



# Full Terms and Conditions

Metro Marketing Limited 2021

## Full Terms and Conditions

### 1. Terms

**1.1** These terms (together with any collateral written agreement entered into by the parties) shall apply to and govern the supply by Metro Marketing Ltd trading as Metro Marketing ("MM") to:

the customer of all marketing and other services including any goods (the "services"); and

the supply of all goods and services by a supplier to MM for on sale to a customer of MM ("supplier supply").

**1.2** If there is any conflict or inconsistency between these terms and the terms of any order submitted by the customer or supplier regarding any price list, invoice or delivery docket issued by MM, these terms shall prevail, unless otherwise agreed in writing by MM.

**1.3** These terms may only be varied in writing signed by a duly authorised signatory of MM and no other employee, agent or representative of MM shall have any authority to amend, modify or add to these terms.

**1.4** MM reserves the right at any time and from time to time to amend, vary or add to these terms in the manner set out in clause 1.3 with effect from the date of publication on MM's website.

### 2. Acceptance

**2.1** All orders are subject to and are not binding until their acceptance by MM and, in the case of a supplier supply, confirmation by MM.

**2.2** Notwithstanding any arrangement granting credit to the customer, MM reserves the right to accept or decline acceptance of any order in its absolute discretion.

**2.3** Any acceptance of an order shall only be conditional acceptance and be subject to MM:

considering the customer's credit status with MM. If MM considers that the creditworthiness of the customer unsatisfactory, it shall be entitled to cancel any order without in any way being liable to the customer;

In the case of a supplier supply subject to MM's and customer paying in full for the supplier supply.

**2.4** After acceptance by MM no order may be cancelled or amended by you without the prior approval of MM and then only on the terms specified by MM.

### 3. Customer's Price and Payment

**3.1** Subject to clause 3.2, the price of the services shall be the standard price charged by MM prevailing at the date of acceptance of the customer's order plus any Goods and Services Tax (GST) thereon (except to the extent it is expressly included) plus the cost of any supplier's supply.

**3.2** Any increases in the cost of supply of services (including, without limitation, increases in the price of supplier supply or due to variations in exchange rates, the cost of labour, freight, handling or insurance or any duties or taxes) between the date of acceptance of the order and the date of delivery of the services, shall be borne by the customer.

**3.3** Any discounts or rebates on the price offered by MM are conditional on payment being made on or before the due date specified by MM. If the customer fails to comply with that condition, payment of the full amount of the price shall become immediately due and payable.

**3.4** Payment of the price is due on the date of invoice unless credit terms are extended to the customer. Where credit is extended to the customer payment is overdue if not paid by the 25th day of the month following date of invoice, unless otherwise agreed in writing by MM.

**3.5** In the case of the customer tendering payment by a cheque, payment shall not have been made until the cheque is honoured on presentment and the moneys payable under it are received in MM's bank account in cleared funds. Until such time receipt of the cheque shall not prejudice or affect MM's rights or remedies against the customer.

**3.6** Time is of the essence in respect of the payment obligations of the customer. If payment is overdue that shall constitute a breach of these terms and the customer will upon demand pay to MM interest on any overdue payment at the same rate charged on MM's current account with MM's bankers from the date that payment was due until payment in full is received by MM.

**3.7** If payment is overdue MM may, in addition to its other remedies, cancel or suspend the customer's entitlement to credit and require payment in cash on or before delivery of any goods or performance of any services ordered by the customer under any contract, or withhold supply of any such goods or performance of any such services until the customer has paid or discharged all sums owing to MM.

**3.8** MM may, at its discretion, apply any payments it receives from the customer in and towards the satisfaction of any indebtedness of the customer and it shall not be bound by any terms or qualifications that the customer may make in relation to payments made under this or any other contract with MM.

#### **4. Suppliers Price and Payment**

**4.1** A supplier providing a supplier supply to MM for on-sale to a customer of MM may not increase the price of the supplier supply from any initially agreed quote, invoice or order except with the written agreement of MM.

**4.2** Any quote provided by a supplier to MM is inclusive of GST and all taxes and charges unless otherwise specified.

**4.3** A supplier providing a supplier supply agrees that despite any other terms that payment by MM to the supplier is not due until payment is received by MM from the customer. No interest or penalty shall accrue on any payment until after MM receives payment from the customer for the supplier supply.

#### **5. Title**

**5.1** Property in any goods sold to any customer shall pass when the goods are paid for in cleared funds to MM and all risk of any loss or damage or deterioration in respect of the goods shall pass to the customer upon delivery to the customer.

**5.2** Property in any goods sold to MM as part of a supplier supply transfers on possession of the goods by MM.

**5.3** The supplier agrees not to encumber or otherwise charge any goods supplied to MM for resale to customers.

**5.4** customer grants a security interest over all present and after-acquired goods supplied by MM and their proceeds as security for payment of the price of those goods.

#### **6. Credit Terms**

**6.1** MM reserves the right, at its discretion, to grant or decline to grant credit to any customer and to suspend or cancel any credit entitlement with effect from the date of notification to the customer.

MM reserves the right to impose a credit limit which may be altered at MM's discretion with effect from the date of notification to the customer. If the credit limit is at any time exceeded that shall constitute a breach of these

terms. MM may, in addition to its other remedies, refuse to accept any further orders from the customer and/or withhold delivery of any services ordered by the customer under any contract until the breach is remedied to the satisfaction of MM.

**6.2** The customer shall, if required by MM, arrange for the customer's liability to be guaranteed by third persons or secured by securities on terms satisfactory to MM. This requirement may be imposed by MM at any time and MM may suspend the customer's entitlement to credit and/or withhold delivery of any services ordered by the customer under any contract pending its fulfilment to the satisfaction of MM.

#### **7. Repossession**

**7.1** MM may take possession of and sell any goods supplied where any event of default occurs or the goods are at risk (as defined by section 109 of the Personal Property Securities Act (called "PPSA")) and for that purpose it shall have the irrevocable right or licence by its agents, servants and employees to enter the premises of the customer or any other premises where the goods are situated (including any premises, land and buildings that the customer may enter upon) without being liable in any way to the customer, and the customer shall indemnify MM upon demand for all claims by any third party for any losses resulting from MM effecting repossession.

#### **8. Costs**

The customer will, upon demand, pay all MM's expenses and legal costs (on a solicitor/agent/client basis) in or in connection with:

the registration of a financing statement or financing change statement relating to the security interest created by these terms;

obtaining an order under section 167 of the PPSA;

the collection of overdue moneys;

the exercise, enforcement or preservation of any right or interest under these terms or any other contract with the customer.

#### **9. Demand and Notices**

**9.1** Demand may be made of, or notice given to, the customer by MM posting a letter or invoice to the customer at the Customer's last known address, which shall be deemed to be received by the customer two days after the date of posting of the letter or invoice.

**9.2** Any notice or other document to be served by the customer or a supplier on MM shall not be served or given by facsimile or electronic mail.

## **10. Default**

**10.1** MM shall be entitled to suspend or cancel all or any part of the contract recorded in these terms and/or any other contract or contracts with the customer or supplier, in addition to its other remedies, upon the happening of any of the following events of default:

- if any amounts payable by the customer to MM are overdue; or
- if the customer or supplier fails to meet any obligation under these terms or any other contract with MM; or
- if the customer or supplier becomes insolvent; or
- if a receiver is appointed in respect of the assets of the customer or supplier; or
- if an arrangement with the customer's or supplier's creditors is made or likely to be made; or
- if the customer or supplier ceases or threatens to cease carrying on business; or
- if the ownership or effective control of the customer or supplier is transferred, or the nature of the business is materially altered.

**10.2** Upon cancellation of the contract recorded in these terms all sums owing by the customer to MM shall become immediately due and payable.

**10.3** Where any event of default occurs MM may appoint a receiver in respect of all goods (including their proceeds) supplied to the customer and any such receiver may take possession of the goods and sell them and otherwise exercise all rights and powers conferred on a receiver by law.

## **11. Claims**

**11.1** The customer agrees that the Consumer Guarantees Act 1993 ("CGA") does not apply to the services and warrants to MM that they are acquired for business purposes.

**11.2** Metro will provide honest recommendations and input into your business, always driven with the best intentions. As the business owner/manager it is your responsibility to test your business proposition in the market to ensure its sustainability. If you would like to outsource a piece of work around this, please talk to our team.

## **12. PPSA**

**12.1** The customer will provide such information and do such acts and execute such further documents as in the opinion of MM may be necessary or desirable to enable MM to perfect under the PPSA the security interest created by these terms as a first priority interest or with such other priority as MM may agree in writing.

**12.2** MM may do all things which it thinks desirable to remedy any default by the customer or otherwise protect goods or the security interest created by these terms.

**12.3** The customer irrevocably appoints MM to be the customer's attorney to do anything which the customer agrees to do under these terms and anything which the attorney thinks desirable to protect MM's interests under these terms and the customer ratifies anything done by an attorney under this clause 12. The customer agrees sections 114(1)(a), 133 and 134 of the PPSA shall not apply to these terms or the security under these terms.

**12.4** The customer waives the customer's right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these terms.

**12.5** The customer agrees that none of the customer's rights as debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall apply to these terms.

**12.6** The customer also agrees, where MM has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

**12.7** The customer must not change the customer's name without first notifying MM of the new name not less than seven days before the change takes effect.

**12.8** The customer must not allow or permit the creation of a lien over any of the goods.

## **13. Governing Law**

**13.1** New Zealand law governs these terms and New Zealand Courts have non-exclusive jurisdiction.

## **14. Limitation of Liability and Indemnities**

**14.1** To the extent allowable by law, no written, oral or implied condition, warranty or term of any description

whether under statute or by implication of law, custom or usage relating to the subject matter of this agreement forms any part of these terms and conditions or will have any operation or affect MM's rights unless that condition, warranty or term is recorded and accepted in writing, and signed by one of MM's authorised officers.

**14.2** Without limiting clause 14.1, MM accepts no responsibility or liability for any loss or damage arising out of or in connection with the services, or any other loss or damage of any kind whatsoever caused by:

the services; and/or  
any activities undertaken by, MM or the customer's employees, agents, contractors or sub-contractors in connection with the services; and/or  
MM requesting or placing an order for a supplier supply

**14.3** The customer and/or the supplier will (as the case may determine) indemnify MM and keep MM indemnified from and against liability and any loss or damage of any kind whatsoever arising directly or indirectly from:

any breach of any of these terms and conditions by the customer or the customer's employees, agents, contractors or sub-contractors any negligence or wilful act or omission by the customer or any of the customer's employees, agents, contractors or sub-contractors  
any claim by any person in respect of or arising out of or in connection with any of the matters referred to in clause 14.2

**14.4** Every exemption, limitation, defence, immunity or other benefit contained in these terms and conditions to which MM is entitled will also be held by MM to the benefit of, and will extend to protect, each of MM's employees, agents, contractors or sub-contractors (excluding the customer and/or the supplier, and the customer's and/or supplier's employees, agents, contractors and sub-contractors).

**14.5** Each indemnity in these terms and conditions is a continuing obligation separate and independent from the customer's other obligations and survives termination of these terms and conditions.

**14.6** It is not necessary for MM to incur expense or make payment before enforcing a right of indemnity conferred by these terms and conditions.

**14.7** Neither party will be liable to the other party in any circumstances for any indirect, economic, special or

consequential loss or damage, including but not limited to loss of revenue, loss of production or loss of profit.

## **15. Intellectual Property**

**15.1** The customer acknowledges that any intellectual property of MM supplied by MM to the customer as part of the services remains the property of MM and such use of the intellectual property by the customer is a revocable licence granted by MM to the customer unless otherwise agreed in writing with MM.

**15.2** For the purposes of this clause intellectual property means but is not limited to all drawings, logo's, brand names, slogans, source code, designs, software, "get-up" and any other material or product produced by MM as part of the Services.

**15.3** MML will work to a client supplied brief and liability arising for breach of Copyright, Trademark or Intellectual Property rights is expressly disclaimed.

**15.4** Intellectual property commissioned by the client for the client remains the property of MM until such time as payment is received in full by the client for all invoices owed to MM – upon receipt of payment the ownership of commissioned intellectual property moves to the client. Exceptions are Intellectual property already owned by Metro and not unique to the client.