

Nine Radio Standard Terms and Conditions

Definitions

"Agency" means an agency acting on behalf of a Client in relation to the Services or payment for the Services;

"Booking" means a request to broadcast or otherwise publish advertising material as identified in the Broadcast Agreement.

"Broadcast Agreement" means the Broadcast Agreement between Client and the Broadcaster which sets out the Services and is subject to and includes these Terms and Conditions.

"Broadcaster" means each company specified in the Broadcast Agreement, whether on its own behalf or as agent for a commercial radio licensee.

"Client" means the person for whose benefit the Services are provided under the Broadcast Agreement and includes an Agency.

"Delete and Charge" means that the Broadcaster will not publish any advertising requested in a Booking but will nevertheless charge the Client for this advertising.

"Holdings" means the electronic holdings file containing confirmation of Bookings (including without limitation all spot and non-spot charges) received by the Broadcaster on behalf of an Agency Client via the RadioMatrix system and provided to the Agency by the Broadcaster's chosen delivery method each weekday evening, in the form of an electronic holdings for download into a compatible media management systems used by the Agency.

"Insolvent" means being unable to pay debts as and when they fall due; ceasing to carry on business, having a liquidator, receiver, receiver and manager or administrator appointed to the whole or any part of the assets of a business; making any composition or arrangement with creditors; having an order or resolution made for the dissolution or liquidation of a business (other than for the purpose of solvent amalgamation or reconstruction); or any similar or analogous procedure, action or event in consequence of debt in any jurisdiction.

"Play and Charge" means that the Broadcaster will publish any advertising requested in a Booking and will charge the Client for this advertising.

"Services" means the publication, communication or broadcast of advertising material on any medium as specified in the Broadcast Agreement.

Agreement

- Any Booking placed by Client with the Broadcaster shall constitute an offer by Client to acquire Services and the Broadcast Agreement attached to this document or any variation thereof constitutes the Broadcaster's acceptance of that offer on the terms set out in these Standard Terms and Conditions and in the Broadcast Agreement.

Payment and Credit

- Client will be charged for the provision of Services at the rates set out in the Broadcast Agreement.
- If Client has a credit account with the Broadcaster, Client will be provided an invoice on a monthly basis for the value of Services provided during the preceding month and Client must pay the amount invoiced in accordance with the terms of that invoice and in any event, no later than 30 days from the date of that invoice. The Broadcaster may, in writing, offer extended payment terms to Clients that are approved advertising agencies. Extended payment terms may be revoked if the Client at any time does not comply with the terms of credit or payment terms. The Broadcaster may charge an additional administration fee for payments made by Credit Card.
- If Broadcaster's invoice is not paid when due, the Broadcaster may, in its discretion and without limiting its other rights: (a) charge interest on the unpaid amount at the rate charged by the Australia and New Zealand Banking Group Limited as its Index Rate from time to time plus 3% until such amount is paid; (b) suspend publication or broadcast of any advertising material lodged by Client until such time as all outstanding payments are received by the Broadcaster; (c) if the unpaid amount exceeds 90 days, charge an administration fee of 2% per month, from date of invoice, on the unpaid amount; (d) to the extent permitted by law, recover any expenses, costs or disbursements including legal costs for debt recovery incurred by the Broadcaster in recovering any outstanding monies; (e) cease to provide, or impose conditions on the provision of, credit to the Client and require pre-payment for any subsequent Booking; and (f) not pay or deduct any applicable agency rebate, discount or commission, and the amount of any such rebate, discount or commission shall be immediately due and payable. The Broadcaster may use the services of a mercantile agent for recovery of unpaid amounts and may commence legal proceedings to recover unpaid amounts without notice.
- The Broadcaster may at any time at its discretion and without notice alter, cancel, suspend or impose conditions on credit facilities.
- If Client does not have a credit account, or the value of Services exceeds the available credit limit, payments for Services must be made at least 3 business days prior to advertisements being published. If payment is not made in accordance with this clause, the Broadcaster will Delete and Charge or Play and Charge (in its absolute discretion) for the Services and Client agrees that it will be liable for such charges.

Conditions on Provision of Services

- The Broadcaster: (a) reserves the right to refuse to accept for publication or to publish or to withdraw any advertising material for any reason; and (b) may, at its discretion and at any time, cancel, reschedule or replace any programming or advertising breaks within or between programming without reference to the Client.
- Client acknowledges and agrees that: (a) scheduling of programming and advertising by the Broadcaster is subject to unforeseen changes and the Broadcaster may reschedule advertisements at any time in its absolute discretion; (b) Services may be subject to interruption; and (c) it must not re-sell, sub-license or sub-contract any advertising allocated to it other than with the consent of the Broadcaster; (d) Client may only cancel, vary or reschedule a Booking with 28 days' written notice and the Broadcaster will Delete and Charge or Play and Charge (in its absolute discretion) Bookings where this notice is not given and Client agrees to be liable for such charges; and (e) The Broadcaster does not guarantee the success of any advertising or promotional campaign booked pursuant to the Broadcast Agreement and no recourse will be available as against the Broadcaster or any of its employees, agents or representatives for failure of advertising booked by Client to achieve the desired results; (f) the Broadcaster may from time to time publish or broadcast other material or advertisements which are not beneficial to Client's business and custom; and (g) for Bookings made by an Agency participating in the RadioMatrix system, Holdings is deemed to be the final confirmation from the Broadcaster of the Booking. It is the Client's sole responsibility to check Holdings and notify the Broadcaster of any errors within 2 business days of making the Booking and subsequently on a weekly basis throughout the period of the campaign. Any errors (included misplaced, duplicated or incorrectly rated Bookings) for spots or non-spot charges that appear in Holdings that are not queried by the Client with the Broadcaster will not attract a credit and Client will be required to make full payment for advertising published, communicated or broadcast in accordance with Holdings. In the event the Broadcaster adjusts a Booking prior to Broadcast in accordance with this clause 8(g), they will advise the Client of the changes to be reflected within Holdings with sufficient time prior to the Broadcast to allow the Client to review and agree on those changes.

- All copyright and other intellectual property rights created by the provision of Services by the Broadcaster shall be the property of the Broadcaster, by way of present and future assignment. Client must lodge advertising material in accordance with this clause and any lodgement requirements specified by the Broadcaster from time to time. If the Client fails to comply with this clause with respect to a Booking, the Broadcaster is under no obligation to perform the Services. Broadcaster will Delete and Charge or Play and Charge (in its absolute discretion) for advertising material that is not lodged in accordance with this clause and Client agrees that it will be liable for such charges. The Broadcaster's lodgement requirements include, but are not limited to, the following: (a) Deadline for receipt of approved audio advertisements is 12 noon the business day prior to publication or broadcast; and (b) Bonus and BTA advertisements cannot be guaranteed a particular time or position in break.

Warranties

- Client warrants that advertising material and other information provided to the Broadcaster by Client: (a) complies with all laws, statutes, regulations, codes of practice and any standards determined by any relevant regulatory agency or industry self-regulatory body applicable to Services; (b) complies with any standard or requirement specified by the Broadcaster and notified to the Client from time to time; (c) does not infringe copyright, trademark or other legal rights of any person; (d) is not false or misleading and is true in substance and in fact; (e) does not infringe the Australian Consumer Law 2010 (Cth) or equivalent state legislation; and (f) does not contain anything which may give rise to any cause of action by a third party against the Broadcaster, including without limitation material which is misleading and deceptive or defamatory or obscene or which infringes any right of privacy or personality or which otherwise causes injury or damage to any person. Client further warrants it is responsible for obtaining and must obtain all consents, approvals or permissions for the publication or broadcast of all advertisements on its behalf by Broadcaster, whether required by law or otherwise.

Indemnities

- Client indemnifies and will keep indemnified the Broadcaster against any action, claim, loss or expense arising from the Services or any breach by Client of the warranties in clause 11 of these Standard Terms and Conditions or other clause of the Broadcast Agreement or these Standard Terms and Conditions.

Liability

- To the extent permitted by law, the Broadcaster has no liability to Client whether in contract, tort or otherwise for any loss, cost, claim or damage (including without limitation for or in respect of any consequential, special or indirect liability and loss of profits, opportunity, revenue or data) arising from: (a) the provision of the Services by the Broadcaster; (b) any action taken by the Broadcaster in accordance with clauses 7 or 8 above; or (c) any breach of the Broadcast Agreement.
- To the extent permitted by law, all implied representations, conditions or warranties by the Broadcaster, whether based in statute, common law or otherwise, are excluded.
- Any liability of the Broadcaster not excluded by clauses 13 or 14 above is limited, at the Broadcaster's option, to the supply of any service again or the payment for the cost of having any service supplied again.

Termination

- Either party may terminate the Broadcast Agreement: (a) without penalty upon the provision of 28 days' written notice; or (b) immediately upon the provision of notice where the other party has breached a material term of the Broadcast Agreement (including these Standard Terms and Conditions); or (c) immediately upon the provision of notice if the other Party is deemed Insolvent or ceases or threatens to cease to carry on business.

Agency

- Each person constituting the Client will be jointly and severally liable as principal debtor for payment of amounts invoiced by the Broadcaster. Client warrants that it has full authority in all matters connected with the entering into and performance of the Broadcast Agreement with the Broadcaster.

Miscellaneous

- The Broadcast Agreement between the Broadcaster and Client will be governed by the laws in force in New South Wales and each party submits to the jurisdiction of courts exercising jurisdiction in the State or Territory in which Services are provided (or where the Services are provided in more than one State or Territory, that State or Territory selected by the Broadcaster in its sole discretion).
- If the Broadcaster is prevented or delayed in the performance of any of its obligations by a force majeure event being an event beyond its control, it shall be excused from the performance or the punctual performance as the case may be for so long as such event shall continue.
- The terms and conditions of the agreement concluded between Client and Broadcaster are set out exhaustively in these Standard Terms and Conditions and in the attached Broadcast Agreement or any variation thereof and comprise the entire agreement of the parties. The Broadcast Agreement and these Standard Terms and Conditions supersede and exclude any prior representations, negotiations, arrangements, understandings, communications or agreements between Client and Broadcaster relating to the subject matter of the Broadcast Agreement. The Broadcast Agreement and these Standard Terms and Conditions can only be varied by agreement in writing by both parties, or in the case of the Broadcaster varying these Standard Terms and Conditions, by it giving notice in writing.
- A waiver of any right, power or remedy under the Broadcast Agreement and these Standard Terms and Conditions must be in writing signed by the party granting it. The fact that a party fails to do, or delays in doing, something the party is entitled to do under the Broadcast Agreement and Standard Terms and Conditions does not amount to a waiver.
- Each provision of this document is individually severable. If any provision is or becomes illegal, unenforceable, void or invalid in any jurisdiction it is to either: (a) be treated as being severed from this Agreement in the relevant jurisdiction, but the rest of this document, and the legality, validity and enforceability of the provision in any other jurisdiction, will not be affected; or (b) be read down to the extent necessary to make it valid and enforceable in the relevant jurisdiction.
- The Broadcaster collects and shares the personal information of the Client and any individuals associated with the Client in accordance with the Broadcaster's privacy policy available on its website (as updated from time to time).