

TELEMALL GENERAL TERMS AND CONDITIONS

INTRODUCTION

1. These Terms and Conditions set out the standard terms for all Clients that enter into a Service Agreement with Telemall. Clients should read these Terms and Conditions as well as the specific terms and conditions in the Service Agreement to understand their rights and obligations.
2. To the extent that there is any inconsistency between the Service Agreement and these Terms and Conditions, the Service Agreement will prevail.

PRIVACY

3. Telemall may collect and hold Personal Information, including but not limited to, names of Clients, addresses, telephone numbers, facsimile numbers and email addresses. These details are collected for the purpose of providing services to Clients, and the selling and marketing of products and services. Telemall may also use such information for the purpose of member satisfaction surveys, and events such as loyalty programs.
4. Telemall does not disclose Personal Information to any organisation not related to the provision of Telemall services.
5. Telemall may disclose Personal Information to its associated entities if required to carry out its business. Telemall will never disclose Personal Information to Third Parties.
6. Personal Information collected by Telemall is retained as part of a database, which is securely monitored and maintained by Telemall. Telemall takes all reasonable steps to protect the security of Personal Information that it holds. This includes appropriate measures to protect electronic materials and materials stored and generated in hard copy.
7. Telemall may be required to provide Personal Information to other organisations to comply with its legal obligations, such as auditors, legal advisers and the Australian Taxation Office (or any other relevant organisations).
8. The *Privacy Act 1988* provides individuals with the right to access Personal Information held by Telemall. If the information is inaccurate, a request can be made to correct it. Telemall reserves the right to charge a nominal fee if required for the retrieval of information requested.
9. If you would like to access the Personal Information that Telemall holds about you, you can contact Telemall using the contact details on the Telemall website.

INTELLECTUAL PROPERTY, COPYRIGHT & LICENSING

10. Where Telemall has provided material containing copyright or any other intellectual property right to the Client to use under licence, it is only to be used for the purpose of the Service and is only to be used at the Location.
11. Subject to **clause 19** the entire copyright, sound recording right, performance right and all other rights, title and interest in any sound recording produced by Telemall for the Client shall vest in Telemall and be Telemall's absolute property throughout the World for the full period of copyright and the extensions or renewals, unless otherwise agreed in writing between the Parties.
12. Where the Client has provided to Telemall Third Party material including audio, voice recordings, music, scripts and wording, to be included in a new audio production: the rights to the supplied material remain with the original rights owners. Subject to **clause 19**; Telemall retains the copyright to any new sound recording using such supplied material.
 - 12.1. For example: If the Client supplies to Telemall a musical jingle to make a production using the supplied music, the rights to the supplied music remain with the original owners and Telemall will own the rights to the new sound recording and it will be the Client's responsibility to ensure it has obtained the necessary permission and consent for Telemall to make a production using the supplied music.
13. Unless otherwise agreed in writing between the Parties: the copyright to all wording and scripting created by Telemall remains with Telemall and cannot be used by a Third Party without Telemall's prior written agreement.

13.1. For example: the Client cannot take a script written and created by Telemall and have it recorded and produced by another production company without Telemall's prior written agreement.

14. Where wording and scripts are supplied to Telemall by the Client to be recorded, then the Client must comply with **clause 19**.
15. Unless otherwise agreed: the copyright and all rights to any music including sung jingles and sonic logos created by Telemall remain with Telemall and any recordings made by Telemall and any musical works produced by Telemall cannot be used by a different production company without Telemall's prior written agreement and may be subject to a licensing fee.
16. Where music, audio or video material are supplied to Telemall by the Client to be included in a production: then the Client must comply with **clause 19**.
17. Telemall will supply to the Client a copy of any music or audio produced by Telemall for the Client's use pursuant to the Service Agreement. Telemall will endeavour to archive a copy of such recordings but makes no warranty or representation to the Client that the audio will be available to be supplied again at a later date. Telemall shall not be liable to the Client in any respect if archives of previously recorded productions are no longer available.
18. If Telemall supplies to the Client any audio product or visual product or audio-visual product which incorporates or is the copyright or other intellectual property right of a Third Party: then it will be supplied on the basis that Telemall have obtained all requisite licence and/or authorisation to use it.
 - 18.1. For the avoidance of any doubt: with respect to the provision of In-Store Commercial Music Services at a Location; Telemall is responsible for all applicable Third Party licensing fees payable to ARIA and APRA AMCOS for dubbing of material; but the Client acknowledges that Telemall is not responsible for any applicable Third Party licensing fees for public performance of material.
19. It is the Client's responsibility to ensure:
 - 19.1. that all material supplied by the Client to be incorporated in any audio product, visual product or audio-visual product or any other product does not infringe the copyright or any other rights of any nature including intellectual property rights of any Third Party; and
 - 19.2. where the copyright or any other intellectual property right subsisting in the materials supplied, is not owned by the Client: that the Client has obtained all requisite licence and/or authorisation to use it.

EQUIPMENT

20. If Telemall is required to install its Equipment at the Location; unless specified otherwise in the Service Agreement the following applies:
 - 20.1. Both legal and equitable title in the Equipment remains vested in Telemall and the Client shall have no claim, right, title, or entitlement in or to it;
 - 20.2. Telemall has an irrevocable right of access to the Location to inspect, maintain, repair, replace or remove the Equipment situated at the Location;
 - 20.3. The Client indemnifies Telemall and will hold Telemall and keep Telemall harmless against all claims made by anyone against Telemall in exercise of Telemall's rights pursuant to **clause 20.2**.
 - 20.4. If the Equipment becomes faulty due to normal wear and tear during the term of the Service Agreement: Telemall will replace the Equipment at no charge to the Client.
 - 20.5. If the Equipment is damaged or lost during the term of the Service Agreement: the Client will be responsible for the repairs or replacement of the Equipment that is damaged or lost.
 - 20.6. Notwithstanding **clause 20.2**: the Client is responsible for the return of the Equipment to Telemall within fourteen (14) days of the date of termination of the Service Agreement. The Client will be liable to pay Telemall for all costs (including legal costs and expenses) of and incidental to the return of the Equipment to Telemall.

UPDATES

21. Telemall may contact the Client during the term of the Service Agreement to remind the Client to use its Updates; however, it is the responsibility of

the Client to use the Updates each year. The Updates are not transferable to any other type of service provided by Telemall, and do not accumulate.

TERMINATION OF THE SERVICE AGREEMENT

22. Unless specified otherwise in the Service Agreement, the Service Agreement may be terminated:
- 22.1. At any time by the Parties, by mutual agreement in writing to that effect; or
- 22.2. at any time by either Party giving the other Party a three (3) months' notice in writing terminating the Service Agreement, in which case the Service Agreement shall automatically terminate upon the expiration of the period stated in that notice; or
- 22.3. by either Party immediately upon notice in writing to the other Party, after the occurrence of one or more of the following events:
- 22.3.1. the other Party becomes subject to any form of bankruptcy, insolvency or other external administration; or
- 22.3.2. Where the other Party has failed to remedy the breach specified in the notice served under **clause 23** within the fifteen (15) business day period specified in that notice.
23. If a Party has breached a term of these Terms and Conditions or the Service Agreement ("**the Defaulting Party**") then the Party not in breach ("**the Non-Defaulting Party**") may give written notice to the Defaulting Party:
- 23.1. setting out the details of the breach;
- 23.2. requiring the Defaulting Party to remedy the breach within fifteen (15) business days; and
- 23.3. notifying the Defaulting Party that in default of rectification of the breach specified in that notice within the fifteen (15) business day period, then the Non-Defaulting Party may at any time thereafter terminate the Service Agreement pursuant to **clause 22.3.2**.

NO WARRANTIES

24. Whilst Telemall will take commercially reasonable steps to ensure that the Services will be uninterrupted, error-free and completely secure, Telemall is unable to warrant to the Client that the Services will be provided to the Client uninterrupted, error-free and completely secure.

EXCLUSION OF LIABILITY

25. The Client acknowledges and agrees that Telemall shall not be liable nor responsible to the Client nor anyone else claiming through the Client for any Claim arising out of any of the following:
- 25.1. the failure of any telecommunications services; or
- 25.2. the failure of or defect in any electronic communication; or
- 25.3. any hardware failure; or
- 25.4. any software failure or any bugs in software; or
- 25.5. any Trojan, virus, worm or other unauthorised or unwanted program infecting or corrupting any software or damaging any computer hardware; or
- 25.6. reasonable mistake by Telemall in providing Services, including but not limited to scripts and recordings; or
- 25.7. the Client's negligence or the negligence of any of the Client's employees, contractors or other persons in the Client's employ or otherwise engaged by the Client; or
- 25.8. a breach of contract or duty by the Client or any of the Client's employees, contractors or other persons in the Client's employ or otherwise engaged by the Client with respect to any other person; or
- 25.9. the services provided by the Client's or Telemall's Internet service provider; or
- 25.10. any other services provided by Third Parties; or
- 25.11. For any other act or matter which is beyond Telemall's control including, significant failure of a portion of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labour action, terrorist activity,

or other events of a magnitude or type for which precautions are not generally taken in Telemall's business's industry.

CONFIDENTIALITY

26. A Receiving Party shall ensure that Third Parties do not gain access to the Provider's Confidential Information other than as permitted under the Service Agreement and/or these Terms and Conditions.
27. A Receiving Party shall not, without the Provider's prior written consent which consent may not be unreasonably refused:
- 27.1. use or permit any person to use the Provider's Confidential Information for any purpose other than a Permitted Purpose;
- 27.2. disclose or in any way communicate to any Third Party all or any of the Provider's Confidential Information except as authorised by the Provider under the Service Agreement and/or these Terms and Conditions;
- 27.3. permit unauthorised persons to have access to places or computers where the Provider's Confidential Information is displayed, reproduced or stored; or
- 27.4. make or assist any person to make any unauthorised use of the Provider's Confidential Information.
28. A Receiving Party must: -
- 28.1. take reasonable steps to enforce the confidentiality obligations imposed by these Terms and Conditions and the Service Agreement including diligently prosecuting at its cost, any breach or threatened breach of such confidentiality obligations by a person to whom the Receiving Party has disclosed the Provider's Confidential Information; and
- 28.2. co-operate, and provide the Provider with all reasonable assistance, in any action which the Provider may take to protect the confidentiality of the Provider's Confidential Information.
29. A Receiving Party may only disclose Confidential Information (to the extent reasonably necessary):
- 29.1. to its legal advisers in relation to its rights under the Service Agreement and these Terms and Conditions;
- 29.2. to its personnel:
- 29.2.1. solely to assist that Receiving Party in carrying out its covenants pursuant to the Service Agreement and these Terms and Conditions and only in relation to the Permitted Purposes;
- 29.2.2. on a need to know basis; and
- 29.2.3. on condition that such persons do not disclose that Confidential Information to any other person.
30. The Parties agree that they must keep the Service Agreement and the dealings between the Parties strictly confidential save and except this obligation regarding confidentiality does not apply to confidential information or that part of it which:
- 30.1. at the time of disclosure is within the public domain; or
- 30.2. after disclosure, comes into the public domain other than by reason of a breach or breaches of any of the obligations in the Service Agreement and/or these Terms and Conditions; or
- 30.3. the law requires confidentiality not to be maintained; or
- 30.4. where it is required to be disclosed to an employee or contractor or advisor for the purposes of the Service Agreement and/or these Terms and Conditions provided that such persons are required to maintain the confidentiality of that information.
31. A Provider of Confidential Information is entitled to injunctive relief against a Receiving Party to enforce the provisions of this clause and may obtain a temporary order restraining any threatened or further breach without having to prove actual damages or loss.
32. In the event of the termination of the Service Agreement for whatever reason, then a Receiving Party shall return or cause to be returned forthwith

to the Provider of Confidential Information all of the Provider's Confidential Information.

33. Notwithstanding the termination of the Service Agreement for whatever reason, the Parties shall maintain the confidentiality of each other's Confidential Information.

SERVICE FEES

34. The Client agrees to pay Telemall the Service Fees for the Services selected under the Service Agreement.
35. Telemall will render an account for the Services provided by Telemall to the Client on a quarterly basis unless specified otherwise in the Service Agreement.
36. Service Fees are reviewed and may at Telemall's discretion be increased annually by 3% or by an amount reflective of CPI as at the 1st day of July every year during the term of the Service Agreement.

MANNER OF PAYMENT

37. The Client shall make payment of the Service Fees (and any other amounts payable by the Client to Telemall under the Service Agreement) by way of direct debit from the Client's account to Telemall's nominated bank account within the time frame specified in the Service Agreement. Payment shall not be deemed to have been made by the Client nor received by Telemall until such time as Telemall has actually received the same and constitute cleared funds and if payment is made by cheque then Telemall will bank the same promptly upon receipt of the cheque. Accordingly, payment by the Client must be made by the Client and received by Telemall no later than the due date for payment.
38. the Client must pay GST on any taxable supply made to the Client in accordance with the payment term in **clause 29** and the GST Act and Relevant Regulations.

AMENDMENTS

39. From time to time, Telemall may change these Terms and Conditions to reflect changing business practices. Telemall will notify Clients of any amendments and post an updated version of these Terms and Conditions on the Telemall website. These Terms and Conditions were last updated on 29 May 2020.

GOVERNING LAW

40. These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of South Australia and the Parties irrevocably and unconditionally submit to the jurisdiction of the Courts of that State (including Federal Court) for determining any dispute.

DEFINITIONS & INTERPRETATION

41. In these Terms and Conditions, unless repugnant to the interpretation or construction thereof, the following shall have the meaning ascribed thereto.

- 41.1. **Agreed Rate** is a reference to the agreed interest rate being the lesser of 10 per cent per annum (10% pa) or Bank SA's commercial loan interest rate called "*Commercial Base Rate*" plus 2%.
- 41.2. **Business Day** means any day, which is not Saturday, Sunday or a public holiday in the State of South Australia.
- 41.3. **Claim** includes any action, proceeding, account, right, claim, demand, cost and expenses (including legal expenses), wherever and however arising, whether prospective, current or contingent and whether known or unknown as at the date of the Service Agreement.
- 41.4. the **Client** means a person or entity that receives Services from Telemall pursuant to the Service Agreement.
- 41.5. **Commencement Date** means the Commencement Date specified in the Service Agreement.
- 41.6. **Confidential Information** includes:
- 41.6.1. Information relating to a Party including information relating to a Party's business, its officers, employees or contractors;
 - 41.6.2. Information relating to a Party's customers;
 - 41.6.3. Information which by its very nature is considered at law to be confidential;
 - 41.6.4. Information designated by a Party to be confidential information;

- 41.6.5. Any document prepared by a Party (or for a Party) which contains or otherwise reflects or is generated from any of the information referred to in clauses 41.6.1 to 41.6.5 [both inclusive];

- 41.6.6. all of which shall be deemed by the Parties to be highly commercially sensitive, personal and confidential information no matter what form it is in or how it is recorded.

- 41.6.7. Disclose includes announcing, publishing, divulging, conveying, transferring, revealing or making known to a Third Party by whatever means, Confidential Information.

- 41.6.8. Document includes, in addition to a document in writing:

- 41.6.9. Any book, map, plan, graph, chart or drawing;

- 41.6.10. Any notes, analyses, data, compilations, records, designs;

- 41.6.11. Any image or photograph;

- 41.6.12. Any disc, tape, sound track, computer or device whether of the same kind or any kind whatsoever in which sounds or other data (not being visual images) are embodied so as to be capable (with or without aid of some other equipment) of being reproduced therefrom;

- 41.6.13. Any film (including microfilm), negative, tape, disc or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

- 41.6.14. Any electronic communication; and

- 41.6.15. Anything whatsoever on which is marked any words, figures or letters or symbols which are capable of carrying a definite meaning to persons conversant with them.

- 41.7. **Location** means the Client's place of business at which Telemall provides or is to provide the Services.

- 41.8. **Party** means a party to a Service Agreement.

- 41.9. **Permitted Purpose** means for the sole purposes of putting into effect each and every one of the provisions of the Service Agreement and these Terms and Conditions and for the purpose of Telemall providing to the Client the Services according to the Service Agreement.

- 41.10. **Personal Information** means information relating to an individual, including an opinion, which may be provided to Telemall either in material form or not, and whether true or not. Such information may personally identify an individual or make the person's identity reasonably apparent.

- 41.11. **Provider** means a Party that discloses its confidential information to the other Party and "Providing Party" shall bear a corresponding meaning.

- 41.12. **Receiver** means a Party that receives or obtains the confidential information of the other Party.

- 41.13. A reference to:

- 41.14. A **Party** includes:

- 41.14.1. If an individual, that Party's legal personal representatives;

- 41.14.2. If several individuals, those individuals jointly and their respective legal personal representatives;

- 41.15. A **person** includes a natural person and a body corporate and vice versa;

- 41.16. A **statute**, ordinance, code or other law includes regulations, rules, and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- 41.17. **Any thing** includes the whole or any part of that thing and a reference to a group of things or persons shall include each thing or person in that group;

- 41.18. Any **document** (including the Service Agreement and these Terms and Conditions) shall include a reference to that document as varied, amended, supplemented, novated or replaced from time to time; and

- 41.19. the **GST Act** means the *A New Tax System (Goods and Service Tax) Act 1999 (C'th)* and the Regulations made thereunder.

- 41.20. **Relevant Regulations** includes any (civil or criminal) legislation, ordinances, rules or regulations, by-laws, code of conduct or standards, relating to any one or more of the following:

- 41.20.1. the Client or the conduct of the Client's business;

- 41.20.2. Telemall or the conduct of Telemall's business;

- 41.20.3. Privacy;

- 41.20.4. The Parties' relationship pursuant to the Service Agreement and these Terms and Conditions; and
- 41.20.5. The Service Agreement.
- 41.21. **Service Agreement** means the agreement between Telemall and the Client specifying details of the Service.
- 41.22. **Services** means the services to be provided by Telemall to the Client pursuant to the Service Agreement.
- 41.23. **Telemall** means Telemall Communications Pty Ltd and its associated entities.
- 41.24. These **Terms and Conditions** means this document entitled TELEMALL GENERAL TERMS AND CONDITIONS.
- 41.25. **Third Party** means any person other than Telemall or a Client.
- 41.26. **Updates** means the review and (if required) update of a script, recording or other service within the Services pursuant to the Service Agreement.
- 41.27. **Use** in the context of the use of Confidential Information means all kinds of use without any limitation including the viewing, analysis, consideration, evaluation, handling, and dealing with Confidential Information.
- 41.28. Where:
- 41.28.1. A term or expression or word is defined or otherwise given a meaning in an annexure or in the schedule that is not defined or otherwise given a meaning in this clause, then such term or expression or word (as the case may be) shall have that definition or meaning given in the annexure or in the schedule (as the case may be).
- 41.28.2. A provision of the Service Agreement or these Terms and Conditions is reasonably open to more than one construction; a construction that would promote the intention of the Parties (whether or not that intention is expressly stated in the Service Agreement or these Terms and Conditions) must be preferred to a construction that would not promote that intention.
- 41.28.3. The word **include** or any form of that word is used it must be construed as if it were immediately followed by the words *without limitation*.
- 41.28.4. A reference to the *terms of the Service Agreement* means the terms, conditions and provisos of the Service Agreement.
- 41.28.5. A word or phrase is defined:
- 41.28.5.1. cognate words and phrases have corresponding meanings; and
- 41.28.5.2. other parts of speech and grammatical forms of the word or phrase have, unless the contrary intention appears, corresponding meanings.
- 41.29. **Words** expressed in:
- 41.29.1. the **singular** includes the plural and vice versa;
- 41.29.2. **one gender** includes the other genders, as is appropriate in the context.
- 41.30. **Writing** encompasses all means of reproducing words in a tangible and permanently visible form and includes facsimile transmissions.
- 41.31. The first letters of words and expressions defined in these Terms and Conditions are indicated by capital letters for convenience and the absence of a capital letter does not alone imply that the word or phrase is used with a meaning different from that given by its definition. Bolding a word is just for convenience and shall not affect the interpretation of these Terms and Conditions.
- 41.32. These Terms and Conditions are written in plain English as far as possible. The terms are to be interpreted so as to give efficacy to the Parties' agreement. No rule resolving a doubt as to interpretation against the Party preparing these Terms and Conditions will apply. The specific provisions will not limit the interpretation of general provisions.