

1. REGISTRATION FOR HOSTING SERVICES

- 1.1 As a pre-condition to you receiving Online Services from us, you must register for Hosting Services by providing to us such materials and information that we require and paying to us the Hosting Fee. The Hosting Fee is payable on an annual in advance basis. You must remain registered for Hosting Services to receive Online Services.
- 1.2 In registering for Hosting Services and renewing that registration you agree that the Online Services shall be supplied by us subject to these terms.

2. ADVERTISING SERVICES

- 2.1 We will provide you with Advertising Services, as specified by you in your Order, where that Order has been accepted by us and where you otherwise comply with the requirements of these terms.
- 2.2 These terms apply to the supply of Advertising Services by us to you. These terms prevail over any terms in your documents and represent the entire agreement between us. When you place an Order with us, make any payment or comply with these terms, you are taken to have accepted them.

3. ORDERS

- 3.1 In placing an Order, you must:
 - (a) specify the particular Advertising Services that you require;
 - (b) comply with our then current ordering procedure (including all applicable deadlines for the placement of orders) and these terms;
 - (c) place the Order at least seven business days before the earliest Posting Date in the Order; and
 - (d) supply to us such materials and information that we require.
- 3.2 You acknowledge that a contract between us for the supply of the Advertising Services that are the subject of your Order will not arise until we accept your Order. Acceptance of an Order by us in no way limits your obligation to comply with the requirements of these terms.

4. CHARGES

- 4.1 In return for the supply of Online Services by us, you must pay to us the Charges for those services.
- 4.2 Except for the Hosting Fee which is payable on the basis set out in clause 1, you must pay Charges under these terms within 30 days from the date of invoice by us.
- 4.3 If you fail to pay any invoice by the due date then, without affecting any other right or remedy available to us, we may:
 - (a) suspend or refuse to perform any Online Services to you whether under an existing or new Order;
 - (b) charge you interest on the amount unpaid at the rate set from time to time under the *Penalty Interest Rates Act 1983 (Vic)* (such interest to be computed daily and compounded monthly) until payment in full is made; and
 - (c) recover from you, in addition to the outstanding amount, all reasonable costs incurred by us in collection of the outstanding amount.
- 4.4 The Charges do not include sales, goods and services, value added, carbon or other environmental, or any other applicable government tax or duty payable either before or after invoice from us. Such taxes and duties are payable by you in addition to the Charges at the same time that the Charges are due.

5. MATERIALS SUPPLIED TO US BY YOU

- 5.1 You will supply us with Advertising Materials:
 - (a) which comply with your Order and our current Advertising Specifications;
 - (b) which are free from defects, viruses, trojan horses and other forms of malicious code; and
 - (c) at least five business days before the Posting Date for those Advertising Materials.
- 5.2 Advertising Materials that you supply to us must not:
 - (a) contain anything illegal, obscene, defamatory or offensive, as determined by us in our discretion; or
 - (b) be otherwise inappropriate for display on the Website as reasonably determined by us.
- 5.3 You warrant that:
 - (a) you have all necessary authority to place each Order for Online Services;
 - (b) the supply by us of Online Services in relation to Advertising Materials that you provide to us will not infringe your or any third party's copyright, trade marks or other property right; and
 - (c) all information contained in Advertising Materials and in any accepted Order is correct, including the Posting Periods and Advertising Areas (or lack of Advertising Areas) for Advertising Materials.
- 5.4 You grant us a non-exclusive licence to use your Advertising Materials for the Online Services you order from us.

6. DISPLAY CONDITIONS

- 6.1 We will display Advertising Materials on the Website for the Posting Period, subject to these terms.
- 6.2 Where you do not stipulate any Advertising Areas in your Order, the Advertising Materials will be accessible generally from the Website. Any Advertising Areas specified in your Order are used by us for the Website's search functionalities only and as such you acknowledge and agree that:
 - (a) users of the Website may access Advertising Materials in areas other than the Advertising Areas stipulated for those Advertising Materials; and
 - (b) without limiting clause 5, your Advertising Materials must clearly identify the Advertising Areas that apply to those Advertising Materials.
- 6.3 Although we will use all reasonable endeavours to display Advertising Materials in a form similar to that in which you supplied the Advertising Materials to us, you acknowledge that our process by which we optimise Advertising Materials for display on the Website may result in alterations to the appearance of Advertising Materials including by making some print illegible. You must notify us within one business day after the Advertising Materials are made publicly available on the Website if you do not accept the way in which the Advertising Materials are displayed on the Website.
- 6.4 If you notify us in accordance with clause 6.3, then we will remove the Advertising Materials from the Website as soon as reasonably practicable and you will have no obligation to pay Charges in respect of those removed Advertising Materials.
- 6.5 If we receive no notification from you in accordance with clause 6.3, then:
 - (a) you are deemed to accept the way in which the Advertising Materials are displayed on the Website; and
 - (b) you release us from all liability arising in connection with the way in which the Advertising Materials are displayed on the Website.
- 6.6 You acknowledge and agree that:
 - (a) the Website will be accessed through the Internet and that access to the Website by each of you, us and users is subject to a wide range of factors which are beyond our control including telecommunications faults and/or latency;
 - (b) we will undertake both routine and unscheduled maintenance to the Website and that during such maintenance Website access may not be available; and
 - (c) you will not hold us liable for Downtime arising from factors beyond our reasonable control or arising from routine or unscheduled maintenance conducted by us.
- 6.7 We have implemented reasonable security measures for the Website, but we do not guarantee that the Website is completely secure. You acknowledge that there are risks inherent in the Website and in internet connectivity that could result in unauthorised access to or loss of Advertising Materials or other information or property from the Website (such as through 'hacking' or other unauthorised access that bypasses the Website's security measures) and you agree that we have no liability for such unauthorised access or loss.
- 6.8 You must keep a copy of all Advertising Materials supplied to us. We may permanently delete such Advertising Materials on completion of the supply of Online Services in relation to them.

7. SUBSTITUTION OR REMOVAL OF ADVERTISING MATERIALS

- 7.1 You may request us to substitute Advertising Materials the subject of any accepted Order by notifying us and by providing us with replacement Advertising Materials that are in accordance with Advertising Specifications. If you do so at least five business days prior to the Posting Date we will substitute the Advertising Materials without additional charge. After this time we will only substitute the Advertising Materials if:
 - (a) in our sole discretion, it is reasonably practicable for us to do so within the time specified in your notice; and
 - (b) You pay us the Late Substitution Fee in addition to the Charges for the Order.
- 7.2 We will remove Advertising Materials from the Website as soon as reasonably practicable following written request by you. If your written request is received by us at least five business days prior to the Posting Date you will not be charged for the Advertising Materials removed. Otherwise, you must still pay us the Charges for the entire Order relating to those Advertising Materials.

8. EXCLUSIONS AND LIMITATIONS

- 8.1 We exclude all legislated guarantees, implied conditions and warranties except any legislated guarantee, implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause 8 to be void ("**Non-excludable guarantee**").
- 8.2 To the extent permitted by law:
 - (a) Except for liability for breach of a Non-excludable guarantee, we exclude liability (whether in contract, tort (including negligence),

- pursuant to statute or otherwise) for loss of profits or consequential or indirect loss or damage; and
- (b) our liability to you from our breach of any Non-excludable guarantee, other statutory provision or any express guarantee, condition or warranty or our negligence is limited, at our option, to:
- (i) supplying the Online Services in respect of which the breach or negligence occurred again;
 - (ii) paying the cost of having those Online Services supplied again; or
 - (iii) refunding you the Charges you paid for those Online Services.
- 8.3 You acknowledge that the exclusions and limitations in this clause 8 are customary for suppliers of services equivalent to the Online Services, and are fair and reasonable given the nature of the Online Services and the Charges paid for them.
- 9. INDEMNITY**
- You indemnify us against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against us) that we may sustain or incur as a direct or indirect result of a breach by you of any of these terms including any warranty contained in these terms.
- 10. TERMINATION**
- 10.1 A party may, without affecting any other rights it may have, terminate or suspend any contract formed upon the acceptance of an Order which is subject to these terms with immediate effect by giving notice to the other party if the other party has:
- (a) breached any provision of that contract and has failed to remedy the breach within 7 days after receiving notice requiring it to do so;
 - (b) breached a material provision of that contract where that breach is not capable of remedy;
 - (c) ceased to be able to pay its debts as they become due;
 - (d) become subject to any form of insolvency administration; or
 - (e) had any step taken by a mortgagee to take possession or dispose of the whole or any part of that party's assets.
- 10.2 This clause does not limit or affect any other remedy which may be available to the terminating or suspending party including seeking compensation for any loss or damage suffered by it.
- 11. FORCE MAJEURE**
- Without limiting any other provision of these terms, we will not be liable for any failure to perform or delay in performance of any obligation where such failure or delay is due to anything beyond our reasonable control, including but not limited to adverse weather or terrain, strikes, lockouts and other industrial action, raw material shortages, accidents, power failure, breakdowns of plant or machinery or import or export regulations or embargoes.
- 12. GENERAL**
- 12.1 We are a member of the group of companies whose parent company is PMP Limited ACN 050 148 644 ("**PMP Group**"), and accordingly we may perform any of our obligations or exercise any of our rights alone or through any other member of the PMP Group.
- 12.2 We may subcontract the supply or delivery of the Online Services.
- 12.3 Any failure by us to insist on strict compliance with any contract between us or any delay by us in exercising our rights under any contract between us will not constitute a variation or waiver of any provision of that contract or of any right available to us.
- 12.4 You acknowledge that third parties may be involved in our provision of the Online Services to you. These third parties may be your or our agent or other intermediary, be suppliers to us or customers of ours in connection with the supply of the Online Services to you or be otherwise involved, directly or indirectly, in the supply of the Online Services to you. You acknowledge that we may pay, give to, or receive from such third parties commissions, fees, rebates or other remuneration or benefits (**Rewards**) for our involvement with the third party in connection with the supply of the Online Services to you.
- 12.5 Where we supply the Online Services to you and those Online Services are for the benefit of another person (**End Customer**), you agree to make all necessary disclosures to the End Customer in relation to any Rewards exchanged between us so as to comply with all applicable laws. To the extent that you act or purport to act on behalf of an End Customer in any way, you warrant that you hold all necessary authority from that End Customer to do so.
- 12.6 If part or all of any provision of these terms or their application to any person or circumstance is illegal or unenforceable, the provision will be interpreted so as to ensure it is not illegal or unenforceable. If any provision or part of it cannot be so interpreted, the provision or part of it will be severed from these terms and the remaining provisions of these terms continue in force.
- 12.7 Where you comprise two or more persons, an agreement or obligation to be performed or observed by you binds those persons jointly and each of them severally.

12.8 We may amend these terms and conditions at any time by written notice to you of not less than 45 days. Any amendments notified to you take effect on expiry of the notice period given in accordance with this clause.

13. GOVERNING LAW AND JURISDICTION

- 13.1 This contract is governed by the laws of the State of Victoria.
- 13.2 Each party submits to the jurisdiction of the courts of that State and of any court that may hear appeals from any of those courts, for any proceedings in connection with this contract.

14. DEFINITIONS

- 14.1 Expressions defined in these terms have their defined meaning wherever used throughout these terms.
- 14.2 In these terms:

"**Advertising Areas**" means the geographical areas or the postcodes you specify in an accepted Order as applicable to the Advertising Materials the subject of that Order;

"**Advertising Materials**" means product catalogues, banner advertisements, logos, trade marks (whether or not registered under the *Trade Marks Act 1995*), links and any other materials that we accept for display on the Website;

"**Advertising Specifications**" means our specifications relating to the submission of Advertising Materials for display on the Website as notified to you prior to you placing an Order and as may be amended by us from time to time;

"**Advertising Services**" means the display by us of Advertising Materials on the Website, as ordered by you from time to time;

"**Charges**" means the Hosting Fee and our charges for the supply of particular Advertising Services as set out in the Rate Card on the Website at the time you place the Order relating to those Hosting Services. You acknowledge that we may vary the Charges set out in such Rate Card from time to time;

"**Downtime**" means any period of time during which the Website is not accessible to any of you, us or users;

"**Hosting Services**" means: (a) your inclusion on the Website as a listed retailer; (b) the display of those Advertising Materials you provide us for the purpose of listing you as a retailer on the Website; and (c) your registration for us to provide Advertising Services in accordance with these terms;

"**Late Substitution Fee**" means 80% of the Charges for those Advertising Services in respect of which Advertising Materials are substituted under clause 0;

"**Online Services**" means the Hosting Services and the Advertising Services (separately or collectively as the case may be);

"**Order**" means your order for Advertising Services, placed by your acceptance of a completed standard order quotation form;

"**Posting Date**" means the date specified in an accepted Order on which Advertising Materials are to be made publicly available on the Website;

"**Posting Period**" means the period of time starting from the Posting Date and ending on the date Advertising Materials are to be removed from the Website, as specified in an accepted Order, up to a maximum of 6 months;

"**Hosting Fee**" means our annual registration charge for the supply of Hosting Services as varied by us from time to time;

"**we**", "**us**" or "**our**" means PMP Print Pty Ltd ABN 76 051 706 499 trading as PMP Distribution;

"**Website**" means the website at <http://www.catalogues4u.com.au>;

"**you**" or "**your**" means you or your organisation, as specified in your Order.