

# Terms of Trade

Tauranga.co.nz Limited v. 1.1

## Definitions

"**Tauranga.co.nz**" or "**Tauranga.co.nz Limited**" means Tauranga.co.nz Limited and includes agents Blazon Media Limited.

"**Customer**" means the person or company party to the Accepted Booking and includes all successors, assigns and personal representatives.

"**Accepted Booking**" means the accepted and agreed booking (booking form/s and accepted terms of trade) between the Customer and Tauranga.co.nz in relation to the provision of online advertising provided by Tauranga.co.nz including the following documents which, in the event of any inconsistency, will apply in the following descending order of precedence:

1. The completed and Accepted Booking Form; the advertising booking form and the extension module booking form; and
2. These Terms of Trade

"**Booking Total**" means the total sum payable excluding GST for the purchase of online advertising space as set out in the Booking Form.

## 1.0 Terms of Sale and Payment

- 1.1 All invoices are due for payment by the Customer seven (7) days following invoice. Where the Customer has completed a Credit Application which has been approved by the General Manager for Tauranga.co.nz, invoices shall be due on the 20th of the month following invoice. Where there are delays at the request of the Customer or otherwise through no fault of Tauranga.co.nz, the invoice balances are still required to be paid on the due date.
- 1.2 Tauranga.co.nz retains the right to invoice in advance for Bookings taken. Tauranga.co.nz has no obligation to commence the online advertising until such invoice has been paid in full, and shall not be responsible for any consequential delays.
- 1.3 Failure to pay any sum when due may incur default interest of 2% per month from the due date for payment until payment in full, such interest to compound monthly. Outstanding accounts may be referred to a debt collection agency or legal action undertaken in a court of law. The customer agrees that all fees, legal fees on a solicitor/client basis, disbursements, interest and expenses incurred in collection will be added to the Customer's account balance.
- 1.4 These terms are the terms on which online advertising space is provided. No form of acceptance contrary to these terms will be effective to alter these terms without the prior written approval from the General Manager of Tauranga.co.nz.

## 2.0 Acceptance of Booking and No Cancellation

- 2.1 By signing a Booking Form the Customer accepts full liability for all Booking Totals and any other sums payable pursuant to those bookings. The Customer acknowledges that the Accepted Booking sets out the entire agreement between the parties and it has not relied on any oral or written representations made to it by Tauranga.co.nz, by any employee or any agent. Terms which could be implied from past transactions, correspondence or conduct between the parties are expressly excluded.
- 2.2 Once an Accepted Booking has been signed the Customer acknowledges that this Accepted Booking may not be cancelled.
- 2.3 Tauranga.co.nz reserves the right to suspend the online advertising at any time if the Customer is in breach of any of its obligations pursuant to this Accepted Booking or if Tauranga.co.nz has any doubts whatsoever as to the Customer's credit worthiness or its ability to meet its obligations under this Accepted Booking.

## 3.0 Customer Responsibility and Modifications to the Accepted Booking

- 3.1 The Customer acknowledges responsibility for collecting copy and other relevant material and for providing that material to Tauranga.co.nz where necessary. Failure to deliver material within seven (7) business days of a request in writing may cause delay and may also result in increased costs being incurred. The Customer agrees that any such costs shall be charged in addition to the Accepted Booking.
- 3.2 In the event that Tauranga.co.nz undertakes to upload and set out the advertising space on behalf of the customer, all prices are based on photographs, images and illustrations being supplied in digital format in a quality suitable for the required use as specified in the Accepted Booking. Any additional work required to obtain photographs, images and illustrations in a suitable condition, including having images scanned, shall be carried out at the Customer's expense. The Customer's property and all property supplied to Tauranga.co.nz by or on behalf of the Customer shall be held by Tauranga.co.nz at the Customer's sole risk. Tauranga.co.nz shall not be liable for any consequences caused by defects or unsuitability of such materials or equipment supplied by the Customer.
- 3.3 In the event that Tauranga.co.nz undertakes to upload and set out the advertising space on behalf of the customer, upon completion thereof there is a 10 business day inspection period during which it is the responsibility of the Customer to check for errors, omissions and accuracy of content and performance and to notify Tauranga.co.nz in writing of any modifications required. All valid items for modification accepted in writing by Tauranga.co.nz shall be remedied no later than 10 business days after the inspection period. Tauranga.co.nz shall not be liable for errors in the finished work where it has been submitted to and approved by the Customer.
- 3.4 Any modifications requested by the Customer which were not described by the original Accepted Booking shall be treated as variations to the Accepted Booking and shall be charged for accordingly.
- 3.5 The acceptance of modifications by Tauranga.co.nz does not entitle the Customer to withhold payment of any amounts. The Customer agrees that Tauranga.co.nz shall not be obliged to make any such modifications until the balance of the Accepted Booking is paid in full.

## 4.0 Ownership Retention, Intellectual Property, Warranties and Indemnities

- 4.1 All rights, title and interest in all Intellectual Property, concepts and systems which have been developed or provided by Tauranga.co.nz shall at all times remain the property of Tauranga.co.nz.
- 4.2 Upon receiving any notice from Tauranga.co.nz of any breach by the Customer of its obligations under these terms, the Customer shall immediately:
  - 4.2.1 Cease all use of the Intellectual Property and return all files and code relating to any Accepted Booking to Tauranga.co.nz; and
  - 4.2.2 Destroy all copies (whether electronic or otherwise) of such files in the Customer's possession or control.

- 4.2.3 Should the Customer, in Tauranga.co.nz sole opinion, fail to comply with its obligations pursuant to clause 4.2.2, then Tauranga.co.nz or its duly authorised agents shall be entitled to enter the Customer's premises where such files or code may be situated and destroy, delete and/or remove the same.
- 4.3 Subject to clause 5 all warranties, descriptions, representations or advice given as to the fitness or suitability for any purpose, tolerance to any conditions, similarity to sample, merchantability or otherwise, are expressly excluded. No agent, employee or representative of Tauranga.co.nz is authorised to make any warranties, representations or statements regarding online advertising and Tauranga.co.nz shall not in any way be bound by any such unauthorised warranties, representations or statements.
- 4.4 The Customer undertakes that the online advertising shall not be used for any purpose for which they are not suitable. The Customer expressly agrees and acknowledges that Tauranga.co.nz shall not be liable for any material, statements, representations or information contained or used in any online advertising including, but without limitation, any material, statements, representations or information that:
  - 4.4.1 is or is likely to be misleading or deceptive or otherwise infringing the Fair Trading Act 1986;
  - 4.4.2 is in full or in part defamatory, in breach of copyright, trademark or other intellectual or industrial property right; or
  - 4.4.3 is otherwise in breach of any provision of any rule of law and shall indemnify Tauranga.co.nz in respect of any losses, claims, costs and/or expenses incurred by Tauranga.co.nz arising out of any breach of this clause by the Customer.
- 4.5 Tauranga.co.nz shall not be liable for any consequential, direct, indirect, economic or special damage or loss incurred or suffered by the Customer or any third party directly or indirectly through their use of online advertising, nor shall Tauranga.co.nz be liable for any loss of revenue, profits, goodwill, data or opportunities or loss of anticipated savings whether caused by negligence of Tauranga.co.nz or its employees or otherwise, whether or not Tauranga.co.nz was aware or should have been aware of the possibility of such damage. Without in any way limiting the foregoing, any liability of Tauranga.co.nz whether in Accepted Booking, tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance or any other breach of Tauranga.co.nz' obligations hereunder shall not in any event exceed an amount equivalent to the Accepted Booking total.
  - 4.5.1 Tauranga.co.nz is not liable for any errors or omissions in copy or material contained in any online advertising where such copy or material is made available to the public through any means.
  - 4.5.2 The Customer indemnifies and shall hold Tauranga.co.nz harmless from all claims, losses, damages, costs and liability asserted against Tauranga.co.nz by any person to the extent arising from or in relation to the Customer's breach or non-performance of the Accepted Booking or of its use of online advertising or any acts or omissions of its employees, shareholders, directors or agents in connection with the breach or non-performance of the Accepted Booking or of their use thereof.

## 5.0 Consumer Guarantees Act

- 5.1 The Customer is a commercial customer if it acquires online advertising space from Tauranga.co.nz:
  - (a) that is online advertising not ordinarily acquired for personal, domestic or household use;
  - (b) for use in a business; or
  - (c) for resale or supply to other persons in trade.The Customer acknowledges that where online advertising is intended for business purposes the provisions of the Consumer Guarantees Act 1993 shall not apply.
- 5.2 The Customer is a consumer if it is not a commercial customer as defined above. If the Customer is a consumer; nothing in this document limits or excludes any rights it has under the Consumer Guarantees Act 1993.

## 6.0 Privacy Act 1993

- 6.1 The Customer authorises Tauranga.co.nz to collect from any source whatsoever, retain and use personal information about the Customer for purposes of:
  - 6.1.1 Assessing the Customer's credit-worthiness;
  - 6.1.2 Undertaking any dealings or transactions with the Customer;
  - 6.1.3 Enforcement of any legal or other rights Tauranga.co.nz may have against the Customer;
  - 6.1.4 Making such disclosures as may in Tauranga.co.nz opinion be required for any of the above purposes; and
  - 6.1.5 Sending the Customer any advertising and/or promotional material.

## 7.0 General

- 7.1 If the performance by Tauranga.co.nz of its obligations is prevented by reason of "Force Majeure" (which shall include fire, casualty, accident, act of God, natural disaster, any law, regulation, strikes, labour disputes, shortage or lack of skilled labour, computer viruses, power failure, hardware or software failure, delay in transit or other causes whatsoever beyond the reasonable control of Tauranga.co.nz) then Tauranga.co.nz shall be excused to the extent of such prevention.
- 7.2 Tauranga.co.nz may at any time, vary these terms and conditions, and such variation shall become binding on the Client after notification of the variation in writing.
- 7.3 If any provision of this Terms of Trade is declared by any judicial or other authority to be void, voidable, illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority, the parties shall amend that provision in such manner as achieves the intention of the parties without illegality or, at the discretion of Tauranga.co.nz, such provision may be severed from this Accepted Booking.
- 7.4 The failure by Tauranga.co.nz to enforce its rights at any time or for any period in relation to any one or more of the terms or conditions of this Accepted Booking shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Accepted Booking.