

APN New Zealand National Publishing Advertising terms and conditions

- 1. ADVERTISEMENTS:** APN Holdings NZ Limited and its related companies ("APN") accepts all advertisements and notices ("advertisements") from the Customer for publication in all publications under APN's control on the following Terms and Conditions. These Terms and Conditions will apply to:
 - (a) display and classified advertising in the NZ Herald newspaper and other APN controlled regional newspapers ("Newspaper Advertising");
 - (b) online advertising of Newspaper Advertising and similar advertising on APN advertising search websites ("Website Advertising");
 - (c) advertising in supplementary magazines (including E.G. and Canvas) and insert brochures ("Supplement Advertising");
 - (d) display and classified advertising in the Aucklander ("Aucklander Advertising");
 - (e) online advertising on APN websites other than Website Advertising ("Online Advertising"); and
 - (f) all other advertising services provided to the Customer by APN, which APN notifies the Customer are included in these Terms and Conditions ("Other Advertising").
- 2. TERMS INCONSISTENT:** 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 advertising has been placed with APN by an advertising agency, includes that agency.
- 4. ENTIRE AGREEMENT:** Subject to clause 20 of these terms, with the exception of the credit terms referred to in clause 9 (that form part of these Terms and Conditions), these Terms and Conditions (including booking confirmations if applicable) set out the entire agreement between the parties in relation to Newspaper Advertising, Website Advertising, Supplement Advertising, Aucklander Advertising, Online Advertising and Other Advertising and supersede all prior arrangements, undertakings, representations and warranties by or between the parties in relation to such advertising.
- 5. CUSTOMER UNDERTAKINGS:** The Customer undertakes to APN that no advertisement will:
 - (a) give rise to any claims or liabilities for APN;
 - (b) infringe copyright, trade mark or other intellectual or industrial property rights of any person;
 - (c) contain material that is obscene, offensive, defamatory, or otherwise unsuitable for publication;
 - (d) be, or be likely to be, misleading or deceptive or otherwise infringe the Fair Trading Act 1986 or any other statute, regulation or rule of law.
- 6. INDEMNITY:** By submitting or authorising submission of an advertisement for publication, the Customer indemnifies APN (and its employees and agents) against any proceedings, demands, losses, costs (including legal costs), damages and other liabilities incurred by APN (and/or its employees and agents) in connection with the advertisement.
- 7. APN RIGHTS:** APN may in its discretion:
 - (a) without notice to the Customer alter or abbreviate any advertisement or insert the word "Advertisement" above or below any advertisement which in APN's opinion resembles editorial matter;
 - (b) refuse to publish any advertisement;
 - (c) monitor incoming calls for training purposes;
 - (d) at any time and without notice to the Customer cancel, reject or refuse to publish or continue publishing any advertisement without providing any reason for such rejection or refusal at any time prior to, or after, publication of the advertisement, provided this right will not be unreasonably exercised;
 - (e) re-publish advertising in other APN publications and media (for example APN may publish Newspaper Advertising online, or vice versa), which subject to clause 7(f) will be without further cost to the Customer;
- (f) in relation to an advertisement submitted to APN for publication in print, also publish each listing contained in the advertisement on APN's relevant website as Website Advertising unless the Customer advises APN at the time of submission that it does not wish to have the advertisement published on the website. The Customer will pay all related website publication charges (if any) as set out in the then current rate card published at www.nzherald.co.nz/advertising. "Each listing" in an advertisement has the meaning set out in the then current rate card.
- 8. NO GUARANTEE:** APN will endeavour to grant the Customer the environment and/or positioning the Customer requests for its advertisements. However, APN does not guarantee that the Customer's product featured in the advertisement will be the only product of that type featured in advertisements on any one page. APN will not be responsible or liable to the Customer in any way if the Customer's request cannot be granted, or the product featured in the Customer's advertisement is not the only product of that type featured in advertisements on any one page. We cannot guarantee the availability of colour classified advertising. If colour is not available on the day you have booked your colour classified advertisement, your advertisement will appear in black and white and we will refund the charge for colour loading.
- 9. 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.
- 10. GST:** Unless otherwise stated by APN, advertising rates are quoted exclusive of GST and the Customer will pay GST in addition to such rates.
- 11. Advertising customers will be charged an additional credit card transaction fee plus GST when making payments by Diners Club (2.75%), Visa or MasterCard (1.55%). This excludes prepaid advertising.**
- 12. EXCLUSION OF LIABILITY:** Except as expressly provided in these Terms and Conditions, APN excludes, to the fullest extent permitted by law, all warranties, representations and conditions whether implied by law, trade, custom or otherwise. In no circumstances will APN (its employees or agents) be liable, whether in tort, contract or otherwise for any indirect loss, loss of profits, consequential loss or special damage suffered by the Customer or any other person. APN's (including APN's officers, employees and agents) liability 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 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.
- 13. CONSUMER GUARANTEES ACT:** If the Customer is a consumer under the Consumer Guarantees Act 1993 (the "Act") and acquires or holds itself out as acquiring goods or services from APN for the purposes of a business then the Act will not apply and is expressly excluded. Subject to this clause nothing in these Conditions will affect the Customer's rights as a consumer under the Act.
- 14. NO LIABILITY FOR LOSS SUFFERED:** APN will not be liable to the Customer or any other person for any loss of whatever kind suffered as a result of an advertisement not being available for publication where such event 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 will be deemed to be an event beyond APN's control. Should such an event occur, APN will take responsibility to resurrect site 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) Nor will APN be responsible for any error or inaccuracy in advertisements placed by telephone.
- 15. RETURN OF ADVERTISING MATERIAL:** If the Customer wants back the advertising material submitted to APN, the Customer must collect advertising material submitted to APN immediately after publication. 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 negligence).
- 16. NO WAIVER:** If 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.
- 17. ASSIGNMENT:** The Customer may not:
 - (a) assign this Contract or any part of it (including advertising space allocated to it) 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 the Company. 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.
- 18. CONFIDENTIALITY:** The Customer acknowledges the confidential nature of the subject-matter of these Terms and Conditions ("Confidential Information"). The Customer accordingly undertakes to keep the Confidential Information confidential and not disclose any of the Confidential Information without the prior written consent of APN. The Customer will ensure that its employees, agents, representatives and advisers observe the terms of this clause. The Customer indemnifies APN against all losses, damages, costs or expenses which APN may incur as a result of any unauthorised disclosure of the Confidential Information. This obligation of confidentiality will continue in full force until all of the Confidential Information has entered the public domain and will survive termination of these Terms and Conditions.
- 19. GOVERNING LAW:** These Terms and Conditions are governed by, and construed in accordance with the laws of New Zealand. The parties submit to the exclusive jurisdiction of the laws of New Zealand in respect of any dispute arising from these Terms and Conditions.
- 20. 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.
- 21. ADDITIONAL TERMS:** In addition to the General Advertising Terms the Customer acknowledges that all Newspaper Advertising, Website Advertising, Supplement Advertising, Aucklander Advertising, Online Advertising and Other Advertising including the conditions of payment, delivery and changes to or cancellation of such advertising, will be in accordance with and subject to the conditions notified to the Customer or generally published by APN from time to time.
- 22. APN ABILITY TO CHANGE:** 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; and
 - (b) if the Customer does not agree with a variation the Customer may cease placing orders with APN.