

# Outdoor Advertising Rental Agreement - Terms & Conditions

## **M5 Limited ("Media5")**

### **STANDARD TERMS AND CONDITIONS OF BUSINESS**

The following terms and conditions apply to all advertising services provided by Media5 and form part of this Sales Contract unless otherwise expressly agreed in writing by Media5.

This Sales Contract shall not bind Media5 until execution by an authorised representative of Media5. Capitalised terms are defined at the end of these Terms and Conditions.

#### **1. CAMPAIGNS**

1.1. Details of the Campaign are as set out in this Sales Contract.

1.2. Any additional Campaigns will be set out in separate sales contracts.

#### **2. CHARGES, COSTS AND PAYMENT**

2.1. Unless otherwise agreed in writing, charges for media costs shall be invoiced monthly.

2.2. Where the GST rate changes, the amount of GST payable by the Client to Media5 may vary from that stated in this sales contract and will be determined by the provisions of the Goods and Services Tax Act 1985.

2.3. In addition, the Client will pay all costs relating to:

2.3.1. installation and production of Advertising Material;

2.3.2. importing of Advertising Material, including GST, freight and customs clearance, and delivery to the specific Media5 installers responsible for the Site;

2.3.3. removal of Advertising Material in circumstances where the Client requires Advertising Material to be retained in accordance with clause 5.5 or at a specific time other than prior to the installation of another contracted party's billboard skin, otherwise removal will be at no cost and will be removed as Sites are used by another advertiser;

2.3.4. any costs incurred by Media5 in receiving or forwarding Advertising Material;

2.3.5. all costs incurred by Media5 in recovering payment from the Client including (without limitation) all debt collector's fees or commissions, solicitors fees and disbursements and company clerical costs.

2.3.6. any merchant fees incurred by Media5 in relation to payments the Client makes by credit card.

2.4. All costs associated with design, artwork and preparation of Advertising Material for a Site will be payable by the Client or charged to its account.

2.5. Payment of all invoices must be made in full on or before the 20th day of the month following invoice date.

2.6. Where the Client has indicated that any costs associated with production, installation or display of the Advertising Material should be charged directly to a third party, the Client remains responsible for the costs until such time as they are paid in full by that third party.

2.7. If payment is not made in full on or before the due date for payment, Media5 may do either of the following (without limiting any other right it may have):

2.7.1. charge the Client default interest on the amount outstanding at the rate which is 3% above the overdraft rate charged by Media5's principal bankers (plus GST) from the due date for payment until payment is received by Media5 compounding monthly;

2.7.2. terminate this Sales Contract and remove any Advertising Material (provided however that Media5 will not be obliged to remove any Advertising Material).

2.8. The Client agrees that upon execution it is bound by this Sales Contract and it will be solely liable to Media5 for payment of all monies, costs and expenses howsoever payable under this Sales Contract notwithstanding that it may be acting on behalf of an Advertiser and that it may not have received payment from the Advertiser.

#### **3. ACCREDITED ADVERTISING AGENCIES**

3.1. For a Client to be entitled to a rebate or fee in accordance with clause 3.2, the Client must become an Accredited Advertising Agency ("AAA") of Media5. Media5 will pay a rebate or fee to

an AAA in consideration of the AAA meeting certain financial requirements and by being liable for all payments under this Sales Contract in accordance with clause 2.8.

3.2. Where a Client is an AAA, Media5 will pay the Client a rebate or fee at the rate (if any) set out in the Schedule on the last page of this Sales Contract of the media rental net of GST provided payment is made on or before the last day of the month following invoice. Payments made after the last day of the month following invoice will only attract one half of the nominated rebate or fee. Payments received after 60 days following invoice will not attract any rebate or fee.

3.3. Certain charges are not eligible to any rebate or fee. Where applicable, these charges may be specified in the Schedule (on the last page of this Sales Contract).

3.4. The Client who becomes an AAA warrants to Media5 that it has fully disclosed to the Advertiser all fees, rebates, payments and benefits (including the Agency Rebate/Fee referred to in the Schedule on the last page of this Sales Contract) it has or will receive from Media5 howsoever in connection with, or as a result of this Campaign or Sales Contract, has received the fully informed consent of the Advertiser to such fees, rebates, payments or benefits and has complied with all legal and other requirements prior to receipt of such fees, rebates, payments or benefits.

#### **4. PRODUCTION AND PRINTING**

4.1. If it is specified in this order that Media5 will carry out production and printing in respect of the Advertising Material:

4.1.1. The Client must, at least 10 days before the commencement of the display period, provide Media5 with a copy of the artwork for the Advertising Material at such address as Media5 may direct, which is to scale and supplied as finished reflection or electronic art and which is, in Media5's opinion, in compliance with this Sales Contract, suitable for display and of a nature which will be approved by any Authority whose approval is required.

4.1.2. Media5 will produce and print the Advertising Material from the artwork at reasonable commercial rates. Such rates will be advised to the Client when ascertained. Media5 may subcontract such production and printing. Alternatively, Media5 may introduce the Client to a third party production company.

4.2. If it is specified in this Sales Contract that the Client will carry out its own production and printing, the Client must provide Media5 with the Advertising Material in a form ready to install no later than seven days prior to the commencement of the display period.

#### **5. DELIVERY AND INSTALLATION AND MAINTENANCE**

5.1. The Client is required to physically proof their own artwork before submission to Media5. Media5 accepts no responsibility for any errors in print or image quality resulting from poor photography or artwork. If physical proofs are required, an additional charge will apply. All graphics will be printed as per the format provided.

5.2. If it is specified in this Sales Contract that the Advertising Material is changing under another existing sales contract ("Copy Change date"), the Client must deliver to the specified Media5 installer location, the Advertising Material in a form ready to install no later than seven (7) days prior to the commencement of the display period.

5.3. Media5 will arrange the installation of the Advertising Material on a Site and will retain the right to use its own contractors for any such installation.

5.4. Media5 shall make every reasonable effort to have the Advertising Material installed at the Sites within five (5) working days of the Start date or Copy Change date. Media5 shall not be responsible for any installation delay caused by any act or thing beyond its reasonable control, including where bad weather renders installation unsafe or impracticable. Where an installation delay is caused solely by Media5, then at the option of Media5, the Client will be entitled to either a pro rata abatement of the charges or to a pro rata extension to the display of the Advertising Material on that Site.

5.5. Media5 will not be responsible for any interruption to the electrical power supply to any Site and the Client will not be entitled to any abatement of Monthly Rates during the period of such interruption.

5.6. At the termination of a Campaign, Media5 will dispose of the Advertising Material unless the Client has notified Media5 that it requires the Advertising Material to be retained and either forwarded to a specified address or collected by the Client within one month of the termination of the Campaign. Any and all such additional Services will be charged at the rate specified in the document "Pricelists 2015". Media5 is under no obligation to immediately remove the Advertising Material from the site at the termination of a Campaign. As per clause 2.3.4. any freighting of billboard skins will be charged in addition to the contracted amount.

## **6. ADVERTISING STANDARDS**

6.1. The Client must provide a copy of the creative to Media5 for approval no later than 10 days prior to the commencement of the Campaign.

6.2. If Media5 considers any Advertising Material is illegal or in breach of the standards issued by the Advertising Standards Authority ("ASA") (as may be modified from time to time) (the "Advertising Standards") Media5 may elect not to display that Advertising Material, in which case the following will apply:

6.2.1. Media5 may refer the matter to the ASA for decision. If the ASA determines that the advertising is in breach of the Advertising Standards, the client will be liable to Media5 for:

6.2.1.1. the full amount of the charges under this Sales Contract (even if the advertising has not been displayed)

6.2.1.2. all costs of removing any advertising that has been posted

6.2.1.3. all costs incurred by Media5 in referring the matter to the ASA.

6.2.2. If Media5 elects not to refer the matter to the ASA, no charges will be payable by the Client (but neither will Media5 be liable to the Client for any reason whatsoever).

6.3. If it is specified in this order that Media5 will carry out production and printing in respect of the Advertising Material: If Media5 has been compelled to remove the Advertising Material by an Authority, the Client shall be liable for:

6.3.1. the full amount of the charges under this Sales Contract; and

6.3.2. all costs of removing any advertising that has been posted.

6.4. Media5 accepts no responsibility for the Advertising Material prepared by or at the request of the Client.

## **7. PRE-EMPTIBLE SITES**

7.1 Pre-emptible bookings are on the following basis:

7.1.1 Media5 may cover the clients advertisement with another party's advertisement on this site.

7.1.2. If the client's advertisement is covered up by another party's advertisement, then at the expiration of that other party's advertising term their advertisement shall be removed to again display the client's advertisement. If the de-installation costs are not outlined in this agreement, they will be included in the media rental price in this contract. For the months that the client's skin is exposed, the media rental set out in this contract will be charged to the client.

## **8. GENERAL**

8.1. **Title:** The Sites remain the property of Media5 at all times. Title to Advertising Material supplied under this Sales Contract remains with Media5 until all amounts owing by the Client in accordance with this Sales Contract have been paid in full and in cleared funds.

8.2. **Risk and Insurance:** Media5 is not liable for any damage to the Advertising Material on a Site. The Client is not liable for any damage to the frame of the billboard, except where, in Media5's reasonable opinion, it is likely that the damage to the frame of the billboard was caused as a result of the Advertising Material.

8.3. **Grant of Access and Removal:** Media5 has the right to remove Advertising Material that is the subject of this Sales Contract at any stage, if compelled to by an Authority. On this event occurring, Media5 will use reasonable endeavours to find a suitable replacement site. If Media5 does not find a suitable replacement site, then Media5 is entitled to cancel that Sales Contract and the Client shall be entitled to an abatement of charges only for the remaining period of this Sales Contract.

**8.4. Deductions:** The Client will not deduct or withhold any amount (whether by way of set off, counterclaim or otherwise) from any money owing at any time to Media5. Media5 may deduct any amount owing by the Client from any amount owing by Media5 to the Client.

**8.5. Third-party payments:** Media5 discloses that it may be paid commissions or fees by third-parties recommended or introduced to the Client by Media5 where any such third-party performs production or other work for the Client. The Client consents to Media5 receiving any such commissions or other fees.

**8.6. Client's Warranty and Indemnity:**

8.6.1. The Client warrants that no part of any advertisement used on or in connection with this Sales Contract will infringe the rights (including intellectual property rights) of any person or will fail to comply with the Advertising Standards or with any obligation imposed by law or equity. Approval by Media5 of any artwork or the display of any advertisement on a Site does not constitute a waiver of this warranty.

9.6.2. The Client will indemnify Media5 for all liabilities, losses, damages, costs, expenses and charges which Media5 may suffer or incur as a result of any breach of any warranty in this Sales Contract (including in clauses 3.4 and 8) or as a result of Media5 being deemed to be a manufacturer of the Advertising Material for the purposes of the Consumer Guarantees Act or otherwise liable to any third party in relation to the Advertising Material on a Site or as a result of the Client failing to observe or perform any of its obligations under this Sales Contract (including clause 2.8).

**8.7. Media5's Liability:**

8.7.1. Except for any express warranty contained in this Sales Contract, all warranties, descriptions, representations or conditions whether implied by statute or otherwise by law, trade, custom or otherwise are expressly excluded to the fullest extent permitted by law.

8.7.2. Media5 will not be liable in any event for any consequential, indirect or special damage, loss or injury of any kind suffered by the Client (including but not limited to loss of profits or opportunity) even if such loss or damage was foreseeable or Media5 had been advised of the possibility of it occurring.

8.7.3. If Media5 should be held liable to the Client, the total liability of Media5 whether in tort (including negligence), contract or otherwise, for any loss, damage or injury which the Client may suffer or incur as a direct or indirect result of any act or omission of Media5 will be limited, except where statute expressly requires otherwise, to the lesser of the price paid under this Sales Contract, and the actual loss or damage suffered by the Client.

8.7.4. Media5 shall not be responsible for any failure or delay in the performance of this Sales Contract where such failure arises out of any fire, act of God, industrial dispute, strike, lockout, curtailment of cessation of traffic ordered by local or central government or any other act or thing beyond Media5's reasonable control.

**8.8. Waiver:** A waiver by any party of the obligations of the other party under this Sales Contract will not prevent the subsequent enforcement of that party's rights and will not be treated as a waiver of any kind.

**8.9. Assignment:** Media5 may assign its right or obligations under this Sales Contract to another party. The Client may only assign, transfer or sub-licence its rights with the prior written consent of Media5. A change in control or beneficial ownership of the Client will be deemed an assignment and will require Media5's prior written consent in accordance with this clause.

**8.10. Notices:** Any notice given by one party to the other under this Sales Contract will be sufficiently served or made if sent by email, post or facsimile transmission to the address set out on the front of this Sales Contract. The notice will be treated as having been received by or served upon the recipient party on the third day after the day in which it is posted or on the actual day if sent by email or facsimile.

**8.11. No Partnership etc.:** Neither party may pledge the credit of the other nor represent itself as being the other party nor an agent, partner or employee of the other party and neither party may

hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied, on behalf of the other. Nothing in this Sales Contract will be deemed to constitute either party an agent, partner or employee of the other.

**8.12. Entire Agreement:** This Sales Contract constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior agreements, correspondence or understandings between them. No express or implied representation or promise given by a Media5 representative shall bind Media5 unless contained or embodied in this Sales Contract.

**8.13. Severability:** If at any time Media5 receives legal advice that any part of this Sales Contract is or is likely to be in breach of the law, void or unenforceable, Media5 may, at its option, elect to terminate this Sales Contract immediately upon notice to the Client (and without any liability to the Client) or sever that part of this Sales Contract from the remaining terms and conditions and in that case the remaining terms and conditions will apply and be enforceable as though the severed part had not been included in this Sales Contract.

**8.14. Termination: In the event that:**

8.14.1. any amount payable by the Client to Media5 is overdue or in Media5's opinion the Client is unlikely to be able to meet its payment or other obligations to Media5;

8.14.2. the Client breaches any other term of this Sales Contract or fails to meet any other obligation to Media5; or

8.14.3. the Client becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors or has a liquidator (provisional or otherwise) appointed, or is placed under statutory or official management,

8.15. then, in addition to and without prejudice to its other remedies Media5 will be entitled to, in its absolute discretion:

8.15.1. cancel all or any part of this Sales Contract (and/or any other sales contract which may be in place between the parties for the provision of advertising space at the time any of the events in clause 8.13 take place) which remain unfulfilled;

8.15.2. terminate this Sales Contract (and/or any other sales contract which may be in place between the parties for the provision of advertising space at the time any of the events in clause 8.13 take place) immediately;

8.15.3. require the Client to pay any costs of removal of Advertising Material displayed under this Sales Contract (or any other sales contract which may be in place between the parties for the provision of advertising space at the time any of the events in clause 8.13 take place).

**8.16. Cancellation:** The Client may cancel this Sales Contract at any time up to the date that is 3 months prior to the commencement of the Campaign with 50% of the full media cost payable upon cancellation for the full term of the Sales Contract. If the Sales Contract is within the 3 month start date, 100% cancellation is payable. All cancellation notices or requests must be made in writing and the Client must confirm receipt of the cancellation notice or request with its Media5 representative.

**8.17. Amendment:** Media5 may amend these terms and conditions at any time at its discretion.

**8.18. Survival of Certain Terms:** Neither termination nor expiry of this Sales Contract will affect the accrued rights and liabilities of the parties at the time of termination or expiry. All indemnities given by the Client will survive termination or expiry of this Sales Contract and termination or expiry will not affect the Client's obligations to comply with the provisions of this Sales Contract.

## **9. DEFINED TERMS:**

9.1. In this Sales Contract:

9.1.1. **Accredited Advertising Agency:** means an agency that has been accredited by Media5 in accordance with clause 3.

9.1.2. **Advertiser:** means the owner of the company, product or service being advertised on the Site.

9.1.3. **Advertising Material:** means the Advertising Material to be displayed pursuant to this Sales Contract.

- 9.1.4. **Agency:** means a Client who is representing or acting on behalf of an Advertiser provided however that the liability of the Agent under clause 2.8 is not limited in any way.
- 9.1.5. **Authority:** means any body that has statutory and/or contractual rights to exercise control over Media5's rights to display Advertising Material on the Sites, and includes (but is not limited to) landowners and councils.
- 9.1.6. **Campaign:** means Site or package of Sites booked on a single Sales Contract.
- 9.1.7. **Client:** means the person or company entering into this Sales Contract with Media5 and liable for all payments in accordance with clause 2.8.
- 9.1.8. **Pre-emptible site:** means a site that is booked subject to it being available and not subject to another Sales Contract.
- 9.1.9. **Sales Contract:** means this Sales Contract and includes the Schedule (on the last page of this Sales Contract).
- 9.1.10. **Site:** A billboard that Media5 is entitled to make available for advertising.