

QMS NEW ZEALAND OUTDOOR: STANDARD TERMS & CONDITIONS

1. GENERAL

- 1.1 All Services to be provided by QMS NZ to the Client are on the basis set out in these Terms unless otherwise agreed in writing. In the event of any conflict between these Terms and any specific term in the Contract agreed to by QMS NZ and the Client, the specific term in the Contract will prevail. QMS NZ has the right to vary these Terms from time to time by giving written notice to the Client.
- 1.2 **Defined Terms:** For the purposes of these Terms:
 - 1.2.1 "Advertisement" means the content, design and layout of the advertisement placed on Advertising Material;
 - 1.2.2 "Advertising Material" means all materials used for displaying an Advertisement and which are to be installed on a Site on behalf of a Client, including skins and posters;
 - 1.2.3 "Contract" means the outdoor advertising contract between QMS NZ and the Client comprised of the Key Terms Schedule and these Standard Terms and Conditions;
 - 1.2.4 "Key Terms Schedule" means the detailed campaign breakdown for the Client's campaign;
 - 1.2.5 "MEMA" means the Major Events Management Act 2007 and all regulations and orders made under that Act from time to time;
 - 1.2.6 "Rental Period" means the period set out in the Key Terms Schedule for which particular Advertising Material is to be installed on a Site;
 - 1.2.7 "Services" means all services provided by QMS NZ to the Client in connection with the Contract;
 - 1.2.8 "Site" means the location(s) which QMS NZ makes available for Advertising Material pursuant to the Contract as specified in the Key Terms Schedule, including a billboard site, bus shelter, light box, train or bus, and may include any structures connected with such location as agreed;
 - 1.2.9 "QMS NZ" means QMS NZ Outdoor Limited; and
 - 1.2.10 Other capitalised words and phrases have the meaning given to them in the Contract.

2. PROVISION OF THE SERVICES

- 2.1 Subject to the other provisions of these Terms, QMS NZ will display the Advertising Material on the Site for the Rental Period. QMS NZ will use reasonable efforts to ensure that physical Advertising Material is installed on the Site within the later of (a) the start of the Rental Period; and (b) in the case of physical Advertising Material, 5 working days, and in the case of digital file formats for display on digital Sites, 48 hours after delivery or production of such Advertising Material by the Client pursuant to clause 3.1.2 or 3.2. QMS NZ will provide to the Client either: (i) proof of posting (for installation of physical Advertising Material); or (ii) proof of play (for the installation of digital file formats for display on digital Sites), to the Client within 5 days after the date that such installation occurs.
- 2.2 QMS NZ will not be liable for any delay or non-performance in providing any Services, if such delay or non-performance is attributable (directly or indirectly) to circumstances beyond its reasonable control (including without limitation from weather-related delays or interruptions to the electrical power supply to any Site or strikes or lockouts) and subject to these Terms the applicable Rental Fee will not be reduced for any such period.
- 2.3 If any Site is or becomes unavailable for the display of Advertising Material for any reason whatsoever (including where QMS NZ's rights to display Advertising Material on the Site ends for any reason and/or where the Site or its surroundings are required for redevelopment by QMS NZ or any other person), QMS NZ may notify the Client in writing of an alternative Site on which the related Advertising Material will be displayed, provided that the Client may terminate the Contract in respect of all Services relating to the display of such Advertising Material for the relevant Site within 7 days of the date of QMS NZ's notice (which is the Client's sole remedy) subject to clause 2.4.
- 2.4 QMS NZ may at any time in a bus or train booking at its own discretion substitute any bus or train with similar layout as necessary to fulfill booking obligations, any reasonable costs associated with production or installation of material shall be borne by QMS NZ.
- 2.5 QMS NZ may at any time apply to Advertising Material on any Site which is a Bus any identification plates (including itself) and any other items required by any lawful authority or the owner of the Site.
- 2.6 QMS NZ may subcontract the provision of any Services, including the installation and removal of Advertising Material on a Site, provided that QMS NZ will remain fully responsible for such subcontracted Services.
- 2.7 Following expiry of the Rental Period for particular Advertising Material, QMS NZ may cause, or the Client may request that, such Advertising Material be removed from the relevant Site(s).

Upon the request of the Client pursuant to this clause, QMS NZ will use reasonable efforts to remove such Advertising Material within 10 days of such request being made.

- 2.8 On or prior to the expiry of the Rental Period for particular Advertising Material the Client will notify QMS NZ in writing whether it wishes QMS NZ to dispose of, store or send to a third party such Advertising Material, and QMS NZ may charge a reasonable fee to the Client together with all expenses reasonably incurred for any such option(s) selected. If the Client fails to give such notice to QMS NZ on or prior to the expiry of such Rental Period, QMS NZ will be permitted at its option to dispose of all such Advertising Material and recover from the Client the reasonable costs in doing so.
3. **ADVERTISEMENTS AND ADVERTISING MATERIAL**
 - 3.1. The Client is fully responsible for all costs associated with:
 - 3.1.1. preparing and producing all Advertisements and Advertising Material;
 - 3.1.2. subject to clause 3.2, delivering all Advertising Material to QMS NZ (or any person specified by QMS NZ from time to time), which will be made in the case of physical Advertising Material no later than 10 days and in the case of digital file formats for display on digital Sites, no later than 48 hours prior to the commencement of the relevant Rental Period for such Advertising Material;
 - 3.1.3. QMS NZ receiving or forwarding any Advertising Material (whether before or after the Rental Period for such Advertising Material); and
 - 3.1.4. removal of material if requested or required at any time.
 - 3.2. Where the Key Terms Schedule specifies that QMS NZ will produce any Advertising Material on behalf of the Client, the Client will specify the format and details of the Advertisement relating to such Advertising Material and provide all information necessary for such production no later than 10 working days prior to the start of the Rental Period for such Advertising Material. QMS NZ is not responsible and is not liable for the accuracy of the colour of Advertising Material produced by QMS NZ on behalf of the Client if the Client does not supply a colour print of the required Advertising Material and notifies the applicable PMS colours.
 - 3.3. The Client warrants that all Advertisements will comply with all applicable statutes, by-laws, regulations, industry standards and codes of practice applicable to the Advertisements (including without limitation all standards issued from time to time by the Advertising Standards Authority or required by the MEMA) and not breach any other person's rights including intellectual property rights, and indemnifies QMS NZ from any loss, damage or injury suffered by QMS NZ as a result of any breach of the Client's obligations, undertakings or warranties under this Agreement by the Client or its employees, agents and contractors.
 - 3.4. In respect of any Advertising Material containing any Advertisement which gives rise to a breach of the warranty in clause 3.3 or which QMS NZ considers to be offensive (acting reasonably), QMS NZ may remove such Advertising Material from a Site, refrain from producing any such Advertising Material pursuant to clause 3.2, or determine that such Advertising Material not be installed on a Site. Without limiting clause 3.3, the Client will pay all costs incurred by QMS NZ as a result of such removal. Any action taken by QMS NZ in accordance with this clause 3.4 does not relieve or limit the Client's obligation to pay QMS NZ Rental Fees.
 - 3.5. QMS NZ will not be liable in any manner whatsoever for damage to or loss of any Advertising Material whether through installation, production or otherwise (and including as a result of graffiti or theft), except through the wilful default of QMS NZ. As soon as practicable following QMS NZ becoming aware of any such damage or loss, it will notify the Client and will (at the Client's expense) provide reasonable assistance to remedy such damage or loss.
 - 3.6. In order to comply with the MEMA, QMS NZ may remove any Advertising Material from a Site which is or may be located in a "clean zone" or "clean transport route" during an applicable "clean period" (as each of those terms is defined in the MEMA), without payment of compensation to the Client. The Client shall not be required to pay Rental Fees in respect of the period during which the applicable Advertising Material has been removed. The Client will pay all costs incurred by QMS NZ as a result of such removal.

4. FEES, COSTS AND PAYMENT

- 4.1. The Production Fee, Rental Fee and Installation Fee per Site for the Services is as set out in the Key Terms Schedule. Unless expressly stated in writing, any stated fee for any Services is exclusive of GST, and all GST will be charged to and borne by the Client and payable at the same time as the relevant fee. Such fees will be invoiced to the Client by QMS NZ on the following basis:
 - 4.1.1. Production Fees in the month prior to the applicable Rental Period commencing;

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- 4.1.2. Installation Fees in the month in which the applicable Rental Period commences; and
- 4.1.3. Rental Fees on an equal monthly basis during the applicable Rental Period.
- 4.2. Where the Key Terms Schedule specifies that commission will be payable by QMS NZ to the Client, QMS NZ will set off the applicable commission against the Rental Fees payable by the Client in respect of which the Commission arises, which set-off will be recorded in the relevant invoice(s) issued by QMS NZ for the Rental Fees.
- 4.3. The Client must pay all amounts due to QMS NZ under the Contract without deduction, set-off or counterclaim on or before the date which is 30 days after the date of QMS NZ' invoice.
- 4.4. Without prejudice to any other rights or remedies that QMS NZ may have, in the event of late payment or non-payment by the Client QMS NZ may without any obligation to first notify the Client:
- 4.4.1. suspend its provision of the Services without any liability whatsoever in respect of such suspension; and
- 4.4.2. recover from the Client all costs incurred by QMS NZ arising from such late payment or non-payment or any other breach of the Contract (including legal costs and costs of recovery of the amount unpaid) and QMS NZ may charge interest to the Client at a rate 3% per annum above the base overdraft rate from time to time charged by BNZ Bank, on any moneys outstanding, (both before and after judgment) from the due date until the date of payment. Interest will be payable on demand.
- 4.5. Without prejudice to any other rights that QMS NZ may have and notwithstanding any other provision of the Contract, QMS NZ may set off any debts or liabilities of the Client to QMS NZ against any monies payable by QMS NZ to the Client.
- 4.6. Individual product pricing contained within quotes is indicative only. QMS NZ reserves the right to allocate the value of the Contract across individual product lines at its sole discretion.
- 5. WARRANTIES, LIABILITY AND INDEMNITY**
- 5.1. Except for any written warranties given by QMS NZ to the Client, all warranties, undertakings and representations (including those expressed or implied by law) in respect of Services provided are excluded to the maximum extent permitted by law. QMS NZ' total liability in relation to any Services is limited at QMS NZ' option to re-performing the Services or refunding the fees for the Services paid by the Client.
- 5.2. Notwithstanding any other provision in these Terms, QMS NZ will not be liable, whether in contract, tort or otherwise, for any loss of profit or revenue, loss of use or opportunity or for any special, indirect, incidental or consequential loss or damage of any kind whatsoever suffered by the Client, even if QMS NZ has been advised of such loss or damage.
- 5.3. Subject to clauses 5.1 and 5.2, the liability of QMS NZ will in no circumstances whatsoever, whether in contract, tort or otherwise, in respect of each claim or series of related claims exceed the total fee paid by the Client under the Contract in respect of the relevant Site.
- 5.4. QMS NZ and the Client agree that any Services supplied pursuant to the Contract are for the purposes of a business and hence the statutory guarantees of the Consumer Guarantees Act 1993 do not apply.
- 5.5. QMS NZ warrants that any notified lighting faults will be rectified within three business days of receipt of notification.
- 6. RISK AND TITLE**
- 6.1. Risk in and title to all Advertisements and Advertising Material will remain with the Client at all times. The Client is responsible for insurance of all Advertisements and Advertising Material at all times.
- 6.2. Notwithstanding anything in these Terms, no rights whatsoever are conferred on the Client in any Site under this Contract.
- 7. TERM AND TERMINATION**
- 7.1. The Contract will continue for the term specified in the Key Terms Schedule unless terminated earlier pursuant to these Terms. Where the Key Terms Schedule specifies that a Right of Renewal is applicable, the Client may renew the Contract by giving notice to QMS NZ not less than 3 months prior to the expiry of the term specified, subject to such renewal being on terms to be agreed by the parties prior to such renewal taking effect.
- 7.2. QMS NZ may by notice in writing to the Client terminate the Contract immediately if the Client:
- 7.2.1. commits any act of insolvency (including without limitation entering into any arrangement with its creditors, doing any act which would render it liable to be liquidated, if liquidation or voluntary administration is commenced, or if a receiver is appointed in respect of all or any of its assets); or
- 7.2.2. fails to comply with an obligation in the Contract and has not remedied such non-compliance within 7 days after
- QMS NZ gives the Client written notice requiring such non-compliance to be remedied.
- 7.3. The Client may terminate the Contract in respect of all or any Advertising Material by giving **THREE** full calendar months' notice in writing to QMS NZ, or to the extent permitted, under clause 2.3.
- 7.4. Upon termination, QMS NZ may cause all Advertising Material to be removed from the Sites, provided that if the Contract is terminated pursuant to clause 7.2 QMS NZ may require the Client to pay all such removal costs.
- 7.5. Termination of the Contract will not affect the rights or liabilities which have accrued prior to termination, nor any provision of the Terms which are intended to survive termination (including without limitation clause 5).
- 8. EXCLUSIONS**
- 8.1. QMS NZ has no obligation to perform any activity specified by the client, which is contrary to any law.
- 8.2. All guerrilla activity (advertising at any Site for which a proper permit is not held) is executed on an all care no responsibility basis.
- 8.3. At any time before the date for performance by QMS NZ of any Services, QMS NZ may cancel performance or perform the Services in a different manner if provision of the Services in the manner specified in the Contract would conflict with and law (including the regulations applicable to a private venue) or if QMS NZ for any reason considers it not be in the best interests of QMS NZ to provide those Services.
- 9. CONFIDENTIALITY**
- 9.1. Each party undertakes to the other party that it will treat as confidential the terms contained in the Key Terms Schedule together with all information it obtains about the other party concerning the business, finances, revenues / prices, technology and affairs of the other party generally and each party's respective obligations hereunder or otherwise in connection with the Key Terms Schedule regardless of its nature ("Confidential Information"), and will not disclose such Confidential Information to any person except where required so by law and will not use such Confidential Information other than for the purposes of this Contract subject always to any prior specific authorisation in writing by the party from whom such Confidential Information originated to such disclosure or use.
- 9.2. The provisions of this Clause 9 shall expressly survive any termination, completion or assignment of the Contract.
- 10. MISCELLANEOUS**
- 10.1. **No assignment:** The Client may not assign all or any of its rights or obligations under the Contract without the prior written consent of QMS NZ (which may be given, withheld or given subject to conditions all in QMS NZ's sole discretion).
- 10.2. **Information:** The Client authorises QMS NZ to collect and hold personal information from any source QMS NZ considers appropriate to be used for determining creditworthiness, for debt collection purposes or for any other purpose related to the Contract. The Client further authorises QMS NZ to disclose personal information held by QMS NZ for the purposes set out above to any other parties. The Client understands that the Client has a right of access and may request correction of personal information held by QMS NZ about the Client.
- 10.3. **No waiver:** A waiver of any rights, powers, exemptions and remedies of QMS NZ will not be effective unless given in writing, and then it will be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by QMS NZ in exercising any power or right will not operate as a waiver of that power or right.
- 10.4. **Entire agreement:** The Contract (including these Terms) constitutes the entire agreement between the Client and QMS NZ with respect to the provision of the Services by QMS NZ, and supersedes all previous agreements, arrangements or understandings between the Client and QMS NZ regarding the provision of the Services by QMS NZ.
- 10.5. **Severability:** If any provision of these Terms is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected.
- 10.6. **Disputes:** If a dispute arises, the parties will try to settle the dispute by mediation before resorting to litigation or arbitration. Any party may initiate mediation by giving written notice to the other. If the parties cannot agree on a mediator within seven days after the mediation has been initiated, then the mediator will be appointed by the chairperson of the LEADR (New Zealand Chapter).
- 10.7. **Governing law:** The Contract will be governed by the laws of New Zealand, and QMS NZ and the Client agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.