

## GIVE A DAMN LIMITED - SUPPLIER TERMS AND CONDITIONS

### 1 Professional Advice

- 1.1 You acknowledge that you should seek professional advice from a solicitor and tax advisor regarding the effect and consequences of this agreement before entering into it.

### 2 Definitions and Interpretation

- 2.1 In this agreement, unless the context indicates otherwise:

**Auction** means the auction for each Item that is facilitated via the Platform on the Nominated Charity's behalf as part of the Event.

**Buyer** means the User who wins the Auction by registering the highest bid on the Platform for the respective Item during the Duration.

**Charity** means a charity that is taking part in the Event.

**Confidential Information** means any information of a confidential nature in respect of the business of a party and includes, without limitation, any document, account, software or intellectual property which has come or comes to the notice of a party (**Recipient**) under or in connection with this agreement, but does not include information which:

- (a) is or becomes public through no act or omission of the Recipient; or
- (b) is already known by the Recipient or is in its lawful possession prior to disclosure and in respect of which the Recipient is not under an obligation of confidence; or
- (c) is agreed by the disclosing party in writing to be information which is not to be regarded as confidential.

**Duration** means the period commencing on 02 November 2020 at 9:00 am and expiring on 09 November 2020 at 8:00pm (NZ time).

**Event** means the online auction event known as "The Great Kiwi Online Auction".

**Fee** means 10% of the Price (excluding any GST) received from the Buyer, plus GST.

**Insolvency Event** means in relation to a party, where that party: ceases or threatens to cease to carry on business; is unable to pay its debts as they fall due; has a receiver, liquidator, administrator, trustee, statutory or official manager or similar officer appointed in respect of that party; or enters into, or resolves to enter into, an arrangement or composition with creditors or makes an unauthorised assignment for the benefit of creditors.

**IP Claim** means any claim by third party rights owners against us, the Nominated Charity and/or the Platform Provider in relation to any Materials.

**Item** means the goods and/or services you specify in the Submission Form.

**Law** means any applicable statute, regulation, by-law, ordinance, subordinate legislation, common law, rule of equity, mandatory standard or mandatory code of conduct, and includes the Consumer Guarantees Act 1993, Fair Trading Act 1986, the Contract and Commercial Law Act 2017, the Privacy Act 1993 and any specific product and electrical safety standards and regulations that apply in New Zealand.

**Materials** means any materials and information provided by you, including marketing materials, logos, trade marks, trade names, product images and descriptions.

**Net Proceeds** means the balance of the amount we receive from the Buyer following the sale of the Item via the Platform after deducting our Fee and any Transaction Fees.

**Nominated Charity** means the Charity nominated by you in the Submission Form.

**Platform** means the online platform known as "GalaBid", via which the Auction will be conducted.

**Platform Provider** means the person who provides of the Platform, being Galabid Pty Ltd ACN 150 269 720.

**Price** means the amount equivalent to the highest registered bid for the Item, less any agreed money back offer expressly relating to the Item, which shall be payable in New Zealand dollars.

**Purchaser** has the meaning set out in clause 5.1.

**Submission Form** means our online submission form which is used to confirm details about each Item, including any images of the Item and any terms and conditions relating to it, and which forms part of these terms and conditions.

**Transaction Fees** means transaction fees charged in relation to any payments made by credit card.

**User** means any person who is authorised to use the Platform in relation to the Event.

**We, us, our** is a reference to **Give A Damn Limited**, its employees, agents and representatives.

**Website** means our website, [www.giveadamn.co.nz](http://www.giveadamn.co.nz).

**Working Day** has the meaning given to that term in the Property Law Act 2007.

**You** is a reference to you as the donor of the Item to the Nominated Charity and supplier of the Item to a Buyer or Purchaser on behalf of the Nominated Charity.

**2.2 Interpretation:** In this agreement, unless the context indicates otherwise:

- (a) clause and other headings are for ease of reference only and will not affect the interpretation of this agreement;
- (b) references to any party include that party's executors, administrators, successors and permitted assigns;
- (c) references to a "person" include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, authority or entity, in each case whether or not having a separate legal identity;
- (d) references to the singular include the plural and vice versa;
- (e) references to clauses and schedules are to clauses in, and the schedules to, this agreement and such schedules form part of this agreement;
- (f) references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (g) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- (h) the term includes or including (or any similar expression) is deemed to be followed by the words without limitation.

### **3 Donation**

3.1 By submitting a Submission Form you have agreed to donate the Item to the Nominated Charity. We will confirm with the Nominated Charity that they accept your donation. Title in the Item shall transfer to the Nominated Charity when it accepts your donation.

### **4 Auctions**

- 4.1 The Platform is an online auction platform provided by the Platform Provider, which we are authorised to use for the Event. We and the Platform Provider do not take part in the sale of items other than by facilitating the sale of the Item by the Nominated Charity to the Buyer and remitting the Net Proceeds to the Nominated Charity in accordance with this agreement.
- 4.2 Each Auction will run for the Duration. Users may register bids for an Item on the Platform during the Duration only.
- 4.3 The price for each Item will commence at the starting price set by us and will increase by the amounts bid by Users for the Item (in minimum increments set by us) until the Duration expires.
- 4.4 A contract of sale for each Item will be formed between the Nominated Charity and the Buyer.
- 4.5 If no User bids for the Item prior to expiry of the Duration, then the Item shall be passed in and no sale shall be made via the Platform, however the Nominated Charity may subsequently sell the Item.
- 4.6 Once the Auction closes the relevant contact details for you, the Nominated Charity, the Buyer and us will be automatically exchanged so that the Buyer can arrange for payment to us and then you and the Buyer can arrange the supply of the Item.
- 4.7 The Price will be payable by the Buyer to our nominated bank account within seven (7) days of expiry of the Duration.
- 4.8 We will deduct our Fee and any Transaction Fees from the funds received from the Buyer for the Item and remit the Net Proceeds to the Nominated Charity.
- 4.9 The parties agree that the Net Proceeds belong to the Nominated Charity and we will hold the Net Proceeds on trust for and on behalf of the Nominated Charity.
- 4.10 We are not obliged to take any action against the Platform Provider or any Buyer, User, Charity or Donor.
- 4.11 We will provide you with details for the Users who bid on your Item within 14 Working Days of expiry of the Duration provided that the Users and the Nominated Charity give us permission to do so and you hereby undertake to only use such information in accordance with such permission.
- 4.12 We reserve the right to cancel any Auction at any time and remove all material relating to you and the Item from our Website and the Platform at our sole discretion.
- 4.13 You agree not to tamper or interfere with the Auction in any way.

### **5 Supply and Delivery**

5.1 You undertake on behalf of the Nominated Charity to:

- (a) supply the Item to the Buyer or, if the Item is not sold during the Duration, to the person who purchases the Item from the Nominated Charity after the Event (**Purchaser**) or to the Nominated Charity if

requested, in accordance with the Submission Form and the terms and conditions set out in this agreement; and

- (b) honour the terms and conditions included in the Submission Form and all consumer guarantees and warranties implied by law as if you had sold the Item to the Buyer or Purchaser directly.

5.2 In respect of the Item, you warrant that:

- (a) it is in your possession and control;
- (b) you own it and have the legal right to donate it to the Nominated Charity;
- (c) the donation, sale and supply of it does not breach any Law;
- (d) you hold all necessary licences, permits, approvals or registrations necessary to supply and advertise it;
- (e) it complies with all Laws;
- (f) you have provided all relevant details about it and all details are true, correct and not misleading or deceptive or likely to be misleading or deceptive in any way;
- (g) it is in good condition and of acceptable and/or merchantable quality and is fit for the purpose for which goods of their type are commonly put;
- (h) it has a minimum retail value of NZ\$75.00; and
- (i) it will be supplied free of any charge, encumbrance, lien or security interest.

5.3 You agree to comply with all Laws and industry standards applicable to your obligations under this agreement and to the advertising and supply of the Item.

## **6 Advertising**

6.1 We will:

- (a) undertake a nationwide marketing campaign in relation to the Event; and
- (b) ask the Platform Provider to include your name and trade mark on the Platform, which will be hyperlinked to your website.

6.2 Other suppliers' names, trade marks, products and advertising materials may be included on our Website and the Platform.

6.3 You agree on behalf of the Nominated Charity to supply to us all relevant details about the Item, including a full description of the Item, details regarding any redemption period or expiry date and any other redemption information, high quality photos and logos, shipping and returns costs and information, and any other relevant terms in accordance with the timeframes we specify in our correspondence with you. We reserve the right to refuse to publish the Materials and withdraw the Materials and the Item from our Website and the Platform if, in our reasonable opinion, the Materials or Item are inappropriate, offensive or are likely to be illegal in any respect. We will publish the Materials we approve of on the Platform.

6.4 You must inform us immediately if the Materials contain an error or omission.

6.5 You warrant that the Materials:

- (a) do not contain anything that:
  - (i) is illegal or is likely to breach any Law;
  - (ii) is misleading or deceptive, or is likely to mislead or deceive or which otherwise breaches the Fair Trading Act 1986;
  - (iii) is defamatory, pornographic, indecent or racially or ethnically objectionable, or is likely to be deemed offensive or inappropriate when assessed against generally accepted community standards;
  - (iv) constitutes a breach of copyright or trade mark or any other intellectual property right; or
  - (v) constitutes a breach of privacy or confidentiality;
- (b) comply with the Advertising Standards Code issued by the New Zealand Advertising Standards Authority and with any other relevant code or industry standard; and
- (c) will not give rise to any action, claim, demand or finding of liability against us, the Nominated Charity or the Platform Provider in New Zealand or elsewhere.

6.6 You agree that you will not do anything that will bring us, the Platform Provider, the Charities or the Event, into disrepute.

6.7 You must not embed any cookie, tracing tag, beacon or other tracking device in your Materials.

## **7 Indemnity**

7.1 You hereby indemnify us, the Nominated Charity, the Platform Provider and our and their officers and employees against any costs, losses, damages, liabilities and expenses suffered or incurred by such persons arising out of or in connection with: your performance of or your failure to perform your obligations under this

agreement; any IP Claim relating to the Materials; or any conduct or transaction entered into by you.

## **8 Liability**

- 8.1 To the maximum extent permitted by law, we exclude our liability for all representations, warranties or terms (whether express or implied) other than those expressly set out in these terms and conditions. Our liability for any cost, loss, damage or claim arising directly or indirectly in relation to this agreement is limited to refunding the Fee we have received in relation to your Item. We are not responsible for any indirect, consequential or special loss or damage, loss of data, loss of profits or economic loss.
- 8.2 The Platform is an online forum available to the public. We accept no liability for any misconduct, fraud, or breach on the part of Users.
- 8.3 Our Website and/or the Platform may be temporarily unavailable from time to time due to planned maintenance/upgrades, unplanned outages and matters beyond our control or the control of the Platform Provider. We accept no liability in relation to the non-availability of the Website or the Platform or any defect or error in the Website or the Platform or their software.
- 8.4 As information transmitted over the internet is inherently insecure there is no guarantee of security and we and the Platform Provider cannot ensure the security of any information transmitted to or from the Website or the Platform. We make no representations or warranties in relation to the security, accuracy or content of websites that may be linked to our Website or the Platform.

## **9 Trade marks**

- 9.1 You grant us and the Nominated Charity and authorise us to grant the Platform Provider a non-exclusive licence to use your name and trade marks and other Materials on our Website, the Platform and in promotional materials for the purpose of promoting the Event and the Items.

## **10 Confidentiality**

- 10.1 Each party shall keep confidential and not disclose or use for its own benefit any of the other party's Confidential Information.
- 10.2 No party may reveal any information concerning this agreement or its subject matter to any third party other than: as required by law or any relevant stock exchange listing rules; in good faith and in proper furtherance of the objects of this agreement; to those of its employees, officers, professional or financial advisers and bankers as reasonably necessary but only on a strictly confidential basis; to enforce its rights or to defend any claim or action under this agreement; or information already in the public domain through no fault of that party.

## **11 Term and termination**

- 11.1 This agreement will commence on the earlier of the date you notify us that you accept this agreement in accordance with the procedure set out on our Website or the date you submit a Submission Form to us and continues until completion of the Event.
- 11.2 Either party may terminate this agreement immediately by written notice to the other party (**Defaulting Party**), if the Defaulting Party:
- (a) breaches any of its material obligations under this agreement and the breach is incapable of remedy or if the breach is capable of remedy and the Defaulting Party fails to remedy the breach within two (2) Working Days after notice of the breach; or
  - (b) suffers an Insolvency Event.
- 11.3 On termination of this agreement:
- (a) all rights granted by either party to the other shall terminate and each party shall immediately discontinue its use of and return the other party's property;
  - (b) the obligations of a party which have accrued but have not been discharged at the date of termination will not be affected by termination; and
  - (c) each party will return the other party's Confidential Information and all copies of it.

## **12 General**

- 12.1 You agree that:
- (a) clauses 3, 4.5, 5, 6.5, and 7 confer a benefit on and are enforceable by the Nominated Charity; and
  - (b) clause 5 confers a benefit on and is enforceable by the Buyer or Purchaser, pursuant to the Contract and Commercial Law Act 2017.
- 12.2 Except in relation to any change in the Fee, we may amend this agreement at any time. Such changes will be notified to you and will come into effect immediately. We are able to vary this agreement without reference to any person on whom benefits are conferred under this agreement.
- 12.3 This agreement supersedes all prior discussions and agreements between the parties covering the subject matter of this agreement.

12.4 This agreement will be governed by and construed in accordance with New Zealand law. The parties submit to the exclusive jurisdiction of the New Zealand Courts in respect of all matters relating to this agreement.