



## **AuctionsPlus Advertising Terms and Conditions**

### **1. Agreement**

1.1 Each time you execute a Quote a contract will be formed between you and us for the Services described in that Quote (**Agreement**) comprising:

- (a) the Quote;
- (b) these advertising terms and conditions; and
- (c) any documents incorporated by reference into the Quote or these advertising terms and conditions.

1.2 If there is any inconsistency between the components of the Agreement, the component listed first in clause 1.1 will prevail to the extent necessary to resolve that inconsistency.

### **2. Term**

The Agreement commences on the date the Quote is signed by both parties and continues until the end of the Service Period (unless terminated earlier in accordance with clause 14).

### **3. Our Services**

3.1 We will:

- (a) publish the Advertisement on the Platform:
  - (i) from the applicable Advertisement Commencement Date for the period set out in the Quote, as extended from time to time by agreement between the parties in writing (**Service Period**); and
  - (ii) in the position, and to the dimensions, as set out in the Quote; and
- (b) provide you with any other Services (such design services), as set out in the Quote.

3.2 Except to the extent expressly agreed by AuctionsPlus and set out in the Quote, AuctionsPlus may choose the date, time and position for Advertisements to appear on the Platform.

### **4. Your responsibilities**

4.1 You must:

- (a) provide all requested details for the Advertisement, in the manner and format requested by us, at least three Business Days prior to the applicable Advertisement Commencement Date;
- (b) obtain all third party permissions, licences and approvals required for the lawful display of any Advertisement (other than content (if any) provided by us); and
- (c) provide all information, instructions, material and other inputs and assistance that we reasonably request in relation to our performance of the Agreement,

in the timeframes set out in, and in a manner that allows us to perform our obligations in accordance with, the Agreement.

4.2 You must ensure that all Background Materials you provide to us comply with the Advertising Guidelines and this Agreement.

## 5. Your warranties

5.1 You warrant that:

- (a) the publishing of any Advertisement on the Platform will not constitute a breach or infringement of any Law, rule or requirement of any government or statutory authority (including in relation to alcohol related advertising, privacy and misleading or deceptive conduct) or third party rights (including Intellectual Property Rights);
- (b) prior to the Advertisement Commencement Date you will have obtained all necessary permits, licences and approvals required for the lawful display of the Advertisement on the Platform; and
- (c) none of the Background Material you provide to us:
  - (i) is unlawful, offensive, defamatory, inflammatory, or misleading or deceptive; or
  - (ii) promotes, or links to, a competitor of AuctionsPlus or products or services that are the same or very similar to the products and services provided by AuctionsPlus.

## 6. Approval of Advertisements

6.1 If we have agreed to design the Advertisement for you, you must check proofs of advertisements submitted by us and promptly provide approval or advise if there are errors. We will not publish an Advertisement on the Platform until you have approved the final design via email.

6.2 All Advertisements are subject to final approval by AuctionsPlus. We may refuse to approve an Advertisement where, in our reasonable opinion, the Advertisement does not comply with the Advertising Guidelines or this Agreement.

6.3 If we refuse to approve the publication of any Advertisement under clause 6.2, we will promptly notify you of such refusal, our reasons for the refusal and, if relevant, any amendments that could be made so that the Advertisement would be acceptable to us for display on the Platform.

6.4 If we refuse to approve an Advertisement on the Platform, we will refund any applicable Fees paid by you in advance for that Advertisement less any Fees paid for design services that have already been performed by us.

## 7. Removal of Advertisements

7.1 We may remove Advertisements at any time where we reasonably consider the Advertisement does not comply with the Advertising Guidelines or this Agreement.

7.2 If you ask us to remove an Advertisement from the Platform, we will use reasonable endeavours to promptly take down the Advertisement. If we remove an Advertisement at your request, you are still required to pay 100% of the Fees for that Advertisement, and you will not be entitled to a refund of any of the Fees already paid for that Advertisement.

## 8. Fees and payment

8.1 You must pay us:

- (a) the Fees; and
- (b) an amount equal to any third party expenses we have incurred at your request (**Approved Expenses**).

8.2 Unless otherwise indicated on the Quote:

- (a) we will issue you with a tax invoice for the Fees and Approved Expenses on or about the time you sign the Quote; and
- (b) all invoices must be paid within 30 days of the date the invoice was issued.

8.3 All Fees are exclusive of GST and you must pay the amount of GST in addition to the Fees.

8.4 We may change our prices for the services we offer from time to time. The Fees set out in the Quote will remain fixed for the relevant Service Period indicated on the Quote. If you ask us to provide additional services, or extend Service Period set out in the Quote, we will notify you of the fees payable for those new services, or the extended Service Period, by either issuing you with a new Quote, or by notifying you in writing of the fees payable for the new services or extended Service Period (as applicable).

## 9. Cancellations

9.1 If you ask us to cancel an Advertisement more than 30 days prior to the Advertisement Commencement Date, we will refund you the Fees paid for that Advertisement less any Fees for design services that have already been performed by us.

9.2 If you ask us to cancel your Advertisement less than 30 days prior to the Advertisement Commencement Date, we will use reasonable endeavours to find a replacement advertiser for your allocated slot. If we are unable to find a suitable replacement advertiser, you must pay us a cancellation fee equal to 100% of the Fees for that Advertisement. For clarity, if you have already paid the applicable Fees for the cancelled Advertisement, we will retain those Fees in lieu of the cancellation fee.

## 10. Intellectual Property Rights

10.1 The parties acknowledge and agree that:

- (a) each party owns or licenses the Intellectual Property Rights in any material that it provides to the other under the Agreement (**Background Material**);
- (b) we own the Intellectual Property Rights in any new material developed by AuctionsPlus or its Personnel in performing this Agreement (**Developed Materials**); and
- (c) nothing in the Agreement has the effect of transferring the ownership of any Intellectual Property Rights of either party.

10.2 You grant us a non-exclusive, royalty-free licence (including the right to grant sublicenses) to use, reproduce, host, store, transmit and display your Background Material for the purposes of performing our obligations, or exercising our rights, under the Agreement.

10.3 If we provide design services to you, we grant you a non-exclusive licence to use, reproduce, host, store, transmit and display our Background Material and Developed Materials for the following purposes only (**Approved Purposes**):

- (a) for use as part of an Advertisement on our Platform for the relevant Service Period;
- (b) for use in promotional material on your own website and your social media pages; and
- (c) performing your obligations, or exercising your rights, under the Agreement.

10.4 For clarity, if we design the Advertisement for you, Intellectual Property Rights in the final design of the Advertisement (excluding any of your Background Materials incorporated into the Advertisement) will be owned by AuctionsPlus and must not be used for anything other than the Approved Purposes. You must not use any Advertisement we design for you on any other third party website without our prior written consent.

10.5 Nothing in this clause 10 is intended to transfer ownership of, or restrict your use of, your own Background Materials.

## 11. General liability

11.1 We will provide design services with reasonable care and skill.

11.2 Except as expressly provided in the Agreement, we exclude, to the fullest extent permitted by law, all warranties, representations and conditions whether implied by law, trade, custom or otherwise.

11.3 Subject to clause 11.5, we limit our liability to you for all Losses, in aggregate, to an amount equal to the Fees paid under the Agreement.

11.4 Subject to clause 11.5, we exclude any and all liability to you for:

- (a) Excluded Loss;

- (b) Losses that you suffer or incur relating to any interruption in the operation of our Platform;
- (c) a breach of the Agreement to the extent the breach is caused by an event or circumstance that was beyond our reasonable control; and
- (d) Losses that you suffer or incur as a result of breach of the Agreement to the extent that those Losses are caused by an event or circumstances beyond our reasonable control.

11.5 Clauses 11.3 and 11.4 do not apply:

- (a) to our liability to you for Losses that you suffer or incur relating to our failure to comply with any consumer guarantee set out in the Australian Consumer Law; or
- (b) to the extent that they would cause us to contravene a Law or cause the applicable clause to be void or unenforceable.

11.6 Each party's liability to the other in connection with the Agreement will be reduced proportionately to the extent that the other party or any of its Personnel caused that Loss.

## 12. Liability under the Australian Consumer Law

If the Australian Consumer Law applies to the Services or the Deliverables, our liability to you for Loss that you suffer or incur relating to our failure to comply with any consumer guarantee set out in the Australian Consumer Law is limited to (at our election):

- (a) in the case of the services, the re-supply of the services or the payment of the cost of having the services supplied again; and
- (b) in the case of the goods, replacing those goods or supplying equivalent goods, repairing the goods, paying the cost of replacing the goods or acquiring equivalent goods, or paying the cost of having the goods repaired.

## 13. Indemnities

You indemnify us from and against all Losses suffered or incurred by us or any of our Personnel relating to:

- (a) a breach of any of the warranties set out at clause 5;
- (b) an Infringement Claim; or
- (c) any claim or demand brought by a third party in connection with your Background Material or Advertisement (except to the extent the claim or demand was caused by our breach of the Agreement).

## 14. Termination

14.1 Either party may terminate the Agreement with immediate effect by written notice if the other party:

- (a) commits a material breach of the Agreement which is not capable of remedy; or
- (b) commits a material breach of the Agreement which is capable of remedy and fails to remedy such breach within 14 days of receiving notice from the other party specifying the breach and requiring it to be remedied.

14.2 If the Agreement is terminated or expires you must pay us all Fees and Approved Expenses owing as at the date of termination or expiry.

14.3 Except as expressly set out in the Agreement, any termination or expiry of the Agreement, in its entirety, will not prejudice any right of action or remedy which may have accrued to either party prior to that expiry or termination.

14.4 Any term that by its nature intended to survive termination of the Agreement survives that termination, including clauses 5, 11, 12, 13, 15, 16, 17 and 18.

## 15. Dispute resolution

15.1 Neither party may commence court proceedings (except proceedings seeking interlocutory relief) relating to a dispute unless it has complied with this clause 15.

15.2A party claiming that a dispute arising in connection with the Agreement has arisen must give the other party notice of the details of the dispute. When such a notice is given, each party's contacts as specified in the Quote (or their nominee) must meet and first attempt to resolve the dispute. If those persons cannot resolve the Dispute within 30 days (or longer period agreed), either party may commence court proceedings.

## 16. General

16.1 The parties are not and are not to be taken to be in a partnership, joint venture, employment or fiduciary relationship and nothing in the Agreement gives a party authority to bind any other party in any way.

16.2 The Agreement states all the express terms of the agreement between the parties in respect of its subject matter, and supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter. No party has relied on any statement by any other party not expressly included in, or incorporated in, the Agreement.

16.3 A variation of any term of the Agreement must be in writing and signed by the parties.

16.4 You must not transfer, assign or novate all or any part of the Agreement without our prior written consent. We may assign our rights or transfer our rights and obligations under the Agreement to an affiliate or a purchaser of the assets or business, or any part of the assets or business to which the Agreement relates, on notice to you. You must enter into any additional documents required to give effect to such assignment or transfer, if required by AuctionsPlus.

16.5 If a provision in the Agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from the Agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of the Agreement.

16.6 The Agreement is governed by the law in force in the State of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in that State and the courts having appeal from them.

16.7 Unless expressly required by the terms of the Agreement, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with the Agreement.

16.8 A Quote may be executed in any number of counterparts. Each counterpart is deemed to be an original and all counterparts taken together constitute one document.

## 17. Interpretation

In the Agreement, unless the contrary intention appears:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of the Agreement;
- (b) the singular includes the plural and vice versa;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a 'person' or 'entity' includes any individual, firm, company, partnership, joint venture, unincorporated body or association, trust, corporation or other body corporate and any authority (whether or not having a separate legal personality);
- (e) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, the Agreement and a reference to the Agreement includes any clause, annexure, exhibit and schedule;
- (f) a reference to a document (including the Agreement) includes all amendments or supplements to, or replacements or novations of, that document;
- (g) a reference to a party to any document includes that party's successors and permitted assigns;
- (h) a reference to time is to time in Sydney, Australia;

- (i) a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re enactments of any of them, from time to time;
- (j) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in the Agreement do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (k) a reference to a body, other than a party to the Agreement (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions; and
- (l) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to Australian dollars.

## 18. Definitions

In the Agreement, unless the context requires otherwise:

**Approved Expenses** has the meaning given in clause 8.1(b).

**Approved Purpose** has the meaning given in clause 10.3.

**Advertising Guidelines** means:

- (a) the guidelines published on the AuctionsPlus Platform from time to time at <https://pages.auctionsplus.com.au/about/advertise-with-auctionsplus>;
- (b) the document titled 'Media Kit 2021', as updated by us from time to time, and
- (c) any other guidelines as to the subject matter, format, size or style or other requirements of advertisements notified by AuctionsPlus from time to time.

**Advertisement** means an advertisement you ask us to publish on the Platform (whether provided by you, or designed by us at your request).

**Advertisement Commencement Date** for the date an Advertisement is scheduled to first appear on the Platform as set out in the Quote, or as otherwise agreed between the parties in writing.

**Agreement** has the meaning given to that term in clause 1.1.

**AuctionsPlus, we, us** and **our** means AuctionsPlus Pty Ltd ACN 072 403 984.

**Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)* or the corresponding provisions of the fair trading legislation.

**Background Material** has the meaning given to that term in clause 10.1(a).

**Business Day** means a day other than a Saturday, Sunday or public holiday in Sydney, New South Wales.

**Deliverable** means each item that is supplied by us, or on our behalf, in connection with the Services, such as advertisement design documentation.

**Developed Material** has the meaning given to that term in clause 10.1(b).

**Excluded Loss** means:

- (a) Loss of profits, revenue, opportunity, anticipated savings, good will or reputation;
- (b) Loss or corruption of your data or systems; and
- (c) any indirect, consequential, incidental or special Loss.

**Fees** means the amounts specified in the Quote for the Services.

**GST** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Infringement Claim** means any claim by any person claiming that our, or our Personnel's, use of, or dealings with, your Background Material in accordance with this Agreement infringes the Intellectual Property Rights of any person.

**Intellectual Property Rights** means all intellectual property rights and related rights, anywhere in the world, registered or unregistered, including patents, copyright (including software), rights in circuit layouts, registered designs, trade marks, know-how, inventions and the right to have confidential information kept confidential.

**Law** means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in any relevant jurisdiction and includes any codes of conduct.

**Losses** means all liabilities, losses, damages, costs and expenses suffered or incurred by any person under or in connection with the Agreement whether arising in contract or tort (including negligence) or under any statute or under any other cause of action, and **Loss** has a corresponding meaning.

**Personnel** means the officers, employees, directors, contractors (including subcontractors) and agents of a party.

**Platform** means the digital online auction platform made available by AuctionsPlus at [www.auctionsplus.com.au](http://www.auctionsplus.com.au), or at such other domain as AuctionsPlus nominates from time to time.

**Quote** means the quote attached to these Advertising Terms, or otherwise a quote in a form specified by us and which is executed by the parties.

**Services** means the advertising, design or other services set out in a Quote, or which we agree in writing to provide you from time to time.

**Service Period** has the meaning given to that term in clause 3.1.

**Term** has the meaning given to that term in clause 2.

**You** and **your** means the entity specified in the Quote as the 'Customer'.