

**MOVE AHEAD MEDIA PTY LIMITED**

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**TERMS AND CONDITIONS  
OF BUSINESS**

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*The Customer's attention is drawn to the Conditions of Business which appear below*

*Nothing in these Conditions affects the statutory rights of any consumer.*

**1. Definitions and Interpretation**

1.1. In these Conditions, the following words and expressions will have the following meanings:

Campaign details or Campaign documents	The internet campaign that MAM have agreed to run for the Customer and is attached to or forms part of the Confirmation of Order Form.
“Commencement Date”	either the date when the order is (i) accepted by MAM on payment by debit or credit card being accepted over the telephone or over the internet or (ii) the date when the Confirmation of Order Form is signed and returned to MAM or (iii) when the Customer makes the first monthly payment to MAM if the Confirmation of Order Form has not been returned by the Customer to MAM;
“Conditions”	the terms and conditions set out in this document as amended from time to time in accordance with clause 25 below;
“Confirmation of Order Form”	the confirmation of the terms of the order sent by MAM to the Customer, normally by email or fax
“Contract”	the contract between MAM and the Customer for the sale and purchase of the Goods and Services incorporating these Conditions;
“Customer”	the person, company or organisation (or their agents) who purchase(s) the Goods and Services from MAM or gives instructions on behalf of the customer to MAM ;
“Force Majeure Event”	has the meaning given in clause 15;
“Goods and Services or services”	the goods and services (or any part of them) to be provided by MAM to the customer as set out in the Confirmation of Order Form and the campaign details ;

- “Link” / “Links” a hyperlink on a third party website pointing back to the Customer’s website
- “MAM” Move Ahead Media Pty Limited whose registered office is at Suite 15, 103 George Street, Parramatta, Sydney, 2150, Australian Company Number (CAN) 153 432 001, whose web address is [www.moveaheadmedia.com.au](http://www.moveaheadmedia.com.au) and whose telephone number is 028 003 3921
- “Monthly Payments” the number of monthly payments to be made as set out in the Confirmation of Order form (including GST at the appropriate rate) invoiced on the first day of each month and payable by the 14<sup>th</sup> day of each month (unless otherwise agreed in writing by MAM and the Customer).
- “Payment Schedule” The agreed schedule of payments that the Customer shall make to MAM as set out in the Confirmation of Order Form or alternatively in a one off transaction as accepted over the telephone by MAM and paid for by debit or credit card;
- “Specification” Information supplied by the Customer or its advisors to MAM to enable MAM to carry out its services
- 1.2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3. A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.4. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.5. Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.6. The headings do not affect the interpretation or construction of these Conditions.
- 1.7. A reference to writing or written includes faxes and e-mails.
- 2. Basis of Contract**
- 2.1. The Contract will start on the Commencement Date and the Conditions of Business will apply to all dealings between the Customer and MAM from that date.
- 2.2. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate (even if included in a purchase order), or which are implied by trade, custom, practice or course of dealing.
- 2.3. The Customer shall ensure that the terms of the Order and any relevant Specification provided by the Customer to MAM are complete and accurate.
- 2.4. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of MAM which is not set out in the Confirmation of Order Form, the campaign or these Terms and Conditions of Business Any descriptive matter or advertising issued by MAM and any descriptions or illustrations contained in MAM, brochures or set out in its internet site are issued or published for the sole purpose of giving an approximate idea of the Goods and Services to be

supplied. They shall not form part of the Contract or any other contract between MAM and the Customer for the sale of the Goods and Services.

- 2.5. A quotation for the Goods and Services given by MAM shall not constitute an offer. A quotation shall only be valid for a period of 7 days from its date of issue and may be withdrawn by written or oral notice to the Customer at any time before the Customer places the Order.

### **3. Delivery**

- 3.1. Delivery of MAM's Service to the Customer will take place by MAM uploading their relevant and confidential product onto the internet for the benefit of the Customer in accordance with the Services to be provided on the Confirmation of Order Form, the campaign or in urgent cases implemented after a discussion between the customer and MAM over the telephone or by e-mail.
- 3.2. The length of the contract, the payment terms i.e. whether by monthly instalments or one lump sum, the duration of the contract and whether the contract can be terminated on notice or not will be set out in the Confirmation of Order Form for each particular Customer. So misunderstandings do not occur between MAM's employees and the Customer over the telephone (or otherwise), the Customer will put in writing or by e-mail to MAM any questions it wishes to have dealt with in relation to the Services that are to be provided and agrees to indemnify and hold harmless MAM for any claims for breach of Contract or misrepresentation which the Customer may make as a result of the Customer failing to take that step and in these terms and conditions of business. If for any reason there is a conflict between the Confirmation of Order Form and these terms and conditions of business these terms and conditions of business will apply.

### **4. Price and Payment**

- 4.1. Where the payment to MAM by a Customer for Goods and Services to be supplied set out in the Confirmation of Order Form is by a one off lump sum payment that payment may be taken by debit or credit card, GST at the applicable rate will be added to the Contract price.
- 4.2. In the case of a contract where monthly payments are made if the Customer fails to make any payment due to MAM within 14 days of the date of the invoice being rendered then at any time after 28 days from the date the invoice is rendered MAM can terminate the contract forthwith and in that eventuality 50% of the balance of the monthly payments due for the remainder of the 12 month contract will immediately become due and owing to MAM as the Customer recognises that a substantial amount of MAM work for the Customer is front end loaded.
- 4.3. If the Customer fails to make any payment due to MAM under the provisions of this Contract or the Confirmation of Order Form by the due date for payment then MAM may at its discretion charge interest on any overdue sum at a rate which is 4% above the 90 day bank bill rate offered at the relevant time by Westpac Banking Corporation
- 4.4. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against MAM in order to justify withholding payment of any such amount in whole or in part. MAM may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by MAM to the Customer.
- 4.5. Once a Contract between MAM and a Customer has been in existence for more than twelve months, MAM reserve their right to increase the monthly payment set out in the Confirmation of Order Form as their sole discretion on giving to the Customer not less than 30 days prior written notice.

### **5. Cancellation of contract due to technical matters beyond the control of MAM**

- 5.1. MAM reserves the right to cancel the contract at any stage and to refund the Customer any payments due under this Contract or in the Campaign detail if for any reason technical factors arise in the carrying out of the Contract which are beyond MAM's control but are not due to a

fault of the Customer.

## **6. Cancellation of contract by MAM due to fault of Customer**

6.1 MAM reserves the right to cancel the contract with the Customer if the Customer is in breach of any term of this Agreement.

6.2 Except of the case of non-payment of MAM's invoices the procedure for which is set out in clause 4 above, in the case of any other breach by the Customer which is capable of being remedied MAM will serve on the Customer by email, fax or in writing notice requiring the Customer to rectify any problem that has arisen within 14 days so that MAM may carry out effectively the Campaign.

6.3 In the case of a breach by the Customer which is not capable of remedy, for example, the Customer's insolvency as set out in Clause 7 below MAM may cancel the contract with the Customer with immediate effect.

6.4 In relation to either cause 6.2 or 6.3 above applying 50% of the balance of any monies due and owing under the remainder of the twelve month contract from the Customer to MAM will immediately become payable as the Customer recognises that MAM's work for the Customer is front end loaded.

## **7. Customer's Insolvency or Incapacity**

7.1 If the Customer becomes subject to any of the events listed in clause 7.2, or MAM reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to MAM, MAM may cancel or suspend all further work under the Contract or under any other contract between the Customer and MAM without incurring any liability to the Customer, and all outstanding sums whether payable under the monthly payment schedule for the remainder of the 12 month contract or otherwise from the Customer to MAM shall become immediately due and payable.

7.2 For the purposes of clause 7.1 the relevant events are:

7.2.1 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts as and when the fall due, or (being an individual) is either unable to pay its debts or has no reasonable prospect of so doing or (being a partnership) has any partner to whom any of the foregoing apply; or

7.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or

7.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Customer other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or

7.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order; or

7.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

7.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or

- 7.2.7 (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
- 7.2.8 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- 7.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 7 ; or
- 7.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 7.2.11 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

## **8. Customer Obligations**

- 8.1 The Customer warrants that
  - (a) any information supplied by the Customer to MAM to enable MAM to carry out its Services will not be inaccurate, misleading or fraudulent
  - (b) they will comply with all reasonable requests made by MAM including providing direct and remote access to the Customer's website, source codes, and other diagnostic and statistical information required to enable MAM to carry out the terms of its Contract.
  - (c) they will ensure that a person is available with the required IT ability to comply with requests, directions and advice from MAM promptly when required.

## **9. Carrying Out Terms of the Contract by MAM**

- 9.1 MAM will carry out the Service agreed to be provided in accordance with the Confirmation of Order Form and the campaign subject to the terms of this agreement.
- 9.2 MAM shall be allowed to subcontract or outsource any of the Goods or Services to be supplied under the terms of this agreement.
- 9.3 Where the Goods or Services to be provided require MAM to liaise with the customer or third party representing the customer's interests (which may include for example a web agency or hosting company or the customer's own IT department), the Customer will ensure that those third parties act promptly in providing any information required by MAM so that MAM can carry out the terms of this agreement. MAM will not be liable for any failure to carry out the terms of this agreement by reason of a failure promptly to provide relevant information to MAM by the customer or a third party acting on the customer's behalf.

## **10. Provision of Link(s)**

- 10.1 MAM agree to provide a Link/Links as part of the Contract with the Customer but for the avoidance of doubt it is agreed that MAM cannot be responsible for any interference with the Link that takes place by the service provider, Google or any third party, nor can they guarantee any specific length of time that each Link will remain live on a third party site.
- 10.2 If for any reason the Customer stops paying MAM for Services that are being provided the Customer understands that MAM may at its discretion take steps to remove the Link/Links which are provided on the internet as part of the campaign

## **11. Exclusion of Liability**

- 11.1 MAM will not be responsible for the following interruption to Services provided by MAM caused by:
- (a) Interference or removal of links by third parties as set out in Clause 10 above.
  - (b) the Customer's IT department or IT consultants carrying out any modifications or alterations of the Customer's domain name, website or the Link/Links otherwise than after discussion and agreement in writing with MAM.
  - (c) any Force Majeure event as set out in clause 15 below.
  - (d) problems with the Customer's computer hardware or software which are outside MAM's control
  - (e) the Customer failing to carry out any verbal or written recommendations which affect the provision of the services within 14 days of being required to do so by MAM
  - (f) Any other breach of the terms of this Agreement by the Customer
- 11.2 MAM will not be responsible for any additional costs incurred by the Customer having to upgrade its computer software or hardware or any additional costs rendered to the Customer by its web page service providers or technical support costs incurred as a result of carrying out the terms of the Campaign, the effect of any Link/Links provided or any other hidden cost to the Customer which is not within MAM's control.

## **12. Contract period**

- 12.1 The Contract period will be as set out in the Confirmation of Order Form but in all other respects these Terms and Conditions of Business will apply.

## **13. The money back guarantee**

- 13.1 In some of its contracts MAM have agreed to reimburse part or all of the contract payments made by the customer to MAM if the targets set out in the campaign are not achieved. The assessment of whether a money back guarantee payment is to be made in whole or in part by MAM will be made at the discretion of MAM taking into account the results produced by the software Rank Tracker (or any other software utilised for the purpose by MAM). Furthermore the customer and MAM understand and agree MAM will not be contractually obliged to make a money back guarantee payment where:
- (a) The customer has failed to make a monthly instalment payment to MAM due under the payment schedule within 14 days of the due date.
  - (b) The customer is in breach of clause 8.1.
  - (c) A force majeure event has occurred as set out in clause 15.
  - (d) The customer has cancelled the contract within the 12 month contract period. MAM have cancelled the contact with the customer due to a breach of these conditions of business by the customer.
  - (e) The customer becomes insolvent or is subject to an insolvency event as set out in clause 7 above.
  - (f) The Customer is otherwise in breach of a term of this Agreement or the Campaign details which has made it impossible for MAM to achieve the Campaign objective.

- (g) The Customer's website is off line for a period in excess of 14 days in any given two month period or a total of 28 days in any twelve month period.
- (h) The Customer has not implemented the recommendations for the website in order to achieve the results

13.2 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

#### **14. Limitation of Liability**

14.1 Nothing in these Conditions shall limit or exclude MAM's liability for:

14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

14.1.2 fraud or fraudulent misrepresentation; or

14.1.3 any matter in respect of which it would be unlawful for MAM to exclude or restrict liability.

14.2 Subject to clause 14.1:

14.2.1 MAM shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract; and

14.2.2 MAM's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall not exceed the price of the Goods.

#### **15. Force Majeure**

15.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. In this contract a Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of computer or internet facilities, unforeseen damage or withdrawal of software packages used by MAM nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

#### **16. Assignment and Subcontracting**

16.1 MAM may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of MAM.

#### **17. Notices**

17.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to

the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.

- 17.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 0 ; if sent by pre-paid first-class post or recorded delivery, at 10.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, at the time of transmission if the same is before 4pm and otherwise at 10am on the next Business Day.
- 17.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## **18. Severance**

- 18.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 18.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## **19. Waiver**

- 19.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **20. Confidentiality**

- 20.1 Save as provided in this agreement each party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, or initiatives which are of a confidential nature and have been disclosed by one party to the other, each party shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purposes of discharging its obligations under this agreement and shall ensure that such employees are subject to corresponding obligations of confidentiality



- 20.2 All materials, drawings, specifications, and data supplied by MAM to the Customer shall at all times be, and remain, the exclusive property of MAM but shall be held by the Customer in safe custody at its own risk until returned to MAM and shall not be disposed of or used other than in accordance with MAM's written instructions or authorisation.
- 20.3 This condition shall survive termination of the agreement however caused.
- 20.4 Points agreed via separate 'Non-Disclosure agreement' are agreed in addition to this agreement, not in replace of this agreement.

## **21. Privacy**

Move Ahead Media Pty Ltd have a Privacy Policy that complies with the National Privacy Principles in the *Privacy Act 1988 (Commonwealth)* and any relevant Health Privacy Principles under State legislation, as well as other applicable laws and codes affecting your personal information. Our staff are trained to respect your privacy in accordance with our standards, policies and procedures. For details please contact us at [info@moveaheadmedia.com.au](mailto:info@moveaheadmedia.com.au)

## **22. Third Party Rights**

- 22.1 A person who is not a party to the Contract shall not have any rights under or in connection with it.

## **23. Variation**

- 23.1 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by authorised representatives of MAM and the Customer.

## **24. Governing Law and Jurisdiction**

- 24.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Australian law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Australia.

## **25. Updating of Terms and Conditions of Business**

- 25.1 MAM reserves the right from time to time to update and alter these terms and conditions of business as is necessary for good working practice and to comply with any changes in legislation.