

# East End Marketing Pty Ltd - Terms of Trade ("Terms")

## 1 Application of Terms

- 1.1 These Terms, together with our Quotation (if any), govern our supply of Services to you, including supplies on a cash basis.
- 1.2 If you wish to negotiate these Terms with us then you should respond to this document, marking up these Terms and drawing those changes to our attention and obtain our agreement in writing.
- 1.3 It is not our practice to otherwise review terms and conditions on documents that you issue to us.
- 1.4 Unless we otherwise agree in writing, we do not accept, and will not be bound by, any terms or conditions included in, attached to, or referenced in, any other document you give to us like a purchase order.

## 2 Rebates and Commissions

- 2.1 Where you have engaged us through an agency or a third party (whether or not acting on your behalf), you acknowledge and agree that a rebate or Commission may be payable by us.
- 2.2 You acknowledge and agree that we may, from time to time, receive Commissions from third parties (including Media) and such Commissions remain our sole property.
- 2.3 If you require the details of any rebate or Commission that we or any agent or third party may be entitled to because of your engagement with us, you may contact us by email to: [team@eastendmarketing.com.au](mailto:team@eastendmarketing.com.au)

## 3 Agent capacity

If you act as an agent for another party or parties (whether disclosed to us or not), you warrant and represent to us that:

- (a) you hold a current and proper authority to engage us on behalf your principal(s);
- (b) any Services you request we supply are within the authority and financial limits authorised by your principal(s);
- (c) you hold sufficient funds to ensure payment of all amounts due and owing to us under the contract;
- (d) at our request, you will provide the name(s), address(es), and contact details of your principal(s); and
- (e) if you fail to pay sums to us when they fall due as a result of a dispute between you and your principal(s) regarding your authority, or if you fail to hold sufficient funds in accordance with clause 3(c), then you agree to indemnify us for the amount due and owing.

## 4 Quotations

- 4.1 Each Quotation that we issue:  
is an estimate only;
  - (a) is not an offer or obligation to perform any Services;
  - (b) is exclusive of:
    - (i) GST;
    - (ii) Approvals; and
    - (iii) deposit terms;
  - (c) remains valid for acceptance for a period of thirty (30) days from the date of Quotation, unless withdrawn by us before a contract for supply is formed; and
  - (d) contains a price on the basis that all Services are performed, during Business Hours,unless the Quotation states otherwise.
- 4.2 Quotations provided orally are subject to written confirmation.
- 4.3 A Quotation may include additional terms or conditions, which will supplement these Terms.
- 4.4 Should you wish to have Services performed outside Business Hours please let us know as additional charges may apply.

## 5 Formation of contract

- 5.1 We are not obliged to provide Services until after a contract for supply is formed.
- 5.2 A contract for supply is formed, and you have accepted these Terms, when:
  - (a) you have placed an Order with us; and
  - (b) we have received any deposit we have required from you in respect of the Order before progressing it; andeither we have:

- (c) accepted your Order in writing; or
- (d) performed any Services following receipt of your Order.

### 5.3 If you revoke an Order:

- (a) prior to the formation of a contract for supply then:
  - (i) we will refund you any deposit you have paid in respect of that Order; and
  - (ii) you will not be required to pay any fee for the cancellation of the Order; or alternatively
- (b) after the formation of a contract for supply then unless we are in breach of the contract for supply:
  - (i) you must pay all our reasonable costs associated with fulfilment of your Order; and
  - (ii) we may apply any deposit you have paid towards those costs.

## 6 Price

- 6.1 The price payable for the Services will be:
  - (a) the price agreed in writing pursuant to clause 6.2; or alternatively
  - (b) the price by our prevailing price list or rates as when you place your Order.
- 6.2 For Services outside of the standard Media planning and buying, including:
  - (a) extensive speculative work;
  - (b) work for non-Media projects; or
  - (c) business placed through a master agency,we will charge you hourly Service fees.

## 7 Price variations

- 7.1 This clause 7 applies where a contract for supply has formed pursuant to clause 5.2.
- 7.2 Unless otherwise agreed, where you request or direct that any Services be supplied that are not strictly in accordance with your Order, then such Services shall constitute a price variation and clause 7.3 will apply.
- 7.3 You acknowledge and agree that:
  - (a) all price variations under clause 7.2 must be agreed between the parties in writing prior to the Services being supplied; and
  - (b) all price variations shall be, at our discretion acting reasonably, invoiced at the rate(s) specified in the quotation, as specifically quoted, or in accordance with our current prevailing rates or price list (as amended from time to time).
- 7.4 Subject to clause 7.5, we reserve the right to vary the price or rates specified in the Order if:
  - (a) there is any movement in the cost of supplying the Services specified in the Order (including, without limitation, any actual increase in the costs due to foreign exchange fluctuation, currency regulation of duties, or significant increases in the cost of labour or materials);
  - (b) additional Services are required due to the discovery of hidden or unforeseen problems (including, without limitation, issues, faults, or problems) which have been discovered following the commencement of the Services;
  - (c) the Services specified in the Order are varied from the Services specified in the quotation;
  - (d) you request:
    - (i) the Services be rendered outside our Business Hours;
    - (ii) different Services to be supplied to the Order; or
    - (iii) that we delay provision of the Services for sixty (60) days or more; or
  - (e) otherwise as provided for in these terms and conditions.
- 7.5 Where we vary the price or rates payable for the Services pursuant to clause 7.4, we will notify you of the new price or rates. Thereafter you may reject the new price or rates within seven (7) days and terminate the contract for supply without further cost, or any penalty to you, otherwise you agree that the new price or rates will apply to the contract. For clarity, any termination of the contract for supply under this clause will be without prejudice to any Services supplied prior to termination.

## 8 Briefing, planning, and booking

- 8.1 Order requests or any Client instructions must be provided to us in email.
- 8.2 Following our receipt of instructions from you, we will book space and / or time for you.

- 8.3 We will notify you in writing of booking confirmations.
- 8.4 You must, prior to us commencing the Services:
- (a) unless otherwise agreed, obtain, at your expense, all relevant Approvals;
  - (b) provide us with such information and documentation that we reasonably require to perform the Services; and
  - (c) inform us of any special requirements pertaining to the Services (such as special booking requirements).
- 8.5 You acknowledge and agree that unless the contract expressly states otherwise:
- (a) time in respect of completion of the Services is not of the essence; and
  - (b) while we will take reasonable endeavours to complete the Services by the estimated date for completion, any timeframe or date for completion is an estimate only and is not a contractual commitment.
- 8.6 You authorise us (including our agents and employees) to do all things reasonably required to perform the Services.
- 8.7 If the commencement or the completion of the Services is delayed due to any event beyond our reasonable control, such as your failure to provide us with instructions, information, or documents that we reasonably require to perform the Services, then you agree we may extend the time for commencement or completion of the Services (as the case may be) by a period of time equal to the delay.
- 8.8 We will not be responsible for any Media bookings made directly between you and Media proprietors, unless:
- (a) we are notified in writing; and
  - (b) we confirm your booking with the Media,
  - (c) prior to the relevant cancellation deadline.
- 8.9 You acknowledge and agree to familiarise yourself with any relevant process requirements for placing or booking advertisements with the Media (including the relevant Media's terms and condition, as may be amended from time to time). We will assist to inform you of relevant processes, or terms and conditions.

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## 9 Checking and paying media invoices

- 9.1 You acknowledge and agree that we are authorised by you to receive all Media invoices, are responsible for matching invoices with Media bookings, and for paying all Media by any relevant due dates.
- 9.2 We will invoice you at the rate that we negotiate with the Media notwithstanding a different charge has been provided to you by the Media.
- 9.3 We will endeavour to notify you of the rate negotiated pursuant to clause 6.2, as soon as reasonably practicable.

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## 10 Payment terms

- 10.1 Unless you have a Credit Facility with us which is not in default:
- (a) deposits we have requested must be paid before we commence providing Services;
  - (b) you must pay for all Services:
    - (i) a progressive hourly basis as performed; or alternatively
    - (ii) (where progress payment terms are not nominated by us at the time of commencing the Services nor provided in our quotation) following completion of the Services, within seven (7) days from the date you were invoiced or charged.
- 10.2 Payment may be made by cash, cheque, or electronic funds transfer. We reserve the right to change the payment methods that we accept at any time.
- 10.3 We may charge a payment surcharge for applicable payment transactions equal to our reasonable cost of acceptance.
- 10.4 You agree to pay GST on all taxable supplies upon us issuing you a tax invoice relating to the taxable supply.
- 10.5 You agree to pay sums due to us free of any set off or counterclaim and without deduction or withholding.

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## 11 Media booking cancellations

- 11.1 If you wish to cancel any Media bookings that we have facilitated, you must:
- (a) notify us in writing by no later than seven (7) days before the relevant Media cancellation deadline; and
  - (b) confirm your instructions to us in email.
- 11.2 Notwithstanding clause 11.1, if a Media booking cancellation will only be accepted by Media on a 'Delete and Charge' basis (which

means the Media will delete the scheduled Media booking and reschedule it at an alternate time), or if there are any other cancellation restrictions, you acknowledge and agree that you are responsible for the payment of any relevant invoices or cancellation fees.

- 11.3 For the avoidance of doubt, you must pay all of our reasonable costs (including but not limited to, cancellation fees or re-booking fees) associated with us cancelling the Media booking at your request.
- 11.4 You acknowledge and agree that we will not be responsible for rescheduling Material on a Delete and Charge basis.

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## 12 Media Materials

- 12.1 We are not responsible for:
- (a) organising Media Materials deadline extensions;
  - (b) despatching Media Materials; and
  - (c) retaining records of availability and whereabouts of Media Materials (beyond any of our requirements at law).
- 12.2 You are responsible for reasonably advising us and Media (within any given deadlines) of the correct Material to be broadcast or published.
- 12.3 Instructions you give to us must contain all relevant information for us to commence performing the Services, including but not limited to, key numbers and identification data for Media Materials.

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## 13 Content of advertisements

- 13.1 You must obtain any relevant Approvals and comply with all applicable laws regarding the content of advertisements or Media Materials, including but not limited to, the Australian Association of National Advertisers Code of Ethics, as amended or succeeded.
- 13.2 You acknowledge and agree to indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) with respect to all Claims made against us arising out of the publication and / or broadcast of any advertisement or Material that has failed to comply with any relevant laws, rules, or codes, or a failure by you to obtain the relevant licences or approvals.

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## 14 Media Materials and your Intellectual Property Rights

- 14.1 Title and all Intellectual Property Rights associated with the Media Materials will immediately be assigned to and vest in you as such rights are created, unless and to the extent that licence conditions relating to any pre-existing third-party Media Materials require ownership to vest in a third party licensor.
- 14.2 You acknowledge clause 14.1 does not affect the Intellectual Property Rights in any pre-existing Material proprietary to us which is incorporated into the Media Materials. In such circumstances, we will endeavour to grant or procure for you a non-exclusive, royalty free, perpetual, irrevocable, and non-transferable licence to use such pre-existing Material.
- 14.3 Clauses 14.1 to 14.3 survive the termination or expiry of any agreement made under these Terms.

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## 15 Our Intellectual Property Rights

- 15.1 All right, title, and interest in our Intellectual Property Rights existing at the time of entry into any contract of which these Terms form part, will at all times, remain our property.
- 15.2 All improvements, derivatives and modifications to the Intellectual Property Rights contemplated by clause 15.1 (the 'Improvements') vest in us immediately on creation. To the extent necessary to give effect to this clause 15, you assign to us all right, title, and interest in the Improvements.
- 15.3 You acknowledge and agree that:
- (a) you have no rights to use our Intellectual Property Rights under these Terms, except as expressly set out herein, unless otherwise agreed in writing; and
  - (b) you must not modify, copy, clone, or reverse engineer any of our Goods (nor procure or permit any person within your reasonable control to do any of these things).

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## 16 Client Material

- 16.1 You warrant and represent to us that all Client Material:
- (a) is accurate and correct; and
  - (b) will not infringe the Intellectual Property Rights of any third-party.
- 16.2 You grant us a non-exclusive, non-transferrable, royalty free, perpetual, worldwide licence to use all Client Material for:

- (a) the purposes of supplying the Goods or performing the Services; and
- (b) marketing and advertising.

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## 17 Confidentiality

- 17.1 You agree to keep confidential, and not use or disclose, other than for your internal business purposes, any Confidential Information provided to or obtained by you before or after your entry into any contract of which these Terms form part. This clause is without prejudice to our rights or any obligations of confidence arising in the jurisdiction of equity.
- 17.2 The obligations of confidence imposed on you by clause 17.1 do not apply to Confidential Information that is required to be disclosed by any applicable Law or under compulsion of a court, government authority, or the rules of any securities exchange (as long as you disclose the minimum amount required to satisfy the law or rules, provide us with prior notice in writing, and take reasonable steps to maintain the confidence of such Confidential Information) or that is in the public domain otherwise than as a result of a breach of these Terms or other obligation of confidence.
- 17.3 Clauses 17.1 and 17.2 survive the termination or performance of a contract of which these Terms form part.

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## 18 Default

- 18.1 Clauses 18.2 to 18.4 apply if you fail to pay sums to us when they fall due.
- 18.2 We may charge you interest on the outstanding debt (including any judgment debt) at the rate of 10% per annum.
- 18.3 We may suspend or cease the supply of any further Services to you.
- 18.4 We may require pre-payment in full for any Services which have not yet been supplied.

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## 19 Security interest

- 19.1 You acknowledge and agree that these Terms (together with any terms governing your Credit Facility) constitute a Security Agreement (as that term is understood in the PPS Act).
- 19.2 You:
  - (a) waive your right to receive a copy of any verification statement in accordance with section 157 of the PPS Act; and
  - (b) agree that, to the extent permitted by the PPS Act:
    - (i) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142, and 143 of the PPS Act do not apply and are hereby contracted out of; and
    - (ii) you waive your right to receive notices under sections 95, 118, 121(4), 127, 130, 132(3)(d), and 132(4) of the PPS Act.
- 19.3 We need not disclose information of the kind detailed in section 275(1) of the PPS Act, unless required by law.
- 19.4 Where we have rights in addition to those under Part 4 of the PPS Act, those rights continue to apply.

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## 20 Indemnity

- 20.1 If you default in the performance or observance of your obligations under any contract of which these Terms form part, then:
  - (a) we will take steps to mitigate our loss and act reasonably in relation to any default by you; and
  - (b) we will give you notice requesting payment for loss and damage occasioned in respect of those events and requesting that you remedy any breach within a reasonable time; and
  - (c) if that demand is not met then you indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that we have suffered arising therefrom.
- 20.2 Your liability to indemnify us will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by us or a breach of our obligations under contract has contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.
- 20.3 Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the termination or performance of any contract of which these Terms form part.

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## 21 Limitation of liability

- 21.1 No party is liable to the other party for any Consequential Loss, including under clause 20, however caused arising out of or in

connection with any contract for supply of which these Terms form part.

- 21.2 While we will take reasonable endeavours to meet any estimated time for Services, you acknowledge and agree that we are not liable for any delay associated with meeting those estimated timeframes.

- 21.3 If the contract for supply is not a Consumer Contract or a Small Business Contract then, to the extent permitted by law, our liability is limited to:

us supplying the Services again; or

us paying you the cost of having equivalent Services supplied.

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## 22 Termination

A party may, with immediate effect, terminate any contract for supply of which these Terms form part by notice in writing, if the other party:

- (a) commits a material or persistent breach of these Terms and does not remedy that breach (if capable of remedy) within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or
- (b) has failed to pay sums due to the party within seven (7) days; or
- (c) has indicated that it is, or may become, insolvent; or
- (d) ceases to carry on business; or
- (e) comprises an entity which is the subject of the appointment of receivers or managers; or
- (f) comprises a natural person who:
  - (i) has committed an act of bankruptcy; or
  - (ii) has been made bankrupt;
- (g) comprises a corporation which:
  - (i) enters into voluntary administration;
  - (ii) is subject to a deed of company arrangement; or
  - (iii) is subject to the appointment of liquidators or provisional liquidators.

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## 23 Trustees

- 23.1 If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:
  - (a) you enter into the contract for supply in both your capacity as trustee and in your personal capacity;
  - (b) you have the right to be reasonably indemnified out of trust assets;
  - (c) you have the power under the trust deed to enter into the contract for supply; and
  - (d) you will not retire as trustee of the trust nor appoint any new or additional trustee without first notifying us in writing and having the new or additional trustee sign an agreement on terms substantially the same as those governing your Credit Facility (where applicable).
- 23.2 You must give us a true and complete copy of the trust deed upon request.

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## 24 Variation

- 24.1 We may amend these Terms in the future by notifying you in writing. The amended Terms will thereafter apply to each Order you place unless you earlier give us written notice in advance of placing a further Order.
- 24.2 The parties may agree to amend any contract of which these Terms form part by agreement in writing.

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## 25 Assignment

- 25.1 Subject to clause 25.2, a party may only assign its rights or obligations under the contract for supply with the written consent of the other party, with such consent not unreasonably withheld.
- 25.2 We may assign or transfer our rights and obligations under the contract for supply but only where we are transferring our business as a going concern to a third party, without your consent.

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## 26 Conflicts and Inconsistencies

If there is any conflict or inconsistency between any of the documents which together govern the relationship between the parties, it is agreed the order of precedence will be (highest to lowest):

- (a) any additional terms or conditions contained in our Quotation applicable to the supply of Services;

- (b) any terms governing your Credit Facility; and
- (c) these Terms.

## 27 Severance

If any part or term of our agreement with you (including any Credit Facility) is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the contract and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

## 28 Governing law and jurisdiction

- 28.1 Our relationship is governed by and must be construed according to the law applying in the State of South Australia.
- 28.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of South Australia with respect to any proceedings that may be brought at any time relating to our relationship.

## 29 Definitions

In these Terms, unless the context otherwise requires, the following definitions apply.

- 29.1 **Approval** means any authorisation, assessment, accreditation, determination, registration, clearance, permit, licence, consent, certificate, or other approval obtained or required or applying in connection with any contract of which these Terms form part.
- 29.2 **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended.
- 29.3 **Business Hours** means between 08:30am to 5:30pm on a day that is not a Saturday, Sunday, or gazetted public holiday in the place where the Services are, or are to be, supplied.
- 29.4 **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, or award howsoever arising, whether present, unascertained, immediate, future, or contingent, whether based in contract, tort, pursuant to statute or otherwise and whether involving a third party or a party to a contract for supply.
- 29.5 **Commissions** includes any commissions, rebates or other incentives.
- 29.6 **Confidential Information** includes:
  - (a) any information relating to our business and affairs;
  - (b) any information that is by its nature confidential;
  - (c) any information which is designated by us as confidential;
  - (d) any information that you know, or ought to know, is confidential; and
  - (e) all financial information, pricing information, and commercially valuable information of ours.
- 29.7 **Consequential Loss** includes any:
  - (a) consequential loss;
  - (b) loss of anticipated or actual profits or revenue;
  - (c) loss of production or use;
  - (d) financial or holding costs;
  - (e) loss or failure to realise any anticipated savings;
  - (f) loss or denial of business or commercial opportunity;
  - (g) loss of or damage to goodwill, business reputation, future reputation, or publicity;
  - (h) loss or corruption of data;
  - (i) downtime costs or wasted overheads; or
  - (j) special, punitive, or exemplary damages.
- 29.8 **Consumer Contract** has the meaning given to this term in section 23(3) of the Australian Consumer Law.
- 29.9 **Credit Facility** means an account we have opened for you on which we may, from time to time, extend you with additional time to pay for our Services and associated charges.
- 29.10 **Client, you** means the person or other entity who has:
  - (a) instructed us to perform the Service;
  - (b) placed an Order with us for the supply of Services; or
  - (c) the person on whose behalf an Order is placed or instructions are made.
- 29.11 **Client Material** means all information and documentation provided to us by you (or on your behalf) in the course of us supplying the Goods or Services.
- 29.12 **Intellectual Property Rights** means all industrial and intellectual property rights throughout the world, whether present or future, and whether protectable by statute, at common law or in equity, including rights in relation to copyright, trade secrets, know how,

trade marks (whether registered or unregistered or whether in word or logo/device form), designs, patents, and patentable inventions, including the right to apply for registration of any such rights.

- 29.13 **Media Materials** means all materials, documents, and other items prepared or supplied by us as part of the Services and includes the deliverables.
- 29.14 **Media** includes a person or organisation that disseminates information to the general public or private clients through mediums, including but not limited to:
  - (a) newspapers;
  - (b) magazines;
  - (c) bill boards, online;
  - (d) digitally, television;
  - (e) radio,
 and includes all traditional and non-traditional mediums.
- 29.15 **Order** means:
  - (a) a written or oral order placed by you; or
  - (b) (where the context permits) your instructions to us, requesting that we provide Services
- 29.16 **PPS Act** means the *Personal Property Securities Act 2009* (Cth), as amended.
- 29.17 **Quotation** means a written statement or communication setting out the Supplier's estimated costs, fees, and / or scope of work for the performance of Services.
- 29.18 **Services** means all services performed by us, as described on our Quotation, invoice, or any other form issued by us.
- 29.19 **Small Business Contract** has the meaning given to this term in section 23(4) of the Australian Consumer Law.
- 29.20 **Supplier, we, us** means East End Marketing Pty Ltd (ACN 069 868 882).

## 30 Interpretation

In these Terms, unless the context otherwise requires:

- 30.1 A time is a reference to the time zone of Adelaide, Australia unless otherwise specified.
- 30.2 \$, dollar, or AUD is a reference to the lawful currency of Australia.
- 30.3 A party includes a reference to that person's executors, administrators, successors, substitutes (including a person who becomes a party by novation), assigns, and in the case of a trustee, includes any substituted or additional trustee.
- 30.4 A right includes a benefit, remedy, authority, discretion, or power.
- 30.5 The singular includes the plural and vice versa, and a gender includes other genders.
- 30.6 "In writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
- 30.7 If a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning.
- 30.8 Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
- 30.9 A term of an agreement in favour of two or more persons is for the benefit of them jointly and each of them separately.