

TERMS & CONDITIONS

1. PARTIES

The parties are Switched On Media Pty Ltd ABN 57 125 690 146 (Agency) and the person, company or entity to whom the Quotation is addressed.

2. EFFECTIVE DATE

The effective date is the date on which the Quotation is signed and dated by the Client.

3. SERVICES

3.1 During the Term, the Agency will provide to the Client the Services stated in the Quotation. The Agency will not accept or perform the Services until the Quotation is approved by the Client in writing and returned to the Agency. The Client will use its best endeavours to ensure that all instructions are in writing. The Client shall indicate formal approval of all components of the Quotation by signing off work at appropriate stages as requested by the Agency.

3.2 Completion and delivery timeframes are estimates only and are predicted on timely receipt of all materials to be supplied by the Client to enable the Agency to perform the Services. Every attempt will be made by the Agency to meet such timeframes, but the Agency will not be liable for any loss or damage caused to the Client from any delays not caused by the Agency's negligence.

3.3 The Agency will seek the Client's written approval for any fees or expenses that exceed the Quotation by over 10%. Any further author corrections will be additional to the Quotation and charged on completion of the Services at head hour rates as stated in the current Agency rate card. Any amendment to these payment terms must be agreed by the parties in writing.

4. OWNERSHIP OF MATERIALS

4.1 No copyright or any other intellectual property rights in the unique materials created by the Agency as a direct product of the Services (Materials) will be transferred to the Client until the Client has paid in full all fees and expenses due to the Agency.

4.2 On receipt by the Agency of full payment of all fees and expenses due for the provision of the Services, the Agency will:

a. assign to the Client copyright in the Materials limited to the purpose, territory, time period and/or media stated in the Quotation.

b. non-exclusively license to the Client any material developed by the Agency independently of the Services to the extent embedded in or otherwise required for the Client's use or benefit of the Materials;

c. use reasonable endeavours to obtain an assignment or exclusive licence of any third party material embedded in or otherwise required for the Client's use or benefit of the Materials and, if the Agency is unable to comply, obtain any limited licence reasonably necessary to use such third party material (at the Client's cost).

4.3 The Agency may use the Materials for any self-promotional purpose where the Agency obtains prior approval by Client.

4.4 The Agency will not be required to transfer to the Client any Materials stored electronically by the Agency unless otherwise stated in the Quotation or the cost of such transfer is agreed to by the parties in writing.

4.5 No copyright or any other intellectual property rights will be transferred to the Client on concepts pitched by the Agency unless the Agency ultimately implements those concepts in the Materials. Concepts pitched to the Client but not implemented by the Agency in the Materials will remain confidential and the Agency will retain copyright and all other

intellectual property rights in such concepts. A separate fee must be negotiated if such concepts are to be implemented by the Client without the involvement of the Agency.

4.6 The Client will indemnify the Agency against all claims and expenses, including reasonable legal fees, due to the Client's use of the materials provided by the Agency outside of the limitations of use as stated in the Quotation or otherwise advised by the Agency in writing.

5. CONFIDENTIALITY

Each party will not, without the prior written approval of the other party, disclose or use any information of the other party which by its nature or the circumstances of its disclosure could reasonably be expected to be.

6. CANCELLATION

6.1 If the Client cancels the Quotation for any reason (which cancellation must be in writing), the Client must pay all fees and expenses incurred or committed to by the Agency to the date of cancellation, plus a 3rd party costs the Agency has already committed to on behalf of Client or committed to because of the Services

6.2 If the Client decides to terminate the ongoing Services for any reason, the Client must give the Agency a notice of 30 days in writing, or pay the Agency in lieu of the notice.

7. INVOICES & PAYMENT

The Agency's standard payment term is 21 days of invoice date.

7.1 The Agency will issue invoices upon completion of each stage of the Services unless otherwise stated in the Quotation or agreed in advance by the parties in writing.

7.2 If staged payments are agreed to, and any amount becomes overdue, the Agency reserves the right to cease providing the Services until all overdue amounts are paid and the Agency will not be liable to the Client for any damage, claim or other liability caused by the delay in providing the Services.

7.3 If the Client breaches these terms, fails to pay for Service or suffers an Insolvency Event, the Agency may in its discretion and without limitation:

- a. cancel any provision of credit to Client;
- b. withhold any discounts or rebates if Client fails to comply with its payment obligations;
- c. require cash pre-payment for further Service; charge interest on all overdue amounts at the rate of ANZ Overdraft Base Rate;
- d. take proceedings against the Client for any outstanding amounts;
- e. recover Agency's costs including mercantile agency and legal costs on a full indemnity basis;
- f. cease further Service or terminate an agreement for Service not provided;
- g. exercise any other rights at law

8. GST, VAT OR SALES TAX

Unless GST, VAT or Sales Tax is expressly included, all fees and expenses stated in the Quotation are exclusive of those taxes and the tax will be payable by the Client. Percentage of tax applies to all invoices issued by the Agency in accordance of local government regulation.

9. INDEMNITY & LIABILITY

9.1 The Client will indemnify the Agency against all claims arising from any information or documentation supplied by the Client or any act or omission done by the Agency on the Client's instructions or with the Client's approval.

9.2 Client indemnifies, and agrees to keep the Agency, its directors, officers and employees indemnified, against all losses or claims arising out of the breach of any rights (including Intellectual Property Rights and Moral Rights) of any third party in connection with materials or content that The Client supply to the Agency, or that are supplied to the Agency on the Client's behalf, or any act or omission done by the Agency on the Client's instructions or with the Client's approval.

9.3 The Agency's liability for any Loss, however caused (including by the Agency's negligence) suffered or incurred by the Client in connection with the Services, whether or not the Client was aware of the possibility of such Loss when the Quotation was entered into, is limited to the amount of Fees received by the Agency under the Terms;

9.4 The Agency is not liable for any indirect or consequential loss, or any loss of revenue, loss of profit, loss of business opportunity, or payment of liquidated sums, penalties or damages under any agreement sustained by the Client or any other person arising from or in connection with the Services; or loss that is caused by (or to the extent contributed to by) the acts or omissions of a third party; or loss due to factors outside the Agency's reasonable control.

9.5 The Agency will not be liable for any errors or omissions resulting from the Client's failure to sign off on any work.

9.6 The Agency makes no warranty regarding the suitability or otherwise of the Materials for the Client's purposes and it is the Client's responsibility to ensure that the Materials comply with all applicable laws, regulations and industry codes of practice.

10. GOVERNING LAW

The Terms are governed by, and are to be construed in accordance with the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any court hearing appeals from those courts.

11. VARIATION

The Quotation is an estimate only. Where major changes are required or requested, the Agency reserves the right to revise the Quotation with Client's prior approval. The Client shall be liable to pay any additional fees or expenses that result from a variation to the Quotation. The Quotations are subject to approval of the Agency's Credit Department and the Agency may at any time alter or suspend credit, services, refuse shipment or cancel unfilled orders, when in the Agency's opinion the financial conditions of the client, or the status of the Client account, warrant it.