

**1. Definitions and Interpretation**

1.1. In these Terms and Conditions, unless the context otherwise requires:

Ad	is an advertisement for goods or services (as allowed by Us), placed on the Site by Us
Claim	any allegation, debt, cause of action, Liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise
Content	means any content, information, description, review, comment, testimonial, image, video, recording, creative works or writings, reference, link, resource, or other material in any form
Corporations Act	the <i>Corporations Act 2001</i> (Commonwealth) as amended from time to time
Fee	is the fee set by Us from time to time for delivery of the Services
GST	has the meaning it has in the GST Act
GST Act	the <i>A New Tax System (Services and Services Tax) Act 1999</i> (Commonwealth)
Laws	means common law, principles of equity, and laws made by parliament, State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them
Liability	includes all liabilities (whether actual, contingent or prospective), Losses, damages, costs, charges and expenses of whatsoever nature or description irrespective of when the acts, events or things giving rise to the liability occurred
Loss	includes any damage, loss, cost, Claim, Liability or expense (including legal costs and expenses) including any consequential or indirect losses or economic losses or loss of profits
Order	means an order placed by You for the supply of Services
Personal Information	has the meaning given to it in the Privacy Policy
Privacy Policy	means Our privacy policy which can be viewed at <a href="http://www.ballarat.com">www.ballarat.com</a>
Services	means the design, placement, uploading and display of an Ad on the Site
Site	means and includes: (a) the website at <a href="http://www.ballarat.com">www.ballarat.com</a> which is owned and operated by Us; (b) a site, page or forum within the website; and (c) any social media page, tool or application maintained by Us
Tax Invoice	means each tax invoice issued by Us to You
Terms and Conditions	means these terms and conditions
You or Your	means the person, individual, company, organization, partnership or entity engaging Us to deliver the Services
Your Content	means any Content that is provided or submitted by You
Us, We or Our	means Ballarat Regional Tourism Inc ABN 66 944 757 683 trading as Visit Ballarat

1.2. In these Terms and Conditions, unless the context otherwise requires:

- (a) singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (d) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) headings are used for convenience only and do not affect the interpretation of this Agreement;
- (f) the words "in writing" include any communication sent by letter or email or any other form of communication capable of being read by the recipient;
- (g) the word "include" or any form of that word, when introducing a list of things, does not limit the meaning of the words to which the list relates to those things or to things of a similar kind;
- (h) examples are descriptive only and not exhaustive; and
- (i) money amounts are stated in Australian currency unless otherwise specified.

**2. Application**

2.1. These Terms and Conditions:

- (a) will apply to all Services requested by You from Us unless expressly waived by Us in writing; and
- (b) may be varied by Us on 30 days' notice to You.

### 3. Submitting an Order

- 3.1. To make a request for Services, You must submit an Order.
- 3.2. For an Order to be valid (and able to be relied upon by Us), it must be in writing and meet our requirements. We will notify You in writing once We have received and accepted Your Order.
- 3.3. We have the right to refuse any Order without assigning any reason therefore.
- 3.4. Once an Order is accepted by Us, an agreement is formed between You and Us and You are committed to the Fee.
- 3.5. *Cancellation of an Order:*
  - (a) We are under no obligation to consider any request for cancellation of an Order after it has been received by Us.
  - (b) If You attempt or seek to cancel an Order after it has been accepted by Us, then You will be liable for all Losses incurred by Us resulting from the cancellation of the Order.

### 4. Fees and payment

- 4.1. Once we have received a valid Order, We will provide You with a Tax Invoice for the Fee for payment.
- 4.2. You must pay the Fee to Us in full on or before the due date set out in the Tax Invoice. If payment is not received before the due date then the Fee may be varied and We may issue a revised Tax Invoice.
- 4.3. In addition to the Fee, You agree to pay to Us:
  - (a) all taxes, stamp duty or other statutory charges/levies payable by Us or You in relation to the supply of the Services;
  - (b) third party costs and disbursements (if the provision of Services reasonably requires it); and
  - (c) all additional costs and Losses incurred by Us as a result of any request for variation to or cancellation of an Ad or Order (beyond what is allowed by Us).
- 4.4. *Overdue amounts*
  - (a) You must pay Us, interest at the rate which is 2% above the rate from time to time fixed by the *Penalty Interest Rates Act 1983* (Vic) on any overdue amounts, with such interest calculated from the due date for payment until the date that payment is received in full as clear funds by Us.
  - (b) Any payment received by Us from You will be applied, in order, to costs and Losses, then to the interest on the oldest overdue Tax Invoice, and then to the costs, Losses, interest and amount outstanding on subsequent Tax Invoices, until all overdue amounts are paid for in full.
- 4.5. *GST*
  - (a) Unless otherwise stated, the Fee is inclusive of all taxes including impost, levy, deduction, charges, withholding or tax of any kind whatsoever, but excluding GST.
  - (b) You must pay, in addition to the Fee, an additional amount calculated by multiplying the prevailing GST rate by the Fee payable by You, provided always that We issue a valid Tax Invoice.
  - (c) If for any reason the amount recovered from Your by Us on account of GST under clause (b) differs from the amount of GST payable at Law by Us in respect of the supply, the amount payable by You will be adjusted accordingly.

### 5. Approval of Ad

- 5.1. Upon receipt of payment of the Fee in full by Us, We will draft the Ad and submit it to You for approval.
- 5.2. You warrant and acknowledge that the Ad produced by Us is based on Your Content and the information provided to Us by You and contained in Your Order.
- 5.3. Before approving the Ad:
  - (a) You are responsible for promptly checking for and notifying Us of any errors;
  - (b) You may request minor amendments to the Content of the Ad, however the layout and appearance of the Ad may not be subject to change as We aim to create consistency across all Ads that appear on the Site.
- 5.4. You promise not to make any Claim in respect of the Content or the appearance of the Ad after it has been approved.
- 5.5. Once approved, the Ad will be uploaded and displayed on the Site for a set period of time.
- 5.6. *Variation to Ad*
  - (a) We are not obliged to consider any request for variation to an Ad after that Ad has been approved by You.
  - (b) If You seek to vary the Content contained in the Ad then You may be liable for an additional Fee.

### 6. Expiration of Ad

- 6.1. Prior to the expiration of the Ad, You will have the opportunity to:
  - (a) pay a renewal Fee to extend the display of the Ad on the Site; or
  - (b) allow the Ad to expire and be removed from the Site.
- 6.2. If the renewal Fee is not paid by the due date on the Tax Invoice then the Ad will be automatically removed from the Site and You will be required to submit a further Order for a new Ad.

### 7. Your warranties

- 7.1. You warrant and acknowledge that:
- (a) You have read and understand these Terms and Conditions;
  - (b) You can pay Your debts as and when they fall due;
  - (c) the Ad produced by Us is based on the information provided to Us by You and contained in Your Order and we are in no way liable for the Content of Your Ad;
  - (d) We will publish Your Ad under the classification or category heading We determine most appropriate;
  - (e) We are in no way responsible for any business transacted (or other activity) between You and a user of the Site;
  - (f) You are responsible for any consequence that may result from the Ad being placed on the Site;
  - (g) You or Your business must reside or be located in Australia;
  - (h) all Ads must be posted in English; and
  - (i) We reserve the right, at any time, to verify Your identity, age and place of residence.
- 7.2. You promise not to make any Claim in respect of any warranty made by You in these Terms and Conditions.

## 8. Your Content

- 8.1. When You submit or produce any of Your Content (whether included in the Ad or not), unless We advise otherwise, You agree to licence and grant Us and Our affiliates and sub-licensees, a non-exclusive, transferable, sub-licensable, royalty-free, perpetual, worldwide and irrevocable right to use, reproduce, modify, publish and display Your Content for any purpose in any media, without compensation, restriction on use, attribution or liability. You further warrant that You have the full authority to grant these rights.
- 8.2. You warrant and acknowledge that, Your Content and Your Ad must not be false or misleading in anyway.
- 8.3. You warrant and acknowledge that, if Your Content or Your Ad:
- (a) contains the name or photographic or pictorial representation of any living person and/or any copy by which any living person can be identified – You have obtained the approval and consent of that person to make use of his or her name or representation or the copy;
  - (b) contains any contact details for You – those contact details will be accurate and up to date;
  - (c) promotes a competition or trade promotion – You have obtained all relevant permits;
  - (d) ceases to be current, accurate or relevant – You must notify us to remove the Ad;
- 8.4. You warrant and acknowledge that Your Content and the Ad does not breach or infringe:
- (a) the *Competition and Consumer Act* (Cth) or any equivalent State or other Laws;
  - (b) any copyright, trade mark, intellectual property right, obligation of confidentiality or other personal or proprietary right;
  - (c) any Law of defamation, obscenity or contempt of any court, tribunal or royal commission;
  - (d) State or Commonwealth privacy Laws or anti-discrimination Laws;
  - (e) any financial services Law as defined in the *Corporations Act*; or
  - (f) any other Law.
- 8.5. In addition to Our other rights contained in these Terms and Conditions, we reserve the right to cancel and remove Your Ad at any time if, in our opinion, Your Content is or becomes offensive, discriminatory, scandalous, controversial or objectionable in any way.

## 9. Our warranties

- 9.1. Without limiting any other warranties contained herein, We warrant that all Services will be delivered:
- (a) with due care and skill;
  - (b) in accordance with the Order (unless otherwise agreed); and
  - (c) within any agreed timelines (subject to delay caused by You).
- 9.2. If the Services are not capable of completion, repair, replacement or correction then We may offer a credit in exchange for the incomplete or defective Services equal to the Fee paid for the Services and shown on the Tax Invoice.
- 9.3. Our warranty shall not apply in respect of:
- (a) errors contained in the Order or Your Content;
  - (b) incorrect Services sought by You; or
  - (c) lack of cooperation on Your part.
- 9.4. Except as provided by any application Australian consumer protection laws, We do not warrant that:
- (a) consumers access to the Site and Your Ad will be uninterrupted;
  - (b) the Site will be error-free; or
  - (c) the Site and Our servers are free of computer viruses and other harmful data, code, components or material.

**10. Liabilities and Indemnities**

- 10.1. We indemnify You against any Claim or Loss suffered or incurred by You, which may arise from any breach by Us of any of the warranties given by Us under these Terms and Conditions.
- 10.2. To the extent permitted by Law or these Terms and Conditions, You indemnify Us against any Claim or Loss suffered or incurred by Us or third persons, which may arise from:
  - (a) the Ad, Your Content or other information provided by You, containing any errors, omissions, inaccuracies or misleading information;
  - (b) any breach by You of any warranties given by You under these Terms and Conditions;
  - (c) any injury, death, damage or Loss incurred by You, Your personnel, agents, customers or third parties resulting from the Ad.

**11. Default by You**

- 11.1. You will be in default in the event that:
  - (a) You have breached any one of the warranties made by You under these Terms and Conditions; or
  - (b) You have failed to perform any of Your obligations under these Terms and Conditions – including failure to pay any amount due under these Terms and Conditions; or
  - (c) You are or become insolvent under administration, insolvent, in liquidation or wound up, subject to any similar arrangement where you are unable to pay Your debts.
- 11.2. In addition to any of Our other rights, where You are in default, We may:
  - (a) cancel Your Order;
  - (b) remove Your Ad from the Site – even after We may have initially accepted the Order (and with no obligation to provide a refund of the Fee paid); and or
  - (c) refuse to supply any further Services to You until You pay an overdue Tax Invoice in full.
- 11.3. You agree that all restrictions imposed on You, disclaimers and limitations of liability set out in these Terms and Conditions are reasonable and will survive termination of these Terms and Conditions.

**12. Guarantee**

Each person that is an owner or director of You, jointly and severally:

- 12.1. guarantees to Us the prompt payment of all amounts due to Us from time to time;
- 12.2. guarantees that You will comply with these Terms and Conditions;
- 12.3. promises to comply personally with all of Your obligations under the Terms and Conditions.

**13. Privacy**

- 13.1. Subject to clause **Error! Reference source not found.**, any personal or confidential information obtained or collected by Us will be retained, held and used only in accordance with Our Privacy Policy.
- 13.2. You must notify Us of any change to Your contact details (as set out in the Order) or in Your accounts payable contact at least fourteen (14) days prior to any of those changes taking place.

**14. Miscellaneous**

- 14.1. Any notice or other communication to or by a party under these Terms and Conditions:
  - (a) may be given by post or email;
  - (b) is deemed to be given by the sender and received by the addressee:
    - (i) if posted, two (2) Business Days after the date of posting to the addressee whether delivered or not;
    - (ii) if sent by email, as determined by section 13 of the *Electronic Transactions (Victoria) Act 2000*;  
but if the delivery or receipt is not a business day or is after 5.00pm (addressee's time), it is deemed to have been received at 9.00am on the next business day.
- 14.2. You must not assign any rights benefits or obligations under these Terms and Conditions without Our prior written consent.
- 14.3. You agree that We may subcontract all or any part of the Services.
- 14.4. Notwithstanding any other provision in these Terms and Conditions, any indemnity or warranty is independent and survives completion or cancellation of the agreement and these Terms and Conditions between the parties.
- 14.5. The Order and the Terms and Conditions contain the entire understanding between the parties in relation to each separate request for the supply of Services and supersedes all prior agreements and communications between the parties.
- 14.6. Any provision of these Terms and Conditions which is invalid must, be read down to the minimum extent necessary to achieve its validity; or be severed from these Terms and Conditions in any other case, without invalidating or affecting the remaining provisions of these Terms and Conditions or the validity of that provision in any other jurisdiction.
- 14.7. An Order does not create a relationship of employment, agency or partnership between the parties.
- 14.8. *No waiver*
  - (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by these Terms and Conditions does not operate as a waiver of the power or right.
  - (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under these Terms and Conditions.
  - (c) A waiver of a breach does not operate as a waiver of any other breach.

- 14.9. These Terms and Conditions are governed by and must be construed in accordance with the Laws in force in Victoria and the parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to these Terms and Conditions.