

MAVERICK MARKETING AND COMMUNICATIONS - STANDARD TERMS FOR CLIENTS

Once these terms are first accepted by you ("Client") they will apply to all the Client's subsequent dealings with Maverick Marketing and Communications ACN 097 951 794 ("Agency"), including being incorporated in all agreements (each a "Service Agreement") under which Agency supplies goods and/or services (together, the "Services") to the Client. Once accepted they will supersede any previous versions of these terms. They will prevail over anything inconsistent in the Client's documents. If the Client orders, accepts or pays for any Services after receiving or becoming aware of these terms then it is taken to have accepted these terms (but this does not limit the other ways in which the Client may accept these terms).

1. Pricing

- 1.1 Unless the prices in the Service Agreement are expressed to be "fixed" or "capped" then those prices should be considered to be good faith estimates only. In that case, Agency may charge for undertaking any work or expense additional to that contemplated in the Service Agreement, on the basis that additional fees may be charged at Agency's current rate card (or other schedule of fees set out in the Service Agreement) and additional expenses may be marked up at the average rate at which expenses were marked up under the original Service Agreement.
- 1.2 If the prices in the Service Agreement are expressed to be "fixed" or "capped" then Agency may from time to time request the Client's approval to charge for work or expense additional to that contemplated in the Service Agreement if:
 - (a) the Client has requested variations to the nature or scope of the Services; or
 - (b) the additional work or expense was not reasonably foreseeable at the time the Service Agreement was made,and Agency may terminate the Service Agreement without penalty if the Client does not approve such a request within 7 days.
- 1.3 Unless otherwise agreed in writing by Agency, prices are GST exclusive. In addition to the price, the Client must pay to Agency an amount equal to any GST payable by Agency for a supply under the Service Agreement.
- 1.4 Unless Agency and the Client agree otherwise in the Service Agreement:
 - (a) Agency is under no obligation to keep timesheets or allow the Client to access any timesheets it has kept;
 - (b) Agency is under no obligation to disclose arrangements with its suppliers including prices charged by them;
 - (c) amounts charged for items under the Service Agreement may include a mark up on their cost to Agency; and
 - (d) Agency may retain rebates and commissions it receives from media outlets and other suppliers without obligation to disclose them to the Client.

2. Payment

Unless Agency and the Client agree otherwise in the Service Agreement:

- (a) Agency may invoice 50% of the total price under the Service Agreement when the agreement is made and the remaining 50% upon completion of the Services;
- (b) the Client must pay amounts invoiced by Agency within 14 days except for the upfront payment which must be paid immediately; and
- (c) the Client must pay interest on overdue amounts at the rate of 10% per annum, calculated daily.

3. Liability

- 3.1 Other than expressly provided in the Service Agreement, to the extent permitted by law, every warranty, condition, liability or representation concerning the Services is excluded.
- 3.2 To the extent permitted by law, the liability of Agency and its officers, employees or agents (each an "Associate") for a breach of any warranty or liability which by law cannot be excluded, restricted or modified, or for a breach of any express warranty in the Service Agreement, is limited, at Agency's option, to:
 - (a) in the case of goods, any one or more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
 - (b) in the case of services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 3.3 Agency and its Associates will not be liable to the Client for:
 - (a) indirect or consequential loss, loss of profit, economic loss, or punitive or exemplary damages;
 - (b) any contravention by the Client of a law, regulation, decree, order, ordinance, permit or licence occurring within the scope of Services approved by the Client;
 - (c) amounts which the Client is entitled to claim under any insurance policy; or
 - (d) liability, loss, damage, cost or expense caused or contributed to by:
 - (i) any negligence or breach of duty or contract by the Client; or
 - (ii) Agency or its Associates complying with or relying on any instruction or advice given by or on behalf of the Client.
- 3.4 The Client indemnifies Agency and its Associates against liability, loss, damage, cost or expense directly or indirectly incurred or suffered by them and caused or contributed to by:
 - (a) any negligence or breach of duty or contract by the Client; or
 - (b) Agency or its Associates complying with or relying on any instruction or advice given by or on behalf of the Client.
- 3.5 Agency may come to its own view on legal issues relating to a supply of Services and communicate that view to the Client, who agrees that such communications do not constitute legal advice. The Client will not rely on, nor hold Agency or its Associates responsible for any error in or omission from, those communications. The Client warrants that the sole legal advice relied upon in connection with the Services will be advice from the Client's own qualified lawyers and acknowledges that if an estimate of costs provided to the Client by Agency allows for legal expenses, then those expenses if incurred are directed at confirming Agency's, rather than the Client's, legal exposure arising from the Services.
- 3.6 Subject to the other provisions of this clause 3, the maximum aggregate liability of Agency and its Associates to the Client under or in connection with the Service Agreement (including without limitation any negligence in connection with the performance of the Services) will be the repayment by Agency of all amounts paid to it by the Client under that agreement.

4. Title

- 4.1 Unless Agency and the Client agree otherwise in the Service Agreement, all equipment, materials and other goods used by Agency to supply the Services will remain the property of Agency.
- 4.2 Subject to clause 4.1, until the Client has paid all amounts owing by it to Agency:
 - (a) ownership of goods delivered to the Client in the course of the Services do not pass to it;

- (b) the Client must keep such goods as bailee and fiduciary for Agency and must return them to Agency on request; and
- (c) the Client irrevocably authorises Agency to enter any premises where such goods are kept, and to act on the Client's behalf, if necessary, to recover possession of the goods.

- 4.3 If Agency retakes possession of goods under clause 4.2, Agency may sell or dispose of those goods.

5. Intellectual property

- 5.1 The Client warrants that the use of designs, logos, text, data, works, information, materials and instructions given by it or on its behalf to Agency for the purposes of supplying the Services will not infringe any third party rights (under the laws of intellectual property, confidentiality, contract or otherwise) and indemnifies Agency and its Associates against any claim or allegation of such infringement.
- 5.2 Unless otherwise agreed in writing by Agency, the Client will not acquire intellectual property rights in anything done or supplied by Agency under or in connection with the Service Agreement.

6. Confidentiality

- 6.1 The Client acknowledges that information (including creative concepts) disclosed to it by Agency under the Service Agreement, or in a proposal or presentation intended to secure a Service Agreement, is proprietary, confidential or a trade secret of Agency. Except as contemplated in the Service Agreement, the Client must not and must not permit any of its officers, employees, agents, contractors or related companies to use or to disclose to any person any such information without the prior written consent of Agency. This clause does not apply to information which is generally available to the public (other than as a result of wrongful disclosure by the Client) or information required to be disclosed by any law.
- 6.2 For the duration of any Service Agreement, and for 6 months thereafter, the Client must not employ or engage (or be knowingly involved in another employing or engaging) any Associate with which the Client had contact during the course of the Service Agreement.

7. Force majeure

Agency is not liable for a failure to perform the Service Agreement, and no payment may be withheld by the Client in connection with such failure, if the failure arises directly or indirectly out of circumstances which are not within Agency's reasonable control. If such circumstances occur, Agency may delay or cancel the performance of all or part of the Service Agreement. Circumstances beyond Agency's reasonable control include without limitation: adverse weather conditions, pandemic, terrorist action or threats, strikes, lock-outs, accidents, war, fire, flood, explosion, shortage of power, breakdown of plant or machinery, shortage of materials from normal source of supply, act of God or any order or direction of any local, State or Federal Government, Government authority or instrumentality. Agency is not obliged to remedy such circumstances.

8. Termination

- 8.1 Agency may terminate the Service Agreement by giving notice to the Client if the Client: breaches any obligation under the Service Agreement; is in liquidation or provisional liquidation or under administration; has a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property; is taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand; is unable to pay its debts or otherwise insolvent; takes any step that could result in the Client becoming an insolvent under administration (as defined in section 9 of the Corporations Act); or is affected by any analogous event.
- 8.2 Upon termination of the Service Agreement by Agency under clause 8.1, the Client must immediately pay to Agency all amounts outstanding (whether or not those amounts were otherwise due and payable).
- 8.3 The Client may not cancel or terminate all or part of the Service Agreement unless Agency first consents in writing to same. As a condition of giving its consent Agency may require the Client to pay: Agency's expenses to date; payments required by Agency's suppliers to discontinue their work; usual time charges for the work of Agency staff to date; Agency's concept and other applicable standard fees; and an equitable amount by way of profit margin on the preceding items.

9. General

- 9.1 A notice, consent or other communication under these terms is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax. If it is sent by mail, it is taken to have been received 3 working days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form. A party's address and fax number are those set out in the letterhead on correspondence last sent to the other party.
- 9.2 The Service Agreement is governed by the law in force in New South Wales. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts.
- 9.3 A right of Agency may only be waived in writing, signed by Agency. No other conduct of Agency (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right. Where the Service Agreement contemplates that the consent of Agency is required that consent may be given or withheld at Agency's absolute discretion.
- 9.4 A variation of the Service Agreement will not take effect unless it is agreed by Agency in writing.
- 9.5 Any provision of the Service Agreement which is unenforceable is to be severed to the extent necessary to make the Service Agreement enforceable, unless this would materially change the intended effect of the Service Agreement.
- 9.6 The client may not assign the Service Agreement without the written consent of Agency. Agency may subcontract the production or supply of any or all of the Services.
- 9.7 A promise or representation of Agency or its Associates in any advertisement, brochure, website, meeting, discussion, correspondence or elsewhere does not form part of the Service Agreement and is otherwise not binding unless Agency has expressly agreed to be contractually bound by that promise or representation.
- 9.9 Where a provision of these terms purports to protect or give rights to an Associate then Agency takes the benefit of that provision on behalf of and as trustee for that Associate.