of the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 except to the extent permitted by statute.
7. **Price**
- 7.1 The Provider requires full payment of the Price upon placement of an Order of the Services.
- 7.2 The Price of the Services shall be either:
- As shown on The Provider's invoice; or
 - Stipulated in The Provider's quotation.
- 7.3 Unless otherwise agreed the Price is exclusive of Goods and Services Tax, and any other applicable taxes, duties, charges and costs which are payable by the Client in addition to the Price.
- 7.4 The Provider reserves the right to amend and increase prices and Quotes in accordance with exchange rate fluctuations.
8. **Payment**
- 8.1 Unless otherwise agreed to in writing by The Provider, payment is due at the time of placing an Order with The Provider.
- 8.2 In some circumstances The Provider may allow the Client to pay in installments. The following conditions will apply where clients have arranged to make payment in installments:
- Payment for each session must be made at least forty-eight (48) hours prior to the session with The Provider;
 - Payment of all sessions will be due regardless of whether the Client completes all sessions;
 - All other terms of these Terms and Conditions and the Contract with The Provider will apply.
- 8.3 Payment may be made by mobile eftpos, cash or direct deposit to The Provider nominated bank account.
- 8.4 All payments by the Client must be made in full and without any deduction or right of set-off or counterclaim. The Client agrees, however, that any monies that The Provider may owe the client on any account whatsoever may, at The Provider's option, be set-off against payments due by the client to Melanie Dragovich.
- 8.5 Receipt of a bill of exchange or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 8.6 In the event that a Client makes an Order for Services with The Provider and does not make payment, The Provider reserves the right to withhold or decline to provide any Services until payment has been made.
9. **Default**
- 9.1 Without prejudice to any other rights or remedies that The Provider may have against the Customer, the Customer agrees that in the event of default in payment by the Customer then the Customer agrees to pay on demand;
- All costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by The Provider in recovering any amounts payable by the Customer to The Provider; and
 - Interest on the amount outstanding at the end of each month in which the Customer's account is in arrears at the rate of two and a half percent (2.5%) per month (compounding) with such a rate after as well as before any judgement; and
 - A monthly administration fee of twenty five dollars (\$25) by way of damages payable on the last day of each month in which the Customer's account is in default; and
 - Any costs incurred by The Provider for storage of Goods; and
 - Any losses or damages which may be incurred by The Provider due to non-performance of any relevant contracts held with third party feed suppliers.
- 9.2 The Provider shall, in its sole discretion, determine whether the Customer is in default of payment. For the avoidance of doubt, the Customer is in default on the day following the date by which the invoice was due for full payment.
- 9.3 The Provider may at any time, by notice to the Customer, declare all or any part of the money's owing to The Provider to be due and payable immediately, upon demand or at a later date as The Provider may specify.
- 9.4 The Provider may at The Provider's sole discretion stop further performance of this contract, require payment in cash before further performance of this contract, debit any other account the Customer may have to pay the sum owing, retain any deposit paid by the Customer (which shall be forfeited by the Customer) or terminate this contract without notice to the Customer upon the happening of any of the following events:
- The Customer makes default in payment due under this contract or in payment of any moneys due by the Customer to The Provider on any account whatsoever; or
 - The Customer is insolvent or takes any proceedings to reschedule any indebtedness; or
 - In The Provider's opinion the Customer is unable to pay indebtedness as it falls due; or
 - A receiver or manager is appointed to any property of the Customer.
10. **Privacy Act**
- 10.1 The Client under this Agreement, acknowledges that personal information collected or held by The Provider is provided and may be held, used and disclosed for the following purposes:
- Administering, whether directly or indirectly, The Provider's contracts and enforcing The Provider's right thereunder; and
 - Marketing Goods provided by The Provider; and
 - Ascertaining at any time the Client's creditworthiness and obtaining at any time credit reports, character references or credit statements; and
 - Enabling The Provider to notify any credit agency of any application for credit or default on any obligation of the Client to The Provider and enabling The Provider to provide such personal information to any credit agency so such credit agency can maintain correct records; and
 - Enabling the Client to communicate with The Provider for any purpose.

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- 10.2 Where the Client are an individual the authorities under clause 10.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 10.3 The Client has the right under the Privacy Act 1993 to obtain access to and to request correction of any personal information concerning it held by The Provider.
- 10.4 The Client must notify The Provider of any change in circumstance that may affect the accuracy of the information provided by them to The Provider.
11. **Limitation of Liability**
- 11.1 In New Zealand, the Consumer Guarantees Act 1993, the Commerce Act 1986, the Fair Trading Act 1986 and other statutes may imply warranties or impose obligation on The Provider which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of such implied warranties, conditions or terms imposed on The Provider, The Provider's liability shall, where it is allowed, be excluded or if not able to be excluded, only apply to the minimum extent required by the relevant statute.
- 11.2 Except as provided for by clause 11.1 The Provider, any of its suppliers, vendors, service providers, and all other persons or business associated directly or indirectly with The Provider shall not be liable for any loss or damage of any kind whatsoever including consequential loss and personal injury, whether suffered or incurred by the Client, or another person, and whether in contract, tort, or otherwise and whether such loss or damage arises directly or indirectly from the Services provided by The Provider to the Client. For the sake of clarity, this includes but is not limited to loss and damage caused by inaccurate advice or recommendations, abuse, unintended use of information.
- 11.3 To the extent permitted by statute if The Provider is ever liable to the Client, or any other person, and The Provider cannot rely on the exclusions or representations, warranties, or liabilities set out in these terms and conditions then The Provider's liability is in all cases limited to a refund of the purchase Price of the Services.
- 11.4 Neither party shall be deemed in default of this contract to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any Act of God, war, terrorism, fire, natural disaster, accident, act of government, strikes, unavailability of material, or any other cause beyond the reasonable control of such party.
- 11.5 The Client hereby disclaims any right to rescind, or cancel any contract with The Provider or sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by The Provider and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgement and not as a result of any inducement, representation or promise made by The Provider.
- 11.6 The Client shall indemnify The Provider against all claims, and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of The Provider or otherwise, brought by any person in connection with any matter, act, omission or error by The Provider, its agents, third party suppliers or employees in connection with the Services.
- 11.7 The Client acknowledges and agrees that in the event that any information provided by the Client regarding the Services to be provided by The Provider is inaccurate or incomplete, The Provider has no liability and accepts no responsibility for any loss, damages, or costs however resulting from the inaccurate or incomplete information.
- 11.8 The Client acknowledges that The Provider is not a medical professional or health care service. The Services as provided by The Provider are not intended to be a replacement for medical care, counselling services or physiological treatment.
12. **Cancellation and Postponement**
- 12.1 To end the contract, the Client must give The Provider a signed notice stating that the Client is ending the contract under this clause and giving the details of why the contract is being ended.
- 12.2 Once the Client has engaged The Provider in accordance with these terms, they are not entitled to a refund.,
- 12.3 The Client must give at least twenty-four (24) hours-notice to The Provider to postpone an appointment. If the Client gives less than twenty-four (24) hours-notice, the pre-paid fee for this appointment will be charged.
- 12.4 If the client postpones their appointment with at least twenty-four (24) hours-notice, their pre-paid fee will be apportioned to the postponed appointment.
- 12.5 If the client postpones their appointment with less than twenty-four (24) hours-notice, they will be required to pay a new fee for the session.
13. **Copyright**
- 13.1 All copyright, patent and intellectual property of any materials or samples provided by The Provider shall remain the property of The Provider and shall only be used by the Client for the use for which they were intended or supplied.
14. **Dispute**
- 14.1 For disputes arising between the parties under this contract where the Price is within the limits of the jurisdiction of the Disputes Tribunal the Client expressly acknowledges and agrees that this contract may be taken as agreement that both parties consent for the dispute to be referred to the Disputes Tribunal for resolution.
- 14.2 For disputes arising between the parties under this contract where the Price exceeds the limits of the jurisdiction of the Disputes Tribunal the parties agree that before referring the dispute to a third party a period of no less than four (4) weeks shall pass to allow both parties time to attempt to negotiate or mediate an agreement. Failing an agreement acceptable to both parties being formed such disputes will be referred to a single arbitrator to be mutually agreed upon by the parties (or failing such agreement as appointed by the Arbitrators Institute of New Zealand council). Any determination of such arbitrator shall be final and binding on the parties and not subject to review.
15. **General**

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- 15.1 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.
- 15.2 The Provider reserves 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 The Provider notifies the Client of such change.
- 15.3 If there is any inconsistency between these terms and conditions and any Order submitted by the Client, or any other arrangement between the parties, these terms and conditions shall prevail, unless otherwise agreed in writing by the parties.
- 15.4 The Client shall not approach any third party supplier for direct discounts, use the name of The Provider, or reveal The Provider's trading terms and conditions in any attempt to obtain personal discounts from businesses not associated with The Provider.