

In consideration of Capricorn Society Limited (ACN 008 347 313) agreeing to consider Your Booking Form to place advertising in Capricorn's "Purple Pages" directory, You agree to the terms and conditions set out below which will bind You in Your dealings with Capricorn concerning the Purple Pages:-

1. YOUR BOOKING FORM

1.1 Your Booking Form (including any request to produce Capricorn Artwork) must be completed in full and submitted to Capricorn. Capricorn may accept or reject Your Booking Form in its absolute and unfettered discretion. Upon submission of the Booking Form to Capricorn, You are deemed to have agreed to be bound by these Terms and the terms of the Booking Form (collectively, the "Agreement") and the Agreement shall apply on and from the date of submission.

1.2 Following submission of the Booking Form (as contemplated by clause 1.1), You will be charged a Booking Form fee and, if applicable, a Capricorn Artwork fee (collectively, the "Fee"). If Capricorn ultimately refuses Your Booking Form, any Fee paid by You will be refunded without interest (subject to clause 3.2).

1.3 You authorise Capricorn to do all things necessary (including amending Your submitted Booking Form and confirming such changes with You) to complete Your Booking Form in the event that the Booking Form submitted by You is incomplete, unclear or Capricorn is otherwise unable to determine any specific detail with respect to Your advertising in Purple Pages. The Agreement shall be amended to the extent of any agreed changes to the Booking Form.

1.4 By submitting the Booking Form to Capricorn, the person submitting the Booking Form warrants to Capricorn that they have full authority and power to enter into this Agreement on behalf of the Preferred Supplier named in the Booking Form and to bind that Preferred Supplier to the Terms of this Agreement.

2. LICENCE

2.1 You grant Capricorn and its Related Bodies Corporate a worldwide, royalty-free non-exclusive licence to use, reproduce, modify and adapt the information contained in Your Booking Form and any Capricorn Artwork produced under clause 3 (including, without limitation, any of Your Intellectual Property contained in or submitted in connection with Your Booking Form) for any purpose Capricorn considers reasonably necessary or desirable to:-

2.1.1 if requested by You to do so, produce Capricorn Artwork; and

2.1.2 publish Your artwork or otherwise promote and advertise information and services relating to You and Your products and services in Purple Pages.

3. CAPRICORN ARTWORK

3.1 You agree that Capricorn may engage contractors to produce Capricorn Artwork in consideration for the Capricorn Artwork fee. Capricorn retains ownership of all Capricorn Artwork until any Capricorn Artwork fee 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, subject to the licence granted under clause 2.

3.2 Any Capricorn Artwork fee paid to Capricorn is non-refundable, unless the Agreement is terminated prior to Capricorn commencing any work towards producing any Capricorn Artwork requested by You (a refund in such circumstances being in Capricorn's sole and absolute discretion).

- 3.3 The Capricorn Artwork fee is based on Capricorn preparing draft artwork for You, providing it to You for approval and, if requested by You, making no more than two rounds of minor changes (as determined by Capricorn in its sole discretion) to Your artwork and providing the subsequent amended version(s) to You for Your approval. If You request further minor changes then Capricorn may charge a minor change fee at the rate of \$100 per hour or part thereof (in addition to the Capricorn Artwork fee). If You request changes that are more than minor (as determined by Capricorn in its sole discretion) then Capricorn reserves the right to impose a further additional fee to reflect the time and additional labour costs incurred by Capricorn by virtue of the requested changes.

4. APPROVAL AND RIGHT TO WITHDRAW OR ALTER ARTWORK

- 4.1 After receipt of Your artwork with the Booking Form, or as part of the production of any Capricorn Artwork, Capricorn will provide You with a proof of Your final composite artwork to be published in Purple Pages ("**Final Artwork**") for Your approval.
- 4.2 If You do not provide Capricorn with approval of Your Final Artwork by the date 10 days after the Advertising Deadline for Purple Pages ("**Final Approval Date**"), or if Capricorn cannot reasonably make any changes requested by You by the Final Approval Date, then Capricorn will use the artwork in the form it exists in as at the Final Approval Date and You must still pay Capricorn the Fee in full.
- 4.3 Capricorn will use reasonable endeavours to ensure that Your artwork to be published in Purple Pages appears in substantially the same form as approved by You (or provided to You for approval). Capricorn however, may at any time before or after publication of Purple Pages alter the location, size or appearance of, or withdraw completely, any part of Your artwork (including any Capricorn Artwork component approved by you (or provided to You for approval)) if Capricorn considers it:-
- 4.1.1 necessary or desirable, having regard to the length, format, size, medium or cost of publishing Purple Pages or any part of it, or any other commercial factor;
 - 4.1.2 inappropriate, offensive, misleading or deceptive, defamatory, incorrect or in any other way in breach of the Agreement, any law or third party rights; or
 - 4.1.3 is legally compelled to do so by any third party, or by law.
- 4.4 You may notify Capricorn prior to the Final Approval Date that You no longer wish for Your artwork to appear in Purple Pages. In such case You will be refunded any Booking Form Fee. Refund of any Capricorn Artwork fee will be in accordance with clause 3.2.
- 4.5 If, after publication of Purple Pages, Capricorn withdraws Your artwork completely, the Agreement will terminate and any Booking Form fee paid by You will be refunded without interest on a pro-rata basis based on a 12-month publication period (unless Capricorn withdraws Your artwork following a breach of the Agreement by You, in which case Capricorn may retain the Booking Form fee). For example, if Capricorn withdraws your advertisement 3 months into the Purple Pages' 12-month publication period, Capricorn will refund 75% of your Booking Form fee.
- 4.6 Capricorn cannot rectify (and disclaims any liability for any Claim in respect of) errors in any hardcopy version of Purple Pages after Your artwork has been sent by Capricorn (following the approval process contemplated by clause 4) to any third party for the purposes of printing and publication of Purple Pages. If You promptly tell Capricorn of an error in Your artwork that is caused by Capricorn then, depending on the seriousness of it, Capricorn may at its discretion refund all or part of the Fee.

5. PAYMENT OF FEE

- 5.1 Subject to clause 5.2, unless otherwise specified by Capricorn, You must pay Capricorn the Fee:-
- 5.1.1 no later than 14 days after Your artwork is published in Purple Pages; or
 - 5.1.2 in accordance with any invoice issued by Capricorn in respect of Your artwork in Purple Pages, whichever is the earlier.
- 5.2 If You hold a current Capricorn purchasing number or buying account (each, the “**Capricorn Account**”), You may place the Fee on Your Capricorn Account and You are liable to pay the Fee in accordance with the terms of Your Authorised Purchaser Agreement with Capricorn. For the avoidance of doubt, Capricorn Reward Points do not accrue in respect of the Fee being placed on Your Capricorn Account.
- 5.3 Capricorn may set-off and deduct from any payment due by it to You (including under Your Preferred Supplier Trade Agreement with Capricorn) any amount owed by You to Capricorn on any basis whatsoever (including payment of the Fee under the terms of the Agreement).

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 (including as implied by the Act) or otherwise are hereby expressly excluded from the Agreement to the maximum extent permitted by law (including as permitted by the Act), 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 artwork in Purple Pages as published will appear in exactly the same form as requested in Your Booking Form or as submitted by Capricorn (following the approval process as contemplated by clause 4) to any third party for the purposes of printing and publication of Purple Pages, or that any Capricorn Artwork will meet Your exact requirements;
 - 6.1.2 that online access to Purple Pages via Capricorn’s website (if provided) will be continuous, uninterrupted, timely, fault-free, virus-free or secure;
 - 6.1.3 that the contents of Purple Pages as published will be complete, current or free from errors, omissions, inaccuracies or deficiencies (including without limitation 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 Purple Pages or the likely economic advantage from advertising in 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 11.
- 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 is implied (including as implied under the Act), that liability is limited to Capricorn, at Capricorn’s option, doing the following:-

- 6.2.1 supplying the services again free of charge; or
- 6.2.2 paying You 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 the Agreement by You, including any representation or warranty made or given by You in or concerning the Agreement;
- 7.2 any refusal by Capricorn to accept Your Booking Form;
- 7.3 any exercise by Capricorn or its Related Bodies Corporate of any rights under The Agreement, including without limitation under clauses 1, 2, 3, 4, 5, 11, 12, 13 and 14;
- 7.4 any infringement of any third party's Intellectual Property or other rights by virtue of any of the materials submitted to Capricorn as part of Your Booking Form, Your artwork in Purple Pages or by virtue of any Capricorn Artwork produced based on materials submitted to Capricorn by You; and
- 7.5 any error, omission, inaccuracy or deficiency (including without limitation in relation to the quality or resolution of artwork, logos, get up, fonts, colours, layout designs and Intellectual Property) in the contents of Your Booking Form or Your Purple Pages artwork 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 the Agreement;
- 8.2 the contents of Your Booking Form are free from any error, omission, inaccuracy or deficiency (including without limitation in relation to the quality or resolution of artwork, logos, get up, fonts, colours, layout designs and Intellectual Property) and do not infringe any third party's Intellectual Property or other rights;
- 8.3 You have lawful authority to submit Your Booking Form, enter into the Agreement and grant the licence in favour of Capricorn to use the information (including any Intellectual Property) contained in or submitted in connection with Your Booking Form referred to in clause 1; and

8.4 the artwork You are requesting Capricorn to publish in Purple Pages is not inappropriate, offensive, misleading or deceptive, defamatory, incorrect or in any other way in breach of the Agreement, any law or third party rights.

9. DEFAULT

9.1 You are in default of the Agreement in the following circumstances:-

9.1.1 You do not comply with or otherwise breach any obligation under the Agreement and such breach is not remedied within 7 days after Capricorn requests that You remedy the breach;

9.1.2 Capricorn terminates any arrangement or agreement (including without limitation Your Preferred Supplier Trade Agreement) it has with You;

9.1.3 You provide misleading or incorrect information or Capricorn has reason to suspect that You are behaving or have behaved fraudulently;

9.1.4 Your personal details or any details that relate to Your artwork in Purple Pages changes and You fail to notify Capricorn within 30 days of the change; or

9.1.5 You (being a corporation) come under or are the subject of an order placing You under external administration or enter into any scheme, deed or some other arrangement with Your creditors or You (being an individual) make any arrangement for the benefit of Your creditors or are otherwise the subject of bankruptcy proceedings.

9.2 Capricorn may terminate the Agreement with You immediately and remove or withdraw any of Your artwork contained in Purple Pages following occurrence of any of the matters referred to in clause 9.1, and any moneys paid to Capricorn (including, without limitation, the Fee) shall be immediately forfeited.

10. GST

Unless specifically stated otherwise, fees and charges under this Agreement do not include GST (or any other value-added tax). Capricorn will increase any fees and charges, unless specifically stated as including GST, by an additional amount on account of GST. You must pay the GST at the same time as You pay the Fees and charges. Capricorn will issue You a tax invoice in a GST compliant form.

11. PRIVACY AND USE OF INFORMATION

11.1 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 Booking Form for any purpose permitted by law (including, without limitation, for the purpose of ascertaining any breach of the Agreement and/or marketing purposes and shall include without limitation, all information submitted for the purposes of publication in 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.

11.2 You can request access to Your personal information by contacting Capricorn's Privacy Officer and may request at any time that Capricorn correct information that is incorrect or out of date. For further information in relation to Capricorn's Privacy Policy (which does not limit the foregoing), visit Capricorn's website at www.capricorn.coop.

12. TERM OF AGREEMENT

- 12.1 These Terms apply on and from the date set out in this document, being a date on or after the date of publication of these Terms on Capricorn's website (www.capricorn.coop under 'Suppliers – Purple Pages').
- 12.2 The Agreement shall remain in force for the duration of Purple Pages' publication or until termination of the Agreement, whichever is earlier. Capricorn gives no warranty as to the continuing availability of Purple Pages. Notwithstanding any other provision in these Terms, clauses 2, 5, 6, 7, 8, 10, 11, 16, 17, 18 and 19 survive the expiry or sooner termination of the Agreement.
- 12.3 Capricorn may at any time without notice terminate the Agreement or terminate, cancel, amend or vary any or all parts of Purple Pages including, but not limited to, as it relates to publishing of any artwork (including publishing of Your artwork as set out in Your Booking Form or as part of any Capricorn Artwork) in Purple Pages.

13. VARIATION OF TERMS

Capricorn may at any time without notice amend or vary these Terms to reflect its changing business, if it is required to do so by law, for security reasons or for technical or infrastructure reasons. Capricorn will use best endeavours to inform You of any material changes to the Terms (but shall not be liable for any failure to do so) and any changes to the Terms shall be updated on Capricorn's website at www.capricorn.coop under 'Suppliers – Purple Pages'. Notice under this clause shall be deemed to have been given by Capricorn to You if it is posted on Capricorn's website at www.capricorn.coop under 'Suppliers – Purple Pages'.

14. DISPUTE

In the event of any dispute under the Agreement, Capricorn has the sole and absolute discretion to make any determination it deems appropriate.

15. ENTIRE AGREEMENT

These Terms (together with the Booking Form) 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 the Terms are of any force or effect.

16. 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.

17. USE OF SUBCONTRACTORS

Capricorn may subcontract the whole or part of its performance of this Agreement, but will remain responsible for the acts or omissions of any subcontractor as if they were acts or omissions of Capricorn subject to the Terms.

18. PROPER LAW AND JURISDICTION

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

19. WAIVER

A waiver by Capricorn of any right, power or privilege arising under the Agreement 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:-

- 19.1 any other or further exercise of that right, power or privilege; or
- 19.2 the exercise of any other right, power or privilege.

20. DEFINITIONS AND INTERPRETATION

In these Terms unless the context otherwise requires:-

- 20.1 **Act** means the *Competition and Consumer Act 2010* (Cth);
- 20.2 **Agreement** has the meaning given by clause 1;
- 20.3 **Booking Form** means Your application to Capricorn to have advertising published in 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 Booking Form;
- 20.4 **Capricorn** means Capricorn Society Limited (ACN 008 347 313) together with its successors in business, transferees and assigns;
- 20.5 **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 Booking Form;
- 20.6 **Claim** includes claim, demand, action, proceeding, suit, cost, charge, expense, damage, debt, interest, loss or other liability;
- 20.7 **GST** means a goods & services tax, value added tax, consumption tax, or any similar tax or a tax on services only;
- 20.8 **Intellectual Property** means all intellectual property 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;
- 20.9 **Purple Pages** means the forthcoming editions of the publication by that name published by Capricorn from time to time, generally 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;
- 20.10 **Related Body Corporate** has the meaning given by section 9 of the *Corporations Act 2001* (Cth);
- 20.11 **Terms** mean the terms and conditions concerning advertising in Purple Pages as set out in this document, which may be amended by Capricorn in the future from time to time;
- 20.12 **You** means the Preferred Supplier named in a Booking Form submitted to Capricorn to place advertising in Purple Pages, and Your has a corresponding meaning;
- 20.13 the singular includes the plural and vice versa;

- 20.14 a reference to anything includes the whole and each part of it;
- 20.15 mentioning anything after “includes”, “including”, “for example”, or similar expressions, does not limit what else might be included;
- 20.16 an obligation, representation or warranty in favour of two or more persons or parties is for their benefit jointly and severally and an obligation, representation or warranty on the part of two or more persons binds them jointly and severally;
- 20.17 words which denote any gender also denote the other gender;
- 20.18 a provision of these Terms must not be construed to the disadvantage of Capricorn because Capricorn was responsible for the preparation of these Terms;
- 20.19 if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- 20.20 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;
- 20.21 a reference to a person includes a body corporate, body politic or partnership;
- 20.22 references to clauses are references to clauses in these Terms;
- 20.23 the headings in these Terms are for reference purposes only and do not influence or affect the meaning of these Terms;
- 20.24 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
- 20.25 a reference to any party includes that party’s executors, personal representatives, administrators, substitutes, successors and permitted assigns.