

CAPITAL-E MARKETING AND EVENTS PTY LTD

Standard Terms and Conditions for the Sale of Goods and Supply of Services

Along with the Contract, these Terms and Conditions (the “**Terms and Conditions**”) are the only terms upon which CAPITAL-e Marketing and Events Pty Ltd (CAPITAL-e) is prepared to deal with the Customer and they shall govern any and all agreements to the entire exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase agreement, order, specification or other document) unless otherwise agreed in writing by CAPITAL-e and the Customer.

Each order by the Customer for the supply of Services by CAPITAL-e shall be deemed to be an offer by the Customer to procure the provision of Services subject to these Terms and Conditions unless otherwise agreed in writing by CAPITAL-e and the Customer.

1. Definitions

- 1.1. For the purpose of the Terms and Conditions, the following terms shall have the following meaning:
 - 1.1.1. “Additional Event Costs” mean all costs being additional to the Price, which are incurred by CAPITAL-e during the provision of the Services.
 - 1.1.2. The terms “Event” and “Project” are deemed interchangeable.
 - 1.1.3. “Business Days” mean days on which banks are open to the public in Sydney, Australia and excluding Saturdays, Sunday and Public Holidays.
 - 1.1.4. “Contract” means a contract for the provision of Services, between the Customer and CAPITAL-e, which incorporates the provisions of these Terms and Conditions unless otherwise agreed in writing by CAPITAL-e and the Customer from time to time.
 - 1.1.5. “Customer” means the person or legal entity who has been issued a Contract and who then progresses to procure the provision of the Services from CAPITAL-e.
 - 1.1.6. “Project” means the project or event for which the Customer has engaged to CAPITAL-e to provide the Services.
 - 1.1.7. “Project Date” means the date the Project or event is due to take place.
 - 1.1.8. “Invoice” means a statement of cost detailing the Project Costs, plus Additional Event Costs (or such portion of it) issued by CAPITAL-e to the Customer in respect of the contracted Services.
 - 1.1.9. “CAPITAL-e” means Capital E Marketing And Events Pty Ltd, ACN 149 821 465, providing Services to the Customer and shall be taken to include its agents, representatives, directors, officers, employees, sub-contractors or consultants from time to time.
 - 1.1.10. “Price” means the total cost of the Services quoted in any proposal or Contract which is due to be paid by the Customer to CAPITAL-e as determined by CAPITAL-e from time to time. For the avoidance of doubt the Price shall exclude GST and all Additional Event Costs.
 - 1.1.11. “Public Holiday” means a day decreed to be a public holiday in Sydney, Australia including but not limited to all national holidays as stated by the Australian Government as well as NSW public holidays.
 - 1.1.12. “Scope” means the scope of the Services being procured by the Customer, as agreed between the Customer and CAPITAL-e .
 - 1.1.13. “Services” mean the services offered by CAPITAL-e from time to time including but not being limited to the marketing and/or management of specific projects or events as agreed between the Customer and CAPITAL-e.

1.2. In these Terms and Conditions:

1.2.1. section headings are inserted for ease of reference only and will not form part of, nor be used in the interpretation of, the Terms and Conditions;

1.2.2. words importing the singular will include the plural and vice versa, words importing a gender will include the other gender; and

1.2.3. a reference to a person will be construed as a reference to an individual, firm, body corporate or other entity (whether incorporated or not), or, where a position is nominated, the individual occupying that position.

2. **Price, Payment, Provision of Services and Changes in Scope**

2.1. In placing an order with CAPITAL-e, the Customer permits CAPITAL-e to seek from credit reporting agencies a credit report to permit the granting of credit under the Privacy Act 1988 (as amended) or similar legislation. CAPITAL-e reserves the right to grant or decline a credit facility to the Customer at its own discretion.

2.2. The Customer agrees that payment for the Services are to be made as follows:

2.2.1. 50 percent of the Prices (plus GST) shall be paid no later than (60) days before the Project Date, or immediately if the booking of the Project falls inside (60) days before the Project;

2.2.2. the outstanding 50 percent of the Price (plus GST) shall be paid no later than (7) Business Days before the Project Date;

2.2.3. any Additional Project Costs shall be invoiced by CAPITAL-e as soon as practicable after the Services have been provided and the Customer shall pay such Additional Project Costs in full as soon as possible but at the latest within seven (7) days from the date of any such Invoice;

2.3. Payments are to be made by electronic transfer to the bank account details as stated by CAPITAL-e or as set out in the relevant Invoice.

2.4. To the extent that any amount of the Price is not paid by the due date (as referred to in clause 3.2.3) CAPITAL-e shall be under no obligation to provide the Services and shall take such legal action as it deems necessary to recover such amount of the Price (if any) which it has outlaid in anticipation of providing the Services and which in its reasonable opinion it is unable to recover.

2.5. To the extent that Additional Event Costs as invoiced are not paid by the due date (as referred to in clause 3.3) CAPITAL-e reserves the right to charge interest on any amounts due at the rate of 2% above the monthly corporate overdraft reference rate of the Commonwealth Bank of Australia.

2.6. The Customer acknowledges that CAPITAL-e:

2.6.1. Charges a management fee for the provision of Services. This fee is based on the Scope and a set of expected deliverables as agreed between the Customer and CAPITAL-e and as more specifically set out in the Contract; and

2.6.2. CAPITAL-e does not charge any mark up on such ancillary cost required to provide the Services including but not limited to venue hire, couriers, flights and accommodation.

2.7. CAPITAL-e reserves the right to amend the Price in the event of factors occurring which are beyond CAPITAL-e's control including but not limited to:

2.7.1. a change in the Scope of the Services as requested by the Customer; or

2.7.2. unexpected price adjustments by third party suppliers or landlords,

2.7.2.1. and CAPITAL-e will give notice to the Customer as soon as reasonably practicable in circumstances where the Price will be amended in accordance with this change.

- 2.8. For the avoidance of doubt, any change in Scope requested by the Customer must be:
- 2.8.1. received in writing by CAPITAL-e (30) Business Days prior to the Project Date; and
 - 2.8.2. accepted by CAPITAL-e by notice in writing to the Customer within (7) Business Days of receiving the request outlined in clause 3.8.1,
 - 2.8.2.1. before such change in Scope shall be deemed effective.

3. Insurance, Risk, Delays and Cancellation

- 3.1. The Customer must effect and maintain the following insurances in relation to CAPITAL-e's supply of Services pursuant to the Contract including in relation to any premises where the Services shall be provided in relation to an Event:

Please circle Yes or No

Type	Required	Minimum amount
Professional Indemnity	YES / NO	\$10 million per claim
Public Liability	YES / NO	\$10 million per claim
Workers' Compensation	YES / NO	As required under relevant legislation
Event Insurance	YES / NO	\$2 million per claim

- 3.2. The Customer must, on demand, produce evidence to the satisfaction of CAPITAL-e of the insurances being effected and maintained in accordance with clause 4.1.
- 3.3. If the Customer wishes to postpone the provision of the Services, such postponement shall be deemed a change in Scope and shall be dealt with in accordance with clause 3.8.
- 3.4. The Customer:
- 3.4.1. acknowledges that CAPITAL-e may require a wide range of information to be able to provide the Services as comprehensively as possible;
 - 3.4.2. acknowledges that CAPITAL-e shall, when it has requested certain information from the Customer, require timely and comprehensive responses to such requests;
 - 3.4.3. acknowledges that it shall bear the responsibility for any additional cost incurred by CAPITAL-e as a result of the Customer not responding to information request made by CAPITAL-e in a timely and comprehensive manner; and
 - 3.4.4. further acknowledges that CAPITAL-e shall not be liable for any costs in connection with any Customer incurred delay in the provision of the Services.
- 3.5. If the Customer wishes to cancel the provision of the Services, it must inform CAPITAL-e in writing (30) Business Days prior to the date when the Services are due to commence.
- 3.6. For the avoidance of doubt should the provision of the Services be cancelled (either by the Customer or by the actions of a third party), the Customer bears the responsibility of such cancellation solely and must reimburse CAPITAL-e for such matters including but not being limited to:
- 3.6.1. Cancellation or postponement more than 90 days from the project delivery date, a 10% deposit is due within 7 days of notice;

3.6.2. Cancellation or postponement within 60 and 89 days of the project delivery date, a 50% deposit is due within 7 days of notice;

3.6.3. Cancellation or postponement between 30 and 59 days of the project delivery date, a 75% deposit is due within 7 days of notice;

3.6.4. Cancellation or postponement less than 30 days of the project delivery date, 100% of the invoiced project value is due within 7 days of notice;

4. Provision of Services

4.1. Should the Services be such that they involve the holding of an event, CAPITAL-e shall endeavour to provide the Services to the place requested by Customer.

4.2. CAPITAL-e may revise and/or discontinue a Service(s) at any time without notice as part of CAPITAL-e's policy of on-going Service up-date and revision. Revised or updated Service(s) will in material respects have the functionality and performance of any Service(s) previously ordered. The Customer accepts that CAPITAL-e's policy may result in differences between the specification of Service(s) delivered to the Customer and the specification of Services(s) ordered.

5. Personal Information

5.1. CAPITAL-e understands that privacy is important to the Customer. CAPITAL-e is subject to the requirements of the National Privacy Principles ("NPPs") which are contained in the Privacy Act 1988 ("Privacy Act") and which govern how private sector organisations handle personal information.

5.2. In procuring the Services, the Customer agrees that it may need to provide personal information to CAPITAL-e in which the Customer has certain rights. By signing the Contract, the Customer grants CAPITAL-e consent to use the Customer's personal information in certain circumstances, detailed as follows.

5.2.1. to as effectively and efficiently as possible provide the Customer with the requested Services;

5.2.2. to provide updates to the Customer on the progress of the Services;

5.2.3. to notify the Customers about existing or new CAPITAL-e Services or promotions from time to time; and

5.3. Personal information collected by CAPITAL-e may also be disclosed to third parties to whom CAPITAL-e contracts out specialised functions (including mailing houses and printing companies). If CAPITAL-e does disclose personal information to third party contractors under outsourcing or contracting arrangements, CAPITAL-e shall take reasonable steps to ensure that those contractors:

5.3.1. comply with the NPPs when they handle the Customer's personal information; and

5.3.2. are authorised only to use personal information in order to assist CAPITAL-e provide the Services or to perform the functions required by CAPITAL-e.

5.4. CAPITAL-e takes reasonable steps to ensure the security of personal information held by it from such risks as loss or unauthorised access, destruction, use, modification or disclosure.

6. Work Performed on Customer's Premises

- 6.1. Where the Contract requires CAPITAL-e to perform work at the Customer's premises, the Customer shall be responsible for arranging, in good time, all permits, licences or other permissions necessary to enable CAPITAL-e's employees, consultants, agents and representatives to gain access to, and perform the work at, such premises. CAPITAL-e's employees, consultants, agents and representatives working on the Customer's premises shall abide by such regulations provided in writing by the Customer to CAPITAL-e.
- 6.2. Where CAPITAL-e is required to enter the Customer's nominated premises, the Customer agrees that, unless CAPITAL-e does not comply in any material respects with written instructions provided by the Customer to CAPITAL-e in relation to their presence on the Customer's nominated premises:
 - 6.2.1. CAPITAL-e will not be liable for any loss, damage or injury caused by such entry; and
 - 6.2.2. the Customer shall indemnify and keep CAPITAL-e and any of its officers, employers, consultants, agents, or sub-contractors indemnified against any claims made by any third party against CAPITAL-e arising from such entry.

7. No Guarantee

- 7.1. CAPITAL-e shall endeavour to ensure that the Services supplied shall be in accordance with the Scope expressly incorporated into the Contract. However and notwithstanding the generality of the foregoing, CAPITAL-e makes no warranty that the Services will be suitable to enable the Customer achieve a particular purpose even when such purpose has been notified to CAPITAL-e.
- 7.2. The Customer acknowledges that CAPITAL-e does not warrant that the Services provided will produce a successful result for the Customer and in circumstances where the Services include the organising of an event, CAPITAL-e does not guarantee a particular number of attendees.

8. Liability

- 8.1. CAPITAL-e shall not be liable in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise for any loss or damage suffered and the Customer's rights are limited to those set out in these Terms and Conditions and subject to Clause 8.2 under statute.
- 8.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.3. To the extent permitted by law CAPITAL-e's total and aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation or otherwise arising in connection with the performance or contemplated performance of the Services or CAPITAL-e's obligations under these Terms and Conditions or any Contract shall not exceed the total amount paid by the Customer for the procurement of Services under these Terms and Conditions.
- 8.4. The Customer shall indemnify CAPITAL-e and its officers, employees, consultants, sub-contractors and agents and keep CAPITAL-e and its officers, employees, consultants, sub-contractors and agents fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any act or omission of the Customer, its employees, agents or sub-contractors or by any breach of its contractual obligations set out in these Terms and Conditions.
- 8.5. To the extent permitted by law, CAPITAL-e and the Customer agrees that CAPITAL-e will not be liable to the Customer for any incidental, indirect, special or consequential damages arising out of or in connection with the procurement of Services, even if CAPITAL-e has been advised of their existence.

- 8.6. CAPITAL-e shall not be liable in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise for any loss or damage suffered as a result of any action taken or failure on the part of the Customer to take any action as advised by CAPITAL-e under its Services.
- 8.7. To the extent permitted by law, any typographical, clerical or other error or omission in sales literature, quotation, price list, acceptance of offer, Invoice or other documents or information issued by CAPITAL-e shall be subject to correction without any liability on the part of CAPITAL-e.
- 8.8. CAPITAL-e shall not be liable to the Customer for:
 - 8.8.1.any, indirect, special or consequential loss, damage, costs, expenses or other claims whatsoever; or
 - 8.8.2.any economic loss (including loss of profit, loss of business, depletion of goodwill or like loss); or
 - 8.8.3.any loss, damage or liability to the extent caused by the negligence, wilful misconduct or other fault of the Customer, its employees, consultants, agents or contractors or a breach by the Customer of any Contract;
 - 8.8.3.1. in each case howsoever caused, including without limitation negligence or breach of statutory duty or misrepresentation.

9. Force Majeure

- 9.1. Save for payment obligations by the Customer, neither party shall be liable for any delay in performing any of its obligations under these Terms and Conditions if such delay is caused, directly or indirectly, by circumstances beyond the reasonable control of the party so delaying, and such party shall be entitled to a reasonable extension of time for the performance of such obligations. Circumstances causing such delay shall include but not be limited to the following:
 - 9.1.1.any act of God, terrorism, fire, flood, explosion, accident, endemic, war, governmental actions, civil disturbance, strike or lock-out, or emergency; or
 - 9.1.2.the postponement of any event, planned occasion or Service as a result of adverse weather or unsafe conditions.
- 9.2. Either party may terminate a Contract upon written notice to the other party if the event of Force Majeure lasts more than one hundred and eighty (180) days or renders the continuation or completion of the Contract impossible. In such event the Parties shall, subject to the provisions of the clause 4 above, be released from all obligations under the Contract and the Customer shall pay to CAPITAL-e within seven (7) days from the date of termination:
 - 9.2.1.all outstanding payments due and owing to CAPITAL-e under these Terms and Conditions and/or the Contract at the date of termination; and
 - 9.2.2.in addition a fair and reasonable price for Additional Project Costs incurred or in progress but not invoiced for at the date of termination.

10. Termination for Breach

- 10.1. Without prejudice to any rights of action or remedy which have accrued or shall accrue, CAPITAL-e (the "**Terminating Party**") may at any time by written notice to the Customer terminate the Contract if;
 - 10.1.1. the Customer is in breach of any material obligation under these Terms and Conditions and / or under the Contract and if the breach is capable of remedy, the Customer has failed to remedy such breach within thirty (30) days of the written notice issued to the Customer; or
 - 10.1.2. any distress, execution or other process is levied upon any of the assets of the Customer; or
 - 10.1.3. the Customer enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up

(except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, administrative receiver or administrator is appointed in respect of the whole or any part of the Customer's undertaking or assets; or

10.1.4. the Customer ceases or threatens to cease to carry on its business.

10.2. Where CAPITAL-e terminates the Contract under this provision, the Customer shall within seven (7) days pay to CAPITAL-e:

10.2.1. all outstanding payments invoiced by CAPITAL-e under these Terms and Conditions and / or the Contract at the date of termination;

10.2.2. a fair and reasonable price for Additional Event Costs incurred or in progress but not invoiced for at the date of termination;

10.2.3. all costs (including overheads) and liabilities incurred by CAPITAL-e arising out of or resulting from termination, including but not limited to landlords', suppliers', sub-contractors' cancellation charges; and

10.2.4. a sum in respect of the profits which CAPITAL-e would have made under the Contract but for its termination.

10.3. The provisions of the clauses 3, 4, 9, 11, 12 and 13 shall survive termination of this Contract together with any other provision which by the nature of its terms is implicitly intended to survive termination.

11. Notices

11.1. Any notices given under these Terms and Conditions must be in writing and be signed by the party giving the notice.

12. General

12.1. The Customer shall not assign or otherwise transfer any Contracts or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of CAPITAL-e. Any such unauthorized assignment shall be deemed null and void.

12.2. CAPITAL-e is entitled to subcontract to a third party any of its obligations under these Terms and Conditions or any Contract without the consent of the Customer.

12.3. If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and Conditions and the remainder of the provisions in question shall not be affected thereby.

12.4. Failure of either party at any time to insist on performance of any provisions of any Contract is not a waiver of its right at any later time to insist on performance of that of any other provision.

12.5. If a dispute arises out of or of or relates to these Terms and Conditions or any contract, or the breach, termination, validity or subject matter thereof, or as to any related claim in restitution or at law, in equity or pursuant to any statute, the parties to the agreement and the dispute expressly agree to endeavour to settle the dispute themselves through the respective appointed representatives. Failing a resolution through the respective appointed representatives within 14 days after one party has given to the other written notice of such a dispute, the parties agree to attempt to settle the dispute by mediation administered by the Australian Commercial Disputes Centre ("ACDC").

12.6. On the occasion of a mediation the mediation shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation, which are operating at the time the dispute is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are hereby deemed incorporated into

these Terms and Conditions and the terms of any future agreement between the Customer and CAPITAL-e.

13. Governing Law

13.1.1. These Terms and Conditions shall be governed by and construed in accordance with the laws of New South Wales and shall be subject to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

13.1.2. Each party hereby irrevocably submits to the exclusive jurisdiction of the Courts of NSW provided that each party shall have the right to enforce a judgment of the Courts of NSW in a jurisdiction in which the other party is incorporated or in which any assets of the other party may be situated.