

Social Traders Ltd – Certified Social Enterprise Membership Terms and Conditions (version 2.0)

THESE TERMS AND CONDITIONS ARE A BINDING AGREEMENT between Social Traders Ltd (ABN 42 132 665 804) (**Social Traders**, or **we**) and a Certified Social Enterprise Member (**Certified Social Enterprise Member**, or **you**).

These Terms and Conditions (together with any documents referred to in them) set out the terms and conditions of your status as a Certified Social Enterprise Member.

Social Traders is an independent not for profit company that works to foster social enterprises' growth by connecting them with business and government buyers.

Becoming a Certified Social Enterprise Member is a recognition that your business or organisation is a certified social enterprise based on Social Traders' criteria of a social enterprise as defined from time to time ("**criteria**").

As a Certified Social Enterprise Member, you agree to comply with:

- A. these Terms and Conditions, as amended by Social Traders from time to time;
- B. [Social Traders Website Terms of Use](#);
- C. [Social Traders Privacy Policy](#); and
- D. all applicable Australian and international laws and regulations. In particular but not limited to, competition law obligations. Certified Social Enterprise Members acknowledge that they may be "competitors" or "potential competitors" for the purposes of relevant Australian competition laws, including the *Competition and Consumer Act 2010 (Cth)*. Certified Social Enterprise Members understand their competition law obligations and will fully comply with them.

Certification

1. Your certification with Social Traders is subject to ongoing recertification (as determined by Social Traders) as a Certified Social Enterprise Member. Accordingly, you must:
 - a. provide evidence that your enterprise meets the criteria determined by Social Traders as requested by Social Traders from time to time; and
 - b. provide statements of your enterprises' size, capability and impact as requested by Social Traders from time to time.
2. If Social Traders in its absolute discretion determines that you are required to be recertified, Social Traders will specify the required documentation and you will be required to provide this information. If you are unable to provide the requested information, Social Traders may come to agreement with you for an acceptable form of documentation in place of the requested materials in order to verify you continue to meet the criteria.
3. You agree that the information that is provided to Social Traders in or supporting your recertification is true and correct and not misleading in any way, and that no relevant information has been excluded. You must immediately advise Social Traders if any information becomes incorrect, misleading, untrue or if any relevant information has been excluded.
4. As a Certified Social Enterprise Member and in relation to the recertification process, you acknowledge and agree that:
 - a. it is your responsibility to make Social Traders aware of any changes to your ownership, governance or organisational objectives;
 - b. any changes to ownership, governance or to your organisational objectives will require a reassessment of your status as a Certified Social Enterprise Member;

- c. Social Traders may in its absolute discretion assess such changes and make a determination in relation to the impact on your status as a Certified Social Enterprise Member;
 - d. Social Traders has the right to assume that you will comply with your governing documents and any resolution or formal undertakings made in connection with the application for certification as a Certified Social Enterprise Member and in connection with the recertification pursuant to clause 2 (including any undertakings made to conform governance documentation in compliance with conditions attaching to a certification determination) and it is entitled to rely on that assumption; and
 - e. Social Traders may at any time request additional information from you in relation to a certification review or as part of its ongoing audit process and may require site access and access to records (in which case this will occur during business hours after reasonable notice is provided).
5. You must advise Social Traders immediately of any changes to your solvency status.

Membership

- 6. When you apply for certification, you must enrol in an annual Membership Package and pay any associated membership fee. You must maintain your certification alongside your membership ("**Membership**").
- 7. Subject to you complying with the terms and condition of this agreement, your Membership allows you to enjoy certain benefits and services to be provided by Social Traders depending on the Membership Package that you enrol in.
- 8. Social Traders may from time to time offer to provide you additional services and advance your Membership to a higher tier subject to your payment of an additional membership fee to be determined by Social Traders and agreed by you.
- 9. Your Membership is only valid for 12 months. You must renew your Membership in order to continue to enjoy the benefits and services offered in the Membership Package and to maintain your status as a Certified Social Enterprise Member.
- 10. Your Membership will only be renewed upon payment of any associated renewal fee (to be determined by Social Traders from time to time) for the Membership Package that you choose to renew. You acknowledge that the renewal of a Membership Package is subject to any adjustments Social Traders may make to the services and benefits associated with the Membership Package.
- 11. Your Membership will expire if:
 - a. you do not renew it;
 - b. you fail to pay the associated membership fee; or
 - c. your status as a Certified Social Enterprise Member is suspended or terminated.
- 12. If your Membership expires, you must immediately cease to represent yourself as a Certified Social Enterprise Member.
- 13. The membership fee is non-refundable unless this agreement is terminated by reason of Social Traders' default, in which case you will be entitled to claim a pro rata refund of the membership fee for the remaining period of the Membership after the date of termination.

Social Traders Portal

14. As a Certified Social Enterprise Member, you are permitted to access Social Traders' portal that allows you to search for other Certified Social Enterprise Members.
15. A social enterprise profile that sets out your Business Information will be listed and made available to be viewed by other Certified Social Enterprise Members and Business or Government Members on the portal.
16. Access to Social Traders portal is strictly limited to Certified Social Enterprise Members and Business or Government Members only. By using the Social Traders portal, you agree:
 - a. to comply with Social Traders' Website Terms of Use as amended from time to time;
 - b. to only use this portal for lawful purposes;
 - c. to keep your login details confidential and secure;
 - d. not to disclose your passwords and login details to any third party;
 - e. not to permit any other third party to use your passwords and login details;
 - f. not to access the portal using another third party's passwords or login details; and
 - g. not to use this portal for any dishonest, fraudulent, misleading or malicious purpose; and
 - h. not to disclose any Competitively Sensitive Information that may raise risks under relevant Australian competition laws, including the *Competition and Consumer Act 2010* (Cth).
17. Social Traders will not be liable for any loss or damage that you may incur as a result of someone else using your passwords or login details, either with or without your knowledge or consent.

Provision of Information

18. You agree to provide true and correct information to Social Traders, and you declare that all information you provide is true, correct and up to date.
19. If the information you provide to Social Traders is not up to date, you must take appropriate steps to update the information and notify Social Traders immediately.
20. You must not provide false or misleading information to Social Traders. You warrant that the information provided to Social Traders does not violate any law or infringe upon the rights of any person of any kind, including without limitation those concerned with Intellectual Property Rights, anti-competitive conduct, consumer law, contract, defamation or Privacy Laws.

How we use your information

21. Social Traders collects, holds, uses and discloses information, including Personal Information provided by you in accordance with the Social Traders Privacy Policy, for the purpose of research activities and delivering its products and services or otherwise conducting the functions and activities of Social Traders, or as required by law. If you do not provide some or all of the information we request, we may not be able to provide you with some or all of our services.
22. You consent to Social Traders:
 - a. collecting, holding, using and disclosing the information for such purpose and in accordance with the Social Traders Privacy Policy;

- b. disclosing your social enterprise profile and capability statement to Business or Government Members and their contractors. This information is vital because it helps Business or Government Members develop an understanding of the Social Enterprise market and what they can buy from social enterprise;
 - c. listing your Business Information on Social Traders' portal and Social Enterprise Finder;
 - d. disclosing your Business Information to third-party operators of procurement transaction platforms; and
 - e. disclosing your Business Information to external procurement consultants or agencies to further promote or advocate for social procurement.
23. It is not likely that we will share your Personal Information with overseas recipients, and we will not do so without obtaining your consent.

Certified Social Enterprises Members and Business or Government Members

24. You acknowledge that Social Traders works with Business or Government Members to assist social enterprises to grow their impact.
25. As soon as you become aware that you have obtained procurement opportunities through Social Traders or work with a Business or Government Member, you must (if requested by Social Traders) provide to Social Traders financial information, impact indicators and income derived from these opportunities as soon as reasonably practicable.

Certified Logo and Intellectual Property Rights

26. You agree to comply with the Social Traders' Certified Logo Licensing Agreement in relation to the Certified Logo and associated Intellectual Property Rights.
27. The license to use the Certified Logo and associated Intellectual Property Rights will be suspended or terminated if Social Traders decides to suspend or terminate your status as a Certified Social Enterprise Member in accordance with these Terms and Conditions.
28. You agree that Social Traders owns and retains all right, title, and interest, including all Intellectual Property Rights, in the works conceived, prepared or developed by Social Traders under this agreement.

Confidentiality

29. You agree not to disclose any Social Traders Confidential Information without Social Traders' prior written consent.
30. Subject to the disclosure permitted under clause 22, we agree not to disclose your Confidential Information without your prior written consent.
31. The obligations of confidentiality under this clause will not apply to information that is:
- a. required or authorised to be disclosed by law;
 - b. disclosed to the parties' solicitors, auditors, insurers or professional advisers;
 - c. reasonably required to be disclosed for the purpose of enabling the parties to fulfil their respective obligations under this agreement.

Liability

32. Notwithstanding any clause of these Terms and Conditions, you release Social Traders from any liability in respect of any loss, damage, cost or expense suffered or incurred by you:

- a. arising out of, under, or in any way in connection with these Terms and Conditions including:
 - i. becoming a Certified Social Enterprise Member or any decision by Social Traders to suspend or terminate your certification or membership for any reason;
 - ii. using the Social Traders Portal referred to in clauses 14 to 17 above; or
 - iii. using the goods and services or otherwise engaging with other Certified Social Enterprise Members and Business or Government Members; or
 - b. otherwise at law or in equity arising out of, or any way in connection with these Terms and Conditions or its subject matter, the performance or non-performance of Social Traders' obligations under these Terms and Conditions, whether before or after this document becomes effective, including by statute (to the extent to which it is lawfully possible to exclude or limit liability), in tort for negligence or otherwise, including but not limited to negligent misrepresentation, or restitution.
33. Notwithstanding any clause of these Terms and Conditions:
- a. Social Traders makes no warranty or representation as to the quality of any goods or services provided by any other Certified Social Enterprise Members;
 - b. you agree you will make your own inquiries as to the suitability of any goods or services provided by other Certified Social Enterprise Members and will not rely on any perceived representation made by Social Traders; and
 - c. Social Traders is not liable for (and you release and hold Social Traders (and its and officers, directors, agents, partners, successors and assignees) harmless against) any loss, damage, cost or expense suffered or incurred by you as a result of the acts or omissions of any other Certified Social Enterprise Members.
34. You agree to indemnify Social Traders (and its and officers, directors, employees, agents, partners, successors and assignees) for any loss, damage, cost or expense suffered or incurred by Social Traders arising out of, under, or in any way in connection with:
- a. your breach of these Terms and Conditions;
 - b. goods or services you provide to a third party including a Business or Government Member and another Certified Social Enterprise Member;
 - c. any warranty or representation regarding your goods or services which you make to a third party including a Business or Government Member and another Certified Social Enterprise Member; or
 - d. any information exchanged in any way whatsoever between you and a third party including a Business or Government Member and another Certified Social Enterprise Member.
35. To the extent permitted by law:
- a. Social Traders' total aggregate liability for all claims relating to these Terms and Conditions is limited to the payment of any fee to Social Traders; and
 - b. Either party's liability for any claim relating to these Terms and Conditions will be reduced to the extent to which the other party contributed to the damage arising from the claim.

36. Clauses 32 to 35 survive the termination of these Terms and Conditions and/or the termination or suspension of your status as a Certified Social Enterprise Member.

Suspension or Termination

37. Social Traders, in its sole discretion, may restrict, suspend (and lift any such suspension) or terminate your status as a Certified Social Enterprise Member if:

- a. in the opinion of Social Traders, you do not comply with or no longer meet the Certified Social Enterprise Member criteria, in which case:
 - i. you will be given an opportunity to respond in connection with the non-compliance; and
 - ii. you will be given an opportunity to address any issues raised in connection with your recertification.

If, after the processes described in paragraph 37a are completed, and Social Traders deems you to still not be compliant, you will have an opportunity to appeal the decision in which case Social Traders will refer your appeal to the Advisory Group. The Advisory Group will provide advice to Social Traders on your appeal and together with the Advisory Group, Social Traders will make a determination on your status as a Certified Social Enterprise Member and will have the power to restrict, suspend or terminate your status. You will be bound by the final determination.

- b. you commit a breach of these Terms and Conditions which, in Social Traders' reasonable opinion:
 - i. is not remediable; or
 - ii. if capable of remedy, is not remedied by you within 14 days of written notice;
- c. an insolvency event occurs in relation to your organisation, other than a solvent reconstruction with notice to Social Traders;
- d. in Social Traders' reasonable opinion, you engage in a conduct which is materially prejudicial to the goodwill or reputation of Social Traders; or
- e. you cease to operate.

38. If your status as a Certified Social Enterprise Member is suspended or terminated:

- a. by Social Traders as a result of advice given by the Advisory Group under clause 37.a; or
- b. by Social Traders under clauses 37.b – 37.e,

you must immediately cease to represent yourself as a Certified Social Enterprise Member. Any such decision in accordance with this clause is final and binding.

Variation

39. Social Traders reserves the right to amend these Terms and Condition where:

- a. it is necessary to comply with changes in the law or regulatory reasons; and
- b. Social Traders needs to correct any errors or omissions (and this right includes the right to change any of the documentation which forms part of these Terms and Conditions), as long as such correction is minor and does not materially affect the Terms and Conditions.

40. Where practicable, Social Traders will provide reasonable notice of any proposed variation to these Terms and Conditions before they come into effect.

Severability

41. If any provision of these Terms and Conditions is held by a court of law to be invalid or unenforceable under any applicable statute or rule of law, such provision shall cease to apply or to bind the parties, but the remainder of the Terms and Conditions shall continue to be binding and in full force and effect.

Governing Law

42. These Terms and Conditions takes effect, is governed by, and shall be construed in accordance with the laws from time to time in force in Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

Definitions

In these Terms and Conditions, unless the contrary intention appears:

Advisory Group means the independent committee appointed by Social Traders and made up a number of the following experts, a lawyer, an academic and/or other industry expert, a social enterprise practitioner, each with significant social enterprise expertise.

Business Information means business name, business location, contact details of the nominated representative of the business, the products and services offered by the business, excluding Competitively Sensitive Information;

Business or Government Member means an organisation participating in the Social Traders membership program that connects Certified Social Enterprise Members with Australian business and government buyers and that accesses Social Traders social procurement services for a fee;

Certified Logo means the certification logo that is made available by Social Traders to you pursuant to the [Social Traders' Certified Logo Licensing Agreement](#);

Certified Social Enterprise Member or **you** mean a current certified social enterprise member meeting the certification criteria as defined by Social Traders from time to time;

Competitively Sensitive Information includes non-public information that competitors would not ordinarily share and which would provide insights into how competitors are likely to act in the future. This includes information which confirms an expectation of how a competitor may act or view the market and public information which is compiled or shared in a way that a third party would not ordinarily be able to access or compile;

Confidential Information means information that is by its nature confidential or by the circumstances in which it is disclosed is confidential including but not limited to current or prospective financial position or finances, activities, business plans, trade secrets, clients, technical data or know how but excluding information which:

- a. is generally available in the public domain except where such availability is as a result of a breach of this agreement;
- b. was known prior to the disclosure of the information by the other party;
- c. is disclosed to a party's solicitors, auditors, insurers or professional advisers; or
- d. is required to be disclosed by an applicable law or court order;

Intellectual Property Rights means all intellectual property rights which may subsist anywhere in the world, including but not limited to all copyright, patents, trademarks, design rights, trade secrets, domain

names, know-how and any right to have confidential information kept confidential, and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application;

Membership Package means the membership tier chosen by you and associated benefits and services provided by Social Traders to the Certified Social Enterprise Member, as published on our Social Traders' website or offered by Social Traders upon the renewal of the Membership;

Personal Information has the meaning given in the *Privacy Act 1988* (Cth), and means any information or opinion about an identified individual, or an individual who is reasonably identifiable, whether true or not and whether recorded in a material form or not;

Privacy Laws means the *Privacy Act 1988* (Cth) as amended from time to time, and all other laws, rules or regulations in Australia which relate to the privacy, protection, use or disclosure of Personal Information;

Social Enterprise Finder means the online directory of Certified Social Enterprise Members available at <https://www.socialtraders.com.au/find-a-social-enterprise>

Social Traders Privacy Policy means the privacy policy available at <https://www.socialtraders.com.au/privacy-policy>

Social Traders Website Terms of Use means the website terms of use available at <https://www.socialtraders.com.au/terms-and-conditions>

Social Traders' Certified Logo Licensing Agreement means the logo licensing agreement between you and Social Traders governing your use of the Certified Logo, available at <https://www.socialtraders.com.au/social-traders-licensing-agreement/>