

## STANDARD TERMS AND CONDITIONS

All advertisements accepted for broadcast by Tonic Health Media Limited ABN 147 968 885 trading as Tonic Media Network (“Tonic”) on any of Tonic’s products (the “Tonic Network”) are accepted subject to these terms and conditions. Any person and/or advertising agency (“you”) who submits an Order Form for advertising on the Tonic Network, agrees to these terms and conditions.

- 1. Terms of Agreement.** These Standard Terms and Conditions and your Order Form together represent the entire agreement (“Client Advertising Agreement”) with Tonic for the provision of the advertising services ordered by you. No purchase order or other document issued by you will vary these Terms and Conditions unless specifically agreed to in writing by Tonic.
- 2. License Granted to Advertise.** You grant to Tonic a worldwide, royalty-free, non-exclusive, irrevocable license to broadcast your advertisement as described in the Order Form on the Tonic Network and you warrant that you are duly authorised to grant such license to Tonic. You agree that you are the owner, creator or authorised representative able to supply the advertisement to Tonic. The advertisement provided to Tonic remains the property of the producer and/or supplier and Tonic retains no intellectual property rights in the advertisement provided under this agreement.
- 3. Broadcasting of Advertisements.** Tonic will, subject to availability, technical limitations and these terms and conditions, use its reasonable endeavors to broadcast your advertisement in the format submitted by you and in accordance with your other instructions set out in the Order Form. The positioning or placement of your advertisement will be at Tonic’s discretion unless Tonic expressly agrees otherwise in writing.
- 4. Right to Refuse Advertising.** Tonic may, at its absolute discretion, refuse to broadcast any advertisement without giving any reason. No contract is formed between you and Tonic until Tonic accepts your advertisement for broadcast and issues you with a valid tax invoice. If Tonic does refuse to broadcast your advertisement, no fee will be charged to you. Even if a contract has been formed between you and Tonic, Tonic reserves the right to refuse or withdraw your advertisement from broadcast at any time, without giving reasons, even if Tonic has previously broadcast the same or similar advertisement.
- 5. Right to Vary Format, Placement or Distribution.** We reserve the right to vary the placement or positioning of your advertisement and to change the format of your advertisement where Tonic deems fit to do so. Tonic will endeavor to notify you of revisions, but Tonic will not be liable for any costs, expenses, losses or damages suffered or incurred by you arising from Tonic’s failure to broadcast your advertisement in accordance with your request. Under no circumstances will any of the changes affect the content of the advertisement.
- 6. Advertising Specifications.** Any advertisement supplied to Tonic must comply with Tonic’s specifications as set out in the Order Form provided to you by Tonic. We can reject the advertisement if it is not submitted in accordance with such specifications. Tonic does not accept any responsibility for errors in the advertisement supplied by you.

You acknowledge and agree in relation to any advertisement provided to Tonic that:

- 6.1. All Brochure, Poster and GP Pack advertisements must be supplied to the nominated print distribution addresses as set out in the Order Form before the 15<sup>th</sup> of the month prior to the campaign launch.
  - 6.2. Digital and Online advertisements must be supplied one week prior to the campaign start date set out in the Order Form.
  - 6.3. Pricing provided for EDMs includes two rounds of feedback and amendments. Any further changes will incur additional charges.
  - 6.4. The advertisement contains no commercial music or imagery used without permission. Any original composition, production music or licenced stock footage used within the advertisement has appropriate copyright and usage clearances.
  - 6.5. All talent appearing within the advertisement has agreed for their image and voice to be used and/or a talent release form has been signed with the producer of the advertisement.
- 7. Booking Cancellation and Amendments.** Clients may cancel or amend a booking without penalty if written notice is given to Tonic four weeks prior to the campaign start date.
  - 8. Fees Payable for Advertising.** The rate for your advertisement will be as agreed by Tonic and specified in your Order Form. You must pay Tonic for the advertising services in accordance with the terms of your Order Form. If no due date for payment is specified in your Order Form, you must pay Tonic within 21 days of the date of the invoice. If you are using an advertising agency in connection with any advertising submitted to Tonic, you and such advertising agency will be jointly and severally liable for payment of the fees to Tonic. All rates and charges quoted are, unless expressly stated otherwise, exclusive of GST. We will issue you with a valid tax invoice and you must pay Tonic any applicable GST in addition to the rates and charges quoted to you.
  - 9. Failure to Pay and Other Breaches.** If you breach these terms and such breach is not remedied within 10 days’ notice from Tonic, or you fail to pay for advertising or you suffer an Insolvency Event (as defined below), Tonic may (in its discretion and without limitation):
    - (a) cancel any provision of credit to you;
    - (b) require cash pre-payment for further advertising;
    - (c) charge interest on all overdue amounts at the NAB Overdraft Base Rate;
    - (d) take proceedings against you for any outstanding amounts;
    - (e) recover all costs including all legal costs on a full indemnity basis;

(f) cease broadcasting of further advertising or terminate an agreement for advertising not broadcast.

An “**Insolvency Event**” occurs if (a) you are a natural person and you commit an act of bankruptcy; or (b) you are a body corporate and you cannot pay your debts as and when they fall due or you enter an arrangement with your creditors other than in the ordinary course of business or pass a resolution for administration, winding up or liquidation or you have a receiver, manager, liquidator or administrator appointed to any of your property or assets or have a petition presented for your winding up.

**10. Warranties.** By submitting the advertisement for broadcast by Tonic, you warrant that the advertisement complies with all relevant laws and regulations and that its broadcast will not give rise to any claims or liabilities against Tonic, its partners, its directors, employees or agents. Without limiting the foregoing, you warrant that the advertisement submitted by you does not breach or infringe the Competition and Consumer Act 2010, the Fair Trading Acts of relevant States of Australia or equivalent or other sale of goods legislation; any copyright, trade mark, obligation of confidentiality or other personal or proprietary rights; any law of defamation, obscenity or contempt of any court, tribunal or royal commission; State or Commonwealth anti-discrimination legislation; the *Privacy Act* (Cth); or any other law (including but not limited to any common law, statute, delegated legislation, rule and ordinance of the Commonwealth or any State or Territory).

**11. Indemnities.** By submitting the advertisement for broadcast by Tonic, you indemnify Tonic and its partners, its directors, employees and agents against all claims, demands, proceedings and other liability arising wholly or partially, directly or indirectly, from the broadcast of the advertisement. Without limiting the generality of the above, you indemnify Tonic and its partners, its directors, employees and agents against any costs, expenses, losses, damages, liability and claims suffered or incurred and arising from your breach of these terms and conditions and any negligent or unlawful act or omission by you in connection with the advertising.

**12. No Further Representations.** Except for any warranty or representation made expressly in writing by Tonic, you acknowledge that you have not relied on any advice given or representation made by Tonic or on its behalf in connection with the advertising. We have no liability to you and you indemnify Tonic in relation to any failure of telecommunications services or systems which affect Tonic’s receipt of your advertisement or the broadcast of your advertisement.

**13. Limitation of Liability.** Tonic excludes all implied conditions and warranties from these terms and conditions, except any condition or warranty (such as those implied by the Competition and Consumer Act 2010) which cannot be excluded (“non-excluded conditions”). Tonic limits its liability for: breach of any non-excluded condition (to the extent that liability for such breach can be limited); and any other error or omission in broadcasting caused by Tonic; to (at Tonic’s option) re-supply of the advertising services affected by its breach or payment of the cost of re-supply. Subject to the above, Tonic excludes all other liability to you for any costs, expenses, losses and damages suffered or incurred by you in connection with these terms and conditions and any advertisement broadcast by Tonic, whether that liability arises in contract, tort (including by Tonic’s negligence) or under statute. Without limitation, Tonic will not, in any circumstance, be liable for any indirect or consequential losses, including loss of profits, loss of revenue and loss of business opportunity.

**14. Amendments.** Tonic may change these terms and conditions at any time without notice to you. Those changes will apply to the provision of advertising services after the date the change becomes effective. You and Tonic will be bound by the terms and conditions that are current as at the date of your order.

**15. Force Majeure.** Tonic will not be liable for any delay or failure to broadcast your advertisement that is caused by a factor outside of Tonic’s reasonable control (including but not limited to any act of God, war, breakdown of plant, industrial dispute, electricity failure, governmental or legal restraint).

**16. Privacy.** Tonic collects your personal information to provide the advertising and for invoicing purposes. Tonic 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.

**17. Governing Law.** These terms and conditions and the relevant Order Form are governed by the laws of the State of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that State.