

### 1. AGREEMENT

- (a) These terms of trade (Terms) govern the agreement between Yonder Creative Pty Limited (ACN 600 714 761) (Yonder) and you (Client) for the supply of Services by Yonder to the Client. These terms commence on the date that Yonder commences providing the Services and the Client is deemed to have accepted these Terms if it receives the Services after receiving these Terms.
- (b) These Terms apply to all Quotes, unless Yonder and the Client expressly agree in writing to exclude any part of these Terms.

### 2. SERVICES

- (a) Yonder will provide the services set out in the Quote (Services) to the Client in relation to the Client's business, products and/or services.
- (b) Yonder may subcontract for the provision of any of the Services.

### 3. APPROVALS

- (a) Yonder will submit to the Client for its approval any copy, layouts, proofs, artwork, scripts, animation and other Materials.
- (b) If Yonder submits Materials to the Client for its approval and the Client fails to notify Yonder of its approval or disapproval of such Materials on or before any deadline, such material will be deemed to have been approved by the Client.
- (c) Yonder will not be responsible for any delay or non-performance in connection with the provision of Services to the extent that the delay or non-performance is caused by the Client, including any delay in accepting a Quote, approving Materials or providing information to Yonder.

### 4. PAYMENT OF FEES & TERMS OF PAYMENT

- (a) In consideration of Yonder providing the Services, the Client must pay Yonder the Fees set out in each Quote provided by Yonder, unless the Client and Yonder agree otherwise in writing.
- (b) The Client must pay Yonder the amount of each invoice within seven (7) days of the date of the invoice.
- (c) Subject to the provision of reasonable documentation, the Client will reimburse Yonder for out-of-pocket expenses, which will be payable on a cost only basis and must be reasonable.
- (d) In the case of production work, including television, cinema, radio, print and online production components, the Client must pay Yonder fifty percent (50%) of the estimated production cost prior to the commencement of

pre-production and Yonder will have no obligation to commence pre-production until the relevant amount is paid by the Client to Yonder.

### 5. GST

All fees and charges, commissions and rebates, and other payments in these Terms are exclusive of the goods and services tax levied in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST) and if Yonder is liable to pay GST in respect of any good or service supplied to the Client pursuant to these Terms Yonder will invoice the Client for the amount of that GST at the time of invoicing the Client for that good or service and the Client must pay the amount of that GST in accordance with this clause 5.

### 6. VARIATION TO THE SERVICES

- (a) Either Yonder or the Client may request a meeting to discuss a variation in the Services and/or fees and charges payable under these Terms and, if either party does so, authorised representatives of each of Yonder and the Client must meet as soon as practicable, and not later than thirty (30) days of such a request, to discuss that variation.
- (b) Yonder will use reasonable endeavours to comply with requests by the Client to vary or cancel any Services, unless to do so would breach any obligation to any third party, and provided that the Client must pay all Fees and must reimburse Yonder for any cost or expense incurred by Yonder prior to the variation or cancellation and as a consequence of the variation or cancellation.

### 7. OWNERSHIP OF MATERIALS

- (a) All rights, title and interest in and to the Materials, whether created before or after the date of issue of these Terms, will be the exclusive property of Yonder on its creation.
- (b) Upon payment of the fees and charges by the Client to Yonder in accordance with clause 4, all the Materials will be assigned to the Client without any need for the parties to enter into any further documentation.
- (c) Materials which are created or owned by third parties and which will be included by Yonder in the Materials (Third Party Materials) will, where possible, be assigned to the Client in accordance with the procedure set out in clause 7(b). However, the Client acknowledges that an assignment of Third Party Material will not always be possible, in which case Yonder will obtain a licence of the Third Party Material for the benefit of the Client, on terms satisfactory to Yonder.

- (d) The Client acknowledges that Yonder may reproduce the Materials in final form for the sole purpose of self-promotion, including on Yonder's website, in show reels and for awards.
- (e) The Client acknowledges that it will not obtain any rights to any pitch materials prepared by Yonder for the Client except if an assignment of the pitch materials from Yonder to the Client is specifically acknowledged in writing as being included in a pitch fee.
- (f) The Client acknowledges that it will not, at any time, obtain any licence or rights to any creative concept or idea or Materials prepared or developed by or on behalf of Yonder for the Client, which the Client does not accept or does not use.

### 8. MORAL RIGHTS

Yonder will use reasonable efforts to obtain from all individuals engaged by it who contribute to the Services and/or the creation of the Materials, a consent for the Client to edit, change, copy, add to, take from, adapt and/or translate the Materials, without attribution, which conduct may otherwise infringe any Moral Rights that may be granted to such individuals in connection with the Materials.

### 9. WARRANTIES AND INDEMNITIES

- (a) The Client warrants to Yonder that:
  - (i) all information and material provided by or on behalf of the Client to Yonder for inclusion in Materials, or upon which the Materials may be based (Client Material), will not violate or infringe the rights of any third party or breach any applicable laws or regulations; and
  - (ii) the use of Client Material by Yonder and any person to whom Yonder may supply that Client Material will not give rise to any action, proceeding, suit, claim or demand against Yonder or that person.
- (b) The Client indemnifies Yonder from and against any and all actions, claims and demands brought or made against Yonder by any person arising from or in connection with any breach of a warranty made by the Client in this clause 9, and from and against any damage, loss, cost or expense (including legal expenses) suffered or incurred by Yonder as a result.
- (c) Yonder warrants to the Client that:
  - (i) it will obtain all necessary consents, licences and authorisations necessary for the provision of the Services as required by statute or otherwise; and
  - (ii) it will comply with all relevant laws and regulations, and will observe all relevant rules, recommendations, guidelines and codes which are relevant to the provision of the Services.

(d) Yonder indemnifies the Client from and against any and all actions, claims and demands brought or made against the Client by any person arising from or in connection with any breach of a warranty made by Yonder in this clause 9, and from and against any damage, loss, cost or expense (including legal expenses) suffered or incurred by the Client as a result.

### 10. LIABILITY

- (a) Nothing in these Terms will be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by the Australian Consumer Law which by law cannot be excluded, restricted or modified.
- (b) To the extent permitted by law, Yonder limits its liability to:
- (i) in the case of goods, either the replacement or repair of the goods or supply of equivalent goods, or the payment of the cost of having the goods replaced or repaired, or the cost of acquiring equivalent goods (at Yonder's option); and
- (ii) in the case of services, either the supply of the services again or the payment of the cost of having the services supplied again (at Yonder's option).
- (c) To the extent permitted by law, neither party will in any circumstances be liable to the other party for any indirect, incidental or consequential damage or loss of any nature however caused (whether based on tort, contract or otherwise) including loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour costs or overhead expenses, even if such damage or loss could reasonably be supposed to have been in the contemplation of both parties.

### 11. TERMINATION

Either the Client or Yonder may terminate these Terms with immediate effect by giving written notice to the other if:

- (a) an Insolvency Event occurs in respect of either party; or
- (b) the other party commits a breach of these Terms, and does not remedy that breach (if it is capable of remedy) within 14 days of being required by notice from the other to do so.

### 12. CONFIDENTIALITY

Neither party may disclose or make use of Confidential Information in any manner whatsoever except as required by law or to obtain professional advice. The parties acknowledge that this obligation of confidentiality is a

continuing obligation which survives the termination of these Terms.

### 13. PRIVACY

Each party must comply with the Privacy Act 1988 (Cth) (including the Australian Privacy Principles), and all other applicable privacy laws, codes and policies, and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, to the extent that each party is legally obligated to comply with these laws.

### 14. DISPUTE RESOLUTION

- (a) Neither the Client nor Yonder may commence legal proceedings in respect of any dispute between them under these Terms unless and until the procedure set out in this clause 14 has been followed.
- (b) If any dispute arises under these Terms, including in relation to their interpretation, either party may give written notice to the other that a dispute has arisen and request that a meeting be held of duly authorised representatives of the parties within fourteen (14) days.
- (c) If a party receives written notice of a dispute from the other in accordance with clause 14(b), that party must cause one (1) authorised representative to attend the meeting referred to in that notice.
- (d) If a meeting is held in accordance with clause 14(c) and that meeting does not resolve the dispute, then a meeting must be held between the general managers of each party within fourteen (14) days.
- (e) If a meeting is held in accordance with clause 14(d) and that meeting does not resolve the dispute, the parties must endeavour to settle any dispute by mediation administered by the Australian Disputes Centre (ADC). The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC.

### 15. GENERAL

- (a) These Terms may not be varied except by a later written document that is agreed and signed by the parties.
- (b) A party may not assign or transfer any of its rights or obligations under these Terms without the prior written consent of the other party which may be given, given on conditions, or regused at the other party's sole discretion.
- (c) If any part of the Terms is unenforceable, invalid or void then that part of these Terms is severed and the rights and obligations of the remaining

parts of these Terms continue to apply.

- (d) Yonder is an independent contractor of the Client and neither Yonder nor its employees are agents, employees or joint venturers of the Client, and nothing in these Terms creates a relationship of principal and agent, or employee and employer between the parties.
- (e) These Terms are governed by the laws of the state of New South Wales and the parties submit to the non-exclusive jurisdiction of New South Wales.

### 16. DEFINITIONS

Materials means any and all results and proceeds of the Yonder's Services, including any and all print, radio, television, cinema, billboard, digital and/or online material, marketing collateral or advertisements developed and produced by Yonder for the Clients.

Confidential Information means all confidential information belonging to a party, including but not limited to: (i) any and all information about the operations, finances, business arrangements or contracts of that party; (ii) any information or material regarding these Terms; (iii) the Material and any information about any project or campaign for which Yonder is providing the Services; and (iii) any and all information about the Client which Yonder provides to the Client in connection with the Services.

Insolvency Event means the winding up, dissolution or cessation of business, the appointment of an administrator, liquidator, receiver or an official manager, an assignment for the benefit of creditors, scheme of arrangement with creditors, insolvency and bankruptcy of the Client or any similar procedure.

Moral Rights has the meaning given to it in the Copyright Act 1968 (Cth).

Quote means any written quote between Yonder and the Client.

Services, Fee and Client have the meaning and are described in a Quote.

