

# Terms and Conditions

## 1. Services

- 1.1. Marketing Impact Limited ("Marketing Impact") will:
  - 1.1.1. perform Services in accordance with an Order and these Standard Terms; and
  - 1.1.2. provide Services with the due care, diligence and skill reasonably expected of a competent and experienced organisation normally providing such Services.
- 1.2. Marketing Impact may appoint (or change) a subcontractor to perform all or any of the Services.
- 1.3. Marketing Impact must ensure that all Client material (including, without limitation, any Data) that is in Marketing Impact's possession is kept as secure as Marketing Impact keeps its own material, except as required by law.
- 1.4. Ownership and insured risk in Client material stored on Marketing Impact or their subcontractor's premises will remain the property of the Client and responsibility to insure this material remains with the Client
- 1.5. Notwithstanding clause 1.1, any time frames for the completion of the Services specified in the Order or these Standard Terms are for guidance only and Marketing Impact does not guarantee that the Services will be completed within these time frames.

## 2. The client's obligations

- 2.1. The Client will:
  - 2.1.1. comply with its obligations specified in the Order and these Standard Terms
  - 2.1.2. accept the Services on the terms set out in the Order and these Standard Terms
  - 2.1.3. give Marketing Impact all assistance as is necessary for the provision of the Services, and
  - 2.1.4. provide to Marketing Impact all documents, consents, and other information reasonably required by Marketing Impact in order to provide the Services
  - 2.1.5. provide Client information to Marketing Impact in an agreed secure and secret manner, which is executable, virus and/or malware free.

### 3. Charges, invoicing and payment

- 3.1. The Client must pay the Charges specified in an Order for the performance of Services under that Order.
- 3.2. Marketing Impact will send an invoice to the Client for work completed within a calendar month within 10 calendar days of that month's end.
- 3.3. Conditional upon meeting the obligation of 3.2, the Client must then make payment to Marketing Impact on or before the 20th calendar day of that month's end – the due date.
- 3.4. Without prejudice to Marketing Impact's other legal remedies, Marketing Impact may charge the Client interest on any amount due and payable under the Order and these Standard Terms which has not been paid within 7 days after its due date. Interest will be calculated daily from the due date until the date of payment at the per annum rate of 10% plus the Official Cash Rate. Interest shall be compounded monthly. This clause does not prejudice any other rights or remedies Marketing Impact may have at law or under the Order and these Standard Terms.
- 3.5. If any invoice or part of an invoice submitted by Marketing Impact is disputed by the Client:
  - 3.5.1. the Client must within 10 calendar days of the date of the invoice notify Marketing Impact of the reasons why such invoice or part is disputed and must not delay payment of the (undisputed) remainder of the invoice;
  - 3.5.2. if the parties are unable to resolve the dispute within 10 calendar days, clause 9 (Dispute Resolution) will apply; and
  - 3.5.3. upon resolution of the dispute (whether by agreement or under clause 9) the agreed or determined amount must be paid by the Client within 10 calendar days.

### 4. Termination

- 4.1. An Order may be terminated by either party if the other party defaults in the performance of any obligation in the Order or these Standard Terms and:
  - 4.1.1. the default is not capable or being remedied, the non-defaulting party may by written notice, and at its sole discretion, immediately terminate, or temporarily suspend the operation of these Standard Terms (including all current Orders) or all or part of the Order to which the default relates.

- 4.1.2. the default is capable of being remedied, and, within 5 working days of notice being given by the non-defaulting party specifying the default, the default is not remedied; or
- 4.1.3. the default is not capable of being remedied, the non-defaulting party may by written notice, and at its sole discretion, immediately terminate, or temporarily suspend the operation of these Standard Terms (including all current Orders) or all or part of the Order to which the default relates.
- 4.2. A party may terminate an Order immediately by giving written notice to the other party in the event that the other party is (or is held by a Court to be) insolvent or unable to pay its debts as they fall due or is placed into liquidation or receivership.
- 4.3. The termination of an Order does not affect any accrued right or remedy of either party in relation to that Order or these Standard Terms up to the date of termination.

## 5. Liability and exclusion of warranties

- 5.1. The maximum aggregate liability of Marketing Impact to the Client for all claims under or in connection with an Order or these Standard Terms in respect of any event or series of connected events shall not in any circumstances exceed the charges payable to Marketing Impact under an Order excluding postage or other media charges; whether such liability arises in contract, tort (including negligence), breach of statutory or fiduciary duty or otherwise.
- 5.2. To the maximum extent permitted by law, neither party is liable to the other for:
  - 5.2.1. any loss of income, profit, savings, or any other form of economic loss; or
  - 5.2.2. any indirect, special, incidental, or consequential loss or damage suffered by the other party or for any punitive damages.
- 5.3. Marketing Impact's warranties are limited to those set out in the Order and these Standard Terms and any implied condition or warranty (including any warranty under the Sales of Goods Act 1908) is hereby excluded.
- 5.4. The Client acknowledges and agrees the Client is acquiring the Services for the purposes of a business and that the Consumer Guarantees Act 1993 does not apply to the supply of the Services by Marketing Impact.

- 5.5. Without limiting the scope of this section 5 and notwithstanding clause 1, Marketing Impact does not guarantee or make any warranties or representations with respect to:
  - 5.5.1. the nature or rate of responses from any mailing or the direct mail campaign;
  - 5.5.2. the effect of any analytical or marketing advice provided by Marketing Impact on the nature or rate of responses from any mailing or the direct mail campaign;
  - 5.5.3. the effect of any data services (including profiling and data deduplication) undertaken by Marketing Impact and/or its business partner or sub-contractor; or
  - 5.5.4. the effect of any post-campaign reporting on the nature or rate of responses from any mailing.
- 5.6. No claim may be brought against Marketing Impact under the Order and these Standard Terms unless notice of that claim is given to Marketing Impact within 30 days of the supply of the Services giving rise to the claim.
- 5.7. Marketing Impact is not liable to the Client in any circumstances whatsoever for any loss (direct or indirect), damage, cost, claim or expense of any kind arising from the loss or corruption of or damage to any Client Data.

## 6. Confidential information

- 6.1. Each party acknowledges that the Confidential Information of the other party is valuable to that other party and undertakes to keep the Confidential Information of that other party secure and secret and not to disclose it except:
  - 6.1.1. to the extent required to perform an Order or these Standard Terms;
  - 6.1.2. to its professional advisers in connection with an Order or these Standard Terms; or
  - 6.1.3. to the extent required to do so by law.
- 6.2. The Confidential Information of each party will remain the property of that party. The Client and Marketing Impact must not, without the prior written consent of the other, use any Confidential Information of the other party except for the purpose of performing an Order.

- 6.3. Neither party will cause in any way the existence or contents of an Order or these Standard Terms to be published in any newspaper, magazine, journal or broadcast on radio or television, or other advertising medium; or to be made known in any other manner, unless prior written approval has been given by the other party.
- 6.4. Where a party is required to by law to disclose Confidential Information, or an Order or these Standard Terms or any of their contents, it will use its best endeavours to first notify the other party prior to making that disclosure.

## 7. Intellectual property and licensing

- 7.1. Each party retains its rights in any Intellectual Property that exists as at the commencement of an Order.
- 7.2. The Client licenses Marketing Impact to use the Client's Intellectual Property (including the Content) to perform the Services.
- 7.3. Except as otherwise provided in an Order and subject to clause 7.4, all new Intellectual Property arising in connection with the performance of the Services, including all modifications and adaptations of existing Intellectual Property, vest in and remain the property of Marketing Impact as such rights arise and may only be used by the Client for the purpose set out in the Order or as otherwise approved in writing by Marketing Impact.
- 7.4. All the Client's Data provided to and held, controlled, or generated by Marketing Impact vests and remains the property of the Client.
- 7.5. Marketing Impact will not obtain any interest in the Client's Data or Content and shall not use the Client's Data or Content for any purpose other than for providing the Services to the Client pursuant to the relevant Order.
- 7.6. The Client warrants that it is entitled to provide the Data and Content to Marketing Impact in connection with an Order or these Standard Terms and that the possession and/or use of that Data or Content by Marketing Impact to provide the Services will not infringe the Intellectual Property rights of any third party.
- 7.7. The Client indemnifies Marketing Impact against all liabilities, damages, expenses, and losses arising from any claim or proceeding brought against Marketing Impact to the extent the claim or proceeding is based on an allegation that Marketing Impact's possession and/or use of the Data or Content infringes any third party's Intellectual Property rights.

## 8. Force Majeure

- 8.1. A party will not be liable for any delay or failure to perform its obligations under an Order or these Standard Terms if such delay is due to Force Majeure.
- 8.2. If a delay or failure of a party to perform its obligations is caused by Force Majeure, the performance of that party's obligations will be suspended. The party unable to fulfil its obligations due to Force Majeure shall immediately:
  - 8.2.1. notify the other party in writing of the reasons for its failure to fulfil its obligations and the effect of such failure; and
  - 8.2.2. use all reasonable endeavours to avoid or remove the cause and perform its obligations as soon as possible.
- 8.3. Performance of any obligation affected by Force Majeure must be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure.
- 8.4. If by reason of Force Majeure a party is unable to perform any obligation under an Order or these Standard Terms and if the failure to perform the obligation continues for 10 working days, the other party may terminate that part or the whole of an Order or these Standard Terms affected by the Force Majeure.

## 9. Dispute resolution

- 9.1. If any dispute or question arises concerning an Order or these Standard Terms ("dispute"), either party may give written notice to the other requiring the parties to meet promptly to discuss that dispute. If the dispute is not resolved within 10 calendar days, it will be immediately escalated to the parties' authorised representatives or their nominees.
- 9.2. If the dispute is not resolved by agreement within 5 calendar days (or such longer period as they both agree) of it being referred to the authorised representatives of the parties, one party, by notice to the other, may refer the dispute to mediation, before a mediator and by rules to be agreed. If the parties cannot agree on a mediator, the chairperson for the time being of LEADR New Zealand Inc (or nominee) will be requested to appoint a mediator within 10 working days of the request. If the parties cannot agree on the rules of the mediation, the mediator will set the timetable and the rules will be LEADR's standard rules.

- 9.3. If the dispute is not resolved within 20 calendar days (or such longer period as the parties agree) after commencing mediation, then a party may pursue the dispute through court proceedings.
- 9.4. This clause does not affect either party's right to seek urgent interlocutory and/or injunctive relief from any court of competent jurisdiction.
- 9.5. While any dispute remains unresolved, the parties must continue to perform an Order or these Standard Terms to the extent that such performance is possible, given the nature of the dispute.

## 10. Notices

- 10.1. Notices under an Order or these Standard Terms may be delivered by hand, by mail or by email to the addresses specified in the Order or to such other address as either party may from time to time notify to the other in writing.
- 10.2. Notice will be deemed given in the case of hand delivery, upon written acknowledgement of receipt by or on behalf of the receiving party; in the case of notice given by post within 2 working days after posting within New Zealand or 14 working days if posted outside New Zealand; and in the case of notice given by email, 2 working days from the time specified in the email message header, to the recipient to whom the notice is given.

## 11. Digital messaging services

- 11.1. The Client acknowledges that they are the data controller that determines the purposes for which and the means by which personal data is processed and that Marketing Impact is the data processor that processes personal data only on behalf of the controller.
- 11.2. In the context of the Unsolicited Electronic Messages Act 2007 Marketing Impact will be deemed to be authorised in every instance to send all electronic messages to the Client's customers.
- 11.3. Marketing Impact is Data Warranted by the New Zealand Marketing Association and will apply best efforts at all times to only process Client personal data in line with the controller's documented instructions comply with their obligations under New Zealand law and established best practice with respect to digital messaging and data management.

- 11.4. Notwithstanding, the Client indemnifies Marketing Impact against all liabilities, damages, expenses, and losses arising from any claim or proceeding brought against Marketing Impact to the extent the claim or proceeding is based on an allegation that Marketing Impact's storage or management of Client data or processing of personalised messages was in breach of domestic or international law or regulation.
- 11.5. For clarity, the Parties note that it is the controller, rather than the processor, that has overall control of what happens to personal data.

## 12. General

- 12.1. All Orders and these Standard Terms and any dispute or matter arising in connection with them shall be governed by New Zealand law. The parties hereby submit, subject to the above clauses, to the non-exclusive jurisdiction of the New Zealand courts in respect of any dispute or other matter arising in connection with an Order or these Standard Terms.
- 12.2. Neither the Client or their associate parties will solicit or offer employment or other contractual engagement to Marketing Impact's employees or contractors nor to any person who has been an employee or contractor of Marketing Impact within 12 months after that person having left their employment or contractor relationship with Marketing Impact.
- 12.3. Nothing in an Order or these Standard Terms will be deemed to constitute either party as the agent, partner, or joint venturer of the other.
- 12.4. If any provision contained in an Order or these Standard Terms is held invalid, unenforceable, or illegal for any reason, it will be severable, and will be deemed deleted from an Order or these Standard Terms and will not affect the validity or enforceability of other provisions in an Order or these Standard Terms.
- 12.5. Any delay or failure by either party to exercise (in whole or in part) any right under an Order or these Standard Terms will not operate as a waiver of such right. A waiver by either party of any breach of any provision of an Order or these Standard Terms will not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach will not be, or be deemed to be, a waiver of any other or subsequent breach.
- 12.6. Marketing Impact may transfer or assign its interests in an Order or these Standard Terms, or any part of it or them upon giving 20 calendar days' notice to the Client of any such assignment.



- 12.7. Each Order and these Standard Terms constitute, as of the date of an Order, the entire agreement between the parties as it relates to the subject matter of an Order, and supersedes all previous agreements, undertakings, and negotiations on that subject matter. All amendments of an Order or these Standard Terms must be in writing signed by both parties.
- 12.8. Under Marketing Impact's current Mail House Relationship Agreement with New Zealand Post, we receive a rebate from New Zealand Post for Volumes of qualifying mail processed and lodged or either 0.4 or 0.8 cents per qualifying mail unit lodged. This rebate is subject to change by New Zealand Post.

### 13. Definitions

- "Charges" means the charges payable by the Client to Marketing Impact for the provision of the Services provided under an Order, as specified in that Order.
- "Client" means the client named in an Order.
- "Confidential Information" means, in relation to a party, all information concerning the organisation, administration, operation, business, customers, clients, finance, methods and systems (including any secret process or formula or other trade secret) of that party. The Confidential Information of Marketing Impact includes all information produced or used in connection with any Service provide under an Order or these Standard Terms and the supplied data.
- "Content" means all content provided by the Client to Marketing Impact, including (but not limited to) images. "Data" means all information, data, records, documents and trade secrets concerning:
  - (a) the transactions, business affairs, products, plans, intentions, operations, processes, know-how and business affairs of the Client; and
  - (b) the Client's customers (including, without limitation, all customer account and transaction data), (whether digital, electronic or otherwise) held or controlled by Marketing Impact in connection with any Order or these Standard Terms.

- “Force Majeure” includes any delay in acceptance of an item by an addressee, seizure or destruction of an item by customs or any other regulatory or government authority, act of God, earthquake, volcanic activity, flood, fire, or adverse weather condition, sabotage, riot, civil disturbance, epidemic, national emergency or act of war, governmental action, and other similar causes beyond the reasonable control of the party claiming the benefit of the Force Majeure clause in these Standard Terms. Force Majeure does not include:
  - (a) any event which the party affected could have prevented or overcome by exercising reasonable care at a reasonable cost; or
  - (b) a lack of funds for any reason.
- “GST” means goods and service tax chargeable under the New Zealand Goods and Services Tax Act 1985 (and any equivalent taxes payable in any other jurisdiction).
- “Intellectual Property” includes any right to, and any interest in, any patent, design, trademark, copyright, trade secret or any other proprietary right or form of intellectual property (whether protectable by registration or not).
- “Standard Terms” means these standard terms and conditions and any other document, incorporated in them by reference or physical attachment.
- “Order” means an instruction from the client to complete a task or set of tasks in a format including but not limited to a verbal or written brief or acceptance of a quotation or an order form.
- “Services” means any service to be provided by Marketing Impact to the Client under an Order.
- “Working day” means a day other than a Saturday, Sunday or public holiday (as defined in the Holidays Act 2003).