

## 2010-2011 FAIRFAX ADVERTISING TERMS

These terms apply to all advertising provided to any person (**'Customer'**) by Fairfax Media Limited ABN 15 008 663 161 or a subsidiary (**'Fairfax'**). Customer includes an advertiser on whose behalf Advertising is placed and any media company or agency that arranges the Advertising for its clients.

### 1. Publication of Advertising

1.1 Subject to these Terms, Fairfax will use its reasonable endeavours to publish advertising ('Advertising') in the format and in the position agreed with the Customer. 'Advertising' includes images submitted for publication and content or information relating to published Advertisements.

1.2 Customer grants Fairfax a worldwide, royalty-free, non-exclusive, irrevocable licence to publish, and to sub-licence the publication of, the Advertising in any form or medium, including print, online or other. Customer warrants that it is authorised to grant Fairfax the licence in this clause 1.

### 2. Right to Refuse Advertising

2.1 Neither these Terms nor any written or verbal quotation by Fairfax represents an agreement to publish Advertising. An agreement will only be formed between Fairfax and Customer when Fairfax accepts the Advertising in writing or generates a tax invoice for that Advertising.

2.2 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, Placement or Distribution

3.1 Fairfax will use reasonable efforts to publish Advertising in the format and in the position requested by the Customer. However, Fairfax reserves the right to vary the placement of Advertising within a title or website or to change the format of Advertising (including changing colour to black and white).

3.2 Fairfax may distribute interstate or regional editions of a title without all inserts or classified sections.

3.3 Except in accordance with clause 12, Fairfax will not be liable for any loss or damage incurred by a Customer arising from Fairfax's failure to publish Advertising in accordance with a Customer's request.

3.4 If Fairfax changes the press configuration for a publication, Fairfax reserves the right to shrink or enlarge the Advertising by up to 10% without notice to Customer or any change to rates.

### 4. Submission of Advertising

4.1 Customer warrants to Fairfax that the publication of 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 privacy legislation or anti-discrimination legislation;
- (e) any financial services law as defined in the Corporations Act 2001 (Cth); or
- (f) any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth, or a State or Territory).

4.2 Customer warrants that if Advertising 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 Advertising containing contact details for the Customer must contain the full name and street address of the Customer. Post office box and email addresses alone are insufficient.

4.4 If a Customer submits Advertising that looks, in Fairfax's opinion, like editorial material, Fairfax may publish the Advertising under the

heading 'Advertising' with a border distinguishing it from editorial.

4.5 Fairfax will not be responsible for any loss or damage to any Advertising material left in its control.

4.6 Advertising submitted electronically must comply with Fairfax's specifications. Fairfax may reject the Advertising material if it is not submitted in accordance with such specifications.

4.7 Advertising material delivered digitally must include the Fairfax booking identification number.

4.8 If Customer is a corporation and the Advertising contains the price for consumer goods or services, Customer warrants that the Advertising complies with section 53C of the Trade Practices Act (Cth) and contains, as a single price, the minimum total price to the extent quantifiable at time of the Advertising.

4.9 Customer must not resell Advertising space to any third party without Fairfax's consent.

4.10 If Advertising promotes a competition or trade promotion, Customer warrants it has obtained all relevant permits and indemnifies Fairfax against any loss in connection with the Advertising.

### 5. Classified Advertising

5.1 Fairfax will publish classified Advertising under the classification heading it determines is most appropriate. These headings are for the convenience of readers. 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, Customer must submit creative materials and a click-through URL to Fairfax at least 3 working days (5 working days for non-gif material) before publication date. Fairfax may charge Customer for online Advertising cancelled on less than 30 days notice or if creative materials are not submitted in accordance with this clause 6.1.

6.2 All online Advertising (including rich media) must comply with Fairfax's advertising specifications.

6.3 Fairfax will measure online display and banner Advertising (including impressions delivered and clicks achieved) through its ad-serving systems. Results from Customer or third party ad-servers will not be accepted for the purposes of Fairfax's billing and assessment of Advertising.

6.4 Fairfax is not liable for loss or damage from an internet or telecommunications failure.

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 Customer must promptly check proofs of Advertising (if provided to the Customer by Fairfax) and notify Fairfax of any errors in the proofs or in published Advertising.

7.2 Fairfax does not accept responsibility for any errors submitted by the Customer or its agent, including errors in Advertising placed over the telephone.

7.3 Customer must send any claim for credit or republication in writing to Fairfax no later than 14 days after the date of publication of the Advertising.

### 8. Advertising Rates and GST

8.1 The Customer must pay for Advertising, unless otherwise agreed, at the casual ratecard rate. Ratecard rates may be varied at any time by Fairfax without notice. Customer must pay GST at the time it pays for Advertising. Fairfax will provide a tax invoice or adjustment note (as applicable).

8.2 Eligibility for discounts or rebates will be based on the Customer's GST-exclusive advertising spend.

### 9. Credit and Customer Accounts

9.1 Fairfax may grant, deny or withdraw credit to a Customer at any time in its discretion. Customer must ensure that its

# TERMS & CONDITIONS (CONTINUED)

Customer account number is available only to those employees authorised to use it. Customer acknowledges it will be liable for all Advertising placed under Customer's account number.

## 10. Payment

10.1 The Customer must pre-pay for Advertising if required by Fairfax. If Advertising is on account, payment must be within 7 days of date of the invoice or, for certain Rural Press publications, within 21 days of the end of the month in which the invoice is issued. If a commercial account has been established with Fairfax, payment must be within 30 days of invoice date.

10.2 If Customer fails to provide the copy for a booking by publication deadline, Customer will be charged unless a cancellation is approved by Fairfax. If Fairfax accepts Advertising after the deadline, it will be deemed out of specification. Customer has no claim against Fairfax for credit, republication or other remedy for out of specification Advertising.

10.3 Customer must pay the full price for Advertising even if Fairfax varied the format or placement of the Advertising or if there is an error in the Advertising, unless the error was Fairfax's fault. Customer must pay its electronic transmission costs.

## 11. Failure to Pay and Other Breach

11.1 If Customer breaches these terms, fails to pay for Advertising or suffers an Insolvency Event (defined in clause 11.2), Fairfax may (in its discretion and without limitation):

- (a) cancel any provision of credit to Customer;
- (b) require cash pre-payment for further Advertising;
- (c) charge interest on all overdue amounts at the rate 2% above the NAB Overdraft Base Rate;
- (d) take proceedings against the Customer for any outstanding amounts;
- (e) recover Fairfax's costs including mercantile agency and legal costs on a full indemnity basis;
- (f) cease publication of further Advertising or terminate an agreement for Advertising not published;
- (g) exercise any other rights at law.

11.2A Customer suffers an 'Insolvency Event' if:

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

11.3 Fairfax may withhold any discounts or rebates if Customer fails to comply with its payment obligations.

11.4A written statement of debt signed by an authorised employee of Fairfax is evidence 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 ('Non-excludable Condition').

12.3 Fairfax limits its liability for breach of any Non-Excludable Condition (to the extent such liability can be limited) and for any other error in published Advertising caused by Fairfax to the re-supply of the Advertising or payment of the cost of re-supply (at Fairfax's option).

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 incurred in relation to 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, loss of profits, loss of revenue or 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 to the Customer and for invoicing purposes. Fairfax may disclose this personal information to its related bodies corporate, to credit reporting agencies and other third parties as part of provision of the Advertising and for overdue accounts, to debt collection agencies to recover amounts owing.

13.2 Fairfax provides some published Advertising to third party service providers. Where such Advertising contains personal information, Customer consents to the disclosure of their personal information in the advertising to third parties and to the personal information being republished by a third party.

13.3 Customers may gain access to their personal information by writing to the Privacy Officer, GPO Box 506, Sydney NSW 2001. Fairfax's privacy policy is at [www.fjx.com.au](http://www.fjx.com.au).

## 14. Confidentiality

14.1 Each party will treat as confidential, and will procure that its advertising agents, other agents, and contractors ('Agents') treat as confidential and will not disclose, unless disclosure is required by law:

- (a) the terms of this Agreement (including terms relating to volumes and pricing);
- (b) information generated for the performance of this Agreement, including all data relating to advertising schedules, budgets, forecasts, booked advertising, prices or volumes;
- (c) any other information that ought in good faith to be treated as confidential given the circumstances of disclosure or the nature of the information;
- (d) any information derived wholly or partly for any information referred to in (a) to (c) above;

Each party agrees to take all reasonable precautions to prevent any unauthorised use, disclosure or dissemination of the confidential information by or on behalf of itself or any third party.

## 15. General

15.1 These Terms, with any other written agreement, represent the entire agreement of the Customer and Fairfax for Advertising. They can only be varied in writing by an authorised officer of Fairfax. No purchase order or other document issued by the Customer will vary these Terms.

15.2 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).

15.3 Fairfax may serve notice on Customer by post or fax to the last known address of the Customer.

15.4 These Terms are governed by the laws of the State in which the billing company for the Advertising is located and each party submits to the non-exclusive jurisdiction of that State.

## 16. Fairfax Community Network Distribution

(a) Fairfax uses a third party supplier for the household distribution of its free publications and does not make any representation or warranty about the performance of this service.

(b) Any representations by Fairfax Community Network about distribution numbers or distribution areas/coverage are estimates only. Fairfax Community Network does not provide refunds of advertising costs in the event of fluctuations in distribution numbers or areas/coverage as these can vary from week to week.