

Terms and Conditions of Advertising

The REIV and the Advertiser agree:

1. Term of agreement

This agreement has effect on and from the date it is entered into and continues until cancelled or terminated by either the REIV or the Advertiser.

2. What this agreement applies to

This agreement applies to all advertising provided by the Advertiser to the REIV for publication in any REIV official medium (electronic or hard copy) including, but not limited to, "The Estate Agent", member rewards, events, education and/or training.

3. Licence to publish

The Advertiser grants the REIV a non-exclusive, royalty free licence to publish the advertising in any REIV official medium referred to in clause 2, during the term of this agreement.

4. Publication of advertising

4.1 The REIV will use reasonable endeavours to publish advertising submitted by the Advertiser, subject to the terms of this agreement.

4.2 If the Advertiser wishes to cancel or make changes to advertising, the REIV must be advised as follows -

4.2.1 publication in "The Estate Agent": no later than 5:00 pm, 3 business days after edition deadline;
or

4.2.2 publication in member rewards: no later than 5:00 pm, 3 business days after material deadline;
or

4.2.3 publication in events, education and/or training materials: no later than 5:00 pm, 14 business days before day of printing of material.

4.3 The Advertiser acknowledges -

4.3.1 the timings referred to in clauses 4.2.1 to 4.2.3 inclusive are of critical importance to the REIV;
and

4.3.2 failure on the part of the Advertiser to meet the timings will mean the REIV has no obligation to make the cancellation or change requested; and

4.3.3 if a cancellation or change is not made the advertising must still be paid for in accordance with this agreement.

5. Refusal of advertising

The REIV may at its discretion –

- 5.1** refuse or withdraw advertising that is in breach of the Advertiser’s warranties in clause 6;
- 5.2** vary the placement of advertising in electronic or hard copy format;
- 5.3** alter the format of advertising including altering colours to black and white;
- 5.4** increase or decrease the size of advertising by up to 5% without notifying the Advertiser.
- 5.5** publish the Advertiser’s previous advertising in place of current advertising, if current advertising is not submitted in the manner and within the time required for publication.

6. Advertiser’s warranties

The Advertiser warrants to the REIV –

- 6.1** it has the power to grant the licence referred to in clause 3; and
- 6.2** the advertising -
 - 6.2.1** does not infringe any copyright, trade mark, obligation of confidentiality, or other proprietary right; and
 - 6.2.2** is not obscene, libellous, defamatory, in poor taste, or derogatory; and
 - 6.2.3** does not infringe the *Competition and Consumer Act 2010*, the *Fair Trading Act 1999*; the *Privacy Act 1988*, the *Corporations Act 2001*, or anti-discrimination laws; and
 - 6.2.4** if in relation to a competition or trade promotion, all necessary authorizations and permits have been received;
 - 6.2.5** a living person whose name and/or image appears in the advertising has given their written consent to that use. and acknowledges the warranties set out in clauses 6.1 and 6.2.
- 6.3** The Advertiser acknowledges the warranties in clauses 6.1 and 6.2 respectively are fundamental to the REIV entering into this agreement and will be relied upon by the REIV in publishing the advertising.

7. Advertiser contact details

If advertising contains contact details, the full street address of the Advertiser must be set out in an easily readable size font, in addition to any other contact details.

8. Advertorials

If the REIV considers advertising looks like a news item or an editorial it may publish the advertising under a heading “Advertisement” with a distinguishing border.

9. Advertising to comply with REIV specifications

Advertising must conform to specifications advised by the REIV from time to time. If advertising does not conform, the REIV may reject it or reformat it so it does conform, at its discretion.

10. Delivery of advertising to REIV

Advertising must be delivered for publication in the manner required by the REIV from time to time. If advertising is not delivered in the required manner, the REIV may reject it or re-schedule it, at its discretion.

11. Advertising: consumer goods and services

If advertising for consumer goods or services contains a price representation, the Advertiser must ensure the representation conforms to the requirements of the *Competition and Consumer Act 2010* and/ or the *Fair Trading Act 1999*.

12. Proofs

If the REIV provides an advertising proof to the Advertiser, the Advertiser will promptly

12.1 check the proof; and

12.2 notify any errors and/or omissions so advised publication dates are met.

13. Errors

The REIV is not responsible for errors in advertising submitted by the Advertiser and published by the REIV.

14. Advertising rates, payment, and GST

14.1 The Advertiser must pay for advertising at the applicable rate(s) set out in the rate card provided by the REIV from time to time.

14.2 Advertising rates are exclusive of GST.

14.3 If the advertising is a taxable supply, the Advertiser will pay in addition to the applicable rate(s) the GST applicable to the supply, on receipt of a valid tax invoice.

14.4 The Advertiser will pay invoices within 30 days of the date of invoice (the due date for payment) without demand, deduction, or set-off.

14.5 If the Advertiser does not pay an invoice by the due date for payment, the Advertiser will pay interest on the amount of the invoice outstanding from time to time at the rate fixed from time to time under the *Penalty Interest Rates Act 1983* calculated from the due date for payment to and including the date on which the invoice is paid in full, if demanded.

14.6 A statement in writing signed by the Chief Executive Officer of the REIV is prima facie evidence and proof of the amount owed by the Advertiser to the REIV.

15. If the Advertiser does not pay for advertising

If the Advertiser fails to pay for advertising as required by this agreement then, in addition to requiring the payment of interest, the REIV may do any or all of the following -

- 15.1** cease or withdraw publication of the Advertiser's advertising;
- 15.2** require the Advertiser to pay for advertising before publication;
- 15.3** withhold or cancel discounts or commissions to which the Advertiser is entitled;
- 15.4** give notice terminating this agreement.

16. Default and the consequences

16.1 Subject to clause 17, if either the REIV or the Advertiser defaults in the performance of its obligations under this agreement, the other must not exercise its rights arising from the default (except to sue for money and interest then owing) until -

16.1.1 notice is given setting out the default and stating the intention to exercise rights unless the default is made good and the legal costs and expenses occasioned by the default are paid on a full indemnity basis within 14 days of the giving of the notice; and

16.1.2 the defaulting party fails to comply with the notice.

16.2 If the notice also states that unless the default is made good this agreement will be terminated, then if the defaulting party fails to comply with the notice, this agreement is terminated.

17. Consequences of Advertiser breaching a warranty, administration and the like

The REIV may give notice immediately terminating this agreement if the Advertiser -

17.1 is in breach of a warranty in clause 6;

17.2 assigns or purports to assign the benefit of this agreement;

17.3 being a natural person, commits an act of bankruptcy;

17.4 being a corporation -

17.4.1 cannot pay its debts as and when they fall due; or

17.4.2 enters into an arrangement with its creditors, other than in the ordinary course of business;
or

17.4.3 passes a resolution for administration, winding up, or liquidation, other than for the purposes of reorganisation or re-construction; or

17.4.4 has a receiver, manager, liquidator, or administrator appointed to any of its property or assets; or

17.4.5 has a petition presented for its winding up.

18. Cancellation of this agreement

Provided the REIV or the Advertiser is not in notified default, either may cancel this agreement at any time on giving the other 30 days prior written notice, no reason is necessary. Cancellation will not affect advertising to which the Advertiser has committed prior to giving notice and this agreement will continue to apply to that advertising.

19. Cancellation or termination does not affect accrued rights

The cancellation or termination of this agreement does not affect either party's rights accrued under this agreement prior to the date of cancellation or termination, subject to clause 20.

20. Liability of the REIV and Advertiser indemnity

20.1 The REIV excludes all conditions, warranties, or guarantees relating to this agreement implied by law, to the extent it is legally entitled to do so.

20.2 The liability of the REIV in relation to a non-excludable condition, warranty, or guarantee is, to the extent it may be limited, limited to re-supply of the advertising or payment of the cost of re-supply.

20.3 The REIV excludes all other liability to the Advertiser for any losses, damages, costs and expenses incurred by the Advertiser in connection with this agreement, whether arising in contract or tort or under statute. In particular, the REIV will not be liable for any indirect or consequential losses, loss of profits, loss of revenue, or loss of business opportunity, subject to clauses 20.1 and 20.2.

20.4 The Advertiser indemnifies the REIV, its officers, employees, contractors, and agents against all losses, damages, costs, expenses, and liability incurred by the REIV as a result of the Advertiser's breach of this agreement or any negligent or unlawful act or omission of the Advertiser in relation to the advertising. The indemnity will not merge on the cancellation or termination of this agreement and continues until discharged by performance.

21. No assignment

This agreement is personal to the Advertiser and cannot be assigned at law or in equity.

22. Collection, use and disclosure of Advertiser's personal information

If the Advertiser is a natural person the REIV collects their personal information and will use and disclose it for the performance of this agreement and for invoicing.

The REIV may also collect and disclose the Advertiser's personal information to realestateview.com.au Ltd [ACN 088 369 395], to credit reporting agencies and, if it is necessary to take action in relation to an outstanding account or a default in the performance of this agreement, to debt collectors and/ or legal practitioners. The main consequence for the Advertiser if personal information is not provided is that the REIV may be unable to perform the terms of this Agreement. The Advertiser may access his or her personal information by writing to the REIV at its address set out in this agreement.

23. How notices and demands are given

23.1 A notice or demand must be in writing and be dated and signed by or on behalf of the party giving it.

23.2 A notice or demand may be -

23.2.1 delivered to the address of the party set out in this agreement;

23.2.2 posted by pre-paid post to the address of the party set out in this agreement;

23.2.3 transmitted by facsimile transmission to the party's facsimile number.

23.3 A notice will be given -

23.3.1 on delivery, but if delivered on or after 5:00 pm will be deemed given at 9:00 am on the next business day;

23.3.2 if posted, on the second business day following the day of posting;

23.3.3 if transmitted by facsimile, on the transmitting facsimile machine correctly recording the facsimile as being transmitted to the party's facsimile number, but if transmitted on or after 5:00 pm will be deemed given at 9:00 am on the next business day.

24. Meaning of "business day"

A "business day" is a day other than Saturday, Sunday, or a gazetted public holiday at the address of the REIV or the Advertiser, as the case requires.

25 Force majeure

The REIV is not liable to the Advertiser for any failure or delay in publishing advertising as a result of factors beyond its control including, but not limited to, acts of God, riots, strikes, civil commotion, damage to or destruction of premises, breakdown of machinery, plant and/or equipment, unavailability of materials or labour, delays in or unavailability of means of electronic communication, inclement weather.

26 Entire agreement

This agreement together with delivery requirements, specifications, rate cards, and notification of deadlines and publication dates provided by the REIV from time to time represent the entire agreement between the REIV and the Advertiser. The terms of this agreement cannot be varied except in writing executed in the same manner as this agreement.

27. Warranty of authority to sign agreement

The REIV and the Advertiser respectively warrant each to the other that the person signing this agreement on their behalf has authority to do so and to bind the party on whose behalf they sign.

28 Governing law

The law of Victoria applies to this agreement.