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ACN # 107648233

**Please find below our terms & conditions of trade:**

**1. Definitions**

1.1 "Seller" shall mean Digi Marketing Corporate Pty Ltd ABN# 63 107648233 and its successors and assigns.

1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.

1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer on a principal debtor basis.

1.4 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).

1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.

**2. Acceptance**

2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.

2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.

2.5 The Buyer undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice).

### **3. Goods**

3.1 The Goods are as described on the invoices, quotation, purchase orders or any other work commencement forms as provided by the Seller to the Buyer.

### **4. Price and Payment**

4.1 At the Seller's sole discretion the Price shall be either;

(a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or

(b) the Seller's quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Buyer shall accept in writing the Seller's quotation.

4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

4.3 At the Seller's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods.

4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.

4.5 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by or by direct credit, or by any other method as agreed to between the Buyer and the Seller.

4.6 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

### **5. Delivery Of Goods / Services**

5.1 Delivery of the Goods shall be made to the Buyer's nominated address, or delivery of the Goods shall be made to the Buyer at the Seller's address.

5.2 Delivery of the Goods to a carrier, either named by the Buyer or at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.

5.3 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

5.4 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

## **6. Risk**

6.1 If the Seller retains proprietary rights in the Goods, nonetheless all risk for the Goods passes to the Buyer upon delivery.

6.3 Whilst all reasonable care will be taken by the Seller, the Seller will not be liable for (and the Buyer agrees to indemnify the Seller against) any damage caused to vehicle paintwork through the removal of previous signage or decals.

## **7. Buyer's Disclaimer**

7.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgment.

## **8. Defects / Returns**

8.1 The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods promptly.

## **9. Warranty**

9.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.

9.2 For all goods manufactured by the Seller, the warranty shall be a period of 12 months from the date of delivery of the goods.

## **10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**

10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## **11. Intellectual Property**

11.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion unless otherwise agreed with the Seller.

11.2 The Buyer shall indemnify the Seller against any claims by third parties for patent, trademark, design or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, or use of the Goods or any other deficiency therein. Where the Buyer has supplied drawings, sketches, files or logo's to the Seller, the Buyer warrants that the drawings, sketches, files or logo's do not breach any patent, trademark, design or copyright, and the buyer agrees to indemnify the Seller against any action taken by a third party against the Seller.

## **12. Default & Consequences of Default**

12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.

12.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection.

12.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

12.5 In the event that:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
- (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer,

then without prejudice to the Seller's other remedies at law:

- (i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 12.1 hereof.

## **13. Title**

13.1 It is the intention of the seller and agreed by the Buyer that property in the Goods shall not pass until the Buyer has paid all amounts owing for the particular Goods.

13.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognized and until then the Seller's ownership of rights in respect of the Goods shall continue.

13.3 It is further agreed that:

(a) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.

(b) The Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and

(c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods.

(d) The Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller.

(e) The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller.

(f) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.

(g) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.

(h) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

(i) Until such time that ownership in the Goods passes to the Buyer, if the Goods are so converted, the parties agree that the Seller will be the owner of the end products.

#### **14. Security And Charge**

14.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:

(a) Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions.

The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.

## **15. Cancellation**

15.1 At the Seller's sole discretion the Buyer may cancel delivery of Goods. In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any costs incurred by the Seller up to the time of cancellation.

## **16. Privacy Act 1988**

16.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.

16.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- (a) To assess an application by Buyer;
- (b) To assess the credit worthiness of Buyer and/or Guarantor/s.

16.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

## **17. Unpaid Seller's Rights**

17.1 Where the Buyer has left any item with Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:

- (a) a lien on the item;
- (b) the right to retain the item for the Price while the Seller is in possession of them;
- (c) a right of resale,
- (d) the foregoing right of disposal,

provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the Price having been obtained.

## **18. General**

18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18.2 All Goods supplied by the Seller are subject to the laws of Queensland and the Seller takes no responsibility for changes in the law which affects the Goods supplied.

18.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.

18.4 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.

18.5 The Buyer shall not set off against the Price amounts due from the Seller.

18.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.

18.7 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Buyer of such change.

18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

## **19. Prevailing Terms**

19.1 These terms and conditions are the sole contract between Digi Marketing Corporate Pty Ltd and the buyer. Any terms and conditions included with the Buyers purchase order shall be amended by these terms unless previously agreed and, where the former are inconsistent with the latter, the terms of Digi Marketing Corporate Pty Ltd shall prevail.

**End.**