

Adelaide Fringe Advertising Terms and Conditions of Sale

These terms apply to all advertising services provided to any person (“**Client**“) by Adelaide Fringe Incorporated (“**Adelaide Fringe**“) ABN 71 660 859 461. Client includes an advertiser on whose behalf Advertising Services (“**Advertisement / Advertising**“) are placed in accordance with the Booking Agreement (“**Booking**“) and any media company or agency that arranges the Advertising Services as agent for its clients.

By submitting a Booking, the Client agrees to be bound by these Terms and Conditions (**T&Cs**).

1. Provision of Advertising Services

- 1.1 The Client may submit one or more Bookings to request Adelaide Fringe provide advertising services and in doing so accepts both the terms and conditions set out herein and any additional terms set out in the Booking. To the extent that any inconsistency between these T&Cs and the contents of any Booking should arise, these T&Cs will prevail.
- 1.2 Subject to these T&Cs, Adelaide Fringe will display each Advertisement within the medium stipulated in the Booking and on the date(s) specified in the Booking (if any). Adelaide Fringe will use its reasonable endeavours to publish the Advertising in the format and in the position agreed with the Client.
- 1.3 The Client grants Adelaide Fringe a royalty-free, non-exclusive, binding licence to publish the Advertising in any form or medium, including print, digital or other.

2. Right to Vary Format, Placement or Distribution

- 2.1 Adelaide Fringe will use reasonable efforts to publish Advertising in the format and in the position requested by the Client. However, Adelaide Fringe reserves the right to vary the placement of Advertising or to change the format of the Advertising. The Client must pay the full price for the Advertising even if Adelaide Fringe varies the format or placement of the Advertising.
- 2.2 Adelaide Fringe will endeavour to publish any Advertising in the primary genre of the nominated event, unless otherwise requested by the Client. Any requests for placement outside of the primary genre are not guaranteed, as per clause 2.1.

2.3 Adelaide Fringe reserves the right to shrink or enlarge the Advertisement by up to 10% without notice to the Client or any change to rates.

2.4 Copy may be amended to fit with Adelaide Fringe brand standards without notice to the Client or any change to rates.

3. **Payment**

3.1 The Client must pay to Adelaide Fringe the fee described as the 'Total Cost' in the relevant Booking in accordance with this clause 3 (**Payment**), either up-front in full or by way of a 50% deposit upon booking and the balance in full no less than five (5) business days before the date that the Advertisement is scheduled to be published or broadcast.

3.2 Adelaide Fringe will invoice the Client for the payment option selected in the Booking and such invoice will be payable within 14 days by electronic funds transfer to the bank account nominated by Adelaide Fringe.

3.3 Adelaide Fringe may require the Client to pay any production costs and other out of pocket expenses that are part of the Advertising Fee prior to incurring those costs and expenses.

4. **Sponsorship and Partnership Clients**

4.1 If the Client is party to a current Sponsorship/Partnership Agreement with Adelaide Fringe under which it receives a specified amount of Advertising Services, the provision of advertising will be outlined in the Sponsorship and Partnership agreement.

4.2 In the case that provision of advertising services form part of the Sponsorship/Partnership Agreement as outlined in clause 4.1, the Client agrees that the Adelaide Fringe representative managing the Sponsorship/Partnership Agreement will submit the Booking on their behalf in accordance with clauses 1.1 and 5.2.

5. **Advertising Material**

5.1 Adelaide Fringe will not be required to display any advertising material and content supplied by the Client (**Advertisement**) unless the content of the Advertisement (or changes to any Advertisement) is approved by both Adelaide Fringe and the Client.

- 5.2 The Client is responsible for the content of all Advertisements and must ensure that:
- (a) all necessary consents and approvals required to prepare, produce, publish and display the Advertisement, including in relation to all intellectual property rights in any Advertisement, have been obtained; and
 - (b) any Advertisement does not contain any material that is, or is deemed by Adelaide Fringe to be, defamatory, false, misleading or deceptive, offensive, obscene, indecent, inflammatory, pornographic, infringes the rights of any person (including without limitation any intellectual property rights) or breaches any law.
- 5.3 By submitting an Advertisement to Adelaide Fringe, the Client represents and warrants to Adelaide Fringe that the Advertisement complies with clause 5.2 above and that the Client has the right and authority to grant the rights in clause 1.3.
- 5.4 Adelaide Fringe will use its reasonable endeavours to reproduce Advertisements as provided by the Client, however the Client acknowledges and agrees that Adelaide Fringe is not responsible or liable for the quality of any Advertisement published or broadcasted or any failure to publish or broadcast any Advertisement because of any other cause beyond Adelaide Fringe's reasonable control.
- 5.5 Adelaide Fringe is unable to guarantee specific placement within a page or genre other than as specified by the product description at the time of purchase.
- 5.6 Notwithstanding any other provision of these T&Cs, Adelaide Fringe may without any liability to the Client, reject, cancel or require amendment of, or remove or refuse to display or publish any Advertisement, which it considers (in its sole discretion) does not comply with clause 5.2, or is otherwise inappropriate, undesirable or unsuitable. However, Adelaide Fringe has no obligation to monitor, edit, delete any Advertisement (although it may do so).
- 5.7 The Client agrees to comply promptly with the reasonable requests or directions of Adelaide Fringe in relation to the production or publication of any Advertisement, including any directions relating to the content of an Advertisement or supply of material required to be provided by the Client to enable Adelaide Fringe to display the Advertisement, including without limitation any visual and audio material.
- 5.8 Client must not resell Advertising space to any third party without Adelaide Fringe's consent.

- 5.9 If Advertising promotes a competition or trade promotion, Client warrants it has obtained all relevant permits and indemnifies Adelaide Fringe against any loss in connection with the Advertising.
- 5.10 In purchasing a 'Membership Giveaway', the Client approves Adelaide Fringe allocating ticket type 'Presenter Comps' to the winners of the competition. A maximum of six Presenter Comps will be issued unless additional allocation has been approved in writing by the client. Regular Presenter Comp booking fees apply. Session dates and times for the Presenter Comps are to be given by the Client to Adelaide Fringe 10 working days prior to the scheduled Giveaway booking. If no session date and time is selected, Adelaide Fringe will select the session date and time for the Giveaway.

6. **Privacy**

- 6.1 The Client acknowledges that in purchasing advertising distributed to Adelaide Fringe contact databases, that they are not entitled to collect participant information for marketing purposes. Adelaide Fringe will manage the allocation and distribution of tickets for competition winners.
- 6.2 The Client will not solicit contact information, database subscription or social media interaction as a condition of accessing a Giveaway, discount or reward distributed via Adelaide Fringe advertising.

7. **Digital Advertising**

- 7.1 For digital and email banner and display Advertising, Client must submit creative materials and a click-through URL to Adelaide Fringe at least 10 working days or within such other deadline advised by Adelaide Fringe at its discretion before publication date. Adelaide Fringe may charge Client for online Advertising cancelled on less than 21 days' notice or if creative materials are not submitted in accordance with this clause 6.1.
- 7.2 The URL must be to an Adelaide Fringe or FringeTIX hosted website.
- 7.3 All online Advertising (including rich media) must comply with Adelaide Fringe's advertising specifications.
- 7.4 Adelaide Fringe is not liable for loss or damage from an internet/ telecommunications failure.

7.5 Client acknowledges that Adelaide Fringe may at its discretion include additional features or inclusions such as third party advertisements within online Advertising.

8. **Cancellations**

8.1 The Client may cancel the display of an Advertisement by notice in writing to Adelaide Fringe not less than 21 days prior to the applicable date on which the Advertisement will be displayed or printed.

8.2 If the Client cancels the display of an Advertisement less than 21 days prior to the applicable publication date, the Client will remain liable to pay the Advertising Fee in full and Adelaide Fringe will not be required to provide the Client with any credit or refund in relation to that Advertisement.

8.3 Advertising artwork and copy must be supplied by the Client for approval at least seven [7] days prior to the Advertisement running unless otherwise specified.

8.4 Adelaide Fringe may accept late Advertising for publication at their discretion, however Adelaide Fringe has sole discretion to treat this as a cancellation. In this event the Client remains liable to pay the Advertising Fee in Full and Adelaide Fringe will not be required to provide the client with any credit, refund, or make good in relation to that Advertisement.

8.5 In the event of a Government mandated event cancellation due to a public safety concern, the following refunds for purchased advertising products will apply:

- (a) Prior to publication and distribution, a full refund of the Advertising Fee will be returned to the client.
- (b) Post publication and distribution and prior to the Festival opening night, no refunds will be issued.
- (c) Post publication and distribution and within the Festival dates, no refunds will be issued.

8.6 In the event that the Client is required to cancel a registered Adelaide Fringe event due to medical advice of exposure or infection with the novel corona-virus (Covid-19):

- (a) The Client must provide medical confirmation of the diagnosis or direction to isolate due to possible exposure to the Adelaide Fringe as soon as possible in

accordance with the terms and conditions of the Adelaide Fringe Artist Agreement.

- (b) For advertisements not yet published and distributed and falling within 21 days of the booked time period a credit will be offered to the client for the subsequent season applicable for use on a similar Advertising product.
- (c) For advertisements published and distributed and falling within 21 days of the booked time period a partial credit will be offered to the client at the discretion of Adelaide Fringe and upon presenting sufficient evidence of a medical or government issued COVID restriction. Partial credit will be calculated on impact and valid for the 2023 season applicable for use on a similar Advertising product.
- (d) A full or partial refund or credit for unused advertising will be calculated relevant to the occurrence of the cancellation advice within the Festival period.

9. **Termination and Right to Refuse**

- 9.1 Neither these Terms nor any written or verbal quotation by Adelaide Fringe represents an agreement to publish Advertising. An agreement will only be formed between Adelaide Fringe and Client when Adelaide Fringe accepts the Advertising in writing or a tax invoice is generated for that Advertising.
- 9.2 Adelaide Fringe reserves the right to refuse or withdraw from publication any Advertising at any time that, in the opinion of Adelaide Fringe, is illegal, defamatory, offensive, obscene and/or contrary to the business interest, goodwill and/or reputation of Adelaide Fringe or any of its clients, partners or vendors or is likely to infringe on the rights of third parties (even if the Advertising has previously been published by Adelaide Fringe).
- 9.3 Adelaide Fringe reserves the right to refuse or withdraw advertising where a Client has outstanding debts owed to the Adelaide Fringe.
- 9.4 Adelaide Fringe may terminate a Booking or these T&Cs without liability if the Client breaches these T&Cs and fails to remedy such breach within 7 days from a notice requesting them to do so (including any failure to pay the Advertising Fee) or if the Client enters into or is placed under any form of insolvency administration.

- 9.5 Upon termination of a Booking in accordance with clause 9.1, without prejudice to any other rights or remedies it may have, Adelaide Fringe may:
- (a) require the Client to immediately pay in full any monies unpaid by the Client to Adelaide Fringe;
 - (b) require the Client to pay in advance all amounts in respect of subsequent Bookings;
 - (c) recover from the Client all costs, fees, and disbursements relating to any action taken by or on behalf of Adelaide Fringe to recover monies from the Client; and/or
 - (d) cease or refuse to provide any further Advertising Services to the Client including cancellation of the production or broadcast of any Advertisement which has not been broadcast on or before the date of the Event of Default.

9.6 Termination of these T&Cs will not affect any accrued rights or remedies either party may have.

10. **Variation**

These T&Cs as they apply to a Booking may be varied only by agreement in writing between each of Adelaide Fringe and the Client. Adelaide Fringe may otherwise amend the T&Cs relating to its supply of Advertising Services from time to time.

11. **Goods and services tax**

11.1 Unless specified otherwise, any amount payable under these T&Cs does not include any amount on account of GST.

11.2 Where any supply to be made by one party (**Supplier**) to another party (**Recipient**) under or in accordance with these T&Cs is subject to GST (other than a supply the consideration for which is specifically described in these T&Cs as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply but for the application of this clause (**GST Exclusive Consideration**) shall be increased by, and the Recipient shall pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply (GST Amount); and
- (b) the Recipient must pay the GST Amount to the Supplier, without set-off, deduction or requirement for demand, at the earlier of the time that the GST

Exclusive Consideration is payable or to be provided and the time that the Supplier has to pay the GST in respect of that supply.

11.3 Notwithstanding any other provision of these T&Cs, the Recipient need not make any payment for a taxable supply made by the Supplier under or in accordance with these T&Cs until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

11.4 A word or expression used in this clause which is defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* has the same meaning in this clause.

12. **Limitation of Liability**

12.1 Subject to clause 12.2, Adelaide Fringe excludes all liability arising whether in tort (including, without limitation, negligence), contract or otherwise, whether direct, indirect, special or consequential, arising from or in connection with the Advertisement or the Advertising Services, except for any liability which cannot be excluded by law (in which case liability is limited to the minimum amount permitted by law).

12.2 To the extent permitted by law, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied or conferred by statute, custom or the general law that impose any liability or obligation on Adelaide Fringe are excluded under these T&Cs. If a supply under these T&Cs is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law, nothing contained in these T&Cs excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law, provided that, to the extent that the Australian Consumer Law permits Adelaide Fringe to limit its liability, then Adelaide Fringe's liability shall be limited to:

- (a) in the case of services, supplying the services again or payment of the cost of having the services supplied again; and
- (b) in the case of goods, replacing the goods, supplying equivalent goods or repairing the goods, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

13. **Indemnity and release**

The Client indemnifies and holds harmless Adelaide Fringe and its personnel against all liabilities, losses, claims, proceedings, damages and costs (including legal fees on a solicitor and own basis) arising in connection with:

- (a) any breach by the Client of these T&Cs;
- (b) Adelaide Fringe's use of the Advertisement;
- (c) any negligent, wilful, reckless or unlawful act or omission of the Client or any of its officers, employees and agents in connection with these T&Cs; and
- (d) any injury or death caused by an act or omission of the Client or its officers, employees and agents.

14. **General**

- 14.1 These Terms, with any other written agreement, represent the entire agreement of the Client and Adelaide Fringe for Advertising. They can only be varied in writing by an authorised officer of Adelaide Fringe. No purchase order, Booking, invoice or other document issued by the Client will vary these Terms.
- 14.2 Adelaide Fringe will not be liable for any delay or failure to publish Advertising caused by a factor outside Adelaide Fringe's reasonable control (including but not limited to any act of God, breakdown of plant, industrial dispute, electricity or technical failure)
- 14.3 Adelaide Fringe may serve notice on Client by post, email or fax to the last known address of the Client.
- 14.4 These T&Cs shall be governed by and construed in accordance with the laws of the South Australia, Australia, as applied to contracts entered into and performed within South Australia, Australia. The Client submits to the courts of South Australia, Australia, and designate it as the forum for resolution of all disputes arising under this Agreement.