



## **Terms of Engagement – SimplyArb Ltd**

### **1. DEFINITIONS**

1.1 “SimplyArb” shall mean SimplyArb Ltd, or any agents or employees thereof.

1.2 Customer shall mean the customer, any person acting on behalf of any with the authority of the customer, or any person purchasing such services from SimplyArb.

1.3 Publications shall mean:

*1.3.1* all publications of the general description specified on the front of this agreement and supplied by SimplyArb to the customer; and

*1.3.2* all publications supplied by SimplyArb to the customer and

*1.3.3* all publications supplied by SimplyArb and further identified in any invoice issued by SimplyArb to the customer, which invoices are deemed to be incorporated into and form part of this agreement; and

*1.3.4* all publications that are marked as having been supplied by SimplyArb or that have performed, worn on or to, or in which goods or materials have been supplied or financed by SimplyArb have been attached or incorporated.

*1.3.5* the above descriptions may overlap but each is independent of and does not limit the others.

1.4 “Such services” shall mean all publications, goods, services and advice provided by SimplyArb to the customer and shall include without limitation the supply of such the provision of advertising space and all changes from time and attendances, hire charges, insurance charges, or any fee or charge associated with the supply of such services by SimplyArb to the customer.

1.5 “Price” shall mean the cost of such services as agreed by SimplyArb and the customer and includes all disbursements, e.g. charges SimplyArb pay to others on the customers behalf subject to clause 1.4 of this contract.

### **2 ACCEPTANCE**

2.1 Any instructions received by SimplyArb from the customer for the supply of such services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

### **3 COLLECTION + USE OF INFORMATION**

3.1 The Customer authorises SimplyArb to collect, retain and use information about the customer, for the purpose of assessing the customers credit worthiness, enforcing any rights under this contract, or marketing and such services provided by SimplyArb to any other party including on the SimplyArb website and social media channels.

3.2 The Customer authorises SimplyArb to disclose any information obtained to any person for the purpose set out in clause 3.1

3.3 Where the customer is a natural person the authorities under clause 3.1 and 3.2 are authorities or consents for the purpose of the privacy act 1993.



#### **4. QUOTATION**

4.1 Where a quotation is given by SimplyArb for such services:

4.1.1 unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and

4.1.2 the quotation shall be exclusive of goods and services tax unless specifically stated to the contrary.

4.1.3 SimplyArb reserves the right to alter the quotation because of circumstances beyond its control.

4.2 SimplyArb reserves the right to withdraw this quotation at any time without reason or penalties.

4.3 Where such services are required in addition to the quotation the customer agrees to pay for the additional cost of such services.

4.4 Customers are therefore advised to carefully check quotations before accepting them. For the purpose of these Terms of Trade “quotations” includes “estimates”.

#### **5. GST**

5.1 The price or prices provided for in the quotation exclude GST, which must be paid by you in addition to the price or prices quoted. Unless specified.

#### **6. CLAIMS**

6.1 Complaints regarding finished work must be received by SimplyArb within a reasonable time. What is a “reasonable time” will depend on the circumstances of each case.

#### **7. ILLEGAL OR LIBELLOUS MATERIAL**

7.1 The supplier is not required to reproduce any material that is, in the suppliers opinion, illegal or libellous in nature or that is in breach of any statute. The supplier will be indemnified by the customer in respect of any and all claims, costs, and/or expenses arising out of any libel or breach of statute or infringement of copyright, patent or design.

#### **8. ADVERTISEMENT CONTENT**

8.1 The advertiser guarantees that the material supplied for display print or publication contains no false or unwarranted claims for any product or service, does not infringe the copyright, privacy or the rights of any person or organisation of The Fair Trading Act. Contains no defamatory statements or matter, complies with The Advertising Codes of Practice, and may be published without the Publisher incurring any liability of any nature whatsoever.

#### **9. ALTERATIONS OR CANCELLATIONS**

9.1 All orders, cancellations or alterations are to be made in writing. No responsibility will be taken for errors or omissions caused by misinterpretation or oversight in verbal communications or instructions. Cancellations must be in writing and received prior to the commencement of production. Late cancellations will result in a cancellation fee equal to the time and expenses already incurred.

9.2 Amendments to the services described and the price provided for in the quotation must be made in writing and agreed upon by both parties.



## **10. TITLES AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)**

10.1 Title in any Such Services supplied by SimplyArb passes to the Customer only when the Customer has made payment in full for all Such Services provided by SimplyArb and of all other sums due to SimplyArb by the Customer on any account whatsoever. Until all sums due to SimplyArb by the Customer have been paid in full, SimplyArb has a security interest in all Such Services.

10.2 If Such Services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Such Services shall remain with SimplyArb until the Customer has made payment for all Such Services, and where those Such Services are mixed with other property so as to be part of or a constituent of any new Such Services, title to these new Such Services shall be deemed to be assigned to SimplyArb as security for the full satisfaction by the Customer of the full amount owing between SimplyArb and Customer.

10.3 The Customer gives irrevocable authority to SimplyArb to enter any premises occupied by the Customer or on which Such Services are situated at any reasonable time after default by the Customer or before default if SimplyArb believes a default is likely and to remove and repossess any Such Services and any other property to which Such Services are attached or in which Such Services are incorporated. SimplyArb shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. SimplyArb may either resell any repossessed Such Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Such Services and credit the Customer's account with the invoice value thereof less such sum as SimplyArb reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

10.4 Where Such Services are retained by SimplyArb pursuant to clause 10.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

10.5 The following shall constitute defaults by the Customer:

*10.5.1* Non-payment of any sum by the due date.

*10.5.2* The Customer intimates that it will not pay any sum by the due date.

10.6 If the Credit Repossession Act applies to any transaction between the Customer and SimplyArb, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

## **11. PAYMENT ALLOCATION**

11.1 SimplyArb may in its discretion allocate any payment received from the Customer towards any invoice that SimplyArb determines and may do so at the time of receipt or at anytime afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by SimplyArb, payment shall be deemed to be allocated in such manner as preserves the maximum value of SimplyArb's purchase money security interest in the Such Services.

11.2 Payment is due in full 10 days from the date of the invoice. For Account Holders payment is the 20th of the following month or how it is negotiated under any separate contract.

11.3 If payment is not made by the due date, SimplyArb reserves the right to add interest of 15% to any outstanding amount.



## **12. LIABILITY**

12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon SimplyArb which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on SimplyArb, SimplyArb's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

12.2 Except as otherwise provided by clause 18.1 SimplyArb shall not be liable for:

*12.2.1* Any loss or damage of any kind whatsoever, arising from the supply of Such Services by SimplyArb to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Such Services provided by SimplyArb to the Customer; and

*12.2.2* The Customer shall indemnify SimplyArb against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of SimplyArb or otherwise, brought by any person in connection with any matter, act, omission, or error by SimplyArb, its agents or employees, in connection with the Such Services.

12.3 If, contrary to the disclaimer of liability contained in these terms and conditions of trade SimplyArb is deemed to be liable to the Customer, following and arising from the supply of Products and Services by it to the Customer, then it is agreed between SimplyArb and the Customer that such liability is limited in its aggregate to \$500.00.

## **13. COST OF DEBT RECOVERY**

13.1 The customer and guarantors agree to reimburse SimplyArb for all costs reasonably incurred by SimplyArb in recovering payments due from the customer and/or guarantors including but not limited to legal costs assessed on a solicitor and client basis.

## **14. DISPUTE RESOLUTION**

14.1 In the first instance any dispute between the parties must be discussed between them to attempt to settle the dispute. Where the parties cannot reach a settlement between themselves external mediation may be sought. This clause does not remove the customer's right to refer any dispute to any other body or organisation, or impose any requirement that the customer attend any mediation or arbitration.

## **15. CONSUMER GUARANTEES ACT**

16.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Such Services from SimplyArb for the purposes of a business in terms of section 2 and 43 of that Act.

## **17. MISCELLANEOUS**

17.1 SimplyArb shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

17.2 Failure by SimplyArb to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations SimplyArb has under this contract.



17.3 If any provision of this contract shall be invalid, void or illegal or unenforceable, the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.4 Damage to any underground services such as pipes or cables (water, power, telecom etc) shall be the responsibility of the property owner unless the exact location of such services is supplied to SimplyArb. A cable location service can be provided if required at an additional cost.

17.5 It is the responsibility of the property owner to define all boundaries.