

## Self-service Terms and Conditions

The terms and conditions set out below ("**Terms and Conditions**") govern your use of the **self-serve advertising booking** service ("**Service**"). By using the Service, you must accept and abide by these Terms and Conditions. If you do not accept these Terms and Conditions, you are not permitted to use the Service and you must refrain from using it.

All advertisements submitted using the Service are also subject to the APN Advertising Terms and Conditions which are set out below.

1. APN reserves the right to make changes to these Terms and Conditions which will be effective once they are published on this website. You should revisit this area of the website regularly to check the Terms and Conditions.
2. You agree to only use the Service for purposes permitted by the Terms and Conditions. You are responsible for all equipment and software used to access the Service.
3. You acknowledge and agree that you may only use the Service if you are a New Zealand resident.
4. You must not:
  - use the Service directly or indirectly for any activity which breaches any laws, infringes a third party's rights, is unlawful, or breaches the Terms and Conditions;
  - use the Service directly or indirectly to post or transmit any information, data, text, software, music, sound, photographs, graphics, video, messages or other material ("**Content**") unlawfully, or which is obscene, indecent, uses offensive language, defames, abuses, harasses, stalks, threatens, menaces, offends or restricts any person, or which prevents any other user from using the Service or which is false, misleading or deceptive in any way;
  - use the Service for distributing any Content in any way which violates, plagiarises or infringes upon the rights of any third party, including but not limited to any copyright or trademark law, privacy or other personal or proprietary or moral rights;
  - use the Service directly or indirectly to conduct surveys, contests, pyramid schemes, or send chain letters, junk email or any other duplicative or unsolicited messages (commercial or otherwise);
  - attempt to gain unauthorised access to the Service or use another person's name, registration account or password;
  - create a false identity for the purpose of misleading others as to the identity of the user of the Service;
  - tamper with, hinder the operation of or make unauthorised modifications to the Service; or
  - knowingly transmit any virus or other disabling feature to the Service.
5. It is your responsibility to keep your login (via your email address) and your password safe and secure. You are responsible for any activity undertaken with your login details. If you think that

your details may have been used by someone else then you must notify the Contact Centre as soon as possible. You must also change your password immediately. You agree to indemnify APN against any and all claims arising out of your failure to maintain the confidentiality of your username and password.

6. If any credit card payments are made in relation to the Service, those payments are processed by an independent third party service provider. You consent to disclosure of relevant information about you to that provider on a confidential basis. If you wish to obtain further information about the provider, then contact us in accordance with the Privacy Statement. To the extent permitted by law, APN excludes all liability in relation to those payments and the services provided by that third party.
7. The Service is provided on an "as is" basis. APN makes no warranty that the Service will be uninterrupted, error-free or free from defects in design or engineering. There may be delays, omissions and interruptions in the availability of the Service. To the extent permitted by law, all implied warranties, conditions and representations about or in relation to the Service are excluded.
8. When registering to use the Service, you must ensure that all information you provide is correct and up-to-date. If you change your details during the use of the Service, you agree to ensure your details are updated.
9. APN reserves the right to suspend, limit, cancel or disable your access to the Service without prior notice: (i) if APN reasonably believes that you or someone authorised by you has breached any of the Terms and Conditions, (ii) if considered necessary by APN due to technical or security issues, (iii) if there is a prolonged period of inactivity in your use of the Service, (iv) if APN is requested to do so by a government or law enforcement agency, (v) if you fail to provide a valid New Zealand residential address or (vi) if it is otherwise considered necessary by APN at its sole discretion. APN is not required to provide any reasons for a decision to suspend, limit, cancel or disable your access.
10. To the maximum extent permitted by law, you specifically agree to indemnify and hold APN and its affiliates, employees, agents, representatives and third party service providers, harmless from any and all claims and liabilities relating to your use of the Service or its use by any person on your behalf.
11. To the extent permitted by law, APN excludes all liabilities (including in contract, for negligence or otherwise) for any loss, damage (whether direct or consequential), costs or expenses suffered by you or claims made against you in connection with, however caused:
  - your use of the Service;
  - any lack of availability, interruption, delay in operation, virus, internet access difficulties, or equipment malfunction in relation to the Service;
  - any failure to provide the Service; or
  - your use or reliance on any information provided in relation to the Service.
12. No advertising booking using the Service will be accepted until prepayment is received using a valid credit card.

13. Once you have completed your advertising booking using the Service, any cancellation of advertising may incur a cancellation fee of 100% of the amount paid for the cancelled advertising.

## Advertising Terms and Conditions

**1. ADVERTISEMENTS:** APN Holdings NZ Limited and its related companies ("APN") accept 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) online advertising on APN websites other than Website Advertising ("Online Advertising"); and

(e) 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, 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 at 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;  
or

(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](http://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:** APN has no obligation to return any advertising material to the Customer unless otherwise agreed by APN prior to publication of the advertisement.

**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, 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.