

TERMS.AND.CONDITIONS.

1. ADVERTISEMENTS:

All advertisements submitted for publication by any business, organisation, individual, agent or internal department ("The Customer") in the collective press and online media run by and/or supported by the University of Western Australia Guild of Undergraduates ("UWA GUILD") and its affiliates are accepted for publication on the following Terms & Conditions. ("Terms & Conditions"). These media include but are not limited to UWA Student Diary, Pelican (UWA Student Magazine), Lighthouse (UWA International Students Magazine) and G-News (Student Guild email newsletter) or other publications that may be produced by the UWA GUILD in the future.

These Terms & Conditions will apply to:

- (a) display and classified advertising in UWA GUILD Publications ("Press Advertising");
 - (b) online banner and email newsletter advertising ("Online Advertising");
 - (c) Magazine/Diary inserted brochures;
 - (d) all other advertising services provided to the Customer by UWA Guild in relation to Advertisements ("Other Advertising")
- For the purposes of these Terms & Conditions, all of the items in (a), (b), (c) and (d) above are collectively referred to as 'Advertising' or "Advertisements" as the context permits

2. TERMS INCONSISTENT: The placing of an order for any Advertising by a Customer constitutes acceptance by the Customer of these Terms & Conditions and of all rates set out by UWA GUILD in the relevant rate sheet unless otherwise agreed in writing by UWA GUILD. To the extent that any order submitted by the Customer attempts to include terms that are inconsistent with these Terms & Conditions, those terms will not apply.

3. CUSTOMER: The expression "Customer" means the advertiser and, where any Advertising has been placed with UWA GUILD by an advertising agency (subject to clause 21), includes that agency.

4. ENTIRE AGREEMENT: Subject to clause 24, these Terms & Conditions (including booking confirmations and any credit terms referred to in clause 13 if applicable) set out the entire agreement between the parties in relation to any Advertising and supercedes all prior arrangements, undertakings, representations and warranties by or between the parties in relation to such Advertising.

5. SUBMISSION OF ADVERTISING: If submitting any Advertisements, the Customer must comply with the submission requirements and deadlines set out in the relevant UWA GUILD Rate Sheet, or on the relevant UWA GUILD website, or otherwise notified to the Customer by UWA GUILD. UWA GUILD will not be obliged to accept any Advertisement for publication which has not been submitted in this manner.

6. PUBLICATION:

- (a) Subject to these Terms & Conditions, UWA GUILD will use its reasonable endeavours to publish Advertisements submitted by Customers in the format submitted by the Customer and in accordance with the placement instructions of the Customer.
- (b) Without limiting the above, if UWA GUILD, in its sole discretion, believes that the placement instructions of the Customer for an Advertisement are inappropriate for any reason, UWA GUILD may offer the Customer alternate placements. If the Customer does not accept the alternate placements, clause 10(c) will apply.

7. CANCELLATION: The cancellation by the Customer of any Advertising after the booking deadline will incur a cancellation fee of 80% of the charges that would be payable by the Customer if the Advertising had been published or completed. This fee is non-negotiable to all Advertising bookings including those that comprise advance multiple bookings and special packages incurring a bulk discount.

8. ADVANCE MULTIPLE BOOKINGS: Where The Customer and UWA GUILD agree a booking for advertisements in advance in multiple press publication editions, it is understood that these are on the basis of the UWA academic year in question and that any discounted price agreed for the overall booking is subject to all the advertisements booked being placed and paid for in accordance with the Clause 15.

9. CUSTOMER UNDERTAKINGS: The Customer undertakes and warrants to UWA GUILD that no Advertisement will:

- (a) breach or infringe the Trade Practices Act 1974 (Cth) or equivalent legislation in any State or Territory of Australia;
- (b) infringe copyright, trademark or other intellectual or moral property rights of any person;
- (c) contain material that is obscene, offensive, defamatory, or otherwise unsuitable for publication;
- (d) breach or infringe any laws relating to therapeutic goods, financial services, anti-discrimination, political publication, publication of court or tribunal materials, or any other State or Commonwealth legislation, rule or ordinance; or
- (e) give rise to any liability on UWA GUILD, cause UWA GUILD to be in breach of any law by virtue of publishing the Advertisement, or result in a claim being made against UWA GUILD.
- (f) be contrary to Guild Regulations & Policy as published within the Guild Regulations and the official Policy Book.

10. UWA GUILD RIGHTS: UWA GUILD may in its absolute discretion:

- (a) without notice to the Customer alter or abbreviate any Advertisement or insert the word "Advertisement" above or below any Advertisement which in UWA GUILD's opinion resembles editorial matter;
- (b) re-publish an Advertisement in other UWA GUILD publications and media (for example UWA GUILD may publish Newspaper Advertising online, or vice versa), which subject to clause 10(c) will be without further cost to the Customer; or
- (c) in relation to an Advertisement submitted to UWA GUILD for publication in print, also publish each listing contained in the Advertisement on UWA GUILD's relevant website or email newsletter as Online Advertising unless the Customer advises UWA GUILD at the time of submission that it does not wish to have the Advertisement published online.

11. INDEMNITY: By submitting or authorising submission of an Advertisement for publication or Advertising, the Customer indemnifies UWA GUILD (and its employees, officers and agents) against any proceedings, demands, losses, costs (including legal costs on a full indemnity basis), damages and other liabilities of any nature taken, made or awarded against or incurred by UWA GUILD (and/or its employees, officers and agents) in connection with the Advertisement or any Advertising.

12. NO GUARANTEE OR WARRANTIES:

- (a) UWA GUILD does not guarantee that the Customer's product featured in an Advertisement will be the only product of that type featured in Advertisements on any one page, although all efforts will be made to ensure that location is appropriate and maximizes advertising effectiveness. UWA GUILD will not be responsible or liable to the Customer in any way if the Customer's request cannot be granted, or the product featured in the Customer's Advertisement is not the only product of that type featured in Advertisements on any one page.

13. CREDIT TERMS APPLY: The Customer acknowledges that any credit provided will be on UWA GUILD's then standard credit terms which may vary from time to time.

14. GST: Unless otherwise stated by UWA GUILD, advertising rates are quoted exclusive of GST and the Customer will pay GST in addition to such rates.

15. PAYMENT: The Customer must pay UWA GUILD for Advertisements:

- (a) in accordance with the rates set out in the relevant rate sheets (which may be varied at any time by UWA GUILD without notice) or as per the advertisement prices agreed between the UWA GUILD and The Customer unless otherwise agreed in writing by UWA GUILD;
- (b) by prepayment, if so required by UWA GUILD;
- (c) if payment is agreed by UWA GUILD to be on account, on the credit terms supplied by UWA GUILD to the Customer; and
- (e) on the basis of booked space or advertising material (whichever is larger) provided that if the actual space is reduced during printing, UWA GUILD will not be liable to the Customer for any credit for such reduction.

16. PRODUCTION SERVICES: If the Customer requires any creative, design, production, or other services ("Production Services") from UWA GUILD, the Customer must pay UWA GUILD additional charges for such services, as notified in writing to the Customer by UWA GUILD at the time (or shortly after) the Customer requests the Production Services. UWA GUILD may charge the Customer on an hourly basis for these Production Services on a case by case basis and minimum charge may apply.

17. FAILURE TO PAY: If any payment is not received by UWA GUILD on or before the date that such payment is due, or if the Customer commits an act of bankruptcy (in the case of an individual), or is unable to pay its debts as and when they fall due, enters into any arrangement with its creditors other than in the ordinary course of business, passes a resolution for administration, winding up or liquidation (other than for the purposes of re-organisation or reconstruction), has a receiver, manager, liquidator or administrator appointed to any of its property or assets or any petition is presented for its winding up (all in the case of a body corporate), UWA GUILD may:

- (a) cancel any provision of credit to the Customer;
- (b) immediately and without notice, suspend or cancel all Advertising orders of the Customer and terminate any agreement in relation to Advertising not yet published;
- (c) require cash pre-payment for any further Advertising;
- (d) impose interest at the rate of 2% (two percent) above the Reserve Bank's 90 day Bill Rate on all sums that remain unpaid until full payment is received;
- (c) take proceedings against the Customer for any outstanding amounts;
- (d) recover from the Customer all costs incurred by UWA GUILD in the recovery of any amount owed by the Customer including any mercantile agency costs and legal costs on a full indemnity basis; and
- (e) exercise any other rights at law.

18. LIABILITY:

- (a) Except as expressly provided in these Terms & Conditions, UWA GUILD excludes, to the fullest extent permitted by law, all warranties, representations and conditions whether implied by law, trade, custom or otherwise. Where UWA GUILD is liable to a Customer for a breach of implied warranty or condition that may not be excluded, UWA GUILD's liability will, to the extent permitted by law, be limited to any one or more of the following (at UWA GUILD's option):
- (i) in the case of the supply of goods under these Terms & Conditions (if any),:
 - (a.i.i) the replacement of the goods or the supply of equivalent goods or the payment of the cost of replacing the goods or acquiring equivalent goods;
 - (a.i.ii) the repair of the goods or the payment of the cost of having the goods repaired; or
 - (ii) in the case of the supply of services under these Terms & Conditions:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (b) In no circumstances will UWA GUILD (its employees, officers or agents) be liable, whether in tort, contract or otherwise for any indirect loss, loss of profits, consequential loss or special or exemplary damage suffered by the Customer or any other person, even if such loss or damages are foreseeable and whether or not UWA GUILD had been advised of the possibility thereof.
- (c) The liability of UWA GUILD (including UWA GUILD's officers, employees and agents) to the Customer, or any other person, for any and all loss or damage arising in relation to these Terms & Conditions and/or Advertisements (including from any errors or inaccuracies however caused, whether by negligence, system, software or press failure, mistake, mis-classifications, early, late or non-insertion of Advertisements, or loss or delay in the delivery of replies) will be limited to an amount equal to the cost of the space of the relevant Advertisement, provided that if the Customer does not advise UWA GUILD of any error within five days of publication of the Advertisement UWA GUILD will have no liability whatsoever.
- (d) UWA GUILD will not be liable to the Customer or any other person for any loss of whatever kind suffered as a result of Other Advertising, or an Advertisement not being available for publication or not published where such loss arises from any cause beyond its control. Any loss suffered as a result of any partial or total breakdown of UWA GUILD's operation or network, any technical malfunction, computer error or loss of data will be deemed to be an event beyond UWA GUILD's control. Should such an event occur, UWA GUILD will take responsibility to resurrect sites and links, and the Customer has the right to cancel the particular contract for the affected advertising at no penalty if such an occurrence results in the site being down for more than 7 working days (working days being Monday to Friday inclusive, but excluding statutory holidays).
- In addition, UWA GUILD will not be liable to the Customer for any error or inaccuracy in Advertisements placed by telephone.

19. RETURN OF ADVERTISING MATERIAL: If the Customer requests the return of any material submitted to UWA GUILD in relation to Advertising ("Advertising Material"), the Customer must collect Advertising Material submitted to UWA GUILD immediately after publication. UWA GUILD will endeavour to take reasonable care of Advertising Material in its custody and control, but will not be responsible for any loss or damage to Advertising Material (even if caused by UWA GUILD's (its employees', officers' or agents') negligence).

20. NO WAIVER: If at any time UWA GUILD does not enforce any of these Terms & Conditions or grants the Customer time or other indulgence, UWA GUILD shall not be construed as having waived that term or condition or its right to later enforce that or any other term or condition.

21. ASSIGNMENT: The Customer may not:

- (a) assign any of its rights under any agreement or any part of an agreement to which these Terms & Conditions apply (including the rights to advertising space allocated in accordance with such an agreement) to any third party; or
- (b) place Advertisements (whether directly or indirectly) on behalf of third party advertiser(s) (whether as an agent or otherwise), except on terms previously agreed with UWA GUILD. Advertisements are placed by a Customer on behalf of a third party advertiser where, for example (but without limitation), the Advertisement promotes or otherwise notifies readers as to the goods or services of the third party advertiser rather than the Customer.

22. GOVERNING LAW: These Terms & Conditions are governed by, and construed in accordance with the law in force in Western Australia. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with these Terms & Conditions.

23. SEVERABILITY: If any provision of these Terms & Conditions is held illegal or unenforceable, then such illegality or unenforceability shall not affect the remaining provisions of these Terms & Conditions which shall remain in full force and effect.

24. ADDITIONAL TERMS: In addition to these Terms & Conditions the Customer acknowledges that all Advertising, including the conditions of payment, delivery and changes to or cancellation of such Advertising, will be in accordance with and subject to any specific conditions notified to the Customer or generally published by UWA GUILD from time to time, including on the relevant UWA GUILD website.

25. AMENDMENT: UWA GUILD may vary these Terms & Conditions at any time in its sole discretion, provided that:

- (a) such amended terms will not affect prior agreed Advertising orders with a date of publication within 3 months from the date of the variation; and
- (b) if the Customer does not agree with a variation the Customer may cease placing orders with UWA GUILD.