

1 Recitals

- 1.1 The websites (**the Sites**) are owned, operated and maintained by Next Commerce Pty Ltd, Level 8, 143 York St, Sydney, NSW 2000 (**the Operator**). The Sites include [www.getprice.com.au, www.pricepanda.com.sg, pricpanda.com.my, pricepanda.com.ph pricepanda.co.th and pricepanda.co.id]
- 1.2 From time to time, suppliers of goods and/or services (**Merchants**) seek to place advertisements on the site
- 1.3 These Terms and Conditions form part of any agreement between the Operator and a Merchant under which the Operator agrees to display certain products, prices or Advertisements of the Merchant as set out in a written Insertion Order. The Insertion Order together with these terms and conditions form an agreement between the Operator and the Merchant. (**Agreement**).

2 Definitions

2.1 The following definitions apply to these Terms and Conditions:

- (a) "**Advertisement**" means an advertisement for the Merchant's goods or services published by the Operator in accordance with a signed Insertion Order and can include but is not limited to banners, leaderboards, skyscrapers, wide skyscrapers, rectangles, medium rectangles, half pages, InVue, and interstitial internet based advertisements.
- (b) "**Advertising Fee**" means the fee the Merchant will pay for a specific Advertisement.
- (c) "**Affiliate**" means any entity with which the Operator has an agreement in relation to the publication of content which will include Advertisements.
- (d) "**Cost per Click**" means price per visit by retail consumers on the Merchant's internet website, where access to the Merchant's website is through redirection from the Operators Site or Related Sites.

"**Confidential Information**" means information (whenever it was obtained) in relation to either party's:

- business, operations or strategies;
- customers or website users;
- intellectual or other property; or
- actual or prospective customers, suppliers or competitors.

Information is not confidential if:

- it is in the public domain (including content provided by the

Merchant under these Terms and Conditions), unless it came into the public domain by a breach of this agreement;

- it is already known by the other party at the time this document is entered into; or
- it is obtained lawfully from a third party without any breach of confidentiality.

- (e) **"Fees"** means any Licence Fee, Setup Fee and Sponsorship Fee applicable and payable by the Merchant.
- (f) **"Insertion Order"** means the document setting out the advertising placements relating to any media booking issued by the Operator to the Merchant.
- (g) **"Intellectual Property Rights"** means all present and future intellectual property or other proprietary rights, including copyright, moral rights, trade marks, designs, patents, circuit layouts, business or domain names, inventions, know-how, confidential information and trade secrets, arising anywhere in the world and whether registered or unregistered.
- (h) **"Licence Fee"** means the fee the Merchant will pay the Operator based on a specific cost per click by retail consumers to the Merchant's website where access to the Merchant's website is through redirection from the Site or Related Sites. The cost per click is specified in the Agreement, as adjusted in the Bidding Management System in the Operators administration system or as agreed in writing between the Operator and the Merchant. In the case of inconsistency the cost per click in the Bidding Management System prevails followed by the document dated most recently.
- (i) **"PCS"** means the Price Comparison System displayed on the Site.
- (j) **"Related Site"** means any website developed, owned or operated by an Affiliate, and any other website on which the Operator may choose to display content at its sole and absolute discretion.
- (k) **"Site"** means any or all of the websites developed, owned, or operated by the Operator and its related bodies corporate including, without limitation, www.getprice.com.au, www.shopferret.com.au.
- (l) **"Sponsorship Fee"** means the fee payable by the Merchant for sponsorship in accordance with an Insertion Order, where applicable.
- (m) **"Territory"** means the territorial extent of the licence granted herein shall be Australia and its territories.

2.2 In the interpretation of these Terms and Conditions, unless a contrary intention appears or the

context otherwise requires:

- (a) words importing the singular shall be deemed to include the plural;
- (b) words importing any gender shall be deemed to include all other genders;
- (c) words importing persons shall be deemed to include all companies, corporations, bodies and associations incorporated or unincorporated an vice versa;
- (d) any reference to any act, statute or statutory provision shall be deemed to include any act, statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaces by the same and any regulations, orders, instruments or tother subordinate legislation made thereunder;
- (e) reference to "clause", "sub-clause", "paragraph", "sub-paragraph", "schedule", and "annexure" are to clause, sub-clause, paragraph, sub-paragraph, schedule and annexure respectively of these Terms and Conditions; and
- (f) headings are for reference only and shall not affect the interpretation of these Terms and Conditions.

3 Operation

- 3.1 It is the responsibility of the Merchant to check the Site for updates to these Terms and Conditions. Any updates to the Terms and Conditions will apply from the date that the updated Terms and Conditions were placed on the Site. If the Merchant continues to use the Site and/or Related Sites it will be deemed to have accepted any updates to the Terms and Conditions. Modifications or revisions of the Merchant Terms and Conditions can be made any time by the Operator without any prior warning or notice.
- 3.2 If the Merchant does not agree to the updated Terms and Conditions the Merchant must immediately notify the Operator that it does not agree to the updated Terms and Conditions. The Merchant may terminate the Agreement after providing notice under clause 15.
- 3.3 To the extent of any inconsistency between these terms and the terms set out in any insertion order, then the insertion order will prevail.

4 Products and advertising

- 4.1 The Merchant may request placement of products or advertisements on the Site.
- 4.2 The Operator will issue an Insertion Order to the Merchant in respect of any product or advertisement display requested. The Merchant and the Operator will agree the Insertion Order.
- 4.3 Once an Insertion Order is agreed and signed by both parties, there is an Agreement between the parties for the placement of Advertisements and the Operator will display the Merchant's

Advertisements in accordance with the Insertion Order.

- 4.4 The Operator may, in its absolute discretion, in addition to complying with an Insertion Order, decide to display the Merchant's products, services or Advertisements on any or all of the PCS, the Site, or any Related Sites. The Operator may remove the Merchant's products, services or Advertisements at any time and in any case, without notice to the Merchant for reasonable grounds which includes, but is not limited to, incomplete or inaccurate data feeds, non payment of account and account disputes or failure to meet minimum retail requirements around fulfilment of orders.

5 Intellectual Property and business information

- 5.1 The Merchant acknowledges and agrees that the Operator retains all rights over the PCS and the Operator's Intellectual Property Rights (including branding, logo and the Site design and layout) and that all use is for the benefit of the Operator. No right, title, or interest (except the licence interest granted by clause 5.1) is transferred by these Terms and Conditions.

6 Terms of Payment and Taxes

- 6.1 The Operator shall calculate the Fees according to data provided by its administration system (whether operated by it or a third party). The Merchant agrees to pay the Operator the Fees at the rate specified in the Agreement, as adjusted in the Bidding Management Platform in the Operator's administration system, or where applicable, an Insertion Order, based on that calculation. The Merchant agrees to pay for all clicks based on the Operator's click methodology. In the case of inconsistency the cost per click in the Bidding Management System prevails followed by the document dated most recently.
- 6.2 The Operator will invoice the Merchant for the applicable Fees.
- 6.3 Unless otherwise agreed in writing, the Merchant must pay the Fees within 7 days after receipt of each tax invoice issued by the Operator, unless that Merchant has a pre-approved account with the Operator and is able to pay by EFT or cheque as per clause 6.6 on 30 day credit terms
- 6.4 Invoiced amounts not paid within agreed payment terms will accrue interest at a rate of 1.5% per month (or the highest rate permitted by law, if less).
- 6.5 In the event of termination, unused payments made in advance will be refunded within 14 days.
- 6.6 Payment may be made by either credit card (Mastercard or VISA only), or by direct debit. Where the Merchant elects to pay by credit card in accordance with this clause 6.6, an additional transaction fee of 1% of the applicable Fees will be added to the Fee. No transaction fee is payable where a Merchant elects to pay by direct debit. The Merchant must adhere to payment method by credit card or direct debit unless they have been approved to have an account, which may include a credit check and are able to pay by EFT or cheque.
- 6.7 If agreed by the Merchant in the Merchant Sign Up form or a direct debit authorisation, the Operator may automatically deduct the Fees from the Merchant's authorised account or charge the Fees to the nominated credit card, according to the payment method selected by the Merchant at clause 6.6, including any transaction fees that may apply.

- 6.8 If the Merchant elects to pay by credit card or direct debit then the Operator reserves the right to process the credit card/direct debit details for payment as required to achieve a successful outcome in the event that the original processing transaction is unsuccessful. The Merchant acknowledges that it is solely responsible for any charges or fees associated with insufficient funds or any other such charge relating to the collection of payments.
- 6.9 The Operator will deduct the Fees from the Merchant's authorised account or charge to the nominated credit card in accordance with clause 6.7 on or before the 7th day of the month following the month to which the Fees relate.
- 6.10 If the Operator fails to receive, or is unable to deduct, payment from the Merchant's authorised account in accordance with clause 6.7 on 3 occasions, whether by credit card or direct debit, the Operator may charge the Merchant an administrative fee of \$25, which is a genuine pre-estimate of the additional cost to the Operator in collecting overdue amounts.
- 6.11 If the Merchant's account exceed the Operator's payment terms of 7 days from the date of the invoice, unless different payment terms are specified in writing from the Operator, and be passed on for collection and or legal action, all costs including debt collection, commission, Solicitor's fees and any out of pocket expense will be the liability of the Merchant. This will apply if invoices are not paid in accordance with these terms or as agreed otherwise.
- 6.12 If the Merchant at anytime exceeds the Operator's payment terms of 7 days from the date of the invoice, unless different payment terms are specified in writing, and as a result is passed on for collection and or legal action the Operator may place a default against the Merchant with a credit reporting agency.
- 6.13 If a Merchant pays in advance, any fees incurred by the Merchant over the value of the advance payment is payable by the Merchant in accordance with the postpaid terms and conditions of this agreement upon receipt of the tax invoice issued by the Operator.

7 GST

- 7.1 Terms used under clause 7 have the same meaning as those terms in *A New Tax System (Goods and Services Tax) Act 1999*.
- 7.2 If operating within Australia, a party must pay GST on a Taxable Supply made to it under the Agreement. It must do so at the same time and in the same manner as it is required to pay the consideration for the Taxable Supply to which the GST relates.
- 7.3 A party making a Taxable Supply to another party under the Agreement must issue a tax invoice in the format required by law to the other party for the Taxable Supply. The tax invoice must set out the amount of the GST payable by that other party. The tax invoice must be issued at the same time as the consideration for the Taxable Supply is due.
- 7.4 Each party must do anything reasonable to assist the other party to comply with its GST obligations in relation to the Agreement.

8 Merchant Responsibilities

- 8.1 The Merchant will:
- (a) provide accurate retail product details to the Operator for inclusion on the Site PCS or Related Site (including, but not limited to, category, sub-category, product name, product description, product price, product model number, product manufacturer, unique numerical product id, product cost and

delivery charges, product image for display on the Site, PCS or Related Site, product manufacturer and Merchant hot link or other such items agreed between the parties and other information which a retail consumer would expect to be provided on the Site, PCS or Related Site); and

(b) automatically via its direct link (**Product Feed**) or in writing notify the Operator of any changes to product details or price referred to in clause 8.1(a) above.

(c)

9 Operator Responsibilities

9.1 The Operator will

(a) use reasonable commercial endeavours to maintain access to the Site and the PCS to enable maximum consumer access to the Merchant's Advertisement;;

(b) update the Merchant products on the PCS promptly when provided with new information or as requested by the Merchant;

(c) present the Merchant's products in categories within the Site and PCS as agreed between the parties in writing;

(d) provide the Merchant with online access to statistical information regarding both the quantum and standard of clicks introduced to the Merchant's website via the Site or an Affiliate; and

(d) provide the Merchant with secure access to the Site which will enable the Merchant to monitor certain statistics relating to Merchant products displayed on the Site and the PCS.

10 Confidentiality

10.1 A party must not disclose any of the other party's Confidential Information except in any of the following circumstances

(a) the disclosure is required by law;

(b) the disclosure is necessary in connection with performing obligations under these Terms and Conditions or under another agreement between the parties;

(c) the disclosure is to an officer, employee, agent or consultant of the first party, to the extent that he or she needs to know the Confidential Information;

(d) the disclosure is reasonably made to a professional legal adviser

or professional auditor; and

- (e) the other party consents in writing to the disclosure. The consent may be subject to the condition that the person to whom the disclosure is to be made enter into a separate confidentiality agreement with the provider.

10.2 A party must take reasonable steps to ensure that its officers, employees, agents and consultants do not do or fail to do anything which, if the party did or failed to do it, would be a breach of these Terms and Conditions.

11 Prohibited Content and Activity

11.1 The Merchant must not permit offending content to be placed on the Site or any Related Site. The Operator reserves the right to investigate and take appropriate legal action against any person who, in the Operator's sole discretion, breaches the requirements of this clause 11. The Operator may, without limitation, remove offending content from the Site or a Related Site and the PCS, and terminate the Agreement with the Merchant where the offending content was placed by the Merchant or its personnel. Where content is provided by the Merchant through its Product Feed, or is placed by an unauthorised third party accessing the Merchant's Product Feed or the Merchant's systems, it will be deemed to have been placed by the Merchant for the purposes of this clause.

11.2 Offending content includes, but is not limited to, content that is reasonably determined by the Operator as being content which:

- (a) Is offensive or promotes racism, bigotry, hatred or physical harm of any kind against any group or individual;
- (b) harasses or advocates harassment of another person;
- (c) exploits people in a sexual or violent manner;
- (d) contains nudity, violence, or offensive subject matter or contains a link to an adult website;
- (e) solicits personal information from anyone under 18;
- (f) publicly posts information that poses or creates a privacy or security risk to any person;
- (g) constitutes or promotes information that is known to be false or misleading or promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libellous;
- (h) constitutes or promotes an illegal or unauthorised copy of another person's copyrighted work, such as providing pirated computer programs or links to them, providing information to circumvent manufacturer-installed copy-protect devices, or providing pirated music or links to pirated music files;
- (i) involves the transmission of 'junk mail,' 'chain letters,' or unsolicited mass mailing, instant messaging, or 'spamming';

- (j) contains restricted or password only access pages or hidden pages or images (those not linked to or from another accessible page);
- (k) furthers or promotes any criminal activity or enterprise or provides instructional information about illegal activities including, but not limited to making or buying weapons, violating someone's privacy, or providing or creating computer viruses or other harmful code;
- (l) solicits passwords or personal identifying information for commercial or unlawful purposes from other people;
- (m) involves commercial activities and/or sales without prior written consent from the Operator such as contests, sweepstakes, barter, advertising, or pyramid schemes;
- (n) includes a photograph or video of any person without that person's consent;
- (o) violates the privacy rights, publicity rights, copyrights, trademark rights, contract rights or any other rights of any other person;
- (p) promotes propaganda and/or symbols of organisations which are unconstitutional or illegal in Australia;
- (q) in any way, if published or transmitted by the Operator in accordance with these terms, would breach any relevant laws, regulations or industry codes.

12 Warranties

12.1 The Merchant represents, warrants and undertakes to the Operator that:

- (a) it will not infringe any third party's Intellectual Property Rights;
- (b) it will not expressly state or imply any relationship or affiliation with the Operator or endorsement by the Operator except as expressly permitted by these Terms and Conditions; and
- (c) it will not do anything that has, or is likely to have (either directly or indirectly), the effect of defaming, disparaging or adversely affecting the integrity and reputation associated with the Operator, including by directly or indirectly placing or allowing the placement of offending content on the Site, a Related Site, or the PCS.

13 Acknowledgment and Indemnity

- 13.1 The Merchant acknowledges and agrees that it is solely responsible for the information, data and other content it provides to the Operator for inclusion on the Site, Related Sites and the PCS and the Operator operates on the assumption that the information it receives is accurate and current in all respects and that the Merchant has the necessary rights of or authority from any third party with a proprietary interest in the information to deal with this information and provide it to the Operator.
- 13.2 The Merchant will continually indemnify the Operator against any claim or proceeding that is made, threatened or commenced, and any liability, loss, damage or expense (including reasonable legal costs on a full indemnity basis) that the Operator incurs or suffers as a result of any claims brought by or on behalf of any third party relating to:
- (a) product information or content provided to the Operator by the Merchant (including for misleading or deceptive conduct or infringement of any third party's Intellectual Property Rights);
 - (b) any omission in information provided to the Operator by the Merchant;
 - (c) the content of or the information and products on the Merchant's website or websites associated with the Merchant that are linked to the Site or a Related Site;
 - (d) the provision of goods or services advertised or featured on the Site, or a Related Site; and
 - (e) any breach of an Agreement.
- 13.3 In no event will the Operator be liable to the Merchant for any direct, indirect, incidental, consequential (including among other things loss of revenue or profits, loss of data, third party claims or loss of good will), punitive or exemplary damages of any kind (whether based on breach of contract, tort, negligence, strict liability or otherwise) incurred by the Merchant in connection with the Agreement, even if the Merchant has been advised that such damages are possible.

14 Disclaimer of Warranties and Limitation of Liability

- 14.1 Subject only to clause **14.2** below:
- (a) the Merchant acknowledges and accepts the risk that any communication to or from the Site may be intercepted, used or modified by third parties;
 - (b) the Operator does not warrant that access to or use of the Site or a Related Site will be uninterrupted or error free or that the Site or Related Sites or any material on or accessible through the Site or Related Sites is free from errors or viruses, worms, trojan horses, time bomb, cancelbot or other harmful components; and
 - (c) the Operator may change any of the material on the Site or Related Sites at any time without notice.
- 14.2 The Operator does not exclude any rights and remedies in respect of goods or services under the Competition and Consumer Act 2010 (Cth) or equivalent State or Territory legislation which cannot be excluded, restricted or modified. However, the Operator excludes all rights, remedies, guarantees, conditions and warranties in respect of this Agreement and the services being provided to the

Merchant by the Operator whether based in statute, common law or otherwise to the extent permitted by law. To the fullest extent possible:

- (a) The Operator will have no responsibility or liability in relation to any loss or damage that the Merchant incurs, including damage to the Merchant's software or hardware, arising from your use of or access to the Site.
- (b) The Operator does not warrant that the Site or the functions contained in the Site content, such as hyperlinks, will be uninterrupted or error free, that defects will be corrected or that the Operator or the server that makes it available, are free of viruses or bugs
- (c) Liability of the Operator, for any breach of a term or condition implied by law is limited at the Operator's discretion, to the supply of any service again or the payment for the cost of having any service supplied again.
- (d) the Merchant indemnifies the Operator and its affiliated companies, and each of their directors, officers, employees and agents against any action, claim, loss or expense which it incurs which arises from this Agreement, your use of the Site or the publication or proposed publication of Advertisements.

15 Term and Termination

- 15.1 The Operator may terminate the Agreement by giving the Merchant 7 days prior written notice.
- 15.2 The Merchant may suspend or terminate a specific Insertion Order at any time without penalty, subject to clause 6.5, by completing either a notice of suspension or notice of termination, as the case may be, in a form prescribed by the Operator, and returning it to the Operator. The Merchant acknowledges and agrees that any suspension or termination of the Agreement or an Insertion Order shall only be of effect following 7 business days of receipt of a valid notice of suspension or notice of termination, as the case may be, by the Operator. The termination form can be located at <http://www.getprice.com.au/Cancellation-form.htm> and can be sent to sales@nextcommerce.com.au. The Operator will acknowledge receipt of form within 24 business hours
- 15.3 Where a specific term is set out in an Insertion Order then termination can only be effected with the notice requirements set out in the insertion Order.
- 15.4 The Merchant must settle any outstanding Fees (including Licence Fee, Advertising Fee, Sponsorship Fee, unpaid tax invoice and final tax invoice) to the Operator within 7 days of the date of termination, unless otherwise advised by the Operator. Unpaid invoiced amounts after this will accrue interest at a rate of 1.5% per month, pro rata (or the highest rate permitted by law, if less).
- 15.5 Either party may, upon giving written notice to the other party, terminate the Agreement if the other party goes into liquidation (save for the purpose of reconstruction or amalgamation) or if a receiver or administrator is appointed in respect of the whole or part of its assets or it makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things.
- 15.6 The Operator reserves the right to terminate the Agreement or Insertion Order immediately should the Merchant breach the Agreement or Insertion Order in anyway.

16 Miscellaneous

- 16.1 **Independent Contractors.** The parties are independent contractors. Neither party is, or has the right to act as, an agent, representative or partner of the other party. The Agreement must not be construed to create an association, agency, joint venture or partnership between the parties.

- 16.2 **Waivers.** A right created by the Agreement can only be waived if the waiver is in writing, signed by the party entitled to that right. Delay by a party in exercising a right does not amount to a waiver, and a written waiver will not operate as a subsequent waiver of the same right or of any other right of that party.
- 16.3 **Assignment.** The Merchant may not assign or sub-licence its rights or obligations under the Agreement without the prior written consent of the Operator. Any assignment or sub-licence without the prior written consent of the Operator shall be null and void. The Agreement may be assigned by the Operator without any consent.
- 16.4 **Enforceability.** If a clause or part of a clause is unenforceable, voidable, invalid or illegal, it must be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or the offending part) is taken to be severed from the Agreement without affecting the enforceability, validity or legality of the remaining clauses.
- 16.5 **Disputes.** In the event of a dispute between the parties arising in connection with the Agreement, this clause must be followed before any litigation is commenced. A party must provide written notice of the dispute to the other party. Each party must nominate an officer of equivalent seniority who must meet in good faith to resolve the dispute. If they cannot resolve the dispute within 14 days of receiving the written notice of the dispute, the Merchant's CEO and an officer of equivalent seniority from the Operator must meet in good faith to resolve the dispute. If the dispute is not resolved within a further 14 days, either party may take any action it deems appropriate. Nothing in this provision restricts the rights of either party to seek injunctive relief.
- 16.6 **Governing Law.** The Agreement is governed by the law of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there without regard to the principles of conflicts of law.