

**ALTERNATIVE TECHNOLOGY ASSOCIATION INC. PUBLICATIONS**  
**TERMS AND CONDITIONS OF ADVERTISING**



The Agreement (“Agreement”) between the Customer and the Publisher applicable to any particular Goods or Services to be supplied by the Publisher to the Customer comprises the applicable Booking Form, the Rates Card and the Terms.

**DEFINITIONS**

In the Agreement, the following words have the following meanings:

“Advertising” means the advertising material to be published in the Magazine for the Customer as specified in the Booking Form.

“Booking Form” means the order form provided by the Publisher to the Customer as completed by the Customer and accepted by the Publisher (either in writing, or by performance) together with any variations to the Booking Form agreed to in writing by the Publisher.

“Customer” means the person that signs off on a Booking Form in respect of the Advertising.

“Goods” means any Advertising produced by the Publisher for the Customer as specified by the Customer in the Booking Form.

“Magazine” means the magazine title or titles (as the case may be) as specified in the Booking Form.

“Price” means the price of the Advertising space as set out in the Rates Card.

“Publisher” means Alternative Technology Association Inc. of Level 1, 39 Little Collins Street, Melbourne, VIC 3000.

“Rates Card” means the most current rates card provided by the Publisher to the Customer (which the Publisher may vary or replace in respect of future orders).

“Services” means publishing any Advertising for the Customer as specified in the Booking Form.

“Terms” means these terms and conditions of advertising (which replace any terms and conditions previously provided by the Publisher to the Customer).

**BINDING TERMS**

The only contractual terms and conditions that are binding upon the Customer and the Publisher are those set out in the Agreement, or as otherwise agreed in writing between the Customer and the Publisher, and those (if any) that are imposed by law and which cannot be excluded by the Agreement.

**RIGHT TO REFUSE ADVERTISING**

The Agreement is only formed between the Publisher and the Customer when the Publisher accepts the Booking Form (and thereby confirms the Customer’s reservation in the Magazine) by either sending written confirmation to the Customer, or by performing in accordance with the Booking Form. The Publisher is not under any obligation to accept the Agreement.

## **PRICING**

- a) The Customer must pay the Price in accordance with the Rates Card.
- b) The rates in the Rates Card:
  - i. may be varied at any time by the Publisher without notice to the Customer;
  - ii. are inclusive of taxes, duties and GST; and
  - iii. are not inclusive of Advertising agency fees.

## **PAYMENT**

- a) The Customer must pay the Price for Goods and Services (as the case may be) within the time specified in the Rates Card.
- b) The Customer must pay the Price notwithstanding:
  - i. that the Publisher exercises its right (as described in clause 8) to vary the format or placement of the Advertising;
  - ii. that there is an error or omission in the published Advertising (except where the error or omission is attributable to the Publisher's negligence); or
  - iii. that the Customer cancels or purports to cancel the reserved Advertising.
- c) If the Customer defaults in paying the Price under this Agreement when due, then in addition to its other rights, the Publisher, may in its discretion:
  - i. charge the Customer interest on the outstanding amounts at 4% above the 30 day bank bill rate published by the National Australia Bank Limited applicable from time to time, from the date on which the payments fell due until the date of payment; and
  - ii. suspend the provision of any Goods and Services to the Customer until such time as the Customer has rectified the default.
- d) The Publisher may retain all art work, proofs and materials provided by the Customer in respect of Advertising (whether under this Agreement or any other) until all moneys owing to the Publisher by the Customer are paid in full.

## **ERRORS**

- a) The Customer must promptly:
  - i. upon receiving notice to check Advertising proofs from the Publisher, check those proofs and notify the Publisher of any errors in the proofs, no later than three (3) business days from when the Customer receives the proofs; and
  - ii. notify the Publisher of any errors in any published Advertising, no later than seven (7) days after publication of the issue of the Magazine in which the Advertising was printed.

- b) The Publisher does not accept responsibility for any errors in published Advertising, where the Advertising material (or any changes to the Advertising material) was supplied otherwise than in writing.

## **PUBLICATION OF ADVERTISING**

Subject to the terms and conditions of the Agreement, the Publisher agrees to use its reasonable endeavours to deliver the Goods and Services in accordance with the Customer's specifications in the Booking Form, in particular:

- a) in the Magazine issue specified by the Customer;
- b) in the format specified by the Customer; and
- c) if applicable, in accordance with the Customer's placement instructions and provided only that the applicable loading has been paid, as specified in the Rates Card.

## **RIGHT TO VARY**

Notwithstanding clause 7, the Publisher reserves the right to:

- a) change the format of the Advertising including, but not limited to, changing a format from colour to black and white;
- b) vary the placement of Advertising within the Magazine; and
- c) refuse or withdraw the Advertising from publication at any time, in its discretion, without giving the Customer notice or reasons for doing so.

## **WARRANTIES**

The Customer warrants that:

- (a) it has the legal capacity and authority to enter into the Agreement;
- (b) the Advertising does not breach or infringe:
  - A. the Trade Practices Act 1974 (Cth);
  - B. the Fair Trading Acts in all applicable States and Territories;
  - C. the Privacy Act 1988 (Cth) including the National Privacy Principles;
  - D. any intellectual property rights, including, copyright, trade mark, obligation of confidentiality or other personal or proprietary right of any third party;
  - E. any law of defamation, obscenity or contempt of any court, tribunal or royal commission;
  - F. any State or Commonwealth anti-discrimination legislation;
  - G. any other law, including but not limited to, common law, legislation, regulations, by-laws, rule and ordinances of the Commonwealth or any State or Territory; and
- (c) it will not provide the Advertising for, or in connection with, any illegal purpose.

## INDEMNITY

The Customer indemnifies and will keep indemnified the Publisher, its officers, employees, contractors, and agents against all claims, actions, suits, liabilities, actual or contingent costs, damages and expenses incurred by the Publisher arising from:

- (a) any breach of the Agreement by the Customer;
- (b) any negligent or unlawful act or omission by the Customer, in connection with the Agreement; or
- (c) any actual or alleged breach by the Customer of any law, legislation, regulations, by-laws, ordinances or codes of conduct in connection with the Advertising.

## LIABILITY

- a) Except in accordance with this clause, the Publisher will not be liable for any costs, expenses, losses or damages suffered or incurred by the Customer arising from the Publisher's failure to publish the Advertising or to publish the Advertising in accordance with the Customer's requests.
- b) To the extent permitted by law, all conditions and warranties expressed or implied by statute, the common law, equity, trade, custom or usage are expressly excluded. Under no circumstances will the Publisher be liable for any indirect or consequential loss. The liability of the Publisher is limited (at the option of the Publisher) to:
  - i. publishing the Advertising in a subsequent edition(s) of the Magazine;
  - ii. paying the cost of having the Advertising published in a comparative publication selected by the Publisher; or
  - iii. providing the Customer a refund to the maximum value of the moneys paid by the Customer in respect of the Advertising.

## PRIVACY

- a) The Publisher is committed to complying with the National Privacy Principles as set out in the *Privacy Act 1988 (Cth)*. To provide quality service, the Publisher will collect the Customer's personal information and use it to:
  - i. provide the Goods or Services; and
  - ii. manage and administer the Goods or Services.
- b) To reduce its financial risks, the Publisher may also collect the Customer's personal information, and use it:
  - i. to obtain from a credit reporting agency or other credit provider personal credit information about the Customer and/or its directors or officers for the purpose of assessing the Customer's commercial credit application; and to obtain a consumer credit report about the Customer for the purpose of collecting overdue payments relating to commercial credit owed by the Customer;
  - ii. to refer to tribunals, courts, and statutory authorities (where necessary); and
  - iii. to refer to collection agents/lawyers (where default/enforcement action is required).

- c) Customers can contact the Publisher to ascertain what personal information has been collected in respect of them. If the Customer does not provide their personal information to the Publisher and consent to the Publisher's collection and possible uses of it, the Publisher may refuse to enter an Agreement with the Customer or withdraw from an existing agreement with the Customer.

#### **FORCE MAJEURE**

The Publisher will not be liable for any delay or failure to perform its obligations under the Agreement if such a delay or failure is due to circumstances caused by a factor outside the Publisher's reasonable control (including but not limited to any act of God, war, terrorism, breakdown of a plant, industrial dispute, electricity failure, governmental or legal restraint).

#### **GOVERNING LAW**

The Agreement is governed by and construed in accordance with the law of the State of Victoria and the parties irrevocably submit to the jurisdiction of the courts of that State.