

1 General

The whole of the Agreement between Light Melbourne Inc. ABN 96 042 635 740 ("LightMelbourne") and the Customer referred to in the proposed contract, ("Customer") are those set out in these terms and conditions as amended from time to time and those, if any, which are implied and which cannot be excluded by law ("Terms"). Any other contractual terms of the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. By receiving delivery and/or supply of all or a portion of the labour and/or services supplied by LightMelbourne under these Terms ("Services"), the Customer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all other terms, unless otherwise specified by LightMelbourne in writing.

2 Credit Terms

2.1 Payment is due as follows:

- 2.1.1 For all campaigns, full payment must be made one month in advance of the Services being provided. Campaigns will not proceed until payment is received.
- 2.1.2 Invoices will be issued on the 1st day of each month preceding the supply of the next month's Services. Invoices issued are payable within 21 days from the date of invoice, unless otherwise stated in writing by LightMelbourne.
- 2.1.3 A surcharge will apply to all payments made by credit card (Visa, Mastercard and American Express) in accordance with the Competition and Consumer Act 2010.

2.2 LightMelbourne may charge interest (as liquidated damages) at a rate equivalent to two percent (2%) in excess of the rate of interest for the time being fixed by under section 2 of the *Penalty Interest Rates Act 1983* (Vic) if payment is not received by the due date.

2.3 LightMelbourne's express or implied approval for extending credit to the Customer may be revoked or withdrawn by LightMelbourne at any time.

2.4 LightMelbourne is entitled to set-off against any money owing to the Customer amounts owed to LightMelbourne by the Customer on any account whatsoever.

2.5 Any payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs referred to in clause 2.6, and then to principal.

2.6 The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by LightMelbourne for enforcement of obligations and recovery of monies due from the Customer to LightMelbourne.

2.7 All sums outstanding become immediately due and payable by the Customer to LightMelbourne if the Customer makes default in paying any sums due to LightMelbourne, the Customer becomes bankrupt or commits any act of bankruptcy, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms

2.8 LightMelbourne will at its discretion charge an administration fee in accordance with the current rate card for any alterations to the scheduling of a campaign that are requested by the Customer on giving written notice to the Customer. This includes but is not limited to suspension of a campaign, spot time changes or a change in days. LightMelbourne reserves the right to vary the administration fee charged without notice to the Customer. However, it will not change the administration fee after providing written notice to the Customer under this clause.

3 Quotations and Pricing

3.1 Prices charged for Services will be according to a current quotation for those Services. Otherwise, they will be determined by LightMelbourne by reference to its standard prices in effect at the date of delivery (whether notified to the Customer or not and regardless of any prices contained in the order). Subject to clause 20 LightMelbourne reserves the right to increase the prices, however, it will not change any prices for an existing order that has been accepted by it; the prices that apply to the order are the prices that applied at the time the Customer placed the order.

3.2 Any quotation by LightMelbourne shall not constitute an offer. Quotations will remain valid for 30 days from the date of the quotation. A quotation is subject to variation without notice to the Customer prior to its acceptance of the quotation. The Customer is responsible for ensuring the accuracy of all specifications and details which form the basis of a quotation and otherwise in accordance with clause 21. LightMelbourne does not accept any

responsibility for any errors in such specifications and details and shall fulfil the order in conformity with the information supplied by the Customer.

3.3 Any quotation, acceptance of quotation, purchase order or other document which requires signature may be signed in electronic form, and such signature shall be binding upon the person affixing that signature.

3.4 Unless otherwise specified by LightMelbourne, the prices exclude any statutory tax, including any GST, duty or impost levied in respect of the Services and which has not been allowed for by LightMelbourne in calculating the price.

4 Property

4.1 All intellectual property produced by or provided to LightMelbourne ("Intellectual Property") becomes and remains the property of LightMelbourne, and LightMelbourne may retain or destroy or otherwise dispose of such Intellectual Property as it sees fit in its absolute discretion. Any request to use any written or recorded material that remains the intellectual property of LightMelbourne must be made in writing to LightMelbourne, and it is at the sole discretion of LightMelbourne, who may charge a fee for use of such material.

4.2 The Customer will not use or not permit use of any LightMelbourne logo, trademarks or intellectual property in any sponsorship promotion or other material without the prior written consent of LightMelbourne.

4.3 In addition to any lien to which LightMelbourne may, by statute or otherwise, be entitled, LightMelbourne shall in the event of the Customer's insolvency, bankruptcy or winding up, be entitled to a general lien over all property or goods belonging to the Customer in LightMelbourne's possession (although all or some of such property or goods may have been paid) for the unpaid price of any Services sold or delivered to the Customer under this or any other contract.

5 Consequences of Non-Payment

If the Customer fails to make any payment in accordance with clause 2.1, then LightMelbourne in its absolute discretion and without responsibility for any loss or damages (including any consequential loss), may:

5.1 Withhold from broadcast any sponsorship material placed by the Customer;

5.2 Refuse to accept any further placements of sponsorship material from the Customer; and

5.3 Refuse to provide any further Services to the Customer.

6 Cancellations

6.1 No cancellations or partial cancellation of a sponsorship agreement or airtime booking shall be accepted, unless 30 days written notice is provided.

6.2 If a Customer makes a cancellation part way through a month, the Customer is liable to pay for the Services for the remainder of the month. The Customer may elect to convert the amount payable under this clause 6.2 into time credits which may be applied any time within 12 months from when the Customer gives written notice under clause 6.1. The time credits are not refundable.

6.3 LightMelbourne will at its discretion charge a booking fee of up to 20 percent, if the Customer specifies the times of broadcast of the sponsorship material in its airtime booking request.

6.4 LightMelbourne reserves the right at any time in its discretion to reject a booking, or amend or refuse to broadcast sponsorship material. All sponsorship is subject to availability and discretionary approval by LightMelbourne.

6.5 For all sponsorship material the following deadlines will apply:

6.5.1 Copy brief by 5.00 pm - seven working days before the first broadcast date.

6.5.2 Material ready for broadcast - two full working days before the first broadcast date.

6.6 LightMelbourne may require full payment for any scheduled sponsorship campaign that was not broadcast due partly or solely due to the Customer's failure to meet these deadlines.

7 Substitution of Sponsorship Material

The Customer, without the prior consent of LightMelbourne which may be withheld in the absolute discretion of LightMelbourne, may not require LightMelbourne to broadcast sponsorship material pursuant to any sponsorship agreement other than for the business of the advertiser disclosed to LightMelbourne at the commencement of the sponsorship agreement.

8 Displacement of Sponsorship

LightMelbourne in its absolute discretion may displace any sponsorship material of the Customer at any time, provided that the alternative placement is at an equivalent or higher rating period. LightMelbourne shall not be responsible for any consequential loss as a result of such displacement.

9 Compliance with Relevant Laws

9.1 The Customer warrants that all material provided to LightMelbourne for use in the sponsorship material to be broadcast by LightMelbourne is the

sole and exclusive property of the Customer or that the Customer is properly authorised to use that material, and that the use of that material does not infringe any law or Statute including, without limitation, the provisions of the Competition and Consumer Act 2010, the Broadcasting Services Act 2002 and the Community Radio Broadcasting Code of Practice (2008).

- 9.2 The Customer shall also ensure that all sponsorship material complies with community standards and internal sponsorship standards maintained by LightMelbourne.
- 9.3 If requested by LightMelbourne, the Customer shall provide evidence of compliance to the satisfaction of LightMelbourne.

10 Indemnity

While LightMelbourne will use its best endeavours to ensure the quality of the sponsorship, LightMelbourne accepts no liability for:

- 10.1 The sound quality or delay of matter transmitted to or from a station by means of landline or other telecommunication or like delivery system;
- 10.2 Copy changes or failure to broadcast arising from events that could not be reasonably foreseen or with respect to the applicable clauses under these Terms;
- 10.3 Minor discrepancies or minor schedule variations;
- 10.4 Schedule variances necessitated by broadcasts of news or events of national importance, directions of competent authorities or broadcast of urgent, safety or emergency material;
- 10.5 Any claims for damages, or costs incurred by the Customer which may in any way be related to, or deemed related to the provision of the sponsorship or other services by LightMelbourne.
- 10.6 Any variance from the listener statistics, for which LightMelbourne makes no guarantee, in relation to published or non published listener statistics.

11 Responsibility for Materials

LightMelbourne will exercise all due care in the handling and storage of the Customer's material while in the possession of LightMelbourne, up to the fourteenth day after the materials are last broadcast by LightMelbourne, but shall not be responsible for any wear or tear or for loss or damage of the Customer's materials except where the loss or damage is as a direct consequence of the negligence of LightMelbourne, its servants or agents. If the Customer requires return of material, a written authority will be required and return of same will incur a delivery cost which shall be the responsibility of the Customer.

12 Artistic Control of Production

So far as is possible, LightMelbourne shall comply with the wishes and instructions of the Customer in the production of any sponsorship material. However, the Customer acknowledges that LightMelbourne reserves the right of full and unfettered artistic control in connection with production of all sponsorship material to be broadcast by it.

13 Use of Music

The Customer shall provide LightMelbourne with full Australian Performing Rights Association details for any music provided by the Customer for use in the sponsorship materials.

14 Omissions

The omission of any advertisement or programming variation by LightMelbourne shall not invalidate any current sponsorship agreement nor shall LightMelbourne be responsible for any consequential loss.

15 Privacy Act 1988 ("Privacy Act")

- 15.1 To enable LightMelbourne to assess the Customer's application for credit, the Customer authorises LightMelbourne:
- 15.1.1 To obtain from a credit reporting agency a consumer or commercial credit report containing personal information about the Customer and its guarantors pursuant to the Privacy Act; and
- 15.1.2 To obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities, and
- 15.1.3 To give to a credit reporting agency information including identity particulars and application details
- AND in accordance the *Privacy Act* the Customer authorises LightMelbourne to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act*.
- 15.2 The Customer understands that information can be used for the purposes of assessing its application for credit, assisting it to avoid defaulting on its credit obligations, assessing its credit worthiness and notifying other credit providers and credit reporting agencies of a default by it under these Terms.
- 15.3 LightMelbourne has a privacy policy which governs the collection, use, storage and disclosure of personal information. This privacy policy is available from our website: www.lightfm.com.au.

16 Notification

- The Customer must notify LightMelbourne in writing within seven (7) days of:-
- 16.1 Any alteration of the name or ownership of the Customer.
- 16.2 The issue of any legal proceedings against the Customer.
- 16.3 The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- 16.4 Any change in the ownership of the business name of the Customer. The Customer agrees that it shall be liable to LightMelbourne for all Services supplied to the new owner by LightMelbourne until notice of any such change is received.

17 Warranties

- 17.1 No warranties except those implied and that by law cannot be excluded are given by LightMelbourne in respect of Services supplied. If the Customer is a consumer for the purposes of the Australian Consumer Law ('Consumer') or these Terms are deemed to be a small business contract under the Australian Consumer Law ('Small Business Contract'), LightMelbourne's liability for a breach of a condition or warranty is limited to:
- 17.1.1 The repair of the Services or the cost of repairing the Services if we determine that there has been a minor fault; or
- 17.1.2 If we determine there has been a major fault (which may include multiple minor faults), cancelling the agreement and granting a refund.
- 17.2 The Customer acknowledges and warrants that it has relied on its own skill and judgment or, alternatively, on the skill and judgment of tradesmen and professional advisers retained by it to provide advice and assistance on the suitability of the Services for specific purposes and procedures and, in this respect, shall indemnify LightMelbourne from and against any suit, claim, demand or compensation which, but for these Terms, the Customer may have had against LightMelbourne except if the Customer is a Consumer, or these Terms are deemed to be a Small Business Contract.
- 17.3 The Customer warrants to LightMelbourne that it is purchasing Services as the principal and not as an agent.

18 Termination

If either party breaches an essential term of the Agreement, the other party may give written notice requiring the breach to be remedied within 14 days. If the breach is not remedied, the party giving the notice may terminate the Agreement.

19 Force Majeure

LightMelbourne shall be released from its obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders provision of the Services impossible, where all money due to LightMelbourne shall be paid immediately and, unless prohibited by law, LightMelbourne may elect to terminate the Agreement.

20 Equitable Charge

The Customer as beneficial owner and/or registered proprietor now charge in favour of LightMelbourne all of the Customer's estate and interest in any real property (including but not limited to any applicable land owned by the Customer or described as the Customer's Street Address in the Credit Application if applicable) ('Land') to secure payment of accounts rendered by LightMelbourne to the Customer for the delivery and/or supply of the Services including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by LightMelbourne and including the costs to prepare and lodge a Caveat against the Land and to remove the Caveat.

21 Variation

- 21.1 LightMelbourne may vary these Terms by providing written notice to the Customer (by email, conventional mail or by posting the amended terms on LightMelbourne's website). LightMelbourne will not change any Terms for an existing order that has been accepted by it; the Terms that apply to the order are the Terms that applied at the time the Customer placed the order.
- 21.2 If the Customer is a Consumer, or these Terms are deemed to be a Small Business Contract, and the Customer does not deem the variation acceptable, the Customer may elect not to proceed with the purchase of the Services ordered before the date of the variation but which are intended to be subject to the variation.
- 21.3 If the Customer is not a Consumer and these Terms are not deemed to be a Small Business Contract, the Customer agrees that the variation applies from the date of receiving notice of the varied Terms.

22 Failure to Act

LightMelbourne's failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or LightMelbourne's failure to exercise any right or remedy available under these Terms or at law, or LightMelbourne's failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of LightMelbourne's right to demand timely payment of future obligations or strict compliance with the Terms.

23 Legal Construction

- 23.1 These Terms shall be governed by and interpreted according to the laws of the State in which the Services are principally provided, and

LightMelbourne and the Customer consent and submit to the jurisdiction of the Courts in that State.

23.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.