

## **Private Media General Terms for SmartCompany advertising and content services**

Private Media Operations Pty Ltd (ABN 98 101 558 847), through its trading businesses SmartCompany, the Mandarin, Crikey, StartupSmart (we, us, our or Private Media), provides certain content marketing and advertising products and services through its websites (including newsletters and subscriptions) (Services) and these terms and conditions (Terms) set out the terms and conditions on which we agree to provide those services to content partners (Partner, you, your) and advertisers (Advertiser, you, your) from time to time.

### **1. Your Order**

- 1.1. By submitting your signed Order you confirm your acceptance of these Terms. We will review and confirm receipt of your signed Order at which time a legally binding agreement will be formed between you and Private Media, that is comprised of:
  - 1.1.1. these Terms;
  - 1.1.2. the Order; and
  - 1.1.3. the Creative Specifications published on our website from time to time here <https://privatemedia-uploads.s3.amazonaws.com/uploads/2017/06/Private-Media-Creative-Specs-2017-JUNE.pdf>.
- 1.2. To avoid doubt, no legally binding agreement is formed between you and Private Media until we confirm receipt of the signed Order.
- 1.3. You acknowledge and agree that we provide Services to you on a non-exclusive basis.

### **2. Your Content and PM Content**

- 2.1. Any content or advertising material submitted to us by you is referred to in these Terms as Your Content and if you are an Advertiser, Your Content will include your advertisement(s) (Advertisement).
- 2.2. Any content or material or work in progress of any kind developed by us, including any kind of artwork, text, design, layout, digital files, surveys, articles, recordings,, surveys, ebooks, webinars, profiles or other material created by us or on our behalf, in providing the Services is through any part of our referred to in these Terms as PM Content

### **3. Intellectual property**

- 3.1. In these Terms, Intellectual Property Rights means all intellectual property rights, including the following rights:
  - 3.1.1. patents, copyright (including future copyright), rights in circuit layouts, designs, trade and service marks (including goodwill in those marks), domain names and trade names and any right to have confidential information kept confidential;
  - 3.1.2. any application or right to apply for registration of any of the rights referred to in paragraph 3.1.1; and
  - 3.1.3. all rights of a similar nature to any of the rights in paragraphs 3.1.1 and 3.1.4.
  - 3.1.4. that may subsist anywhere in the world (including Australia), whether or not such rights are registered or capable of being registered.
- 3.2. Except where otherwise agreed, Private Media owns all Intellectual Property Rights in the PM Content.
- 3.3. You (or your third party licensors) own all Intellectual Property Rights in Your Content.
- 3.4. You grant Private Media a royalty free, non-exclusive, perpetual, worldwide, irrevocable right and licence (including the right to sub-licence) to use reproduce, publish, modify, adapt and communicate all or part of Your Content (including an extract or image of all or part of Your Content) that you supply on any medium,

including Private Media websites, associated websites and third party websites (such as social media sites), for the purpose of providing the Services and for its own internal business purposes.

- 3.5. Private Media grants to you a royalty-free, non-exclusive licence to use the finalised PM Content created on your behalf and subject to the provisions set out in your Order on your website or through your social media channels

#### **4. Term**

Your agreement with Private Media commences when your Order is formed in accordance with clause 1.3 and will terminate on the earlier to occur of:

- 4.1. the date you cancel your Order in accordance with clause 15;
- 4.2. the date either party terminates this agreement in accordance with clause 16; and
- 4.3. the end of the Campaign Period.

#### **5. Costs and Payment Terms**

- 5.1. In consideration for providing the Services you will pay the charges specified in the Order (Service Charges).
- 5.2. Unless otherwise agreed in the Order, if you are an Advertiser, the Service Charges for advertisements will be as per our standard rates as notified to you from time to time.
- 5.3. You must pay for the Services (plus GST) in accordance with the terms of the Order. If no date for payment is specified, you must pay within 30 days of the date of invoicing by Private Media. Interest may be charged on amounts not paid by the due date at 5% per annum. We may also charge you any costs we incur relating to payment collection.
- 5.4. It is your responsibility to facilitate provision of Your Content and other materials, interviews, personnel and media to ensure that booked activity runs within the Campaign Period specified in the Order. If it is not supplied at least 72 hours prior to commencement of a booked Service, this may result in the Service being delayed or cancelled (at our discretion).
- 5.5. You acknowledge and agree that the Service Charges are based on the total value of Services (Committed Service Value). You will be responsible for the full value of the Service Charges for the Campaign Period regardless of whether you use the total Committed Service Value. To avoid doubt, any unused portion of the Committed Service Value cannot be carried over to a subsequent campaign period.
- 5.6. To the extent a delay in the delivery of the Services is caused by Private Media, it will provide you with a written proposal to make good on the delayed activity which will include a revised delivery date for the Services and confirmation of revised Service Charges and payment date

#### **6. Goods and Services Tax**

- 6.1. Words or expressions used in this section 11 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in these clauses.
- 6.2. If we make a supply under or in connection with these Terms on which GST is imposed, in whole or in part (not being a supply the consideration for which is specifically described as being GST inclusive) then:
- 6.3. the consideration payable or to be provided for that supply under these Terms but for the application of this section (GST exclusive consideration) is increased by, and you must also pay to us, an amount equal to the GST payable by you on that supply (GST Amount); and
- 6.4. the GST Amount must be paid to us by you without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided, subject to us giving you a tax invoice in respect of that taxable supply.

- 6.5. If a payment to a party under these Terms is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

## **7. Your Content and placement**

- 7.1. Acting reasonably, we may amend Your Content without notice if we believe that its publication by us would be offensive, false, misleading, indecent, harmful (regardless of its truth), dishonest, defamatory, or in breach of any law, any preexisting agreement we have with a third party, or a third party's rights or is otherwise prejudicial to our interests. If we do so, this will not reduce the Service Charges.
- 7.2. We may vary the placement or positioning of Your Content and change its format in our sole discretion. We will endeavour to notify you, but we will not be liable to you for any costs, expenses, loss or damage incurred or suffered by you arising from our failure to publish in accordance with your request and/or directions.
- 7.3. We may, at our sole discretion, insert the word "Advertisement", "Sponsored", "Partner Content" or similar identification at the beginning of any of Your Content or PM Content when required to do so by law or if we consider it appropriate.
- 7.4. Without limiting any of our rights under this clause 6, any of Your Content or PM Content that we publish on our websites will remain available on our websites for at least the Campaign Period and may remain on our websites for up to 12 months beyond the end of the Campaign Period if we agree.

## **8. Restrictions on the use of our sites**

- 8.1. You must not (nor permit a third party to):
- 8.1.1. undertake any action that will impose a burden or make excessive traffic demands on our infrastructure that we deem, acting reasonably, to be unreasonable or disproportionate website usage;
  - 8.1.2. directly or indirectly, introduce or permit the introduction of, any virus, worm, Trojan, malware or other malicious code into any of our websites, or in any other manner whatsoever corrupt, degrade or disrupt any of our websites;;
  - 8.1.3. without our prior written agreement, provide retargeting URL's on our websites for the purpose of retargeting advertising across multiple publishers or for cookie pooling;
  - 8.1.4. remove or tamper with any copyright notices on our websites;
  - 8.1.5. disassemble, decompile, reverse engineer, or create derivative works or functionally equivalent software from any of our websites (except to the extent permitted by Division 4A of Part III of the Copyright Act 1968 (Cth)); or
  - 8.1.6. copy or download, in a systematic manner, any text, graphics, information, designs, data or other content from our websites, or communicate or otherwise distribute such systematically obtained text, graphics, information, designs, data or other content.
- 8.2. You must not (nor permit a third party to) upload or submit any data or information to or via our websites nor otherwise use our websites:
- 8.2.1. to engage in any activity which breaches any law, infringes a third party's rights, or in a manner which interferes with the rights of any other person;
  - 8.2.2. to infringe our Intellectual Property Rights or those of any third party;
  - 8.2.3. in any way that is defamatory, obscene, misleading or deceptive or otherwise illegal; or
  - 8.2.4. in any way that constitutes misuse, or resale or other commercial use, of this website (or any content and/or services provided or made available through this website).

- 8.3. You acknowledge that if you do not comply with clauses 8.1 or 8.2, you will be in breach of these Terms.
- 8.4. Without limiting any other rights we may have against you, we may take whatever action we deem necessary to prevent unauthorised access to or use of the relevant Private Media website, including instituting technological barriers or reporting your conduct to any person or entity.

## **9. Your Warranties and Indemnities**

- 9.1. You represent and warrant that all of Your Content:
  - 9.1.1. complies with all applicable laws (which includes any legislation, regulation, the common law and equity as applicable from time to time and any applicable industry codes of conduct rules) and that its use by us will not give rise to any claim of any kind or any other liability against us, our partners, our directors, employees or agents;
  - 9.1.2. does not contain any viruses and is not otherwise contaminated or harmful; and
  - 9.1.3. is complete, accurate and truthful.
- 9.2. Without limiting clause 9.1, you warrant that:
  - 9.2.1. you have all necessary rights to grant the licence to us under clause 3.4;
  - 9.2.2. our use of Your Content will not infringe the rights of any third party;
  - 9.2.3. Your Content does not breach any applicable law (including but not limited to the Competition and Consumer Act 2010 (Cth) (including the Australian Consumer Law in Schedule 2), the Fair Trading Acts of relevant States and Territories of Australia or equivalent or other sale of goods legislation; any obscenity law, or contempt of any court, tribunal or royal commission, State or Commonwealth anti-discrimination legislation and the Privacy Act 1988 (Cth) (including the Australian Privacy Principles), all rules, recommendations and guidelines of the Advertising Standards Bureau and the Australian Competition and Consumer Commission and is not defamatory of anyone.
- 9.3. You indemnify us and our partners, directors, employees and agents against all actions, claims, charges and costs of any kind (including legal costs on a full indemnity basis), or other liability (including all judgements, orders, costs, expenses, losses, fines, damages or other compensation, and amounts paid on advice of legal advisers to compromise or settle a claim) that we, our partners, our directors, employees or agents may sustain or incur, directly or indirectly, as a result of or in connection with:
  - 9.3.1. Your Content;
  - 9.3.2. your breach of these Terms;
  - 9.3.3. any unlawful, negligent or fraudulent act or omission or wilful misconduct by you in connection with these Terms; and
  - 9.3.4. a claim that the use or possession of Your Content infringes the Intellectual Property Rights or other rights of any person.

## **10. Disclaimer and Limitation of Liability**

- 10.1. Subject to clause 10.4, you acknowledge and agree that we make no representation, warranty or guarantee:
  - 10.1.1. in relation to the availability, suitability or continuity of our Services nor the number of visitors to our websites or associated sites, or the number of impressions at any website.
  - 10.1.2. that the Services will be error-free, or that our websites, associated sites or any files downloaded from those sites will be free from computer viruses or any other defect or error which may affect your software or systems. You should protect your software and systems by installing and implementing your own security and system checks.

- 10.2. Except for any warranty made expressly in writing, you acknowledge that you have not relied on any advice given or representation made by us or on our behalf in connection with the Services.
- 10.3. Subject to clause 10.4, we will not be liable if our websites (or any content submitted to, provided on or made available through our websites) is incomplete, corrupted, inaccurate, outdated or incorrect, or if this website (or any services provided or made available through it) is unavailable for any reason, including directly or indirectly as a result of:
  - 10.3.1. telecommunications unavailability, interruption, delay, bottleneck, failure or fault;
  - 10.3.2. negligent, malicious or wilful acts or omissions of third parties (including our third party service providers);
  - 10.3.3. maintenance or repairs carried out by us or any third party service provider in respect of any of the systems used in connection with the provision of this website;
  - 10.3.4. any events beyond our control; or
  - 10.3.5. services provided by third parties ceasing or becoming unavailable.
- 10.4. To the extent permitted by law, any conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied or conferred by statute, custom or the general law that impose any liability or obligation on us are excluded under these terms. However, if a supply under these terms is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law (contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended or replaced from time to time), nothing contained in these terms excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law, provided that, to the extent that the Australian Consumer Law permits us to limit our liability, then our liability is limited to the cost of supplying the services again or payment of the cost of having the services supplied again.
- 10.5. Except in the case of a major failure (as that term is defined in the Australian Consumer Law), we can elect as between the remedies set out in clause 10.4 above.
- 10.6. Subject to clause 10.4, and to the extent permitted by law, the total aggregate liability of Private Media for any claim or liability caused by, resulting from, or in relation to, the Services, an Order or these Terms is limited to an amount equal to the Service Charges actually paid by you in respect of Services provided to you in the preceding 12 month period.
- 10.7. We will not, in any circumstance, be liable for any indirect or consequential losses (including for negligence) arising under or in connection with these Terms.

## 11. General

- 11.1. We may, without notice to you, engage subcontractors to provide or support the Services.
- 11.2. Private Media and you are not in a partnership, joint venture, fiduciary, employment or agency relationship. Neither has power to bind the other.
- 11.3. These Terms may not be altered unless by agreement in writing and any waiver by us of a breach of any of these Terms will not be construed as a waiver of any other breach.
- 11.4. These Terms are governed by the laws of the State of Victoria. Each party submits to the non-exclusive jurisdiction of the courts of that State.
- 11.5. We will not be liable for any delay or failure to publish content that is caused by a factor outside of our reasonable control (including any act of God, war, technology failure, breakdown of plant, industrial dispute, electricity failure, governmental or legal restraint).

## 12. Confidentiality

- 12.1. In this section, Confidential Information means all information and data relating to or provided by you that you identify as being of a confidential or secret nature at the time of providing that information to Private Media.
- 12.2. Private Media will use reasonable endeavours to keep Confidential Information confidential and use Confidential Information only for the purposes of providing the Services and not disclose it to any third party without your consent.
- 12.3. Clause 12.2 does not apply to information that is: already in Private Media's possession or knowledge without restriction prior to its disclosure, in or comes into the public domain other than by a breach of this clause, received by Private Media from a third party who has the right to provide the information, created by Private Media (whether alone or jointly with anyone) independently of you, required by law or by any court, government, agency or regulatory authority to be disclosed, or which Private Media may need to disclose to its professional advisors.

### **13. Your Content format**

- 13.1. Subject to availability, technical limitations, the Order and these Terms, Private Media will use reasonable endeavours to publish Your Content (including any Advertisement) in the format submitted and in accordance with your reasonable instructions. You acknowledge and agree that the final positioning, placement and size of Your Content (including any Advertisement) will be at our absolute discretion.

### **14. Advertisements**

- 14.1. This clause 14 applies if you are an Advertiser.
- 14.2. We may, at our absolute discretion, refuse to publish Your Advertisement without giving any reason for doing so. If we refuse to publish Your Advertisement, you will not be charged the Service Charges. We reserve the right to refuse or withdraw your advertisement from publication at any time, without giving reasons.
- 14.3. Your standard creative must be received by us at least 3 Business Days prior to the commencement of the Campaign Period and your rich media creative must be received by us at least 5 Business Days prior to the commencement of the Campaign Period.
- 14.4. You acknowledge and agree that if the commencement of the Campaign Period is delayed because we have not received either the standard creative or rich media creative in accordance with clause 14.3, the publication of Your Advertisement will be deemed to have commenced on the first day of the Campaign Period (as specified in the Order) for the purposes of the Service Charges. For the purposes of these Terms, Business Day means a day other than a Saturday, Sunday, public holiday in Melbourne, Australia.
- 14.5. It is your responsibility to arrange and manage re-directs with third party ad-servers and provide such third party with the creative and lead time requirements. We will not compensate you where campaigns are affected or delayed in any way by third party ad-server redirect problems. We may, in our absolute discretion, remove any redirects from our network which cause delays in serving advertisements.
- 14.6. All click-through URL's must enable the browser's 'back' feature to allow users to return to our website.
- 14.7. If you submit an Advertisement (or any other of Your Content) to us electronically, it must comply with our specifications as notified to you from time to time. We can reject an Advertisement (or any other of Your Content) if it is not submitted in accordance with such specifications.
- 14.8. You acknowledge and agree that we have no obligation to provide you with any Advertisement drafts. However, if we do, you acknowledge and agree that it is your responsibility to check any draft Advertisements, and provide us with reasonable notice us of any errors in the draft Advertisement prior to publication.
- 14.9. We do not accept any responsibility for errors in Your Content (including advertising material) submitted by you or on your behalf electronically.

## 15. Cancellation and refunds

- 15.1. If you cancel some or all of the Services, cancellation fees will apply. If you cancel any Services in writing:
  - 15.1.1. more than 21 days before the Campaign Period commencement date (Start Date), as specified in your Order, you will receive a full refund;
  - 15.1.2. 21 days or less before the Start Date, we reserve the right to charge you the total Service Charges; or
  - 15.1.3. on or after the Start Date, we will retain the total Service Charges.

## 16. Termination

- 16.1. Either party (**Terminating Party**) may terminate this agreement for cause immediately by notice in writing, if the other party:
  - 16.1.1. commits a material breach of this agreement that is not capable of remedy;
  - 16.1.2. breaches any term of this agreement that is capable of remedy and fails to remedy that breach within 14 days of receiving a notice from the Terminating Party requiring it do so; or
  - 16.1.3. is unable to pay its debts, or has a receiver, administrator, administrative receiver or liquidator appointed, or calls a meeting of its creditors or for any other reason ceases to carry on business, or if any of these events appear reasonably likely to occur.

## 17. Consequences of termination

- 17.1. On the date of effective termination (irrespective of the reason for such termination) or expiry of the Term:
  - 17.1.1. we will cease providing the Services, and will cease to be obliged to provide the Services in respect of that Order;
  - 17.1.2. both parties will return, on request, any property of the other party, except as prevented under applicable laws; and
- 17.2. all amounts payable under clause 5 and 15 as at the date of effective termination or expiry become immediately due and payable, and You must pay them within 5 Business Days of the date of effective termination or expiry of the Term.3,9, 10,11, 12 and this 17 will survive termination of the agreement as well as any other term by its nature intended to survive.

## 18. Notices and other communications

- 18.1. Any notice or other communication under these Terms (Notice) must be given either by hand delivery, prepaid express post or email to the recipient's address for Notices specified in the Order.
- 18.2. A Notice given in accordance with 18.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
  - 18.2.1. if hand delivered, on delivery;
  - 18.2.2. if sent by express prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
  - 18.2.3. if sent by email, on the first to occur of:
    - (a) receipt by the sender of an email acknowledgement from the recipient's information system showing that the Notice has been delivered to the email address specified in the Order;
    - (b) the time that the Notice enters an information system which is under the control of the recipient; and
    - (c) the time that the Notice is first opened or read by the intended addressee, however, if the sender receives an out of office reply that states the recipient is out of the office until a later date, the Notice will only be taken to be given on that later date, but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.