

East End Marketing Pty Ltd - Terms of Trade (“Terms”)

1 Application of Terms

- 1.1 These Terms govern our supply of Services to you, including supplies on a cash basis.
- 1.2 If you wish to negotiate these Terms with us then you should respond to this document, marking up these Terms and drawing those changes to our attention and obtain our agreement in writing.
- 1.3 It is not our practice to otherwise review terms and conditions on documents that you issue to us.
- 1.4 Unless we otherwise agree in writing, we do not accept, and will not be bound by, any terms or conditions included in, attached to, or referenced in, any other document you give to us like a purchase order.

2 Quotations

- 2.1 Each Quotation that we issue:
 - (a) is an estimate only;
 - (b) is not an offer or obligation to perform any Services;
 - (c) is exclusive of GST;
 - (d) remains valid for acceptance for a period of thirty (30) days from the date of Quotation, unless withdrawn by us before a contract for supply is formed; and
 - (e) contains a price on the basis that all Services are performed, during Business Hours, unless the Quotation states otherwise.
- 2.2 Quotations provided orally are subject to written confirmation.
- 2.3 A Quotation may include additional terms or conditions, which will supplement these Terms.
- 2.4 Should you wish to have Services performed outside Business Hours please let us know as additional charges may apply.

3 Formation of contract

- 3.1 We are not obliged to provide Services until after a contract for supply is formed.
- 3.2 A contract for supply is formed, and you have accepted these Terms, when:
 - (a) you have placed an Order with us; and
 - (b) we have received any deposit we have required from you in respect of the Order before progressing it; and either we have:
 - (c) accepted your Order in writing; or
 - (d) performed any Services following receipt of your Order.
- 3.3 If you revoke an Order:
 - (a) prior to the formation of a contract for supply then:
 - (i) we will refund you any deposit you have paid in respect of that Order; and
 - (ii) you will not be required to pay any fee for the cancellation of the Order; or alternatively
 - (b) after the formation of a contract for supply then unless we are in breach of the contract for supply:
 - (i) you must pay all our reasonable costs associated with fulfilment of your Order; and
 - (ii) we may apply any deposit you have paid towards those costs.

4 Briefing, Planning and Booking

- 4.1 Following our receipt of instructions from you, we will book space and / or time for you. These bookings will be confirmed in writing.
- 4.2 For the avoidance of misunderstandings or error, all instructions from you to us must be made by email.
- 4.3 We will not be responsible for any Media bookings made directly between you and Media proprietors, unless:
 - (a) we are notified in writing; and
 - (b) we confirm your booking with the Media, prior to the relevant cancellation deadline.
- 4.4 You acknowledge and agree to familiarise yourself with any relevant process requirements for placing or booking

advertisements with the Media (including the relevant Media's terms and condition, as may be amended from time to time). We will assist to inform you of relevant processes, or terms and conditions.

5 Checking and Paying Media Invoices

- 5.1 You acknowledge and agree that we are authorised by you to receive all Media invoices, are responsible for matching invoices with Media bookings, and for paying all Media by any relevant due dates.
- 5.2 We will invoice you at the rate negotiated, in good faith, with the Media notwithstanding a different charge provided to you by the Media.
- 5.3 We will endeavour to notify you of the rate negotiated pursuant to clause 5.2, as soon as reasonably practicable.

6 Commissions

You acknowledge and agree that we may receive Commissions from third parties including the Media, from time to time, and such Commissions remain our sole property.

7 Price

- 7.1 The price payable for the Services will be:
 - (a) the price agreed in writing pursuant to clause 5.2; or alternatively
 - (b) the price by our prevailing price list/rates as when you place your Order.
- 7.2 We may vary our price or rates by notice to you if you request:
 - (a) the Services be rendered outside Business Hours;
 - (b) different Services to be supplied to the contract for supply; or
 - (c) that we delay provision of the Services for sixty (60) days or more.
- 7.3 For work outside the standard Media planning and buying, for extensive speculative work, work for non-Media projects, or for business placed through a master agency, we will charge an hourly fee.
- 7.4 Where we vary the price or rates payable for the Services pursuant to clause 7.2, we will notify you of the new price/rates. Thereafter you may reject the new price/rates within seven (7) days and terminate the contract for supply without any cost or penalty to you, otherwise you agree that the price/rates will apply to the contract.

8 Payment terms

- 8.1 Unless you have a Credit Facility with us which is not in default:
 - (a) deposits we have requested must be paid before we commence providing Services;
 - (b) you must pay for all Services on a progressive hourly basis as performed.
- 8.2 Payment may be made by cash, cheque, or electronic funds transfer. We reserve the right to change the payment methods that we accept at any time.
- 8.3 We may charge a payment surcharge for applicable payment transactions equal to our reasonable cost of acceptance.
- 8.4 You agree to pay GST on all taxable supplies upon us issuing you a tax invoice relating to the taxable supply.
- 8.5 You agree to pay sums due to us free of any set off or counterclaim and without deduction or withholding.

9 Security interest

- 9.1 You:
 - (a) waive your right to receive a copy of any verification statement in accordance with section 157 of the PPS Act; and
 - (b) agree that, to the extent permitted by the PPS Act:
 - (i) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142, and 143 of the PPS Act do not apply and are hereby contracted out of; and
 - (ii) you waive your right to receive notices under sections 95, 118, 121(4), 127, 130, 132(3)(d), and 132(4) of the PPS Act.
- 9.2 We need not disclose information of the kind detailed in section 275(1) of the PPS Act, unless required by law.

- 9.3 Where we have rights in addition to those under Part 4 of the PPS Act, those rights continue to apply.

10 Media Cancellations

- 10.1 If you elect to cancel any Media bookings you must:
- confirm these instructions to us by email; and
 - within a reasonable timeframe prior to any Media cancellation deadlines.
- 10.2 Notwithstanding clause 10.1, if a Media booking cancellation will only be accepted by Media on a 'Delete and Charge' basis (which means the Media will delete the scheduled advertisement and reschedule it at an alternate time), or there are any other cancellation restrictions, you acknowledge and agree that you are responsible for the payment of any relevant invoices or cancellation fees
- 10.3 For the avoidance of doubt, you must pay all of our reasonable costs (including but not limited to, cancellation fees or re-booking fees) associated with your cancellation of Media booking(s).
- 10.4 You acknowledge and agree that we will not be responsible for rescheduling Material on a 'Delete and Charge' basis.

11 Material

- 11.1 We will not be responsible for organising Material deadline extensions, dispatching Material, and retaining the record of availability and whereabouts of Material.
- 11.2 You will be responsible for advising us and the Media (within any given deadlines) of the correct Material to be broadcast and / or published.
- 11.3 You acknowledge and agree that Material instructions will contain all relevant information, including but not limited to, key numbers and identification data.

12 Content of Advertisements

- 12.1 You must obtain any relevant approvals or licences, and to comply with all relevant and applicable laws regarding the content of advertisements or Materials, including but not limited to, the Australian Association of National Advertisers Code of Ethics (as amended from time to time).
- 12.2 You acknowledge and agree to indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) with respect to all Claims made against us arising out of the publication and / or broadcast of any advertisement or Material that has failed to comply with any relevant laws, rules, or codes, or a failure by you to obtain the relevant licences or approvals.

13 Title in Materials and Intellectual Property Rights

- 13.1 Title and all Intellectual Property Rights associated with the Materials will immediately be assigned to and vest in you as such rights are created, unless and to the extent that licence conditions relating to any pre-existing third-party Materials require ownership to vest in a third party licensor.
- 13.2 You acknowledge clause 13.1 does not affect the Intellectual Property Rights in any pre-existing Material proprietary to us which is incorporated into the Materials. In such circumstances, we will endeavour to grant or procure for you a non-exclusive, royalty free, perpetual, irrevocable, and non-transferable licence to use such pre-existing Material.
- 13.3 Clauses 13.1 to 13.3 survive the termination or expiry of any agreement made under these Terms.

14 Default

- 14.1 Clauses 14.2 to 14.4 apply if you fail to pay sums to us when they fall due.
- 14.2 We may charge you interest on the outstanding debt (including any judgment debt) at the rate of 10% per annum.
- 14.3 We may suspend or cease the supply of any further Services to you.
- 14.4 We may require pre-payment in full for any Services which have not yet been supplied.

15 Indemnity

- 15.1 If you default in the performance or observance of your obligations under any contract of which these Terms form part, then:

- we will take steps to mitigate our loss and act reasonably in relation to any default by you; and
- we will give you notice requesting payment for loss and damage occasioned in respect of those events and requesting that you remedy any breach within a reasonable time; and
- if that demand is not met then you indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that we have suffered arising therefrom.

15.2 Your liability to indemnify us will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by us or a breach of our obligations under contract has contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.

15.3 Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the termination or performance of any contract of which these Terms form part.

16 Limitation of liability

- 16.1 No party is liable to the other party for any Consequential Loss, including under clause 15, however caused arising out of or in connection with any contract for supply of which these Terms form part.
- 16.2 While we will take reasonable endeavours to meet any estimated time for Services, you acknowledge and agree that we are not liable for any delay associated with meeting those estimated timeframes.
- 16.3 If the contract for supply is not a Consumer Contract or a Small Business Contract then, to the extent permitted by law, our liability is limited to:
- us supplying the Services again; or
 - us paying you the cost of having equivalent Services supplied.

17 Termination

A party may, with immediate effect, terminate any contract for supply of which these Terms form part by notice in writing, if the other party:

- commits a material or persistent breach of these Terms and does not remedy that breach (if capable of remedy) within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or
- has failed to pay sums due to the party within seven (7) days; or
- has indicated that it is, or may become, insolvent; or
- ceases to carry on business; or
- comprises an entity which is the subject of the appointment of receivers or managers; or
- comprises a natural person who:
 - has committed an act of bankruptcy; or
 - has been made bankrupt;
- comprises a corporation which:
 - enters into voluntary administration;
 - is subject to a deed of company arrangement; or
 - is subject to the appointment of liquidators or provisional liquidators.

18 Trustees

- 18.1 If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:
- you enter into the contract for supply in both your capacity as trustee and in your personal capacity;
 - you have the right to be reasonably indemnified out of trust assets;
 - you have the power under the trust deed to enter into the contract for supply; and
 - you will not retire as trustee of the trust nor appoint any new or additional trustee without first notifying us in writing and having the new or additional trustee sign an agreement on terms substantially the same as those governing your Credit Facility (where applicable).
- 18.2 You must give us a true and complete copy of the trust deed upon request.

19 Variation

We may amend these Terms in the future by notifying you in writing. The amended Terms will thereafter apply to each Order you place unless you earlier give us written notice in advance of placing a further Order.

20 Assignment

A party may only assign its rights under the contract for supply with the written consent of the other party.

21 Conflicts and Inconsistencies

If there is any conflict or inconsistency between any of the documents which together govern the relationship between the parties, it is agreed the order of precedence will be (highest to lowest):

- (a) any additional terms or conditions contained in our Quotation applicable to the supply of Services;
- (b) any terms governing your Credit Facility; and
- (c) these Terms.

22 Severance

If any part or term of our agreement with you (including any Credit Facility) is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the contract and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

23 Governing law and jurisdiction

- 23.1 Our relationship is governed by and must be construed according to the law applying in the State of South Australia.
- 23.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of South Australia with respect to any proceedings that may be brought at any time relating to our relationship.

24 Definitions

In these Terms, unless the context otherwise requires, the following definitions apply.

- 24.1 **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended.
- 24.2 **Business Hours** means between 08:30am to 5:30pm on a day that is not a Saturday, Sunday, or gazetted public holiday in the place where the Services are, or are to be, supplied.
- 24.3 **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, or award howsoever arising, whether present, unascertained, immediate, future, or contingent, whether based in contract, tort, pursuant to statute or otherwise and whether involving a third party or a party to a contract for supply.
- 24.4 **Commissions** includes any commissions, rebates or other incentives.
- 24.5 **Consequential Loss** includes any:
 - (a) consequential loss;
 - (b) loss of anticipated or actual profits or revenue;
 - (c) loss of production or use;
 - (d) financial or holding costs;
 - (e) loss or failure to realise any anticipated savings;
 - (f) loss or denial of business or commercial opportunity;
 - (g) loss of or damage to goodwill, business reputation, future reputation, or publicity;
 - (h) loss or corruption of data;
 - (i) downtime costs or wasted overheads; or
 - (j) special, punitive, or exemplary damages.
- 24.6 **Consumer Contract** has the meaning given to this term in section 23(3) of the Australian Consumer Law.
- 24.7 **Credit Facility** means an account we have opened for you on which we may, from time to time, extend you with additional time to pay for our Services and associated charges.
- 24.8 **Customer, you** means the person or other entity who has placed an Order with us for the supply of Services (or the person on whose behalf an Order is placed).
- 24.9 **Intellectual Property Rights** means all industrial and intellectual property rights throughout the world, whether

present or future, and whether protectable by statute, at common law or in equity, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), designs, patents, and patentable inventions, including the right to apply for registration of any such rights.

- 24.10 **Material** means all materials, documents, and other items supplied by us in connection with these Terms, and includes the deliverables.
- 24.11 **Media** includes a person or organisation that disseminates information to the general public or private clients through mediums including but not limited to, newspapers, magazines, bill boards, online, digitally, television, radio, and includes all traditional and non-traditional mediums.
- 24.12 **Order** means a written or oral order placed by you requesting that we provide Services.
- 24.13 **PPS Act** means the *Personal Property Securities Act 2009* (Cth), as amended.
- 24.14 **Quotation** means a written statement or communication setting out the Supplier's estimated costs, fees, and / or scope of work for the performance of Services.
- 24.15 **Services** means all services performed by us, as described on our Quotation, invoice, or any other form issued by us.
- 24.16 **Small Business Contract** has the meaning given to this term in section 23(4) of the Australian Consumer Law.
- 24.17 **Supplier, we, us** means East End Marketing Pty Ltd (ACN 069 868 882).

25 Interpretation

In these Terms, unless the context otherwise requires:

- 25.1 A time is a reference to the time zone of Adelaide, Australia unless otherwise specified.
- 25.2 \$, dollar, or AUD is a reference to the lawful currency of Australia.
- 25.3 A party includes a reference to that person's executors, administrators, successors, substitutes (including a person who becomes a party by novation), assigns, and in the case of a trustee, includes any substituted or additional trustee.
- 25.4 A right includes a benefit, remedy, authority, discretion, or power.
- 25.5 The singular includes the plural and vice versa, and a gender includes other genders.
- 25.6 "In writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
- 25.7 If a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning.
- 25.8 Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
- 25.9 A term of an agreement in favour of two or more persons is for the benefit of them jointly and each of them separately.