
Vendor Terms and Conditions – Spinr

1 Overview

- 1.1 Spinr is a platform developed and owned exclusively by Spinr Pty Ltd 654 972 746 (**We, us, our, Spinr Pty Ltd**).
- 1.2 We reserve the right to update, modify, replace, limit, and expand Spinr and its functionality ourselves or via our third-party licensors.

2 Acceptance of Terms and Conditions

- 2.1 These Terms and Conditions and the authority form (**Authority Form**) annexed hereto record an agreement between you (**Vendor, you**), as the Vendor, and us for the purpose of you supplying prizes to be won by users of Spinr.
- 2.2 By contributing prizes you are accepting these Terms and Conditions (**Terms and Conditions**) and agree to be bound by them.

3 Spinr Games

- 3.1 You acknowledge and agree that in keeping with the Gambling Regulation Act 2003 (Vic), we are operating trade promotion lotteries via the Spinr platform (**Games**) to promote Vendor businesses.
- 3.2 By completing the Authority Form and contributing prizes, you are appointing us to promote your business through Games.

4 Prizes

- 4.1 You will supply as prizes the goods and/or services identified in the Authority Form.
- 4.2 You accept full responsibility and liability for the prizes you supply under all applicable laws, including without limitation Australian Competition and Consumer Laws. You fully indemnify us against any claim brought against us by a user of Spinr in relation to supplying defective or faulty goods, any misleading or deceptive behaviour in relation to prizes, or any claims relating to prizes whatsoever.
- 4.3 You guarantee that you are fully authorised to supply to goods or services to be used as prizes in the Games, and that you own all proprietary rights in the prizes, or are sufficiently licensed, to supply the prizes for the Games. You indemnify us against any loss, damage or claims relating to a breach of any third party's intellectual property or other proprietary rights in respect of a prize that you have supplied.
- 4.4 Subject to clause 5, you acknowledge and agree that you are providing the prizes to be given away through a Game for the purposes of promoting your business through the Games. You further acknowledge that the prizes are not being sold and are being given away for promotional purposes only.
- 4.5 Ownership and title in the prizes pass to the user upon a Game being won. Risk in the prizes pass to the user upon the prize being delivered to them. At no time does title or risk in a prize pass to us.
- 4.6 You acknowledge and agree that all Games will be run in accordance with:

- (a) The Gambling Regulation Act 2003 (Vic);
- (b) The Gambling Regulations 2015 (Vic); and
- (c) Any other applicable legislation.

(Applicable Legislation).

- 4.7 We will not comply with any request from you or any third party to operate a game in such a manner the breaches or risks breaching the Applicable Legislation.

5 Prizes Not Won

- 5.1 Where a prize is entered into a Game and is not won, it will be advertised on Spinr for 90 days to be purchased by a user of Spinr.
- 5.2 Our involvement in the sale of the good (**Transaction**) is limited to the following capacity:
- (a) Facilitating the Transaction by allowing the user to buy goods or services from the Vendor; and
 - (b) Collecting payment from the user and remitting it to the Vendor.
- 5.3 Our involvement in the Transaction is limited to that of a facilitator to the Transaction. We are not and do not purport to be a contractual party to the Transaction. We are not responsible for the performance of either party's obligations under the Transaction.
- 5.4 The purchase price of the good (**Transaction Fee**) is payable by a user in full upon entering into a Transaction. We will process payment of the Transaction Fee at the time of booking, which will be held until it is approved to be remitted to the Seller.
- 5.5 If the Transaction is completed and approved, subject to clause 6 the Vendor is entitled to be remitted the Transaction Fee. You are responsible for providing complete and accurate billing and contact information to us, and we will not be held responsible for any loss or damage caused by the provision of incomplete billing information. The Transaction Fee will be remitted within 14 days of a Transaction being completed and approved.

6 Fees

- 6.1 Our fees for promoting your business through Spinr are calculated as a percentage of the regular retail value of the prize you supply for a Game (**Fee**). The fee will be calculated based on the percentage inserted in the Authority Form plus a \$100 administrative fee. In the absence of a percentage in the Authority Form, the fee will be 8% of the retail value of the prize.
- 6.2 Fees are calculated upon a user of Spinr being awarded a prize that you have supplied or a Transaction being entered into. At the end of each month, we will issue you with an invoice which will set out:
- (a) A description of the prizes supplied by you that have been won through Games for that month, including the retail value of each prize;
 - (b) The Fee payable on each prize
 - (c) The administrative fee; and
 - (d) Your total Fees for that month.

(Invoice)

- 6.3 Invoices remain payable as per clause 6.2 where a prize is withdrawn by you prior to the relevant Game commencing.
- 6.4 Invoices are payable within 7 days (unless stated otherwise in the Invoice), according to the payment instructions in the Invoice. We reserve the right to deduct any Fees from a Transaction Fee before remitting it to you, to the extent that an invoice is not paid within 7 days.

7 Termination

- 7.1 Either party may terminate this agreement immediately.
- 7.2 In the case of termination, all prizes that have already been advertised on Spinr will not be returnable, and Fees will still be payable in respect of those prizes. We will continue to issue you monthly invoices until all prizes that have been advertised prior to termination are given away through the Games.
- 7.3 All accrued Fees and outstanding Invoices are immediately due and payable upon termination.
- 7.4 We reserve the right to terminate this agreement immediately if you are in breach of any of these Terms and Conditions, including but not limited to any dishonest, discourteous, or otherwise unprofessional behaviour by you in relation to Spinr.

8 Intellectual Property

- 8.1 Nothing in these Terms and Conditions or otherwise creates an assignment of any rights in Spinr beyond the ability to use it for its intended use.
- 8.2 Nothing in these Terms and Conditions or otherwise creates the right for you to sublicense Spinr.
- 8.3 By accepting these Terms and Conditions you undertake not to reverse engineer, replicate, or otherwise copy Spinr. We reserve all our rights to seek compensation, damages, injunctions, or any other remedy available to us at law if any attempt to do so, whether successful or unsuccessful, is made by you or any of your affiliates.
- 8.4 All intellectual property and ownership rights subsisting in Spinr (including the user interface and the software comprising Spinr), the data derived from use Spinr, and any other documentation, information or materials that are supplied by us to you, remain our or our third party licensors' exclusive property. For the avoidance of doubt, nothing in this agreement assigns any ownership rights to you.
- 8.5 All intellectual property and ownership rights subsisting in the prizes and any other documentation, information or materials that are supplied by you to us, remain your exclusive property. For the avoidance of doubt, nothing in this agreement assigns any ownership rights in the intellectual property comprising the prizes to us.

9 Modifications to Spinr

- 9.1 We reserve the right to modify or discontinue, temporarily or permanently Spinr and its other products and services with or without notice.

10 Warranties

- 10.1 You represent and warrant that we will not be liable for any direct or indirect expense, damage or injury (including indirect loss of revenue, profits, goodwill or business opportunity) howsoever caused, including arising directly or indirectly from or in connection with your supply of prizes.
- 10.2 You warrant that you have full capacity to deliver any prize advertised in a Game to the winner of that Game.

11 Limitation of liability

- 11.1 Spinr is made available to users on an “as is” basis. We make no warranties, representations or conditions of any kind, express, statutory or implied as to:
- (a) The operation and functionality of the platform;
 - (b) the accuracy, integrity, completeness, quality, legality, usefulness, safety and IP rights of any of the software content; and/or
 - (c) the products and services associated with the software or its content. We further disclaim all warranties, express, statutory or implied, including, but not limited to, implied warranties of merchantability, merchantable quality, durability, fitness for a particular purpose and/or non-infringement. No advice or information, whether oral or written, that you obtain from us shall create any warranty, representation or condition not expressly stated herein.
- 11.2 We disclaim all liability for any:
- (a) indirect, special, incidental, punitive, exemplary, reliance or consequential damages;
 - (b) loss of profits;
 - (c) business interruption;
 - (d) loss or damage to reputation of us or any third party; or
 - (e) loss of information or data.
- 11.3 Our maximum aggregate liability to you for any claims, damages, injuries or causes whatsoever, and regardless of the form of action (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason), will at all times be limited to the greater of (i) the amount paid, if any, by you to us in connection with Spinr in the 2 months prior to the action giving rise to liability or (ii) \$1.00.

12 Indemnity

- 12.1 You agree to defend, indemnify and hold harmless us, our members, managers, subsidiaries, affiliates, any related companies, suppliers, licensors and partners, and the officers, directors, employees, agents and representatives of each of them, including costs, liabilities and legal fees, from any claim or demand made by any third party due to or arising out of:
- (a) Your supply of prizes;
 - (b) Your violation of this agreement;
 - (c) Any infringement by you of any intellectual property or other right of any person or entity. We reserve the right, at your expense, to assume the exclusive defence and

control of any matter for which you are required to indemnify us and you agree to cooperate with our defence of these claims. You agree not to settle any matter without our prior written consent. We will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

13 Confidentiality

- 13.1 Each party will keep confidential and protect the confidential information of the other party, and will not disclose any confidential information to any third party unless such disclosure is:
- (a) Expressly permitted by the other party;
 - (b) Made to a professional advisor; or
 - (c) Required to be made by law.
- 13.2 Each party must:
- (a) Keep effective control of all confidential information received under or in connection with these Terms and Conditions;
 - (b) Take all precautions that are reasonably necessary to prevent any theft, loss, unauthorised use or disclosure of that confidential information; and
 - (c) Must promptly inform the other party of any suspected or actual theft, loss, unauthorised use or disclosure of the other party's confidential information.
- 13.3 Each party is responsible for the actions and inactions of each person, in relation to confidential information, that comes into possession of the confidential information as a direct or indirect result of the action, inaction or disclosure of that party.
- 13.4 A party must, upon written request of the other party, promptly return or procure the return of all confidential information or, if due to the format of the confidential information it is impossible to return, destroy or procure the destruction of the confidential information, within 14 days of the written request.
- 13.5 Except where disclosure is required by law or must be made to a legal advisor, the parties will keep these Terms and Conditions strictly confidential.
- 13.6 The obligations imposed on each party by this clause 13 survive the termination of this Agreement.

14 General

- 14.1 Verbal, physical, written or other abuse (including threats of abuse or retribution) of any Spinr Pty Ltd employee, member, representative, or officer will result in immediate termination of these Terms and Conditions.
- 14.2 The failure of Spinr Pty Ltd to exercise or enforce any right or provision of these Terms and Conditions shall not constitute a waiver of such right or provision. The Terms and Conditions and the Authority Form annexed hereto constitutes the entire agreement between you and

us.

- 14.3 Any part of these Terms and Conditions that is invalid, prohibited or not enforceable will not void the balance of the Terms and Conditions. All other parts will be enforced without regard to the invalid provision and continue to be valid in accordance with their terms.
- 14.4 We make no representations or warranties that the content of Spinr complies with the laws (including intellectual property laws) of any country outside Australia.
- 14.5 These Terms and Conditions are governed by the laws of Victoria. Disputes arising from your use of Spinr are exclusively subject to the jurisdiction of the courts of Victoria.
- 14.6 Any queries about the Terms and Conditions should be sent by email to Spinr Pty Ltd at **contact@spinr.com.au**.