

WYNDHAM PAGES TERMS & CONDITIONS

This contract is between you (the advertiser) and Wyndham Pages (the publisher).

These terms and conditions set out the basis on which you acquire the Product(s) or Service from Wyndham Pages.

1 INVOICE AMOUNT

- 1.1 The advertiser shall pay Wyndham Pages the amount specified on the purchase order / advertising application form for all products and services provided by the publisher.
- 1.2 The advertiser agrees to pay the publisher for any additional requests for products and services.
- 1.3 The advertiser agrees to pay the publisher for any requested amendments in excess of the one amendment allowed. Wyndham Pages reserves the right to, at its own discretion, apply a charge at the rate of \$80.00 per hour (plus GST) for additional requirements or changes and this charge rate may change from time to time without further notice required to be given to the advertiser.
- 1.4 Requests for changes and pricing amendments by the advertiser must be made in writing to Wyndham Pages. Verbal arrangements in relation to pricing will not have any effect.

2 PAYMENT OF TAX INVOICE

- 2.1 Payment of the tax invoice shall be made to Wyndham Pages ABN 86 434 628 477 at Level 1, 275 Heaths Road, Hoppers Crossing Victoria 3029.
- 2.2 Payment is due within 14 days of either the tax invoice date or signed advertising application form whichever is the earlier.
- 2.3 Where the advertiser is an advertising agency, payment is due within 30 days of the tax invoice date / signed advertising application form (whichever is the earlier).
- 2.4 If payment is not received within the above mentioned time, and the publisher's prices are adjusted, Wyndham Pages reserves the right to apply the new price structure at its own discretion to existing accounts.
- 2.5 The advertiser agrees that it shall be liable for the administration costs of any cheque which is dishonoured at the rate of \$50.00 per cheque.
- 2.6 Wyndham Pages reserves the right to recover all costs associated with recovering unpaid tax invoices, including legal costs and disbursements, administrative costs and any other services used by Wyndham Pages to recover overdue amounts.
- 2.7 Wyndham Pages reserves the right to suspend or cancel any services if the advertiser does not pay the tax invoice within the due date.

3 ACCEPTANCE OF ORDER

- 3.1 Wyndham Pages reserves the right to reject this order at its own discretion.

4 PLACEMENT REQUEST

- 4.1 All requests must be made in writing. Verbal arrangements will not be acted upon.
- 4.2 All requests made by a representative of the advertiser shall be deemed as a guarantee of the advertiser to fulfil its obligations under these terms and conditions.
- 4.3 Wyndham Pages does not guarantee the placement position (unless specified on the purchase order). Such requests will be dealt with at the discretion of Wyndham Pages. Failure to comply with such requests does not constitute the basis for a credit note if the advertiser is not satisfied with the position.
- 4.4 Placement requests in the "Wyndham Pages Magazine" are valid for one edition of the said magazine only unless otherwise specified and agreed in the purchase order. The advertiser must advise Wyndham Pages in writing if the placement is to be re-published.
- 4.5 Placement requests on the Wyndham Pages website www.wyndhampages.com.au are valid for twelve (12) months from the date of placement unless otherwise specified and agreed. The advertiser must advise Wyndham Pages in writing if the placement is to be re-listed after this time.

5 PRINTED PRODUCTS & ONLINE PRODUCTS

- 5.1 The advertiser must check all advertisements for any errors or omissions by no later than the date specified by Wyndham Pages. Failure to respond to this shall be deemed to be approval of the advertisement.
- 5.2 Wyndham Pages cannot rectify any errors or omissions after the closing date of advertising.
- 5.3 If the advertiser instructs Wyndham Pages to repeat an advertisement, the advertiser must notify Wyndham Pages of any changes which are required on or before the closing date of advertising.
- 5.4 The onus is on the advertiser to notify Wyndham Pages in writing of any errors or omissions in the advertisement.
- 5.5 The advertiser acknowledges that Wyndham Pages products and services cannot be guaranteed to be 100% error free. The advertiser acknowledges that the existence of any errors or omissions shall not constitute a breach or reason to terminate or alter this agreement in any way.
- 5.6 Wyndham Pages reserves the right to reject or remove any content which it deems inappropriate, offensive, misleading or deceptive, defamatory, incorrect or in any other way in breach of any legislative or third party rights.
- 5.7 Wyndham Pages is not responsible for the contents of any pages linked or referenced through its website at www.wyndhampages.com.au. Wyndham Pages makes no warranty, guarantee or promise (expressed or implied) concerning the content or accuracy of the information linked or referenced through the said website at www.wyndhampages.com.au.
- 5.8 The presence of an advertisement in the "Wyndham Pages Magazine" does not imply any endorsement of the content of the advertisement by Wyndham Pages.
- 5.9 The presence of a hyper-link from a page on the Wyndham Pages (<http://www.wyndhampages.com.au>) website does not imply any kind of endorsement of the content of these pages or links by that organisation.
- 5.10 With respect to hyperlinks and pointers to websites operated by third parties that appear on the Wyndham Pages (<http://www.wyndhampages.com.au>) website Wyndham Pages state that these websites are not under the control of Wyndham Pages nor does Wyndham Pages have any responsibility for the contents of any such hyperlink or linked website. If the advertiser links to any such websites, it leaves the Wyndham Pages (<http://www.wyndhampages.com.au>) website and does so entirely at its own risk.
- 5.11 Wyndham Pages will endeavour to ensure that all information provided on the Wyndham Pages (<http://www.wyndhampages.com.au>) website is accurate and up to date and Wyndham Pages takes no responsibility for any error or omission relating to this information.

6 CONTENTS OF PRINTED AND ONLINE PRODUCTS AND UNDERTAKINGS

- 6.1 The advertiser will be solely responsible for the content of its printed and online undertakings. Wyndham Pages is not responsible for proof reading any content unless specifically agreed to in writing.
- 6.2 Wyndham Pages makes no representations to the advertiser concerning the content or functionality of its printed or online advertisements. It is the advertisers own responsibility to ensure that it meets its own requirements.
- 6.3 If the advertiser provides Wyndham Pages with goods, material, photographs, film, data or information to be used in any form, it hereby warrants that these do not infringe copyright and the rights of third parties and indemnifies Wyndham Pages against any action taken against Wyndham Pages by any such third parties.
- 6.4 Without limiting the generality of the foregoing, the advertiser agrees not to infringe the copyright trademark, privacy or personal or proprietary rights of third parties, supply libellous, abusive, obscene material or disparage the products or services of any third party.
- 6.5 Wyndham Pages for its part hereby undertakes not to knowingly infringe the rights of third parties in activities conducted on the advertiser's behalf.
- 6.6 The advertiser is solely responsible for dealing with persons who access its advertisements and warrant that it will not refer complaints or inquiries in relation to such advertisements to Wyndham Pages.

7 INTELLECTUAL PROPERTY

- 7.1 All files created remain the property of Wyndham Pages unless otherwise agreed in writing.
- 7.2 The advertiser agrees that copyright in Wyndham Pages products including the content of our product being provided on its behalf is the property of Wyndham Pages. The advertiser may not reproduce any material without the prior written consent from Wyndham Pages. This excludes any trademarks, designs, logos, graphics or illustrations that the advertiser owns.
- 7.3 The advertiser agrees that Wyndham Pages will reproduce, modify or adapt its property where required to provide the product or service that is required.
- 7.4 Wyndham Pages retains the Copyright in and the right to use all artwork created in advancing the profile of Wyndham Pages and to be recognised for artwork created by Wyndham Pages.
- 7.5 Unless otherwise agreed, Wyndham Pages reserves the right to showcase any of the product(s) that it has provided the advertiser with on the Wyndham Pages (<http://www.wyndhampages.com.au>) website and/or Magazine.

8 SUSPENSION OF SERVICES

- 8.1 Wyndham Pages reserves the right to suspend services in any case where the advertiser fails to perform its obligations under this agreement. This includes but is not limited to where payment is not received within the agreed time frame. Online listings may be removed until final payment (or periodic payment where agreed) is confirmed/ received.
- 8.2 Wyndham Pages may from time to time and without notice or liability to the advertiser suspend any of the services if the reason for doing same is an event beyond the reasonable control of Wyndham Pages.

9 CANCELLATION AND TERMINATION

- (a) Cancellation of a purchase order and or agreement by the advertiser must be communicated to Wyndham Pages in writing (letter, facsimile or email) prior to the booking deadline / cancellation date for the Wyndham Pages Magazine.
- (b) Once design work has commenced, the deposit is not refundable. Where the project is cancelled at the advertiser's request, any costs accrued by Wyndham Pages over and above the deposit will be invoiced to the advertiser and will be due and payable immediately.
- (c) Where advertising has been agreed to and the project is cancelled at the advertisers request and where the design work has not yet commenced, a termination fee of 25% of the agreed quotation or proposal or the total of costs incurred by Wyndham Pages to that date will apply (whichever is greater).
- (d)(i) Works in progress can be postponed at the advertisers request in writing. All outstanding costs to that date will be invoiced to the advertiser and become payable immediately.
- (d)(ii) Where the advertiser postpones a project in accordance with clause 9(d)(i), work will be restarted and completed at the advertiser's instructions in accordance with the specifications of the original quotation.
- (d)(iii) Notwithstanding clause 9(d)(ii), work resumed after postponement will be subject to a cost revision. Work will not re-start until a revised costing (if any) has been agreed to in writing between the parties.
- (e) Wyndham Pages reserves the right to terminate services where (i) there are outstanding invoices, or (ii) there is a material breach of these terms and conditions.
- (f) Wyndham Pages will be entitled to cancel any agreement with the advertiser where it becomes insolvent, enters into voluntary arrangements with creditors, enters receivership or ceases trading for any reason. This will be done without prejudice to any other rights or remedies available to Wyndham Pages. Amounts owing will be invoiced and immediately due and payable.

10 GENERAL

- 10.1 Wyndham Pages may require a personal guarantee from the Director of a company in cases where any advertising is required before payment.
- 10.2 Wyndham Pages reserves the right to change these Terms and Conditions without notice to the advertiser. It is the advertiser's responsibility to review Wyndham Pages website periodically to ascertain whether these Terms and Conditions have changed. The amended Terms and Conditions will become effective as soon as they are posted on the Wyndham Pages website, following which, should you continue to use this service, you shall be deemed to have agreed to be bound by such amendments.

11 INDEMNITY

- 11.1 Wyndham Pages, its servants, agents and contractors warrant that we will use due care in relation to the provision of the product or service provided.
- 11.2 The advertiser is solely responsible for the final approval of any product or service prior to Wyndham Pages providing the product or service.
- 11.3 The advertiser indemnifies and agrees to hold harmless Wyndham Pages, its servants, agents and contractors against all liability, claims, actions, demands, proceedings, losses, damages, costs including Solicitor and client costs and expenses which Wyndham Pages, its servants, agents or contractors may suffer, incur or sustain in connection with, or arising in any way out of the publication or error in publication of any material or editorial pursuant to the order. 11.4 The advertiser indemnifies and agrees to hold harmless Wyndham Pages, its servants, agents and contractors against any action for defamation, slander, passing off, breach of copyright, or infringement of any trademark, name of description, invasion of privacy or breach of any provision of the Trade Practices Act 1974.
- 11.5 Notwithstanding the above, where there is an error in the product or service or a failure to provide the product attributable solely to Wyndham Pages, then Wyndham Pages may offer to provide the product a second time, without error, the next available time. The advertiser shall be obliged to accept this as settlement / resolution and shall not be entitled to any further indemnity or to withhold payment by reason of such error.
- 11.6 The advertiser agrees that Wyndham Pages shall be entitled without notice or compensation to do any of the following:
 - a) Decline or cancel and advertisement without stating any reason;
 - b) Postpone the publication of the Wyndham Pages Magazine or online listing at any time without compensation.
 - c) Change the title of the magazine.
- 11.7 Please note that Wyndham Pages accepts no responsibility for delays or down time, breakdowns or data loss caused by Internet Service Providers (ISPs), third party hosting companies, and both internal and external servers.

12 LIABILITY OF WYNDHAM PAGES

- 12.1 Wyndham Pages will not be liable for any acts, omissions or obligations of any buyer, and the advertiser must not pursue Wyndham Pages to recover amounts owed to the advertiser by buyers, or otherwise to recover damages or to obtain other remedies on account of any breach by a buyer of any duty of obligation of that buyer to the advertiser.
- 12.2 To the full extent permitted by law;
 - a) In no event will Wyndham Pages be liable for special, incidental or indirect damages or economic loss or consequential loss or damage (including, but not limited to, lost profits or savings), even if Wyndham Pages is informed of the possibility such damages may occur, and
 - b) Any conditions on Wyndham Pages or liabilities or warranties of Wyndham Pages which would, but for this clause, be implied into this Agreement by any law are hereby excluded.
- 12.3 Any liability of Wyndham Pages for loss or damage, however caused (including, but not limited to, by the negligence of Wyndham Pages), suffered by an advertiser in connection with this agreement is limited to \$1,000.00 (One thousand Dollars). The liability of Wyndham Pages is reduced in proportion to the extent that this liability results from a negligent act or omission on the part of Wyndham Pages.
- 12.4 Severability: As far as is possible this contract is to be construed so as not to be void, voidable, unenforceable or illegal, but if any part of this contract is void, voidable, enforceable or illegal by operation of any law, then the offending part of this deed as far as is possible is to be read down to the extent necessary to ensure that it is not invalid, unenforceable or illegal but if it cannot be so read down then it is to be deemed severed without affecting the remainder of the contract which will continue to apply with the full force and effect as amended.