

TERMS AND CONDITIONS OF BUSINESS OF THIRTYSEVEN CELSIUS, THE CREATIVE AND DIGITAL AGENCY

1 DEFINITIONS

The following expressions shall have the following meanings:

1.1.1 “Agent” means THIRTYSEVEN CELSIUS PTY LTD of MELBOURNE, VICTORIA, AUSTRALIA;

1.1.2 “Client” means any person who purchases Services from the Agent; 23*

1.2 “Proposal” means a proposal, application, quotation, or other similar object describing the agency's Services;

1.3 “Services” means the agency services as described in any Proposal;

1.4 “Fee” means the monies due to the Agent from the Client for providing the Services;

1.5 “Intellectual Property Rights” means any patent, trademark, service mark, registered design, copyright, design right, right to extract or exploit information from a database, database rights, know-how, confidential information or process, any application for any of the above, and any other Intellectual Property Right recognised in any part of the world whether or not presently existing or applied for;

1.6 “Terms and Conditions” means the terms and conditions of supply of Services as set out in this document and any subsequent terms and conditions agreed in writing by the Agent;

1.7 “Agreement” means the contract between the Agent and the Client for the provision of the Services incorporating these Terms and Conditions;

2 GENERAL

2.1 These Terms and Conditions shall apply to the Agreement for the supply of Services by the Agent to the Client and shall supersede any other documentation or communication between parties.

2.2 Any variation to these Terms and Conditions must be agreed in writing by the Agent.

2.3 These Terms and Conditions shall be attached to any Proposal, signed, and returned to the Agent by the Client.

2.4 Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Agent may be entitled in relation to the Services, by virtue of any statute, law or regulation.

2.5 The Agency acts as a principal at law and not as the agent of the Client in all its dealings with third party suppliers. The Client shall be directly responsible to such parties for payment of their fees/invoices.

3 PROPOSAL

3.1 Proposals refer to these Terms and Conditions or any project-specific addendum.

3.2 Proposals shall remain valid for acceptance for a period of 14 calendar DAYS.

3.3 The Proposal must be accepted by the Client in its entirety.

3.4 The Agreement between the Agent and the Client, incorporating these Terms and Conditions, shall only come into force when the Agent confirms acceptance in writing to the Client.

4 SERVICES

4.1 The Services are as described in the Proposal.

4.2 Any variation to the Services must be agreed by the Agent in writing.

4.3 The Services shall commence and finish on the dates specified on the Proposal unless terminated according to the terms of this Agreement.

4.4 Dates given for the commencement of the Services are estimates only and not guaranteed. Time for commencement shall not be of the essence of the Agreement and the Agent shall not be held liable for any loss, costs, damages, charges, or expenses caused directly or indirectly by any delay in the Services.

4.5 The Client appoints the Agent as sole provider of design, marketing, or advertising agency services in respect of the Services plus any other brands launched or acquired by the Client which the parties agree should be covered by this Agreement.

5 PRICE AND PAYMENT

5.1 The Fee is as specified in the Proposal and is inclusive of any other charges as outlined in that document.

5.2 The terms for payment are as specified in the Proposal.

5.3 The Client hereby agrees to reimburse the Agent in respect of all reasonable travel, subsistence, and courier expenses incurred by the Agent in performing the Services, and in respect of any other reasonably incidental expenses, provided they are approved in advance by the Client.

5.4 The Client shall pay all reasonable legal fees related to the creation of the Advertising as well as production, licensing, and clearance for use and shall pay all other third party

costs (including licensing and performer fees) associated with producing the Advertising provided they are approved in advance by the Client.

5.5 The Client must settle all payments for Services within 7 days from the invoice date.

5.6 The Client will pay interest on all late payments at a rate of 5% per month charged on a daily basis.

5.7 The Agent is also entitled to recover all reasonable expenses incurred in obtaining payment from the Client where any payment due to the Agent is late.

5.8 The Client is not entitled to withhold any monies due to the Agent.

5.9 The Agent is entitled to withhold or withdraw any work that the Client has failed to provide complete payment for.

5.10 The Agent is entitled to vary the price to take account of:

5.10.1 any additional Services requested by the Client which were not included in the original Proposal;

5.10.2 any additional work required to complete the Services which was not anticipated at the time of the Proposal;

5.10.3 any reasonable increase in hourly rate, if applicable; and any variation must be intimated to the Client in writing by the Agent.

6 SUB-CONTRACTS

6.1 The Agent shall monitor all production companies and suppliers to whom work is allocated on a sub-contracting basis to ensure that:

6.1.1 all deadlines are met and that all agreed budgets are not exceeded;

6.1.2 all necessary consents, clearances, and licences are obtained;

6.1.3 all necessary consents, clearances, and licences are obtained in respect of copyright and any other rights performances, music and all other constituent elements of the advertising as defined in the description of the Services;

6.1.4 all artists are properly contracted for appearances, repeats, and/or buy-outs.

7 CLIENT OBLIGATIONS

7.1 The Client agrees to cooperate with the Agent and shall provide any support, information, and facilities to the Agent as may be required.

7.2 The Client agrees to refrain from directly or indirectly recruiting any person employed or engaged by the Agent for the purpose of providing the Services for a period of six months following completion of the Services.

7.3 The Client shall nominate a named, authorised individual to whom all requests for approval should be sent by the Agent.

7.4 The Client's written approval of copy, layouts, or artwork will be the Agent's authority to buy production materials and prepare proofs. The Client's written approval of television, cinema, and radio scripts and/or storyboards will be the Agent's authority to enter into production agreements and to engage performers.

8 AGENT OBLIGATIONS

8.1 The Agent shall supply the Services as specified in the Proposal.

8.2 The Agent shall perform the Services with reasonable skill and care and to a reasonable standard and in accordance with recognised codes of practice and statutory obligations.

8.3 The Agent shall have the authority to delegate any obligations to other employees or sub-contractors but undertakes to notify the Client of any significant changes to personnel.

8.4 The Agent will maintain appropriate insurance in accordance with industry practice.

8.5 The Agent shall comply with all regulations and statutory obligations regarding the use and storage of information relating to the Client.

9 INTELLECTUAL PROPERTY

9.1 Any Intellectual Property Rights created as a product of the Services or pre-Services shall remain the property of the Agent and/or its licensors.

9.2 On termination of this Agreement and subject to payment of all monies due to the Agent under it, the Agent shall, in consideration of the payment equal to or greater than \$1000.00 AUD, assign absolutely to the Client all intellectual property rights in all advertising created by the Services, to the extent that such intellectual property rights are vested in the Agent.

9.3 The Client shall provide the Agent with copies of all trademarks and other intellectual property that represents the branding of the Client which are to be included in the performance of the Services. The Client hereby grants the Agent a royalty free licence to use, copy, and reproduce such trademarks and branding for the purpose of developing the advertising created by the Services.

9.4 The Agent will use all reasonable efforts to obtain all copyright and a waiver of moral rights in respect of work sub-contracted to or acquired from third parties, but it cannot

undertake that in all cases it will be able to do so. In the event that the Agent is unable to obtain copyright or a waiver of moral rights in respect of such work the Agent shall inform the Client before any appropriate agreement is entered into.

9.5 The Client agrees that on termination of this agreement the Agent shall be entitled to use the advertising products created by the Services solely for its own internal and external promotional purposes.

10 CONFIDENTIALITY

10.1 The parties agree to keep all confidential information in relation to the business of the other confidential during and after the term of the Agreement. This clause 10.1 will not apply to:

10.1.1 any information which has been published other than through a breach of this Agreement;

10.1.2 information in the possession of the recipient party before the disclosure under this Agreement took place;

10.1.3 information obtained from a third party who is free to disclose it;

10.1.4. information which a party is required by law to disclose.

11 TERMINATION

11.1 The Agreement shall continue until the Services have been provided in terms of the Proposal or any subsequent date as mutually agreed in writing by both parties or until terminated by either party in accordance with these Terms and Conditions.

11.2 The Client may terminate the Agreement if the Agent fails to comply with any aspect of these Terms and Conditions and this failure continues for a period of 4 weeks after notification of non-compliance is given.

11.3 The Agent may terminate the Agreement if the Client has failed to make over any payment due within 2 weeks of the sum being requested.

11.4 Either party may terminate the Agreement by notice in writing to the other if:

11.4.1 the other party commits a material breach of these Terms and Conditions and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or

11.4.2 the other party commits a material breach of these Terms and Conditions which cannot be remedied under any circumstances; or

11.4.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or

11.4.4 the other party ceases to carry on its business or substantially the whole of its business; or

11.4.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee, or similar officer is appointed over any of its assets.

11.5 In the event of termination the Client must make over to the Agent any payment for work done and expenses incurred up to the date of termination.

11.6 Any rights to terminate the Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of the Agreement as at the date of termination.

12 STATEMENTS

12.1 The Client and the Agent agree to:

12.1.1 inform each other immediately if any claim, statement, or representation in any copy to be published is, or is likely to be defamatory, in breach of copyright, in breach of the terms of any Act or provision of law, or is in any other way unlawful;

12.1.2 inform each other without delay if it considers any claim or trade description in any copy is false or misleading in relation to the product or service to be advertised.

13 WARRANTY

Both parties warrant their authority to enter into this Agreement and have obtained all necessary approvals to do so.

14 LIMITATION OF LIABILITY

Nothing in these Terms and Conditions shall exclude or limit the liability of the Agent for death or personal injury, however the Agent shall not be liable for any direct loss or damage suffered by the Client or any third party howsoever caused, as a result of any negligence, breach of contract, or otherwise in excess of the sum insured under the professional indemnity insurance policy held by the Agent in the insurance year in which the Client's claim is first notified.

15 INDEMNITY

The Client shall indemnify the Agent against all claims, costs, and expenses which the Agent may incur and which arise directly or indirectly from the Client's breach of any of its obligations under these Terms and Conditions.

16 FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery, or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

17 ASSIGNMENT

The Client shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Agent.

18 THIRD PARTY RIGHTS

Nothing in these Terms and Conditions intend to or confer any rights on a third party.

19 SEVERANCE

If any term or provision of these Terms and Conditions is held invalid, illegal, or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal, or unenforceable provision eliminated.

20 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions.

21 NOTICES

Any notice to be given by either party to the other may be served by email, fax, personal service, or by post to the address of the other party given in the Proposal, or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally, or if sent by post shall be deemed to have been delivered in the ordinary course of post.

22 ENTIRE AGREEMENT

These Terms and Conditions supersede any previous agreements, arrangements, documents, or other undertakings either written or oral. Any subsequent email correspondence will be referred to as the official record of client/contractor expectations or Terms and Conditions amendments.

23 GOVERNING LAW

These Terms and Conditions shall be governed by and construed in accordance with the law of Australia and the parties hereby submit to the exclusive jurisdiction of the Australian courts.