

# NZ Capricorn Alumni

## Terms & Conditions



### Interpretation

1. In this Agreement, unless the context requires otherwise:
  - 1.1. "**Agreement**" means these terms as amended, extended, changed, varied or supplemented together with your signed agreement to join the Capricorn Alumni;
  - 1.2. "**Capricorn**", "**we**" or "**us**" means Capricorn Society Limited;
  - 1.3. "**you**" and "**your**" means the person applying or accepted to become a Capricorn Alumni and receive credit through a Capricorn Alumni Account;
  - 1.4. the singular includes the plural and vice versa;
  - 1.5. any reference to a person or party includes that person's or party's servants, employees, executors, administrators, personal representatives, insurers, successors and assigns (and, where applicable, the party's legal personal representative);
  - 1.6. a reference to any statute or statutory provision: (i) is a reference to the statute or statutory provision as amended, modified, re-enacted or replaced; and (ii) includes all regulations; other statutory instruments made under it.

### Application

2. If we accept your application to become a Capricorn Alumni, you will be issued with a number ("**Authorised Purchaser's Number**"), which will enable you to purchase goods and/or services using credit provided by us from a range of our preferred suppliers with which we have entered into agreements (as principal) to pay for goods and/or services which you order using your Authorised Purchaser's Number. We may accept or reject your application at our sole and absolute discretion.
3. You agree that before making any purchase using an Authorised Purchaser's Number you shall inform us of any facts, including as to your capacity to pay for such purchases, which might reasonably affect our decision to extend credit to you and which are known or ought to be known by you, and any failure to do so will constitute a material breach of this Agreement giving us the right to immediately terminate this Agreement without notice (without limiting any other remedies or causes of action that may arise at law).
4. The grant of any credit facility or nomination of any credit limit by us is at our absolute and unfettered discretion. Sometimes we may permit you to temporarily exceed your credit limit or your credit limit may be exceeded where

purchases that do not require our authorisation are made from preferred suppliers. To avoid doubt, any such temporary excess over and above your credit limit, shall be subject to this Agreement, including without limitation the requirement to repay the excess within the required time.

5. Despite any other clause herein, we may:
  - 5.1. on not less than 62 days' notice to you, change your credit limit, the Late Charge or any other term of this Agreement in our absolute and unfettered discretion excluding any implied term of good faith and without any liability to you or any other person; and
  - 5.2. immediately on notice to you, change your credit limit or suspend any credit facility provided to you if we are of the reasonable opinion you are in breach of your obligations under this Agreement, including if we receive an adverse credit report about you, you submit a declaration of intention to present a debtor's petition or bankruptcy proceedings are filed regarding you.

### Ordering and Payment

6. When your Authorised Purchaser's Number is used to make any purchase of goods and/or services from us or a preferred supplier we act on that instruction and pay for your purchases. We then charge you the amount of the purchases and any other amounts provided for in this Agreement and you must pay these amounts under this Agreement.
7. We will issue you a statement monthly through written and/or electronic means ("**Account Statement**"). The Account Statement will record purchases made using your Authorised Purchaser's Number during the preceding month and may also include purchases from previous months not recorded on an earlier Account Statement. You are deemed to have received the Account Statement by the 14<sup>th</sup> day of each month if you have not communicated otherwise to us by this time.
8. In consideration of us accepting your application or continuing to allow you to be a Capricorn Alumni, you agree and undertake to pay all amounts specified in each Account Statement by the last business day of the calendar month in which that Account Statement is issued to you, subject to the term any credit provided to you being for a maximum of 62 days.
9. If you fail to pay any amount in an Account Statement by the due date for payment, we can immediately raise against your Authorised Purchaser's Number a late charge of 7% of the

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unpaid balance of the Account Statement ("**Late Charge**"). The Late Charge shall be payable on the Account Statement issued by us the following month. You acknowledge and agree that the Late Charge is a genuine pre-estimate of our loss arising from late payment of any amount in your Account Statement.

10. You acknowledge that should you fail to pay any amount in any Account Statement when due and we elect to start recovery proceedings against you, then we may recover payment for all amounts due by you to us with payment for any subsequent goods or services ordered using your Authorised Purchaser's Number from issue of our last Account Statement to you, including the date on which recovery proceedings are started by us.
11. If the Late Charge is insufficient to reasonably compensate us for any costs or losses arising out of your default, or any costs or losses arising from any recovery proceedings arising out of your default, we can impose a default fee ("**Default Fee**") for such amount as would reasonably compensate us for such costs or losses. The Default Fee will be notified to you on your next Account Statement and will be payable immediately upon receipt of that Account Statement.
12. It is your responsibility (and not ours) to ensure that the Authorised Purchaser's Number is not used by unauthorised persons to get goods or services. Subject to clause 13, you will be liable to pay to us all amounts on your Account Statement, even if amounts charged to you are for goods or services that were:
  - 12.1. not ordered by you or were ordered by you but never received by you; or
  - 12.2. ordered or got because of the unauthorised use of your Applicant's Authorised Purchaser's Number or any other number, code or identifier issued by us whether you received such goods or services.
13. If your Account Statement records goods or services not ordered or not received by you, you must notify us within 14 days' of issue of the Account Statement, in which case we may, in its absolute and unfettered discretion excluding any implied term of good faith, release you from any obligation to pay us regarding those goods or services. No such release will be provided where you assisted in, facilitated or knew, goods and services being ordered by a person other than you.
14. You acknowledge and agree that if you do not notify us under clause 13 regarding any goods or services not ordered or not received by you (or any such notice is reasonably rejected by us) all goods and services referred to on your Account Statement are deemed to have been ordered or

received by you, and you will be liable to pay us for the same, whether or not those goods or services were ordered or received by you.

15. You agree that we may receive on its own account income from preferred suppliers, including a service fee payable by the preferred supplier to us based on the purchases you have made.

### Warranties

16. You warrant that, as at the date of execution of this Agreement and while this Agreement remains in force:
  - 16.1. all information provided to us as part of your application to become a Capricorn Alumni is correct and accurate;
  - 16.2. you are solvent and able to pay all of your debts as and when they fall due.

### Liability

17. To the fullest extent allowed by law (including the *Consumer Guarantees Act 1993*) we and any of our officers, employees or agents shall not be liable for any loss, claim or damages including but not limited to for personal injury, any damage to property, any loss of profits and/or any contingent, consequential, direct, indirect, special or punitive damages, whether due to negligence or otherwise and whether foreseeable or otherwise, and you acknowledge this limit of liability and agree to limit any claim accordingly.
18. We exclude from this Agreement all conditions, warranties and terms implied by statute, general law, international convention or custom, except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void ("**Non-Excludable Condition**").
19. Our liability to you for breach of any Non-Excludable Condition shall be limited, at our option, to either re-providing the relevant goods or services to you or paying to you an amount equal to any payment made by you to us regarding such goods or services.

### Default and Termination

20. Without limiting the operation of any other clause, you are in default under this Agreement if you:
  - 20.1. do not pay on time any amount payable under this Agreement;
  - 20.2. breach any warranty, representation or covenant provided or made by you under this Agreement; or
  - 20.3. do not comply with any other term or condition of this Agreement.

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21. If you are in default then we may, without notice to you, do any or all of the following in any order:
    - 21.1. send you a notice requiring you to fix the default prior to a given date (but to avoid doubt, there is no requirements for us to send such notice);
    - 21.2. deem that all amounts owing by you under this Agreement are immediately due and payable;
    - 21.3. start legal proceedings without notice to you for recovery of amounts owed by you to us on any basis (but not before the date of any notice sent to you under clause 21.1); or
    - 21.4. terminate this Agreement with immediate effect (but not before the date of any notice sent to you under clause 21.1).
  22. If you are in default, you agree that we may start recovery proceedings without notice to you for the amount outstanding on any basis as at the date of the start of recovery proceedings and you agree to pay on demand such amount with any legal or other debt collection expenses we incur on a full indemnity basis in instituting recovery proceedings or taking any other action to recover amounts not paid by you.
  23. You acknowledge and agree that in any proceedings started by us to recover amounts due by you under this Agreement or otherwise, a certificate which purports to be signed by an authorised officer of us stating your indebtedness is prima facie evidence of the matters set out in the certificate.
  24. You may terminate this Agreement at any time by giving us written notice. We may terminate this Agreement at any time by giving you at least two months' written notice.
  25. Termination of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to any party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.
- between you and us regarding its subject, and supersedes and replaces any previous contracts, agreements, understanding or arrangement about its subject.
29. Each provision of this Agreement is severable, and any invalid or unenforceable provision shall be severed from and shall not affect the validity of the rest of this Agreement.
  30. Nothing in this Agreement is to be construed adversely against one party because that party drafted this Agreement.
  31. The failure of a party to exercise or delay in exercising a right, power or remedy under this Agreement does not prevent its exercise. A provision or right under this Agreement may not be waived except by a waiver in writing signed by the party granting the waiver and will be effective only to the extent specifically set out in the waiver.
  32. The parties to this Agreement must do all things reasonable and necessary or desirable to implement and give full effect to this Agreement.

### General

26. This Agreement is governed by and will be construed under the laws of New Zealand. In any action or other legal process regarding any matter or thing in connection with this Agreement the parties irrevocably and unconditionally submit to the non- exclusive jurisdiction of New Zealand.
27. None of your rights or obligations under this Agreement may be assigned, encumbered or transferred without our prior written consent.
28. This Agreement represents the entire agreement