

## Published Authors Terms of Service

**ACCEPTANCE OF TERMS:** Applegate Education Pty Ltd Trading as Published Authors (ABN 69 101 457 845) (AE) provides its service to the Contracting Party ("CP"), subject to the following terms, AE and CP agree to be bound by this agreement. CP's submission of their cookbook Getting Started Form to AE constitutes acceptance of the terms of this agreement. AE reserves the right to update or change these terms and conditions of supply from time to time without notice so please take the time to check and read them each time you access the Published Authors website.

In this agreement:

**Goods** means products including electronic cookbook printing proofs and printed cookbooks produced and supplied by AE. **Services** means the Step-By-Step Fundraising Package and the Published Authors website ([www.publishedauthors.com.au](http://www.publishedauthors.com.au)) used by AE to produce the Goods.

**COMMENCEMENT OF PROJECT:** Once CP has instructed AE in writing to proceed with a cookbook project, AE will personalise their website to permit the families, friends and local community of CP to lodge their recipes directly to the AE website within 3 working days of this instruction being received. AE will provide CP with written confirmation once this task has been actioned. This personalised section of the AE website will remain open until CP advises AE that the recipe lodgement deadline has been reached.

**ORDERS:** Once CP provides AE with a completed 'Final Order Form' and all associated electronic files (including, but not limited to, their logo, their final words for the cookbook foreword, any photos to be included in the cookbook plus all business sponsorship advertisements), AE agrees to provide CP with an electronic printing proof of the compiled cookbook within 15 business days of receipt of the above mentioned material (excluding National and ACT public holidays), for the approval of CP.

CP accepts that the electronic printing proofs provided by AE are screen resolution files only that should be used for checking layout and positional requirements only. Whilst every effort is made to ensure the accuracy of the final printing, CP agrees that AE cannot accept responsibility for colour inconsistencies, perceived or otherwise, between supplied files and the final printed product.

CP also agrees that although every care has been taken by AE, the final responsibility for the accuracy and contents of the proofs lies with CP. Where any changes are required, CP agrees to advise AE of the required changes in writing.

When compiling a cookbook proof for CP, AE agrees to check submitted recipes for obvious spelling mistakes and to edit their layout to ensure consistent formatting. CP agrees that where they request AE to make any additional changes to the supplied electronic printing proofs, except where the changes relate to publishing / design faults or omissions, CP may incur an additional charge as client's corrections, payable at AE's design & editorial rate of \$60 per hour (excl GST). Minor changes requiring 15 minutes or less design or editorial work will incur no charge.

Once CP has instructed AE in writing that they accept the printing proof, and that payment of the 50% deposit is authorised, AE agrees to print their cookbook and dispatch by courier the printed cookbooks to CP by courier within 30 days of this written instruction to proceed being received (excluding public holidays).

AE must within 14 days of the date of receiving written instruction to proceed with (a) the compilation of the cookbook or (b) printing of the cookbook, notify CP if AE expects to be unable to supply (a) the printing proof or (b) dispatch by courier the printed cookbooks, either at all or by the timeframes outlined in the 2 paragraphs above.

AE must notify CP as soon as AE becomes aware there may be a delay in supply of either the electronic printing proofs or the printed cookbooks to CP and AE must fill CP's order as soon as possible and within 21 days of AE's notice of delay to CP, unless CP cancels its order before its payment of the 50% deposit.

The 50% deposit will be set out in a tax invoice and that invoice will describe the type and quantity of the Goods, the amount to be paid in the deposit and the GST payable. This tax invoice will also note that the freight charge plus the cost of any client requested amendments will be added to the final tax invoice. If AE is not able to supply the Goods at all AE must refund CP's payment of the 50% deposit within 7 days of CP making a written request for AE to do so.

**CUSTOMER CONTENT:** CP understands that all information, data, text, photographs, graphics, messages or other materials ("Content") are the sole responsibility of the person from whom such content originated unless provided by AE. This means that the person from whom such content originated, and not AE or its employees, is entirely responsible for all Content sent, uploaded, posted or otherwise transmitted via mail, email or the Published Authors website and subsequently included in any Goods produced by AE.

CP acknowledges that AE does not pre-screen content, or conduct a full editorial review of the material submitted for inclusion in the Goods delivered to CP. CP further acknowledges and agrees that AE may preserve Content and may also disclose Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process, (b) enforce this agreement; (c) respond to claims that the Content violates the rights of third parties, property, or personal safety of AE.

**INSTRUCTIONS:** CP warrants that instructions issued by CP will only be in written form including electronic mail. Where hand written or verbal instructions only are received from CP, AE shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.

**PAYMENT AND CHARGES:** CP agrees to pay the amount invoiced by AE in accordance with this agreement. AE reserves the right to charge interest on any part of the price not paid by the due date. Interest will be charged on any outstanding amount from the due date until payment at the rate of 1% per cent per calendar month. Where an outstanding amount is still owed to AE by CP 90 days after the due date of the invoice, and AE has made 3 or more requests in writing for payment during this 90 day period, the CP agrees to pay all debt recovery costs, fees and charges in relation to all moneys due and payable to AE including collection agency commissions and solicitor/client costs incurred by AE in recovering the amount due.

**INDEMNITY:** CP agrees to indemnify and hold Published Authors, and its subsidiaries, affiliates, officers, agents, co-branders, print vendors, distributors, business partners, employees, successors or assigns harmless from any claim or demand, including reasonable attorney's fees, made by any third party due to or arising out of Content submitted, uploaded, posted to or transmitted through email, your use of Published Authors Services, your violation of the ToS, or your violation of the rights of a third party.

**NO RESALE OF SERVICE:** CP agrees not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any portion of the Service and any templates or food images supplied by AE.

**GENERAL PRACTICES REGARDING USE AND STORAGE:** CP acknowledges that AE may establish general practices and limits concerning CP's use of the Service, including but not limited to the maximum number of days that designs or other uploaded Content will be retained by the Service, and the maximum disk space that will be allotted on AE's servers for Customer use. Notwithstanding any general practices and limits set by AE, AE will provide appropriate disk space for storage of all data submitted by CP and AE will properly store and maintain all compiled electronic cookbook files on behalf of CP from the date of the order until one calendar year from the date of the order placed by CP. CP acknowledges that AE reserves the right to delete Content stored on AE's disks that is inactive for more than one calendar year from the date of the order placed by CP.

**DELIVERY POLICY:** AE will dispatch by courier road transport Goods ordered by CP, and which AE have agreed to supply, to CP's nominated street address, within 28 days of acceptance in writing of the printing proof by CP, and AE's receipt of CP's payment in full of the initial tax invoice. Delivery will be at CP's cost and will be set out as freight in the final tax invoice sent to CP by AE. Once the printed cookbooks have been dispatched by courier to the address nominated by CP, AE will issue CP a final tax invoice within 7 days of the goods being dispatched. This tax invoice will describe the type and quantity of the Goods, the balance payable on the Goods, the freight charge, the 10% GST amount, and any other applicable charges such as additional graphic design and typesetting services as requested in writing by the CP. Payment in full of this final tax invoice is due 14 days of the issue date of this invoice.

**CLAIMS:** Claims by CP to AE concerning short supply, printing faults, or Goods damaged in transit must be notified in writing by CP to AE within 3 business days of delivery (excluding public holidays). It is the responsibility of CP to confirm quantities and quality of products once delivered and all Goods are to be checked by CP for damage caused by printing faults prior to distribution or sale of Goods. AE will arrange and pay for collection of faulty Goods at AE's cost within 7 days of CP notifying AE of same. AE will then on receipt of the return Goods promptly check all Goods for the faults detailed. All Goods found by AE to be subject to printing faults will be replaced by AE at AE's cost and the replacement Goods will be distributed to CP at AE's cost within 30 days of the date that the faulty books were received by AE.

Except where subject to the above term, AE will not accept return of Goods supplied to CP or issue refunds where AE has delivered the Goods according to: (a) the printing specifications recorded in the email accompanying the electronic printing proofs supplied to and subsequently agreed to by CP; (b) accepted industry standards for printing publications of the size, page length, paper stock and binding style detailed in the above mentioned printing specifications; and/or (c) where the cause of CP dis-satisfaction relates to the contents, design and/or layout of the Goods as featured in the electronic printing proofs approved by CP. Claims by CP to AE concerning the quality of delivered Goods with the must be provided in writing to AE within 3 business days of delivery (excluding public holidays). Once AE authorises return of the Goods in question, these Goods must be returned by CP to AE at CP's cost within 7 business days of return being authorised.

AE will not accept partial return of the delivered Goods in the event that CP has ordered too many and wants to return excess stock.

**RISK AND TITLE:** The risk in the Goods passes to CP upon delivery, and AE will not be held responsible for damage, loss or theft of the books once the books have been delivered to CP's nominated address. Property and ownership in the Goods will not pass to CP but will remain with AE until: (a) the full purchase price and all other amounts owing to AE are paid; or (b) CP sells or disposes of the Goods to CP's customers in the ordinary course of business.

**FEES & CANCELLATION FEES:** A 50% deposit is required by AE once CP accepts the printing proof and supporting printing specifications provided by AE. Once this deposit is paid, CP agrees to pay the remaining 50% balance of the purchase price, the freight charge, and the cost of any additional graphic design and typesetting work requested by CP in writing, within 14 days of the issue date of the final tax invoice. In the event that CP notifies AE that it requires AE to collect and replace faulty Goods and Goods damaged in transit, then the monies due to AE are not payable by CP under this clause until 14 days of the delivery of replacement Goods by AE.

Up until the date that CP provides written instruction to AE that they approve the printing proof, either EA or CP may cancel the cookbook project at any time by informing the other party in writing. (A) If the project is cancelled by CP after they provide to AE their signed Start Up Form, but before they notify CP that they have all recipes submitted and request access to the website editing facility, a \$50 (excl GST) project cancellation fee will apply. (B) If CP cancels the project after they inform CP that all their recipes have been submitted and the Published Authors editing facility is activated, a \$500 fee (+10% GST) is payable by CP for the recipe compilation service provided by AE. (C) If CP cancels the project after they submit their cookbook final order form to AE but before their payment of the 50% deposit, CP will be liable to pay AE the \$500 fee for the recipe compilation service

provided by AE plus AE's graphic design and typesetting work associated with the compilation of their cookbook, up until that time that CP instructs AE in writing that they cancel their project. This work will be charged at AE's standard design & editorial rate of \$60 per hour (excl GST).

Except as set out in this agreement, no refunds will be paid, and no full or partial cancellations will be accepted from CP, once AE receives CP's 50% deposit.

**RESPONSIBILITY:** Although every care will be taken by AE, it is CP's responsibility to check the printing proofs to ensure that all information, data, text, photographs, graphics, messages or other materials ("Contents") included in CP's Goods including the cookbook is correct and free from errors, defamation, and misplacements. Once you pay Published Authors the 50% deposit and therefore accept the terms and conditions of this agreement, you acknowledge and agree that, subject to your rights and remedies available under the Trade Practices Act 1974 (Cth) or equivalent State or Territory legislation, Published Authors shall not be liable for errors, misplacements, or the Content in the final products, or for any loss, damage, cost, expenses or other claim, however caused (including our negligence, or the negligence of our employees, agents, or representatives) which arise out of our connection with the Goods. Published Authors limits its indemnity to \$50.

**GENERAL INFORMATION:** This agreement constitutes the entire agreement between CP and AE. This agreement governs CP's use of AE's Services and supersedes any prior agreement between CP and AE or other advertised terms or conditions of supply. This agreement and the relationship between CP and AE is governed by the laws of Australia and CP and AE agree to submit to the jurisdiction of the courts in the Australian Capital Territory. The failure of AE to exercise or enforce any right or provision of this agreement shall not constitute a waiver of such right or provision. If any provision of this agreement is found by a court by competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in the provision, and the other provisions of this agreement remain in full force and effect. The section titles in this agreement are for convenience only and have no legal or contractual effect.

**COPYRIGHT INFORMATION:** CP may not use copyrighted materials from artists, photographers, publishers, writers, composers, and other authors of original work unless they are specifically licensed by you the copyright holder, or where they acknowledge the source.

**COPYRIGHT INFRINGEMENT:** AE respects the intellectual property of others, and asks CP to do the same. CP will use it best endeavours to notify AE immediately in writing if the CP: (a) becomes aware of any claim made that any of our Goods infringe patent, copyright, design, trademark or any other rights; or (b) becomes aware of any infringement of AE's patent, copyright, design, trademark or other rights. If artwork is provided by CP, CP warrants that to the best of CP's knowledge it does not infringe the copyright or other intellectual property rights of any third person.

**COPYRIGHT OWNERSHIP:** Electronic material stored or produced by AE, including recipes submitted to the Published Authors website, remain the property of AE. It is a breach of contract and copyright for CP or their representative to download or copy these recipes submitted to our Published Authors website, and then publish or reproduce them elsewhere, without the prior written approval of AE. Should CP request any electronic files or material created for this project be recreated into any other format after the project has completed, CP agrees to pay AE on an hourly basis at the rate charged by AE for design and editorial work at the time that this request is made by CP.

**ENTIRE AGREEMENT:** These terms constitute the entire agreement between CP and AE. These conditions bind the parties, their executors administrators and assigns as the case may be. CP hereby requests AE to provide the Goods and Services according to this agreement. These conditions bind CP and your executors administrators and assigns as the case may be. In entering into this contract, CP warrant that you have conducted your own enquiries and relied on your own judgment and not on any representation made by or on behalf of AE and all such representations are hereby excluded.