

Terms & Conditions

'BigPixel' is a subsidiary brand of Spawn Limited trading as 'BigPixel' and hereafter referred to as BigPixel.

STANDARD TERMS AND CONDITIONS OF BUSINESS

The following terms and conditions apply to all advertising services provided by BigPixel and form part of this Sales Contract unless otherwise expressly agreed in writing by BigPixel.

1. CAMPAIGNS

1. Details of the Campaign are as set out in this Sales Contract.
2. Any additional Campaigns will be set out in separate sales contracts.
3. Digital media placement via Sites will be subject to a separate media contract with the client.

2. CHARGES, COSTS AND PAYMENT

1. Unless otherwise agreed in writing, charges for production costs shall be invoiced monthly.
2. Where the GST rate changes, the amount of GST payable by the Client to BigPixel may vary from that stated in this sales contract and will be determined by the provisions of the Goods and Services Tax Act 1985.
3. The Client will pay all costs relating to:
 - a. Concept development, design, production, licensing fees and ad serving of Advertising Material;
 - b. all costs incurred by BigPixel in recovering payment from the Client including (without limitation) all debt collector's fees or commissions, solicitor's fees and disbursements and company clerical costs.
4. Payment of all invoices must be made in full on or before the 20th day of the month following invoice date.
5. New (non-advertising agency) Clients must pay production costs upfront.
6. Where the Client has indicated that any costs associated with production, installation or display of the Advertising Material should be charged directly to a third party, the Client remains responsible for the costs until such time as they are paid in full by that third party.
7. If payment is not made in full on or before the due date for payment, BigPixel may do either of the following (without limiting any other right it may have):
 - a. charge the Client default interest on the amount outstanding at the rate which is 3% above the overdraft rate charged by BigPixel's principal bankers (plus GST) from the due date for payment until payment is received by BigPixel compounding monthly;
 - b. terminate this Sales Contract and remove any Advertising Material.
8. Where the Client is acting as an agent for the Advertiser, the Client and the Advertiser will be jointly and severally liable for payment of all money due under this Sales Contract and a reference to the Advertiser in relation to payment will include a reference to the Client. The Client warrants to BigPixel that the Client has executed this Sales Contract on behalf of the Advertiser as agent for the Advertiser and with Advertiser's authority.

3. ACCREDITED ADVERTISING AGENCIES

1. For a Client to be entitled to a commission in accordance with clause 3.2, a client must become an Accredited Advertising Agency ("AAA") of BigPixel. BigPixel will pay commission to an AAA in consideration of the agency meeting certain financial requirements and by guaranteeing payment to BigPixel by certain times.
2. Where a New Zealand Client is an AAA, BigPixel will pay the Client (New Zealand only) commission at the rate of 20% of the agreed production cost net of GST provided payment is made on or before the 20th of the month following invoice. Payments made after the 20th of the month following invoice will only attract a 10% commission. Payments received after 60 days will not receive any commission.

4. ADVERTISING STANDARDS

1. If creative is supplied the Client must provide a copy of the creative to BigPixel for approval no later than 10 days prior to the commencement of the Campaign.
2. If BigPixel considers any Advertising Material is illegal or in breach of the standards issued by the Advertising Standards Authority ("ASA") (as may be modified from time to time) (the "Advertising Standards") BigPixel may elect not to produce that Advertising Material, in which case the following will apply:
 - a. BigPixel may refer the matter to the ASA for decision. If the ASA determines that the advertising is in breach of the Advertising Standards, the client will be liable to BigPixel for:
 - a. all costs incurred by BigPixel in referring the matter to the ASA.
3. BigPixel accepts no responsibility for the Advertising Material prepared at the instruction by the Client.

5. GENERAL

1. Title: Title to Advertising Material supplied under this Sales Contract remains with BigPixel until all amounts owing by the Client in accordance with this Sales Contract have been paid in full and in cleared funds.

2. Deductions: The Client will not deduct or withhold any amount (whether by way of set off, counterclaim or otherwise) from any money owing at any time to BigPixel. BigPixel may deduct any amount owing by the Client from any amount owing by BigPixel to the Client.

3. Client's Warranty and Indemnity:

- a. The Client warrants that no part of any advertisement used on or in connection with this Sales Contract will infringe the rights (including intellectual property rights) of any person or will fail to comply with the Advertising Standards or with any obligation imposed by law or equity. Approval by BigPixel of any artwork or the display of any advertisement on a Site does not constitute a waiver of this warranty.
- b. The Client will indemnify BigPixel for all liabilities, losses, damages, costs, expenses and charges which BigPixel may suffer or incur as a result of any breach of this warranty or as a result of BigPixel being deemed to be a manufacturer of the Advertising Material for the purposes of the Consumer Guarantees Act or otherwise liable to any third party in relation to the Advertising Material on a Site.

4. BigPixel's Liability:

- a. Except for any express warranty contained in this Sales Contract, all warranties, descriptions, representations or conditions whether implied by statute or otherwise by law, trade, custom or otherwise are expressly excluded to the fullest extent permitted by law.
- b. BigPixel will not be liable in any event for any consequential, indirect or special damage, loss or injury of any kind suffered by the Client (including but not limited to loss of profits or opportunity) even if such loss or damage was foreseeable or BigPixel had been advised of the possibility of it occurring.
- c. If BigPixel should be held liable to the Client, the total liability of BigPixel whether in tort (including negligence), contract or otherwise, for any loss, damage or injury which the Client may suffer or incur as a direct or indirect result of any act or omission of BigPixel will be limited, except where statute expressly requires otherwise, to the lesser of the price paid under this Sales Contract, and the actual loss or damage suffered by the Client.
- d. BigPixel shall not be responsible for any failure or delay in the performance of this Sales Contract where such failure arises out of any fire, act of God, industrial dispute, strike, lockout, curtailment of cessation of traffic ordered by local or central government, contractor negligence, carelessness or any other act or thing beyond BigPixel's reasonable control.

5. Termination: In the event that:

- a. any amount payable by the Client to BigPixel is overdue or in BigPixel's opinion the Client is unlikely to be able to meet its payment or other obligations to BigPixel;
- b. the Client breaches any other term of this Sales Contract or fails to meet any other obligation to BigPixel; or
- c. the Client becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors or has a liquidator (provisional or otherwise) appointed, or is placed under statutory or official management,

6. then, in addition to and without prejudice to its other remedies BigPixel will be entitled to, in its absolute discretion:

- a. cancel all or any part of this Sales Contract;
- b. terminate this Sales Contract;

6. DEFINED TERMS:

1. In this Sales Contract:
 - a. Accredited Advertising Agency: means an agency that has been accredited by BigPixel in accordance with clause 3.
2. Advertiser: means the owner of the company, product or service being advertised on the site.
3. Advertising Material: means the Advertising Material to be displayed pursuant to this Sales Contract
4. Agency: means a Client that is signing on behalf of an Advertiser.
5. Authority: means any body that has statutory and/or contractual rights to exercise control over BigPixel's rights to display Advertising Material on the Sites.
6. Campaign: means Site or package of Sites booked on a single Sales Contract.
7. Client: means the person or company representing a certain company, product or service and entering into an agreement with BigPixel.
8. Sales Contract: means this Sales Contract and includes the Schedule (on the front page of this Sales Contract).
9. Site: A digital platform, DSP or website that BigPixel utilises to run client advertising produced.