



asa terms and conditions of advertising

Australasian Sonographers Association, August 2020

Level 2, 93-95 Queen St
Melbourne, VIC 3000

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www.sonographers.org
August 2020

Terms of Advertising

These Terms apply to all Advertisements submitted to the Publisher. An Advertisement submitted to the Publisher for publication is not accepted unless and until confirmed in writing by the Publisher or the advertisement is published in the relevant publication. By submitting an Advertisement to the Publisher, the Customer agrees to be bound by these Terms.

1. Definitions

In these Terms, the following words have the following meanings:

“Advertisement” means an advertisement published, reproduced or inserted in or on any Publication for the Customer as specified in the Booking Form and includes a Job Advertisement.

“Booking Form” means the booking form available on the Publisher's website as completed by the Customer and accepted by the Publisher in writing, or by performance) and, in respect of a Job Advertisement, the equivalent booking form, together with any variations to the Booking Form agreed to in writing by the Publisher.

“Customer” means the person or legal entity that submits a Booking Form in respect of the Advertisement.

"Interest Rate" means interest calculated daily at the rate fixed from time to time pursuant to section 2 of the *Penalty Interest Rates Act 1983 (Vic)*.

"Job Advertisement" means an advertisement for a job vacancy published on the Publisher's website for the Customer.

“Material” means any advertising material/copy, artwork, photographs or other material provided or to be provided by the Customer in connection with the Booking Form.

“Price” means the price of the Advertisement as set out in the Rates Table.

"Publication" means an ASA e-newsletter, member magazine, scientific journal, event handbook, wall calendar or research reviews and in respect of a Job Advertisement, the Publisher's website.

“Publisher” means Australasian Sonographers Association Limited of level 2/93-95 Queen St, Melbourne VIC 3000.

“Rates Table” means the Rates Table set out in the Booking Form (which the Publisher may vary or replace in respect of future orders) and in respect of a Job Advertisement, the equivalent table.

“Services” means publishing any Advertisement for the Customer as specified in the Booking Form.

“Terms” means these Terms of advertising (which replace any terms and conditions previously provided by the Publisher to the Customer).

2. Binding Terms

The only contractual terms and conditions that are binding upon the Customer and the Publisher are those set out in these Terms, or as otherwise agreed in writing between the Customer and the Publisher, and those (if any) that are imposed by law and which cannot be excluded by these Terms.

3. Right to Refuse Advertisement

- (a) The Agreement is only formed between the Publisher and the Customer when the Publisher accepts the Booking Form or request by either sending written confirmation to the Customer, or by performance in accordance with the Booking Form. The Publisher is under no obligation to accept the Booking Form or request.
- (b) If the Publisher refuses the Booking Form, the Customer will be entitled to a full refund.

4. Pricing

- (a) The Customer must pay the Price in accordance with the Rates Table (or as otherwise agreed and/or notified to the Customer from time to time).
- (b) The rates in the Rates Table may be varied at any time by the Publisher without notice to the Customer.
- (c) The Publisher reserves the right to change the rates in the Rate Card at any time and to publish the amended rates on its website. The then current prevailing Rate Card is available to the Customer on request from the Publisher's advertising department.

5. Payment

- (a) The Customer shall receive an invoice from the Publisher at the time of submitting the Booking Form.
- (b) If the Customer fails to pay the Price under these Terms when due, the Publisher will not accept the Booking Form.
- (c) The Customer will be entitled to a 50% refund of the Price if it cancels the reserved Advertisement prior to the due date on which the Material is submitted for printing (**Due Date**).
- (d) The Customer is not entitled to a refund in circumstances where:
 - (i) the Publisher exercises its right (as described in clause **Error! Reference source not found.**) to vary the format or placement of the Advertisement;

- (ii) there is an error or omission in the published Advertisement (except where the error or omission is attributable to the Publisher's negligence); or
- (iii) the Customer cancels or purports to cancel the reserved Advertisement on or after the Due Date.

6. Errors

- (a) It is the Customer's responsibility to ensure that all Advertisements are correct, accurate and not misleading. The Publisher accepts no responsibility for any errors in an Advertisement including (without limitation) any errors which arise as a result of any changes or alterations undertaken by the Publisher at the Customer's request.
- (b) In respect of any Advertisement in a member magazine or scientific journal, in the event of an error in a published Advertisement as a result of a material typographical error caused by the Publisher, the Publisher agrees to re-run the Advertisement free of charge in the next available edition of such magazine or journal.
- (c) The Customer must promptly:
 - (i) upon receiving notice to check Advertisement from the Publisher, check those proofs and notify the Publisher of any errors, no later than three (3) business days from when the Customer receives the notification and
 - (ii) notify the Publisher of any errors in any published Advertisement, no later than seven (7) days after publication in which the Advertisement was placed.

7. Publication of Advertisements

- (a) The Customer grants the Publisher an irrevocable, world-wide, royalty-free licence to reproduce, publish and republish the Advertisement within the relevant Publication (irrespective of the medium or platform in or on which it is published) in accordance with the provisions of the Booking Form.
- (b) The Publisher may reject, refuse, omit, postpone, cancel, or require changes to the whole or part of any Booking Form, Material or Advertisement submitted for insertion into a Publication at any time, whether or not it has accepted the Booking Form, including the dates for publication and positioning of the Advertisement, or to accept the Booking Form subject to additional conditions which will be notified by the Publisher to the Customer.
- (c) The Customer shall submit all Materials to the Publisher in accordance with the Publisher's then current technical specifications (as may be updated from time to time), the current version of which is available on request.

- (d) Subject to these Terms, the Publisher agrees to use its reasonable endeavours to deliver the Services in accordance with the Customer's specifications in the Booking Form, in particular:
 - (i) in the Publication specified by the Customer;
 - (ii) in the format specified by the Customer; and
 - (iii) if applicable, in accordance with the Customer's placement instructions and provided only that the applicable loading has been paid, as specified in the Rates Table.

8. Job Advertisement

- (a) With respect to Job Advertisements, and without prejudice to any other rights or remedies that the Publisher may have under these Terms, the Customer agrees that it will not, and will not enable or authorise any third party to:
 - (i) submit a Booking Form for a Job Advertisement without a reasonable and legitimate intent to hire for a bona fide job opportunity or the specific position listed;
 - (ii) create a Job Advertisement that fails to meet the minimum requirements under the *Fair Work Act 2009* (Cth);
 - (iii) create a Job Advertisement that fails to comply with other applicable employment, equal opportunity, consumer and tax laws;
 - (iv) create a Job Advertisement that intentionally misrepresents the job or hiring company or is deceptive in any way;
 - (v) fail to clearly disclose in any Job Advertisement that a position is for an independent contractor or is part-time, freelance work, commission-based, or has otherwise non-traditional working conditions or compensation;
 - (vi) fail to accurately disclose the remuneration applicable to the job or misrepresent the bonus opportunities in a Job Advertisement (if applicable);
 - (vii) fail to obtain any necessary licenses, registrations or permits required in connection with advertising the relevant job (including but not limited to sponsoring overseas applicants);
 - (viii) spam or otherwise contact applicants for purposes other than related to the specific employment opportunity described in the Job Advertisement;

- (ix) harass, stalk, or contact any applicant after they have asked not to be contacted;
- (x) unlawfully provide identifiable candidate resume or application data to any third parties;
- (xi) create a Job Advertisement that requires applicants to pay for employment or otherwise bear costs related to employment;
- (xii) engage in solicitations, communications or transactions that violate any applicable laws or regulations related to the prohibition of employment discrimination, or that violate applicable laws governing legal eligibility to work;
or
- (xiii) engage in illegal or fraudulent conduct.
- (xiv)

9. Warranties

The Customer warrants that:

- (a) it has the legal capacity and authority to enter into a binding contract with the Publisher on the provision of these Terms;
- (b) the Advertisements comply with all applicable laws, regulations and codes of practice (or similar);
- (c) the Advertisements will not infringe the intellectual property rights, including, copyright, trade mark, obligation of confidentiality or other personal or proprietary right of any third party;
- (d) the Advertisements are not obscene, defamatory, fraudulent or misleading and shall not give cause, whether directly or indirectly, for any action to be brought against the Publisher for defamation, fraud, publication of a false or misleading statement (or any other relevant cause of action);
- (e) the Advertisements shall not indicate an intention to discriminate on grounds of sex, race, religion or belief, disability, ethnic origin, age or sexual orientation (unless such an Advertisement is exempted from any statutory requirements relating to such forms of discrimination and the Customer notifies the Publisher of the applicability of such an exemption at the time when the Booking Form is submitted to the Publisher);
- (f) it will not provide Advertisements for, or in connection with, any illegal purpose;

- (g) all information and material supplied to the Publisher is true, accurate and nothing contained in it is liable to bring the Publisher or any Publication into disrepute;
- (h) the Advertisement shall not cause disruption to any computer, computer system, or network, and shall be free from viruses or malicious code;
- (i) it shall not represent to any third party that the Publisher in any way endorses the Customer, the Advertisements and/or the Customer's products or services;
- (j) it shall provide the Publisher with all necessary Material by the date notified by the Publisher to the Customer, such date being of the essence. If the Customer fails to provide such Material by such date, the Customer acknowledges and agrees that the Publisher may not be able to fulfil its obligations under the Booking Form or these Terms and accepts that the Publisher will not be liable for any such failure to any extent or at all;
- (k) it shall not without the prior permission of the Publisher embed any tracking device, cookies, beacon, floodlight or other technological device in or as part of an Advertisement published on any digital platform that enables the Customer to track or analyse the online behaviour of any user to which such Advertisement is served; and
- (l) it has all necessary rights, licences and consents (including where necessary regulatory consents and consents from persons or entities cited or quoted in the Material) needed to permit the Publisher to use, display, reproduce, insert or publish the Material.

10. Indemnity

The Customer indemnifies and will keep indemnified the Publisher, its officers, employees, contractors, and agents against all claims, actions, suits, liabilities, actual or contingent costs, damages and expenses incurred by the Publisher arising from:

- (a) any breach of these Terms by the Customer;
- (b) any actual or potential infringement of a third party's intellectual property rights;
- (c) the publication by the Publisher of an Advertisement in accordance with a Booking Form;
- (d) any negligent or unlawful act or omission by the Customer, in connection with these Terms; or
- (e) any actual or alleged breach by the Customer of any laws, regulations, by-laws, ordinances or codes of conduct in connection with the Advertisements.

11. Liability

- (a) Except in accordance with this clause, the Publisher will not be liable for any costs, expenses, losses or damages suffered or incurred by the Customer arising from the Publisher's failure to publish the Advertisements or to publish the Advertisements in accordance with the Customer's requests.
- (b) To the extent permitted by law, all conditions and warranties expressed or implied by statute, the common law, equity, trade, custom or usage are expressly excluded. Under no circumstances will the Publisher be liable for any indirect or consequential loss. The liability of the Publisher is limited (at the option of the Publisher) to:
 - (i) paying the cost of having the Advertisements published in a comparative publication selected by the Publisher; or
 - (ii) providing the Customer, a refund to the maximum value of the monies paid by the Customer in respect of the Advertisements.

12. Privacy Statement

- (a) The Publisher is committed to complying with the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth).
- (b) The personal information provided by the Customer in the Booking Form (**Personal Information**) is collected, used and disclosed in accordance with the Publisher's Privacy Policy.
- (c) The Publisher may use and disclose the Personal Information for the purposes of processing and administering Booking Forms, using Materials for advertising purposes, publishing Advertisements, conducting its business activities, complying with legal obligations or otherwise in accordance with the ASA's Privacy Policy.
- (d) The Publisher may share Personal Information with third parties such as service providers, partners and sponsors however personal information is not generally disclosed to anyone outside Australia. ASA may use and disclose the Personal Information for direct marketing purposes in accordance with its Privacy Policy.
- (e) The ASA Privacy Policy contains information about how the Customer may access, and request correction of Personal Information held by the Publisher or make a complaint about the handling of Personal Information and provides information about how a complaint will be dealt with by the Publisher. If the Customer does not provide its personal information, the Publisher will not be able to publish the relevant Advertisement(s).

13. Force Majeure

The Publisher will not be liable for any delay or failure to perform its obligations under these Terms if such a delay or failure is due to circumstances caused by a factor outside the Publisher's reasonable control (including but not limited to any act of God, war, epidemic, terrorism, breakdown of a plant, industrial dispute, electricity failure, governmental or legal restraint), including but not limited to circumstances directly or indirectly relating to COVID-19, even where known or reasonably foreseeable at the time of the Publisher accepting an Advertisement.

14. Governing Law

The Agreement is governed by and construed in accordance with the law of the State of Victoria and the parties irrevocably submit to the jurisdiction of the courts of that State.