

## ADVERTISING TERMS AND CONDITIONS

1. **ADVERTISEMENTS:** APN News & Media Limited and its Australian subsidiaries ("APN") accept all Advertisements and notices ("Advertisements") from any person ("Customer") for publication in publications or websites under APN's control or represented by APN under a contract, agency, reseller or similar representative arrangement ("APN Media") on the following terms and conditions ("Terms and Conditions"). These Terms and Conditions will apply to:
  - (a) display and classified advertising in APN Media, in supplementary magazines and in newspaper inserted brochures ("Newspaper Advertising");
  - (b) online banner and online display advertising on APN Media ("Banner Advertising");
  - (c) online advertising on APN Media other than Banner Advertising ("Online Advertising"); and
  - (e) all other advertising services provided to the Customer by APN in relation to Advertisements ("Other Advertising"),
 (together referred to as "Advertising").
2. **TERMS INCONSISTENT:** The placing of an order for any Advertising by a Customer constitutes acceptance by the Customer of these Terms and Conditions and of all rates set out by APN in the relevant rate cards unless otherwise agreed in writing by APN. To the extent that any order submitted by the Customer attempts to include terms that are inconsistent with these Terms and Conditions, those terms will not apply.
3. **CUSTOMER:** The expression "Customer" means the advertiser and, where any Advertising has been placed with APN by an advertising agency (subject to clause 23), includes that agency, and all obligations (including payment obligations), warranties, indemnities, releases and discharges expressed to be given under these Terms and Conditions by the Customer are expressed to be given by the advertiser and the advertising agency on a joint and several basis.
4. **ENTIRE AGREEMENT:** Subject to clause 27, these Terms and Conditions (including any insertion orders, booking confirmations and any credit terms referred to in clause 14 if applicable) set out the entire agreement between the parties in relation to any Advertising and supersedes all prior arrangements, undertakings, representations and warranties by or between the parties in relation to such Advertising.
5. **SUBMISSION OF ADVERTISING:** If submitting any Advertisements, the Customer must comply with the submission requirements and deadlines set out in the relevant APN Media or otherwise notified to the Customer by APN. Where an Advertisement has not been submitted in this manner APN will not be obliged to accept the Advertisement for publication. In relation to Online or Banner Advertising, APN may also charge the Customer in full with effect from the publication date in the relevant insertion order.
6. **PUBLICATION:**
  - (a) Subject to these Terms and Conditions, APN will use its reasonable endeavours to publish Advertisements submitted by Customers in the format submitted by the Customer and in accordance with the placement instructions of the Customer or agreed insertion order, but the Customer acknowledges given the nature of various different APN Media that it will not always be possible or feasible to use the format submitted by the Customer or to accommodate the placement requested by the Customer.
  - (b) APN will publish classified Advertisements under the classification heading that it reasonably believes is most appropriate.
  - (c) Without limiting the above, if APN, reasonably believes that the placement instructions of the Customer for an Advertisement are inappropriate for any reason, APN may offer the Customer alternate placements. If the Customer does not accept the alternate placements, clause 10(a) will apply.
7. **CANCELLATION (BANNER ADVERTISING):** Any cancellation of Banner Advertising by the Customer must be made with at least 30 days written notice. Advertising cancelled with less than 30 days notice will be forfeited by the Customer and APN is under no obligation to provide any refund or credit in respect of the notice period.
8. **CANCELLATION:** The cancellation by the Customer of any Advertising (other than Banner Advertising) after the booking deadline will incur a cancellation fee of 100% of the charges that would be payable by the Customer if the Advertising had been published or completed.
9. **CUSTOMER UNDERTAKINGS:** The Customer undertakes and warrants to APN that no Advertisement will:
  - (a) breach or infringe the Competition and Consumer Act 2010 (Cth);
  - (b) infringe copyright, trade mark or other intellectual or moral property rights of any person;
  - (c) contain material that is obscene, offensive, defamatory, or otherwise unsuitable for publication;
  - (d) breach or infringe any laws relating to therapeutic goods, financial services, anti-discrimination, political publication, publication of court or tribunal materials, or any other State or Commonwealth legislation, rule or ordinance; or
  - (e) give rise to any liability on APN, cause APN to be in breach of any law by virtue of publishing the Advertisement, or result in a claim being made against APN.
10. **APN RIGHTS:**
  - (a) If in APN's reasonable opinion, the Advertisement breaches any term of these Terms and Conditions (including clause 9) or the publication of the Advertisement may damage APN's reputation or would otherwise be contrary to APN's legitimate business interests, APN may:
    - (i) without notice to the Customer alter or abbreviate to the extent reasonably necessary any Advertisement, including by inserting the word "Advertisement" above or below any Advertisement which in APN's reasonable opinion resembles editorial matter; or
    - (ii) at any time and without notice to the Customer cancel, reject or refuse to publish or continue publishing any Advertisement at any time prior to, or after, publication of the Advertisement, provided this right will not be unreasonably exercised.
  - (b) Without limiting clause 10(a), the Customer acknowledges that it remains responsible for all Advertisements submitted by it and APN has no obligation to review any Advertisement nor to alter, amend, cancel, reject or refuse to publish or continue publishing any Advertisement.
  - (c) The Customer agrees that APN may publish or re-publish an Advertisement in other APN Media and media (for example APN may publish Newspaper Advertising online, or vice versa or may publish Online Advertising in a variety of APN Media). Additional charging (if any) for such publishing or re-publishing will be as agreed between APN and the Customer.
11. **INDEMNITY:** By submitting or authorising submission of an Advertisement for publication or Advertising, the Customer indemnifies APN (and its employees, officers and agents) against any proceedings, demands, losses, costs (including legal costs on a full indemnity basis), damages and other liabilities of any nature taken, made or awarded against or incurred by APN (and/or its employees, officers and agents) ("Loss") arising from or in connection with:
  - (a) the Advertisement or any Advertising; or
  - (b) any breach of these Terms and Conditions (including clause 9) by the Customer,

except to the extent that the Loss was caused or contributed to by:

- (c) breach of these Terms and Conditions by APN; or
- (d) breach of any consumer guarantee that cannot be excluded by APN; or
- (e) the negligent or fraudulent act or omission of APN, its employees, officers, agents or contractors.

12. **NO GUARANTEE OR WARRANTIES:** Subject to clause 17:

- (a) APN does not guarantee that the Customer's service or product featured in an Advertisement will be the only service or product of that type featured in Advertisements on any one page or that any particular editorial content or subject matter will or will not appear on any one page; and
- (b) Online Advertising will be published via internet accessible Advertisement serving software ("Software"). APN makes no warranties of any kind, whether express or implied of the fitness of this Software for a particular purpose. APN shall not be liable for any loss, damage, or expense incurred in connection with the Software, including without limitation, for any technical malfunction, computer error or loss of data other than as a result of APN's gross negligence or fraud.

13. **PRODUCTION SERVICES:** If the Customer requires any creative, production, programming, or other services ("**Production Services**") from APN, the Customer must pay APN additional charges for such services, as notified in writing to the Customer by APN at the time the Customer requests the Production Services or shortly after that time (but before the Production Services are provided). The Customer acknowledges that the charges for these Production Services will be APN's applicable current charges as in force from time to time.

14. **CREDIT TERMS APPLY:** The Customer acknowledges that any credit provided will be on APN's then standard credit terms which may vary from time to time.

15. **PAYMENT:** The Customer must pay APN for Advertisements and any required Production Services in relation to such Advertisements:

- (a) in accordance with the rates set out in the relevant rate cards (the rate cards may be varied at any time by APN without notice and will apply to new Advertising submitted following the change of rates) unless otherwise agreed in writing by APN;
- (b) by prepayment, if so required by APN;
- (c) if payment is agreed by APN to be on account, on the credit terms supplied by APN to the Customer; and
- (d) on the basis of booked space or advertising material (whichever is larger) provided that if the actual space is reduced during printing by no more than 5%, APN will not be liable to the Customer for any credit for such reduction.

16. **FAILURE TO PAY:** If any payment is not received by APN on or before the date that such payment is due, or if the Customer commits an act of bankruptcy (in the case of an individual), or is unable to pay its debts as and when they fall due, enters into any arrangement with its creditors other than in the ordinary course of business, passes a resolution for administration, winding up or liquidation (other than for the purposes of re-organisation or reconstruction), has a receiver, manager, liquidator or administrator appointed to any of its property or assets or any petition is presented for its winding up (all in the case of a body corporate), APN may:

- (a) cancel any provision of credit to the Customer;
- (b) immediately and without notice, suspend or cancel all Advertising orders of the Customer and terminate any agreement in relation to Advertising not yet published, and in relation to which payment has not yet been received;
- (c) require cash pre-payment for any further Advertising;
- (d) impose interest at the rate of 2% (two percent) above the 90 day bank bill rate (published by the Reserve Bank) on all sums that remain unpaid until full payment is received;
- (e) take proceedings against the Customer for any outstanding amounts;
- (f) recover from the Customer all costs incurred by APN in the recovery of any amount owed by the Customer including any

mercantile agency costs and legal costs on a full indemnity basis; and

- (g) exercise any other rights at law.

17. **LIMITATION OF LIABILITY:** This clause 17 sets out the manner in which APN limits its liability against the Customer.

- (a) Except as expressly provided in these Terms and Conditions, if a warranty, representation, guarantee and/or condition is imposed by law, trade, custom or otherwise and:

- (i) can lawfully be excluded against a particular Customer, APN excludes it;
- (ii) cannot be lawfully excluded against a particular Customer, but can be limited, APN limits its liability under that warranty, representation, guarantee and/or condition to that particular Customer to the extent permitted by law; and
- (iii) cannot be excluded or limited against a particular Customer, APN acknowledges its liability under the warranty, representation, guarantee and/or condition to that particular Customer to the extent required by law.

- (b) For Advertising which is acquired for:

- (i) less than \$40,000; or
- (ii) personal, domestic or household use,

APN acknowledges that certain guarantees apply which cannot be excluded, including that:

- (iii) APN will provide the Advertising with due care and skill; and
- (iv) the Advertising will be reasonably fit for the particular purpose made known to APN by the Customer and will be of a nature, quality and state or condition that might reasonably be expected to achieve any result made known to APN by the Customer, unless the Customer did not rely on, or it was unreasonable for the Customer to have relied on, APN's skill or judgment.

- (c) Where APN is liable to a Customer for a breach of a guarantee which cannot be excluded, such as a guarantee described in clause 17(b), APN:

- (i) acknowledges that its liability to Customers that are acquiring Advertising for personal, domestic or household use cannot be limited; and
- (ii) limits its liability as set out in clause 17(d) for all Customers other than Customers described in clause 17(c)(i).

- (d) Subject to clause 17(c), where APN is liable to a Customer for a breach of a guarantee that cannot be excluded, such as a guarantee described in clause 17(b), APN's liability under that guarantee is limited to any one or more of the following (at APN's option):

- (i) in the case of the supply of goods under these Terms and Conditions (if any):
  - (A) the replacement of the goods or the supply of equivalent goods or the payment of the cost of replacing the goods or acquiring equivalent goods;
  - (B) the repair of the goods or the payment of the cost of having the goods repaired; or
- (ii) in the case of the supply of services under these Terms and Conditions:
  - (A) the supplying of the services again; or
  - (B) the payment of the cost of having the services supplied again.

- (e) Except for liability for a breach of a guarantee which cannot be excluded, such as a guarantee described in clause 17(b)

(APN's liability for which is described in clauses 17(c) and 17(d)), and to the extent permitted by law:

- (i) in no circumstances will APN (its employees, officers or agents) be liable, whether in tort, contract or otherwise for any indirect loss, loss of profits, consequential loss or special or exemplary damage suffered by the Customer or any other person, even if such loss or damages are foreseeable and whether or not APN had been advised of the possibility thereof;
  - (ii) the liability of APN (including APN's officers, employees and agents) to the Customer, or any other person, for any and all loss or damage arising in relation to these Terms and Conditions and/or Advertisements (including from any errors or inaccuracies however caused, whether by negligence, system, software or press failure, mistake, mis-classifications, early, late or non-insertion of Advertisements, or loss or delay in the delivery of replies) will be limited to an amount equal to the cost of the space of the relevant Advertisement, provided that if the Customer does not advise APN of any error within five days of publication of the Advertisement APN will have no liability whatsoever; and
  - (iii) APN will not be liable to the Customer or any other person for any loss of whatever kind suffered as a result of Other Advertising, or an Advertisement not being available for publication or not published where such loss arises from any cause beyond its control. Any loss suffered as a result of any partial or total breakdown of APN's operation or network, any technical malfunction, computer error or loss of data will be deemed to be an event beyond APN's control. Should such an event occur, APN will take responsibility to resurrect sites and links, and the Customer has the right to cancel the particular contract for the affected advertising at no penalty if such an occurrence results in the site being down for more than 7 working days (working days being Monday to Friday inclusive, but excluding statutory holidays). In addition, APN will not be liable to the Customer for any error or inaccuracy in Advertisements placed by telephone.
18. **THIRD PARTY APN PUBLICATIONS:** The Customer acknowledges and agrees that, where APN is selling Advertising as a contractor, agent, reseller or similar representative for an APN Media owned or operated by a third party ("**Third Party Owner**"):
  - (a) where APN is acting as agent for and on behalf of the Third Party Owner, APN may (at APN's sole discretion) enforce these Terms and Conditions in its own name on behalf of the Third Party Owner against the Customer, or allow the Third Party Owner to exercise its rights as principal under these Terms and Conditions by written notice to the Customer; and
  - (b) where APN is acting as a reseller (or some other capacity other than as an agent) of the Third Party Owner, APN may hold the benefit of some or all rights conferred by the Customer under these Terms and Conditions on behalf of the Third Party Owner (as trustee or otherwise) and APN may enforce all rights conferred under these Terms and Conditions in its own right (or in its capacity as trustee, if applicable), or may assign, novate and/or transfer any or all of its rights under agreements made pursuant to these Terms and Conditions to the relevant Third Party Owner by notice in writing to the Customer (and by these Terms and Conditions, the Customer consents to such assignment, novation and/or transfer).
19. **LICENSING AND SYNDICATION:** The Customer grants to APN and its contractors a worldwide, perpetual, nonexclusive, sub-licensable, royalty free license to use, distribute, reproduce, modify, adapt, publish, translate and publicly display the Advertisements in any print or online publication. Additional charging (if any) for such publishing or re-publishing would be agreed between APN and the Customer before any such additional publication
20. **RETURN OF ADVERTISING MATERIAL:** If the Customer requests the return of any physical material submitted to APN in relation to Advertising ("**Advertising Material**"), the Customer must collect Advertising Material submitted to APN immediately after publication. Subject to clause 17, APN will endeavour to take reasonable care of Advertising Material in its custody and control, but will not be responsible for any loss or damage to Advertising Material (even if caused by APN's (its employees', officers' or agents') negligence).
21. **CONFIDENTIALITY:** All information supplied by APN to the Customer in relation to APN's finances and affairs, media locations, contracts, pricing, methods of business and any other information which is designated confidential by APN or ought reasonably be regarded as confidential is confidential to APN and the Customer must maintain and ensure that its officers, employees, contractors and consultants maintain strict confidentiality in respect of such confidential information.
22. **NO WAIVER:** If at any time APN does not enforce any of these terms and conditions or grants the Customer time or other indulgence, APN shall not be construed as having waived that term or condition or its right to later enforce that or any other term or condition.
23. **ASSIGNMENT:** The Customer may not:
  - (a) assign any of its rights under any agreement or any part of an agreement to which these Terms & Conditions apply (including the rights to advertising space allocated in accordance with such an agreement) to any third party; or
  - (b) place Advertisements (whether directly or indirectly) on behalf of third party advertiser(s) (whether as an agent or otherwise),  
  
except on terms previously agreed with APN. Advertisements are placed by a Customer on behalf of a third party advertiser where, for example (but without limitation), the Advertisement promotes or otherwise notifies readers as to the goods or services of the third party advertiser rather than the Customer.
24. **GOVERNING LAW:** These Terms and Conditions are governed by, and construed in accordance with the law in force in Queensland. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland, and any court that may hear appeals from any of those courts, for any proceedings in connection with these Terms and Conditions.
25. **SEVERABILITY:** If any provision of these Terms and Conditions is held illegal or unenforceable, then such illegality or unenforceability shall not affect the remaining provisions of these Terms and Conditions which shall remain in full force and effect.
26. **PRIVACY:** APN may monitor incoming calls for training purposes. APN also collects the Customer's personal information to assist in providing the goods or services the Customer has requested and to improve APN's products and services. APN may contact the Customer about goods, services or promotions which may be of interest to the Customer. APN may also share the Customer's information with other persons or entities who assist APN in providing its services including any Third Party Owner. Personal information will be dealt with in accordance with APN's Privacy Policy.
27. **ADDITIONAL TERMS:** In addition to these Terms and Conditions the Customer acknowledges that all Advertising, including the conditions of payment, delivery and changes to or cancellation of such Advertising, will be in accordance with and subject to any specific conditions notified to the Customer or generally published by APN from time to time, including on the relevant APN website.
28. **AMENDMENT:** APN may vary these Terms and Conditions at any time in its sole discretion, provided that:
  - (a) such amended terms will not affect prior agreed Advertising orders with a date of publication within 3 months from the date of the variation; and
  - (b) if the Customer does not agree with a variation the Customer may cease placing orders with APN.