

PURPLE PAGES TERMS AND CONDITIONS

In consideration of Capricorn Society Limited A.C.N. 008 347 313 (**Capricorn**) agreeing to consider your application to place advertising in Capricorn's "Purple Pages" directory, you agree to the terms and conditions set out below (the **Terms**).

1. DEFINITIONS AND INTERPRETATION

In these Terms unless the context otherwise requires:

- 1.1. "Agreement" has the meaning given by clause 2;
- 1.2. "Capricorn Artwork" means any artwork, logos, get up, fonts, colours, layout design and Intellectual Property which Capricorn produces at your request in connection with Your Application;
- 1.3. "Claim" includes claim, demand, action, proceeding, suit, cost, charge, expense, damage, debt, interest, loss or other liability;
- 1.4. "Intellectual Property" means all intellectual rights and property conferred under statute, common law and in equity, including without limitation in connection with copyright, trademarks, trade names, business names, corporate names, logos and get up;
- 1.5. "Purple Pages" means the forthcoming edition of the publication by that name published by Capricorn from time to time, available to Capricorn members and others both in hardcopy and online via Capricorn's website for a period of approximately 12 months after publication, which advertises information and services relating to Capricorn and its preferred suppliers;
- 1.6. "Related Body Corporate" has the meaning given by section 9 of the *Corporations Act 2001* (Cth);
- 1.7. "you" means the person who submits an application to Capricorn to place advertising in the Purple Pages, and "your" has a corresponding meaning;
- 1.8. "Your Application" means your application to Capricorn to have advertising published in the Purple Pages (and, if applicable, any request to produce Capricorn Artwork), and includes all data, information, descriptions of products and services, artwork, logos, get up, fonts, colours, layout designs and Intellectual Property contained in or submitted in connection with your application;
- 1.9. the singular includes the plural and vice versa;
- 1.10. a reference to legislation or to a legislative provision includes all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision, and also includes any amendments, modifications or re-enactments of that legislation or legislative provision and any legislation or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
- 1.11. a reference to a person includes a body corporate, body politic or partnership;
- 1.12. references to clauses are references to clauses in these Terms;
- 1.13. the headings in these Terms are for reference purposes only and do not influence or affect the meaning of these Terms;
- 1.14. a reference to a deed, agreement, licence, document or other instrument (including these Terms) includes that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time; and
- 1.15. a reference to any party includes that party's executors, administrators, substitutes, successors and permitted assigns.

2. YOUR APPLICATION

Your Application (including any request to produce Capricorn Artwork) may be accepted or refused by Capricorn in its absolute discretion. In particular, Capricorn may refuse Your Application if you have not paid the relevant application fee or any applicable Capricorn Artwork fee in full. If Capricorn refuses Your Application, any application fee or Capricorn Artwork fee paid by you will be refunded without interest. If Your Application is accepted, an agreement ("the Agreement") incorporating these Terms will have been made between Capricorn and you.

3. LICENCE

By submitting Your Application to Capricorn, you grant Capricorn and its Related Bodies Corporate a licence to use Your Application and your Intellectual Property (including without limitation any Intellectual Property contained in or submitted in connection with

Your Application) for any purpose Capricorn considers reasonably necessary or desirable to:

- 3.1. if requested to do so, produce Capricorn Artwork; and
- 3.2. publish, promote and advertise information and services relating to you and your products and services in the Purple Pages.

4. CAPRICORN ARTWORK

You agree that Capricorn may engage contractors to produce Capricorn Artwork. Capricorn retains ownership of all Capricorn Artwork until it is paid for in full, at which time ownership of the Capricorn Artwork and any Intellectual Property in the Capricorn Artwork held by Capricorn passes to you.

5. RIGHT TO WITHDRAW OR ALTER

If Your Application is accepted, Capricorn will use reasonable endeavours to ensure that your advertisement in the Purple Pages as published appears in substantially the same form as requested in Your Application, and that any Capricorn Artwork meets your reasonable requirements. However, Capricorn may at any time before or after publication of the Purple Pages alter the size or appearance of, or withdraw completely, any part of your advertisement if:

- 5.1. Capricorn considers it necessary or desirable, having regard to the length, format, size, medium or cost of publishing the Purple Pages or any part of it, or any other commercial factor;
- 5.2. Capricorn considers it to be inappropriate, offensive, misleading or deceptive, defamatory, incorrect or in any other way in breach of these Terms, any law or third party rights; or
- 5.3. Capricorn is lawfully required to do so by any third party, or by law.

If after publication of the Purple Pages Capricorn withdraws your advertisement completely, the Agreement will terminate and any application fee paid by you will be refunded without interest on a pro-rata basis based on a 12-month publication period. For example, if Capricorn withdraws your advertisement 3 months into the Purple Pages' 12-month publication period, Capricorn will refund 75% of your application fee. However, Capricorn may retain any Capricorn Artwork fee paid by you.

6. EXCLUSION OF LIABILITY

6.1. All liabilities, conditions, representations, warranties, undertakings and obligations on the part of Capricorn, its Related Bodies Corporate and each of them and their respective officers, employees, agents, contractors and subcontractors which might be implied by law or otherwise are hereby expressly excluded from the Agreement to the maximum extent permitted by law, and in particular no representation, warranty or undertaking is made on the part of Capricorn, its Related Bodies Corporate or any of them or their respective officers, employees, agents, contractors or subcontractors:

- 6.1.1. that your advertisement in the Purple Pages as published will appear in exactly the same form as requested in Your Application, or that any Capricorn Artwork will meet your exact requirements;
 - 6.1.2. that online access to the Purple Pages via Capricorn's website will be continuous, uninterrupted, timely, fault-free, virus-free or secure;
 - 6.1.3. that the contents of the Purple Pages as published will be complete, current or free from errors, omissions, inaccuracies or deficiencies (including in relation to the quality or resolution of artwork, logos, get up, fonts, colours, layout designs and Intellectual Property);
 - 6.1.4. as to the volume of circulation or online access to the Purple Pages or the likely economic advantage from advertising in the Purple Pages; or
 - 6.1.5. in connection with the security of any information collected, stored, disclosed or used by the Capricorn or any of its Related Bodies Corporate pursuant to clause 9.
- 6.2. Nothing contained in these Terms shall be construed as excluding, restricting or modifying or purporting to exclude,

restrict or modify any statutory liabilities, conditions, representations, warranties, undertakings or obligations (whether implied or otherwise) which are incapable of being excluded, restricted or modified. However, to the extent that liability for breach of any statutory liability, condition, warranty, undertaking or obligation which is implied by the *Trade Practices Act 1974* (Cth) may be limited, that liability is limited to Capricorn, at Capricorn's option, doing the following:

- 6.2.1. supplying of the services again; or
- 6.2.2. paying the cost of having the services supplied again.

6.3. Except to the extent otherwise provided by law and subject to clause 6.2:

6.3.1. Capricorn will have no liability to you in contract, tort, under statute or otherwise at law or in equity or otherwise for any Claim arising from any act or omission, whether or not negligent, by Capricorn, its Related Bodies Corporate or any of them or their respective officers, employees, agents, contractors or subcontractors under or pursuant to or in connection with the Agreement; and

6.3.2. to the extent (if any) Capricorn is liable to you under any such Claim, Capricorn will be liable only for loss and damage directly caused by the act or omission and not for any indirect or consequential losses (including loss of profits).

7. INDEMNITY

You indemnify and hold indemnified Capricorn, its Related Bodies Corporate and each of them and their respective officers, employees, agents, contractors and subcontractors from and against any Claim in connection with or arising out of:

- 7.1. any breach of these Terms by you, including any representation or warranty made or given by you in these Terms;
- 7.2. any refusal by Capricorn to accept Your Application;
- 7.3. any exercise of by Capricorn or its Related Bodies Corporate of any rights under these Terms, including without limitation under clauses 2, 5 and 9; and
- 7.4. any error, omission, inaccuracy or deficiency (including in relation to the quality or resolution of artwork, logos, get up, fonts, colours, layout designs and Intellectual Property) in the contents of Your Application or your Purple Pages advertisement as published.

8. REPRESENTATIONS AND WARRANTIES

You represent and warrant to Capricorn that:

- 8.1. you have not relied on any statement, representation, warranty, description, illustration or specification which is not stated expressly in these Terms;
- 8.2. the contents of Your Application are free from any error, omission, inaccuracy or deficiency (including in relation to the quality or resolution of artwork, logos, get up, fonts, colours, layout designs and Intellectual Property);
- 8.3. you have lawful authority to make Your Application, enter into these Terms and grant the licence in favour of Capricorn to use any Intellectual Property contained in or submitted in connection with Your Application referred to in clause 2; and
- 8.4. the advertisement you are requesting Capricorn to publish in the Purple Pages is not inappropriate, offensive, misleading or deceptive, defamatory, incorrect or in any other way in breach of these Terms, any law or third party rights.

9. PRIVACY

Subject to the provisions of the *Privacy Act 1988* (Cth), you irrevocably authorise Capricorn and its Related Bodies Corporate to collect, store, disclose and use information about you contained in or submitted in connection with Your Application for any purpose permitted by law (including, without limitation, for the purpose of ascertaining any breach of these Terms and/or marketing purposes and shall include without limitation, for the purposes of publication in and publishing Capricorn's Purple Pages business directory for all Capricorn Members and Authorised Purchasers), and irrespective of whether or not Capricorn or any of its Related Bodies Corporate obtains or provides a benefit, service or advantage in connection with such collection, storage, disclosure or use.

10. TERM

These Terms shall remain in force for the duration of the Purple Pages' publication. However, notwithstanding any other provision in these Terms, clauses 6, 7, 8, 9, 13, 14 and 15 survive the expiry or sooner termination of these Terms.

11. VARIATIONS

From time to time, Capricorn may consider it necessary or desirable to vary these Terms to reflect its changing business, or if it is required to do so by law, for security reasons or for technical or infrastructure reasons. Capricorn may vary these Terms at any time by posting the varied Terms on its website and posting a notice on its homepage that a variation has occurred. Upon that posting, the Agreement between you and Capricorn incorporating these Terms will be and be deemed varied accordingly.

12. ENTIRE AGREEMENT

These Terms constitute the sole and entire agreement between Capricorn and you, and no warranties, representations, guarantees or other terms and conditions of any nature not contained or recorded in these Terms are of any force or effect.

13. SEVERANCE

If any part of these Terms is or becomes void or voidable or otherwise unenforceable whether due to the provisions of any statute or otherwise, that part will be severed from these Terms such that the balance of these Terms shall remain in full force and effect.

14. PROPER LAW AND JURISDICTION

These Terms shall be interpreted and applied in accordance with the laws of Western Australia and that the courts of Western Australia shall have jurisdiction.

15. WAIVER

A waiver by Capricorn of any right, power or privilege arising under these Terms must be in writing. Failure to exercise or delay in exercising any right, power or privilege by Capricorn does not operate as a waiver of that right, power or privilege. A single or partial exercise of any right, power or privilege by Capricorn does not preclude:

- 15.1. any other or further exercise of that right, power or privilege; or
- 15.2. the exercise of any other right, power or privilege.