

Capricorn Alumni

Australian Terms & Conditions



Interpretation

1. In this Agreement, unless the context requires otherwise:
 - 1.1. the term “You” means the person applying or accepted to become a Capricorn Alumni and receive credit through a Capricorn Alumni Account;
 - 1.2. the singular includes the plural and vice versa;
 - 1.3. any reference to a person or party includes that person’s or party’s servants, employees, executors, administrators, personal representatives, insurers, successors and assigns (and, where applicable, the party’s legal personal representative);
 - 1.4. a reference to this Agreement is a reference to this Agreement as amended, extended, changed, varied or supplemented from time to time; and
 - 1.5. a reference to any statute or statutory provision:
 - (i) is a reference to the statute or statutory provision as amended, modified, re-enacted or replaced from time to time; and
 - (ii) includes all regulations; other statutory instruments made under it.

Application

2. If Capricorn accepts your application to become a Capricorn Alumni, you will be issued with a number (“**Authorised Purchaser’s Number**”), which will enable you to purchase goods and/or services using credit provided by Capricorn from a range of Capricorn’s preferred suppliers with which Capricorn has entered into agreements (as principal) to pay for goods and/or services which you order using your Authorised Purchaser’s Number. Capricorn may accept or reject your application at Capricorn’s sole and absolute discretion.
3. You agree that before making any purchase using an Authorised Purchaser’s Number you shall inform Capricorn of any facts, including as to your capacity to pay for such purchases, which might reasonably affect Capricorn’s decision to extend credit to you and which are known or ought to be known by you, and any failure to do so will constitute a material breach of this Agreement giving Capricorn the right to immediately terminate this Agreement without notice (without limiting any other remedies or causes of action that may arise at law).
4. The grant of any credit facility or nomination of any credit limit by Capricorn is at Capricorn’s absolute and unfettered discretion. You agree to not exceed the credit limit attached to your account without Capricorn’s written authorisation. In some cases,

Capricorn may permit you to temporarily exceed your credit limit or your credit limit may be exceeded where purchases that do not require Capricorn’s authorisation are made from preferred suppliers. For the avoidance of doubt, any such temporary excess over and above your credit limit, shall be subject to the terms of this Agreement, including without limitation the requirement to repay the excess within the required time.

5. Despite any other clause herein, Capricorn may:
 - 5.1. on not less than 62 days’ notice to you, change your credit limit, the Late Charge or any other term of this Agreement in its absolute and unfettered discretion excluding any implied term of good faith and without any liability to you or any other person; and
 - 5.2. immediately on notice to you, change your credit limit or suspend any credit facility provided to you pursuant to this Agreement if Capricorn is reasonably of the opinion that you are in breach of your obligations under this Agreement, or you have breached the warranty at clause 16 in a manner that materially increases our risk in relation to amounts payable by you under this Agreement.

Ordering and Payment

6. When your Authorised Purchaser’s Number is used to make any purchase of goods and/or services from Capricorn or a preferred supplier we act on that instruction and pay for your purchases. We then charge you the amount of the purchases as well as any other amounts provided for in this Agreement and you must pay these amounts in accordance with this Agreement.
7. Capricorn will issue you a statement on a monthly basis through written and/or electronic means (“**Account Statement**”). The Account Statement will record purchases made using your Authorised Purchaser’s Number during the preceding month and may also include purchases from previous months not recorded on an earlier Account Statement. You are deemed to have received the Account Statement by the 14th day of each month if you have not communicated otherwise to Capricorn by this time.
8. In consideration of Capricorn accepting your application or continuing to allow you to be a Capricorn Alumni, you hereby agree and undertake to pay all amounts specified in each Account Statement by the last business day of the calendar month in which that Account Statement is issued to you, subject to the term any credit provided to you being for a maximum of 62 days.
9. If you fail to pay any amount in an Account Statement by the due date for payment, Capricorn can immediately raise against your Authorised Purchaser’s Number a late charge of 7% of the unpaid balance of the Account

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Statement ("Late Charge"). The Late Charge shall be payable on the Account Statement issued by Capricorn the following month. You acknowledge and agree that the Late Charge is a genuine pre-estimate of Capricorn's loss arising from late payment of any amount in your Account Statement.

10. You acknowledge that should you fail to pay any amount in any Account Statement when due and Capricorn elects to start recovery action in relation to your debt (which may include, but is not limited to, debt recovery processes undertaken by Capricorn or a third party), then Capricorn shall be entitled to recover payment for all amounts due by you to Capricorn together with payment for any subsequent goods or services ordered using your Authorised Purchaser's Number from the date of issue of Capricorn's last Account Statement addressed to you, up to and including the date on which recovery action is started by Capricorn.
11. To the extent that the Late Charge is insufficient to reasonably compensate Capricorn for any costs or losses arising out of your default, or any costs or losses arising from any recovery action taken by Capricorn or a third party arising out of your default, Capricorn can impose a default fee ("Default Fee") for such amount as would reasonably compensate Capricorn for such costs or losses. The Default Fee will be notified to you on your next Account Statement and will be payable immediately upon receipt of that Account Statement.
12. It is your responsibility (and not Capricorn's) to ensure that the Authorised Purchaser's Number is not used by unauthorised persons to get goods or services. Subject to clause 13, you will be liable to pay to Capricorn all amounts shown on your Account Statement, even if amounts that have been charged to you are for goods or services that were:
 - 12.1. not ordered by you or were ordered by you but never received by you; or
 - 12.2. ordered or got as a result of the unauthorised use of your Applicant's Authorised Purchaser's Number or any other number, code or identifier issued by Capricorn whether or not you received such goods or services.
13. If your Account Statement records goods or services which were not ordered or not received by you, you must notify Capricorn within 14 calendar days of the date of issue of the Account

Statement, in which case Capricorn may in its discretion release you from any obligation to pay Capricorn in respect of those goods or services. No such release will be provided by Capricorn where you assisted in, facilitated or were aware of, goods and services being ordered by a person other than you.

14. You acknowledge and agree that if you do not notify Capricorn under clause 13 in respect of any goods or services which were not ordered or not received by you (or any such notice is reasonably rejected by Capricorn) all goods and services referred to on your Account Statement are deemed to have been ordered or received by you, and you will be liable to pay Capricorn for the same, whether or not those goods or services were in fact ordered or received by you.
15. You agree that Capricorn may receive on its own account income from preferred suppliers, including a service fee payable by the preferred supplier to Capricorn based on the purchases you have made.

Warranties

16. You warrant that, as at the date of execution of this Agreement and at all times while this Agreement remains in force:
 - 16.1. all information provided to Capricorn as part of your application to become a Capricorn Alumni is correct and accurate;
 - 16.2. you are solvent, of good credit and able to pay all of your debts as and when they fall due; and
 - 16.3. there is no enforcement action being taken against you or your assets by another creditor.

Liability

17. To the fullest extent permitted by law (including but not limited to the provisions of the *Competition and Consumer Act 2010* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth)):
 - 17.1. Capricorn and any of its officers, employees or agents shall not be liable for any kind of loss, claim or damages arising out of or in connection to this Agreement including any attempt to exercise a remedy or power under this Agreement, whether due to negligence or otherwise and whether foreseeable or otherwise except where the relevant loss or damage was caused by Capricorn's gross negligence or fraud; and
 - 17.2. neither party shall have any liability to each other for any indirect or consequential loss or damage arising out of or in connection to this Agreement.

Nothing however in this clause limits the operation and effect of clauses 9, 10, 11, 22 and 23 in this Agreement or limits your liability for Capricorn's losses arising from any failure by you to pay any amount payable under this Agreement when due.

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18. Capricorn excludes from this Agreement all conditions, warranties and terms implied by statute, general law, international convention or custom, except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void ("Non- Excludable Condition"). Nothing in this Agreement purports to limit the operation of a consumer guarantee imposed by law that cannot at law be lawfully limited or excluded.
19. To the fullest extent permitted by law, Capricorn's liability to you for breach of any Non- Excludable Condition shall be limited, at Capricorn's option, to either re-providing the relevant goods or services to you or paying to you an amount equal to any payment made by you to Capricorn in respect of such goods or services.
20. Capricorn makes no warranty against defects (as that term is defined by Schedule 2 of the *Competition and Consumer Act 2010* (Cth) associated with the supply of services under this Agreement. However, if and only if Capricorn is taken at law to have made any such warranty in connection with this Agreement, then Capricorn is taken to have provided the following statement to the Applicant:

Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- *to cancel your service contract with us; and*
- *to a refund for the unused portion, or to compensation for its reduced value.*

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

Default and Termination

21. Without limiting the operation of any other clause of this Agreement, you are in default under this Agreement if you:
- 21.1. do not pay on time any amount payable under this Agreement;
- 21.2. breach any warranty, representation or covenant provided or made by you under this Agreement and the breach, in our reasonably held opinion, materially increases our risk in relation to amounts payable by you under this Agreement; or
- 21.3. do not comply with any other material term or condition of this Agreement.
22. If you are in default then Capricorn may do any or all of the following in any order:
- 22.1. if the default can be remedied, send you a notice requiring you to fix the default prior to a given date (but for the avoidance of doubt, there is no requirement for Capricorn to send such notice);

- 22.2. upon written notice, deem that all amounts owing by you under this Agreement are immediately due and payable;
- 22.3. start legal proceedings without notice to you for recovery of amounts owed by you to Capricorn on any basis whatsoever (but not before the given date of any notice sent to you under clause 22.1); or
- 22.4. upon written notice, terminate this Agreement with immediate effect (but not before the given date of any notice sent to you under clause 22.1).
23. If you are in default, you agree that Capricorn may start recovery action without notice to you for the full amount outstanding on any basis whatsoever as at the date of the start of recovery action and you agree to pay on demand such amount together with any legal or other debt collection expenses incurred by Capricorn on a full indemnity basis in instituting recovery action or taking any other action to recover amounts not paid by you.
24. You may terminate this Agreement at any time by giving us written notice. We may terminate this Agreement at any time by giving you at least two months' written notice.
25. Termination of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to any party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.

General

26. This Agreement is governed by and will be construed under the laws of Western Australia, irrespective of where this application has been completed by you and submitted to Capricorn. In any action or other legal process with respect to any matter or thing in connection with this Agreement the parties irrevocably and unconditionally submit to the non- exclusive jurisdiction of the State of Western Australia.
27. None of your rights or obligations under this Agreement may be assigned, encumbered or transferred without the prior written consent of Capricorn.
28. This Agreement represents the entire agreement between you and Capricorn in regards to its subject matter, and supersedes and replaces any previous contracts, agreements, understanding or arrangement concerning its subject matter.
29. Each provision of this Agreement is severable and any invalid or unenforceable provision shall be severed from and shall not affect the validity of the rest of this Agreement.
30. Nothing in this Agreement is to be construed adversely against one party on the basis that that party was responsible for the drafting of this Agreement.
31. The failure of a party to exercise or delay in exercising a right, power or remedy under this Agreement does not

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prevent its exercise. A provision or right under this Agreement may not be waived except by a waiver in writing signed by the party granting the waiver, and will be effective only to the extent specifically set out in the waiver.

32. The parties to this Agreement must do all things reasonable and necessary or desirable to implement and give full effect to the provisions of this Agreement.