

LEGAL INFORMATION - WEBSITE USER TERMS AND CONDITIONS

1. GENERAL

- 1.1 The information on this website is updated regularly. Tuskbury Pty Ltd ACN 068 701 753 (Tuskbury/**we/us/our**) reserves the right to change information displayed on this website (including these Website User Terms and Conditions) at any time without notice to visitors to and users of this website (**you/your**). Any access to or use of this website by you is entirely at your own risk and Tuskbury will not be responsible for the propagation of any computer worms or viruses transmitted from or through this website.
- 1.2 All maps, photographs, illustrations or computer-based graphics displayed on this website are included for general illustrative purposes only and are not always accurately indicative of their related subject matter.
- 1.3 By using this website, you agree that you will be responsible for first satisfying yourself by independent enquiry or advice as to the suitability to you, or to any other persons on whose behalf you may be acting, of any particular activity or matter depicted or presented on this website.

2. TRANSACTIONS

- 2.1 Please refer to our Shipping & Returns Policy: www.magicpants.com.au/shipping-returns.
- 2.2 If you make a purchase, sale or other transaction in respect of any products or services available through our website (a **Transaction**) you are irrevocably declaring that:
- (a) you are of at least 18 years of age;
 - (b) you are the authorised holder (or acting lawfully with the true consent of the authorised holder) of any credit card or banking facility used to make the Transaction;
 - (c) you have read all of these Website User Terms and Conditions and voluntarily agree to be bound by them; and
 - (d) you have read and accept our Returns and Refunds Policy.
- 2.3 When providing your details in connection with a Transaction through this website, you must ensure that all information you provide is correct and up-to-date. If you change your personal or contact details without notifying Tuskbury, you release and indemnify Tuskbury from any adverse consequences that arise out of your personal or contact details not being up-to-date.
- 2.4 Where in the course of a Transaction there is any inconsistency between our Standard Terms and Conditions of Trade and these Website User Terms and Conditions, our Standard Terms and Conditions of Trade will prevail to the extent of that inconsistency.
- 2.5 Unless otherwise stated, all prices, rates and charges are quoted in Australian dollars and are exclusive of any Goods and Services Tax (**GST**) which, where applicable, will be charged in addition thereto.

3. CANCELLATION AND REFUNDS POLICY

- 3.1 Please refer to our Returns and Refunds Policy.

4. THIRD PARTY INFORMATION

- 4.1 Some information on our website will have been provided to us by third parties. Irrespective of any measures taken by us to check that the information on this website is accurate or

complete, we are unable to guarantee to you that the website is free of errors or faults. In no event will we be liable to you or any person in contract, tort (including, without limitation, negligence) or otherwise if any information on this site provided by third parties is incomplete, inaccurate, misdescriptive or otherwise misleading.

- 4.2 Through your access to and use of this website and any services available through it, you accept that whilst Tuskbury displays information provided by third-parties, Tuskbury accepts no responsibility for any inaccuracy or misdescription in any such information supplied to us, nor any liability for the acts or omissions of those third parties.

5. LINKED SITES

- 5.1 The website may contain links to external sites. Those sites are not part of this website and, unless otherwise expressly stated, are not under the control of Tuskbury. No external site linked to this website is endorsed by Tuskbury and no responsibility is taken for material contained within them. You agree that by accessing any linked site you are doing so at your own risk and you agree to fully indemnify Tuskbury against any liability arising out of your accessing any linked site.

6. PRIVACY

- 6.1 We understand that visitors to and users of this website (**you/your**) are concerned about their privacy, confidentiality and security of any information that may be provided to us. We are committed to protecting user privacy, in compliance with the Australian Privacy Principles (**APP**). For more information about the APP, please click <http://www.privacy.gov.au/law/act/npp/>
- 6.2 We acknowledge that we receive private information in the process of providing our services and recommend that you read our Privacy Policy.
- 6.3 Our Privacy Policy explains:
- what personal information we may collect from you;
 - how we may use or share your information;
 - how we secure the personal information that we collect; and
 - how you may access the personal information that we hold about you.

To read the full detail of our Privacy Policy, as amended from time to time, please click www.magicpants.com.au/privacy-policy.

- 6.4 As noted above, we acknowledge that you may click-through to third party sites from our website. We cannot assume any responsibility for information and content of third party sites so we recommend that you refer to the individual privacy statements of the sites you visit.
- 6.5 We use IP addresses to analyse trends, administer the site, track user movement, and gather broad demographic information for aggregate use. We do not link IP addresses to personally identifiable information, and we do not distribute or share IP information with any third parties.
- 6.6 Tuskbury may use Google advertising programs to improve the online experience, including the display of relevant ads on external websites. Anyone can opt out of these programs at any time by clicking [here](#).

7. INTELLECTUAL PROPERTY

- 7.1 All copyright, trade marks and all other intellectual property rights (**IP Rights**) in this website and in the content (other than third party-provided content) displayed or available through this website (**our content**) belong to Tuskbury. Without limitation, our content includes:
- (a) Australian Trade Mark Number 870147 “Magic Pants”, held by Tuskbury under exclusive licence; and

(b) Australian Trade Mark Number 846150 “Eliza’s”, owned by Tuskbury.

7.2 Subject to applicable laws:

- (a) unauthorised use of our content is strictly prohibited and may infringe our IP Rights; and
- (b) none of our content may be reproduced, published or transmitted in any form and in any manner whatsoever without our prior written consent.

8. WARRANTIES

8.1 Your use of this website is permitted and accepted by us on the basis of your warranty that you will not:

- (a) use any form of spyware or other software, program or device to record, copy, retain or access any information on this website which is not purposefully made available to the public;
- (b) commit nor assist in any acts that will have or are likely to have the effect of lessening the security, productivity or suitability of this website;
- (c) use this website directly or indirectly for any activity which breaches any laws, infringes a third party's rights, is unlawful, or breaches these Website User Terms and Conditions;
- (d) use this website directly or indirectly to post or transmit any information, data, text, software, music, sound, photographs, graphics, video, messages or other material unlawfully, or which is obscene, indecent, uses offensive language, defames, abuses, harasses, stalks, threatens, menaces, offends or restricts any person, or which prevents any other user from using or enjoying this website or which is false, misleading or deceptive in any way.

9. LIABILITY - RELEASE, INDEMNITY AND EXCLUSIONS

9.1 Without derogating from the preceding provisions, your use of this website is conditional upon your acceptance and agreement that you:

- (a) release Tuskbury and its officers, employees, agents, licensees and other representatives from all cost, liability, loss or damage incurred or suffered by you or others through you directly or indirectly and resulting from personal injury, illness or death or damage to or loss of property unless caused by Tuskbury's negligence or wrongful act;
- (b) waive any claims you have, or may at any time have, against Tuskbury and its officers, employees, agents, licensees and other representatives and you agree not to make any claim against nor seek any compensation from Tuskbury and its officers, employees, agents, licensees and other representatives in respect of any personal injury, illness or death suffered by you or damage to or loss of property sustained by you;
- (c) fully and effectively indemnify, defend, and hold harmless Tuskbury from any and all claims, liabilities, losses, damages, penalties, fines, costs and expenses, whether actual or alleged (collectively, **Claims**) including legal costs on a full indemnity basis and any taxes in relation to those Claims, that arise out of or in connection with:
 - (i) your use of this website (including our content and any third party content); or
 - (ii) a breach by you of these Website User Terms and Conditions.

- 9.2 In these Website User Terms and Conditions, **Non-Excludable Condition** means any condition, warranty or guarantee provided or implied by any State, Territory or Commonwealth law, including but not limited to the statutory consumer guarantees described in the *Competition and Consumer Act 2010 (C'th)* and the provisions of any State or Territory legislation which cannot be lawfully excluded.
- 9.3 To the extent permitted by law, we exclude all conditions, warranties and guarantees provided or implied by any State, Territory or Commonwealth law, including but not limited to the statutory consumer guarantees described in the *Competition and Consumer Act 2010 (C'th)* and the provisions of any State or Territory legislation.
- 9.4 Our total liability for a breach of any Non-Excludable Condition is limited to the remedies available under Section 64A of Schedule 2 to the *Competition and Consumer Act 2010 (C'th)* (to be chosen by us at our discretion) or similar remedies under any applicable State or Territory fair trading legislation.
- 9.5 Except where the preceding paragraph applies, we bear no liability for any loss you suffer arising from your access to or use of this website or any of our content, including but not limited to any failure or delay by us in performing any services or providing any product or other thing for any reason whatsoever including our breach of contract, negligence, breach of other duty or wilful act or default.
- 9.6 We will not be liable for any loss of income, loss of profits, loss of markets, loss of reputation, loss of customers, loss of use, loss of an opportunity, loss of business, loss of reputation or goodwill, loss of value or use of intellectual property or other proprietary rights even if we had knowledge that such damages or loss might arise or for any other indirect, incidental, special or consequential damages or loss howsoever arising including without limitation our breach of contract, negligence, wilful act or omission or default.
- 9.7 We are not liable if we do not fulfil any obligations towards you, whether partly or at all, as a result of:
- (a) circumstances beyond our control such as (but not limited to):
 - (i) acts of god including earthquakes, cyclones, storms, flooding, fire, disease, fog, snow or frost;
 - (ii) force majeure including (but not limited to) war, accidents, acts of public enemies, strikes, embargoes, perils of the air, local disputes or civil commotions;
 - (iii) national or local disruptions in air or ground transportation networks and mechanical problems to modes of transport or machinery;
 - (iv) criminal acts of third parties, such as theft and arson.
 - (b) your acts or omissions, or those of third parties, such as your being in breach of your obligations under these Website User Terms and Conditions.
- 9.8 These Website User Terms and Conditions and any transaction or obligation arising from them will not be interpreted, construed or applied adversely against Tuskbury by reason of their having been drafted by or on behalf of Tuskbury.

10. JURISDICTION

- 10.1 These Website User Terms and Conditions and each agreement on which they are based will be governed by the laws of the State of Queensland, Australia and the exclusive jurisdiction of its courts.