

Traveltalk

Terms and Conditions 2014

1. Our Agreement With You

- 1.1 As a customer of Traveltalk Media these terms and conditions form the basis of our agreement.
- 1.2 Our agreement with you also includes your booking confirmation request which you complete and provide to us. We may accept and rely on facsimile copy or email of the booking confirmation request as if it was an original. You will be bound by a facsimile/email copy of the application or order form as if it was an original.
- 1.3 This agreement will commence on the date of its signing by us and continue until the completion of the publication of advertisements booked.

2. Service Description

- 2.1 The services (the "Services") provided include:
 - (a) the publication of your advertisement(s) in our publication(s) on dates agreed from time to time and subject to available space in any relevant publication; and
 - (b) upon request, the provision of artwork and layout design and production services at the rate agreed upon.

3. Use if Services

- 3.1 You agree and warrant in relation to any material provided to us for use in any advertisement that:
 - (a) You are the owner of any copyright or other intellectual property right in the material and/or you have all necessary licences to use any third party copyright or other intellectual property included or reproduced or adapted in your material (including, without limitation, any moral right or performer's right, trade mark, trade indicia or slogan);
 - (b) The material does not infringe any state or federal statute or regulation or compulsory or voluntary industry code of conduct, including, without limitation, the Trade Practices Act, 1974, the Privacy Act, 1988, any act or regulation dealing with defamation, indecency, censorship, advertising standards or self regulation;
 - (c) The material shall not include any defamatory, libellous, indecent, pornographic, offensive, threatening, false or disparaging content;
 - (d) The material shall not promote or encourage piracy, counterfeiting, plagiarism, unfair competition or idea misappropriation.
- 3.2 You hereby indemnify Pointer Publishing Pty Ltd and agree to keep it indemnified against any loss or damage (including legal costs on a client/own solicitor basis for any breach by you or your servants or agents or Clause 3.1 hereof.
- 3.3 Pointer Publishing Pty Ltd may, in its absolute discretion, refuse to publish any advertisement or to refuse to repeat any advertisement if any material contained in the advertisement may amount to a contravention of Clause
- 3.4 hereof, is inconsistent with Traveltalk's editorial or advertising policy or for any other reason.
- 3.5 You must provide your artwork at least one week prior to publication of the publication in which the advertisement is to be placed in the format and to the quality advised by us in the booking confirmation request. Failure to do so may result in the advertisement not being printed or not being printed in the position requested or may affect the quality of the advertisement.
- 3.6 You agree that you are solely responsible for the quality and accuracy of any artwork provided by you.

- 3.7 Where we provide the services set out in Clause 2.1(b) you agree that you are solely responsible for checking and approving the accuracy and/or quality of the artwork produced and agree that signing and returning our artwork approval form is conclusive evidence that you have approved any such artwork for publication. If you fail to approve any such artwork within [24 hours] prior to publication you agree that you are deemed to have approved such artwork and we will not be liable for any errors it may contain.
- 3.8 Subject to any express written agreement to the contrary, you agree we may change the position of your advertisement or other copy where we consider it desirable for any editorial, layout or legal requirements of any of our publications. If this needs to be done, we will use our best efforts to place your advertisement in a suitable alternative position and, subject to time constraints, to notify you of our decision prior to publication.

4. Charges and Payment

- 4.1 You agree during the term of this agreement:
 - (a) to be charged for the Services we provide to you at our current Prices.
 - (b) as our charges are exclusive of any taxes, that we can pass on to you the full amount of any taxes payable on the charges and GST;
 - (c) to pay accounts on 14 day invoice for all of those charges (including taxes) by the date specified in the account ("Due Date") unless otherwise agreed.
 - (d) To pay any legal costs we may incur in recovering payment of our account on a full indemnity basis.
- 4.2 If you dispute in good faith an amount in the account, you must notify us in writing within fourteen days setting out reasons for the dispute and the amount in dispute. Notwithstanding any dispute as to any amount of any charge, you must pay the undisputed amount of each account by the Due Date.
- 4.3 If you do not pay the account by the Due Date, then we may charge an administration fee of \$15 per month or part thereof or 1.5% per month on the outstanding amount of the invoice and suspend all or part of your Services pending payment of outstanding amounts on the account. Nothing in this clause affects our rights to terminate this agreement under clause 8
- 4.4 Rejected cheques will be automatically charged back to the customers account. A charge of \$15 is charged for dishonoured cheques.
5. **Amendments to Terms and Conditions**

Without limiting clause 4.1, we may vary, alter, replace or revoke any of these terms and conditions effective upon the expiry of 14 days written notice from us. We may interpret your ongoing use of the Services after that date as constituting your acceptance of any such variation, alteration, replacement or revocation of these terms and conditions
6. **Use of Information and the Privacy Act 1988**

You agree to provide us with any information we request in connection with our providing the Services to you under this agreement and hereby authorise us to use information provided by you as set out below, subject to the provisions of the Privacy Act, 1988 and any other applicable act or mandatory code of practice:

- 6.1** You authorise and consent to the following:
- (a) our obtaining from a credit reporting agency a credit report containing personal credit information about you in relation to commercial credit provided by us.
 - (b) our obtaining personal information about you from other trade or credit providers, whose names you provided to Pointer Publishing Pty Ltd or that may be named in a credit report, for the purpose of assessing your application for commercial credit made to us.
 - (c) our obtaining a consumer credit report about you from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed by you.
 - (d) Our providing any information about you to any law enforcement agency as required or authorised by statute or regulation
 - (e) Our refusing to provide you with information we hold about you where to do so would in the case of personal information would pose a serious and imminent threat to the life or health of any individual; providing access would have an unreasonable impact upon the privacy of other individuals; the request for access is frivolous or vexatious; the information relates to existing or anticipated legal proceedings between the organisation and the individual, and the information would not be accessible by the process of discovery in those proceedings; providing access would reveal the intentions of the organisation in relation to negotiations with the individual in such a way as to prejudice those negotiations; providing access would be unlawful; denying access is required or authorised by or under law; providing access would be likely to prejudice an investigation of possible unlawful activity; providing access would be likely to prejudice the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law; the enforcement of laws relating to the confiscation of the proceeds of crime; the protection of the public revenue; the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct; the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of its orders; by or on behalf of an enforcement body; or an enforcement body performing a lawful security function asks the organisation not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia.
- 7. Limit on Liability**
- 7.1** We do not exclude or limit –
- (a) the application of any provision of any statute (including the Trade Practices Act 1974) where to do so would contravene that statute or cause any part of this clause 7 to be void; or
 - (b) direct losses and damages which arise only as a result of our gross negligence (which means where we commit an act or allow an omission to occur in reckless disregard the consequences of the act or omission).
- 7.2** Except where clause 7.1 applies, we exclude all statutory liability, tortious liability (including but not limited to liability in negligence), conditions and warranties implied by custom, the general law or statute, liability for all direct, economic, consequential or indirect losses, expenses, damages and costs incurred by you, arising out of or relating to the Services, any failure to supply change to or delay in supplying the Services or out of or relating to this agreement, including, but not limited to, liability for gross negligence and except to the extent of clause 7.1(a), we are not responsible or liable for any indirect consequential or economic damages, including, without limitation, loss of income or profit or loss of actual potential business opportunities.
- 7.3** Our liability to you for any breach of any implied provision of this agreement (other than an implied warranty of title) is limited, at our option, to refunding the price of the Services in respect of which the breach occurred, or to providing the Services again.
- 7.4** We are not liable to you for any delay in or any failure to provide the Services which is caused by an event beyond our reasonable control.
- 8. Term of Agreement**
- 8.1** This agreement may be immediately terminated by written notice at any time if, without prior written consent: either party breaches any term or condition of this agreement; a receiver or receiver and manager is appointed over any of either parties property or assets; a liquidator or provisional liquidator is appointed to either party; either party becomes bankrupt; either party enters into any arrangements with either party's creditors; either party assigns or otherwise deals with either party's rights under this agreement; either party ceases to carry on business; or there is a material change in either party's direct or indirect ownership or control.
- 9. Assignment**
- 9.1** Your rights under this agreement are personal. You must not assign or attempt to assign any right or obligation under this agreement without our written consent. We may assign all or any of our rights and obligations under this agreement at any time by notifying you in writing.
- 10. Dispute Resolution**
- 10.1** Your rights under this agreement are personal. You must not assign or attempt to assign any right or obligation under this agreement without our written consent. We may assign all or any of our rights and obligations under this agreement at any time by notifying you in writing.
- 11. Miscellaneous**
- 11.1** Any notice, demand, consent or other communication required to be given to either party must be delivered personally or sent by prepaid mail or by facsimile to the address of the other as last notified.
- 11.2** Clauses 4, 6 and 7 shall survive the expiration or termination of this agreement.
- 11.3** This agreement shall be governed by and construed in accordance with the law of WA and the parties hereby submit to the nonexclusive jurisdiction of the courts of that State.
- 11.4** This agreement contains yours and our entire understanding to the exclusion of any and all prior or collateral agreement, representation or understanding relating to the Services, whether oral or written.
- 11.5** If any part of this agreement is found to be invalid or of no force or effect, this agreement shall be construed as though such part had not been inserted and the remainder of this agreement shall retain its full force and effect.
- 11.6** Where you are a corporation and we are providing you credit, we may ask you to provide personal guarantees from your directors or shareholders guaranteeing compliance with the terms of this Agreement, including, without limitation, payment for the provision of the Services.

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