

**GENERAL TERMS AND CONDITIONS OF TRADE (2012)**

To the fullest extent legally permissible all dealings between the Customer (together with all related and/or associated companies and/or other entities, all successors and/or assigns and in its own capacity and as trustee of each trust of which the Customer is Trustee) [the "Customer"] and Affect Media Pty Ltd A.B.N. 45 156 148 597 (and/or any related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns) whether trading as "Affect Media" and/or otherwise ["Affect Media"] relating to any services provided or to be provided by and/or on behalf of Affect Media [the "Services"] are subject to the following terms and conditions ["these Terms"] unless otherwise expressly agreed in writing:

1. Payment: a) Payment shall be made by cash, cheque, bank cheque or EFTPOS, without deduction and within the credit period stipulated in each invoice or statement. b) The Customer agrees to pay an administration fee of 2% as the liquidated processing cost on credit card payments and/or on payments made outside the credit period stipulated in each invoice or statement.

2. Interest: Interest shall be charged on overdue accounts at the *Penalty Interest Rates Act 1983* (Vic) interest rate plus 2%.

3. Limitation of Liability: a) The Customer agrees to limit any claim to the cost of supply of equivalent Services. b) Affect Media shall not be liable for: (i) any claim, loss or expense which is made after 7 days from the date the Services are provided after which there shall be deemed to have been unqualified acceptance; (ii) any consequential loss and/or any special and/or punitive damages through any fault of Affect Media Pty Ltd or otherwise; and/or (iii) any claim in any way caused and/or contributed to by the Customer and/or any third party. c) These Terms shall prevail to the extent of any inconsistency with any other agreement, representation and/or warranty.

4. Cancellations: The Customer agrees a) not to cancel any order without Affect Media's prior approval; b) that Affect Media Pty Ltd does not give cash refunds.

5. Quotations: The Customer agrees that: a) quotations must be in writing; b) Affect Media Pty Ltd shall not be bound by any quotation if an order is not placed within 30 days from the date of quotation; c) Affect Media Pty Ltd may prior to receipt of any order amend any quotation and notify the Customer accordingly without ramification; d) Affect Media Pty Ltd shall not be bound by any quotation if it forms the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with the Customer and if Affect Media Pty Ltd also forms the view that those circumstances have substantially and/or materially changed.

6. Placement of Orders: The Customer agrees that: a) if any dispute arises concerning any order (including any question of identity, authority or any phone, fax or computer generated order) the internal records of Affect Media Pty Ltd shall be conclusive evidence of what was ordered; b) each order placed shall be and be deemed to be a representation by the Customer made at the time that it is solvent and able to pay all of its debts as and when they fall due; c) when placing any order the Customer shall inform Affect Media Pty Ltd of any facts which might reasonably affect acceptance of the order by Affect Media Pty Ltd and/or any grant of credit and any failure to do so by or on behalf of the Customer shall be deemed to create an inequality of bargaining position, be deemed to constitute the taking of an unfair advantage of Affect Media Pty Ltd and to be unconscionable, misleading and deceptive.

7. Supply and Delivery: a) Affect Media Pty Ltd may supply by instalments and/or withhold or cancel supply without ramification where: (i) the Customer is in breach of these Terms; and/or (ii) Affect Media Pty Ltd considers it appropriate whether because of any minimum invoice policy or otherwise. b) The Customer agrees that: (i) Affect Media Pty Ltd may elect to arrange delivery of Services at its discretion and without any liability and at the cost and responsibility of the Customer in all things; (ii) the Customer shall be deemed to have accepted delivery and liability for Services on being notified by Affect Media Pty Ltd that Services are ready for collection and/or on Services being delivered to a carrier or to the Customer's business premises or nominated site whether attended or not; (iii) a certificate purporting to be signed by an officer of Affect Media Pty Ltd confirming delivery shall be conclusive evidence of delivery; (iv) Affect Media Pty Ltd shall not be liable for delay, failure or inability to deliver any Services; and (v) the Customer shall be solely responsible for the accuracy of all information provided to Affect Media Pty Ltd for the purpose of providing the Services. c) The Customer agrees: (i) to pay for so much of any forward order as Affect Media Pty Ltd invoices from time to time; (ii) that no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment; and (iii) to pay Affect Media Pty Ltd any additional charges levied in respect of any delay in the performance of the Customer's obligations pursuant to any quotation, invoice or statement.

8. Purchase Price: a) In the absence of a binding quotation all sales are made at the price nominated by Affect Media Pty Ltd at the time of delivery. b) All government imposts (including any GST or equivalent) shall be to the Customer's account. c) Prices exclude government imposts (including any GST or equivalent) unless Affect Media Pty Ltd otherwise agrees.

9. Variations: To be binding any variation of these Terms must be approved by Affect Media Pty Ltd in writing.

10. Exclusions: a) If Affect Media Pty Ltd publishes material concerning its Services and/or its prices anything so published which is incompatible with these Terms is unless otherwise stated expressly excluded. b) The Customer shall rely on its own knowledge and expertise in selecting any Services for any purpose and any advice and/or assistance given by or for Affect Media Pty Ltd shall be at the Customer's risk and shall not be or be deemed to be given as expert or adviser nor to have been relied on by the Customer or anyone claiming through the Customer. c) Affect Media Pty Ltd shall not be responsible nor liable for: (i) any failure to comply with any special requirements of the Customer or any other person (whether relating to any particular intended use of any Services or otherwise); (ii) document content (including but not limited to any error(s) and/or breach of third party intellectual property rights) once the Customer has approved any document for printing, publication and/or distribution.

11. Default: a) On default or breach of any part of these Terms by the Customer Affect Media Pty Ltd may *inter alia* terminate any contract, retain all monies paid, cease further provision of Services and/or recover all lost profits without prejudice to any other rights and without being liable in any way to any party. b) The Customer agrees not to commence or continue or permit to be commenced or continued through it any suit or action against Affect Media Pty Ltd while the Customer is in default under any part of these Terms or in any of its dealings with Affect Media Pty Ltd. c) The Customer agrees to indemnify Affect Media Pty Ltd

for all fees and expenses payable to solicitors, mercantile agents and other parties acting on behalf of Affect Media Pty Ltd in respect of anything instituted or being considered against the Customer whether for debt or otherwise (including all legal costs on an indemnity basis). d) Affect Media Pty Ltd may apply any payment in reduction of fees, interest and/or any principal debt in such order of priority as Affect Media Pty Ltd in its discretion deems appropriate. e) The Customer irrevocably authorises the payment directly to Affect Media Pty Ltd of any debt due to the Customer by any debtor of the Customer in reduction of any amount due to Affect Media Pty Ltd under these Terms or otherwise.

12. Indemnity: The Customer fully indemnifies Affect Media Pty Ltd against any claim or loss arising from or related in any way to any dealing between Affect Media Pty Ltd and the Customer and/or arising under these Terms.

13. Intellectual Property: a) The Customer agrees that all intellectual property created in the provision of any Services shall be and remain the property of Affect Media notwithstanding any contribution by the Customer. b) The Customer agrees that Affect Media Pty Ltd provides Services to the Customer for the purpose(s) stated in any quotation and that the Customer is only entitled to use the work for the stated purpose(s) (for example if Affect Media Pty Ltd is asked to produce a printed brochure then the Customer may not use material from the brochure for another purpose such as a website) unless the Customer obtains the prior written approval of Affect Media Pty Ltd.

14. Other Terms and Conditions: No terms and conditions sought to be imposed by the Customer upon Affect Media Pty Ltd shall apply.

15. Customer Restructure: The Customer shall notify Affect Media Pty Ltd in writing of any change in its structure or management including any change in director, shareholder and/or management and/or any change in partnership and/or trusteeship within 7 days of each change. Until such notice is received the Customer guarantees the performance of all obligations passing to any third party and fully indemnifies Affect Media Pty Ltd against all loss (including legal costs on an indemnity basis).

16. Jurisdiction: The Customer agrees that all dealings with Affect Media Pty Ltd shall be governed by the law applicable in the State of Victoria and the Customer agrees to submit to the jurisdiction of the appropriate Court nominated by Affect Media Pty Ltd in Melbourne.

17. Credit Limit: Any credit facility or credit limit is an indication only of the intention of Affect Media Pty Ltd at the time. Affect Media Pty Ltd may vary or withdraw credit at any time at its discretion and without any liability to the Customer or any other party.

18. Waiver: An election by Affect Media Pty Ltd not to exercise any of its rights arising as a result of any breach of these Terms shall not constitute a waiver of any rights of Affect Media Pty Ltd relating to any other breach.

19. Notice: The Customer agrees that it shall be deemed to have notice of any change to these Terms immediately any change is adopted by Affect Media Pty Ltd and whether or not the Customer has actual notice. The Customer shall be deemed to be bound by any terms and conditions of trade which may be adopted by Affect Media Pty Ltd immediately any change is adopted and notwithstanding any other purported or pre-existing terms and conditions which might otherwise have applied.

20. Security For Payment: The Customer hereby grants to Affect Media Pty Ltd a general lien over all property of the Customer until payment in full of all monies owing to Affect Media Pty Ltd.

21. Force Majeure: Affect Media Pty Ltd shall not be in default or in breach of any contract with the Customer as a result of *Force Majeure* including any strike or lock-out.

22. Insolvency: a) If the Customer commits or is involved in any act of insolvency the Customer shall be deemed to be in default under these Terms. b) An act of insolvency is deemed to include the appointment of any insolvency practitioner and the calling of any formal meeting of creditors.

23. Severability: Any part of these Terms shall be capable of severance without affecting any other part of these Terms.

Affect Media Pty Ltd Web Development

You will remain liable for all fees during any period when services have been disconnected or suspended due to a failure on your part to comply with these terms and conditions.

No final artwork or files will be delivered until the final invoices are paid in full. Payment by cheque will entail waiting for clearance before supply of files. Delivery being, supply of final artwork, digital files to print, on disc, via email or uploaded to nominated ISP. Construction files remain the property of Affect Media Pty Ltd unless arranged otherwise.

All terms, conditions, warranties, undertakings, inducements and representations, whether express or implied, statutory or otherwise relating to the provision of services by Affect Media Pty Ltd not contained in the agreement are excluded and Affect Media Pty Ltd will not accept liability for any loss or damage (including consequential loss or damage) however caused (whether by negligence or otherwise) which may be suffered or incurred or which may arise directly or indirectly with respect to the service.

Where any applicable legislation implies any term, condition or warranty into the agreement or in respect of Affect Media Pty Ltd's relationship with you, or otherwise gives you a particular remedy against Affect Media Pty Ltd and the legislation or any other legislation renders void or prohibits provisions excluding or modifying the application of, the exercise of or liability under such implied term, condition, warranty or remedy will be deemed to be included in the agreement or as the case may require, apply to the relationship between Affect Media Pty Ltd and you. However, Affect Media Pty Ltd's liability for any such breach of such implied term, condition or warranty or under such remedy will be limited, at Affect Media Pty Ltd's option in any or more of the ways permitted in the legislation, including, where so permitted if the breach relates to services or supplying of those services again, or the payment of the cost of having those services supplied again.

You acknowledge that websites cannot be guaranteed to be 100% error free in construction and/or 100% secure and acknowledge that the existence of errors falling short of a complete failure of consideration of the site shall not constitute a reason to terminate this agreement.

Affect Media Pty Ltd reserves the right to suspend services in any case where you fail to perform your obligations under this agreement. If payment for services is not received within the terms of payment stipulated by us, websites may be taken down until payment is confirmed.

Affect Media Pty Ltd may, from time to time and without notice or liability to you, suspend any of the services if the reason for doing so is an event beyond the reasonable control of Affect Media Pty Ltd.

You will be solely responsible for the content of your web page/undertakings. Affect Media Pty Ltd is not responsible for proof-reading any content unless specifically agreed.

Affect Media Pty Ltd makes no representations to you concerning the content or functionality of your website. This is your responsibility to ensure that it meets your requirements.

If you provide Affect Media Pty Ltd with goods, material, photographs, film, data or information to be used in any form, you hereby warrant that these do not infringe the rights of third parties and indemnify Affect Media Pty Ltd against any action taken against Affect Media Pty Ltd by any such third party.

Without limiting the generality of the foregoing, you agree not to infringe the copyright trademark, privacy or personal or proprietary rights of third parties, supply, libelous, abusive, obscene material or disparage the products or services of any third party.

Affect Media Pty Ltd, for its part, hereby undertakes not to knowingly infringe the rights of third parties and activities conducted on your behalf. You are solely responsible for dealing with persons who access your data or web page and warrant that you will not refer complaints or inquiries in relation to such data to Affect Media Pty Ltd.

All creation files remain the property of Affect Media Pty Ltd.

Affect Media Pty Ltd retains the copyright in and the right to use all artwork created in advancing the profile of Affect Media Pty Ltd and to be recognized for artwork created by Affect Media Pty Ltd.

Affect Media Pty Ltd shall be free to reproduce, use, disclose, display or exhibit, transmit, perform, create derivative works and distribute any item from your web page unless specifically agreed otherwise. Further, Affect Media Pty Ltd shall be free to use any ideas, concepts, know-how or techniques acquired in the construction of websites for any purpose whatsoever, including but not limited to, developing, manufacturing and marketing products and other items incorporating such information unless specifically agreed otherwise.

Affect Media Pty Ltd observes privacy laws and guidelines relating to personal data.

Any code or original artworks or graphics developed by Affect Media Pty Ltd or our contractors including HTML markup, Flash, Multimedia including audio and video, data base design and development, data collection and web based administration are licensed to the client for use on their own single website. It cannot be copied, re-used or re-sold without the written permission of Affect Media Pty Ltd. Original graphics created for use on the proposed website cannot be re-used in any other website or for other promotional media, brochures, press or other advertisement without our express written permission and/or additional fees.

Affect Media Marketing & Public Relations

Approval by the client of the final copy, layouts, scripts, story boards, designs and the likes will be Affect Media Pty Ltd's authority to proceed with production or publication as appropriate. Where artwork or other material is sent to the client for final approval, the client shall check it carefully and notify Affect Media Pty Ltd of any errors or alterations.

Affect Media Pty Ltd will use its reasonable endeavors to effect any changes so notified but Affect Media Pty Ltd reserves the right to charge extra if any of these alternations either go beyond the original brief. Where the notification of errors is either unreasonably delayed in this way or does not occur at all before publication, Affect Media Pty Ltd will not be liable in respect of such errors.

Affect Media Pty Ltd will also not be liable in respect of errors which may occur after the hand over of artwork where the client oversees the print production process. Affect Media Pty Ltd cannot guarantee that any or all colors will be exactly replicated in the final version as published.

Neither party shall divulge any confidential information which is supplied to it about the other party in the course of this agreement, or any pre-agreement discussions, or other information forming part of the public domain otherwise than through a breach of this clause or any obligation of confidence.