



QMS MEDIA PTY LTD

TERMS AND CONDITIONS OF A BOOKING
FOR ADVERTISING SERVICES

VERSION 1

TERMS AND CONDITIONS OF A BOOKING FOR ADVERTISING SERVICES

- 1 These terms and conditions apply to the provision of services by Q Media Pty Limited (ACN 164 971 608) or its related body corporate (including any officer, director, agent, employee, adviser representative or contractor of these entities) (**QMS**) to the party referred to as Agency or Direct Booking Client in connection with and as described in the related booking confirmation form (**Order**).
- 2 If the Order is made by an Agency on behalf of the Agency's client the Agency agrees to these terms and conditions as principal, and as agent for their client. The Agency also warrants it is duly authorised to act on behalf of their client for the purposes of the Order.
- 3 This Order shall not be binding upon QMS until it has been accepted.
- 4 All advertising space booked is subject to availability at the time of QMS accepting the Order. QMS bears no liability to: the Agency, the Agency's client or a Direct Booking Client or any third party for damage, loss or other liability resulting from the passage of time between signing the Order.
- 5 The Order is for an agreed share of time (**SOT**) over the booking period only (digital) and for space only (non-digital). The Direct Booking Client / Agency will provide advertising material for display (**Displays**) in the format and material and of a size and specification suitable for exhibition on the structures available at the sites as specified in the Order or any attached site list to the Order (**Sites**).
- 6 SOT increments are 5% of Display Time for digital advertising Sites while the billboard is in operation. The Agency / Direct Booking Client must book a minimum of one 5% increment.
Display Time means in respect of an advertising Site, the period of time for which it is usually available to the public and is permitted to display advertising. This may or may not be for a full 24-hour period depending upon the individual advertising Site's permit conditions and/or location.
- 7 The term of the Order shall be from the Start Date until the End Date (as agreed in the Order).
- 8 The Agency / Direct Booking Client must arrange for Displays to be made available to QMS in the manner and within the timeframe specified by QMS at least ten (10) working days (for non-digital) and 5 working days (for digital) prior to the earlier of the Start Date or any other date specified in the Order (the **Deadline**). The Agency / Direct Booking Client will, where applicable, provide sufficient spares of the non-digital Displays to cover any replacement required between the Start Date and End Date. QMS shall not be liable for any loss caused by delay in commencement of the campaign caused by a delay in supplying Displays or by any other cause beyond the reasonable control of QMS.
- 9 With respect to static Displays, additional freight charges will apply if the Displays is not supplied by the Deadline.
- 10 QMS may raise an invoice each month in relation to an Order after the month has concluded. Unless otherwise agreed, for Direct Booking Clients payment of invoices issued by QMS are due within 30 days of the date of the invoice in clear funds by electronic transfer to a bank account nominated by QMS. With respect to Agency bookings, payment must be made within 45 days of the end of the month in which an invoice is issued by QMS.
- 11 If the Direct Booking Client or Agency fails to make payment in accordance with clause 10, QMS may:
 - a. as a liquidated debt, recover from the Direct Booking Client or Agency:
 - i. the amount stated as payable to Q Media in the Order as a debt; and
 - ii. all costs, fees and disbursements in relation to any action taken by or on behalf of QMS to recover monies from the Direct Booking Client or Agency; and
 - b. cease or refuse to provide any further services to the Direct Booking Client, Agency or their related parties, including cancellation of the production or exhibition of any Display which has not been produced or exhibited at that time.
- 12 Any variations to the Order need to be formally requested in writing to QMS at least 20 working days prior to the Start Date. Any changes must be agreed with QMS and will be subject to availability and any change in QMS' then applicable rates. If the Direct Booking Client / Agency seeks a variation other than in accordance with this clause, QMS may refuse such request at its absolute discretion.
- 13 The Direct Booking Client / Agency may cancel the Order by written notice to QMS at least 3 calendar months prior to the Start Date. If the Direct Booking Client / Agency seeks to cancel the Order less than 3 calendar months prior to the Start Date, QMS may require the Direct Booking Client / Agency to pay all or part of the Order and QMS will not be required to make good or provide the Direct Booking Client / Agency with any credit, rebate or refund in relation to the Order.
- 14 QMS shall make every reasonable effort to exhibit the Displays at the Sites but if by direction of any property owner, council, statutory authority or for any other reason beyond QMS' control it shall be impossible to do so then QMS may perform the Order by exhibiting the Displays on the most suitable alternative sites available and by giving notice of such alternative sites to the Direct Booking Client / Agency within 7 days after the change occurs. Unavailability of alternative sites will not entitle either party to terminate the Order unless such unavailability extends to all of the Displays at the Sites. Where unavailability extends to some Sites only, the Direct Booking Client / Agency shall be entitled to a proportionate reduction of monthly rates during any period of unavailability extending beyond 1 month. A Display at a non-digital Site may be installed at the Site within 3 days before or after the Start Date or removed from the Site within 3 days before or after the End Date.

- 15 In the case of digital Sites, the SOT bought is to be delivered across the booking period stated in the Order.
- 16 In the case of any digital Sites or Sites where Displays are illuminated, QMS will not be responsible for any interruption to the power supply or internet connection due to circumstances beyond its control and no abatement of monthly rates shall apply. Notwithstanding this, QMS may elect at its absolute discretion to abate a proportionate amount where:
 - a. digital Sites fail to exhibit Displays for more than 5% of the time booked on digital Sites across the period of the Order; or
 - b. non-digital Sites are not illuminated for more than 10% of the time booked on non-digital Sites across the period of the Order.
- 17 Where a Display on a non-digital Site is materially defaced, QMS will remove the defacing material within 5 working days.
- 18 All non-digital Displays may be stored for a period of 3 months and then destroyed by QMS unless agreed otherwise with the Direct Booking Client / Agency prior to the Start Date.
- 19 QMS shall have the right to change the physical location of any Site at its discretion. The Direct Booking Client / Agency shall be informed of such relocation in writing not less than 7 days prior to the relocation being affected. Should the Direct Booking Client / Agency object to the new location, this must be in writing and received by QMS prior to the relocation taking place, thereupon an alternative site/s (if available) will be submitted for the approval of the Direct Booking Client / Agency, which approval shall not be unreasonably withheld.
- 20 QMS will not be required to exhibit a Display unless the content of the Display (or any changes to the content) is first approved by each of QMS and the Direct Booking Client / Agency.
- 21 The Direct Booking Client / Agency is responsible for the content of the Displays and warrants to QMS that content provided to QMS:
 - a. is not (or could reasonably be expected to be) defamatory, false, misleading or deceptive;
 - b. does not contain anything which may give rise to a cause of action any text or images included in the content will not include any content that is illegal, obscene, violent or defamatory;
 - c. does not infringe copyright, trademark, obligations of confidentiality or other legal rights of any person;
 - d. complies with all laws, statutes, regulations, codes of practice, codes of ethics, policies and any standards applicable to the display of out of home advertising (including any requirements of any authority having power to regulate the exhibition of such Displays) including but not limited to advertising of content governed by the Therapeutic Goods Act 1989 (TGA), advertising of gambling and advertising of discretionary food and drink products; and
- e. without limiting the above, does not infringe the Competition and Consumer Act 2010 (Cth) or similar laws, regulations and codes operating in Australia.
- 22 The Direct Booking Client / Agency grants to QMS the right to use any mark, whether unregistered or registered under the Trade Marks Act 1995 (Cth) which forms part of a Display to the extent necessary to exhibit the Display.
- 23 QMS shall have the right, at any time, to cease, take down or refuse to exhibit any Display which, in the reasonable opinion of QMS, may not comply with these terms and conditions or which QMS otherwise reasonably considers to be inappropriate, undesirable or unsuitable for exhibition.
- 24 By submitting content to QMS for, or approving the content of, a Display, the Direct Booking Client / Agency represents and warrants that the content of the Displays does not breach copyright, and the content of the Display complies with clause 21 and that the Direct Booking Client / Agency has the right and authority to grant the right in clause 22.
- 25 The Direct Booking Client / Agency shall unconditionally and irrevocably indemnify QMS from and in relation to any and all liabilities, claims, proceedings, losses, demands, damages, costs (including legal costs on a full indemnity basis), expenses, outgoings however arising or incurred (or agreed to be paid by way of settlement or compromise) whether directly or indirectly in connection with any breach of these terms and conditions by the Direct Booking Client / Agency, or any matter or thing relating to or in connection with any Display or the provision of the services or prosecutions made on or against QMS in respect of the contents of the Displays.
- 26 The terms 'static' and 'digital' used in these terms and conditions and the Order have the meaning given to them in the advertising industry by those names respectively.
- 27 The Direct Booking Client / Agency will not, and will ensure that their respective related parties do not, use, apply or otherwise deal with any confidential information of QMS without the prior written consent of QMS.
- 28 Personal information collected by QMS is used, stored and disclosed in accordance with the QMS privacy policy available at www.qmsmedia.com. The Direct Booking Client and Agency must comply with all applicable privacy laws, including without limitation that all consents and disclosures have been obtained and made in relation to any personal information collected, used, stored or disclosed by the Direct Booking Client or Agency.
- 29 QMS may assign its rights and obligations under the Order to another company upon giving written notice to the Direct Booking Client / Agency.
- 30 The Order shall not be assignable by the Direct Booking Client / Agency without prior written consent of QMS.
- 31 The Order sets out the whole agreement between QMS and the Direct Booking Client / Agency. No variation to the Order shall be valid unless it is in writing signed by a duly

authorised officer of QMS. All other express or implied terms, including the Agency or Direct Booking Client's terms, are excluded to the extent permitted by law.

- 32 The Direct Booking Client / Agency acknowledges and agrees that QMS makes no representations or warranties as to the quality, fitness for purpose, results, performance, effectiveness, profitability, usefulness, reliability, timeliness, or accuracy in relation to the provision of services by QMS under the Order.
- 33 Subject to clause 35, QMS shall not be liable for any loss of revenue, profits or indirect or consequential loss or damage of any kind resulting from its exhibition or non-exhibition of a Display (including but not limited to loss of reputation, loss of business or loss of opportunity).
- 34 Subject to clause 35, QMS' liability for any loss or damage arising out of the exhibition or non-exhibition of a Display, will be limited at QMS' absolute discretion to either:
- a. re-exhibition of the Display on similar terms to the original booking; or
 - b. a payment which will not exceed the value of the Order to which the Display relates.
- 35 The Direct Booking Client / Agency acknowledges and agrees that QMS will not be liable for any loss of revenue, profits or indirect or consequential loss or damage of any kind resulting from the non-exhibition or partial exhibition of a Display due to a reason outside the reasonable control of QMS.
- 36 Where the law prohibits the exclusion of liability for an implied term, the term is included in these terms and conditions, however to the extent permitted by law, QMS' liability for any individual breach of that term will be limited to the supply of the services again or paying the cost of doing so.
- 37 The supply provided by the Order will be a taxable supply in respect of which GST is payable, as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and an additional 10% for GST will be included in QMS tax invoices.
- 38 These terms and conditions are governed by the laws in force in Victoria and each party submits to the non-exclusive jurisdiction of the courts of Victoria.
- 39 Any provision of these terms and conditions which is void, unenforceable or inconsistent with any law, with the effect that it is void and of no effect, is severed to the extent necessary to avoid that result.
- 40 QMS' failure to exercise (or delay in exercising) a right or remedy under these terms and conditions will not constitute a waiver of the right or remedy.