

Prelude Publications Pty Ltd T/A Gold Coast Weddings Magazine – Terms & Conditions of Trade

1 Definitions

- 1.1 "Publisher" shall mean Prelude Publications Pty Ltd T/A Gold Coast Weddings Magazine its successors and assigns or any person acting on behalf of and with the authority of Prelude Publications Pty Ltd T/A Gold Coast Weddings Magazine.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any advertising authority, work authorisation or other form as provided by the Publisher to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Services" shall mean all Services supplied by the Publisher to the Client and includes any advice or recommendations.
- 1.5 "Advertisement" shall mean public announcement to sell Services.
- 1.6 "Price" shall mean the price payable for the Services as agreed between the Publisher and the Client in accordance with clause 3 of this contract.

2 Acceptance

- 2.1 Any instructions received by the Publisher from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Publisher shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Publisher.
- 2.4 The Client shall give the Publisher not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Publisher as a result of the Client's failure to comply with this clause.

3 Price And Payment

- 3.1 At the Publisher's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Publisher to the Client in respect of Services supplied; or
 - (b) the Publisher's quoted Price (subject to clause 3.2 which shall be binding upon the Publisher provided that the Client shall accept the Publisher's quotation in writing within thirty (30) days.
- 3.2 The Publisher reserves the right to change the Price in the event of a variation to the Publisher's quotation.
- 3.3 At the Publisher's sole discretion a deposit may be required.
- 3.4 At the Publisher's sole discretion:
 - (a) payment shall be due on delivery of the Services; or
 - (b) payment shall be due before delivery of the Services; or
 - (c) payment for approved Clients shall be made by instalments in accordance with the Publisher's payment schedule.
- 3.5 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Publisher.
- 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4 Delivery Of Services

- 4.1 The failure of the Publisher to deliver shall not entitle either party to treat this contract as repudiated.
- 4.2 The Publisher shall not be liable for any loss or damage whatever due to failure by the Publisher to deliver the Services (or any of them) promptly or at all.

5 Advertising Conditions

- 5.1 Disc or email supplied Advertisements are accepted only with a colour proof included which has been approved by the Client. Supplied Advertisements received directly from agencies or art houses will be deemed to be approved by the Client and ready for publication.

6 Title

- 6.1 The Publisher and the Client agree that ownership of the Services shall not pass until:
 - (a) the Client has paid the Publisher all amounts owing for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to the Publisher in respect of all contracts between the Publisher and the Client.
- 6.2 Receipt by the Publisher of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Publisher's ownership or rights in respect of the Services shall continue.

7 Client's Disclaimer

- 7.1 The Client hereby disclaims any right to rescind, or cancel the contract with the Publisher or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by the Publisher and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.

8 Errors and Omissions

- 8.1 It is the responsibility of the Client to check and approve final proof of their Advertisement for any mistakes or omissions and to notify the Publisher as soon as possible if there are any mistakes or omissions to the Advertisement. No responsibility will be accepted for any loss arising from the failure of an Advertisement, or any part of an Advertisement to appear, or from any error in an Advertisement published. The Publisher reserves the right to reject or omit from the publication any or part of an Advertisement considered unsuitable for publication for whatever reason. When artwork is overdue the Publisher reserves the right to repeat a previous Advertisement.
- 8.2 Any defects found within an Advertisement must be notified to the Publisher within fourteen (14) days.

9 The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")

- 9.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

10 Intellectual Property

- 10.1 Where the Publisher has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Publisher, and shall only be used by the Client at the Publisher's discretion.
- 10.2 The Client warrants that all designs or instructions to the Publisher will not cause the Publisher to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Publisher against any action taken by a third party against the Publisher in respect of any such infringement.
- 10.3 Sketches and dummies submitted by the Publisher on a speculative basis shall remain the property of the Publisher. They shall not be used for any purpose other than that nominated by the Publisher and no ideas obtained there from may be used without the consent of the Publisher. The Publisher shall be entitled to compensation from the Client for any unauthorised use of such sketches and dummies.
- 10.4 Disks, artwork and film supplied by the Client and/or other authorised persons remain the property of the Client. Unless otherwise indicated in writing the Publisher shall assume these disks, artwork and film to be duplicate copies of the original.
- 10.5 Where the Publisher has designed or drawn Goods for the Client then the Client undertakes to acknowledge the Publishers design or drawings in the event that images of the Goods are utilised in advertising or marketing material by the Client.

11 Default & Consequences of Default

- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.

- 11.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Publisher from and against all costs and disbursements incurred by the Publisher in pursuing the debt including legal costs on a solicitor and own client basis and the Publisher's collection agency costs.
- 11.3 Without prejudice to any other remedies the Publisher may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Publisher may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Publisher will not be liable to the Client for any loss or damage the Client suffers because the Publisher has exercised its rights under this clause.
- 11.4 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.5 Without prejudice to the Publisher's other remedies at law the Publisher shall be entitled to cancel all or any part of any advertising authority of the Client which remains unfulfilled and all amounts owing to the Publisher shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Publisher becomes overdue, or in the Publisher's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

12 Security And Charge

- 12.1 Despite anything to the contrary contained herein or any other rights which the Publisher may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Publisher or the Publisher's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Publisher (or the Publisher's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Publisher elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Publisher from and against all the Publisher's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Publisher or the Publisher's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

13 Cancellation

- 13.1 The Publisher may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Publisher shall repay to the Client any sums paid in respect of the Price. The Publisher shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by the Publisher (including, but not limited to, any loss of profits) up to the time of cancellation.
- 13.3 Cancellation of any part of a multiple booking will revert the order to the casual rate and all extra charges will be invoiced accordingly. Cancellation or deferral of a booking must be received before the relevant booking deadline or they cannot be accepted.

14 Privacy Act 1988

- 14.1 The Client and/or the Guarantor/s agree for the Publisher to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Publisher.
- 14.2 The Client and/or the Guarantor/s agree that the Publisher may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 14.3 The Client consents to the Publisher being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Client agrees that personal credit information provided may be used and retained by the Publisher for the following purposes and for other purposes as shall be agreed between the Client and Publisher or required by law from time to time:
 - (a) provision of Services; and/or
 - (b) marketing of Services by the Publisher, its agents or distributors in relation to the Services; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 14.5 The Publisher may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

15 General

- 15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 15.3 The Publisher shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Publisher of these terms and conditions.
- 15.4 In the event of any breach of this contract by the Publisher the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 15.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Publisher.
- 15.6 The Publisher may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 15.7 The Publisher reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Publisher notifies the Client of such change.
- 15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 15.9 The failure by the Publisher to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Publisher's right to subsequently enforce that provision.