

# MACPAC Terms & Conditions

## MACPAC Affiliate Program Terms and Conditions

These terms and conditions (the “**Agreement**”) exist between Macpac Retail Pty Ltd (“**MACPAC**” or “**we**”) and the applicant (the “**Affiliate**”, “**you**”, or “**your**”) for MACPAC’s Affiliate program (the “**Program**”)

The parties agree as follows:

- 1. Term.** The term of this Agreement will commence when MACPAC accepts your application for participation in the Program and will end when terminated by either party.
- 2. Avantlink Terms and Conditions.** The Avant Marketing Group DBA Terms of Use Agreement for Affiliates (the “**Avantlink Terms**”) applies to your participation in the Program. Your obligations under the Avantlink Terms is in addition to the terms set out in this Agreement, and breach of the Avantlink Terms will constitute a breach of this Agreement. The Avantlink Terms can be found at <https://www.avantlink.com/terms>.
- 3. Application.** Application to the Program constitutes your acceptance of this Agreement. MACPAC reserves the sole and unilateral right to assess your application and reject it for any reason.
- 4. Approval.** Approval of your application by MACPAC may be conditional on your acceptance of further terms, conditions, or limitations. Approval is limited to only those of your websites (including any social media sites or online methods of communication) which are explicitly set out in your application and which are approved in writing by MACPAC (“**Affiliate Sites**”). Only sites that contain exclusively safe and appropriate brand environments are eligible to be Affiliate Sites, and no Affiliate Site may contain sexually explicit material or promote violence, harassment, discrimination, or any other content that would tend to lower MACPAC’s reputation or goodwill.
- 5. Use of MACPAC Links.** Upon approval, MACPAC will grant you a limited, revocable, non-exclusive, non-transferable, non-sublicense able and non-assignable license, during the term of this Agreement, to use MACPAC website links (the “**MACPAC Links**”) as specified by MACPAC in writing. The MACPAC Links will be specific to the [www.macpac.com.au](http://www.macpac.com.au), [www.macpac.co.nz](http://www.macpac.co.nz) websites or subdomains (collectively, the “**MACPAC Sites**”). At all times, your use of the MACPAC Links must:
  - A. be in compliance with this Agreement;
  - B. be in compliance with all applicable laws, including but not limited to any and all related regulatory guidance, the Advertising Standards Authority New Zealand and/or Advertising Standards Authority Australia, the FTC’s Guides Concerning the Use of Endorsements and Testimonials in Advertising, the FTC’s “Dot Com Disclosures” Guidelines and the FTC’s Enforcement Policy Statement Regarding Deceptively Formatted Advertisements; and
  - C. to the extent that your use of the MACPAC Links is not otherwise clearly shown as paid advertising, include a clear disclosure statement that the MACPAC Links are a paid advertising statement.

**6. Use of MACPAC Content.** Upon approval, MACPAC will grant you a limited, revocable, non-exclusive, non-transferable, non-sublicensable and non-assignable license, during the term of this Agreement, to use certain MACPAC Marks, images, text, logos, images, graphics, information, data, or other content (the “MACPAC Content”). At all times, your use of the MACPAC Content must be:

- A. used solely for the purpose of increasing sales of products on the MACPAC Sites under this Agreement;
- B. With respect to the MACPAC Mark or Marks set out in Schedule A, only use such MACPAC Mark or Marks in compliance with the requirements set out in Schedule A.

**7. Intellectual Property.** MACPAC retains all right, title, interest, and intellectual property in the MACPAC Links, the MACPAC Sites, the MACPAC Content, and the Program. This Agreement and your participation in the Program does not convey any such rights to you, other than the limited, revocable, non-transferable rights as set out in this Agreement.

**8. Fees and Payment.** The commission rate to you will be the percentage posted by MACPAC on our Affiliate Program page <https://classic.avantlink.com.au/clients/merchant-details/19269/macpac/> (the “**Commission Rate**”). MACPAC reserves the right to change the Commission Rate at any time. Commission will be calculated based on payment actually received by MACPAC. Shipping and tax are not included in calculation of commission. MACPAC will not make any payments or pay any fees in connection with abusive marketing practices or any sales that result from a violation of this Agreement or the Avantlink Terms. No commission will be paid on products that are returned within 30 days from the date of purchase. Payment will be in accordance with the Avantlink Terms.

**9. Privacy.** You acknowledge that use of the MACPAC Links may cause MACPAC to receive information regarding visitors to your sites. You consent to MACPAC accessing, using, and storing such information in compliance with the MACPAC Privacy Policy, available from <https://www.macpac.co.nz/privacy-policy.html> or <https://www.macpac.com.au/privacy-policy.html> and subject to change from time to time. You also expressly represent, warrant, and agree that:

- A. during the time you are engaged in the Program, you have and will maintain all necessary security and data protection requirements, including but not limited to applicable anti-spam legislation, including Australia’s anti-spam legislation (AASL), New Zealand’s Unsolicited Electronic Messages Act 2007 and the U.S. CAN-SPAM Act of 2003; and
- B. your Affiliate Sites do not and will not collect or process any data from residents of the E.U. or U.S.

**10. Confidentiality.** Under the Program and as a party to this Agreement, MACPAC may provide you with confidential information (the “**Confidential Information**”). You agree to keep the Confidential Information strictly confidential. You agree to use all

reasonable security measures to protect the Confidential Information from loss, theft and unauthorized use, access, disclosure, duplication, modification and deletion. You must promptly notify MACPAC in writing of any breach or suspected breach of security or confidentiality involving any Confidential Information and use reasonable efforts to limit or reverse any damage caused by that breach. Promptly upon MACPAC's request or upon termination of this Agreement, you will deliver to MACPAC all documents and other material in your possession or control which belong to MACPAC or which contain, reveal or embody any Confidential Information, and you will destroy all remaining copies in your possession or control.

**11. Termination.** Either party may terminate this Agreement at any time on written notice (email is sufficient). Upon termination, all fees and payment will be paid by MACPAC in accordance with this Agreement and the Avantlink Terms. MACPAC is entitled to hold back a portion of this payment for a reasonable time in the case of returns. If termination is due to a material breach of this Agreement, MACPAC will not be obligated to pay any outstanding fees and payments. Upon termination, you will immediately cease to use any MACPAC Links and MACPAC Content.

**12. Modification of this Agreement.** MACPAC reserves the sole right to modify this Agreement at any time, by posting a change on our Affiliate Program page. If any changes made to this Agreement are unacceptable to you, your only recourse is to terminate this Agreement. If you continue to operate under the Program following the posting of any changes to this Agreement, this will constitute your binding acceptance of any such changes.

**13. Additional Representations and Warranties.** By applying to the Program you represent, warrant, and agree that, for the Term of the Agreement:

- A. all the information submitted in your application to the Program is true, complete, and accurate;
- B. if any material information submitted in your Application ceases to be true, complete, and accurate, you will immediately inform MACPAC in writing of the change;
- C. you are authorized to enter into an agreement with MACPAC.
- D. you are and will remain in compliance with all applicable rules, legislation, regulation, or other agreements, arrangements, and understandings to which you are a party and/or legally bound;
- E. you are solely responsible for the Affiliate Sites;
- F. the Affiliate Sites and any material published by you in relation to the Program do not and shall not violate, infringe, or misuse any third party's intellectual property, personal, or privacy rights; and
- G. you will not become involved in any scandalous, immoral, fraudulent or other behaviour or controversy which MACPAC reasonably believes may tarnish MACPAC's reputation or goodwill.

**14. Coupons and Promotions.** You may not offer coupons, discounts, or any other promotion in relation to your use of the MACPAC Links or your engagement in any part of this Program unless specifically authorised by MACPAC in writing. You will not

display any expired coupons, discounts, or promotions relating to MACPAC. You acknowledge that MACPAC is not responsible for honouring any expired coupons, discounts, or promotions. Pricing displayed by you must be in line with current pricing shown on the MACPAC Sites.

**15. Search Engine Marketing.** You are strictly prohibited in engaging in Search Engine Marketing in relation to the Program.

**16. No Representation, Warranty, Guarantee or Obligation by MACPAC.** You understand and accept that:

- A. MACPAC makes no guarantees, warranty, or representation regarding the availability, price, or shipping time for any product;
- B. MACPAC has no obligation to accept any orders;
- C. MACPAC is not liable for any direct, indirect, incidental, special, consequential, punitive or other damages whatsoever including business interruption, loss of use, data, information, profits (regardless of the form of action, including but not limited to contract, negligence or other tortious act) arising out of or in connection with your access or use of the MACPAC Links, MACPAC Site, and MACPAC Content even if MACPAC has been advised of or foresees the possibility of any damages occurring. Without limiting the foregoing, everything on the MACPAC Links, MACPAC Site, MACPAC Content, and all other information or products offered by MACPAC in relation to the Program are provided to you on an "AS IS" BASIS, WITHOUT REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS, IMPLIED, OR STATUTORY INCLUDING, BUT NOT LIMITED TO, IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE, ACCURACY, TIMELINESS, RELIABILITY, TRUTHFULNESS OR COMPLETENESS OF INFORMATION, DURABILITY, TITLE, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR INTER-OPERABILITY OF PRODUCTS OR SERVICES; and
- D. MACPAC makes no representations or warranties of any kind in relation to the Program.

**17. Limitation of Liability.** MACPAC will not be liable to you for any loss of profits or business, failure to realize expected revenue, loss of or damage to data, loss of good will or reputation, or any consequential or indirect damages, arising from or relating to the Program or this Agreement. MACPAC will not be liable for any expenditures made by you in relation to the Program, or from any losses to you relating to termination of this Agreement. These exclusions and limits on liability apply whether the claims are made in contract, tort (including negligence), statute, or otherwise. These exclusions apply even if you could reasonably foresee or have been advised of the possibility of such damages. In any event, MACPAC's entire liability to the you arising from or relating to the Program or the Agreement, is limited to the lesser of:

- A. the total of the fees and payments made to you over the last twelve months under this Agreement from the date of the event giving rise to the claim of liability.

**18. Indemnity.** You will indemnify, hold harmless and defend MACPAC from and against all claims, damages and liabilities (including legal fees) which may be at any time incurred, suffered by, or awarded relating to or arising from: (a) your breach of this agreement; (b) any misrepresentation by you, or (c) the performance or non-performance of your obligations, the exercise of your rights, or your participation in the Program under this Agreement.

**19. Law/Dispute Resolution.** This agreement is governed by the laws prevailing in Victoria, and the parties attorn to the exclusive jurisdiction of the Courts of Victoria, including the Federal Court of Australia sitting in Victoria, Australia.

**20. Miscellaneous.** The parties are independent contractors and are not agents or legal partners of each other and cannot incur any liability for each other. The parties will not assign, license or otherwise give any third party any type of interest in this Agreement. This Agreement does not create or imply any agency, partnership, joint venture, franchise, employment or other joint relationship between the parties, and does not authorize either party to bind or obligate the other in any way. If any provision of this Agreement is void, prohibited, or unenforceable, this Agreement is to be construed as if that provision had never been part of this Agreement. The failure of MACPAC to exercise any right under this Agreement, or to insist upon strict or full performance of the obligations under this Agreement, does not constitute a waiver or relinquishment of any provision of this Agreement. Provisions of this Agreement that expressly or by their nature extend beyond the termination of this Agreement survive any termination of this Agreement.

## **SCHEDULE A**

### **MARK**

The MACPAC Mark is as follows:

Macpac ®

You also agree as follows:

**1. Restrictions.** You must not use, display or copy the MACPAC Mark except as explicitly permitted by this Agreement.

**2. Notices.** Whenever you display the MACPAC Mark, you must place a “®” symbol after it and the following notice nearby: “® is a trade-mark of Macpac”. If space permits, include the text “® , Macpac” (for example, “® 2020 Macpac”).

**3. Standards.** You must comply with MACPAC’s standards regarding the display of the MACPAC Mark. MACPAC may communicate those standards to you from time to time.

**4. Inspection.** When requested by MACPAC, you will promptly permit and assist MACPAC to inspect how you are displaying the MACPAC Mark.

**5. Ownership.** You acknowledge the validity of the MACPAC Mark and MACPAC’s ownership of the MACPAC Mark and all goodwill associated with the MACPAC Mark.

**6. Good Faith Covenants.** You will not directly or indirectly: (a) do anything or omit to do anything that might damage or disparage the MACPAC Mark or the goodwill associated with the MACPAC Mark; (b) challenge the validity of the MACPAC Mark or MACPAC's interest in the MACPAC Mark; (c) register, record or acquire any rights in any trade-mark, trade name, business name, corporate name, copyright, domain name or design that in whole or in part reproduces or resembles the MACPAC Mark, or is confusing with the MACPAC Mark, or is derived from or based on the MACPAC Mark; or (d) assist, permit, or encourage any other person or entity to do any of the above.