

TERMS AND CONDITIONS OF TRADING OF RESPONSE DIRECT PUBLISHING PTY LIMITED ("RDP")

1.- Contract Terms

- 1.1 All contracts made between RDP and its Clients for the printing, publication and distribution of advertisements (which expression includes loose or other inserts where appropriate and shall include advertisements in written or electronic form or otherwise) and any other services to be supplied by RDP to the Client will be on the terms and conditions set out below and overleaf to the exclusion of any other terms and conditions (except those implied in favour of a supplier which are not inconsistent with these terms and conditions). No variation to the contract will be binding on RDP unless expressly accepted by RDP in writing.
- 1.2 Advertisement orders issued by an advertising agency are issued as a principal and must be on the agency's official form.

2.- Acceptance of Advertisements

- 2.1 RDP reserves the right in its absolute discretion to refuse publication or distribution of any advertisement or insert.
- 2.2 All advertisements or inserts are provisionally accepted subject to RDP's approval of the copy and to the space or capacity being available. The Client shall amend copy to meet RDP's approval (such approval not to be unreasonably withheld or delayed). Copy will be provided in electronic form provided that the format has been agreed between RDP and the Client.

3.- Copy

- 3.1 The Client will be charged for the production of proofs in accordance with the rates set out in RDP's production information sheet, which rates may be altered by RDP from time to time to reflect any increase in the cost to RDP of producing such proofs. The Client shall provide colour proofs of advertisements to match artwork to printed materials where available.
- 3.2 The Client may request changes to copy provided adequate time is allowed and subject to the Client bearing all costs incurred by RDP in meeting such changes (unless such changes are corrections of errors or defects made by RDP).
- 3.3 The Client is responsible for checking and approving all proofs where supply of which is considered necessary by RDP and all proofs are deemed approved and accepted by the Client unless the Client notifies RDP of any corrections in writing within 5 working days prior to the scheduled date for delivery of the final copy.
- 3.4 Where copy is provided to RDP in electronic form, the Client shall take back-up copies of the data provided before delivery to RDP. If at any time the data is lost or corrupted for whatever reason (including loss of or damage to media) the Client will provide RDP with a further copy of the data within any time scale agreed with RDP at the Client's cost.

4.- Changes by RDP

- 4.1 RDP reserves the right to omit, suspend, modify or change the position of insertion of any advertisement or loose insert or to modify or alter the structure of any data provided by the Client. RDP shall notify the Client of any such change as soon as reasonably practicable.
- 4.2 If any such change referred to in clause 4.1 is material, the Client may cancel the publication of the advert within 3 working days of RDP's notice of such change and receive a refund or reasonable adjustment to the price unless such changes are due to the act or omission of the Client or to circumstances beyond the reasonable control of RDP.
- 4.3 No variation in the design of any advertisement including dimensions typeface colour or layout which in the reasonable opinion of RDP does not affect the suitability of the advertisement for the purpose for which it is published by RDP will constitute a breach of contract or impose upon RDP any liability whatsoever.
- 4.4 In particular (but without prejudice to the generality of Clause 4.3) the Client acknowledges that it may not be possible to reproduce the precise dimensions or colours shown in the specification design drawing sample, proof or other description ("the Specification") provided by RDP or the Client. The Client accepts responsibility for any effect on colours mentioned in the Specification of the material on which the colours are to be used. The Client will be obliged to accept the advertisement notwithstanding any such variation.

5.- Performance

- 5.1 Subject to the following provisions of this Clause 5 and to Clause 13 below, RDP will use its reasonable endeavours to publish and distribute the advertisement(s) or loose inserts (or, if applicable, any edition in which such advertisement(s) or loose inserts is/are scheduled to appear and otherwise to perform its obligations hereunder within any timescales agreed with the Client (or, if no timescales have been agreed, within a reasonable time).
- 5.2 RDP may postpone or cancel any publication if it has not (in its sole opinion) received the minimum number of orders for the placing of advertisements in the relevant publication as are required to fill the space therein.
- 5.3 RDP will use its reasonable endeavours to publish and distribute the quantity of publications ordered by the Client provided that RDP shall not be in breach of its obligations hereunder if the quantity of publications published and distributed by RDP is 10% greater or 10 % smaller than the quantity ordered by the Client.
- 5.4 As soon as practicable following distribution of any publication(s), RDP shall provide the Client with voucher copies or other reasonable proof of insertion of the advertisement(s) or loose inserts in the relevant publication(s).
- 5.5 RDP shall have fulfilled its obligations with respect to the dispatch of such items (and shall be entitled to full payment therefore) upon delivering the same, correctly packaged and addressed, into the possession or control of the appropriate postal authority or carrier.
- 5.6 RDP shall not be in breach of its obligations hereunder if the distribution or dispatch of any advertisement, publication, mailing or other item commences up to fourteen days before or up to fourteen days after the agreed commencement date therefore.
- 5.7 If RDP agrees to arrange the dispatch of publications or other items;
- 5.7.1 It is the Client's responsibility to advise RDP of any postal regulations or rates or other requirements relating to the mailing where the mailing is specifically to the Client's requirements; and
- 5.7.2 RDP's responsibility for the items and the dispatch thereof shall cease as soon as delivery is made to the postal authority (or other carrier) whether at the printers or RDP's works or elsewhere
- 5.8 RDP will endeavour to accommodate any request of the Client to cancel vary or delay any order provided that in such circumstances or if the Client purports to cancel delay or vary any order or part thereof then subject to clause 9.1 below the Client will be liable (without prejudice to any other rights of RDP) to indemnify and keep indemnified RDP against any resulting loss damage or expense suffered or incurred by RDP in connection therewith including the cost of any advertising space used or intended to be used.

6.- Warranty

In the event of any material error misprint or omission in any advertisement arising as a result of the defective act or omission of RDP, RDP will free of charge reinsert the advertisement (or relevant part thereof) in the next publication or at its option make a reasonable refund or adjustment to the price provided that this obligation will not apply where the Client has failed to notify RDP of any defect or suspected defect within 5 days of the same coming to the knowledge of the Client, and in any event within a period of 2 months from the date of publication.

7.- Exclusion and Limitation of liability

- 7.1 To the extent permissible by law, this agreement excludes any liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent the same may not be excluded or limited as a matter of law. Subject to this, RDP's maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed an amount equal to (i) the price paid hereunder in respect of the advertisement, mailing, publication or other item(s) giving rise to the liability or (ii) the cost of a further or corrective advertisement, mailing, publication or other item of a type and standard reasonably comparable to that in respect of which the liability arose, whichever amount is smaller.
- 7.2 Subject to Clause 7.1, RDP shall not be liable under this Agreement or any collateral contract for any loss of income or profits, loss of contracts or for any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise.
- 7.3 This Agreement sets forth the full extent of RDP's obligations and liabilities hereunder. In particular, any condition, warranty representation or other term concerning RDP's performance hereunder which might otherwise be implied into or incorporated in this Agreement, whether by statute, common law or otherwise, is hereby excluded.

8.- Client warranties

- 8.1 The Client warrants that all advertisements, loose inserts and any mailing lists or customer database supplied by the Client for use by RDP:-
- 8.1.1 comply with the requirements of all legislation current at the time of publication including where relevant, the Privacy Guidelines 2001.
- 8.1.2 comply with, but not limited to, any guidelines issued by the ACCC, together with all other standards that apply to the Advertising Industry, together with the Australian Direct Marketing Association Codes of Practice, current at the time of publication;
- 8.1.3 are not defamatory or otherwise illegal;
- 8.1.4 do not infringe any other party's intellectual property right including copyright.
- 8.2 The Client shall indemnify and keep RDP indemnified against all costs claims and liability suffered or incurred by RDP as a result of any breach of Clause 8.1.
- 8.3 In the event that a dispute arises between the Client and RDP then prior to the parties referring the matter to a Court for resolution, the parties shall initially negotiate in faith for the purpose of resolving the dispute and in the event that negotiations fail, then both parties agree to refer the dispute to arbitration pursuant to the provisions of the Commercial Arbitration Act 1984 with the Institute of Arbitrators and Mediators Australia (IAMA) as the nominated body for the purpose of appointing an Arbitrator(s) to resolve the dispute.

9.- Price

- 9.1 RDP shall be entitled to vary its rates at any time provided that where such increase affects any order accepted by RDP, the Client may cancel such order in respect of the next advertisement to be published or otherwise sent to press within 5 working days of the date of RDP's notice of such price increase.
- 9.2 Unless expressly stated otherwise all prices are exclusive of GST, which shall be charged at the rate, and in the manner prescribed by law from time to time.

10.- Payment

- 10.1 RDP's payment terms are 7 days from the date of RDP's invoice unless otherwise stated in writing.
- 10.2 Unless otherwise stated in writing, the Client shall pay the 50% of the full contract price seven days prior to copy date. The balance is due within 7 days of the date of RDP's invoice, (Sent on day of mailing.), notwithstanding that the levels of response obtained from any advertisement may be lower than those anticipated by the Client. The failure by RDP to perform any part of this or any other contract shall not entitle the Client to withhold payment of such proportion of the Contract price as relates to work that has been, or is subsequent to such failure, duly completed by RDP pursuant to this or any other contract.
- 10.3 If the Client is an advertising or marketing agency and where the parties expressly agree in writing the Client shall be entitled to a 10% commission on the contract price on condition that payment in full is made on or before the due date.
- 10.4 Notwithstanding any term of the Contract allowing the Client credit, payment shall become due and payable to RDP immediately upon the termination of the Contract.
- 10.5 Where the Client fails to pay on the relevant due date any sum due to RDP under this or any other contract, RDP without liability may suspend performance of or cancel the Contract or any other contract between RDP and the Client but without prejudice to any right or remedy which RDP may have against the Client in respect of such default.
- 10.6 Interest at an annual rate of 5% above Westpac Banking Corporation base rate from time to time will accrue daily and will be calculated on a daily basis on overdue accounts from the due date of invoice until payment.
- 10.7 Any dispute arising on invoices must be notified to RDP in writing within 14 days of the date of the relevant invoice failing which any claim of the Client on such invoice will be deemed to have been waived and will be absolutely barred.
- 10.8 Should a client's debt be handed over to a collection agency, the client will be held responsible for all collection costs incurred.

11.- Materials and Intellectual Property

- 11.1 All copyright and other intellectual property in any completed advertisements, type, plates, artwork, (including digital) and other materials used owned created or produced by RDP or its contractors pursuant to this Contract shall vest absolutely in and shall be and remain the sole and exclusive property of RDP. The Client agrees to execute all documents and take all further actions necessary to give effect to the terms of this clause 11.1.
- 11.2 All materials artwork, printed materials and other property of the Client or supplied to RDP by or on behalf of the Client are held by RDP at the sole risk of the Client and the Client shall make its own insurance arrangements against loss or damage from whatever cause.
- 11.3 RDP reserves the right to destroy all artwork and other materials which have been in its (or its suppliers) custody for 3 months from the date of its last publication unless written arrangements have been made to the contrary.

12.- Lien

Without prejudice to any other remedies available to RDP, RDP shall have in respect of all unpaid debts due from the Client a general lien on all property of the Client in the possession of RDP (or its printers) for whatever purpose and whether worked upon or not and RDP shall be entitled on the expiration of not less than 14 days written notice to the Client to dispose of such property and to apply the proceeds towards the satisfaction of such debts.

13.- Force Majeure

- 13.1 RDP shall not be liable for any delay in performing or failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any cause or circumstance whatsoever beyond its reasonable control including shipping delays (hereinafter, "event of force majeure"), including without limitation governmental action, war, civil commotion, fire, flood, labour dispute, act of God or the cessation, obstruction or delay of postal services.
- 13.2 As soon as reasonably practicable after becoming aware of any event of force majeure, RDP shall notify the Client of the manner and extent to which its obligations are likely to be prevented or delayed and the date(s) for performance of the affected obligations shall be postponed for so long as is made necessary by the event of force majeure. During the period of postponement, each party shall use its reasonable endeavours to minimise the effects of any event of force majeure.
- 13.3 If the performance of any services and/or the delivery or dispatch of any item is delayed due to an event of force majeure, such delay shall not have the effect of discharging RDP's payment obligations with respect to such services and/or items.

14.-Termination

- 14.1 This Contract shall commence on the date printed overleaf and shall continue unless terminated by RDP giving the Client not less than one month's written notice of termination.
- 14.2 The Contract will terminate immediately upon the happening of any one or more of the following, namely, that the Client has had a bankruptcy order made against him or has made an arrangement or composition with his creditors or otherwise taken the benefit of any Act for the time being in force for the relief of insolvent debtors or (being a body corporate) has had convened a meeting of creditors (whether formal or informal) or has entered into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver manager administrator or administrative receiver appointed of its undertaking or any part thereof or a resolution has been passed or a petition presented to any Court for the winding-up of the Client or for the granting of an administration order in respect of the Client or any proceedings have been commenced relating to the insolvency or possible insolvency of the Client
- 14.3 The contract will terminate immediately upon service of written notice of termination by RDP on the Client on the happening of any one or more of the following, namely, that the Client has suffered or allowed any execution whether legal or equitable to be levied on his/its property or obtained against him/it or has failed to observe or perform any of its obligations or duties under the contract or any other contract between RDP and the Client or is unable to pay its debts under either the Bankruptcy Act or Corporations Act as the case may be.
- 14.4 Termination shall not affect any accrued rights of either party and in the event of termination by RDP pursuant to clause 14.1 or 14.2 without prejudice to any other rights of RDP the Client shall pay RDP the costs of printing and advertising space which would have been payable by it less a deduction for any costs not actually incurred, or work not done by RDP due to such termination.

15.- General

- 15.1 RDP will be entitled to assign the benefit or delegate the burden of the Contract or any part thereof.
- 15.2 In relation to all obligations of the Client under the Contract the time of performance is of the essence.
- 15.3 These Terms and Conditions shall be governed by and construed in accordance with the laws in force for the time being for the State of New South Wales and the parties agree, subject to Clause 8.3, to refer all disputes to the Courts of that State for determination.

16 - Inserts

- 16.1 A printed sample (or proof and paper sample) of the insert must be supplied and approved by RDP not later than two weeks before the delivery date to the mailing house. Size and weight must not vary from the approved samples. Any excess weight per item above that agreed in this contract will be charged at the rate of \$7.50 per gramme per thousand inserts or at the prevailing Australia Post rate, whichever is the greater.
- 16.2 The Client will deliver printed insert materials to RDP's specified mailing house by the due delivery date agreed on this contract. In the event that materials are not delivered by the due delivery date, RDP reserve the right not to include the inserts in the mailing. The Client remains responsible for the full invoice cost. Client will also be responsible for the cost of returning or destroying the materials.
- 16.3 In the event that the Client supplies less inserts than contracted, the full invoice cost remains applicable. In the event of oversupply of inserts, then the cost of returning or destroying the surplus will be chargeable.
- 16.4 Should materials be supplied by the Client and found to be damaged at the point of delivery, and are not accepted by the mailing house, the Client is responsible for payment under the terms of this Contract.