

## **AMG Australian Marketing Group Pty Ltd – Terms & Conditions of Trade**

### **1. Definitions**

1.1 “Agent” shall mean AMG Australian Marketing Group Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of AMG Australian Marketing Group Pty Ltd.

1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Agent to the Client.

1.3 “Guarantor” means all directors of the Client where the Client is a corporation.

1.4 “Services” shall mean all services supplied by the Agent to the Client and including but not limited to fax marketing services and any advice or recommendations relating to fax marketing services.

1.5 “Copy” shall mean any advertising, promotional or any other similar materials provided to the Agent by the Client.

1.6 “Price” shall mean the price payable for the Services as agreed between the Agent and the Client in accordance with clause 3 of this contract.

### **2. Acceptance**

2.1 Any instructions received by the Agent from the Client for the supply of Services and/or the Client’s acceptance of Services supplied by the Agent shall constitute acceptance of the terms and conditions contained herein.

2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Agent.

2.4 The Client shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Agent as a result of the Client’s failure to comply with this clause.

2.5 Services are supplied by the Agent only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade unless the Agent agrees in writing that such contrary term amends these terms and conditions of trade.

2.6 Where the Client is a corporation then all directors accept these terms and conditions in their personal capacity as guarantor(s) as well as director(s) of the Client, and hereby guarantee the obligations of the Client.

### **3. Price And Payment**

3.1 The Price shall be the Agent’s quoted price (subject to clause

3.2) which shall be binding upon the Agent provided that the Client shall accept the Agent’s quotation in writing within fourteen (14) days.

3.2 The Agent reserves the right to change the Price in the event of a variation to the Agent’s quotation but such change shall be subject to written notice provided prior to the supply of the Services.

3.3 At the Agent’s sole discretion a deposit may be required.

3.4 Payment of the Price shall be due prior to the delivery of the Services unless the Agent has agreed to provide the Client with payment terms in accordance with any ancillary commercial credit agreement.

3.5 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to three percent (2%) of the Price), or by direct credit, or by any other method as agreed to between the Client and the Agent.

3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

#### **4. Delivery Of Services**

4.1 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

4.2 The failure of the Agent to deliver shall not entitle either party to treat this contract as repudiated.

4.3 The Agent shall not be liable for any loss or damage whatever due to failure by the Agent to deliver the Services (or any part of them) promptly or at all due to circumstances beyond the control of the Agent, (including, without limitation, delays caused by the Client, the Client's agent, any supplier, or the printing or manufacturing process) beyond the control of the Agent.

#### **5. Client Warranties**

5.1 The Client warrants that that all Copy lodged with the Agent;

(a) complies with all laws, statutes, regulations, codes of practice and any standards applicable to the publication of Copy and as determined by any relevant regulatory agency or industry self regulatory body;

(b) complies with any standard or requirement specified by the Agent and notified to the Client from time to time; and

(c) does not infringe copyright, trademark or any other legal rights of another person including intellectual property rights;

(d) is not false or misleading and is true in substance and in fact;

(e) without limiting the above, does not infringe the Trade Practices Act 1974 (Cth) or the Fair Trading Act of any State or Territory of Australia; and

(f) does not contain anything which may give rise to any cause of action by a third against the Agent, including, but not limited to, material that is defamatory, or obscene, or which otherwise may cause damage or injury to any person.

5.2 The Agent reserves the right to remove all or part of a message, or any material prepared for transmission should the Agent believe the Copy supplied to be a direct breach of clause

#### **6. Intellectual Property**

Where the Agent has designed, drawn or written documents for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Agent, and shall only be used by the Client at the Agent's discretion.

#### **7. Indemnity**

The Client agrees to indemnify the Agent, its employees, agents and affiliates, and their employees and agents against any action, claim, loss or expense arising from the publication of Copy, or cancellation, or failure to publish any Copy, and all costs, losses and expenses suffered or incurred by the Agent, its employees, agents and affiliates, and their employees and agents as a result of any breach by the Client of these terms and conditions.

#### **8. Errors and Omissions**

8.1 The Client shall inspect the Services on delivery and shall within two (2) days of delivery (time being of the essence) notify the Agent of any alleged shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the

Agent an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are any errors or omissions in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any errors or omissions.

8.2 In fax Broadcasting, where the expected success is not achieved and client have pre-paid for the fax transmission service, the remaining credit can be used at a later date.

### **9. Limitation of Liability**

9.1 These terms and conditions include terms implied by any statute which cannot be lawfully excluded including those implied by Division 2 of the Trade Practices Act and, if applicable, the Fair Trading Acts of each State and Territory of Australia. However, in relation to the supply of Services which are not of a kind ordinarily acquired for personal, domestic or household consumption or use, the Agent's liability for breach of those implied terms (other than section 69 of the Trade Practices Act) will be limited, at its option, to resupplying the **AMG Australian Marketing Group Pty Ltd – Terms & Conditions of Trade Services** or payment of the cost of having the Services resupplied.

9.2 For the avoidance of doubt, the Agent will not be liable for any loss, damage or injury including loss of profits and consequential loss, arising from the supply of the Services, or out the Agent's breach or performance of these terms and conditions of trade whether or not caused by the Agent's negligence.

### **10. Default & Consequences of Default**

10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.

10.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in pursuing the debt including legal costs on a solicitor and own client basis and the Agent's collection agency costs.

10.3 Without prejudice to any other remedies the Agent may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Agent may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent has exercised its rights under this clause.

10.4 If any account remains overdue after thirty (30) days then an amount of the greater of two hundred dollars (\$200.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two thousand dollars (\$2000.00)) shall be levied for administration fees which sum shall become immediately due and payable.

10.5 Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### **11. Security And Charge**

11.1 Despite anything to the contrary contained herein or any other rights which the Agent may have howsoever:

(a) where the Client and/or the Guarantor is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Agent or the Agent's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Agent (or the Agent's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

(b) should the Agent elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Agent or the Agent's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.

## **12. Cancellation**

12.1 The Agent may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Agent shall repay to the Client any sums paid in respect of the Price. The Agent shall not be liable for any loss or damage whatever arising from such cancellation.

12.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by the Agent (including, but not limited to, any loss of profits) up to the time of cancellation.

12.3 Where funds are received by the Agent, no funds are returned. The services will be delivered at the quoted rate.

## **13. Statement of statutory compliance**

13.1 The Agent expressly confirms that when it is providing fax marketing services covered by these terms and conditions to you that the provision of such services will be provided in accordance with Part 6 of Division 7 of the *Telecommunications Act 1997 (Cth)* (**Tel Act**).

13.2 In accordance with the *Do Not Call Register Act 2010 (Cth)*

(**DNCR Act**) the Agent expressly confirms that when sending marketing faxes covered by these terms and conditions it will:

(a) pursuant to clause 12C(c)(i), comply with the DNCR Act;

And (b) pursuant to clause 12C(c)(ii), take all reasonable steps to ensure that its employees and agents comply with the

DNCR Act

## **14. Washed lists**

14.1 Pursuant to the DNCR Act, if:

(a) the Client provides to the Agent a washed list of fax numbers (**Client Washed List**) to use for the purposes of providing the Services, the Client warrants to the Agent that the Client Washed List has been washed in accordance with clause 19 of the DNCR Act and is a valid washed list within the except at subsection 12B(3) of the DNCR Act; or

(b) if the Agent is responsible for providing a washed list of fax numbers (**Agent Washed List**) for the purposes of providing the Services, the Agent warrants to the Client that the Agent Washed List has been washed in accordance with clause 19 of the DNCR Act and is a valid washed list within the except at subsection 12B(3) of the DNCR Act.

14.2 The party providing a warranty under this clause 14 will indemnify and hold harmless the party who is the beneficiary of the warranty from any claim whatsoever arising from a breach of the warranty.

**15. General**

15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.

15.3 The Agent shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Agent of these terms and conditions.

15.4 In the event of any breach of this contract by the Agent the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.

15.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Agent.

15.6 The Agent may license or sub-contract all or any part of its rights and obligations without the Client's consent.

15.7 The Agent reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Client of such change.

15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

15.9 The failure by the Agent to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Agent's right to subsequently enforce that provision.