

# TERMS AND CONDITIONS OF ADVERTISING

These terms and conditions ("Terms") apply to all advertising services provided to any person ("Customer") by Business News Pty Ltd ABN 73 009 193 140 trading as Business News or any of its subsidiaries (all of which are referred to as 'BN').

## 1. Publication of Advertising

1.1 Subject to these Terms, BN will use its reasonable endeavours to publish advertising submitted by Customers ('Advertising') in the format submitted by the Customer and in accordance with the placement instructions of the Customer. 'Advertising' includes images submitted for publication.

1.2 BN may, in its discretion and without further cost to the Customer, re-publish Advertising in other BN publications and media. For example, BN may publish print Advertising on-line, or vice versa. Customer warrants BN is entitled to publish the Advertising anywhere in the world in any medium.

## 2. Right to Refuse or Withdraw Advertising

2.1 Neither these Terms nor any written or verbal quotation by BN represent an offer to publish Advertising. A binding contract in relation to a request for Advertising will only be formed between BN and a Customer when BN accepts the Advertising in writing or generates a GST compliant invoice for that Advertising.

2.2 Even if a contract has been formed in accordance with the above clause, BN reserves the right to refuse or withdraw from publication any Advertising at any time without giving reasons (even if the Advertising has previously been published by BN).

## 3. Right to Vary Format and Placement

3.1 The Customer acknowledges that the positioning and colour of print Advertising is subject to space and colour availability at the time of printing, and will be at the discretion of BN.

3.2 BN reserves the right to:

- (a) vary the placement of Advertising within a particular print title or Internet site; and
- (b) change the format of print Advertising (including but not limited to changing a format from colour to black and white).

3.3 BN will endeavour to notify the Customer of any such changes. However, except in accordance with clause 12, BN will not be liable for any costs, expenses, losses or damages suffered or incurred by a Customer arising from BN's failure to publish Advertising in accordance with a Customer's request.

3.4 Without limiting the discretion of BN concerning position and colour of any Advertising:

(a) BN will attempt to position Advertising or provide colour in accordance with the Customer's preferred position or colour loading charges;

(b) any liability for publishing Advertising not in accordance with the Customer's preferred position or colour request will be limited to crediting the Customer for the relevant loading charges; and

(c) bookings which are in any way conditional will not be accepted.

## 4. Submission of Advertising

4.1 Customer warrants to BN that the Advertising does not breach or infringe:

(a) the Trade Practices Act (Cth), Fair Trading Acts (State) or equivalent legislation;

(b) any copyright, trade mark, obligation of confidentiality or other personal or proprietary right;

(c) any law of defamation, obscenity or contempt of any court, tribunal or royal commission;

(d) State or Commonwealth anti-discrimination legislation;

(e) the Privacy Act (Cth); or

(f) any other law (including but not limited to any common law, statute, delegated legislation, rule and ordinance of the Commonwealth or any State or Territory).

4.2 Customer warrants that in respect of Advertising that contains the name or photographic or pictorial representation of any living person and/or any copy by which any living person can be identified, the Customer has obtained the authority of that person to make use of his/her name or representation or the copy.

4.3 Customer warrants that any Advertising of a financial service complies with the relevant legislation and its publication by BN does not give rise to any breach by BN under that legislation.

4.4 The Customer must not submit Advertising for publication that contains contact details for the Customer if those contact details do not include the full name and street address of the Customer. Post office box and email addresses alone are insufficient.

4.5 If, in BN's opinion, a Customer submits Advertising that looks like editorial material, BN may publish the Advertising under the heading 'Advertising' and with a border distinguishing it from nearby editorial.

- 4.6 The Customer must collect Advertising material submitted to BN immediately after publication. BN 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 BN's negligence).
- 4.7 The Customer authorises BN to dispose of any Advertising material (including but not limited to illustrations, artwork) not collected by the Customer within 14 days of publication. The Customer acknowledges that that BN accepts no liability for the return of any Advertising material submitted to BN.
- 4.8 If the Customer submits Advertising material electronically, the material must comply with BN specifications, which are available upon request. BN may reject the Advertising material if it is not submitted in accordance with such specifications or at its discretion on an all care no responsibility basis adapt the advertising material to the specifications for a charge of \$100 (plus GST).
- 4.9 The Customer acknowledges that it is its responsibility to ascertain the BN specifications for Advertising material, which may change from time to time without notice. No claims for errors will be considered where material is supplied to BN which does not comply with such specifications.
- 4.10 If Advertising has been booked in advance, the Advertising material must be submitted by the deadlines specified in the Ratecard. If Advertising material is not submitted by the specified deadlines, BN reserves the right to:
- (a) treat the Advertising as having been cancelled; or
  - (b) place any previous Advertising submitted by the Customer within the publication at the quoted rate.

## 5. Digital Advertising

- 5.1 For digital banner and display Advertising, the Customer must:
- (a) submit creative materials and a click-through URL to BN at least five (5) working days before the Advertising is scheduled to be published.
  - (b) existing Customers with the option to renew must exercise their request in writing no later than sixty (60) days prior to the expiry of the current digital advertising schedule.
- 5.2 All digital Advertising (including rich media) must comply with BN's advertising specifications, which are available on request.
- 5.3 Subject to clause 12, BN is not liable for any loss, damages or liabilities arising from but not limited to, a failure of the World Wide Web or any telecommunications structure.

## 6. Errors

- 6.1 The Customer must promptly:
- (a) check proofs of Advertising provided to the Customer by BN; and
  - (b) notify BN of any errors in the proofs or any published Advertising.
- 6.2 BN does not accept responsibility for any errors in print Advertising placed over the telephone.
- 6.3 BN does not accept responsibility for any errors in Advertising material received electronically from third parties.
- 6.4 If a Customer wishes to make a claim on BN for credit, re-publication or any other remedy in respect of Advertising, the Customer must send the claim in writing to BN no later than 14 days after the date of the tax invoice or date of publication of the Advertising (whichever is earlier).
- 6.5 BN will only investigate complaints during normal office hours (9.00am to 5.00pm, Monday to Friday excluding public holidays).

## 7. Advertising Rates and Taxes

- 7.1 The customer must pay for advertising and production in accordance with the rates in BN's Ratecard unless agreed to in writing in the Advertising Agreement.
- 7.2 The rates in the Ratecard:
- (a) may be varied at any time by BN without notice; and
  - (b) are exclusive of taxes, duties or GST ("Taxes"), unless the Ratecard specifies that GST or other Taxes are included.
- 7.3 The Customer must pay an additional amount equal to any Taxes payable by BN in respect of Advertising or production. BN will provide Customers with a tax invoice or adjustment note (as applicable) in a compliant form for GST purposes.
- 7.4 If the Customer and BN have agreed a reduced rate ('Reduced Rate') in contemplation of a specified volume of Advertising within a specified period of time and the Customer does not use or pay for the specified volume within the specified period of time, BN may charge the Customer with a fee equal to, but not greater than, the difference between the Reduced Rate and the standard rate set out in the Ratecard.
- 7.5 Cancellations or rescheduling or deferrals of Advertising will strictly be treated as Delete and Charge, with the Customer being charged 100% of the agreed price on the original scheduled insertion/publication date. The Customer is entitled, subject to availability to a Make Good insertion on a like for like basis provided the rescheduled insertion date is published within 100 days of the original scheduled publication date. The Customer is not entitled to a credit that can be offset

against other charges. The responsibility to reschedule the Make Good insertion rests solely with the Customer. All rights and claims to a make good insertion lapses within 100 days of the original publication date and the Customer has no claim to further entitlement.

- 7.6 Any Customer whose annual advertising spend is less than \$40,000 per annum will only be granted specified positions on the basis that they will be surrendered without recourse at BN's discretion.
- 7.7 If an Advertising Agreement does not specify all the insertion/publication dates, then the Customer agrees to pay the full value of the contract within 365 days from the date of the Advertising Agreement.

## 8. Credit

- 8.1 BN may grant, deny or withdraw credit to a Customer at any time in its discretion.

## 9. Payment

- 9.1 The Customer must pay for Advertising:
- (a) by pre-payment, if so required by BN; and
  - (b) on account, within fourteen (14) days after the date of the invoice.
  - (c) credit card payments for amounts greater than \$450 are subject to a 1.5% processing fee for Visa, M/Card, B/Card and 3% for Amex.
- 9.2 The Customer must pay:
- (a) for print Advertising in accordance with the size of the Advertising material lodged by the Customer, or the Advertising space ordered by the Customer, whichever is greater;
  - (b) the full price for Advertising notwithstanding:
    - (i) the fact that BN has exercised its right to vary the format or placement of the Advertising; and
    - (ii) any error or omission in the Advertising (unless the error or omission was the fault of BN).

## 10. Failure to Pay and other Breach

- 10.1 If a Customer fails to pay for Advertising in accordance with clause 10 or if a Customer suffers an Insolvency Event as defined in clause 11.2, BN may (in its discretion and without limitation):
- (a) charge a Customer a late payment fee of \$15.00 per week on overdue accounts;
  - (b) cancel any provision of credit to the Customer;
  - (c) require cash pre-payment for further Advertising;
  - (d) charge interest on all overdue amounts at the rate 2% above the Commonwealth Bank Overdraft Base Rate;

- (e) take proceedings against the Customer for any outstanding amounts;
- (f) recover from the Customer all costs relating to any action taken by BN to recover amounts owing for Advertising, including without limitation any mercantile agency costs and legal costs on a full indemnity basis;
- (g) cease publication of any further Advertising on behalf of the Customer and terminate any agreement in relation to Advertising not yet published; and
- (h) exercise any other rights at law.

10.2 A Customer suffers an 'Insolvency Event' if:

- (a) the Customer is a natural person and the Customer commits an act of bankruptcy;
- (b) the Customer is a body corporate and the Customer:
  - (i) cannot pay its debts as and when they fall due;
  - (ii) enters into any arrangement with its creditors other than in the ordinary course of business;
  - (iii) passes a resolution for administration, wind up or liquidation (other than for the purposes of re-organisation or reconstruction);
  - (iv) a receiver, manager, liquidator or administrator is appointed to any of its property or assets; or
  - (v) any petition is presented for the winding up of the Customer.

10.3 BN reserves the right to withhold any discounts or rebates if the Customer fails to comply with its payment obligations.

10.4 A written statement of debt duly signed by an authorised employee of BN shall be prima facie evidence and proof of the amount owed by the Customer to BN.

## 11. Liability

11.1 The Customer acknowledges that it has not relied on any advice given or representation made by or on behalf of BN in connection with the Advertising.

11.2 BN excludes all implied conditions and warranties from these Terms, except any condition or warranty (such as conditions and warranties implied by the Trade Practices Act and equivalent State acts) which cannot by law be excluded ('Non-excludable Condition').

11.3 BN limits its liability:

- (a) for breach of any Non-Excludable Condition (to the extent that liability for such breach can by law be limited); and
- (b) for any other error or omission in published Advertising caused by BN, to (at BN's option) re-supply of the

Advertising services affected by the breach, or payment of the cost of re-supply.

11.4 Subject to clauses 12.2, BN excludes all other liability to the Customer for any costs, expenses, losses and damages suffered or incurred by the Customer in connection with these Terms and any Advertising published by BN, whether that liability arises in contract, tort (including by BN's negligence) or under statute. Without limitation, BN will in no circumstances be liable for any indirect or consequential losses, including loss of profits, loss of revenue and loss of business opportunity.

11.5 The Customer indemnifies BN and its officers, employees, contractors and agents (the 'Indemnified') against any costs, expenses, losses, damages and liability suffered or incurred by the Indemnified arising from the Customer's breach of these Terms and any negligent or unlawful act or omission of the Customer in connection with the Advertising.

## 12. Privacy

12.1 BN collects a Customer's personal information to provide the Advertising services to the Customer and for invoicing purposes. BN may disclose this personal information to its related companies, to credit reporting agencies and other third parties as part of provision of the Advertising. Where a Customer has an overdue

account, BN may disclose personal information to debt collection agencies to recover the amount due.

12.2 Customers may gain access to their personal information by writing to the BN Privacy Officer at Level 2, 139 Newcastle Street, PERTH WA 6000.

More information about privacy and accessing personal information is in BN's privacy policy which is accessible at [www.wabusinessnews.com.au/privacypolicy.php](http://www.wabusinessnews.com.au/privacypolicy.php).

## 13. General

13.1 These Terms represent the entire agreement of the Customer and BN in relation to Advertising and cannot be varied except in writing by an authorised officer of BN. No purchase order or other document issued by the Customer will vary these Terms.

13.2 BN will not be liable for any delay or failure to publish Advertising caused by a factor outside BN's reasonable control (including but not limited to any Act of God, war, breakdown of plant, industrial dispute, electricity failure, governmental or legal restraint).

13.3 BN may serve any notice or court documents on a Customer by forwarding them by pre-paid post or facsimile to the last known address of the Customer.

13.4 These Terms are governed by the laws of the state of Western Australia, and each party submits to the nonexclusive jurisdiction of the courts of that State

For any queries pertaining to the terms and conditions of advertising please contact:  
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