

Advertising terms and conditions

NZME Publishing Limited, NZME Radio Limited and their related companies ('**NZME**') accept all advertisements and notices from the Customer for publication in all publications under NZME's control on the following Terms and Conditions. The expression '**Customer**' means the advertiser and, where advertising has been placed with NZME by an advertising agency, includes that agency.

1. APPLICATION OF TERMS

1.1 These Terms and Conditions apply to:

- (a) display and classified advertising in the print versions of the New Zealand Herald and Herald on Sunday newspapers and other NZME controlled regional newspapers, including newspaper inserted magazines and brochures ('**Newspaper Advertising**');
- (b) display and classified advertising in any of the print versions of the publications in the NZME Magazines portfolio ('**Magazine Advertising**');
- (c) Broadcast advertising on any of the radio stations owned or operated by NZME Radio Limited ('**Radio Advertising**');
- (d) digital advertising, including advertising on NZME websites, advertising search websites, mobile applications, and all other digital platforms under NZME's control ('**Digital Advertising**'); and
- (e) all other advertising services provided to the Customer by NZME ('**Other Advertising**'),
(together, '**NZME Advertising**').

1.2 **Additional terms and policies:** In addition to these Terms and Conditions the Customer acknowledges that the supply of NZME Advertising will (unless agreed otherwise) be subject to:

- (a) NZME's current standard credit terms;
- (b) NZME's current rate card terms;
- (c) any terms and conditions set out in an order form or booking confirmation for the NZME Advertising accepted by the Customer (the '**Order Form**');
- (d) any other terms and conditions or policies notified to the Customer; and
- (e) the terms of any other agreement accepted by the Customer,

(together: '**Additional Terms and Policies**'). Additional Terms and Policies shall have priority over these Terms and Conditions to the extent of any inconsistency or conflict. 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.

2. **ADVERTISING MATERIAL**

- 2.1 **Customer supplied:** The Customer may provide its own advertising material for publication. NZME will not be responsible for any loss or damage to such material while in the possession of NZME. Advertising material must be received by NZME by the deadlines set out at <http://advertising.nzme.co.nz/>, or if not specified then at least one working day before the scheduled publication or broadcast date. The Customer may be charged for any advertisement not broadcast or published due to late receipt or non-receipt of advertising material by NZME.
- 2.2 **NZME supplied:** Where NZME supplies advertising material, the Customer must provide written confirmation that it accepts the material in all respects at least one working day before the agreed publication or broadcast date. If the Customer does not provide such written approval within that time frame then it will be deemed to have accepted the material in all respects and NZME shall not be liable to the Customer in any way for any defect or matter arising out of the advertising material. In any event, the Customer must notify NZME immediately of any such defect or matter arising out of the advertising material. If the Customer does so, then NZME will do its best to rectify the advertising material to the Customer's reasonable satisfaction prior to broadcast or publication. Unless otherwise agreed advertising material supplied by NZME remains the property of NZME and may not be used in any other medium or published by any third party without the approval of NZME.

3. **CHANGES AND PLACEMENT**

- 3.1 **NZME rights to make changes:** NZME may in its discretion:
- (a) without notice to the Customer alter or abbreviate any advertisement (provided this right will not be unreasonably exercised and NZME will notify the Customer of the change as soon as practicable);
 - (b) at any time and without notice to the Customer cancel, reject or refuse to publish or continue publishing any advertisement (provided this right will not be unreasonably exercised and NZME will notify the Customer as soon as practicable, and it shall be reasonable to reject an advertisement where the advertisement breaches relevant law or regulation, including any media accreditation terms to which NZME may be subject);
 - (c) publish or broadcast advertising material at a time different from the time originally booked, or in the next available issue, programme or edition if there is an error or delay in publication or broadcast of the advertising material;
 - (d) re-publish or broadcast advertising on other NZME media properties (for example NZME may publish Newspaper Advertising online, or vice versa), which will be without further cost to the Customer; or
 - (e) insert the word "Advertisement" above or below any advertisement which in NZME's opinion resembles editorial matter.
- 3.2 **Placement:** NZME will endeavour to grant the Customer the environment and/or placement the Customer requests for its advertisements. NZME 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 features advertising by competitors of the Customer. Bonuses are pre-emptible and may not play where schedules are full.
- 3.3 **Colour classified advertising:** NZME cannot guarantee the availability of colour classified advertising for Newspaper Advertising. If colour is not available on the day the Customer booked colour classified advertisement, the advertisement will appear in black and white and NZME will refund the charge for colour loading.

4. **COST AND PAYMENT**

4.1 **Rates:** The Customer acknowledges that:

- (a) NZME may vary its rate card rates at any time;
- (b) any discount that the Customer may be offered from the standard rate card rates may be revoked or cancelled by NZME at any time on giving notice to the Customer;
- (c) unless otherwise stated by NZME, advertising rates are quoted exclusive of GST and the Customer will pay GST in addition to such rates; and
- (d) Customers will be charged an additional credit card transaction fee (which will be disclosed at the time of payment) plus GST when making payments by Visa, MasterCard or American Express.

4.2 **Credit terms:** The Customer acknowledges that any credit provided will be on NZME's then standard credit terms which may vary from time to time.

4.3 **Payment:** The Customer will be invoiced at the end of each calendar month for advertising supplied to it during that month. Payment is due:

- (a) fixed term contract advertising, on the 1st of the month following the supply of services; and
- (b) in the case of all other advertising by the 20th of the month following the date of publication or broadcast.

4.4 **Unpaid invoices:** If any invoice remains unpaid after the due date NZME may:

- (a) without notice refuse to publish any further advertisements for and/or make any further supply to the Customer and suspend or cancel any or all of the Customer's orders until payment is received;
- (b) charge the Customer default interest on all unpaid amounts at the rate of 2% above the 90 day bank bill rate per month from the Due Date until the date full payment is received; and
- (c) without prior notice, apply all or part of any credit balance with NZME towards satisfaction of any amount owing (whether or not due for payment) by the Customer to NZME.

5. **LIABILITY, WARRANTIES AND INDEMNITIES**

5.1 **Customer warranties:** The Customer warrants to NZME that no advertisement will:

- (a) give rise to any claims or liabilities against NZME;
- (b) infringe copyright, trade mark or other intellectual or industrial property rights of any person;
- (c) contain material that is obscene, offensive, defamatory, illegal or otherwise unsuitable for publication;
- (d) in the case of digital advertising, contain cookies, tracking tags or other tracking device unless NZME has provided its prior written consent, or allow for data leakage or the on-selling of retargeted audiences; or
- (e) be, or be likely to be, misleading or deceptive or otherwise infringe the Fair Trading Act 1986 or any other statute, regulation, code or rule of law.

- 5.2 **Customer indemnity:** By submitting or authorising submission of an advertisement for publication, the Customer indemnifies NZME (and its employees and agents) against any proceedings, demands, losses, costs (including legal costs on a solicitor-client basis), damages (including indirect, consequential loss and special damages) and other liabilities incurred by NZME (and/or its employees and agents) in connection with the advertisement.
- 5.3 **Trade advertising:** If the Customer requests advertisement services of a type not ordinarily used for personal, domestic or household purposes, the Consumer Guarantees Act 1993 will not apply and is expressly excluded. If the Customer is also in trade, it agrees that sections 9, 12A, 13, or 14(1) of the Fair Trading Act 1986 will not apply. Subject to this clause nothing in these Terms and Conditions will affect the Customer's rights as a consumer under the Consumer Guarantees Act 1993 or the Fair Trading Act 1986.
- 5.4 **Exclusion and limitation of liability:** Except as expressly provided in these Terms and Conditions, NZME 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 NZME (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. NZME's (including NZME'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, omissions, non-publication or inaccuracies however caused, including without limitation by negligence, system or press failure, mistake, misclassifications, 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 NZME of any error within five days of publication of the advertisement NZME will have no liability whatsoever.
- 5.5 **No liability for non-publication:** NZME 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 published where such event arises from the exercise of any discretion by NZME under these Terms and Conditions or any cause beyond its control. Any loss suffered as a result of any partial or total breakdown of NZME's operation or network will be deemed to be an event beyond NZME's control. Should such an event occur, NZME will take all steps reasonably necessary to resurrect its operation and network, 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 relevant NZME publication not being published for more than 7 working days (working days being Monday to Friday inclusive, but excluding statutory holidays).

6. CANCELLATION

Any cancellations by a Customer must be via email to the relevant NZME account manager. Upon cancellation the Customer agrees that NZME may at its discretion charge the following cancellation fees. The Customer acknowledges these cancellation fees are a genuine pre-estimate of the loss NZME will suffer as a result of the cancellation.

- 6.1 **Cancellation of Radio Advertising:** If a booking has been made for a Radio Advertising campaign, any cancellation must be advised to NZME at least 30 days prior to the scheduled campaign start date for Radio Advertising. Cancellation of an active campaign may, at the discretion of NZME, incur a 100% cancellation fee. Cancellation of orders 0-20 days prior to the commencement of the booking or campaign may, at the discretion of NZME, incur a cancellation fee of 90% of media costs and 100% of any fixed costs incurred by NZME.
- 6.2 **Cancellation of Digital Advertising:** Cancellation of Digital Advertising may, at the discretion of NZME, incur the following cancellation fees:
- (a) if cancellation occurs at any time within 28 working days before publication a sum equivalent to 50% of the total charges payable by the Customer for the advertisement had publication taken place;

- (b) if cancellation occurs within 10 working days before publication, a sum equivalent to 75% of the total charges payable by the Customer for the advertisement had publication taken place; or
- (c) if cancellation occurs within 5 working days before the publication date, a sum equivalent to 100% of the charges payable by the Customer for all advertisements scheduled to commence from the date of cancellation until 30 days after that cancellation date.

6.3 **Cancellation and Movement of Newspaper Advertising and Magazine Advertising:**

Cancellation or Movement of bookings for Newspaper or Magazine Advertising may, at the discretion of NZME, incur a fee:

- (a) Run of paper (non-premium) – if cancellation occurs after booking deadline (as disclosed on <http://advertising.nzme.co.nz/>), the Customer agrees to pay 100% cancellation fee. If movement occurs after booking deadline, the Customer agrees to pay 50% movement fee.
- (b) Premium positions (including Inserts) – if cancellation occurs within 10 working days of publication date, the Customer agrees to pay 100% cancellation fee. If movement occurs within 10 working days of publication date, the Customer agrees to pay 50% movement fee.
- (c) Movements may only be made within the calendar quarter in which the advertising was originally scheduled.

7. **GENERAL**

- 7.1 **No waiver:** If at any time NZME does not enforce any of these Terms and Conditions or grants the Customer time or other indulgence, NZME shall not be construed as having waived that term or condition or its right to later enforce that or any other term or condition.
- 7.2 **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 NZME. 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 a third party other than the Customer.
- 7.3 **NZME's right of set-off:** The Customer agrees that NZME has the right to use any amounts it owes the Customer to pay any outstanding amounts by the Customer to NZME, including against any other outstanding account within the NZME Group of companies. The Customer also agrees to pay NZME any amounts owed to us in full and without exercising any right of set-off.
- 7.4 **Confidentiality:** The Customer acknowledges the confidential nature of any information disclosed by one party to the other in accordance with 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 NZME. The Customer will ensure that its employees, agents, representatives and advisers observe the terms of this clause. The Customer indemnifies NZME against all losses, damages, costs or expenses which NZME 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.
- 7.5 **Privacy:** NZME collects, uses and stores personal information in accordance with its privacy policy, which is available here: <http://www.nzme.co.nz/about-us/privacy-policy/>.

- 7.6 **Entire agreement:** These Terms and Conditions and any applicable Additional Terms and Policies set out the entire agreement between the parties in relation to NZME Advertising and supersede all prior arrangements, undertakings, representations and warranties by or between the parties in relation to such advertising.
- 7.7 **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 Courts of New Zealand in respect of any dispute arising from these Terms and Conditions.
- 7.8 **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.
- 7.9 **NZME ability to change:** NZME may vary these Terms and Conditions at any time in its sole discretion, provided that:
- (a) the Customer will be notified of such amendments in writing to the last contact details provided by the Customer to NZME or alternatively by a notice published on <http://advertising.nzme.co.nz/>;
 - (b) such amended terms will not affect prior agreed advertising orders (but will affect further advertising orders under any space order arrangements); and
 - (c) if the Customer does not agree with a variation the Customer may cease placing orders with NZME.

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