

BURNIE BRAE TERMS AND CONDITIONS

1. ACCEPTANCE

1.1 These Terms and Conditions (**Terms**) are between Burnie Brae Ltd. (ABN 39 206 062 402), its successors and assignees (referred to as “**we**”, “**us**” or “**our**”) and the person, organisation or entity who uses or purchases any recreational, education or social activities or services (**Services**) and related products from us (referred to as “**you**” or “**your**”), and collectively the Parties.

1.2 Our Services and these Terms are available on the Website or as otherwise provided to you at our Burnie Brae community centre (**Burnie Brae Centre**). Separate terms govern other services we provide including but not limited support, healthcare, services we provide on behalf of the government and other related services (**Excluded Services**).

1.3 You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully. Please contact us if you have any questions.

1.4 You accept these Terms by:

- (a) making a purchase from us, using our Services or making a booking for the Services;
- (b) signing and returning these Terms;
- (c) ticking the online acceptance box;
- (d) confirming by email that you accept these Terms; or
- (e) making part or full payment for the Services via our Website or at a venue and/or facility owned or occupied by us.

Doing any of the above indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older. You must not order Services from us if you are under 18 years of age. If you do not agree to these Terms, you should not purchase from us or do any of the above acts.

1.5 Our Terms of Use set out the terms and conditions for using the Website. Our Privacy Policy sets out how we collect, use and protect your personal information. Our Membership terms and conditions set out the terms for the different memberships we offer. Excluded Services are subject to different terms and conditions (where applicable). These are available on upon request.

1.6 Any services we provide and any membership or association with us are subject to our Constitution which is available on our Website. Please read our Constitution carefully and contact us if you have any questions.

2. REGISTRATION AND SERVICES

2.1 Access to our Services will require you to (a) be a person provided for in our Constitution; and (b) register as an associate member (**Associate Member**) and pay a joining fee (where applicable) and an annual membership fee, as set out on our Website and amended by us from time to time.

2.2 Associate Members will be issued with a membership card and have an account on the Website (**Account**). It is your responsibility to keep your Member details and the details of your Account, including user name and password, confidential. You are liable for all activity on your Account, including any purchases made using your Account or Member details.

2.3 The Services we offer online and at the Burnie Brae Centre may differ. Some Services may only be available for purchase online, and others at the Burnie Brae Centre.

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- 2.4 Some Services may require you to book in advance on our Website or at a Burnie Brae Centre. Such Services are subject to availability. Where bookings are required, we recommend you book as early as possible to ensure you do not miss out.
- 2.5 We agree to perform the Services with due care and skill.
- 2.6 We reserve the right to refuse any request in relation to the Services that we deem inappropriate, unreasonable or illegal.
- 2.7 You may request additional services via our Website or contacting us via the contact details at the end of these Terms. You must pay any fees for such additional services as set out on the Website or as quoted to you. You will be expected to pay any fees for such additional Services before we commence performing them. You acknowledge and agree that if such Service is an Excluded Service, separate terms and conditions may also apply.
- 2.8 The estimated period for us to perform the Services is set out on our Website.
- 2.9 We may provide the Services to you using our employees, contractors and third party providers, and they are included in these Terms.
- 2.10 Third parties who are not our employees or our direct contractors (**Third Parties**) will be your responsibility. We are not responsible for the services provided by Third Parties.
- 2.11 If you request amended or additional services, including but not limited to changes in scope or variations (**Variation**), we have discretion as to whether we perform this work and whether an adjustment to the Fee may be required in respect of the same. If we are unable to accommodate the Variation, we may request that we be paid for Services performed to date and terminate these Terms.
- 2.12 If we agree to perform a Variation, then we will inform you of any additional cost (**Variation Fee**). You need to approve the Variation and Variation Fee before we commence work. We will invoice you accordingly for the Variation.

3. PRICE, INVOICING AND PAYMENT

- 3.1 You agree to pay us the fees, including any other payments and expenses, for the Services that you have requested or for which you have made a booking, as set out on our Website (**Fees**). All amounts are stated in Australian dollars. All amounts include Australian GST (where applicable). Any applicable payments and expenses, such as additional meal or travel costs will be separately shown.
- 3.2 The Fees and Services can be varied by written agreement between us, including by email.
- 3.3 We will not commence performing the Services until you have paid our Fees.
- 3.4 Where applicable, you agree to make payment for the Fees by way of cash, direct debit or credit card or other payment options as set out on the Website or at the Burnie Brae Centre as applicable. Where required, you must provide your credit card or other payment details (**Payment Details**) to us when making a purchase for the Services.
- 3.5 You must not pay, or attempt to pay the Fees through any fraudulent or unlawful means. If a payment is not able to be successfully processed then you will not be able to access the Services and any booking may be cancelled.
- 3.6 In the absence of fraud or mistake, all payments made are final and you shall not have the right to cancel your purchase for any reason and further you agree to satisfy all such payments made, with exception to action taken under the Cancellation and Refund Policy set out in these Terms.
- 3.7 If you make payment by debit or credit card, you warrant that the information you provide to us is true, accurate and complete, that you are authorised to use the debit or credit card to make the payment, that the payment will be honoured by the card issuer, and that you maintain sufficient funds in the account to cover the Fees.

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3.8 If our Website states that the Fees and Price are an estimate only, you acknowledge that the final Fees and Price may be more or less than the estimated amounts. We will endeavour to inform you of any material variation as it becomes apparent.

3.9 Our pricing structure, payment methods and these Terms may be amended from time to time at our discretion. The pricing changes will apply to you for Services provided to you after

the date of the change. All other changes will apply from the date that the amended or new Terms are posted on our Website or are provided to you, whichever is earlier.

4. YOUR OBLIGATIONS AND WARRANTIES

4.1 You warrant that throughout the term of these Terms that:

- (a) you will comply with all rules and requirements as set out in our constitution accessible on our Website;
- (b) there are no legal restrictions preventing you from agreeing to these Terms;
- (c) you will cooperate with us and provide us with information that is reasonably necessary to enable us to perform the Services as requested by us from time to time, and comply with these requests in a timely manner;
- (d) the information you provide to us is true, correct and complete;
- (e) you will not infringe any third party rights in working with us and receiving the Services;
- (f) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns;
- (g) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions; and
- (h) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you.

5. DISCOUNT CODES AND PROMOTIONS

5.1 We may from time to time offer promotional discount codes, which may be applicable to our Services as set out on the Website or other promotional materials we provide to you, and must be entered at the time of ordering the Services. The conditions of use relating to any discount code will be specified at the time that it is issued.

6. OUR INTELLECTUAL PROPERTY

6.1 The work and materials that we provide to you in carrying out the Services may contain material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the intellectual property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.

6.2 You agree that, as between you and us, we own all Intellectual Property rights in the Website, business, branding and our Materials, and that nothing in these Terms constitutes a transfer of any intellectual property rights in such things, except as stated in these Terms or with our written permission.

6.3 Your use of our Materials does not grant you a licence, or act as a right to use any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.

6.4 You must not breach our Intellectual Property rights by, including but not limited to:

- (a) altering or modifying any of the Materials;

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- (b) creating derivative works from the Materials; or
- (c) using our Materials for commercial purposes such as onsale to third parties.

7. CONFIDENTIAL INFORMATION

7.1 You agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.

7.2 These obligations do not apply to Confidential Information that:

- (a) is authorised to be disclosed;
- (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
- (c) is received from a third party, except where there has been a breach of confidence; or
- (d) must be disclosed by law or by a regulatory authority including under subpoena.

7.3 The obligations under this clause will survive termination of these Terms.

8. FEEDBACK AND DISPUTE RESOLUTION

8.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.

8.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:

- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
- (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Queensland to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.

8.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

9. TERMINATION

9.1 Subject to our Constitution, the Parties may terminate these Terms by mutual agreement by providing 30 days' notice in writing including by email.

9.2 Either Party may terminate these Terms if there has been a material breach of these Terms, subject to the dispute resolution procedure.

9.3 We may terminate these Terms immediately, at our sole discretion, if:

- (a) we consider that a request for the Service is inappropriate, improper or unlawful;
- (b) you fail to provide us with clear or timely instructions to enable us to provide the Services;
- (c) you fail to make payment as required in clause 3; or
- (d) for any other reason outside our control which has the effect of compromising our ability to perform our Services within the required timeframe.

9.4 On termination of these Terms you agree that the Fees or any payments made are not refundable to you, and you are liable to pay all amounts for Services rendered to you.

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9.5 If you terminate these Terms early, you must pay for all Services provided prior to termination, including any Services which have been performed and have not yet been paid by you.

9.6 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.

9.7 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.

9.8 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.

10. CANCELLATION AND REFUND POLICY

10.1 If you wish to cancel your booking or our Services, please notify us as soon as possible. Subject to the terms below and our Refund Policy, any refunds will be determined by us at our sole discretion.

10.2 If you cancel our Services and/or a booking for Services which require us to pre-purchase a ticket and the cancellation is made 24 hours or more prior to the commencement of such Service and/or booking, we will only offer a refund or exchange of the ticket (a) if the event is cancelled, rescheduled or significantly relocated by the venue, person or organisation responsible for holding the event; or (b) subject our ability to resell the ticket in accordance with the third party ticket agent's terms and conditions. We do not offer a refund or exchange if the cancellation is made within 24 hours of the commencement of the Service and/or booking.

10.3 All refunds will be made using the same payment method used to purchase our Services.

11. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS

11.1 **ACL:** Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**). Our liability is governed solely by the ACL and these Terms.

11.2 **Services:** If you are a consumer as defined in the ACL, the following applies to you: *You are entitled to a replacement or refund for a major failure and for compensation for any other foreseeable loss or damage. You are also entitled to have the Services remedied if they fail to be of acceptable quality and the failure does not amount to a major failure. To the extent we are able to exclude liability; our total liability for loss or damage you suffer or incur from the Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.*

11.3 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out on our Website where it is affected by your delay in response, or supply of incomplete or incorrect information.

11.4 **Referral:** On request by you, we may provide you with contact details of third party specialists. This is not a recommendation by us

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for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.

11.5 Warranties: To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.

11.6 Liability: To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees and terms relating to the Services and these Terms, except those set out in these Terms, including but not limited to:

- (a) implied or express guarantees, representations or conditions of any kind, which are not stated in these Terms;
- (b) the Services being unavailable; and
- (c) any loss, damage, costs including legal costs, or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, or otherwise, suffered by you or claims made against you, arising out of or in connection with your inability to access or use the Services, and the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.

11.7 You acknowledge and agree that:

- (a) you are solely responsible for determining the suitability of our Services for you;
- (b) your participation in our Services involves anticipated and unanticipated risks, including personal injury to you or a third party sustained during the course of your use of our Services and such risks could result in severe physical or emotional damage to us, yourself, a third party (including stress, personal injury, paralysis or death) or damage to a third party; and
- (c) it is your duty to ensure that you or any third party using our Services with you are using our Services safely and not in contravention of any laws.

11.8 Limitation: To the extent permitted by law, our total liability arising out of or in connection with the Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the total fees paid by you to us in the twelve (12) month period prior to the event giving rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made, as applicable.

11.9 Disclaimer: You are solely responsible for determining the suitability of any of our Services or any service provided by a Third Party, and your reliance on any information that is provide to you through our Website, Services or Materials is at your own risk.

11.10 Some Services are subject to availability. We do not guarantee that such Services will be provided at all or will be available at your preferred date and time. For Services which require booking in advance, we recommend you make your booking as early as possible.

11.11 This clause will survive termination of these Terms.

12. INDEMNITY

12.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:

- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) your participation in the use of any of our Services;

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(c) any breach of these Terms; and

(d) any misuse of the Services from or by you, your employees, contractors or agents.

12.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

12.3 The obligations under this clause will survive termination of these Terms.

13. GENERAL

13.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

13.2 **Accuracy:** While we endeavour to keep the information up to date and correct, we make no representations, warranties or guarantees expressed or implied, about the completeness, accuracy, reliability, suitability or availability of any information, images, products, services, or related graphics contained on the Website for any particular purpose. You hereby acknowledge that such information and materials may contain mistakes, inaccuracies or errors and we expressly exclude any liability for such to the fullest extent permissible by law.

13.3 **Publicity:** You consent to us using advertising or publically announcing that we have undertaken work for you.

13.4 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you and that is the primary way that we will communicate with each other. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.

13.5 **GST:** If and when applicable, GST payable in connection with the supply of the Services will be set out in our Fees. You agree to pay us an amount equivalent to the GST payable on the supply at the same time that you pay our Fees.

13.6 **Relationship of parties:** These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.

13.7 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).

13.8 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.

13.9 Force Majeure

If performance of these Terms or any obligation under these Terms is prevented, restricted, or interfered with by causes beyond either party's reasonable control (**Force Majeure**), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders of acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, LegalVision ILP Pty Ltd owns the copyright in this document and use without permission is prohibited.

lock-outs, work stoppages. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

13.10 **Notice:** Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed to you at the address in the Proposal. Our address is set out in the Proposal. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.

13.11 **Jurisdiction & Applicable Law:** These terms are governed by the laws of Queensland and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Queensland.

13.12 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.

14. DEFINITIONS

14.1 **Confidential Information** includes confidential information about the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential".

14.2 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.

14.3 **Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, company names or internet domain names.

14.4 **Refund Policy** means the document entitled 'Refund Policy' provided by us to you and available on the Website.

14.5 **Website** means the website, available at www.burniebrae.org.au

Contact details:

Burnie Brae Ltd ABN 39 206 062 402 ACN 609 476 637

67 Kuran Street

Chermside QLD 4032

Email: admin@burniebrae.org.au

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