

FLASH POINT PROMOTIONS PTY LTD ACN 617 457 137 – TERMS AND CONDITIONS

TO: FLASH POINT PROMOTIONS PTY LTD ACN 617 457 137 and each of its subsidiaries, divisions, affiliates, associated companies and related entities and any successors and assigns (**Flash Point**).

THE CLIENT

Name (incl ACN if a Company):		
Trading as:		
Postal Address:		
Street Address:		
Telephone No:		
Facsimile No:		
Contact:	(Name)	
	(Phone Number)	(Email Address)
Accounts Payable Contact:	(Name)	
	(Phone Number)	(Email Address)

AUTHORISED PERSON completing this form:

By signing below, the Authorised Person binds the Client to the Agreement and Flash Point relies on this Agreement in providing the Services.

Name and Position		
	(Phone Number)	(Email Address)
	(Signature)	(Date)

TERMS AND CONDITIONS

To the fullest extent legally permissible all dealings between Flash Point and the Client relating to any Services offered by Flash Point are subject to the following terms and conditions (**the Agreement**) unless otherwise agreed in writing:

1. DEFINITIONS

- ‘**Agreement**’ means this agreement and includes any schedules or annexures attached or referred hereto.
- ‘**Additional Fees**’ means any other additional fee, cost, or charge notified by Flash Point to the Client, in writing, verbal, or otherwise, and includes but is not limited to fees for overtime of Personnel, being time worked by Personnel at an Event, after the time for the Services should have been completed.
- ‘**Business Day**’ means a day which is not a Saturday, Sunday or public holiday in Brisbane, Queensland.
- ‘**Claim**’ means an actual or threatened proceeding, claim or suit in or before any court, tribunal or arbitrator.
- ‘**Confidential Information**’ means:
 - (a) the terms of this Agreement and their subject matter, including information submitted or disclosed by a party during negotiations, discussions and meetings relating to this Agreement;
 - (b) information that at the time of disclosure by a Disclosing Party is identified to the Receiving Party as being confidential; and
 - (c) all other information belonging or relating to a Disclosing Party, or any related entity of that Disclosing Party, that is not generally available to the public at the time of disclosure or which the Receiving Party knows, or ought reasonably to be expected to know, is confidential to that Disclosing Party or any related entity of that Disclosing Party.
- ‘**Client**’ means the party described as such on the cover page attached to this Agreement.
- ‘**Damages**’ means:
 - (a) liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis) and, in the case of Flash Point, unpaid fees, outstanding Invoice, or other amounts payable under this Agreement; and
 - (b) consequential and indirect losses and damages (including those associated with third party claims).
- ‘**Disclosing Party**’ means the party to whom Confidential Information belongs or relates.
- ‘**Event**’ means an event or job which the Client requires Flash Point to provide Personnel to effect the Services.
- ‘**Flash Point**’ means the party described as such on the cover page attached to this Agreement and provider of the Services.
- ‘**Guarantor**’ means the party described as such on the cover page attached to this Agreement.
- ‘**GST Act**’ means *A New Tax System (Stock and Services Tax) Act 1999* (Cth).
- ‘**GST**’ means goods and services tax under the GST Act.
- ‘**Insolvency Event**’ means where a party:
 - (a) becomes or proposes to become an Externally Administered Body Corporate(as defined under the *Corporations Act 2001* (Cth));
 - (b) has committed an act of bankruptcy;
 - (c) is insolvent; or

(d) is or proposes to be Insolvent Under Administration (as defined under the *Corporations Act 2001* (Cth)).

'Invoice' means an invoice for the final cost of the Services provided at the Event.

'Laws' mean all relevant laws in force in the State and the Commonwealth of Australia, including common law and legislation.

'Personnel' means such persons working for or contracted to Flash Point for the purposes of providing the Services.

'Quote' means a quote for the Services provided by Flash Point to the Client in writing or other means, including by verbal means.

'Receiving Party' means the party to whom Confidential Information is disclosed or who possesses or otherwise acquires Confidential Information belonging or relating to a Disclosing Party

'Services' means such tasks, and Personnel required by the Client from Flash Point to provide for an Event as detailed in the Quote.

2. ENGAGEMENT

2.1 Flash Point agrees to provide and the Client agrees for Flash Point to provide the Services on a non-exclusive basis.

3. FEES

3.1 Subject to Clause 4.2, the fees payable for the provision of Services to the Client from Flash Point are those specified in the Quote provided by Flash Point to the Client.

3.2 The Quote and/or this Agreement, will be deemed to be accepted by the Client where:

- (a) the Client has signed the above acknowledgement on the first two pages attached to this Agreement;
- (b) the Client has provided or provides verbal, written, or otherwise, instructions to proceed after the Quote has been provided;
- (c) the Client has paid or pays a part or all of the Quote to Flash Point; or
- (d) the Client has provided or provides Flash Point with further details regarding the Services or Event after the Quote has been presented.

3.3 Additional Fees may be payable by the Client under this Agreement and will be itemised under any Invoice rendered in accordance with and under this Agreement.

3.4 Should the Quote exceed \$2,500.00 including GST, Flash Point may require the Client to pay a fifty percent (50%) deposit of the Quote at the time the Quote is presented.

4. INVOICING AND PAYMENT

4.1 Invoices will be rendered by Flash Point to the Client on the same day or next Business Day after providing the Services. At a minimum an Invoice will:

- (a) clearly identify the Service provided;
- (b) identify any Additional Fees payable by the Client; and
- (c) comply with the GST Act.

4.2 The Client acknowledges Invoices are payable within 7 days of the date it is issued, and time is of the essence with respect to payment.

4.3 Payment of any Invoice will be made in such currency as the Invoice dictates, and in such methods as prescribed by such Invoice.

4.4 Interest will accrue on any outstanding Invoice issued by Flash Point to the Client at the rate of 2% per month, until such time as payment of the Invoice is received by Flash Point.

5. OBLIGATIONS

5.1 In exchange for the Client paying the Invoice, and complying with its obligations under clause 6.2 and this Agreement, Flash Point will:

- (a) provide the Services in a professional and competent manner, efficiently with due care and skill, having regard to its knowledge and expertise;
- (b) provide the relevant Personnel for the Services and comply with any and all Industrial Laws relevant to such Personnel;
- (c) serve as a resource to the Client and, unless otherwise agreed, will not exercise any decision-making authority or control with respect to any decisions outside of the Services provided;
- (d) itself, and will take reasonable steps to procure that, each of its Personnel involved in providing the Services has and will maintain all licences, qualifications, certifications and approvals necessary for Flash Point to provide the Services;
- (e) on becoming aware of any event having an adverse effect on the provision of Services (including but not limited to weather conditions), will endeavour to suggest alternative options in providing the Services; and
- (f) maintain professional indemnity insurance cover, and other relevant insurances over its Personnel whilst completing the Services.

5.2 In exchange for Flash Point providing the Services, and complying with its obligations under clause 6.1 and this Agreement, the Client will:

- (a) comply with this Agreement;
- (b) pay the Invoice and any other monies owing under this Agreement as and when they fall due;
- (c) provide Flash Point with all relevant information, directions, and any assistance or other information reasonably requested by Flash Point for it to provide and complete the Services, and the Event, no later than 72 hours before the Event; and
- (d) treat, interact and deal with Flash Point's Personnel with courtesy, respect and professional behaviour.

6. THE EVENT

6.1 At the time of accepting the Quote (pursuant to Clause 4.2), or at minimum within 72 hours of the Event, the Client will provide Flash Point with all relevant information Flash Point reasonably requires to complete and provide the Services.

6.2 Should the Client be unable to provide Flash Point with such information as is required under clause 7.1, then the Client acknowledges and agrees that it cannot hold Flash Point responsible for its failure to fully complete or undertake the Services, or provide the required number of Personnel for the Event. In such circumstances, Flash Point acknowledges and agrees that Additional Fees may be payable, including but not limited to:

- (a) \$2.50 excl GST per Personnel change; and
- (b) \$2.50 excl GST per time change.

6.3 Whilst Flash Point will endeavour to meet the Client's requirements under clause 7.2, should the Client's requirements be provided to Flash Point less than 72 hours from the Event, then the Client acknowledges and agrees that it cannot hold Flash Point responsible for the failure to fully complete or undertake the Services due to the delay in providing the information in clause 7.1.

6.4 If the Client cancels or otherwise postpones the provision of Services (due to unforeseen circumstances, such as weather, or otherwise):

- (a) within 24 hours of the Event, then the Client acknowledges and agrees that it will still be liable for 100% of the Quote;
- (b) between 24 hours and no less than 72 hours of the Event, the Client acknowledges and agrees that it will be liable for fifty percent (50%) of the Quote;
- (c) more than 72 hours prior to the Event, the Client acknowledges and agrees that it will not have to pay the Quote.

7. WARRANTIES AND ACKNOWLEDGEMENTS

7.1 Flash Point warrants to the Client that:

- (a) Flash Point has the ability to provide the Services to the Client;
- (b) the Services, through its Personnel:
 - (i) will be delivered in a diligent and professional manner, and to the best of Flash Point's ability; and
 - (ii) will comply with the Services required to be rendered.
- (c) it will indemnify the Client against all Claims and Damages suffered by it, which arise out of or in connection with the gross negligence, fraud, dishonesty or wilful breach of this Agreement by either Flash Point or its Personnel.

7.2 No further or other covenants or provisions, will be deemed to be implied into this Agreement or will arise between the Client and Flash Point by way of collateral or other agreement by reason of any promise, representation or warranty. Any covenant or provision which is deemed by statute to be incorporated into this Agreement but the operation of which may be lawfully excluded, restricted or modified by agreement between the Client and Flash Point or otherwise is hereby, to the maximum extent possible, so excluded, restricted or modified.

- 7.3 Notwithstanding any other term in this Agreement, the terms are to be read subject to any statutory provision, express or implied, and any term included in this Agreement should be read down to the extent of any inconsistency or conflict.
- 7.4 The Client warrants, acknowledges and agrees as follows:
- (a) Flash Point is not liable in any circumstance for any injury, damage or loss, including consequential (loss of profit or otherwise), whether arising directly or indirectly, in contract, tort, equity or some other basis, arising out of the supply of the Services due to the Client's negligence or fault, and to this end will maintain any and all relevant insurances;
 - (b) Flash Point may engage contractors to give effect to the Services, the terms of which are confidential and will not be permitted to be reviewed or scrutinised by the Client;
 - (c) Flash Point may act on specific instructions given by the Client (or its representative) without investigating whether the act will comply with any relevant laws;
 - (d) it has the legal capacity and authority to enter into this Agreement;
 - (e) Flash Point has reasonably relied on the representations and warranties in this clause in entering this Agreement; and
 - (f) where the Client enters into this Agreement in capacity as trustee, the Client warrants that there are no other trustees of the trust.
- 7.5 This clause will survive termination or expiry of the Agreement.
- 8. CONFIDENTIALITY**
- 8.1 The Receiving Party acknowledges that the Disclosing Party's Confidential Information is the property of and confidential to the Disclosing Party. The Receiving Party must:
- (a) keep the Disclosing Party's Confidential Information confidential and not directly or indirectly disclose, divulge or communicate that Confidential Information to any other person without the prior written approval of the Disclosing Party;
 - (b) take all reasonable steps to secure and keep secure all Disclosing Party's Confidential Information; and
 - (c) not memorise, use, modify, reverse engineer or make copies, notes or records of the Disclosing Party's Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Agreement.
- 8.2 The obligations of confidentiality under this clause do not apply to any information that:
- (a) is generally available to the public (other than by reason of a breach of this Agreement);
 - (b) is disclosed with the prior written approval of the Disclosing Party;
 - (c) is disclosed to a professional adviser, banker or financial adviser of the Receiving Party or to a person whose consent or approval is required under this Agreement and that person undertakes to the Receiving Party not to disclose any of the Information in any form to anyone else and only to use the Information for the purposes of advising the Receiving Party, providing them with finance or considering whether to give that consent or approval (as the case may be); or
 - (d) are required to be disclosed by any applicable Law.
- 8.3 This clause will survive termination or expiry of the Agreement.
- 9. COMPETITION AND CONSUMER ACT**
- 9.1 The parties acknowledge that the *Competition and Consumer Act 2010* (Cth) and the Australian Consumer Law (jointly, the 'ACL') may apply to this Agreement, depending on a variety of factors including the amount payable under this Agreement. Notwithstanding any other provision of this Agreement, nothing in this Agreement is intended to, or attempts to, exclude or limit the operation of the ACL in any respect.
- 9.2 Any provisions of this Agreement (including limitations or exclusions) which might operate to limit the rights of a consumer or an 'affected party' under the relevant provisions of the ACL shall, to the extent that the ACL applies to this Agreement, be read as subject to those provisions of the ACL.
- 9.3 To the extent that the Client is a 'consumer' or an 'affected party' for the purposes of any provision of the ACL, references in this Agreement to the Client shall be read as subject to the relevant provision of the ACL, and the parties acknowledge that in its capacity as a 'consumer' or an 'affected party' the Client has rights and remedies at law which are in addition to those stated in this Agreement and may not be subject to the conditions and limitations in this Agreement.
- 9.4 To the extent permitted by section 64A of the ACL, any liability which Flash Point may have under the ACL for any breach of a consumer guarantee is limited, at the option of Flash Point, to one or more of:
- (a) resupplying the Service in respect of which the breach has occurred; or
 - (b) paying the cost of resupplying the Services in respect of which the breach has occurred.
- 10. LIABILITY**
- 10.1 Except in relation to gross negligence, fraud, dishonesty and wilful breach of this Agreement by Flash Point or any of its Personnel, Flash Point is not liable to the Client for any Claims or Damages suffered or incurred or which may arise directly or indirectly in respect of the Services or their provision by Flash Point or its Personnel pursuant to this Agreement, or in relation to any failure or omission on the part of Flash Point to comply with its obligations under this Agreement.
- 10.2 The Client warrants that it has not relied on any representation made by Flash Point which has not been expressly stated in this Agreement, or on any descriptions, or specifications which may be contained in any document (including brochures, catalogues and other publicity materials) produced by Flash Point.
- 10.3 The Client acknowledges that to the extent to which Flash Point has made any representation which is not otherwise expressly stated in this Agreement, the Client has been provided with a reasonable opportunity to independently verify the accuracy of that representation.
- 10.4 Flash Point's liability for any and all Damages arising out of any and all Client or third party Claims made pursuant to, or which arise under or in relation to this Agreement or its performance, including but not limited to claims arising whether directly or indirectly as a result of:
- (a) any breach by Flash Point of this Agreement;
 - (b) any negligent act or omission of Flash Point or any of its Personnel in connection with this Agreement;
 - (c) any failure by Flash Point to comply with any laws;
 - (d) any personal injury (including sickness and death); or
 - (e) any property damage;
- is limited per Claim to the amount made available to meet the Claim under Flash Point's professional indemnity insurance.
- 10.5 Notwithstanding any other clause in this Agreement, Flash Point will not in any circumstances be liable to the Client for loss of profits, special, consequential or indirect loss including without limitation economic loss or failure to realise anticipated savings or benefits.
- 10.6 Subject to any relevant Law and notwithstanding anything else in this Agreement, neither Flash Point nor any of its officers or approved agents will be liable to the Client or to any other person for any actions or omissions whatsoever of any unrelated third parties or for any costs, losses, damages, charges and expenses which may be incurred in connection with such actions or omissions.
- 10.7 If a third party makes a claim or commences proceedings (**Third Party Claim**) against the Client pursuant to, or which arise under or in relation to this Agreement or its performance, the Client:
- (a) must promptly notify Flash Point;
 - (b) must promptly and diligently defend the Third Party Claim and keep Flash Point informed of the progress; and
 - (c) may settle the Third Party Claim for a commercially reasonable result, but only after first conferring with and obtaining the consent of Flash Point (not to be unreasonably withheld) to the settlement amount and terms.
- 10.8 Flash Point will, subject to reimbursement of its reasonable costs, provide the Client with all reasonable assistance in defending a Third Party Claim.
- 10.9 The Client acknowledges and agrees to indemnify and keep Flash Point indemnified for any and all Claims or Damages that may arise as a result of:
- (a) the Services being rendered as a result of the Client's negligent act or omission in relation to their obligations under this Agreement; or

- (b) the Client's breach of any obligation, warranty or acknowledgement under this Agreement.
10.10 This clause will survive termination or expiry of the Agreement.
- 11. SUSPENSION**
- 11.1 Flashpoint may in the following events suspend, or immediately terminate the Services:
- (a) harassment or unprofessional behaviour by the Client (or its representatives, agents or employees) towards Flash Point or its Personnel; or
- (b) upon advice or comment by the Client that the Services of the Flash Point or Personnel are no longer required.
- 11.2 If the Services are suspended or terminated pursuant to clause 13.1, an Invoice will still be rendered, the amount of which to be in accordance with clause 7.4.
- 12. TERMINATION**
- 12.1 Flash Point may also terminate this Agreement by notice to the Client if the Client breaches a payment obligation, or fails to remedy a breach of this Agreement within seven (7) days after receiving notice requiring it to do so.
- 12.2 The termination of this Agreement does not affect:
- (a) any claim by Flash Point in respect of any outstanding Invoices, or Quotes payable under this Agreement; or
- (b) any other claim which either party may have against the other prior to the date of termination; or
- (c) the Client's requirement to pay any outstanding monies under clause 14.4(a).
- 13. DISPUTES**
- 13.1 If any dispute arises under or in connection with this Agreement (**Dispute**) both parties are prohibited from commencing legal proceedings unless both parties have attempted to negotiate the Dispute in good faith within 14 days of notice of the Dispute being issued.
- 14. INTELLECTUAL PROPERTY**
- 14.1 All intellectual property in the Services vest in Flash Point. This Agreement does not authorise or licence the Client to use the name, trademark or other symbols or marks of Flash Point without its prior written consent. This Agreement authorises and gives Flash Point a royalty free licence to the Client to use the name, trademark or other symbols or marks of the Client for the purpose of the Client providing the Services.
- 15. PROMOTIONAL MATERIAL CONSENT AND USE**
- 15.1 The Client acknowledges and agrees that by entering into this Agreement:
- (a) Flash Point may:
- (i) make images or recordings, whether sound, digital or otherwise, of the Event including of the Client, the Personnel, Flash Point and other persons that it has obtained consent from (**Images and Recordings**);
- (ii) use, publish or reproduce the Images and Recordings or any other image or recordings submitted by the Client (collectively herein after referred to as the Images and Recordings), in any form (in whole or in part, altered or unaltered) and by any medium, including but not limited to newspapers, magazines, brochures, television advertisements, promotional videos, websites, or other multi-media, and for any frequency, location or quantity, for public relations, promotions, commercial and advertising purposes (**Promotional Materials**); and
- (iii) retain or store the Images and Recordings (including those incorporated into **Promotional Materials**), in hard copy or digitally, including but not limited to, deposit of the Images and Recordings into a library or database.
- (b) it agrees:
- (i) that the rights granted to Flash Point under Clause 17.1(a) are perpetual and that the Client will not receive any payment, royalty or other consideration (whether monetary or otherwise) from Flash Point in connection with the making, use or storage of the Images and Recordings;
- (ii) to the collecting, storing, handling, accessing, managing, transferring, using and disclosing of the Images and Recordings for use in its business and in the Promotional Materials, and that it can disclose basic personal information of the subject of the Images and Recordings, such as their name;
- (iii) that any Promotional Materials which refer to the Client, expressly or by implication, are, at the date of publication, made in good faith and are not intended to defame or offend the Client or bring the Client into disrepute and, to the best of Flash Point's knowledge, are true and correct;
- (iv) that Flash Point is the owner of the copyright in the Images and Recordings and the physical Images and Recordings; and
- (v) that the permission, consent and authority for Flash Point to use the Images and Recordings is final and is not subject to the Client's inspection or approval prior to the Images and Recordings being used.
- 15.2 This clause survives the expiry or termination of this Agreement and will bind any assigns or successors of Flash Point.
- 16. GST**
- 16.1 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.
- 16.2 If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay an additional amount equal to the GST payable for the taxable supply.
- 17. GUARANTEE**
- 17.1 In consideration of the Client entering into this Agreement, the Guarantor guarantees to Flash Point:
- (a) payment of all monies and performance of all obligations including any past, present and future indebtedness and any obligation of the Client and any Guarantor from any past, present and future dealing with Flash Point;
- (b) indemnity against all loss or damage arising from past or present and future dealing with the Client and any Guarantor as a separate undertaking unconditionally and irrevocably. Flash Point need not incur any expense or make any payment before enforcing this right to indemnity;
- (c) that this Agreement will remain effective notwithstanding any act, matter, event or omission which might otherwise operate to discharge, or otherwise affect the liability of the Client or the liability under this guarantee and any failure of any Guarantor to sign this Agreement;
- (d) that any payment which is subsequently avoided by any law relating to insolvency will be deemed not to have been paid.
- 17.2 The Guarantor agrees that its liability to Flash Point arises without any demand by Flash Point upon the Client.
- 17.3 The Guarantor acknowledges that it has read and understood this Agreement before signing, and has been offered the opportunity to seek advice prior to signing.
- 18. GENERAL**
- 18.1 This Agreement may only be varied or replaced by a document executed by Flash Point and provided to the Client.
- 18.2 This Agreement is governed by and is to be construed in accordance with the laws applicable in Queensland.
- 18.3 Flash Point may assign its interest, obligations and responsibilities without the prior consent or approval of the Client. The Client may only assign its interest, in this Agreement provided it has obtained the prior written consent of Flash Point.
- 18.4 This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.