

## John Fairfax Holdings Limited

ABN 15 008 663 161

### Terms and Conditions of Advertising

These terms ('Terms') apply to all advertising services provided to any person ('Customer') by John Fairfax Holdings Limited ABN 15 008 663 161 or any of its subsidiaries (all of which are referred to as 'Fairfax').

#### 1. Publication of Advertising

- 1.1 Subject to these Terms, Fairfax 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 Fairfax may, in its discretion and without further cost to the Customer, re-publish Advertising in other Fairfax publications and media. For example, Fairfax may publish print Advertising online, or vice versa. Customer warrants Fairfax 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 Fairfax represent an offer to publish Advertising. A binding contract in relation to a request for Advertising will only be formed between Fairfax and a Customer when Fairfax 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, Fairfax 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 Fairfax).

#### 3. Right to Vary Format and Placement

- 3.1 Fairfax reserves the right;
  - (a) to vary the placement of Advertising within a particular

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

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

#### 4. Submission of Advertising

- 4.1 Customer warrants to Fairfax 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 Fairfax does not give rise to any breach by Fairfax 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 Fairfax's opinion, a Customer submits Advertising that looks like editorial material, Fairfax 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 Fairfax immediately after publication. Fairfax 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 Fairfax's negligence).
- 4.7 If the Customer submits Advertising material electronically, the material must comply with Fairfax specifications. Fairfax may reject the Advertising material if it is not submitted in accordance with such specifications.

#### 5. Classified Advertising

- 5.1 Fairfax will publish classified Advertising under the classification heading that it reasonably believes is most appropriate. Classified Advertising headings are for the convenience of readers and are determined at the discretion of Fairfax.
- 5.2 Fairfax will publish classified display Advertising sorted by alphabetical caption and, where space permits, with related line Advertising.

## 6. Online Advertising

- 6.1 For online banner and display Advertising, the Customer must:
- cancel online Advertising in writing at least 30 days before the publication date; and
  - submit creative materials and a click-through URL to Fairfax at least 3 working days (5 working days for non-gif material) before the scheduled publication date.

Fairfax reserves the right to charge the Customer for online Advertising cancelled on less than 30 days notice or if creative materials are not submitted in accordance with clause 6.1(b).

- 6.2 All online Advertising (including rich media) must comply with Fairfax's advertising specifications, which are available on request.
- 6.3 Fairfax will measure online display and banner Advertising (including impressions delivered and clicks achieved) through its own aderving systems. Results from Customer or third party adservers will not be accepted for the purposes of Fairfax's billing and assessment of Advertising.
- 6.4 Subject to clause 12, Fairfax is not liable for any loss, damages or liabilities arising from a failure of the World Wide Web or any telecommunications structure.
- 6.5 Customer acknowledges that Fairfax may at its discretion include additional features or inclusions such as third party advertisements within online classified Advertising.

## 7. Errors

- 7.1 The Customer must promptly:
- check proofs of Advertising, if these are provided to the Customer by Fairfax; and
  - notify Fairfax of any errors in the proofs or any published Advertising.

- 7.2 Fairfax does not accept responsibility for any errors in print Advertising placed over the telephone.
- 7.3 Fairfax does not accept responsibility for any errors in Advertising material received electronically from third parties.
- 7.4 If a Customer wishes to make a claim on Fairfax for credit, re-publication or any other remedy in respect of Advertising, the Customer must send the claim in writing to Fairfax no later than 25 days after the date of the tax invoice or date of publication of the Advertising (whichever is earlier).
- 7.5 Fairfax will only investigate complaints during normal office hours (9am to 5pm, Monday to Friday excluding public holidays).

## 8. Advertising Rates and Taxes

- 8.1 The customer must pay for advertising in accordance with the rates in Fairfax's Advertising Ratecard (and, unless otherwise agreed, at the casual or basic rate). The rates in the Ratecard:
- may be varied at any time by Fairfax without notice; and
  - are exclusive of taxes, duties or GST ('Taxes'), unless the Ratecard specifies that GST or other Taxes are included.
- 8.2 The Customer must pay an additional amount equal to any Taxes payable by Fairfax in respect of Advertising. Fairfax will provide Customers with a tax invoice or adjustment note (as applicable) in a compliant form for GST purposes.
- 8.3 The Customer's eligibility for discounts and rebates will be based on the Customer's GST-exclusive Advertising spend, which will be subsequently adjusted for applicable GST.

## 9. Credit

- 9.1 Fairfax may grant, deny or withdraw credit to a Customer at any time in its discretion.
- 9.2 The Customer must ensure that its Customer account number is available only to those of its employees authorised to use it. The Customer acknowledges that it will be liable for all Advertising requested with the quotation of the Customer's account number.

## 10. Payment

- 10.1 The Customer must pay for Advertising:
- by pre-payment, if so required by Fairfax;
  - if print Advertising on account, within 7 days after the date of the invoice; and
  - if online Advertising on account, within 30 days after the date of the invoice.
- 10.2 The Customer must pay:
- 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;
  - the full price for Advertising notwithstanding:
    - the fact that Fairfax has exercised its right to vary the format or placement of the Advertising; and
    - any error or omission in the Advertising (unless the error or omission was the fault of Fairfax).

## 11. Failure to Pay and other Breach

- 11.1 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, Fairfax may (in its discretion and without limitation):
- cancel any provision of credit to the Customer;
  - require cash prepayment for further Advertising;
  - charge interest on all overdue amounts at the rate 2% above the National Australia Bank Overdraft Base Rate;
  - take proceedings against the Customer for any outstanding amounts;
  - recover from the Customer all costs relating to any action taken by Fairfax to recover amounts owing for Advertising, including without limitation any mercantile agency costs and legal costs on a full indemnity basis;
  - cease publication of any further Advertising on behalf of the Customer and terminate any agreement in relation to Advertising not yet published; and
  - exercise any other rights at law.

- 11.2 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 reorganisation 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.
- 11.3 Fairfax reserves the right to withhold any discounts or rebates if the Customer fails to comply with its payment obligations.
- 11.4 A written statement of debt duly signed by an authorised employee of Fairfax shall be prima facie evidence and proof of the amount owed by the Customer to Fairfax.

## 12. Liability

- 12.1 The Customer acknowledges that it has not relied on any advice given or representation made by or on behalf of Fairfax in connection with the Advertising.
- 12.2 Fairfax 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 ('Nonexcludable Condition').
- 12.3 Fairfax 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 Fairfax, to (at Fairfax's option) re-supply of the Advertising services affected by the breach, or payment of the cost of re-supply
- 12.4 Subject to clauses 12.2 and 12.3, Fairfax 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 Fairfax, whether that liability arises in contract, tort (including by Fairfax's negligence) or under statute. Without limitation, Fairfax will in no circumstances be liable for any indirect or consequential losses, including loss of profits, loss of revenue and loss of business opportunity.

- 12.5 The Customer indemnifies Fairfax 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.

## 13. Privacy

- 13.1 Fairfax collects a Customer's personal information to provide the Advertising services to the Customer and for invoicing purposes. Fairfax 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, Fairfax may disclose personal information to debt collection agencies to recover the amount due.
- 13.2 Customers may gain access to their personal information by writing to the Fairfax Privacy Officer at GPO Box 506, Sydney, 2001. More information about privacy and accessing personal information is in Fairfax's privacy policy which is accessible at [www.fxj.com.au](http://www.fxj.com.au)

## 14. General

- 14.1 These Terms represent the entire agreement of the Customer and Fairfax in relation to Advertising and cannot be varied except in writing by an authorised officer of Fairfax. No purchase order or other document issued by the Customer will vary these Terms.
- 14.2 Fairfax will not be liable for any delay or failure to publish Advertising caused by a factor outside Fairfax's reasonable control (including but not limited to any Act of God, war, breakdown of

plant, industrial dispute, electricity failure, governmental or legal restraint).

- 14.3 Fairfax may service any notice or court documents on a Customer by forwarding them by prepaid post or facsimile to the last known address of the Customer.
- 14.4 These Terms are governed by the laws of the state of:
- (a) Victoria, in relation to Advertising published in The Age or The Sunday Age; and
  - (b) New South Wales, in all other cases.
- Each party submits to the nonexclusive jurisdiction of the courts of the relevant State.