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## TERMS OF BUSINESS

LOYALTY MARKETING is hereafter referred to as The Agency

Unless otherwise over-riden elsewhere in this document, the following standard business terms will apply.

The Agency charges on a monthly fee or fee per project basis. A cost estimate is always provided for budgeting purposes. A firm quotation is then arrived at from this estimate. A concept development fee is charged for the initial development and feasibility assessment of a particular project.

A management fee is charged for the use of the idea and to implement the proposal.

The Agency reserves the right to supply all items pertaining to a concept. If this right is not provided, the management fee will be adjusted to take into account time spent providing specifications, identifying suppliers etc.

For all creative design and artwork, The Agency charges the prevailing market studio rates at the time the work is produced.

For any external work, The Agency charges the prevailing market studio rates at the time the work is produced. The Agency will also invoice at cost plus commission.

### TERMS OF PAYMENT

50% of the total project cost falls due for payment on acceptance of the proposal. The 50% balance is due on delivery of all material at completion of the proposal.

All outgoings such as faxes, couriers and interstate phone calls will be charged monthly, or as agreed in the working papers.

For premium items sourced within Australia, 80% of the total cost to be paid upon placement of the order with the balance due upon delivery. For overseas sourced premiums total cost must be paid in advance.

In the event that after acceptance of the proposal the client decides to cancel the completion of the proposal, the client shall be liable to reimburse The Agency for all costs incurred on the client's behalf and to pay The Agency a reasonable fee having regard to the amount of time, work and effort expended by The Agency on the proposal up to the date of the client's cancellation. This fee shall be a minimum of 50% of the service fee as stated in this proposal regardless of when the cancellation takes place. Should an activity be repeated the same management fee shall apply.

Payment is due within 7 days of the date of invoice. All account queries are to be made within 7 days of the date of invoice. In the event of the client failing to make payment(s) to invoices (upon which no clarification is outstanding) by more than 30 days outside the accepted terms, then this agreement is void. The Agency thereafter retains the right to refrain from completing further services until outstanding payments are made.

### COPYRIGHT & OWNERSHIP

Copyright in all material in which copyright is capable of subsisting and which is prepared or commissioned by The Agency for a client shall reside in The Agency. Ownership in all intellectual property in the concepts, ideas and other materials relating to any activity prepared by The Agency shall be the property of The Agency. All such material referred to above may only be reproduced with the authority of The Agency and in accordance with the brief to The Agency from the client. The exclusive right to reproduce or implement an activity or proposal prepared and/or designed by The Agency shall lapse automatically if implementation is not progressed by the client within two months of the original submission by The Agency. No further reproduction or adaptation of any proposal, program or material prepared by The Agency may be undertaken without the express authority of The Agency. The payment of the concept fee is not a consideration for ownership of the idea, innovation or technique proposed.

### LEGAL LIABILITY

To the extent permissible by law and subject at all times to the provisions of the Trade Practices Act and other similar legislation, The Agency's liability shall be limited as follows.

All programs and projects undertaken by The Agency shall if deemed necessary by The Agency receive legal clearance through the legal advisor of The Agency.

In the case where The Agency does not print on behalf of the client, the following will apply:

- (i) No responsibility or liability whatsoever shall be accepted by The Agency for any loss or damage suffered by a client either directly or indirectly from programs or projects administered by The Agency. In particular, and without limiting the generality of the foregoing, The Agency accepts no responsibility or liability for any loss or damages arising from a third party including legal advice or the infringement, potential infringement or alleged infringement of any law or statute.
  - (ii) The client hereby acknowledges that it is its sole responsibility to satisfy itself as to the lawfulness of any program or project.
  - (iii) No warranty or guarantee of performance or success shall be deemed to have been given by The Agency unless such warranty or guarantee has been specifically given to the client in writing by The Agency.
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- (iv) The client agrees to indemnify The Agency for all proper costs and damages, fines or losses incurred by The Agency as a result of the client not complying with any Federal or State laws, bylaws and regulations.
- (v) The client agrees to indemnify The Agency against any overclaim on the agreed prize base.
- (vi) In the event that The Agency despite the limitation of liability, as set out in this clause, is held to the client for whatever reason, the client agrees that The Agency's liability shall not in any event exceed the amount actually recoverable from the insurance policies set out in the Schedule and that The Agency shall be subject to the terms, conditions and limitations of those policies as further set out in the Schedule.

In the case where The Agency prints on behalf of the client, the following will apply:

- (i) The Agency will indemnify the client up to the amount actually recoverable from the insurance policies set out in the Schedule to these terms of business and subject at all times to the terms, conditions and limitations of those policies as further set out in the Schedule.

## CONFIDENTIALITY

All matters presented in this document are the subject of strict confidentiality and the client, its employees, agents or consultants or any other third party who may become aware of its contents agrees not to disclose the contents or subject matter to any other person, company or organisation without the express written permission of The Agency.

However, no responsibility or liability whatsoever shall be accepted by The Agency for any loss or damage suffered by a client either directly or indirectly from programs or projects administered by The Agency. In particular, The Agency accepts no responsibility or liability for any loss or damages arising from a third party including legal advice or the infringement, potential infringement or alleged infringement of any law statute. The client hereby acknowledges that it is its sole responsibility to satisfy itself as to the lawfulness of any program or project. No warranty or guarantee of performance of success shall be deemed to have been given by The Agency unless such warranty or guarantee has been specifically given to the client in writing by The Agency. The client agrees to indemnify The Agency for all proper costs and any costs, damages, fines or losses incurred by The Agency as a result of the client not complying with any federal or state laws, by-laws or regulations.

Where The Agency prints on behalf of the client it will indemnify to that client any overclaim of the prize base subject to, the amount recoverable from the Lloyds of London Insurance Policy (a copy of which is available upon request). Where the client undertakes its own printing, it will indemnify The Agency against any overclaim on the prize base. All matters presented in this document are the subject of strict confidentiality and the reader is not to disclose the contents or subject matter to any other person, company, or organisation without the express written permission of The Agency.

"The Agency are deemed to be the printer".

## CONTRACTUAL RIGHT TO RECALL

1. Loyalty Marketing reserves the right to recall and collect un-issued game pieces either in the control of the client or its distributors, retailers or agents in the event of an allegation that the game pieces either:
  - (i) contain errors or misprints; or
  - (ii) have been the subject of fraudulent or dishonest conduct; or
  - (iii) where they otherwise fail to not meet the expectations of the client.
2. Loyalty Marketing may undertake the above recall and collection only for the purpose of assessing any such defect, allegation or failure and to enable Loyalty Marketing to rectify or address the defect, allegation or failure with as little disruption as possible to the running of the game. Any costs associated with the recall, collection or assessment will be borne by Loyalty Marketing unless it is subsequently established that the defect, allegation or failure has been as a direct result of a negligent act or omission of the client, its distributors, retailers or agents, or as a result of a breach of the agreement between the client and Loyalty Marketing by the client.
3. The client undertakes to provide all reasonable assistance and access to Loyalty Marketing to enable it to exercise its right to recall, collect or assess those game materials and will not in any way inhibit or prevent that occurring provided however that Loyalty Marketing must act reasonably in order to minimise and disruption to the proper running of the game.
4. Damaged, or misprinted tickets, due to volume and mechanical constraints beyond Loyalty Marketing's control maybe produced, therefore, Loyalty Marketing reserve the right to replace such tickets into the promotion.

## PRIVACY POLICY

1. Loyalty Marketing acknowledges and respects the privacy of individuals. It accepts and adheres to its obligations under the National Privacy Principles and all relevant privacy legislation protecting the rights of individuals.
2. Where personal information is stored all reasonable efforts will be made to keep the information relevant and up to date whilst offering the individual a chance to amend that information or have it deleted at any time. Any such requests should be made directly in writing to Loyalty Marketing at Suite 11, 210 Toorak Road, South Yarra, VIC 3141 or e-mail us at [simon@loyalty.com.au](mailto:simon@loyalty.com.au).

3. Personal information stored on the Loyalty Marketing server, is protected by passwords, fire walls and up to date bug detectors. This means all our data is protected from internal and external misuse, loss or unauthorised access.
4. Loyalty Marketing will always be open about who we are, how we are gathering the information and what we are doing with the information gathered. Individual requests to access and correct relevant information will always be met as is required under the National Privacy Principles.
5. Loyalty Marketing or Loyalty Marketing on behalf of its clients may contact individuals now and again with offers, products or services that might be of interest to the individual. Loyalty Marketing may also allow that information to be given to third parties for a similar purpose unless the individual has clearly indicated that this is not to occur. In all other situations, any further contact with the individual by Loyalty Marketing, its clients or other third parties will be done with a clear opt out provision enabling the individual not to receive any further contacts and, if they wish, to have their information deleted from any relevant database.
6. In the event of collecting information for one of its client, Loyalty Marketing will always follow the relevant current privacy policy of that client and, if no such privacy policy exists, Loyalty Marketing will always ensure that the individual's interests are protected by following the National Privacy Principles and all relevant privacy legislation.

Privacy is a sensitive issue. At any time, if you believe we have not adhered to these principles, please let us know by e-mail at [simon@loyalty.com.au](mailto:simon@loyalty.com.au) and we will make every effort to review and correct the problem.

## **CONFIDENTIAL INFORMATION**

The Client understands and acknowledges that it shall receive confidential information from Loyalty Marketing. Accordingly, and without limiting the meaning of any such duties, you agree to undertake that, during the term of this Agreement and after this Agreement comes to an end:

- (a) not at any time to knowingly disclose to any unauthorised person confidential information of Loyalty Marketing, which comes to your knowledge during the course of business relationship, whether before or after the date of this Agreement;
- (b) maintain proper and secure custody of all confidential information; and
- (c) you will use your best endeavours to prevent the use or disclosure of the confidential information by any third party.