



These Terms and Conditions of Promotion are applicable to all online purchases from HD.

## 1. Definitions

In these Terms and Conditions of Promotion:

- 1.1. "Business" means any person, firm or company advertising, marketing or promoting its goods and or services on Home Delivery (HD) website.
- 1.2. "Category Area" means the area or part of the Site the navigational elements of which may incorporate the Trademark and Branding of the Business and which contains the Content and Promotes the Business.
- 1.3. "Content" includes content of any kind and in any format, including text, graphics, information, animation, video, audio, maps and tools.
- 1.4. "HD" means Community Broadcast Network.
- 1.5. "GST" has the meaning given to it in the GST Act.
- 1.6. "terms and conditions" or "conditions" or "terms" means the terms and conditions of Promotion set out below and any special terms and conditions agreed in writing by D2U with the Business.
- 1.7. "Products" means the goods or services, or both offered by a Business to a potential customer or client of the Business.
- 1.8. "Promote" or "Promotion" means the promotion, advertising and marketing services provided by HD to the Business by such means as HD may in its absolute discretion decide that may include:
  - 1.8.1. the publication of the listing on the Site and inclusion of Content within a Category Area;
  - 1.8.2. a fixed promotional button within the navigational frame of the Site with a link to the Category Area (the position, appearance and link style of such button which will be determined by HD from time to time); and
  - 1.8.3. search capacity on the home page of the site which enables access to the Business's listing.
- 1.9. "Site" means [www.homedelivered.online](http://www.homedelivered.online)
- 1.10. Term has the meaning contained in clause 3.4.

## 2. General

- 2.1. Unless otherwise agreed in writing by HD, the following conditions shall govern this transaction and shall be incorporated into all future transactions where HD Promotes the Business on the Site whether or not these conditions are made expressly applicable to any particular Promotion.
- 2.2. Terms and conditions contained in any form, order or other writing of the Business and which are at variance with or additional to these terms and conditions are not binding upon HD unless specifically accepted by D2U in writing.
- 2.3. A contract shall only be formed when the Business accepts the terms and conditions of Promotion by agreeing to them on the Site.

- 2.4. The availability of the Products is the responsibility of the Business. HD is not liable for loss or damage whatsoever arising from failure to deliver or delay in delivery of any Products by a Business to a customer or client.
- 2.5. If a person signing as the Business, signing on behalf of a company, partnership, firm or association of any kind whatsoever then each person by their signature also binds them personally as guarantor in favour of HD for all or any amounts for which the Business may be indebted to HD.
- 2.6. Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time,
- 2.7. The headings in these conditions are for convenience only and will not affect their interpretation.
- 2.8. Unless the context otherwise requires, words importing one gender include any other gender, words importing the singular include the plural and vice versa and reference to a person includes a body politic, a body corporate and a natural person.

### **3. The Agreement between the Business and HD**

- 3.1. HD operates the Site which provides Businesses with the ability to market and advertise their products and services.
- 3.2. HD has agreed to create certain interactive online content that will be of interest to people in the market to acquire the Products for the purpose of allow users of the Site to easily compare and contrast various competing Products and find Products that are in a location or available for delivery to them directly at their home, office or online.
- 3.3. These conditions shall apply to all contracts for the Promotion of Products by HD to the Business to the exclusion of all other terms and conditions which the Business proposes should apply under any purchase request or order, confirmation of order or any similar document.
- 3.4. The Term of the agreement will be from the time the Business is Promoted on the Site until the Business or HD terminates the agreement.
- 3.5. No variation to these conditions shall be binding upon HD unless that variation has been agreed to in writing by HD's authorised representative and the Business.
- 3.6. HD's employees or agents are not authorised to make any representations concerning the product unless confirmed by HD to the Business in writing. In entering into any contract to buy Products the Business acknowledges that HD does not rely on any such representations which are not so confirmed.
- 3.7. Any advice or recommendation given by HD or their employees or agents to the Business or their employees or agents as to the storage, application or use of any product which is not confirmed in writing by HD is followed or acted upon entirely at the Business' own risk and HD will not be liable for any such advice or recommendation which is not so confirmed.
- 3.8. Any typographical clerical or other error or omission in any sales literature, quotation, pricelist, acceptance of offer, invoice or other document or information issued by HD will be subject to correction without any liability on HD's part.
- 3.9. Dispatch or delivery of the Promotion by HD to the Business will be deemed to be conclusive evidence of the Business's acceptance of these conditions.

- 3.10. All specifications, dimensions, descriptions and illustrations contained in any sales literature; quotation, or pricelist or other advertisement matter are intended merely to present a general idea of the product that we sell. D2U reserves the right from time to time to make changes to these provided that these changes will not materially affect the quality or fitness for purpose of the product you purchase from HD,
- 3.11. HD will deliver the Promotion on and by the Site.
- 3.12. HD is not responsible for a Promotion not being available due to any failure of the internet, telephone, and or electricity supply to D2U, a Business or customers or clients or all these.
- 3.13. The relationship between HD and the Business is entirely non-exclusive. The Business acknowledges that the Site may Promote competitors of the Business.

#### **4. Promotion of Business**

- 4.1. Subject to these terms and conditions, and in consideration of the payment by the fees, HD will Promote the Business during the Term:
  - 4.1.1. At HD's discretion:
    - 4.1.1.1. links to the Category Area from (eg the Lifestyle, Food etc category home pages on the Site); and
    - 4.1.1.2. search capacity from the Site linking to the Category Area.
- 4.2. D2U will, at its expense:
  - 4.2.1. develop and host the Category Area; and
  - 4.2.2. create the template for the business listing based on the Content provided by the business.
- 4.3. The parties further agree and acknowledge that during the Term, the Category Area will have a "look and feel" and user navigational experience that reflects those of the Site, so that there is consistency in the user experience in relation to the Category Area.

#### **5. Obligations of the Business**

- 5.1. The Business will Promote the Category Area where reasonably possible in all and any promotional and packaging material relating to its Products.
- 5.2. The Business will include, on each page within the website of the Business, if any, a to the Link to the Category Area. HD will provide to the Business the format, including all logos and text, to be used for the reverse link.
- 5.3. The Business will supply the such information as HD requires from time to time for inclusion in the Content, a license to use the Trade Mark and Name of the Business in the Content and the branding of the Business for inclusion in the Promotion (Business Content).
- 5.4. The Business will undertake, at its own expense, all work and provide all services required in order to create and deliver the Business Content to HD. The Business will make the Business Content available in such format, as HD reasonably directs. The Business will notify HD immediately if it experiences any difficulties in providing the information Business Content according to the HD delivery requirements.

- 5.5. The Business must not enter any arrangement for, or facilitate or implement any advertising, promotion, sponsorship or third-party hyperlinks on the Category Area without the prior approval of HD.
- 5.6. Without limiting any of the warranties provided by the Business or otherwise applicable in respect of the Business Content, the Business will ensure that all Business Content provided to HD:
  - 5.6.1. accurately reflects products, services, deals or specials actually available for purchase from the Business and/or its suppliers; and
  - 5.6.2. includes all terms and conditions applicable to the offer of products, services, deals or specials or, at the very least, notifies users that such terms and conditions exist and provides sufficient detail to enable users to locate or access such terms and conditions;
  - 5.6.3. complies with all laws, regulations and guidelines for the marketing and advertising of the Products for the Promotion; and
  - 5.6.4. complies in all respects (insofar as is applicable) with the current standard advertising specifications of HD.
- 5.7. If requested by HD the Business will provide HD with a reasonable opportunity to review and comment on the Business Content.
- 5.8. Should HD request, the Business will correct and edit the Business Content as reasonably requested by HD. HD has the right to reject any Business Content in its absolute discretion.
- 5.9. The Business will continue to publish its website at least to the standard prior to the date of these terms and conditions and the Category Area throughout the Term.
- 5.10. Without limiting any other obligation if requested in writing a representative of HD will meet in a manner mutually agreeable to them and the Business, for representative of the Business to undertake an online audit of the Business's Products and discuss future online potential.

## **6. Reporting and Data Collection**

- 6.1. Subject to clauses 6.2 and 6.3, nothing in these terms and conditions will obligate a party to reveal, share or otherwise deal with any data or information that would identify particular users of any web site of that party. Notwithstanding any part of this clause 6, a party is not obligated to act where doing so would involve a breach by the party of its legal obligations in relation to the privacy of such users.
- 6.2. HD will include on the Category Area a fixed button allowing users to consent to the provision by HD to the Business of all personal details of such users that have been collected on the Category Area ("Opt In Button"). Subject to clause 6.4, HD will at the Business's request (which shall be no more than once per month during the Term), disclose to the Business the details of all users who ticked the Opt In Button and provided their personal details to HD on the Category Area ("Consenting Users").
- 6.3. The Business will, if requested by HD, provide users of the Business's website with the opportunity to "opt in" to provide certain personal information to HD. Subject to clause 6.4 the Business will, at HD's request (which shall be no more than once per month during the Term) disclose to HD all details of users who have elected to provide their personal details.

6.4. The Business will not use any personal details of any Consenting User other than in accordance with, and for the express purposes of providing the product or service as outlined in their listing. The Business must at all times during the Term maintain a comprehensive and fully compliant privacy policy on the Business's website and must be that all personal details of the Consenting Users and other users referred to in clause 6.3 are dealt with in accordance with such privacy policy. Any use by HD of the personal details of the Consenting User or any user in accordance with clause 6.3 will be in accordance with HD's privacy policy located via the home page.

## **7. Fees and Payment**

- 7.1. Unless otherwise stated, the fee for the Promotion shall be the fee stipulated in HD's published price list current at the date of delivery of the Promotion. Fees are exclusive of GST and delivery charges. All Promotions are provided subject to GST which will be added to the fee of the Promotion and any additional charges.
- 7.2. If HD gives the Business a fee for any Promotion this will be binding on HD provided the Business accepts the price within 30 days. HD may by giving the Business notice at any time up to 7 days before delivery increase the price of Promotions to reflect any increase in the cost to HD which is due to factors occurring which are beyond HD's reasonable control (including without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs). The Business may cancel the purchase order for the product within 7 days of any such notice.
- 7.3. The fee for the Promotion must be paid in full at the time of ordering by any one of the following methods:-
  - 7.3.1. credit card;
  - 7.3.2. debit card; or
  - 7.3.3. bank transfer.
- 7.4. If for any reason the Business fails to make payment as required by these terms and conditions, then with effect from the date of delivery of the Promotion, the balance of the price will bear interest at the rate of 4 per cent per annum over the base rate of BOQ Bank subject to a maximum of 16 per cent per annum.
- 7.5. If any bank charges are incurred as a result of failure for any reason of the Business's bank to honour any payment made by the Business, the Business will reimburse HD within 7 days of such charges being notified to the Business and any such sums shall constitute a debt payable immediately on demand.
- 7.6. If the Business fails to make any payment on the due date then without prejudice to any other remedies HD has, we may:-
  - 7.6.1. suspend or cancel deliveries of any Promotion to the Business; and/or
  - 7.6.2. appropriate any payment made by the Business to such Promotion (or any other Promotion supplied or to be supplied to the Business as we in our sole discretion think fit).
- 7.7. Payment of the fee is of the essence.

## **8. Delivery of the Product**

- 8.1. It is the Business's responsibility to ensure the Business has the stocks, products or time to deliver its goods or services or both to a client and customer who contacts the Business via the Promotion on the Site.
- 8.2. The Business warrants and represents that it has the resources to deliver physical goods to a customer or client's home or office as the customer or client directs and or to provide a service to a customer or client remotely online.
- 8.3. The Business warrants and represents that it is the responsibility of the Business to enter into a contract with a customer and client arising from the Promotion.
- 8.4. Unless the Business is a consumer, HD does not accept liability for any loss or damage suffered by the Business in consequence of any failure or delay in delivery.

## 9. **Cancellation**

- 9.1. Either party may terminate these terms and conditions if any of the following events of default occur:
  - 9.1.1. the other party materially fails to perform or comply with these terms and conditions or any provision of these terms and conditions;
  - 9.1.2. the other party becomes insolvent or subject to any form of insolvency administration or admits in writing its inability to pay its debts as they fall due, or makes an assignment for the benefit of its creditors; or
  - 9.1.3. a petition under any bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by the other party, or if such petition is filed by any third party, or an application for a receiver of the other party is made by anyone and such petition or application is not resolved favourably to such party within sixty (60) days.
- 9.2. Termination under 9.1.1 shall be effective thirty (30) days after written notice of termination given by the non-defaulting party to the defaulting party, if the defaulting party's defaults have not been rectified within such thirty (30) day period. Termination under 9.1.2 or 9.1.3 shall be effective upon notice. The rights and remedies provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or these terms and conditions. In the event a non-defaulting party in its discretion elects not to terminate these terms and conditions, such election shall not be a waiver of any and all claims of that party for such default(s). Further, the non-defaulting party may elect to leave these terms and conditions in full force and effect and to institute legal action against the defaulting party for specific performance and/or damages suffered by such party as a result of the default(s).
- 9.3. Once an order for Promotion has been accepted it can only be cancelled in HD's absolute discretion and subject to such terms as HD shall impose.

## 10. **The extent of HD's liability to the Business**

- 10.1. HD's liability to the Business, whether for breach of contract or otherwise shall not in any event exceed the fees of the Promotion and HD will have

- no liability for any direct loss and/or expense or indirect loss and/or expense suffered by the Business or any liability to third parties incurred by the Business.
- 10.2. All warranties and conditions whether implied by statute or otherwise are excluded providing that nothing will restrict or exclude liability for death or personal injury caused by HD's negligence or affect the statutory rights of a Business dealing as a consumer.
  - 10.3. HD will not be liable to the Business or deemed to be in breach of these conditions by reason of any delay in performing, or failure to perform, any of HD obligations in relation to the product, if the delay or failure was due to any cause beyond HD's reasonable control. The following shall be regarded as a non-exhaustive list of causes beyond D2U's reasonable control:-
    - 10.3.1. Act of God, explosion, flood, tempest, fire or accident.
    - 10.3.2. War or threat of war, sabotage, insurrection, civil disturbance or requisition;
    - 10.3.3. Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
    - 10.3.4. Strikes, lockouts or other industrial action or trade disputes whether involving HD's employees or those of a third party;
    - 10.3.5. Difficulty in obtaining raw materials, labour, fuel, parts or machinery; and
    - 10.3.6. Power failure or breakdown in machinery, telecommunications network or systems.

## **11. Severability**

- 11.1. In the event that any or any part of these terms, conditions or provisions shall be determined invalid, unlawful or unenforceable to any extent such terms, conditions or provisions shall be severed from the remaining terms and conditions, which shall continue to be valid and enforceable to the fullest extent permitted by law.

## **12. Waiver**

- 12.1. No waiver by HD of any breach of these conditions shall be considered as waiver of any subsequent breach of the same or any other provision of these conditions.

## **13. Whole Agreement**

- 13.1. No modification, variation or amendment to these terms and conditions shall be of any force or effect unless in writing and signed by HD.

## **14. Notice**

- 14.1. Any notice or document required under these terms and conditions to be served on HD must be addressed to its registered office for the time being. Any notice or document similarly required to be served on the Business may be sent to the Business's last known address. Notices and documents may be delivered by hand or sent by prepaid post and if sent

by post shall be deemed to be served on the day on which they would be delivered in the ordinary course of post. Notices and documents may be delivered by facsimile or electronic email to the parties' last known facsimile number or email address and shall be deemed to be served at the time of transmission.

## **15. Intellectual Property Rights**

- 15.1. The material contained on the Site is protected by copyright. Except to the extent permitted by relevant copyright legislation, the Business must not use, copy, modify, transmit, store, publish or distribute the material on this website, or create any other material using material on the Site, without obtaining HD's written consent.
- 15.2. Trademarks (whether registered or unregistered) and logos must not be used or modified in any way without obtaining HD's prior written consent.
- 15.3. The Site, Products, technology and processes contained in this Site may be the subject of other intellectual property rights owned by third parties. No licence is granted in respect of those intellectual property rights other than as set out in these terms and conditions. The use of the Site must not in any way infringe the intellectual property rights of any person.

## **16. Security**

- 16.1. The Business acknowledges that the server used by HD encrypts the information the Business sends through to the Site.
- 16.2. HD makes no warranty in respect of the strength or effectiveness of that encryption.
- 16.3. HD is not responsible for events arising from unauthorised access of the information provided by the Business.

## **17. Disclaimers and Limitation of Liability**

- 17.1. Except where to do so would cause any part of these Terms and Conditions to be illegal, void or unenforceable, HD:
  - 17.1.1. Excludes all conditions and warranties implied by these Terms;
  - 17.1.2. To the fullest extent permitted by applicable law, is not liable to you or anyone else for any loss or damage, however caused (including negligence), which may be directly or indirectly suffered, in connection with use of this website; and
  - 17.1.3. 17.3 Excludes liability (whether that liability arises under contract, tort (including negligence) or statute) for any special, indirect or consequential loss or damage (including without limitation loss of revenue and loss of, or damage to, data) suffered or incurred in connection with this website.
- 17.2. Without limiting the general disclaimer, HD:
  - 17.2.1. Is not liable to you or anyone else if errors occur in the information on this website or if that information is not up-to-date.
  - 17.2.2. Will not be liable for disruptions to this website; and
  - 17.2.3. Is not liable to you or anyone else if interference with or damage to your computer system occurs in connection with use of this website. You must take your own precautions to

ensure that whatever you select for use from this website is free of viruses.

## **18. Privacy Policy**

- 18.1. We undertake that we will comply with HD's Privacy Policy as detailed on HD's website.

## **19. Governing Law**

- 19.1. All Promotions are deemed to be made in Australia and shall be governed and construed in accordance with the Law of the State of New South Wales.