



Terms & Conditions

A. GENERAL PROVISIONS

1. Whole agreement

The terms and conditions governing the agreement between **Adshel Street Furniture Pty Ltd ABN 77 000 081 872 (Adshel)** and the Client are as set out in this document and any Annexures, Schedules and Addenda which relate to particular types of Services as may be attached to this document (**Terms**) and those, if any, that are implied and cannot be excluded by law (collectively the **Agreement**). Any other contractual terms of the Client (whether set out in the Client's order or elsewhere) that are contrary to, or inconsistent with, this Agreement will not apply; nor will they constitute a counter-offer by the Client. This Section A applies to all Orders and Services provided, or to be provided to the Client under this Agreement. Other Sections of this Agreement will have specific application to particular types of Service.

2. Definitions

In this Agreement:

Advertisement means advertising content that is the subject of an Order;

Control of an entity includes the direct or indirect power to:

- direct the management or policies of the entity; or
- control the membership of the entity's board of directors, whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise;

Copy means the content in any form and format (such as printed and digital material, interactive material, signwriting, or print on a permanent substrate) to form an Advertisement;

Display means those panels and street furniture, including associated infrastructure, at locations controlled by Adshel and made available for the display of Advertisements and the provision of other Services, as agreed in an Order;

Loss means an loss of any nature including any damage, loss, cost, expense or liability, cause of action, charge, claim, action, proceeding suffered or incurred, howsoever arising and whether present, unascertained, immediate, future or contingent;

Order means the form of order prepared by Adshel (which may be a quotation prepared by Adshel); and

Services means the services supplied by Adshel for the purpose of an Order accepted by Adshel.

3. Ordering Services

3.1 To order any Services, the Client must sign the Order and submit the signed Order to Adshel in a manner agreed by Adshel. The Order will then constitute a binding offer from the Client to Adshel to enter into a contract. To avoid doubt, the Client must not make any amendment to the Order which has not been authorised in writing by Adshel. Any such amendment will be deemed not to form a part of the Client's offer or the Order.

3.2 It is the Client's responsibility to ensure that, prior to submission to Adshel, the Order does not contain any errors or omissions. Adshel will in no way be liable, and the Client releases Adshel from any Loss or claim incurred by the Client, whether in tort or otherwise, for any error or omission in any Order prepared by Adshel but submitted to Adshel by the Client.

3.3 Any Order received by Adshel (whether by electronic communication or otherwise) that purports to be signed by or for the Client and reasonably appears to have been sent by or on behalf of the Client or a person ostensibly authorised by the Client will be binding on the Client.

3.4 In the event of any inconsistency between an Order and these Terms, these Terms will prevail.

3.5 An Order will not be deemed to have been accepted by Adshel unless the Order has been signed by a State Manager/Director of Adshel and a copy returned to the Client.

3.6 If the Client purports to act in the capacity of a disclosed agent of a principal advertiser (**Advertiser**):

- (a) the Client is nevertheless also bound by this Agreement in its personal capacity;
- (b) the Client represents that it has full authority to enter into this Agreement, and submit any Orders, on behalf of the Advertiser;
- (c) if the Client receives any commission or rebate or other benefit from Adshel, the Client will ensure that it complies with all applicable laws in its dealings with relevant Advertisers including disclosing to Advertisers that the Client may receive a commission or rebate or other benefit from Adshel in connection with an Order or the Agreement; and
- (d) the Client indemnifies Adshel for any Loss or damage suffered by Adshel because of a breach by the Client of clauses 3.6(b), 3.6(c) or 14.

3.7 No Order may be cancelled, whether in whole or in part, by the Client unless Adshel has first consented in writing to such cancellation or partial cancellation (as applicable).

4. Third party approvals

The Client acknowledges that Adshel's supply of Services may, whether by contract or by law, require the consent or permission of third parties, including that of any statutory authorities and owners or occupiers of sites where Displays are located (**Authority**), and any such supply will be subject to any requirements, restrictions and conditions imposed by the Authority from time to time.

5. Payment terms

(a) Unless otherwise specified in an Order, Adshel may render invoices on or after the last day of the calendar month, for Services that began prior to the last day of that month. This includes space bookings for any display period that would complete in any following calendar month. All invoices are payable within 45 days of the date of issue.

(b) Any payments received from the Client will be applied first to satisfy interest that may have accrued, second to reasonable expenses and legal costs to which clause 5(d) refers, and then to the earliest outstanding invoice.

(c) If payment is not received by the due date for payment, Adshel may, without prejudice to any other rights Adshel may have:

- (i) charge the Client liquidated damages at a rate equivalent to two percent (2%) above the rate of interest for a time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic.); and
- (ii) suspend supply of any Services under any or all Orders.

(d) The Client is liable for, and will indemnify Adshel in respect of, all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a solicitor/own client basis) incurred by Adshel for enforcement of the Client's obligations under this Agreement and recovery of monies due to Adshel from the Client.

6. Limitations of liability

6.1 Subject to clause 6.2:

(a) the only guarantee, representation, warranty or condition provided in relation to any Service is any express warranty that Adshel provides in these Terms or the Order; and

(b) Adshel excludes all liability in relation to the Services, whether in contract, tort or otherwise, including all liability for any consequential or indirect loss or damage, and loss of revenue, profit, opportunity or reputation.

6.2 Subject to clause 6.3, nothing in clause 6.1 excludes, restricts or modifies:

(a) the application of any consumer guarantee in the Australian Consumer Law (**Consumer Guarantee**) or any similar provision in the law of any State or Territory that cannot be excluded, restricted or modified (**Similar Provision**);

(b) the exercise of any right conferred by a Consumer Guarantee or Similar Provision; or

(c) Adshel's liability under any Consumer Guarantee or Similar Provision.

6.3 Where permitted and to the full extent permitted by law, Adshel's liability under any Consumer Guarantee or Similar Provision is limited, at Adshel's option, to:

- (a) in the case of goods, the repair or replacement of those goods, the supply of equivalent goods, the payment of the cost of repairing or replacing the goods or acquiring equivalent goods; and
- (b) in the case of services, supplying those services again, or paying the cost of having the services supplied again.

7. Confidentiality

7.1 All aspects of the Agreement and the Services, and any information disclosed by Adshel in connection with, or in anticipation of, the Agreement or the Services (including lists of displays and Adshel's or its licensors' intellectual property) must be kept confidential by the Client and the Client must not, without the written approval of Adshel, disclose such information to any other person or use it other than for the purposes authorised under the Agreement.

7.2 This clause 7 survives termination of this Agreement.

8. Matters beyond Adshel's control

8.1 Adshel will not be liable for any failure or delay in the performance or delivery of its obligations where such failure or delay arises because of any matter beyond Adshel's reasonable control, including fire, act of God, industrial dispute, strike, civil unrest, lockout, curtailment or cessation of traffic ordered by any government or authority, acts or omissions of third parties including Authorities, vandalism, criminal conduct, adverse weather that (in Adshel's opinion acting reasonably) renders performance unsafe or impractical, natural disasters, access issues (including building closures or lock outs), loss of service by utility suppliers, telecommunications carriers or telecommunication service providers or where Adshel is unable to access infrastructure, or loss due to hardware failures within the normal operating risk (in this latter case other than to seek to diagnose the issue within 3-6 hours and repair within 24-48 hours).

8.2 Upon Adshel receiving notice of vandalism of a Display, Adshel will:

- (a) clean-up or remove the damage; and
- (b) in the event of glass breakage, repair the Display within a reasonable time frame; and
- (c) in the case of vandalism to "wraps", replace one wrap per campaign free of charge (any subsequent reprinting and reinstallation of wraps will be charged to the Client at \$1,000 each); and
- (d) in the event of excessive vandalism involving 30% or more of the posters being stolen/damaged from a single campaign, Adshel reserves the right to remove the campaign from all panels and Displays without liability to the Client or the Advertiser. In this event a suitable alternative will be agreed with the Client to ensure the safe display of the campaign.

9. Adshel marketing

Adshel may take photographs and cinematograph films of Advertisements and Copy, and reproduce, publish and communicate same, for the purpose of marketing and promoting Adshel and its services.

10. Client's warranty and indemnity

10.1 Each of the Advertiser and the Client, jointly and severally, warrant that the Advertisements, and the exhibition and display of the Advertisements pursuant to an Order, and Adshel exercising its rights under clause 9 and performing its obligations under clause 21:

- (a) will comply with any guidelines and standards as may be notified in writing by Adshel from time to time;
- (b) will comply with all codes published by the Australian Association of National Advertisers from time to time;
- (c) will comply with all codes and initiatives administered by the Advertising Standards Bureau, the Advertising Standards Board or the Advertising Claims Board;
- (d) will comply with the Alcohol Beverages Advertising Code;
- (e) will not contravene any legislation, regulation, rule or requirement of any lawful or statutory authority, or any public or private right;
- (f) notwithstanding the generality of clause 10.1(e):
 - (i) will not be defamatory or unlawful;
 - (ii) will not contravene the *Competition and Consumer Act 2010* or the Australian Consumer Law; and
 - (iii) will not infringe any person's intellectual property rights or moral rights or any right to privacy.

10.2 If any proposed Advertisement relates to alcohol, the Client warrants that it or the Advertiser has obtained an approval number under the Alcohol Advertising Pre Vetting System and will provide evidence of compliance and approval to Adshel on request by Adshel.

10.3 The Client warrants to Adshel that the Client and the Advertiser have the right to display the Advertisement including any Copy and any artwork contained in or to be reproduced in such Advertisement, without the infringement of any third party right or contravention of any law.

10.4 The Client indemnifies and releases Adshel, the owners and occupiers of sites where Advertisements and Displays are located and any Authority from and against any Loss, arising from a breach of any of the warranties given in clauses 10.1 to 10.3.

11. No dealings with the Displays

11.1 The Client must not, and must not permit or engage any third party to, deal with any Display in any way (including signwriting, painting or any other work on or interference with any Display) without obtaining the prior written consent of Adshel.

11.2 If the Client deals with a Display in such a manner, whether by itself or by a third party, or wishes to carry out such work, it will be fully responsible for the form and content of the Display, as well as the hiring

of competent contractors, having all relevant insurance and for compliance with all relevant laws and regulations. The Client indemnifies Adshel against any Loss suffered by Adshel by any act or omission of the Client, or any third party engaged by the Client, in connection with its work on or dealing with the Display, including any Loss suffered by Adshel (or for any claim against Adshel by a third party) in connection with death or personal injury of any person, loss or damage to real or tangible property, or breach of any applicable law or fraud by the Client or any person engaged by the Client.

12. Assignment

The Client must not assign or novate any rights and obligations under this Agreement or any Order without the prior written consent of Adshel (which may be withheld by Adshel in its absolute discretion or given on such conditions as Adshel so chooses). A change of Control of the Client is deemed to be an assignment for the purpose of this clause. The Client will remain liable for all obligations, liabilities and indemnities to Adshel under this Agreement, despite any purported assignment or novation of this Agreement or any Order.

13. Termination

13.1 Without prejudice to any other rights Adshel may have, Adshel may terminate this Agreement and any or all Orders if:

- (a) the Client fails to make payment under that Order or any other Order;
 - (b) the Client breaches clause 12;
 - (c) the Client commits an act of insolvency or is deemed to be insolvent or has appointed to it a provisional liquidator, liquidator, receiver, receiver manager or administrator; or
 - (d) the Client otherwise breaches any obligation or warranty under this Agreement and fails to remedy same within two (2) business days of Adshel issuing a notice in writing to the Client requiring remedy.
- 13.2 Termination will be without prejudice to any rights or causes of action that Adshel may have.

13.3 All indemnities in this Agreement survive termination of this Agreement.

14. Commission and Rebates

14.1 Without limiting clause 3.6, the Client warrants to Adshel that it is satisfied that all parties with whom it deals (including Advertisers with whom it deals directly) in the outdoor advertising market are aware of the fee and rebate arrangements which operate in that market, including the use of volume rebates as an incentive to advertising agencies, media buying companies and poster specialists for them to place advertisements with service providers such as Adshel.

B. SPACE ORDERS

15. Application of this Section B

To the extent that the Services comprise services under a "Space Order", this Section B of this Agreement also applies in addition to Section A.

16. Supply of Copy

16.1 Adshel's only obligation is to display the Copy in the Displays in accordance with the terms of the Order. The Client must, at no cost to Adshel, prepare and supply Copy to Adshel for that purpose. The Copy must comply with the standards and requirements specified in Adshel's production guide or specifications from time to time or otherwise specified by Adshel in the Order.

16.2 The Client must supply Adshel with sufficient additional spare Copy as specified in Adshel's production guide or specifications from time to time or as otherwise determined by Adshel.

16.3 If Copy provided by the Client does not comply with the requirements in clause 16.1, or spare Copy is not provided in accordance with clause 16.2 or as otherwise reasonably requested by Adshel, Adshel may blank out or substitute with non-commercial advertising those Displays where, in Adshel's reasonable opinion, the Copy is in an unsatisfactory condition, or where there is insufficient Copy, and the Client will have no claim against Adshel for doing so.

16.4 For all Copy printed onto permanent substrate, the Client will be responsible for any repairs and replacements of Copy damaged during the display period, unless this damage is caused by an Adshel employee in the course of performing their duties for Adshel. In these circumstances Adshel will pay the cost of the replacement copy.

17. Copy approval and lead times for display

17.1 All Copy is subject to the approval of Adshel and any relevant Authority, and Adshel will not be in breach of the Agreement because of a delay or failure to provide or obtain that approval.

17.2 Any approval given by Adshel is not a waiver of any rights or causes of action that Adshel may otherwise have under this Agreement or an acknowledgement that the Copy complies with the requirements of this Agreement or the Order.

17.3 For the purpose of clause 17.1, the Client must provide Adshel with the Copy prior to the commencement of each of the production and printing of the Copy. All Advertisements for display must be delivered to Adshel's poster facility, as Adshel may direct, at least seven (7) days prior to the scheduled posting date.

17.4 The Client will be responsible for any delays and any Losses suffered by Adshel arising from the Client's failure to comply with the lead time requirements referred to in this clause and will not be entitled to any extension of the display period or other compensation. Adshel may impose additional installation and handling fees in respect of Copy not delivered in compliance with this clause and may also require reimbursement of additional costs incurred, including storage, handling and delivery.

18. Posting of Advertisements

18.1 Adshel will use reasonable endeavours to have all the Copy Displayed pursuant to the Order within four (4) working days of the start date specified in the Order.

18.2 Subject to the terms of the Agreement, including clause 17.1, where a delay in displaying the Advertisements is caused solely by Adshel (other than exercising any right it may have under this Agreement) then, at Adshel's option, the Client may be entitled to receive a pro-rated abatement of charges or to a credit against future Space Order Services as determined by Adshel in its discretion, but Adshel will not be liable to the Client for any Losses, including any consequential or indirect loss or damage, loss of revenue or profit, or loss of opportunity or reputation.

19. Performance standards

19.1 If an Order involves bookings for 100 sites or more, Adshel warrants that, subject to clause 8:

- (a) there will be a posting accuracy of at least 95%; and
 - (b) at least 95% of Displays will be illuminated at any time during the display period.
- 19.2 If the Client becomes aware that any Advertisement has not been



displayed pursuant to the Order or has been damaged, the Client must promptly notify Adshel in writing of those circumstances.

19.3 If there is a breach of clause 19.1, the Client's only remedy will be:

(a) in respect of clause 19.1(a), a credit note on a pro-rata basis for affected sites, if posting accuracy levels remain below 95% for more than 48 hours after the fault has been reported to Adshel; and

(b) in respect of clause 19.1(b), a credit note if illumination levels remain below 95% for more than 48 hours after the fault has been reported to Adshel.

19.4 Adshel will take reasonable steps to display the Advertisements pursuant to the Order, but:

(a) if by the direction or other act or omission of an Authority, Adshel is prevented from doing so;

(b) if Adshel ceases to have the right to display Advertisements on any Displays that are the subject of an Order before the Services can be performed in full;

(c) if for any reason any Displays otherwise become unavailable, or

(d) if Adshel decides to upgrade any site, including by conversion of the site to an illuminated display or a digital display and the Client does not agree to pay the rate fixed by Adshel for that site after its upgrade,

then Adshel may either terminate the Order or relocate the Advertisements to comparable alternative Displays to those in the Order (as determined by Adshel). Unavailability of alternative Displays will not entitle the Client to terminate the Order unless unavailability extends to the entire display list.

19.5 Where unavailability extends to some Displays only, then the Client's only remedy will be, at Adshel's option, a pro rata abatement of rates for the period of unavailability or a credit against future Orders.

19.6 Adshel's liability for failing to display any Advertisement is limited to a pro-rata abatement or credit against future Orders for an amount not exceeding one month's display fees for the Advertisements not displayed, calculated from the date on which the Client gives Adshel written notice of the relevant failure and for the remainder of the period of unavailability.

19.7 Despite any other provision in these Terms, a digital media campaign will be considered to have been completed in full if Adshel meets a minimum level of 95% of the plays specified in the client schedule (taken by reference to the duration of plays on all digital Displays under the Order during the digital media campaign period).

19.8 The Client acknowledges and agrees that despite any other provision in these Terms (other than clause 8), in the event of an emergency (as deemed by any government authority or state transport authorities or local councils or other Authority), government authorities, emergency services, transport authorities or operators, Authorities or other persons acting on their behalf or under their authority may remove any digital advertisements from Adshel's digital Displays and use such Displays for the purpose of displaying emergency or public service notices or information. In that event, the Client's Advertisements may not be displayed during that period. Adshel will not be obliged to provide monetary compensation to the Client in the event of such an interruption to the scheduled display of its Advertisements but will endeavour to reschedule the display of the Client's Advertisements, provided that the Client's and Adshel's schedules permit Adshel to do so.

20. Title in the Advertisements and disposal thereof

20.1 Title in the Advertisements vests in Adshel upon delivery to Adshel or, if not delivered to Adshel, at the time they are installed on Displays.

20.2 The Client consents to any dealing by Adshel with the physical Advertisements, including the disposal of the Advertisements at the end of the display period, without any liability.

C. PRODUCTION OF COPY

21. Application of Section C

To the extent that the Services comprise Adshel producing Copy, this Section C of this Agreement also applies.

22. Lead times

22.1 If an Order specifies that Adshel will carry out production in respect of the Copy:

(a) Adshel will make a written proposal to the Client regarding such production, which, if accepted by the Client, will constitute an Order in accordance with the terms of this Agreement.

(b) If Adshel is engaged to provide production services in respect of advertising Copy, the Client must, at least 21 working days before the commencement of the display period to which the Copy relates, provide Adshel with a copy of the artwork for the Copy in such form and format as Adshel requires and at such address as Adshel may direct. The artwork must be to scale and be supplied as finished reflection or electronic art and must, in Adshel's opinion, comply with the Order, be suitable for display and of a nature that will be approved by any Authority whose approval is required.

(c) Adshel may subcontract such production. Adshel may receive and retain any commission paid to Adshel by any third party production company in respect of such production or may charge the Client a fee for production comprising the third party production company's fees, plus Adshel's standard administration fee from time to time.

22.2 To facilitate the efficient delivery of production services to the Client, the Client consents to Adshel's disclosure of information relating to the Client's production requirements to third party production entities.

22.3 When requested to do so by Adshel, the Client must promptly (and in any case within 1 working day or such period as specified in the Order), carefully check the advertising Copy produced by Adshel and confirm to Adshel its satisfaction or otherwise of the Copy's compliance with the Order, and freedom from errors or other issues. If the Client fails to do so within that time frame it will be deemed to have accepted the advertising Copy as being in full compliance with the Order, and free from errors or any other issues.

D. "IGNITE" and "IMMERSE"

23. Application of Section D

If an Order is for the provision of "Ignite" or "Immerse" Services, this Section D of this Agreement also applies.

24. Equipment failure

24.1 The Client acknowledges that failure of equipment used by Adshel in the supply of an "Ignite" Service or an "Immerse" Service is beyond the reasonable control of Adshel and will not amount to a breach of Adshel's obligations.

24.2 Adshel will nevertheless take reasonable steps to respond promptly to all reports of equipment failure and will use reasonable endeavours to remedy the failure within 24 hours of that report unless physical access to the site is otherwise restricted.

25. Digital content

25.1 To the extent that the Advertisement comprises digital content, the Client must ensure that all such digital media is supplied in accordance with the Order, is free of harmful, disabling, malicious or destructive code, is fully tested, and is demonstrated to Adshel's satisfaction work on equipment designated by Adshel without error.

25.2 Adshel will not be obliged to display any Advertisements if the digital content files are not supplied to Adshel within the time frames specified by Adshel or are not in the format specified by Adshel, or if the relevant digital content files do not run continuously without error in Adshel's test environment for a minimum of 72 hours prior to the agreed installation date, or otherwise do not comply with the terms and conditions of this Agreement.

25.3 Adshel will not be responsible for the rectification of problems or for user testing if issues arise in relation to the digital content files unless Adshel was responsible for the creation and delivery of the digital content and digital content files.

25.4 Adshel is unable to provide campaign reports relating to interactivity arising from content developed by others.

25.5 Adshel is not liable for delays caused by the failure of third parties to comply with the delivery of digital advertising content in adherence to Adshel agreed timelines and format.

E. Adshel "Connect" Beacon Network

26. Application of Section E

If an Order is for the provision of Adshel Connect "Beacon Network" Services, this Section E of this Agreement and the document entitled "Adshel Connect Terms of Use" (**Adshel Connect Terms**) shall also apply. A copy of the Adshel Connect Terms is available from Adshel's website, or will be provided upon request.

27. Order of Precedence

To the extent that there is any inconsistency between these Terms and the Adshel Connect Terms, the Adshel Connect Terms shall prevail.