

# Advertising Terms and Conditions

## Agreed Terms

---

### 1. Agreement

---

- (a) These Terms apply to the provision of Services by Specialist Media Pty Ltd ACN 666 958 783 (**Company, we, us and our**) to a customer (**Customer, you and your**) and form the basis of a legally binding agreement between the Company and you. If you do not agree to these Terms, you must not make a Request for Services.
- (b) The following documents will form the agreement between the parties:
  - (i) the Booking;
  - (ii) the Request for Services;
  - (iii) any schedules or annexures to this document, and
  - (iv) these Agreed Terms,(together, the **Terms**) and any ambiguity or discrepancy between the documents will be resolved and interpreted according to the same order of preference as the documents listed above, with the documents higher in the list having higher priority.

### 2. Updating of Terms

---

The Company may amend these Terms from time to time. These Terms were most recently updated on the version date set out at the top of this document. You can access the latest copy of the Terms on our websites:  
Travel Daily: [traveldaily.com.au](http://traveldaily.com.au)  
Cruise Weekly: [cruiseweekly.com.au](http://cruiseweekly.com.au)  
Pharmacy Daily: [pharmacydaily.com.au](http://pharmacydaily.com.au)

### 3. Term

---

- (a) These Terms begin on the Commencement Date and continue for the duration of the Advertising Services under any Booking, unless it is terminated earlier by either party under clause 11 or expiring earlier under clause 5.
- (b) These Terms will expire immediately upon the Company's completion of the Advertising Services, in accordance with the Booking.

### 4. Advertising Services

---

#### 4.1 Request for Services

- (a) You may make a request for Advertising Services by:
  - (i) submitting a request through the Website; or
  - (ii) contracting directly with the Company via phone or email; (**Request for Services**).
- (b) You acknowledge and agree that making a Request for Services will constitute your acceptance of these Terms.
- (c) The Company may refuse your Request for Services if we, in our sole discretion, consider the request is fraudulent or otherwise in breach of any Law.

#### 4.2 Booking

- (a) Within 5 Business Days of receiving a Request for Services, the Company will review the Request for Services and provide a booking confirmation of the Advertising Services to you in writing, which may confirm without limitation, the form of advertising selected, timing for publication, necessary amendments to the Request for Services, the Fee payable and further information required (**Booking**).
- (b) The Booking will become binding on both parties once you communicate your acceptance or acknowledgement of the booking confirmation or the Booking, or otherwise send us materials to allow us to provide the Advertising Services.

#### 4.3 Provision of Advertising Services

In consideration of you complying with the obligations in clause 5, the Company will perform the Advertising Services in accordance with the Booking, subject to these Terms and any variations agreed in writing by the parties.

#### 4.4 Standard of Advertising Services

The Company will supply the Advertising Services, and any Deliverables associated:

- (a) competently with due care, skill, diligence and judgement and in a thorough, lawful, efficient and professional manner; and
- (b) in accordance with all applicable Law, our Policies and these Terms.

### 5. Cancellation of Bookings

---

#### 5.1 Customer right to cancellation

- (a) If you cancel any Booking by no less than 30 days' written notice to us, we will issue a credit to you of any Fees paid in respect of that Booking.
- (b) Unless agreed otherwise between the parties, if you do not cancel in accordance with clause 5.1(a), we may be entitled to retain any Fees you have paid in respect of that Booking.

#### 5.2 Company right to cancellation

Subject to applicable Law, if you do not provide the materials, content or information requested by the Company by a deadline specified in the Booking or notice in writing by the Company, the Company may (in its sole discretion):

- (a) reject the Booking; and
- (b) if the cancellation is less than 2 days before the Publication Date, charge the Fees for the Advertising Services.

## 6. Your obligations

---

### 6.1 General obligations

You must (and it is a condition of these Terms and Booking that you):

- (a) pay the Fees in accordance with these Terms;
- (b) cooperate with us, provide all information requested by us to allow us to fulfil our obligations in these Terms and provide all Advertising Materials by the dates set out in a booking confirmation;
- (c) ensure all material provided under these Terms, including without limitation the Advertising Materials, is accurate, up-to-date, complete, and free of malfunctions;
- (d) at all times, not engage in any behaviour or provide any information, materials or representations that would damage the goodwill, reputation or branding of the Company; and
- (e) comply with all applicable Law (including Privacy Laws), these Terms and the Booking, as amended from time to time in writing.

### 6.2 Customer acknowledgements

You acknowledge and agree that:

- (a) you are solely responsible for determining if the Advertising Services meet your needs and request the Advertising Services at your sole risk;
- (b) you are solely responsible for content, accuracy and completeness of any information or materials provided to the Company under these Terms, including without limitation, any third-party links embedded and warranties or representations made by the information or materials when published;
- (c) if you do not fulfil your obligations under these Terms, we may not be able to fulfil any or all of our obligations under these Terms;
- (d) the timing for performance of the Advertising Services is an estimation only, and we may change or delay performance timing, including the Publication Date, in our reasonable discretion by written notice to you; and
- (e) we may, without any liability to us, intercept, remove, alter, reject or prevent publication of any information, materials or Advertising Materials you provide that we reasonably consider is:
  - (i) offensive, defamatory, damages our goodwill or reputation or breaches any Law or contravenes these Terms or our Policies;
  - (ii) inaccurate, out-of-date or is incomplete; or
  - (iii) uses data in an unlawful manner, including without limitation, malware, hidden text or links, spyware or methods for circumventing content protection measures.

### 6.3 Customer Warranties

By agreeing to these Terms, you warrant you will, and will ensure your Personal:

- (a) do not engage in any conduct or provide any materials or information to the Company that is misleading or deceptive, or likely to mislead or deceive;
- (b) comply with applicable Law, including without limitation, ensuring no unlawful use of third party intellectual property rights; and

- (c) have the capacity and authority to enter into a Booking and these Terms.

## 7. Fees and Invoices

---

### 7.1 Fees and Invoicing

Unless otherwise agreed in writing (including within a booking confirmation):

- (a) we will invoice you for the Fees in relation to any Advertising Services performed under a Booking, or otherwise cancelled under clauses 5.1(b) or 5.2; and
- (b) you must pay all invoices within 30 days of issue in accordance with the payment terms set out in the invoice, unless you are an Agency, in which case you must pay all invoices within 45 days.

### 7.2 GST

- (a) Any terms used in this clause 7.2 that are not otherwise defined in these Terms have the meaning given in the *A New Tax System (Products and Services Tax) Act 1999* (Cth).
- (b) If GST has application to any supply made under or in connection with these Terms, the supplier may, in addition to any amount or consideration payable under these Terms, recover from the recipient an amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by the recipient for the supply by the prevailing GST rate.
- (c) Any additional amount on account of GST recoverable from the recipient under this clause will be calculated without any deduction or set off of any other amount and is payable by the recipient.

### 7.3 Payment Defaults

If you do not pay the Fees or any other amount payable under these Terms when due, and without limiting any other remedies available to us, we may do one or more of the following:

- (a) suspend performance of the Advertising Services;
- (b) charge a fee of up to 2% per month on the amount of any monies that remain owing by you to us, following the date payment is due; and
- (c) engage in debt recovery procedures or processes as we deem necessary to recover the Fees, including engaging third parties to conduct such procedures or processes.

### 7.4 Disputed invoices

- (a) If you reasonably believe an invoice contains an error and you wish to dispute the invoice, you must:
  - (i) pay any undisputed amounts under the invoice;
  - (ii) give written notice to us no later than 14 Business Days after issue; and
  - (iii) provide detailed information about any disputed fees.
- (b) We will investigate the dispute and if we agree that the invoice contains an error, we will issue a replacement invoice to you.

## 8. Intellectual Property Rights

---

- (a) As between the parties:
  - (i) we acknowledge that you retain all rights, title, and interest in the Customer IP; and
  - (ii) you acknowledge that we retain all rights, title, and interest in the Company IP, including the Deliverables subject to clause 8(c).

- (b) You grant us a non-exclusive, worldwide, irrevocable, sublicensable, payment free licence during the Term to the Intellectual Property Rights in the Customer IP as necessary for us to provide the Advertising Services, including the Deliverables, and comply with our obligations under these Terms.
- (c) On the creation of any Deliverables containing the Customer IP, you grant to us a non-exclusive, perpetual, irrevocable, sublicensable, worldwide, payment-free licence to use, reproduce, modify, adapt, and further develop the Customer IP, incorporated as part of any Deliverable for use on our Website and in our publications (digital or printed).
- (d) You warrant to us, and it is a condition of these Terms, that our performance of the Advertising Services and provision of the Deliverables in accordance with these Terms will not infringe the Intellectual Property Rights of a third party, and that you are entitled to license the Intellectual Property Rights to the Customer in accordance with clauses 8(b) and 8(c), or any other relevant clause in these Terms.

## 9. Confidentiality

### 9.1 Obligations of Confidence

Each party agrees to, and must ensure each of its Personnel:

- (a) hold in strict confidence all Confidential Information of the other party;
- (b) use the Confidential Information solely to perform or to exercise its rights under this document;
- (c) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third party; and
- (d) take all reasonable steps, including keeping such information in a safe place and implementing adequate security measures, to ensure that all Confidential Information is secure from unauthorised use, disclosure or copying by third parties.

### 9.2 Exclusions

The obligations in clause 9.1 do not apply:

- (a) to the extent necessary to enable disclosure required by law;
- (b) to any disclosure agreed in writing between the parties;
- (c) where the Confidential Information has entered the public domain other than as a result of a breach of this document or other obligation of confidence; or
- (d) that is already known by, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.

## 10. Privacy

- (a) If you provide or make Personal Information available to us, you must make all disclosures and obtain all consents necessary to allow us to collect, store, use, and otherwise deal with the Personal Information lawfully in accordance with the Privacy Laws.
- (b) We will only collect, store, use, and otherwise deal with the Personal Information strictly as necessary to perform our obligations under these Terms and otherwise in accordance with all Privacy Laws.

- (c) You must give all assistance required by us from time to time in relation to your compliance with the Privacy Laws, or any related investigation, request or enquiry.

## 11. Termination of Agreement

### 11.1 Termination for convenience

Unless otherwise agreed in writing, the Company may terminate these Terms, in whole or in part, without cause by giving you at least 30 days' written notice.

### 11.2 Termination for cause

Either party may terminate these Terms immediately on written notice if the other party:

- (a) commits a material breach of these Terms that is incapable of remedy;
- (b) commits a material breach of these Terms that is capable of remedy and fails to remedy the breach within 14 days of receiving notice to remedy the breach; or
- (c) suffers an Insolvency Event.

### 11.3 Obligations Upon Termination

- (a) On termination or expiry of these Terms, for any reason:
  - (i) the licence granted under clause 8(c) will continue in force;
  - (ii) you must pay the Company the Fees for any Advertising Services supplied up to the time of termination for which you have not paid for, or otherwise claimed under clauses 5.1(b) or 5.2; and
  - (iii) each party must cease using the other party's Confidential Information and Intellectual Property Rights, subject to clause 8(c).
- (b) Termination or expiry of these Terms will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination.

### 11.4 Survival

Except as otherwise provided herein, termination of these Terms for any or no reason will not release either party from liability to the other party that at the time of termination has already occurred or that thereafter may occur in respect of any act or omission prior to such termination; nor will any such termination affect in any way the survival of any right, duty or obligation of either party that is to survive termination. The provisions of clauses 7, 8, 9, 10, 11, 12, 13 and any other provision which should by their nature survive any termination or expiry of these Terms.

## 12. Indemnity

You indemnify the Company and its Personnel against any Claim or Loss arising out of or in connection with:

- (a) your material breach of these Terms;
- (b) any breach of clauses 6.3, 8, 9 or 10; and
- (c) incorrect provision of information within a Request for Services or during the Company's delivery of the Advertising Services to you.

## 13. Liability

### 13.1 Limitation of Liability

- (a) Subject to clauses 13.1(b), 13.2 and 13.3, and unless otherwise prohibited at Law, the total liability of the Company under or in connection with these Terms, whether under contract, in tort, under statute, or

otherwise is limited to the amount equal to 12 months of Fees paid by you to the Company.

- (b) Neither party's liability will be limited or excluded in the case of any Claim arising from:
  - (i) death or personal injury resulting from negligence of the party or its Personnel;
  - (ii) fraud, fraudulent misrepresentation or criminal conduct of the party or its Personnel; or
  - (iii) wilful default, wilful misconduct, or gross negligence of the party or its Personnel.

### 13.2 Exclusions

As far as the Law permits (including under the Australian Consumer Law), and unless otherwise specified in these Terms:

- (a) neither party nor any of its Personnel will be liable to the other party for any Consequential Loss; and
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law in relation to the supply of the Advertising Services and Deliverables are excluded from these Terms.

### 13.3 Australian Consumer Law

- (a) If the Australian Consumer Law applies to the supply of any goods or services under these Terms, the Company acknowledges and agrees that its goods and services come with guarantees that cannot be excluded under the Australian Consumer Law and nothing in these Terms is intended to limit the rights you may have under the Australian Consumer Law.
- (b) To the maximum extent permitted by Law, in the event the Company breaches a consumer guarantee under the Australian Consumer Law, the Company's liability with respect to the Services will be limited to (at our election):
  - (i) the re-supply of the Advertising Services and Deliverables for the affected Booking; or
  - (ii) payment of the cost of having the Advertising Services and Deliverables supplied again for the affected Booking.

### 14. Dispute Resolution

- (a) A party must not commence court proceedings in relation to any dispute arising from or connected to these Terms before first complying with this clause 14.
- (b) A party claiming that a dispute has arisen must notify the other party in writing, specifying the nature of the dispute (**Dispute Notice**). Upon receipt of the Dispute Notice, both parties must engage in good faith negotiations to resolve the Dispute within 30 days.
- (c) Each party must:
  - (i) bear its own costs in connection with resolving the Dispute; and
  - (ii) keep any information or documents disclosed by a party under this clause confidential and use them only for the purpose of resolving the Dispute.
- (d) Nothing in this clause prevents a party from seeking urgent interlocutory relief in a court.

### 15. Force Majeure Events

Neither party shall be liable for any delay or failure to perform its obligations under these Terms if such delay or failure is caused by a Force Majeure Event, provided that the affected party promptly gives a notice to the other party that:

- (a) fully describes the Force Majeure Event and specifies the obligations the party cannot perform;
- (b) estimates the time during which the Force Majeure Event will continue; and
- (c) specifies the measures proposed to be adopted to mitigate, remedy or abate the Force Majeure Event.

### 16. General

- (a) These Terms supersede all previous agreements about its subject matter.
- (b) A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under these Terms may only be waived in writing signed by the party granting the waiver and is effective only to the extent specifically set out in that waiver.
- (d) The laws of New South Wales, Australia govern these Terms, and each party irrevocably submits to the exclusive jurisdiction of New South Wales, Australia courts and courts competent to hear appeals from those courts.
- (e) We may, without limiting any rights or remedies we may have under these Terms, set off any amounts owed to it by us under these Terms against any amount payable by you to us.
- (f) A clause or part of a clause of these Terms that is illegal or unenforceable may be severed from these Terms and the remaining clauses or parts of the clause of the Terms continue in force.

### 17. Definitions

In these Terms:

**Advertising Materials** means any materials or content you provide to us to publish in our publication.

**Advertising Services** means the product, job, promotion, competition or event advertising services provided by the Company to you, as set out under the relevant Booking.

**Agency** means an agency engaged by end customers for marketing and advertising services.

**Australian Consumer Law** means schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Booking** has the meaning set out in clause **Error! Reference source not found.**

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales.

**Claim** means all losses, liabilities, demands, claims, costs and expenses of any kind.

**Commencement Date** means the date the parties agree to these Terms in accordance with clause 4.1(b).

**Company** has the meaning set out in clause 1(a).

**Company IP** means any Intellectual Property Rights owned by the Company in the Website, Advertising Services, Deliverables (subject to any Customer IP), and publications created or derived by the Company, including any Improvements.

**Confidential Information** means any information relating to the business and affairs of a party which is by its nature confidential or designated as confidential by a party or which the other party knows or ought to know is confidential including with respect to the Advertising Services, this document or the Intellectual Property Rights of a party.

**Consequential Loss** means any consequential, special, indirect or incidental loss including without limitation loss of profit, loss of revenue, business interruption, loss of business, loss of opportunity, loss of reputation or loss in connection with breach of third-party contracts or arrangements.

**Customer** has the meaning set out in clause 1(a).

**Customer IP** means any Intellectual Property Rights owned by the Customer in the information, Advertising Materials or materials provided to the Company under these Terms.

**Deliverables** means any deliverables created or improved in connection with the Company's performance of the Advertising Services, including without limitation, any photo pages, brochures, Website pages, newsletter, blog or magazine articles, or email blasts.

**Dispute Notice** has the meaning set out in clause 14(b).

**Fees** means fees we may charge you for the Advertising Services from time to time in line with clause 7.

**Force Majeure Event** means any matter beyond the reasonable control of a party, which is not reasonably foreseeable and not incurred or as the result of the negligence of the afflicted party, which materially impacts the ability of the afflicted party to perform its obligations but does not include any obligation for payment under these Terms.

**Improvement** means any modification, enhancement, extension, adaptation, development of, applications of, mutations, improvement or other technical advance to a technology, material, document, software, or substance in whatever form.

**Insolvency Event** means any of the following events concerning a party:

- (a) if an administrator, liquidator, receiver, receiver and manager or other controller is appointed to, or over, any of the property or undertaking of the party;
- (b) if the party is unable to pay their debts when they become due and payable or otherwise ceases to carry on business.

**Intellectual Property Rights** means any current and future intellectual and industrial property rights and interests throughout the world, including any patents, copyrights and related rights, utility models, designs, trade marks, service marks, rights in relation to circuit layouts and databases, rights in relation to discoveries, trade secrets, and know how, trade, business, or company name, indication, source or appellation of origin, applications for, or rights to apply for registration of any of those rights, rights under licences and consents in relation to any of them; and any other forms of protection of a similar nature or having equivalent or similar effect to any of them now or in the future, whether registered or unregistered, for the duration of the rights and interests.

**Law** means all applicable present and future legislation, ordinances, regulations, by laws, local laws, orders and proclamations, approvals, principles of law or equity, standards, codes and guidelines, directions or notices issued by any government authority.

**Loss** includes all damages, losses, costs, expenses and charges including taxes and duties.

**Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).

**Personnel** means a party's directors, officers, employees, agents, contractors and subcontractors, as the context permits.

**Policies** means the policies, procedures and codes of conduct for the Company available on the Website, as updated from time to time.

**Privacy Laws** means the *Privacy Act 1988* (Cth) and the Australian Privacy Principles and any other applicable laws relating to protecting the privacy of individuals.

**Publication Date** means the agreed date for performance of the Advertising Services and publication of the Deliverables under a Booking, unless otherwise amended in writing between the parties.

**Request for Services** has the meaning given to that term in clause 4.1.

**Term** has the meaning set out in clause 3.

**Terms** has the meaning given to that term in clause 1(b).

**Website** means the Company website located at  
Travel Daily: [traveldaily.com.au](http://traveldaily.com.au)  
Cruise Weekly: [cruiseweekly.com.au](http://cruiseweekly.com.au)  
Pharmacy Daily: [pharmacydaily.com.au](http://pharmacydaily.com.au)

## 18. Interpretation

---

In these Terms:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, these Terms and references to these Terms include any schedules or annexures;
- (b) a reference to a party to these Terms or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a document or agreement (including a reference to these Terms) is to that document or agreement as amended, supplemented, varied or replaced;
- (e) a reference to these Terms or this agreement includes the agreement recorded by these Terms;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (h) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', or 'for example' (or similar phrases) do not limit what else might be included.