

## CONDITIONS OF USE

### Date

This Agreement is made on the ##### day of ##### 2014.

### Parties

This Agreement is made between and binds the following parties:

1. The Australian War Memorial (**the Memorial**); and
2. [Customer Name] (The User )

### Context

This Agreement is made in the following context:

The Memorial is responsible for maintaining a national collection of memorial items relating to Australian military history (**the National Collection**). The Memorial has agreed to supply items from the National Collection to the User on the terms and conditions set out in this Agreement.

## 1. Interpretation

1.1.1. In this Agreement, unless the context indicates otherwise:

<b>Commencement Date</b>	means the date on which the User indicates acceptance of these Conditions of Use by clicking the 'I agree' button and which appears on the first page of this Agreement;
<b>GST</b>	has the meaning that it has in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
<b>Manner of Use</b>	means the manner of use of the Material as set out in Item 3 of the Schedule;
<b>the Material</b>	means the National Collection material set out in Item 1 of the Schedule including any reproductions of such material;
<b>National Collection</b>	means the national collection of memorial items held by the Memorial relating to Australia's military history;
<b>Order</b>	means the order placed by the User for supply of the Material by the Memorial;
<b>Permitted Purpose</b>	means the permitted purpose stated in Item 2 of the Schedule;
<b>Term</b>	has the meaning provided in Item 4 of the Schedule;
<b>Territory</b>	has the meaning provided in Item 5 of the Schedule;
<b>User Fees</b>	has the meaning provided in Item 6 of the Schedule.

1.1.2. In this Agreement, the following principles of interpretation apply:

- a. unless the contrary intention appears, if any conflict arises between the terms of this Agreement and the terms of the Online Shopping Terms and Conditions on the Memorial website, the terms of this Agreement will prevail to the extent of any inconsistency.;
  - b. as far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable. If anything in this Agreement is void or otherwise unenforceable then it will be severed and the rest of the Agreement remains in force;
  - c. a provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision;
  - d. a failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right. A single or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right;
  - e. a variation to this Agreement is binding only if agreed in writing and signed by the parties;
  - f. unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of clauses 1, 2.7 - 2.10 and 2.12 or any other provision which expressly or by implication from its nature is intended to continue;
  - g. this Agreement is to be construed in accordance with the laws of the Australian Capital Territory and the parties submit to the jurisdiction of the courts of that Territory;
- 1.1.3. Subject to this Agreement, the terms and conditions of this Agreement apply on and from the Commencement Date and continue for the Term.

## **2. Conditions of Use**

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### **2.1. Authorisation**

- 2.1.1. The Australian War Memorial hereby authorises the User to access and use the Material described in Item 1 of the Schedule from the National Collection on the terms and conditions set out in this Agreement and any reasonable directions provided in writing by the Memorial to the User.

### **2.2. Permitted Purpose**

- 2.2.1. The User agrees only to use the Material for the Permitted Purpose set out in Item 2 of the Schedule. No further use or storage of the Material is to be carried out that is not directly associated with that Permitted Purpose.

### **2.3. Nature and scope of use**

- 2.3.1. The User agrees only to use the Material in accordance with the Manner of Use stated under Item 3 of the Schedule for [the Term] and/or [a print run of 1000 copies OR other means of determining use] [within the Territory].

### **2.4. User Fees**

- 2.4.1. The user is liable to pay the User Fees to the Memorial in relation to use of the Material authorised under this Agreement.

### **2.5. Moral rights - attribution of authorship and alteration**

- 2.5.1. When reproducing or otherwise using the Material in accordance with this Agreement, the User is to display the Memorial reference numbers as printed on [the receipt relating to the Order or the relevant material] in a reasonably prominent manner in connection with the Material. In the case of art images, caption details will be supplied by the Memorial and are to be printed or screened legibly in close proximity to the reproduction of the Material whether in print or moving image/film. Where the Material comes wholly or partially from Memorial's film collection and exceeds three minutes, the Memorial is to

be credited in the completed production. The User must obtain the Memorial's prior written consent if departing from these methods of attribution or if they do not otherwise apply.

- 2.5.2. The User must obtain the Memorial's prior written consent to modify the Material irrespective of whether the Material is the subject of copyright protection so as to ensure that the author's moral rights are not infringed and/or to ensure the integrity of the National Collection. In particular, the User undertakes to ensure that images are not cropped, overprinted or altered in any way without the prior written approval of the Memorial. Where the Material is to be used as part of any design work a design proposal must be submitted for prior written approval by the Memorial.
- 2.5.3. The Memorial reserves the right to view on demand colour proofs of the Material produced by the User whether before or after publication (where applicable). For overseas publications this right may be exercised through any representative nominated by the Memorial.
- 2.5.4. The Memorial may deny or withdraw authorisation to use the Material in accordance with this Agreement in cases where the User's reproduction or use of the Material is deemed by the Memorial, in its absolute discretion, to be unsuitable or of an unacceptable standard. In these circumstances, the User acknowledges and agrees that it will have no right to recover the User Fees paid in respect of the Order and that it shall have no action against the Memorial for any losses suffered or costs or expenses incurred that arise directly or indirectly from the denial or withdrawal of authorisation to use the Material under this Agreement.

## **2.6. Copies sent to Memorial**

- 2.6.1. Within fourteen (14) days from the publication or production of the Material by the User or such other time as agreed in writing by the Memorial, the applicant agrees to supply the Memorial with one free copy of the publication or production (or three copies in the case of unit histories).

## **2.7. Acknowledgements**

- 2.7.1. The User acknowledges that authorisation to use the Material under this Agreement does not grant exclusive rights of any kind or imply the transfer of any copyright in the Material to the User.
- 2.7.2. The User undertakes that it will not directly or indirectly challenge the ownership or authorship status of the Material (whether or not copyright subsists in the Material) which is claimed by the Memorial.
- 2.7.3. The User agrees that, in order to protect the integrity of the National Collection, the User will not directly or indirectly facilitate reproduction or any other use of the Material by third parties including by provision to the parties of copies, disks and other media from which the Material can be reproduced. To this end, the User will inform any interested third parties of the requirement to obtain the Material directly from the Memorial or using the Memorial website.
- 2.7.4. The User agrees not to sub-licence its rights under this Agreement without the prior written consent of the Memorial.
- 2.7.5. The User acknowledges that its payment of User Fees under this Agreement is independent of the copyright status of the Material.
- 2.7.6. The User must immediately notify the Memorial if it detects or reasonably suspects any unauthorised third party use of the Material, and if requested to do so, will provide reasonable assistance to the Memorial in the conduct of any infringement proceedings brought against any such third party or as otherwise agreed between the parties.
- 2.7.7. The User may not transfer the whole or any part of its rights under this Agreement without the prior written consent of the Memorial.
- 2.7.8. The User is not by virtue of this Agreement an officer, employee, partner or agent of the Memorial, and agrees not to misrepresent its relationship with the Memorial.

**2.8. Third party copyright**

- 2.8.1. In cases where copyright subsists in the Material and that copyright is owned by a party other than the Memorial, the User warrants and represents that it has obtained or will obtain:
- a. written permission from each copyright owner or their representatives to use the Material in accordance with this Agreement; and
  - b. written consent from each author of the Material or their representatives to use the Material for the Permitted Purposes and in accordance with the nature and scope of use stated in this Agreement so as to prevent infringement of any moral rights of the author, including the right of integrity of authorship and the right of attribution of authorship.
- 2.8.2. The User indemnifies the Memorial from and against any action claim or proceeding whatsoever arising directly or indirectly from the User's use of Material under this Agreement in respect of which copyright is owned by a party other than the Memorial.

**2.9. Disclaimers**

- 2.9.1. To the extent permissible by law, the Memorial expressly excludes any warranty relating to:
- a. the copyright status of the Material including whether or not the Material is the subject of copyright protection; and
  - b. the non-infringement of third party rights (including copyright and moral rights) arising from use of the Material.

**2.10. Indemnity**

- 2.10.1. The User hereby indemnifies the Memorial, its employees, agents and authorised users from and against any claim, liability or cost arising directly or indirectly in connection with any breach by the User of this Agreement.

**2.11. Termination**

- 2.11.1. The Commonwealth shall have the right to terminate this Agreement and the authorisation granted under clause 2.1 immediately by notice in writing to the User if the User fails to perform or observe any of the terms of this Agreement and fails to remedy the default within thirty (30) days of the issuance of a notice from the Memorial.

**2.12. Effect of expiry or termination of the Agreement**

- 2.12.1. Unless otherwise agreed in writing by the parties, the User must cease using the Material within thirty (30) days of the expiry or earlier termination of this Agreement, or such other period as agreed between the parties, whichever is the latest, and comply with any reasonable directions of the Memorial in dealing with any copies or reproductions of the Material.

## SCHEDULE

### 1. the Material

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1.1.

1.1.1.

### 2. Permitted Purpose

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2.1. [see comments under clause 2.2.1 above] e.g. project name/title and accession numbers

2.1.1.

### 3. Manner of Use

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3.1. [Comments: Describe the acts permitted to be done in relation to the Material e.g. reproduce, publish, use on website or in another context]

### 4. Territory

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4.1. [e.g. Australia/New Zealand or the World]

### 5. Term

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The term commences from the Commencement Date and continues until expiry or earlier termination of the Agreement, whichever is the earliest.

### 6. User Fees

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6.1. [insert user fees] \$

6.1.1.