

Booking Terms & Conditions

Standard terms and conditions for customers.

MSN New Zealand Limited

msn New Zealand Limited (“we”) and the customer (“you”) wish to enter into an agreement regarding advertising, content integration and creative services we may supply to you for use on the msn network, our mobile sites and our partner sites (“our sites”).

1 Overview

1.1 The agreement comprises:

- (a) these Booking Terms and Conditions;
- (b) the terms of the Insertion Order(s);
- (c) any Credit Application Form; and
- (d) where you are a Preferred Agency, any special terms we have agreed.

1.2 This agreement constitutes the entire agreement between the parties and replaces any previous discussions, communications or other documents concerning the supply of the Services.

2 Interpretation

2.1 Definitions

In this agreement, the following words have these meanings, unless the context otherwise requires:

Advertising Copy means all advertising, marketing or other material supplied by you for publication on any of our sites in the form and manner approved by us;

Approved Agency means any customer who provided advertising agency services to its customers and which is registered with us as an approved agency;

Cancellation Fee means the estimated charges and costs we would have reasonably expected to received for provision of Services but for your late cancellation including our charges for producing any Custom Materials and our Fees for publishing any Custom Materials or Advertising Copy based on the applicable Insertion Order;

Custom Materials means customised content and materials in any form which we have produced for any particular campaign or promotion including any banner, advertisement, copy, mini web site or co-branded web pages, newsletters or e-marketing materials as set out in the Insertion Order;

Confidential Information means:

- (a) this agreement; and
- (b) all information of a confidential nature disclosed or communicated by the disclosing party to the recipient including any financial and pricing data; business plans; policies; suppliers; inventions; product information and information about a party's marketing and/or promotional activities
- (c) but excludes any information which the recipient can establish:
 - (i) is or becomes generally available in the public domain otherwise than through a breach of this agreement or any obligation of confidence owed to the disclosing party;
 - (ii) is or becomes known to the recipient from a source other than the disclosing party otherwise than through a breach of an obligation of confidentiality owed to the disclosing party;
 - (iii) is or has been independently developed or acquired by the recipient; or
 - (iv) is approved in writing by the disclosing party for disclosure by the recipient;

Creative Services means design, production and promotional services we provide for interactive media including without limitation creating, producing and marketing Custom Materials, advertising marketing campaigns, e-direct marketing, developing and hosting integrated offerings such as competitions and associated creative services;

Fees means our fees and charges for the provision of Services as specified in the Insertion Order;

Gaming Services means any products or services which provide the means for customers to play games of chance;

Indirect Losses includes losses of profits, revenue, opportunity, anticipated savings or data or any indirect or consequential loss or damage;

Insertion Order means an insertion order which specifies details of the Services we agree to provide to you;

Integration Placements means a placement of Custom Materials or Advertising Copy which is integrated across multiple entry points on our sites;

Launch Date means the date at which we are scheduled to publish any Advertising Copy or make available any Custom Materials for publication as specified in the Insertion Order;

Non Premium Services means any Services other than Creative Services and Premium Services;

OTP means an advertisement which floats over a webpage;

Order means an order for Services described in an Insertion Order which has been accepted by us in accordance with this agreement;

Partner Network means our third party network of websites and the msn New Zealand network of

websites as constituted from time to time;

Premium Services means any Services which we specify as premium services and includes the publication of any Advertising Copy or Custom Materials on the msn network home page and the publication of any OTP on the msn network;

Preferred Agency means an agency with whom we have agreed to offer special trading terms;

Rate Card means our current standard rates and charges for the provision of Services as notified to you from time to time;

Services means the services to be supplied by us to you described in any Insertion Order;

User means a person who accesses a page on our sites;

We, our or us means MSN New Zealand Limited ;

You or your means the person identified as the "Customer" in the Insertion Order; and

Value Credit means a credit we may issue to you upon your cancellation of an Order in accordance with 3.4 (b) for the supply by us of replacement services of equivalent value to the Order.

3 Services

3.1 Provision of Services

We will provide to you with, and you agree to use the Services on our sites in accordance with this Agreement.

3.2 Orders for Services

- (a) You may request Services from us by completing an Insertion Order.
- (b) We will not be obliged to supply you the particular Services set out in the Insertion Order until both the parties have signed the Insertion Order.
- (c) We may require you to submit a completed Credit Application Form prior to our signature of the Insertion Order.

3.3 Cancellation of Services

- (a) You may cancel an Order for any Services at any time without charge provided that you give us at least thirty (30) days notice prior to the Launch Date except in the case of Orders for the Partner Network which you may cancel on notice at any time up to 24 hours prior to the Launch Date.
- (b) In the event you cancel an Order for Services on less than the notice period set out in clause 3.3 (a) prior to the Launch Date and we may in our discretion issue you with a

Value Credit or charge you a Cancellation Fee.

- (c) All Value Credits must be used within sixty (60) days of the issue date.
- (d) You further acknowledge that use by you of any Value Credit is subject to the availability of replacement services and that we may in our discretion restrict your use of any Value Credit for Premium Services to the purchase of non Premium Services of equivalent value.
- (e) If you cancel an Order for Creative Services, regardless of the notice period we will charge you for any production costs and charges you have incurred as of the date of the cancellation.
- (f) We may cancel an Order or part Order at any time without giving you any reasons for the cancellation. If we exercise this right we will at our option:
 - (i) refund to you any Fees that you already paid to us;
 - (ii) issue a Value Credit; or
 - (iii) reschedule the Launch Date to another date within sixty (60) days of the cancellation date;

and you agree that this is our sole liability to you in relation to that particular Order or part Order.

4 Advertising Copy

4.1 Form of Advertising Copy

You will ensure all Advertising Copy complies with our advertising specifications which are available on request.

4.2 Editorial Matter

- (a) You will ensure that Advertising Copy is clearly identifiable to users as advertising material and does not contain any material which could be confused by Users with our editorial content.
- (b) You acknowledge that we may label any Advertising Copy as an advertisement when we publish it.

4.3 Promotion of Competitions

You will ensure that any Advertising Copy which references any competition clearly identifies the promoter of the competition and that you have obtained all applicable permits and approvals for the conduct of the competition prior to the Launch Date.

4.4 Website Links

You will ensure that any url referenced in any Advertising Copy will link Users to the intended website. We may test whether the url is functional and may in our discretion remove any url which

does not meet with our approval.

4.5 **Delivery of Advertising Copy**

- (a) You will supply us with Advertising Copy for our approval at least five (5) days prior to the Launch Date.
 - (b) We may in our discretion accept late Advertising Copy for publication but if the Advertising Copy is intended to be published as a Premium Placement we may choose in our discretion to delay publication of the Order and extend the publication date and/or in the case of an OTP to publish the medium rectangle component of the OTP only and we may charge you the Fees for the OTP as set out in the applicable Order in full.
 - (c) If we do not receive your Advertising Copy on time we may treat this as a cancellation of the applicable Order or part thereof and we may charge you a Cancellation Fee.
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5 **Sales Materials**

You acknowledge that any marketing slide packs, mock ups, presentations or marketing materials supplied to you concerning our Services are examples only and that we may in our discretion vary the placement of any Advertising Copy including Integration Placements within our sites.

6 **Betting and Gaming**

If you use our Services for the purpose of promoting or marketing any Gaming Services provided by you or any third party you will:

- (a) implement appropriate procedures to ensure that all Users who access such services via our sites are not domiciled in a country which prohibits access to Gaming Services. (We may in our discretion have the right to audit and test the effectiveness of your procedures and you will provide us with any reasonable technical assistance we require for such audit.)
 - (b) ensure that any Gaming Services offered to Users in New Zealand comply with the Gambling Act 2003, the relevant regulations under that Act and any other relevant New Zealand legislation.
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7 **Creative Services**

7.1 **Instructions and Materials**

You will supply us with any design instructions, logos, art work or materials which we will need to carry out Creative Services for you in the manner and format we specify at the time of completion of the Insertion Order.

7.2 **Approval of Custom Content**

We will use reasonable endeavours to supply mock ups of all Custom Materials for your approval

reasonably in advance of the Launch Date.

- 7.3 You must promptly check mock ups upon receipt and notify us of your approval or of any errors or amendments you require prior to the Launch Date. We may charge you additional fees for any amendments' we estimate will take more than one business day's work to complete.
- 7.4 Subject to Clause 7.2 if we do not receive your approval for mocks ups of the Custom Materials supplied to you at least two (2) days prior to Launch Date we may in our discretion treat this as a cancellation of the applicable Order or part thereof and we may charge you a Cancellation Fee.
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8 Warranties

8.1 Your Warranties

You warrant to us that:

- (a) you have all applicable licenses and consents necessary to enter into and perform your obligations under this agreement;
- (b) you are fully authorised to act on behalf of any advertiser or client on whose behalf you are requesting Services;
- (c) you have complied and will continue to comply with all applicable laws and regulations in performing your obligations under this agreement;
- (d) you will not breach any agreement, arrangement or understanding with a third party as a result of entering into or performing any part of this agreement;
- (e) Advertising Copy complies with all applicable laws and regulations and industry guidelines;
- (f) Advertising Copy will not infringe the intellectual property rights of any person;
- (g) Advertising Copy will not include or contain a link to any content that is, illegal, obscene, violent, defamatory or pornographic;
- (h) you will not insert any tag, code, cookie or other data tracking or collection device into the Advertising Copy without our express permission; and
- (i) you will not use or redistribute to any third party without our permission any information or reports we may supply to you other than for the purpose of evaluating the performance of our Services.

8.2 Our warranties

We warrant to you that:

- (a) we have the right to supply the Services to you;
- (b) we will use reasonable care and skill in supplying the Services; and

- (c) we will comply with all applicable laws and regulations in supplying the Services.

8.3 Exclusion of Warranties

We exclude all implied conditions and warranties from this agreement except any conditions or warranties (such as those implied by the Consumer Guarantees Act 1993) which cannot by law be excluded.

9 Intellectual Property

- (a) Unless otherwise agreed in the Insertion Order we or our licensors own the intellectual property in the Custom Content, our trade marks and any other material developed or provided by us under this agreement.
- (b) You and your licensors own the intellectual property in any Advertising Copy, your trade marks and any other material you provide to us under this agreement.
- (c) Except as authorised by this agreement, the parties agree not to:
 - (i) reproduce the other party's intellectual property; or
 - (ii) sub-license, on-supply or further syndicate the other party's intellectual property on any website other than the msn network.

9.2 Licence of Intellectual Property

- (a) You grant us a limited, non-exclusive and non-transferable licence to reproduce and communicate to the public the Advertising Copy on our sites in accordance with the agreement.
 - (b) You grant us a limited non-exclusive right to copy, adapt, modify and otherwise use any logos or other design materials you supply to use for the purposes of supplying you with Creative Services.
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10 Payment

10.1 Rates and Fees

You will pay the Fees. If no Fees are specified in the Booking Form the charges for our Services will be as set out in our current Rate Card at the time of our acceptance of the Order.

10.2 Changes to Rates

We may change our Rate Card from time to time without notice.

10.3 Costs and charges

We may charge you additional costs we incur in the provision of Services including:

- (a) cost of obtaining any necessary licenses for any competitions which form part of Creative

Services;

- (b) any additional costs we incur in providing any talent, photography, filming, special effects of other special services which you request be supplied as part of the for the Creative Services;
- (c) late payment charges for any overdue invoice which will be calculated monthly on the overdue amount at two per cent (2%) above the base rate of Westpac Banking Corporation.

10.4 **GST and taxes**

You will pay all applicable taxes, duties and other government charges payable or assessed in connection with this agreement including goods and services tax, , but excluding taxes, duties and government charges assessed on our income.

10.5 **Invoices**

- (a) We will invoice you monthly for fees and costs due under this agreement.
- (b) You will pay the amounts invoiced within thirty (30) days of the date of the invoice. You may if agreed with us, make payment by electronic debit of your nominated account.

10.6 **Measurement of Advertising**

We will measure advertising (including impressions delivered and clicks achieved) through our advertising systems. Results from third party ad-servers will not be accepted for the purposes of billing and assessment of advertising performance.

11 **Approved Agencies**

11.1 **Commission Payments**

- (a) Where you are an Approved Agency you will be entitled to receive a commission equal to ten percent (10%) of the total amount of your monthly invoiced Fees.
- (b) Payment of any commission is conditional upon the following:
 - (i) you must fully disclose to your clients the amount of commission you receive from us;
 - (ii) you must fully comply with this agreement; and
 - (iii) no more than fifty percent (50%) of the Fees we invoice in any month will be attributable to Services supplied to you on behalf of a single client.
 - (iv) Your payment in full of invoices within thirty (30) days.
- (c) Any commission payable to you will be deducted from your monthly invoice. We will add goods and services tax to the commission.

11.2 Status as Approved Agency

- (a) You must supply us with any information we may reasonable request in support of your application to be registered as an Approved Agency including solvency statements, balance sheet and profit and loss statements and details of any insurance policies you hold.
- (b) We may revoke your status as an Approved Agency at any time upon written notice without giving any reason.

12 Third Party Partner Network

In the case of advertising campaigns run on the Partner Network the following terms will apply:

- (a) All advertising campaigns will be run over the Partner Network as constituted at the time each campaign runs. A list of third party sites and advertising networks included in the Partner Network is available in the "Advertise on msn NZ" section of msn.co.nz
- (b) You acknowledge that the Partner Network may be subject to change at any time. It is your responsibility to check for any updates to the Partner Network at the time the campaign is run and to advise us should you wish to opt out of any particular site or third party advertising network.
- (c) The Partner Network may include partner advertising networks which will run your campaign on a blind buy basis. You acknowledge that these networks do not supply any details of the sites included in these networks and that we cannot provide you with any data or information relating to these websites or the conduct or performance of the campaign on these networks.
- (d) During each campaign period, we will issue you with a report at the end of each month which sets out the aggregate number of impressions (CPM) or clicks (CPC) as relevant for that month

13 Confidential Information

- (a) Each party must:
 - (i) take all action reasonably necessary to maintain the confidentiality of the other party's Confidential Information;
 - (ii) not disclose the other party's Confidential Information to any person except as permitted under paragraph (b);
- (b) A party ("**recipient**") may disclose the Confidential Information of the other party:
 - (i) to a representative of the recipient who needs to know the Confidential Information

for the purposes of this agreement and subject to the recipient taking reasonable steps to ensure that any such representative is fully aware of the confidential nature of the Confidential Information of the disclosing party before the disclosure is made; or

- (ii) which is required or authorised to be disclosed by any law.
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14 Indemnity and liability

You indemnify us against all loss or liability we may suffer or incur arising out of any claim made against us as a result of breach of your warranties in clause 8.1 and any act or omission by you in connection with your Advertising Copy.

14.1 Limitation of Liability

- (a) neither party is liable for any Indirect Loss incurred by them or by any other person arising out of or in connection with this agreement; and
- (b) our liability to you for any claims made under this agreement (whether such liability arises in contract, tort (including negligence) or otherwise) is, to the fullest extent permitted by law, limited at our option to resupplying the Services or paying the cost of having the Services resupplied.

14.2 No responsibility for Advertising Copy

- (a) We are not liable for any aspect of the Advertising Copy including any products or services referred to in the Advertising Copy.
- (b) You are solely responsible for the content of all Advertising Copy and associated products and services, including any ancillary competitions and promotions.

14.3 Complaints

If you wish to make a claim for a Value Credit, republication or any other remedy in respect of our Services you must send the claim to us no less than fourteen (14) days after the Launch Date.

15 General

15.1 Applicable law

This agreement is governed by the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the courts of that place.

15.2 Notices

A notice must be in writing to the address of the addressee as stated in the Insertion Order.

15.3 Public statements

Neither party may issue a press release or other public statement in relation to this agreement without the prior written consent of the other.

15.4 **No Agency**

This agreement will not create a joint venture, legal partnership, employment or agency relationship between you and us.

15.5 **Assignment**

Neither party may transfer or assign this agreement without the other party's prior written consent (not to be unreasonably withheld).

15.6 **Force Majeure**

Neither party will be liable for its failure to perform any of its obligations under this agreement due to any contingency beyond its reasonable control.

15.7 **Privacy**

msn may collect your personal information to provide the Services to you and for invoicing purposes. The collection, use or disclosure of any personal information provided to us by you in connection with your use of the Services is subject to the msn Privacy Policy which is available at www.msn.co.nz.