

## **RCJ GROUP - TERMS & CONDITIONS OF TRADE (“Trading Terms”)**

**Effective date: 1/10/2023**

Please read these Trading Terms carefully.

The following Trading Terms supersede all previous terms and conditions issued by Us.

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### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In these Trading Terms and in any quotation, offer, current catalogue, website, price list produced by Us or other agreement with Us, the following definitions apply:

**Application for Credit Account** means any application signed by You for the provision of credit by Us.

**Business Day** means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Victoria, Australia and concludes at 5pm on that day.

**GST** means the goods and services tax that applies in accordance with *A New Tax System (Goods & Services) Act 1999* (Cth).

**Order** means any written, verbal or electronic purchase order submitted by You for Services.

**Prices** means the prices attributable to the Services as advised by Us in any quotation, offer, current catalogue, website or price list produced by Us and **Price** shall have a corresponding meaning.

**Services** mean any services provided by Us to You and includes any advice or recommendations (and where the context so permits shall include any complimentary or necessarily incidental services provided by Us to You).

**RCJ** means Russell Curtis & Janes Advertising Pty Ltd ABN 15 005 856 575 (T/A RCJ Media; RCJ Media Group; Media Credit Australia; and Media Buying Services) and, where applicable, any of the other entities within the RCJ Group which provides Services to You (whether or not that fact is disclosed to You).

**RCJ Group** means, collectively, RCJ and each of the following entities and their successors and assigns:

- (a) Leapfrogger Pty Ltd ABN 91 607 722 109; and
- (b) Brand Asia Pty Ltd ABN 72 666 692 119,

together with any additional entities that become subsidiaries of RCJ from time to time.

**Trading Terms** means these terms and conditions of trade and includes any amendment or variation.

**We** and **Us** means RCJ and **Our** means belonging or pertaining to Us.

**You** means the person, firm, company or entity submitting an order with Us for Services and **Your** means belonging or pertaining to You.

#### **1.2 Interpretation**

In these Trading Terms, unless the context clearly indicates otherwise:

- (a) a reference to a natural person includes their personal representatives, successors and permitted assigns;
- (b) a reference to a corporation includes its successors and permitted assigns;
- (c) a reference to “dollars” or “\$” is a reference to Australian currency;
- (d) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (e) a reference to a time is to that time in Victoria, Australia; and
- (f) if the time for doing anything to be done under these Trading Terms expires on a day other than a Business Day, the time for doing that act will be extended until the next Business Day.

### **2. APPLICATION OF TRADING TERMS**

- (a) These Trading Terms apply to every provision of Services by Us to You. Each Order submitted by You and accepted by Us will be an individual contract for those Services in accordance with these Trading Terms.
- (b) Where You enter into these Trading Terms as the trustee of a trust, You agree that You enter into these Trading Terms and carry out the transactions that these Trading Terms contemplate

in Your own right and in Your capacity as the trustee of such trust.

- (c) Subject to any special trading terms agreed to between You and Us and recorded in Your Application for Credit Account or separately in writing, these Trading Terms (together with any quotation, offer, current catalogue, or price list produced by Us or other agreement with Us) shall comprise in entirety Our terms and conditions of trade.
- (d) In the event of any inconsistency between these Trading Terms and any other document (excluding a written agreement with Us), these Trading Terms shall prevail, and any trading terms nominated by You are expressly excluded. Any warranty, representation or guarantee not included or provided for in these Trading Terms or a written agreement with Us is of no effect.
- (e) If any part of these Trading Terms, or the application of these Trading Terms to any person or circumstance, is or becomes invalid or enforceable, the remaining provisions of these Trading Terms are not affected and are valid and enforceable to the fullest extent permitted by law.
- (f) We may amend these Trading Terms from time to time and We may give notice of any amended Trading Terms by publication on any of our websites ([www.rcj.com.au](http://www.rcj.com.au); [www.leapfrogger.com.au](http://www.leapfrogger.com.au) and [www.brandasia.com.au](http://www.brandasia.com.au)) or by some other means of notification to You. You will be deemed to have had knowledge of such amendments and have accepted these Trading Terms as amended if You continue to purchase Services from Us after such amendment. Each subsequent provision of Services by Us to You will be in accordance with these Trading Terms as amended.

### 3. AGREEMENT

- (a) Any quotation or offer produced by Us is subject to review, amendment or withdrawal at any time prior to acceptance by You or the expiry of the quotation or offer (whichever occurs first).
- (b) Any quotation or offer produced by Us will be deemed to have been accepted by You and a binding agreement entered into with You on the date We receive Your Order. Any Order which has been accepted by Us may not be cancelled by You without Our written consent (which We may withhold in Our absolute discretion) and then only on the basis that You will indemnify Us in full against all loss (including loss of profit), costs (including the cost of labour and materials used), damages, charges and expenses (including legal costs on a full indemnity basis) incurred by Us as a result of such cancellation.
- (c) We reserve the right to decline, in whole or in part, any Order received from You in Our absolute discretion.
- (d) Any variation to an Order requested by You may be accepted or rejected by Us in Our absolute discretion. We may apply additional terms to any variation of an Order requested by You.
- (e) You are solely responsible for determining whether the Services are suitable for Your intended purposes and meet Your requirements and You acknowledge that no oral or written information, representation or advice given by Us (other than as contained in these Trading Terms) creates a warranty from Us or in any way increases the scope of these Trading Terms.
- (f) You agree to notify Us in writing of any proposed change in Your ownership and/or any other change in Your details (including but not limited to, changes to Your name, address, email address, contact phone number/s, or business practice) not less than 14 days prior to such change taking effect. You agree to indemnify Us against any loss or damage We may incur as a result of Your failure to provide such notification.
- (g) Subject to clause 3(h), You acknowledge that:
  - (i) in the course of providing the Services, We may receive commissions, rebates or any other forms of financial or non-financial incentives (“**Incentives**”) from third party media vendors as a result of purchasing media inventory but such Incentives are attributable to Our purchases of media inventory for all of Our various clients as part of Our normal business operations rather than being solely attributable to Our purchases of media inventory for You under these Trading Terms
  - (ii) We have no control over the types of Incentives which may be offered to Us during the course of providing the Services, or the timing of when Incentives may be offered, and so it is not possible for Us to know the full extent of the Incentives that may be available to Us during the course of providing the Services or the overall net effect that such Incentives will have on the net profit earned by Us from providing the Services; and
  - (iii) any Incentives received by Us in the course of conducting Our ordinary business operations may be applied as We see fit without being obligated to account to any of Our

- clients as to the manner in which We applied it, which may include Us selling the Incentive.
- (h) Notwithstanding the matters described in clause 3(g), We must at all times seek to obtain for our clients the best fees and prices from third party media vendors that are commercially available at the time We purchase the media inventory on behalf of our clients. For the avoidance of doubt, We must not purchase media inventory for You if such purchase would result in Us receiving an Incentive from the media vendor but the fee or price paid on Your behalf was not the best commercially available at the relevant time.
  - (i) You acknowledge and agree that except as permitted strictly in accordance with these Trading Terms, You must not, whether directly or through any intermediary:
    - (i) solicit services directly from, or offer direct employment to, any of Our employees; or
    - (ii) induce or attempt to induce any of Our employees to terminate their employment with Us.

#### **4. DOCUMENTS**

Any clerical or typing errors, misprints or other similar errors in any document produced by Us in respect of Services are subject to correction by Us by either amending or re-issuing the affected document (as the case requires). We shall not be liable for any cost, expense or damage incurred by You as a result of any correction of any document produced by Us.

#### **5. INTELLECTUAL PROPERTY**

You acknowledge and agree that:

- (a) any intellectual property rights in respect of the Services (including, but not limited to, rights to design, copyright, or trademarks in respect of all drawings, designs, specifications and other information provided by Us in connection with any quotation, offer, current catalogue, website, price list produced by Us) remain Our sole and exclusive property (or, if applicable, the sole and exclusive property of its owner) and must remain confidential and You will not attempt to claim any such intellectual property rights in respect of either the Services or any modification or improvement of the Services; and
- (b) in all cases where You have provided any design, copyright or trademarks or other intellectual property to facilitate Our provision of any Services, We will not accept any responsibility for any infringement of any such intellectual property in connection with the execution of Your Order and You agree to indemnify Us against claims for infringement or unauthorised use of such intellectual property arising out of the Services.

#### **6. PRICES AND PAYMENT**

- (a) You agree to pay, and We agree to provide Services for, the Prices.
- (b) Any form of payment other than cash shall not be deemed to be received until that form of payment has been honoured, cleared or recognised.
- (c) All Prices and all amounts payable to Us are exclusive of GST or any other applicable government tax or duty, unless otherwise indicated. You must pay all such taxes and duties in connection with those amounts.
- (d) We reserve the right, from time to time but prior to issuing any invoice to You, to increase the Prices:
  - (i) to take account of increases in the cost of providing the Services to You which are due to any factor beyond Our reasonable control or are due to Your failure to provide adequate information or instructions; and/or
  - (ii) to take account, to the extent necessary, of variations requested by You to an Order; or to correct, without any liability on Our part, any errors or omissions quotation, offer, current catalogue, website or price list produced by Us.
- (e) We reserve the right to pass on to You any additional costs (including merchant fees) incurred by Us where You pay Us by credit card (if applicable).
- (f) If We have not provided credit terms to You, You must pay for any Services on or before the time of provision to You.
- (g) If We have provided credit terms to You, You must pay for any Services provided to You within the time period stated in Our invoice or statement for such Services. If We have not stated a time period for payment or otherwise have not entered into alternative payment arrangements

with You, You must pay for the Services within 30 days of the date of Our invoice or statement for the Services.

- (h) We may set, alter or withdraw credit limits and terms in Our absolute discretion and without giving prior notice to You or providing reasons.
- (i) Payments due to Us must be made without any deduction or set-off. We may apply the amounts paid to Us in payment of any amount owed by You. If You dispute Our invoice or statement, You must still pay the entire amount. We will refund any agreed amount following resolution of the dispute.
- (j) If You fail to pay Our invoice or statement (whether in whole or in part) by the due date, without limiting any other provision in these Trading Terms, We may (in Our absolute discretion):
  - (i) suspend or cancel any further provision of any Services (whether under an existing or new Order) until full payment of all outstanding amounts owed to Us (including accrued interest if applicable) has been made;
  - (ii) charge interest on any amount outstanding in respect of Our invoices, at the rate of 5% above National Australia Bank's 'Corporate Overdraft Reference Rate', calculated daily from the due date of the relevant invoice until full payment (including any accrued interest) has been made;
  - (iii) withdraw (in full or in part) any discount, concession, allowance, rebate or other benefit which was previously offered to You; and/or
  - (iv) recover from You, in addition to the outstanding amount, all costs or expenses incurred by Us arising out of or in connection with collecting or attempting to collect the outstanding amount (including, but not limited to, expenses and fees associated with or paid to or on account of collection costs, court costs, legal adviser fees and the fees or expenses of any other agents acting on Our behalf, all such amounts calculated on an indemnity basis), such amounts being an additional debt due and payable without demand from the date on which We incur the liability for the cost, expense or fee.
- (k) In consideration for Us entering into these Trading Terms with You, You hereby charge in Our favour the whole of Your estate and interest, legal and equitable, in Your personal and real property to secure Your obligations pursuant to these Trading Terms. Without limiting Our rights under these Trading Terms, You acknowledge and agree that the charge on Your property shall provide a caveatable interest in Our favour and You consent to Us registering Our interest in Your property, including by way of a caveat.

## **7. FORCE MAJEURE**

We will not be liable for any failure to perform, or delay in performance of, any obligation where such failure or delay is due to anything beyond Our reasonable control including, but not limited to, adverse weather or terrain, strikes, lockouts and other industrial action, material shortages, failure of any of Our suppliers to supply, accidents, power or data transmission failure, breakdowns of plant or machinery, war, pandemic, changes of government, import or export regulations or embargoes.

## **8. LIMITATION OF LIABILITY AND WARRANTIES**

- (a) The *Competition and Consumer Act 2010* (Cth) may imply certain conditions and warranties into these Trading Terms that cannot be excluded or modified. These Trading Terms do not exclude or modify any of those conditions if to do so would contravene that law or make any part of these Trading Terms void.
- (b) Subject to (a) of this clause and without limiting the terms of any written warranty given separately by Us, all warranties and conditions that may be implied into these Trading Terms are excluded and Our liability for breach of any implied condition or warranty that cannot be excluded is limited (at Our option) to the re-provision of the Services or reimbursement of the cost of providing the Services again or refunding to You any payments made in respect of the Services.
- (c) Despite any other provision of these Trading Terms, to the extent permitted by law, We have no liability to You nor will You be entitled to claim against Us in respect of:
  - (i) any loss or damage caused by delay in provision of the Services; and
  - (ii) any consequential loss or damage (including, but not limited to, loss of profit, loss of

revenue, loss of expected savings and opportunity costs) arising out of or in connection with the provision of the Services or otherwise at law or in equity.

- (d) You acknowledge that the exclusions and limitations in this clause are customary for providers of services equivalent to the Services and are fair and reasonable given the nature of the Services and the applicable Prices.
- (e) For the purpose of making any claim under this clause, You must:
  - (i) immediately upon becoming aware of circumstances giving rise to a claim, notify Us in writing setting out full details of Your claim;
  - (ii) provide Us with proof of payment for the Services in relation to Your claim; and
  - (iii) allow Us (including Our employees and/or agents) full and free access to the places where the Services were provided as is reasonably necessary for the purpose of conducting any inspection and tests that We may deem necessary to determine whether the claim is justified or not.
- (f) This clause shall survive termination of these Trading Terms.

## 9. CONSENT TO CREDIT CHECK AND PRIVACY ACT

- (a) By signing the Application for Credit Account, You acknowledge and agree that the *Privacy Act 1988 (Cth)* allows Us to give a credit reporting agency certain personal information about You at any time after signing such form for the purpose of assessing Your credit worthiness.
- (b) You further acknowledge and agree that We may contact any trade reference provided by You or any credit provider and We may acquire information from them or provide information to them in relation to Your credit worthiness.

## 10. TRUSTEE WARRANTIES

If You are the trustee of a trust (“**Trust**”), You warrant that:

- (a) You enter into these Trading Terms and carry out the transactions that these Trading Terms contemplates in Your own right and in Your capacity as trustee of the Trust;
- (b) the Trust is duly constituted and has not terminated, nor has the date or any event occurred for the vesting of the Trust fund;
- (c) You are the sole trustee of the Trust, You have not given any notice of resignation and no action has been taken to remove You or to appoint an additional trustee of the Trust;
- (d) You have full legal capacity and power under the Trust deed to own the Trust fund and carry on the business of the Trust as it is now being conducted;
- (e) all action has been taken that is necessary or desirable under the Trust deed or at law to:
  - (i) authorise Your entry into these Trading Terms;
  - (ii) ensure that these Trading Terms are valid and binding on You as trustee of the Trust and admissible in evidence against You in that capacity;
  - (iii) enable You to properly carry on the business of the Trust;
- (f) You are entering into these Trading Terms for the commercial benefit of the Trust and for the benefit of the beneficiaries of the Trust;
- (g) You have the right to be fully indemnified out of the Trust fund in relation to these Trading Terms, that right has not been modified, released or diminished in any way, and the Trust fund is sufficient to satisfy that right in full and You have not released or disposed of Your equitable lien over the Trust fund;
- (h) the rights of the beneficiaries to and their interest in the Trust fund are subject to the rights and interests in the Trust fund under these Trading Terms, and any rights and interests of the party in the Trust fund to which the party may be subrogated;
- (i) You are not in breach of any of Your material obligations as trustee of the Trust, whether under the Trust deed or otherwise; and
- (j) no part of the Trust fund has been resettled, set aside or transferred to any other person, whether as trustee or otherwise, or mixed with any other property.

## 11. GENERAL PROVISIONS

- (a) We may sub-contract the provision of all or some of the Services.
- (b) Any failure by Us to insist on strict compliance with these Trading Terms or any delay by Us in exercising Our rights under these Trading Terms will not constitute a variation or waiver of any provision of these Trading Terms or of any right available to us.
- (c) If part of all of any provision of these Trading Terms or its application to any person or circumstance is held to be illegal or unenforceable, the provision will be interpreted so as to ensure it is not illegal or unenforceable. If any provision or part of it cannot be so interpreted, the provision or relevant part of it will be severed from these Trading Terms and the remaining provisions of these Trading Terms will continue in force.
- (d) Where You are comprised of 2 or more persons, an agreement or obligation to be performed or observed by You binds those persons jointly and each of them severally.
- (e) Any notice, instrument, process, demand or document required to be served under, or in connection with the enforcement of, these Trading Terms will, to the extent permitted by law, be sufficiently served if delivered or posted by pre-paid post to the postal address of that party as specified in the Application for Credit Account, unless We are notified of a change of postal address and such change is acknowledged by Us in writing. If the notice or document is posted, then to the extent permitted by law, service will be deemed to have been effected 3 Business Days after the date on which the document or notice was posted, if posted within Australia (7 Business Days if posted from outside of Australia).
- (f) Any entity within the RCJ Group may assign its rights under these Trading Terms to any other entity within the RCJ Group.
- (g) These Trading Terms are governed by the laws of Victoria. All parties submit to the non-exclusive jurisdiction of the Courts of Victoria, Australia, in the district as selected by Us.