

MOOD

ADVERTISING TERMS AND CONDITIONS

MOOD Magazine (**MOOD**) accepts all advertisements from the Client for publication on the following Terms and Conditions.

1. DEFINITIONS

- 1.1 'Advertising,' 'Advertising Material,' 'Advertisement' or 'Feature' means material provided by the Client for publication in MOOD and includes images submitted to MOOD.
- 1.2 'Booking' means the space the Client has reserved in MOOD for their Advertisement.
- 1.3 'Client' means the advertiser or advertising agency that is advertising in MOOD.
- 1.4 'Media Kit' means the document found on the MOOD Website that includes information such as Prices and print deadlines.
- 1.5 'Publication' means both the hard copy and digital publication of MOOD as well as any other MOOD media properties.
- 1.6 'Price' means the fee excluding GST charged to the Client for Advertising in MOOD.
- 1.7 'Terms and Conditions' means the Terms and Conditions contained in this document.
- 1.8 'Website' means <https://www.itsamood.co.nz/>

2. ADVERTISING MATERIAL

- 2.1 The Client may provide its own Advertising for the Publication.
- 2.2 Advertising must be received by MOOD by the specified deadline as contained in the Media Kit.
- 2.3 MOOD will not be responsible for any errors in the Advertising Material provided by the Client for the Publication or for any errors found after the Client has approved the Advertising Material to print.
- 2.4 MOOD will not be responsible for any loss or damage to such Advertising Material while in the possession of MOOD.
- 2.5 Where MOOD provides creative services to the Client (including facilitation of photography and other content creation), the Client acknowledges that MOOD does so as agent for the Client and the Client:

- 2.5.1 is solely responsible for; and
- 2.5.2 provides the warranties set out in these terms in relation to, any
 - (a) Advertising which is the product of such creative services, including its compliance with applicable laws, regulations and codes of conduct; and
 - (b) once MOOD has received client approval for the created content, responsibility of any incorrect information displayed in the Advertising content rests solely with the Client.
- 2.6 Any text, images or logos the Client wants to include in Advertising Material and being created by MOOD are owned by MOOD unless MOOD offers this material to the Client for a fee.
- 2.7 The Client agrees to immediately notify MOOD if the Advertising Material or any part of the Advertising Material submitted to MOOD for the Publication has been, or will be, used in any other hard copy publication, digital publication or media property.

3. PUBLICATION OF ADVERTISING

- 3.1 The Client grants MOOD a worldwide, royalty-free, non-exclusive, irrevocable licence to publish, and to sub-licence the publication of, the Advertising in any form and in any medium.
- 3.2 The Client warrants that it has the right and authority to grant to MOOD the licence referred to in this clause 3.1.
- 3.3 MOOD has no obligation to publish or re-publish Advertising Material on other MOOD media properties but reserves the right to do so at no further cost to the client.
- 3.4 MOOD will not be liable to the Client if the Publication features the product(s) of a competitor to the Client.

4. RIGHT TO VARY FORMAT AND PLACEMENT

- 4.1 MOOD will endeavour to grant the Client the environment and/or placement the Client requests for its Advertisement, but MOOD will not be responsible or liable to the Client in any way if the Client's request cannot be granted.
- 4.2 MOOD may in its discretion:
 - 4.2.1 publish Advertising submitted by the Client in a format that varies from that submitted by the Client in order to make it most appropriate for the Publication; and
 - 4.2.2 vary the placement of Advertising within the Publication.

4.3 MOOD is under no obligation to notify the Client of any such changes referred to in this clause 4.2, provided that the change does not constitute a change in the price.

5. **RIGHT TO REFUSE ADVERTISING**

5.1 MOOD may at any time and without notice to the Client cancel, reject or refuse to publish or continue publishing any Advertisement.

5.2 In accordance with clause 5.1 MOOD reserves the right to refuse or withdraw from the publication any Advertising, even if the Advertising has previously been published by MOOD and even if a contract has been formed in accordance with clause 9.2.

6. **PRICES AND PAYMENT**

6.1 Prices and specifications for Advertising in the Publication are contained in the Media Kit.

6.2 The Client must pay for Advertising:

6.2.1 by prepayment, if required by MOOD ; and

6.2.2 within 30 days after the date of the invoice

6.3 Any dispute the Client has with an invoice must be raised with MOOD promptly and no later than 30 days after the invoice date ("Due Date"). After that time, the Client will be deemed to have accepted that the full amount set out in the issued invoice is due and payable by the Client.

6.4 If any invoice remains unpaid after the Due Date MOOD may charge the Client default interest on all unpaid amounts at the rate of 18% per month from the Due Date until the date full payment is received.

7. **CANCELLATION AND FAILURE TO PROVIDE**

7.1 If the Client cancels a Booking at any time, the Client remains liable for the production costs for any Advertising Material created in connection with the Booking at the time of cancellation. MOOD reserves the right to invoice the Client for any work completed prior to this cancellation.

7.2 The Client may be charged for any advertisement not included in the Publication due to late receipt or non-receipt of the Advertising Material unless the cancellation is approved by MOOD.

8. **LIABILITY, WARRANTIES AND INDEMNITY**

8.1 The Client acknowledges that it has not relied on any advice given or representation made by or on behalf of MOOD in connection with the Advertising.

8.2 MOOD will not be liable for any delay or failure to publish Advertising caused by factors outside of MOOD's reasonable control (including but not limited to any Act

of God, war, breakdown of plant, industrial dispute, electricity failure, governmental or legal restraint).

- 8.3 Except as expressly provided in these Terms and Conditions, MOOD excludes, to the fullest extent permitted by law, all warranties, representations and conditions whether implied by law, trade, custom or otherwise.
- 8.4 In no circumstances will MOOD (including its contractors, contributors, employees or agents) be liable, whether in tort, contract or otherwise for any indirect loss, loss of profits, loss of revenue, loss of business opportunity, consequential loss or special damage suffered by the Client or any other person. MOOD's (including MOOD's contractors, contributors, employees and agents) liability to the Client, 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, omissions, non-publication or inaccuracies however caused, including without limitation by negligence, system or press failure, mistake, misclassifications, 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 Price, provided that if the Client does not advise MOOD of any error within five days of publication of the Advertisement MOOD will have no liability whatsoever.
- 8.5 Subject to clauses 8.1 and 8.2, MOOD excludes all other liability to the Client for any costs, expenses, losses and damages suffered or incurred by the Client in connection with these Terms and Conditions and any Advertising published by MOOD, whether that liability arises in contract, tort (including by MOOD's negligence) or under statute.
- 8.6 The Client indemnifies MOOD and its contractors, contributors, employees, contractors and agents against any costs, expenses, losses, damages and liability suffered or incurred by the indemnified arising from the Client's breach of these Terms and Conditions or any negligent or unlawful act or omission of the Client in connection with the Advertising.

9. GENERAL

- 9.1 Any written or verbal quotation provided to the Client by MOOD does not constitute a contractual offer.
- 9.2 A binding contract between MOOD and the Client in relation to a request for Advertising is only formed when MOOD accepts the Advertising in writing.
- 9.3 The parties acknowledge the confidential nature of any information disclosed by one party to the other in accordance with these Terms and Conditions. The parties accordingly agree to keep the Confidential Information confidential and not disclose any of the Confidential Information without the prior written consent of the other party.
- 9.4 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.
- 9.5 These Terms and Conditions are governed by and construed in accordance with the law in force in New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts for any proceedings in connection with these Terms and Conditions.

- 9.6 These Terms and Conditions represent the entire agreement between the Client and MOOD in relation to the Advertising and cannot be varied except in writing by a Director or another person authorised by the Directors of MOOD.
- 9.7 MOOD may vary the Terms of the Media Kit and these Terms and Conditions at any time in its sole discretion.
 - 9.7.1 It is the Client's sole responsibility to obtain the latest and valid version of the Media Kit and Terms and Conditions, which will be published on the website in replacement of the previously versions.
 - 9.7.2 Such amended terms will not affect agreed Advertising orders prior to the amendment of the terms but will affect any further Advertising submitted to MOOD for Publication.