

## Terms and Conditions

These Terms apply to all advertising provided to any person or entity ("the Customer ") by Penzance Publishing Pty Ltd ABN 18615296118 or a subsidiary ("Penzance Publishing ") in respect of the monthly publication produced by Penzance Publishing and known as the Roaming Magazine ("the Magazine"). In these Terms, the Customer includes an advertiser or agent on whose behalf Advertising is placed and any media company or agency that arranges the Advertising for its clients.

### 1. Publication of Advertising

- 1.1 Subject to these Terms, Penzance Publishing will use its reasonable endeavours to publish advertising ("Advertising ") in the format and in the position agreed with the Customer. In these Terms, "Advertising" includes images submitted for publication and content or information relating to published advertisements in the Magazine.
- 1.2 The Customer grants Penzance Publishing a worldwide, royalty-free, non-exclusive, irrevocable licence to publish, and to sub-licence the publication of, the Advertising in any form or medium, including print, online or any other media. The Customer warrants that it is authorised to grant Penzance Publishing the licence in this clause 1 and further indemnifies Penzance Publishing from any suits, claims, demands, actions, costs, fees, damages, charges, loss, liability and any other requirement to expend money which arises due to a breach of the warranty provided in this clause 1.2

### 2. Right to Refuse Advertising

- 2.1 Neither these Terms nor any written or verbal quotation by Penzance Publishing represents an agreement to publish Advertising. An agreement will only be formed between Penzance Publishing and Customer when Penzance Publishing accepts the Advertising in writing or generates a tax invoice for that Advertising.
- 2.2 Penzance Publishing reserves the right to refuse or withdraw from publication any Advertising at any time without giving reasons (even if the Advertising has previously been published by Penzance Publishing).

### 3. Right to vary Format, Placement or Distribution

- 3.1 Penzance Publishing will use reasonable efforts to publish Advertising in the format and in the position requested by the Customer. However, Penzance Publishing reserves the right to vary the placement of Advertising within a title or website or to change the format of Advertising (including changing colour to black and white).
- 3.2 Penzance Publishing may distribute interstate or regional editions of a title without all inserts or classified sections. Except in accordance with clause 12, Penzance Publishing will not be liable for any loss or damage incurred by a Customer arising from Penzance Publishing's failure to publish Advertising in accordance with a Customer's request.
- 3.3 If Penzance Publishing, in its sole discretion, changes the press configuration for a publication, Penzance Publishing reserves its right to shrink or enlarge the Advertising by up to 10% without notice to Customer or any change to rates payable pursuant to these Terms.

### 4. Submission of Advertising

- 4.1 The Customer warrants to Penzance Publishing that the publication of the Advertising does not breach or infringe:
  - (a) the Competition and Consumer Act (Cth) or any equivalent State legislation;
  - (b) any copyright, trade mark, obligation of confidentiality or other personal or proprietary right or legislation;
  - (c) any law of defamation, obscenity or contempt of any court, tribunal or royal commission;
  - (d) State or Commonwealth privacy legislation;
  - (e) State or Commonwealth anti-discrimination legislation;
  - (f) any financial services law as defined in the Corporations Act 2001 (Cth); or
  - (g) any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth, or a State or Territory).
- 4.2 If the Customer breaches a warranty provided in clause 4.1 or clause 4.3, the Customer indemnifies Penzance Publishing against any suits, claims, demands, actions, costs, fees, damages, charges, loss, liability and any other requirement to expend money in connection with the Advertising and the breach of warranty in clause 4.1 or clause 4.3.
- 4.3 The Customer warrants that if Advertising contains the name or photographic or pictorial representation of any living person and/or any copy by which any living person can be identified, the Customer has obtained the authority of that person to make use of his/her name or representation or the copy.
- 4.4 Advertising containing contact details for the Customer must contain the full name and street address of the Customer. Post office box and email addresses alone are insufficient.
- 4.5 If a Customer submits Advertising that looks, in Penzance Publishing's opinion and sole discretion, like editorial material, Penzance Publishing may publish the Advertising under the heading "Advertising" with a border distinguishing it from an editorial.
- 4.6 Penzance Publishing will not be responsible for any loss or damage to any Advertising material left in its control.
- 4.7 Advertising submitted electronically must comply with Penzance Publishing's specifications as published on our website, [www.roamingpanthermagazine.com.au](http://www.roamingpanthermagazine.com.au), and as amended from time to time. Penzance Publishing may reject the Advertising material if it is not submitted in accordance with such specifications.
- 4.8 Where required by Penzance Publishing, Advertising material delivered digitally must include the Penzance Publishing booking or material identification number.
- 4.9 If Customer is a corporation and the Advertising contains the price for consumer goods or services, the Customer warrants that the Advertising complies with the component pricing provisions of the Competition and Consumer Act (Cth) and contains, as a single price, the minimum total price to the extent quantifiable at time of the Advertising.
- 4.10 The Customer must not resell Advertising space to any third party without Penzance Publishing's prior, written consent, which may be withheld in Penzance Publishing's sole and absolute discretion.

- 4.11 If Advertising promotes a competition or trade promotion, the Customer warrants it has obtained all relevant permits and indemnifies Penzance Publishing against any suits, claims, demands, actions, costs, fees, damages, charges, loss, liability and any other requirement to expend money in connection with the Advertising and such promotion or competition.
5. Online Advertising
- 5.1 For online banner and display Advertising, the Customer must submit creative materials and a click through URL to Penzance Publishing at least 3 working days (5 working days for non-gif material) or within such other deadline advised by Penzance Publishing, at its sole discretion, before the publication date. Penzance Publishing may charge the Customer for online Advertising cancelled with less than 30 days' notice or if creative materials are not submitted in accordance with this clause 5.1.
- 5.2 All online Advertising must comply with Penzance Publishing's advertising specifications as published on our website, [www.roamingpanthermagazine.com.au](http://www.roamingpanthermagazine.com.au), and as amended from time to time.
- 5.3 Penzance Publishing will measure online display and banner Advertising (including impressions delivered and clicks achieved) through its ad-serving systems. Results from the Customer or third-party ad-servers will not be accepted for the purposes of Penzance Publishing's billing and assessment of Advertising.
- 5.4 Penzance Publishing is not liable for loss or damage from an internet or telecommunications failure.
- 5.5 The Customer acknowledges that Penzance Publishing may, in its sole discretion, include additional features or inclusions such as third-party advertisements within online classified Advertising.
6. Errors
- 6.1 The Customer must, within any reasonable time as specified and notified by Penzance Publishing, check proofs of Advertising (if provided to the Customer by Penzance Publishing) and notify Penzance Publishing of any errors in the proofs or in published Advertising. Any errors received after the time stipulated in this clause 6.1 will not be accepted and Penzance Publishing shall not be liable for any suits, claims, demands, actions, costs, fees, damages, charges, loss, liability and any other requirement to expend money suffered because of any error in the publication of the Advertising.
- 6.2 Penzance Publishing does not accept responsibility for any errors submitted by the Customer or its agent, including errors in Advertising placed over the telephone.
- 6.3 The Customer must send any claim for credit or republication in writing to Penzance Publishing no later than 7 days after the date of publication of the Advertising.
7. Advertising Rates and GST
- 7.1 The Customer must pay for the Advertising by monthly instalments, at the rate agreed between the parties from time to time. Penzance Publishing's internal production and service rates may be varied at any time by Penzance Publishing without notice. Customer must pay GST at the time it pays for Advertising. Penzance Publishing will provide a tax invoice or adjustment note (as applicable).
- 7.2 Eligibility for discounts or rebates will be based on the Customer's GST-exclusive advertising spend and will only be granted in Penzance's sole and absolute discretion.
8. Credit and Customer Accounts
- 8.1 Penzance Publishing may grant, deny or withdraw credit to a Customer at any time in its sole discretion. The Customer must ensure and warrants that its Customer account number is available only to those employees authorised to use it. The Customer acknowledges it will be liable for all Advertising placed under Customer's account number.
9. Payment
- 9.1 If Penzance Publishing so requires, at its sole discretion, the Customer must pre-pay for Advertising. At all times payment in respect of Advertising must be made within 7 days of date of the invoice, unless specified or agreed by Penzance Publishing otherwise. If a commercial account has been established with Penzance Publishing, payment must be made within the time period specified in the relevant invoice.
- 9.2 If the Customer fails to provide the required information for a booking by a publication deadline, the Customer will be charged unless a cancellation is approved by Penzance Publishing in accordance with these Terms. The Customer has no claim against Penzance Publishing for credit, republication or other remedy for out of specification Advertising. For purpose of this clause 9.2, Penzance Publishing shall at all times hold the discretion to determine the relevant publication deadline.
- 9.3 The Customer must pay the full price for Advertising, GST and any other costs, charges and fees as invoiced by Penzance Publishing from time to time, even if Penzance Publishing varied the format or placement of the Advertising or if there is an error in the Advertising, unless the error was Penzance Publishing's fault (as determined by Penzance Publishing). The Customer must pay its electronic transmission costs.
10. Failure to Pay and Other Breach
- 10.1 If the Customer breaches these Terms, fails to pay for Advertising or any other costs, charges or fees which are due and payable or suffers an Insolvency Event, Penzance Publishing may (in its sole discretion and without limitation):
- (a) cancel any provision of credit to Customer;
  - (b) require cash pre-payment for further Advertising;
  - (c) charge interest on all overdue amounts at the rate 2% above the Westpac Overdraft Base Rate;
  - (d) take proceedings against the Customer for any outstanding amounts;
  - (e) recover Penzance Publishing's costs including mercantile agency and legal costs on a full indemnity basis;
  - (f) cease publication of further Advertising or terminate an agreement for Advertising not published;
  - (g) exercise any other rights at law.
- 10.2 A Customer suffers an "Insolvency Event" if:
- (a) The Customer is a natural person and commits an act of bankruptcy; or
  - (b) The Customer is a company or a body corporate as defined under the Corporations Act 2001 and cannot pay its debts as and when they fall due or enters an arrangement with its creditors other than in the ordinary course of business or passes a resolution for administration, winding up or liquidation (other than for the purposes of reorganisation or

reconstruction); or has a receiver, manager, liquidator or administrator appointed to any of its property or assets or has a petition presented for its winding up.

10.3 Penzance Publishing may withhold any discounts or rebates if the Customer fails to comply with its payment obligations.

10.4 A written statement of debt signed by an authorised employee of Penzance Publishing is evidence of the amount owed by the Customer to Penzance Publishing.

#### 11. Liability

11.1 The Customer acknowledges that it has not relied on any advice given or representation made by or on behalf of Penzance Publishing in connection with the Advertising and it has entered this agreement voluntarily.

11.2 All implied conditions and warranties which are capable of being excluded from these Terms by Penzance Publishing, are hereby expressly excluded from these Terms by Penzance Publishing except for any condition or warranty (such as conditions and warranties implied by the Competition and Consumer Act and equivalent State acts) which cannot by law be excluded ("Non-excludable Condition").

11.3 Penzance Publishing limits its liability for any breach of any Non-Excludable Condition (to the extent such liability can be limited) and for any other error in published Advertising caused by Penzance Publishing to the re-supply of the Advertising or payment of the cost of re-supply (at Penzance Publishing's option).

11.4 Without limiting the generality of clauses 11.2 and 11.3, Penzance Publishing excludes all other liability to the Customer for any costs, expenses, losses and damages incurred in relation to Advertising published by Penzance Publishing, whether that liability arises in contract, tort (including by Penzance Publishing's negligence) or under statute. Without limitation, Penzance Publishing will in no circumstances be liable for any indirect or consequential losses, loss of profits, loss of revenue or loss of business opportunity.

11.5 The Customer indemnifies Penzance Publishing and its officers, employees, contractors, agents and permitted assigns (the "Indemnified") against any costs, expenses, losses, damages and liability suffered or incurred by the Indemnified arising from the Customer's breach of these Terms and any negligent or unlawful act or omission of the Customer in connection with the Advertising.

#### 12. Cancellation

12.1 The Customer may cancel and terminate any contract for Advertising at any time, without penalty, up to and including the Advertising Cancellation Deadline. For the purpose of this clause 12.1, "Advertising Cancellation Date" means the later of

- (a) 60 calendar days before the monthly release date of the Magazine; or
- (b) such other date as determined by Penzance Publishing, in its sole and absolute discretion.

#### 13. Acceptance, binding nature of these Terms, and billing arrangement

13.1 The Customer acknowledges and agrees that these terms shall be considered accepted, binding and in force from the earlier of:

- (a) the Customer providing instructions, whether verbal or written, to Penzance Publishing to undertake the Advertising;
- (b) the Customer accepting the quotation for Advertising by providing written notice, whether electronic or not, of such acceptance; or
- (c) the Customer accepting the quotation via any online, internet or website-based system used by Penzance Publishing from time to time.

13.2 The Customer acknowledges and agrees that Penzance Publishing will quote for the Advertising on the entire term of the Advertising. Penzance Publishing acknowledges and agrees, unless agreed with the Customer, that it will only invoice the Customer monthly.

#### 14. Privacy

14.1 Penzance Publishing collects a Customer's personal information to provide the Advertising to the Customer and for invoicing purposes. Penzance Publishing may disclose this personal information to its related bodies corporate, to credit reporting agencies and other third parties as part of provision of the Advertising and for overdue accounts, to debt collection agencies to recover amounts owing.

14.2 Penzance Publishing provides some published Advertising to third party service providers. Where such Advertising contains personal information, the Customer consents to the disclosure of their personal information in the advertising to third parties and to the personal information being republished by a third party.

14.3 Penzance Publishing's privacy policy is at [www.roamingpanthermagazine.com.au](http://www.roamingpanthermagazine.com.au)

#### 15. Confidentiality

15.1 Each party will treat as confidential, and will procure that its advertising agents, other agents, and contractors ("Agents") treat as confidential and will not disclose, unless disclosure is required by law or consented to by Penzance Publishing:

- (a) the terms of this Agreement (including terms relating to volumes and pricing);
- (b) information generated for the performance of this Agreement, including all data relating to advertising schedules, budgets, forecasts, booked advertising, prices or volumes;
- (c) any other information that ought in good faith to be treated as confidential given the circumstances of disclosure or the nature of the information;
- (d) any information derived wholly or partly for any information referred to in (a) to (c) above; Each party agrees to take all reasonable precautions to prevent any unauthorised use, disclosure, publication or dissemination of the confidential information by or on behalf of itself or any third party.

#### 16. General

16.1 These Terms, with any other written agreement, represent the entire agreement of the Customer and Penzance Publishing for Advertising. They can only be varied in writing by an authorised officer of Penzance Publishing. No purchase order or other document issued by the Customer will vary these Terms.

16.2 Penzance Publishing will not be liable for any delay or failure to publish Advertising caused by a factor outside Penzance Publishing's reasonable control (including but not limited to any act of God, war, breakdown of plant, industrial dispute or action, electricity failure, governmental or legal restraint).

16.3 Headings in these Terms are for convenience only and do not affect the interpretation of these Terms.

16.4 Penzance Publishing may serve notice on the Customer by post or fax or email to the last known address, fax number or email address of the Customer.

16.5 These Terms are governed by the laws of the State in which the billing company for the Advertising is located and each party submits to the non-exclusive jurisdiction of that State.