

Signage Agreement

Adherettes Pty Ltd

and

The person named as the Client in the Quote

SIGNAGE AGREEMENT

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SIGNAGE AGREEMENT

THIS AGREEMENT is made on the Contract Date.

BETWEEN: **Adherettes Pty Ltd** (ACN 005 383 782) of 359 Plummer Street, Port Melbourne VIC 3207 (**Adherettes**)

AND: **The party described in the Quote (Client)**

RECITALS

- A. The Client wishes to engage Adherettes to undertake the Works.
- B. Adherettes accepts the Client's engagement on the terms and conditions of this Agreement.

IT IS AGREED in consideration of, amongst other things, the mutual promises set out in this Agreement:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the subject or the context otherwise requires:

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria;

Completion Date means the date determined by Adherettes in consultation with the Client, as may be extended in accordance with this Agreement;

Contract Date means the earlier of the date on which the Client accepts the Quote in writing or issues a purchase order for the Works to Adherettes;

Contract Sum means the amount set out in the Quote, as may be varied in accordance with this Agreement;

CPI means the All Groups Consumer Price Index (weighted average of eight capital cities, Index Reference A2325846C) published by the Australian Bureau of Statistics for the previous 12 months based on the preceding quarter end index (for example, if the anniversary of the Contract Date falls on 1 May 2013, the most recently published CPI was for the quarter ending 31 March 2013 which will be compared with the quarter end index for 31 March 2012 to determine the change);

Defects Liability Period means one (1) month after Practical Completion;

Design means the design of the Works, which will be undertaken:

- a. by Adherettes in accordance with clause 2.1; or
- b. by the Client in accordance with clause 2.2;

GST has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Insolvency Event means:

- a. a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with this Agreement;
- b. execution is levied against a party by a creditor;
- c. where a party is an individual person or partnership including an individual person, if that person
 - i. commits an act of bankruptcy;
 - ii. has a bankruptcy petition presented against him or her or presents his or her own petition;
 - iii. is made bankrupt;
 - iv. makes a proposal for a scheme of arrangement or a composition; or
 - v. has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth); or
- d. in relation to a party being a corporation:
 - i. notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement other than for a solvent reconstruction;
 - ii. it enters a deed of company arrangement with creditors;
 - iii. a controller or administrator is appointed;
 - iv. an application is made to a court for its winding up and not stayed within 14 days;
 - v. a winding up order is made in respect of it;
 - vi. it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
 - vii. a mortgagee of any of its property takes possession of that property;

Intellectual Property Right means all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trade marks, confidential information (including trade secrets and know-how), registered designs, circuit layouts and all other proprietary rights resulting from intellectual activity in the industry, scientific, literary or artistic fields;

Personal Property has the meaning given in the PPSA;

PPSA means the *Personal Property and Securities Act 2009* (Cth);

Practical Completion means the stage when the Works are reasonably fit for use by the Client, but which may contain minor defects which do not affect such use;

Quote means a quote in writing for the performance of the Works issued by Adherettes and identified by a quote number;

Scope means, where Adherettes is required to undertake the Design, the Client's requirements for the Design and the Works as provided by the Client to Adherettes;

Security Agreement has the meaning given in the PPSA;

Security Interest has the meaning given in the PPSA; and

Separable Portion means a portion of the Works deemed in accordance with clause 6 or as advised by Adherettes to the Client in writing from time to time;

Site means the site(s) described in the Quote; and

Works means the work to be carried out and completed in accordance with this Agreement, including variations provided for by this Agreement.

1.2 Interpretation

In this Agreement, unless the subject or the context otherwise requires:

- a. words importing the singular include the plural and vice versa;
- b. words importing one gender include other genders;
- c. a reference to any party or other person includes that party's or person's successors and permitted assigns;
- d. a reference to a statute, ordinance or other legislation includes any amendment, replacement or re-enactment for the time being in force and includes all regulations, by-laws and statutory instruments made under such statute, ordinance or other legislation;
- e. a reference to this or any other document includes a reference to that document as amended, supplemented, novated or replaced from time to time;
- f. a reference to a recital, clause or schedule is a reference to a recital, clause or schedule of this Agreement;
- g. a reference to writing includes all means of reproducing words in a tangible and permanently visible form;
- h. a reference to a person includes a natural person, corporation, partnership, trust, estate, joint venture, sole partnership, government or governmental subdivision or agency, association, co-operative and any other legal or commercial entity or undertaking;
- i. the word "including" (and any form of that word) is not to be construed as a word of limitation;

- j. the headings in this Agreement do not affect its interpretation;
- k. the recitals and the schedules in this Agreement form part of this Agreement;
- l. nothing in this Agreement is to be interpreted against a party on the ground that the party put forward this document or any part of it; and
- m. if a period of time is specified and the period commences on a given day or the day of an actual event, it is to be calculated exclusive of that day.

2 DESIGN

2.1 Design by Adherettes

- a. If Adherettes is to carry out and complete the Design then this clause 2.1 applies.
- b. Adherettes must complete the Design in accordance with the Scope. Upon completion of the Design, Adherettes will provide the Design to the Client for approval and the Client must, within 5 Business Days, give Adherettes notice in writing that:
 - i. it approves the Design and the Design is suitable and appropriate for its intended purpose; or
 - ii. it does not approve the Design, with detailed reasons given for its non-approval.
- c. Should the Client not give Adherettes notice in writing within the time stated in clause 2.1b, the Client shall be deemed to have approved the Design and accepted that the Design is suitable and appropriate for its intended purpose.
- d. The Client acknowledges that, as between Adherettes and the Client, all Intellectual Property Rights in the Design (including drawings, artwork, graphics, photographs, workings, designs, technology, specifications, drafts and other works but excluding the Client's logo and trade mark) remain the property of Adherettes and do not transfer to the Client and the Client may not use the Design for any other purpose or signage or give it to any other person for any purpose or allow it to be used by any other person without the prior written consent of Adherettes.
- e. The Client grants to Adherettes an irrevocable royalty free licence to use the client's artwork/logo for the purpose of the Works, and for the use by Adherettes in its own marketing material, including its website.

2.2 Design by Client

- a. If Adherettes is not to carry out and complete the Design then this clause 2.2 applies.
- b. The Client warrants that:
 - i. the use of the Design for the performance of the Works will not infringe any Intellectual Property Right; and

- ii. it is responsible for any defect or deficiency in the Design.
- c. The Client grants to or will procure the grant to Adherettes of a royalty free, irrevocable licence to use the Design to create artwork for the Client and for production purposes and installation of the Works.

3 ADHERETTES' OBLIGATION TO UNDERTAKE THE WORKS

3.1 Generally

- a. In consideration of the Client paying the Contract Sum in accordance with this Agreement, Adherettes must execute and complete the Works at the Site:
 - i. in a proper and workmanlike manner;
 - ii. in accordance with the Design and this Agreement; and
 - iii. by the Completion Date.
- b. The parties acknowledge and agree that the Works are intended to be viewed from a distance and position that is reasonable having regard to the location of where the Works are installed. Adherette's obligations under this Agreement including clause 3.1a.i are to be read subject to this clause 3.1b.

3.2 Completion Date

- a. If a party becomes aware of anything which is likely to cause delay to the Works reaching Practical Completion by the Completion Date, that party shall promptly give the other notice of that cause and the estimated delay.
- b. Adherettes will be entitled to a reasonable extension of time to the Completion Date if Adherettes determines, acting reasonably, that Practical Completion of the Works is or has been delayed by an event outside of Adherettes' control, including any act, default or omission of the Client.
- c. If Adherettes is entitled to an extension of time pursuant to clause 3.1a.iiib above due to a delay caused by the Client or its agents or contractors other than Adherettes (including an act, default or omission within the reasonable control of the Client or its agents or contractors), then the Client must pay Adherettes the delay costs incurred by Adherettes as a result of the delay, including the costs of contractors, equipment hire/rental, cancellation and re-booking fees and any other on and offsite overheads incurred by Adherettes.
- d. Adherettes will notify the Client in writing of the date of Practical Completion.

4 CLIENT'S OBLIGATION TO MAKE PAYMENT

4.1 Deposit

If required by Adherettes, the Client must pay twenty per cent (20%) of the Contract Sum to Adherettes within five (5) Business Days of the Contract Date

4.2 Balance of payments on progress claims

- a. The parties agree that the balance of the Contract Sum will be payable by the Client on progress claims made by Adherettes on the last day of each month, for works performed to the last day of each month.
- b. The Client must pay Adherettes within twenty (20) Business Days from the date of receipt of the progress claim.

4.3 Failure to make payment on time

In addition to any remedy provided under clause 13, if the Client fails to pay any amount due under this Agreement:

- a. interest will accrue on the outstanding amount at the rate set out in *The Penalty Interest Rates Act 1983 (Vic)* plus 5% from the date on which the amount was due to be paid until the amount has been paid in full (including any default interest); and
- b. Adherettes may suspend performing the Works (and the Completion Date will be extended accordingly) until all outstanding amounts have been paid.

4.4 CPI escalation

The parties agree that if the Works have not been completed by the anniversary of the Contract Date (and, if the Works have been delayed, the delay was not caused solely by Adherettes) then the Contract Sum (or any part of the Contract Sum not yet paid) will be adjusted upwards by the change in the CPI (if any).

4.5 Retention of title and security

- a. Notwithstanding delivery of any Personal Property to the Site, title to any Personal Property shall remain with Adherettes and shall not pass to the Client until Client has paid Adherettes for such Personal Property in full.
- b. Adherettes may, at its discretion, register a Security Interest in accordance with the PPSA over any Personal Property not paid for by the Client and the Client agrees to sign any further documents and/or provide any further information which Adherettes may require to enable perfection of its Security Interest in the Personal Property.
- c. This Agreement constitutes a Security Agreement which creates (or may create) a Security Interest in favour of Adherettes in any Personal Property.

5 SITE

5.1 Access to Site

- a. Adherettes will give the Client written notice of the time it will require access to the Site to complete the Works.
- b. The Client must give Adherettes access to sufficient of the Site to enable Adherettes to reach Practical Completion of the Works by the Completion Date.
- c. The parties acknowledge that the original Completion Date was determined on the assumption that Adherettes would be given continuous access to the Site from the time that Adherettes requires access as notified under clause 5.1a.
- d. If the Client fails to give Adherettes access in accordance with clause 5.1b, Adherettes will be entitled to an extension of time to the Completion Date and delay costs in accordance with clauses 3.1a.iii, 3.2b and 3.2c.

5.2 Readiness of Site

- a. The Client must ensure that the Site is in a condition ready for the installation of any part of the Works by the time that it is required by Adherettes. If Adherettes considers, acting reasonably, that the Site is not ready for the installation of any part of the Works, it may give written notice to the Client with reasons for its decision that the Site is not ready and Adherettes shall be entitled to an extension of time to the Completion Date and delay costs in accordance with clauses 3.2b and 3.2c.
- b. Notwithstanding clause 5.2a, if Adherettes is required to undertake additional work because the Site is not ready for the installation of the Works, including Adherettes being required to remove or relocate any part of the Works or remedy any damage to the Works that is caused by the Site not being ready for Adherettes to install the Works or any part of them, the Client must pay Adherettes for such additional work at the rates set out in a rate card for works as advised by Adherettes from time to time.

6 SEPARABLE PORTIONS

6.1 By agreement

The parties may agree on Separable Portions and shall clearly identify for each, the:

- a. portion of the Works; the
- b. Completion Date; and
- c. delay costs (calculated pro-rata according to the ratio of the valuation of the Separable Portion to the Contract Sum).

6.2 Deemed Separable Portions

- a. If the Works consist of the provision of more than one sign to be installed at different times or stages, Adherettes may give notice to the Client after the installation of a stage or sign(s) to inspect that portion of the Works.
- b. The Client must inspect the portion of the Works described in clause 6.2a within 3 Business Days of the notice from Adherettes. Following inspection, the Client must, within 2 Business Days:
 - i. give Adherettes written notice of any defects that will prevent that portion of the Works from reaching Practical Completion; or
 - ii. give Adherettes written notice that the portion of the Works is in accordance with the Agreement.
- c. If the Client:
 - i. gives Adherettes notice in accordance with clause 6.2b.ii; or
 - ii. fails to inspect that portion of the Works within the time described in clause 6.2b; or
 - iii. inspects that portion of the Works but fails to give Adherettes notice in accordance with clause 6.2b.i or 6.2b.ii within the time specified,that portion of the Works shall be deemed a Separable Portion that has reached Practical Completion.

7 PROVISIONAL SUMS

- a. Where the Client requests Adherettes to carry out or supply the work or item to which a provisional sum relates, Adherettes shall price the work or item and the difference shall be added to or deducted from the Contract Sum.
- b. Adherettes shall be entitled to an amount for profit and attendance calculated at the rate of 20% on the amount of the cost which exceeds the provisional sum allowance.

8 VARIATIONS

8.1 Variation Request

- a. The Client may, from time to time, request Adherettes to vary the Works, by any one or more of the following:
 - i. increase, decrease or omit any part;
 - ii. change the character or quality;
 - iii. carry out additional work,(a **Variation Request**).

- b. After receiving a Variation Request, Adherettes will notify the Client in writing (**Variation Response**) whether the proposed variation can be effected, together with the cost of the proposed variation and its effect on the Completion Date.

8.2 **Direction to proceed**

Upon Adherettes undertaking the variation in a Variation Request, Adherettes will be entitled to:

- a. any extension to the Completion Date set out in its Variation Response; and
- b. the cost of such variation set out in its Variation Response.

9 **CARE OF THE WORK**

The parties acknowledge and agree that care of the work under the Agreement (including the Works) shall pass to the Client:

- a. at 4:00 p.m. on the Completion Date; or
- b. where there is a deemed Separable Portion in accordance with clause 6.2c, at 4:00 p.m. on the date that Separable Portion reached Practical Completion.

10 **DEFECTS LIABILITY**

- a. The Defects Liability Period will commence on the date of Practical Completion and if there are Separable Portions, then from the date of Practical Completion for each of the Separable Portions.
- b. During the Defects Liability Period, Adherettes will rectify any defects in the Works that are notified to it in writing by the Client.

11 **BUILDING PERMIT AND APPROVALS**

The parties acknowledge that, if the Works require a building permit or any other approval to be obtained from the relevant authority, then unless Adherettes has expressly agreed in writing to obtain such permit or other approval, it shall be the Client's responsibility to obtain such permit or approval at its cost.

12 **SUBCONTRACTING**

The Client acknowledges and agrees that Adherettes may subcontract all or any part of the Works.

13 **TERMINATION**

A party (**Non Defaulting Party**) may terminate this Agreement:

- a. where the other party has committed a material breach of the Agreement and the breach is capable of being remedied, provided that:
 - i. the Non Defaulting Party has first given the other party written notice of that breach; and

- ii. the other party has not remedied the breach to the Non Defaulting Party's satisfaction (having regard to the nature of the breach) within ten Business Days of the Non Defaulting Party's notice;
- b. if the Non Defaulting Party is Adherettes, where the Client has not paid an amount due and payable under this Agreement and:
 - i. Adherettes has given the Client written notice of that breach; and
 - ii. the Client has not remedied the breach by making the outstanding payment (together with any accrued interest) within five (5) Business Days of Adherettes' notice;
- c. immediately on written notice to the other party where:
 - i. the other party has committed a material breach of this Agreement and that breach is not capable of being remedied; or
 - ii. the other party is the subject of an Insolvency Event.

14 **INSURANCE**

If required, Adherettes must take out and maintain the following insurances at a level appropriate for the Works:

- a. professional indemnity insurance; and
- b. public liability insurance.

15 **DISPUTE RESOLUTION**

15.1 **Notice of Dispute**

A party claiming that a dispute arising out of or in connection with this Agreement (**Dispute**) has arisen must notify the other party in writing giving full details of the Dispute (**Dispute Notice**).

15.2 **Mediation**

If the Dispute is not resolved between the parties within ten (10) Business Days of the Dispute Notice, either party may refer the Dispute to mediation. If the parties are unable to agree on a mediator, the mediator shall be nominated by the President (for the time being) of the Institute of Arbitrators and Mediators Australia at the request of either party.

15.3 **Legal proceedings**

If the Dispute is not resolved by the date that is twenty (20) Business Days from the date of the Dispute Notice, either party may commence legal proceedings in accordance with this clause 15.3.

15.4 **Urgent relief**

Nothing in this clause 14b prevents a party seeking urgent injunctive relief or similar interim relief from a court.

16 **GST**

- a. The Contract Sum excludes GST, unless it is expressed to be GST-inclusive.
- b. Where a party (**Supplier**) makes a taxable supply to another party (**Recipient**) under or in connection with this Agreement, the Recipient must pay to the Supplier an additional amount equal to the GST payable on the supply (unless the consideration amount for that taxable supply is expressed to include GST). The additional amount must be paid by the Recipient at the later of the following:
 - i. the date when any consideration for the taxable supply is first paid or provided; and
 - ii. the date when the Supplier issues a tax invoice to the Recipient.
- c. If, under or in connection with this Agreement, the Supplier has an adjustment for a supply under the GST law which varies the amount of GST payable by the Supplier, the Supplier will adjust the amount payable by the Recipient to take account of the varied GST amount. The Supplier must issue an adjustment note to the Recipient within 28 days of becoming aware of the adjustment.

16.2 **Other GST matters**

If either party indemnifies, reimburses, pays a contribution or pays damages to the other under any provision of this Agreement, such amount is reduced by the amount of GST for which there is an entitlement to claim an input tax credit on an acquisition associated with the reimbursement or indemnity.

16.3 **Tax invoice**

The Recipient is not required to pay the Supplier any amount otherwise due under this Agreement until the Supplier has first delivered to the Recipient a tax invoice, or where appropriate, an adjustment note for the amount payable.

17 **MISCELLANEOUS**

17.1 **Assignment**

Neither party may assign, transfer or novate their rights or obligations under this Agreement without the prior written consent of the other party, which will not be unreasonably withheld or delayed.

17.2 **Notices**

The address of:

- a. Adherettes is as stated in this Agreement, or as notified to the Client from time to time;

- b. the Client is the address in the purchase order issued by the Client or as notified by the Client to Adherettes in writing from time to time.

Any notice, demand or other communication (Notice) to be given or required to be made pursuant to this Agreement is to be in writing and is to be given by post, facsimile, by email or by hand to a party at the party's address at such address or facsimile number as is notified in writing by one party to the other party from time to time. A Notice is deemed to be given or served:

- c. where sent by pre-paid post on the second Business Day following the day on which it was posted;
- d. where transmitted by facsimile during normal business hours on a Business Day on that day, or in any other case of transmission by facsimile on the Business Day following the day of transmission;
- e. where delivered by hand during normal business hours on a Business Day on that day, or in any other case of hand delivery on the Business Day following the day of delivery;
- f. if sent by email, at the earlier of the time shown in a delivery confirmation report generated by the sender's email system or receipt of a non-automated response.

17.3 **Costs**

Each party is responsible for its own costs in relation to the preparation and execution of this Agreement.

17.4 **Governing law and jurisdiction**

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

17.5 **Deemed acceptance**

The Client is deemed to have accepted the terms and conditions contained in this Agreement upon receipt by Adherettes of acceptance of the Quote in writing or the issue of a purchase order for the Works.

17.6 **Variation**

No part of this Agreement may be amended or modified unless in writing and executed by both parties.

17.7 **Entire agreement**

This Agreement sets out the entire agreement and understanding between the parties with respect to its subject matter and supersedes all prior agreements, understandings and representations.