

Trading Terms – Blue Datto Foundation

SUMMARY OF KEY CLAUSES

- Deposits (Clause 5) To secure a program date, a Deposit is required within 7 days of receiving a Booking Confirmation and Invoice. The Deposit will form part of the total price of the services or goods provided.
- Payments (Clause 6) Payment of the balance of the Price for Service is to be completed within seven days after the completion of the Services (program). Payment may be made by cheque, bank cheque, credit card or by electronic/on-line banking. Unless otherwise stated the Price does not include GST.
- Postponement and Cancellation (Clause 10) Postponement of Service or Goods must be made more than 21 days prior to a program otherwise the program is considered Cancelled and the Client will forfeit their Deposit. The Client is able to postpone one service in a twelve (12) month period.

FULL TERMS AND CONDITIONS

1. Definitions

- 1.1 **'The Company or Blue Datto Foundation'** means Blue Datto Foundation (602 842 526), its successors, assigns and any person acting on behalf of the authority of the Company.
- 1.2 **'Client'** means the person/s, company or unincorporated association availing of the goods and services of Blue Datto Foundation.
- 1.3 **'Website'** means <http://bluedatto.org.au/>.
- 1.4 **'Service'** means any service supplied by Blue Datto Foundation to its clients as described on the Website such as programs for to change the culture of young drivers by providing innovative road safety education, and other items that are listed on the Website.
- 1.5 **'Goods'** mean any item/s for sale that are listed on the website such as gala tickets, promotional items and any other items that are listed for sale on the Website.
- 1.6 **'Deposit'** means \$250.00 for securing a program date within 7 days of confirmation.
- 1.7 **'Payment Due Date'** means the date shown on the invoice as the due date for payment of service.
- 1.8 **'Quotation'** means the quoted price provided to the client. The quotation is subject to change. Neither Blue Datto Foundation nor the Client is bound to this agreement as a contract until you consent to the terms and conditions and pay the required security deposit specified in the quotation.

- 1.9 **'Agreement'** means the terms and conditions agreed and accepted Blue Datto Foundation and the Client as per quotation, invoice and these Terms and Conditions of Trade.
- 1.10 **'Marketing'** means any images or testimonials consequently to the services provided by Blue Datto Foundation by or in reference to the client may be used as marketing materials; unless otherwise notified by the client.
- 1.11 **'Call out'** means a nominated service call out fee, plus any additional costs required which may apply for site visits or any work undertaken post installation.

2. Acceptance

- 2.1 Any instructions received from the Client by Blue Datto Foundation for the supply of Services and/or the Client's acceptance of Services supplied by Blue Datto Foundation shall constitute acceptance of the terms and conditions contained herein. Payment of a deposit will also constitute acceptance of these terms.
- 2.2 The Client taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client avails of the Service of Blue Datto Foundation.
- 2.3 These terms and conditions may only be amended with Blue Datto Foundation's consent in writing and it shall prevail to the extent of any inconsistency with any other document on agreement between the Client and the Blue Datto Foundation.
- 2.4 These terms and conditions are meant to be read in conjunctions with the Website Terms and Conditions posted on <http://bluedatto.org.au/>. If there are any inconsistencies between the two documents, then the terms and conditions contained in this document shall prevail.

3. Electronic Transactions Act 2000

- 3.1 Electronic signatures shall be deemed to be accepted by either party provided that it complies with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 3.2 Electronic communication in the form of email is an accepted form of written communication for this agreement.

4. Change in Control

The Client shall give Blue Datto Foundation not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact telephone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Blue Datto Foundation as a result of the Client's failure to comply with this clause.

5. Payment of Deposit for Services

The Client agrees to pay the deposit before any Services are delivered or acquired within 7 days from booking confirmation and receipt of invoice. The deposit will form part of the total price of the services or goods provided.

6. Payment for Goods and Services

- 6.1 The Blue Datto Foundation has sole discretion and Price for Services shall be either:
 - 6.1.1 As indicated on invoices provided by Blue Datto Foundation to the Client in respect of Services availed; or
 - 6.1.2 Blue Datto Foundation quoted Price (subject to Definition clause) which shall be binding upon Blue Datto Foundation provided that the Client shall accept Blue Datto Foundation quotations in writing within seven (7) days from the quotation date.
- 6.2 The Blue Datto Foundation reserves the right to change the Price for Services:
 - 6.2.1 if a variation to the Services which are to be supplied is requested or required; or
 - 6.2.2 in the event of increase in the cost of third-party provider or any other related matters in connection with the Services which are beyond Blue Datto Foundation's control.
- 6.3 Payment of the balance of the Price for Service is to be completed within seven (7) days after the completion of the Services by Blue Datto Foundation.
- 6.4 Price for Goods are as quoted by a Blue Datto Program Coordinator.
- 6.5 Payment may be made by cheque, bank cheque, credit card or by electronic/on-line banking as agreed to between the Client and the Blue Datto Foundation.
- 6.6 Receipt by the Blue Datto Foundation of any form of payment other than cash shall not be deemed to be payment until it has been honoured, cleared or recognised.
- 6.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Blue Datto Foundation an amount equal to any GST. The Client must pay for any supply by the Blue Datto Foundation under this or any other agreement for the Services provided. The Client must pay GST, without deduction or set off any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery of Services

- 7.1 At the sole discretion of the Blue Datto Foundation, delivery of the Services shall take place when goods are delivered to the client, or the agreed works have been completed.
- 7.2 Failure by the Blue Datto Foundation to deliver shall not entitle either party to treat this contract as repudiated.

- 7.3 The Blue Datto Foundation shall not be liable for any loss or damage whatsoever due to failure by them to deliver the Services (or any of them) promptly or at all were due to circumstances beyond the control of the Blue Datto Foundation.
- 7.4 In the event of extreme weather or natural disaster, Blue Datto Foundation reserves the right to postpone the program. In the event that this occurs, Blue Datto Foundation will endeavour to reschedule the program for new date, or alternatively provide a full refund.

8. Security and Charge

- 8.1 In consideration of the Blue Datto Foundation agreeing to supply Service and/or provide Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 8.2 The Client indemnifies Blue Datto Foundation from and against all Blue Datto Foundation's costs and disbursement including legal costs on a solicitor and own client basis incurred in exercising Blue Datto Foundation's rights under this clause.
- 8.3 The Client irrevocably appoints Blue Datto Foundation and each director of Blue Datto Foundation as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 8 including, but not limited to, signing any document on the Client's behalf.

9. Default and Consequences of Default

- 9.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Blue Datto Foundation's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 9.2 If the Client owes Blue Datto Foundation any money the Client shall indemnify Blue Datto Foundation from and against all costs and disbursements incurred by Blue Datto Foundation in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Blue Datto Foundation's contract default fee, and bank dishonour fees).
- 9.3 Further to any rights or remedies Blue Datto Foundation may have, if at any time under this contract, if a Client has made payment to Blue Datto Foundation by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Blue Datto Foundation under this clause 9 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 9.4 Without prejudice to any other remedies Blue Datto Foundation may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Blue Datto Foundation may suspend or terminate its Services to the Client. Blue Datto Foundation will not be liable to the Client for any loss or damages the Client suffers because Blue Datto Foundation has exercised its rights under this clause.

- 9.5 Without prejudice to Blue Datto Foundation's other remedies at law Blue Datto Foundation shall be entitled to cancel any part of any Service to the Client which remains unfulfilled and all amounts owing to Blue Datto Foundation shall, whether or not due payment become immediately payable if:
- (a) any money payable to Blue Datto Foundation becomes overdue, or in Blue Datto Foundation's opinion the Client will be unable to make a payment when it falls due;
 - (b) any Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in request of the Client or any asset of the Client.

10. Cancellation

- 10.1 Blue Datto Foundation may cancel any contract to which these terms and conditions apply or cancel delivery of Service at any time before the Services are delivered by giving notice to the Client. On giving such notice Blue Datto Foundation shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Blue Datto Foundation for Services already delivered. Blue Datto Foundation shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 10.2 If a Client postpones or cancels a service with twenty one (21) days' notice, the deposit will be transferred to the new service date, provided that the service is rescheduled within seven (7) days' of the cancellation. In the event that the Client gives less than twenty one (21) days' notice, the Client agrees to forfeit the deposit to Blue Datto Foundation.
- 10.3 In the event that the Client cancels the Service or Goods, the Client shall be liable for any loss incurred (whether direct or indirect) by Blue Datto Foundation as a direct result of cancellation (including, but not limited to, any loss of profits).
- 10.4 The Client is able to postpone one service in a twelve (12) month period. Further postponements by the Client will result in the deposit being forfeited to Blue Datto Foundation.
- 10.5 Cancellation of Service made to the Client's specification will definitely not be accepted once Service has been started.
- 10.6 In the event that Blue Datto Foundation is required to postpone or cancel a service, they will provide no less than seven (7) days' notice. If the client is eligible to reschedule the service, they must do so within twelve (12) months of the original service date. If for any reason they are unable to reschedule, Blue Datto Foundation will refund their deposit in full.
- 10.7 Blue Datto Foundation reserves the right to amend this cancellation clause at any time and it will be updated accordingly.

11. Privacy Act 1988

- 11.1 The Client agrees for Blue Datto Foundation to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Blue Datto Foundation.
- 11.2 The Client agrees that Blue Datto Foundation may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange the information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client's repayment history in the preceding two years
- 11.3 The Client consents to Blue Datto Foundation being given a consumer credit report to collect overdue payment to commercial credit.
- 11.4 The Client agrees that personal credit information provided may be used and retained by Blue Datto Foundation for the following purposes (and for other agreed purposes or required by):
- (a) the provisions of Services; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relations to the Services.
- 11.5 Blue Datto Foundation may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 11.6 Blue Datto Foundation may give information about the Client to a CRB for the following purposes:
- The information given to the CRB may include:
- (a) personal information as outlined in 11.1 above;
 - (b) name of the credit provider and that Blue Datto Foundation is a current credit provider;
 - (c) whether a credit provider is licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayment or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request or payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue

accounts and Blue Datto Foundation has been paid or otherwise discharged and all surrounding that discharge (e.g. dates of payment);

- (g) information that, in the opinion of Blue Datto Foundation, the Client has committed a serious infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

11.7 The Client shall have the right to request from Blue Datto Foundation;

- (a) a copy of the information about the Client retained by Blue Datto Foundation and the right to request that Blue Datto Foundation correct any incorrect information about the Client retained by Blue Datto Foundation and the right to request that Blue Datto Foundation correct any incorrect information; and
- (b) that Blue Datto Foundation does not disclose any personal information about the Client for the purpose of direct marketing.

11.8 Blue Datto Foundation will destroy personal information upon the Client's request or if it is no longer required to be maintained and/or stored in accordance with the law.

11.9 The Client can make a privacy complaint by contacting Blue Datto Foundation. Blue Datto Foundation will respond to that complaint within seven (7) days of receipt and will take all responsible steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

12. Legal Basis for Processing Personal Data Under General Data Protection Regulation (GDPR)

12.1 If you are from the European Economic Area (EEA), Blue Datto Foundation legal basis for collecting and using the personal information described in this agreement depends on the Personal Data we collect and the specific context in which we collect it.

Blue Datto Foundation may process your Personal Data because:

- (a) We need to perform a contract with you
- (b) You have given Blue Datto Foundation permission to do so
- (c) The processing is in our legitimate interests and it's not overridden by your rights
- (d) To comply with the law

Your Data Protection Rights Under General Data Protection Regulation (GDPR)

13.1 If you are a resident of the European Economic Area (EEA), you have certain data protection rights. Blue Datto Foundation aims to take reasonable steps to allow you to correct, amend, delete, or limit the use of your Personal Data.

13.2 If you wish to be informed what Personal Data we hold about you and if you want it to be removed from our systems, please contact us.

13.3 In certain circumstances, you have the following data protection rights:

- (a) **The right to access, update or to delete the information we have on you.** Whenever made possible, you can access, update or request deletion of your Personal Data directly within your account settings section. If you are unable to perform these actions yourself, please contact us to assist you.
- (b) **The right of rectification.** You have the right to have your information rectified if that information is inaccurate or incomplete.
- (c) **The right to object.** You have the right to object to our processing of your Personal Data.
- (d) **The right of restriction.** You have the right to request that we restrict the processing of your personal information.
- (e) **The right to data portability.** You have the right to be provided with a copy of the information we have on you in a structured, machine-readable and commonly used format.
- (f) **The right to withdraw consent.** You also have the right to withdraw your consent at any time where Blue Datto Foundation relied on your consent to process your personal information.

Please note that we may ask you to verify your identity before responding to such requests.

- 13.4 You have the right to complain to a Data Protection Authority about our collection and use of your Personal Data. For more information, please contact your local data protection authority in the European Economic Area (EEA).

14 General

- 14.1 The failure by Blue Datto Foundation to enforce any provisions of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Blue Datto Foundation's right to subsequently enforce that provision. If any provisions of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 14.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which Blue Datto Foundation has its principal place of business and are subject to the jurisdiction of the courts in that state.
- 14.3 Blue Datto Foundation shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out a breach by Blue Datto Foundation of these terms and conditions (alternatively Blue Datto Foundation's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 14.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Blue Datto Foundation nor to withhold payment of any invoice because part of that invoice is in dispute.
- 14.5 Blue Datto Foundation may license or sub-contract of any of its rights and obligations without the Client's consent.
- 14.6 The Client agrees that Blue Datto Foundation may amend these terms and conditions at any time. If Blue Datto Foundation makes a change to these terms and conditions, then that change will take effect from the date which Blue Datto Foundation notifies that Client

of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Blue Datto Foundation to provide any Services to the client.

- 14.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 14.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 14.9 We make no warranties that goods or services are fit for purpose.
- 14.10 We are not liable for any injury, death or other damage that arises during the installation of our Goods nor from the use of our Goods.
- 14.11 If any term in this agreement is found to be legally void, invalid or unenforceable this does not void the remaining terms of the agreement.
- 14.12 Any disagreement is to be attempted to be resolved by mediation at the Client's expense prior to legal proceedings being commenced.
- 14.13 Complaints regarding service, products and staff can be made by contacting Blue Datto Foundation on 8999 8005 or by sending a written complaint to email info@bluedatto.org.au. Blue Datto Foundation commits to respond, act, assess and manage complaints with respect to the complainant and with reference and in accordance with Blue Datto Foundation's Complaint Handling Policy.

Should a complainant be dissatisfied with the action or decision of Blue Datto Foundation, we wish to advise that alternate action can be taken by contacting the following organisations;

<https://www.accc.gov.au/consumers/complaints-problems/make-a-consumer-complaint>

<https://www.ombo.nsw.gov.au/complaints/making-a-complaint>

http://www.fairtrading.nsw.gov.au/ftw/About_us/Online_services/Lodge_a_complaint.page

15 Limitation of Liability

- 15.1 The Client hereby disclaim any right to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Blue Datto Foundation and the Client acknowledges that the Services were availed relying solely upon the Client's skill and judgment.
- 15.2 Insofar as the Client, notwithstanding provisions of this clause, may have any claim for damages against Blue Datto Foundation, its servants or agents either on contract or in tort and whether arising from negligence or otherwise (it being the intention of this clause that no such damages may be recovered) the same shall be limited to an amount of Services actually paid by the Client in respect of that portion of the particular Services which gave rise to such claim.