

Adfinis Pty Ltd – General Terms and Conditions

These Terms and Conditions (Terms), as amended or replaced from time to time, apply to any goods or services supplied or to be supplied to the Customer, or any third person on the Customer's behalf. Any reference to the Customer also includes its respective successors or permitted assigns. The singular includes the plural and the converse. If the Customer constitutes more than one person or entity, the Terms bind each of them jointly and severally.

1. Payment:

- (a) The Customer must pay the invoiced amount within 30 days of statement. Credit card payments will attract a fee. Adfinis may allocate payments in any manner it chooses.
- (b) The price of all goods is exclusive of GST except where the price is expressed to be inclusive of GST.
- (c) The Customer will pay interest on any overdue amount calculated on a daily basis until paid in full at the rate prescribed by the *s.59(3) of the Civil Proceedings Act 2011*.

2. Risk and Title:

- (a) Risk in any goods passes to the Customer on delivery.
- (b) Title remains with Adfinis until the Customer has paid Adfinis for all goods supplied in full and in cleared funds. Until title passes to the Customer, the Customer will hold them on trust and as bailee for Adfinis.

3. Orders and Delivery:

- (a) The Customer agrees to pay for so much of any forward order as is from time to time invoiced by Adfinis.
- (b) Each order by a Customer will constitute an offer only, by the Customer to Adfinis.
- (c) Adfinis reserves the right to vary any prices quoted by Adfinis, prior to any order being accepted.
- (d) Delivery to the Customer will be as requested by the Customer.
- (e) Adfinis reserves the right to refuse loading of a Customer's vehicle where in the discretion of Adfinis branch manager, the vehicle is unsafe to load, the vehicle is not suitable for road transportation and/or the load can't be properly positioned and secured.
- (f) All expenses relating to delivery, insurance, transit or storage of goods after delivery to the Customer will be at the Customer's cost.
- (g) Adfinis may stop goods in transit whether or not delivery has been made if the Customer is in default at any time.
- (h) Adfinis may in its absolute discretion unload goods at any premises that the Customer nominates for delivery. If the Customer is not in attendance at any nominated premises, Adfinis may leave any goods and Adfinis shall not be responsible for any claims, damages, costs, or expenses arising or resulting there from including any claim that the goods were not delivered.
- (i) Delivery will be organised and charged to the Customer by Adfinis on the following basis;
 - (1) Delivery times are estimates only;
 - (2) That the delivery site has suitable all weather access for safe entry, an appropriate turning circle and exit for conventional heavy highway articulated delivery vehicles and or road trains, traffic control and a suitable stock pile site;
 - (3) Where delivery was not included in estimate/quote provided to the customer;
 - (4) That the unloading of the delivery will be carried out promptly and efficiently and within 2 hours of delivery; and
 - (5) That the Customer will indemnify Adfinis for any additional delivery costs caused by any failure to comply with these terms and conditions
- (j) Upon the occurrence of an Insolvency Event the Customer irrevocably authorises any one of Adfinis and any of its lawful agents, at any reasonable time, to enter the Customer's premises or any premises occupied by the Customer or its agents and re-take any goods and then to re-sell those goods and retain the proceeds of the sale without prejudice to Adfinis's rights to claim the balance of all moneys due. The Customer indemnifies Adfinis in respect of any such entry. The provisions of this clause survive the termination of any security agreement that arises in respect of these Terms.

4. Enforcement

- (a) If an event of Default occurs or is continuing, Adfinis may immediately enforce these Terms. Without limitation, this includes:
 - (1) retaking possession of any goods not paid for by the Customer;
 - (2) suspending delivery of any goods on order and/or refusing to process any unfulfilled order.
 - (3) enforcing any security interest.
 - (4) requiring payment of any proceeds held by the Customer in a separate account or otherwise.
 - (5) appointing a receiver and manager of any of the Customer's real or personal property. The Customer agrees that any such receiver and manager has the powers conferred by the *Corporations Act*.
- (b) The powers exercisable by Adfinis are those given by these Terms including by statute, at law or in equity.
- (c) In the event that the Customer has not been paid for the sale of Adfinis's goods by any of its own customers, at Adfinis's option, Adfinis may in addition to the powers in s 120 of the PPSA, collect that account on giving, to that customer, notice in writing to that effect. Adfinis will be entitled to issue proceedings in the Customer's name against



its customer for recovery of that account for Adfinis's benefit. The Customer appoints any one of Adfinis as its attorney for that purpose.

- (e) The Customer will pay Adfinis for its expenses, including mercantile agent's fees and any fees and commission paid to mercantile agents engaged by Adfinis in relation to the actual or contemplated enforcement of the supply agreement including legal costs and expenses.

5. Negative pledge

The Customer agrees not to grant:

- (a) any security interest over any of its personal property except in the ordinary course of business; or
(b) a security interest in any account as original collateral under s 64 of the PPSA.

6. Force Majeure

Adfinis is not liable for any delay or the failure to perform any obligation in the Customer's favour arising as a result of any event beyond Adfinis's control.

7. General

- (a) The Customer will advise Adfinis in writing, if it changes its name, its structure or officers or management, its registered office, become a trustee of any trust or if the constitution of any partnership of which it is a member changes.
(b) If any provision of these Terms is unenforceable for any reason, it will not invalidate any other provision which will remain in full force and effect despite that invalidity.
(c) These Terms contain the entire agreement in respect of the supply of goods or services to the Customer.
(d) Adfinis may at any time set off any amount Adfinis owes the Customer against any amount payable by the Customer to Adfinis.

8. Governing law

These Terms are governed by the laws of Victoria. The Customer submits to the non-exclusive jurisdiction of any Victorian court and waives any rights to claim that courts there are an inconvenient forum.

9. Notices

- (a) Any notice required under these Terms may be given by any party, including any director or authorised person of that party.
(b) Any notice may be given at that party's registered address or other address stipulated in any application in connection with these Terms or as notified in writing for the purposes of this clause. Without limitation, this includes any electronic address notified to the other party.

10. Survival of indemnities

- (a) Each indemnity and payment obligation of the Customer under these Terms is a continuing obligation, separate and independent from all other obligations, and survives termination of these Terms.
(b) It is not necessary for Adfinis to incur expense or make a payment before enforcing a right of indemnity.

11. Exclusion of implied terms

To the extent permitted by law, Adfinis excludes all conditions, warranties, terms and consumer guarantees implied by law (including the *Australian Consumer Law*) arising in connection with a supply of goods or services. To the extent permitted by law, Adfinis limits its liability in its discretion to replacing the goods or supplying equivalent goods, or, in the case of services, by supplying the services again. The Customer will rely entirely on its own knowledge, skill and judgment in selecting goods which it orders from Adfinis from time to time.

12. Limitation of liability

To the extent permitted by law, Adfinis excludes any liability in contract, tort (including negligence) or otherwise, in connection with the supply of goods and services for any indirect damages or losses, or for any special, punitive or exemplary damages. This includes any liability for a claim that the goods are not fit for a particular purpose, except where the goods are consumer goods or services in which case Adfinis's liability is limited as under clause 16.

13. Consent

The Customer agrees that Adfinis may, subject to the Privacy Act, disclose commercial credit-related information of the Customer, or in the case of a Company, of the proprietors of the Customer, to credit reporting bodies for the purposes of assessing credit worthiness and providing the credit to the Customer. The Customer consents to the collection of commercial credit-related information about the Customer, from credit reporting bodies and other sources in accordance with Adfinis Privacy (Credit Information) Policy, located on its website.

The Customer also agrees that Adfinis may use personal information other than commercial-credit related information for direct marketing in accordance with Adfinis's Privacy Policy located on its website.

14. Electronic Communication

The Customer agrees that;

- (1) If a Customer's signature or execution is required, the requirement is taken to have been met by an electronic

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communication; and

- (2) If Adfinis is required to produce a document that is in the form of paper, the requirement is taken to have been met by an electronic communication.

15. Dictionary

Default means:

- (a) the Customer fails to pay when due any moneys owing to Adfinis under these Terms;
- (b) the Customer gives any third party a security interest in accounts as original collateral in respect of the proceeds of any goods supplied by Adfinis;
- (c) an Insolvency Event occurs or is continuing;
- (d) the Customer breaches any other provision of these Terms; or
- (e) upon any member of Adfinis's Credit Team, posting by ordinary pre paid post, emailing or faxing a letter advising that all money owing to Adfinis is, despite any agreement to the contrary, immediately due and owing.

electronic communication means a communication of information in the form of data, text or images by guided or unguided electromagnetic energy and includes a scanned image or any other form of digital storage.

goods mean any goods Adfinis supplies to the Customer whether on consignment or otherwise under these Terms. They include goods described on any invoice, quotation, work authorisation or any other forms Adfinis provides the Customer or any order the Customer gives Adfinis.

GST means any goods and services or similar tax, together with any related interest, penalties, fines or other charge. **Tax invoice**, **taxable supply** and **value** have the meaning given to them by the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantor means that person, or entity, who agrees to be liable for the Customer's debts whether on a principal debtor basis or who is otherwise a surety of the Customer.

Insolvency Event means:

- (a) An administrator is appointed to the Customer or any Guarantor.
- (b) Except for the purpose of a solvent reconstruction or amalgamation previously approved by Adfinis:
 - (1) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
 - (i) the Customer's winding up, dissolution or administration or of any Guarantor; or
 - (ii) the Customer or any Guarantor entering into an arrangement, compromise or composition with or assignment for the benefit of creditors or a class of them; or
 - (2) the Customer ceases, suspends or threatens to cease or suspend the conduct of all or a material part of its business or dispose of or threaten to dispose of a material part its assets.
- (c) the Customer or any Guarantor is, or under legislation is presumed or taken to be, insolvent or cease to carry on our business.
- (d) A receiver, receiver and manager, administrative receiver or similar officer is appointed in respect of the Customer or any Guarantor.
- (e) Any distress, attachment, execution or other legal process is levied, enforced or sued out on or against all or any material part of the Customer's assets or of any Guarantor and is not discharged or stayed within 14 business days.
- (f) A security interest becomes enforceable or is enforced.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Adfinis means Adfinis Pty Ltd ACN 100 162 203