

## Hallmark Editions - Terms and Conditions as at 10 May 2010

1. In this Agreement: -

**"Client"** means company or organisation participating in the forthcoming Focus publication

**"Force Majeure"** means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under this Agreement. Such circumstances shall include but shall not be limited to:

- (i) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (ii) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and strikes.

**"Material"** means all editorial and photographic material to be supplied by the Participant to Focus.

**"Participation Fee"** means cost of participation as agreed upon by Focus Publishing and the Client

**"Publication"** means the writing and publication of the book.

2 This agreement will be for the period up to and including the delivery date unless terminated earlier under clause 6.1 or extended by mutual agreement.

3. The Participant will pay Focus the Participation Fee according to the terms agreed to on the confirmation form.

(a) If the Participant fails to pay the Participation Fee according to the agreed terms Focus may terminate this agreement by notice in writing to the Participant.

(b) If Focus terminates this agreement under clause 3 or Clause 6.1 then any Participation Fee paid by the Participant is not refundable.

### **4.1 (a) The Participant must:**

- (i) deliver the Material to Focus on or before the materials delivery date.
- (ii) pay all expenses, including the costs of photographs, illustrations, maps.
- (iii) upon request amend and undertake additional work without charge, if the drafts of the Material are in the opinion of Focus incomplete or unsatisfactory in their content, style or coverage.
- (iv) deliver its own images in high resolution digital files with by caption information to Focus by the materials delivery date.
- (v) approve the Material in writing upon request within any reasonable time limit imposed by Focus.

**(b)** The Client will have the right of final approval of their Material provided:

- (i) approval is provided within two rounds of corrections of the artwork supplied to the Participant, and
- (ii) in the event that more than 2 rounds of artwork are required to secure approval the Participant agrees to pay an hourly rate of \$90.00 per hour to cover additional amendments up to final artwork stage and \$150.00 per hour after approval from the Client.

### **4.2 (a) Focus must use its best endeavours to:**

- (i) ensure the Material is completed by the delivery date;
- (ii) Where applicable, overprint the dust jacket of the Participant's copies of the Publication with the Participant's logo in mono colour of Focus'

- choice, however, Focus reserves the right to substitute the Participant's logo with the Participant's name on the dust jacket;
- (iii) Insert the Material into the Publication as agreed with the Client.
  - (b) If Focus cannot comply with the terms of clause 4.2 (a) (iii), then Focus will insert the Material into an alternative chapter of the Publication and advise the Participant in writing accordingly.
  - (c) Focus has sole control over the appearance and format of the Publication the number and destination of any free copies of the Publication to be distributed and the advertising and promotion of the Publication.
  - (d) Focus is not liable for any consequences arising from any incorrect information in the publication.
- 5 (a) The Participant assigns all right, title and interest worldwide in all proprietary or ownership rights (including copyright present and future) in the Material to Focus absolutely and consequently the Material may only be copied or used as permitted by Focus.
- (b) The Participant must, at the request and expense of Focus, do everything necessary to confirm the title of Focus to the Material.

**5.1 If the Participant fails to comply with any part of clause 5 above, then Participant must :**

- (a) indemnify Focus against all loss or damage sustained by Focus as a result of the Participant's failure to comply; and
- (b) at the request of Focus provide all reasonable assistance to enable Focus to resist any action, claim or proceedings brought or threatened against Focus in connection with the Participant's failure to comply.

**5.2 The Participant warrants that:**

- (a) the Material is and will be the original work of the Participant;
- (b) the Material has not been published in any form;
- (c) where the Material is based on other works the Participant has done everything necessary on their part to obtain the required rights in these works;
- (d) the Material is in no way an infringement of any existing copyright or other right;
- (e) the Material does not contain anything defamatory, libellous or unlawful and all statements in the Material purported to be factual are true.

**6 Either party may terminate this Agreement by notice in writing with immediate effect if:**

- (a) the other party has breached or failed to comply in any material respect with this Agreement and has failed to rectify such breach or non-compliance within thirty (30) days of written notice requiring it to do so;
- (b) the other party becomes, or threatens to become, or is in jeopardy of becoming subject to any form of insolvency administration.

**6.1 Focus may terminate the Agreement if:-**

- (a) The Participant by act or omission harms the reputation, affairs or activities of Focus of anyone or more of its Participants

(b) The Participant ceases to have full legal capacity for any reason or is incapacitated by illness or injury from performing their duties under this Agreement for a period exceeding one month;

(c) Any one or more of the representations and warranties set out in clause 5.2 are subsequently found to be incorrect;

(d) The Participant fails to deliver the Material by the delivery date,

(e) The Participant fails to pay the Participant Fee by the delivery date.

**7 This Agreement is governed by the laws applicable in New South Wales, Australia.**

(a) Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales.

7.1 Any notice required to be given or served under this Agreement shall be and given or served by hand delivery or recorded mail or facsimile transmission to the other party at its address or facsimile number shown on the front page or which was subsequently notified in writing from one Party to the other.

7.2

- (a) Except as otherwise provided under this agreement, where a party is unable or wholly or partly by reason of an event of Force Majeure to carry out its obligations under this Agreement and that party:
- (i) gives the other immediate notice of that event of Force Majeure with reasonably full particulars, and to the extent known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
  - (ii) uses reasonable efforts to remove that event of Force Majeure as quickly as possible, that obligation is suspended, so far and so long as it is affected by the event of Force Majeure.
- (b) An obligation to pay money will not be excused by an event of Force Majeure.
- (c) The requirement that an event of Force Majeure shall be removed with reasonable efforts does not require the settlement of strikes, lockouts or other labour disputes on terms contrary to the wishes of the party affected.