

# Terms and Conditions

This Agreement applies to the Engagement of the Consultant by the Client and any Service that will be provided to the Client by the Consultant.

This Agreement may be superseded and changed, at the discretion of the Consultant from time to time.

For the purposes of this Agreement:

“**Agreement**” shall mean these Terms and Conditions together with the Schedule and the Fee Proposal and/or any paperwork supplied by the Consultant to the Client, from time to time, in relation to the Services.

“**Approval Item**” means the approval item as set out in clause 5.4 of this Agreement.

“**Australian Consumer Law**” means the Australian Consumer Law set out in Schedule 2 of the *Competition & Consumer Act 2010* (Cth) as amended from time to time.

“**Client**” means any person and / or business entity named in the Schedule and / or the Fee Proposal, in the absence of any entity named, the entity that receives the Services provided by Consultant.

“**Consultant**” means Purple Giraffe Pty Ltd (ABN 37 639 412 776).

“**Engagement**” means the engagement of the Consultant by the Client to provide the Services under the terms of this Agreement;

“**Fee Proposal**” means any written or oral fee estimate for the Services which is provided to the Client by the Consultant from time to time.

“**GST**” means Goods and Services Tax payable under the GST Act.

“**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“**Hourly Rate**” means the Consultant’s hourly rate as outlined the Fee Proposal and / or in the absence of a rate set out in the Fee Proposal the rate set out in clause 3.2 of this Agreement or as otherwise agreed between the Consultant and the Client, with such Hourly Rate being subject to change, at the sole and absolute discretion of the Consultant from time to time.

“**Intellectual Property**” means software (including source code and object code versions), know-how, systems, algorithms, digital marketing strategies, data, social media marketing strategies, text, images, other artwork, videos, trade secrets, copyright, trademarks, patents, manuals, diagrams, graphs, charts, projections, specifications, estimates, records, concepts, documents, accounts, plans, formulae, designs, methods, techniques, processes, supplier lists, price lists, customer lists, market research information, correspondence, letters and papers of every description including all copies of and extracts from the same and any other hard or soft copy document.

“**Invoice**” means the invoice for payment provided by the Consultant to the Client for any of the Services provided;

“**Schedule**” means any schedule attached to this Agreement.

“**Services**” means the services as described in Schedule 1 and any variation made in accordance with clause 3.3 of this Agreement and in the absence of any description of services in Schedule 1, then any marketing or similar services which are supplied to the Client by the Consultant including but not limited one or more of the following: advertising management, copywriting, digital marketing, event management, graphic design, marketing plans, public relations and communications, sponsorship development and evaluation, survey development and execution, social media management and all other marketing support as may be required by the Client.

## 1. SERVICES

- 1.1. The Consultant has agreed to provide the Services to the Client in exchange for the amounts set out in the Fee Proposal or such other amount as may be agreed between the Consultant and the Client from time to time.
- 1.2. The Consultant need not supply the Services to the Client until the Client accepts the Agreement.

## 2. ACCEPTANCE

- 2.1. The Client will be deemed to have accepted the Agreement upon either following:
  - 2.1.1. Written acceptance, whether by post, email correspondence, facsimile, or other means, stating that the Client accepts the Services and the Fee Proposal and any other document which forms part of the Agreement.
  - 2.1.2. Verbal acceptance by instructing the Consultant to commence the Services after receiving the Fee Proposal.
  - 2.1.3. The Client accepting the Services and the Fee Proposal electronically in the same method as the Consultant issued it to the Client.
  - 2.1.4. The Client makes payment of any deposit for the Services which may be requested by the Consultant from time to time.
- 2.2. As part of the Client's Acceptance, the Client authorises the Consultant to use the Client's business name, logo, and examples of the Services provided to the Client for the Consultant's promotional and portfolio purposes as may be determined by the Consultant from time to time.

## 3. PRICE & VARIATIONS

- 3.1. The Client agrees to pay to the Consultant the price specified in the Fee Proposal, which can be varied in accordance with this Agreement. The Consultant will only carry out works that are outlined in Schedule 1.
- 3.2. If the Consultant's fees have not been set out in the Fee Proposal, the Consultant will charge the Client the Hourly Rate of \$190 (plus GST), which may change from time to time, for any and all Services undertaken by the Consultant for the Client.
- 3.3. Any oral and / or written variations sought by the Client which are outside the scope of Services outlined in Schedule 1 of this Agreement and / or variations which are relating to the Services in progress and / or to be undertaken by the Consultant at any time, are subject to approval by the Consultant in writing.
- 3.4. The Consultant reserves the right to charge the Client additional fees, which the Client agrees to pay, in addition to the price outlined in the Fee Proposal if:
  - 3.4.1. A variation is requested orally or in writing by the Client that is accepted by the Consultant in writing or verbally;
  - 3.4.2. The Client provides incomplete or inaccurate instructions and/or information to the Consultant to undertake the Services that then requires changes, additions and/or amendments to be made by the Consultant as a result of the incomplete or inaccurate instructions and/or information.
  - 3.4.3. The Client provides additional, new or altered instructions and/or information required to complete and/or undertake the Services;
  - 3.4.4. There are interruptions to the Consultant in completing the Services that are as a result of the Client;
  - 3.4.5. There are mistakes to the Services caused by any inaccuracies and/or misrepresentations on the part of the Client;
  - 3.4.6. There are changes to the hardware and software environment as a result of data words information and/or instructions provided to the Consultant by the Client;

3.4.7. There are delays caused by faults or defects in any service provided by a third party; and

3.4.8. Third party fees and/or charges associated with the Services increase whilst the Consultant is undertaking or performing the Services.

3.5. All variations and/or additional fees which the Client will be required to pay will be charged at:

3.5.1. A fixed price, which the Client will be informed of by the Consultant; or

3.5.2. The Hourly Rate.

#### 4. TERMS OF PAYMENT

##### 4.1. Deposit

4.1.1. The Consultant may require the Client to pay a deposit for the Services at the time of entering this Agreement, with the amount of such a deposit to be decided at the Consultant's sole and absolute discretion and outlined in the Fee Proposal. If a deposit is required to be paid by the Client to the Consultant, then the Consultant will only commence the Services for the Client after the Consultant has received the deposit as cleared funds in the Consultant's nominated bank account.

4.1.2. Should the Client terminate this Agreement with the Consultant after paying the deposit, the Consultant, at its sole and absolute discretion, may keep the deposit and, if applicable, the Consultant may charge the Client additional fees in respect of the Services competed prior to the Client's termination of this Agreement.

##### 4.2. Monthly Invoicing & Payment of Fees

4.2.1. Subject to clause 4.1.1 of this Agreement, the Consultant will issue monthly Invoices to the Client for payment of fees for the Services which the Consultant has provided to the Client and work completed for that given calendar month.

4.2.2. The Client agrees to pay the Consultant the total amount specified in each Invoice within fourteen (14) days of the date of the Invoice, unless otherwise agreed between the Consultant and the Client in writing.

4.2.3. Payment of the Invoice is to be made by electronic transfer to the bank account nominated to the Client by the Consultant from time to time or such other method as may be agreed between the Consultant and the Client in writing.

4.2.4. The Client understand and agrees that the Client is liable for payment of any and all third-party fees which may be incurred by the Consultant for the purpose of providing the Services with such third party fees to be set out in any Invoice rendered by the Consultant to the Client and to be paid to the Consultant within the payment terms set out in this clause 4.

##### 4.3. Default in Payment of Invoices

4.3.1. Should the Client fail to make payment of the Invoice within the terms outlined in this Agreement, the Client agrees to pay to the Consultant:

A. Interest at a rate of three percent (3%) per month cumulative which is to be calculated on a day-to-day basis on any monies owed to the Consultant by the Client. Payments received from the Client will be credited first against any account keeping fees and interest, and all such fees and shall be payable by the Client on demand by the Consultant. The Client agrees that this is not a penalty, but a true measure of damages incurred by the Consultant.

B. Any costs, expenses, losses which the Consultant may incur in the Consultant's attempt to recover any monies that the Client owes to the Consultant, including but not limited to debt collection and legal fees on a solicitor and own client basis.

4.3.2. The Consultant reserves the right to:

A. Withhold delivery of the Services, in full or in part, to the Client until the Client has paid to the Consultant all monies owing to the Consultant; and/or

- B. Stop the provision of the Services until such time as the Client makes payment for the Invoice/s in full. If the Consultant stops the provision of the Services as a result of the Client's failure to make payment to the Consultant, the Consultant will not be liable to the Client for any cost, expenses or losses incurred by the Client as a result of the Consultant stopping the provision of the Services.

#### 4.4. Payment Order

- 4.4.1. The Client acknowledges and agrees that the Consultant may, in the Consultant's sole and absolute discretion, apply any amounts needed from the Client towards any amounts owed to the Consultant in any order that the Consultant determines from time to time.

### 5. INSTRUCTIONS & REVIEW

- 5.1. The Client agrees to aid the Consultant, by making available to the Consultant all information required in order for the Consultant to be able to carry out the Services. Should the Client fail to do so, it may either result in a delay or the Consultant's failure to provide the Services in whole or in part and the Client has no right to make a claim against the Consultant for any losses incurred by the Client as a result of that delay or failure to provide the Services.
- 5.2. Instructions received from any third party engaged by the Client and/or anyone employed by the Client will be taken to be instructions received from the Client and the Consultant will not be liable in any way for any losses incurred by the Client in accepting instructions from a third party in respect of the Services.
- 5.3. The Client agrees to be responsible for the accuracy, completeness and propriety of information concerning the Client's products and services which the client furnishes to the Consultant verbally and/or in writing to carry out the Services.
- 5.4. In the event that the Consultant seeks the Client's approval before implementing any of the Services, the Client agrees to notify the Consultant in writing whether the Client accepts the Approval Item or if any amendments are required to correct any incorrect, inaccurate, inadequate or incomplete matters, that do not comply with the Services, within seven (7) days of the Consultant's request, failing which, the Client will be deemed to have accepted the Approval Item.
- 5.5. The Client must provide the Consultant with a reasonable opportunity to make any required amendments to the Approval Items as part of the Work after the Client's instructions under clause 5.4 are received.
- 5.6. It is the Client's responsibility to thoroughly check and gain independent expert advice on the suitability or correctness of the material to be published, printed or distributed before the Client accepts the Approval Item. The Consultant will not take responsibility for errors in copy (wording) or artwork once the Client has accepted the Approval Item.
- 5.7. The Consultant will not be liable to make any amendments that are the result of anything that is incorrect, inaccurate, inadequate, or incomplete in the material provided by the Client to the Consultant to carry out the Services. Subject to clauses 3.3. and 3.4 of this Agreement there may be additional charges if the Client requires these amendments to be made.

### 6. EXTENSION OF TIME

- 6.1. The Consultant shall be entitled to an extension of time to carry out or complete the Services if delay of the provision of the Services is caused by:
- 6.1.1. Any variations under clause 3 of this Agreement;
- 6.1.2. Any delay on the part of a third party to provide the Services;
- 6.1.3. A breach of the Agreement by the Client;
- 6.1.4. The Client fails to make payment in accordance with clause 4 of this Agreement; and/or
- 6.1.5. any other causes that are beyond the Consultant's reasonable control.
- 6.2. In the event an extension of time is required in accordance with clause 6.1 of this Agreement, the Client agrees that:

6.2.1. the Consultant will not be liable in any way for any losses incurred by the Client as a result of the extension of time required to provide the Services; and

6.2.2. the Client may be liable for any and all costs, expenses or losses incurred by the Consultant as a result of the extension of time required to provide the Services

## 7. ACCESS TO YOUR ACCOUNTS

7.1. The Consultant may be required to utilise the Consultant's professional account/s and/or the Client's personal accounts to engage the appropriate third-party providers (e.g. Facebook, Google) to carry out the Services for the Client. The Client authorises the Consultant to access to the Client's social media accounts and/or to set up the required accounts on the Client's behalf, as required from time to time.

7.2. The Client agrees to provide to the Consultant with the Client's necessary details to access the Client's social media account(s), the Client's digital marketing account(s) and/or any other similar or related account and/or to set up an account on the Client's behalf, as required from time to time, to carry out the Services.

7.3. Upon termination of this Agreement, the Client will have access to any account(s) created or managed by the Consultant that the Client own or are licensed for, in accordance with this Agreement. Access does not include access to Consultant Project Management Tools or Publishing platforms used in the day-to day work of the Consultant.

## 8. GOOGLE PAY PER CLICKS AND GOOGLE ADS

8.1. The Consultant reserves the right to reallocate the Client's approved Google pay per click budget between different approved marketing platforms in order to maximise results for the Client.

8.2. The Client agrees to abide by Google's Ads terms and conditions where the Services include the creation and/or management of the Client's Google AdWords account, which are subject to change from time to time.

8.3. Upon termination of the Agreement, the Client will continue to have access to the Client's Google Ads account.

## 9. INTELLECTUAL PROPERTY AND COPY RIGHT

9.1. The Client guarantees that all Intellectual Property including any elements of text, images, design, information, videos, logo's, price lists, sales data or other artwork which the Client provides to the Consultant are either owned by the Client, or that the Client has permission to use them and that its use will not breach any rights (including intellectual property rights or moral rights) of any third party and/or compromise the security of the Consultant's computer systems through a virus or otherwise.

9.2. Subject to clause 9.2.1 below, the Consultant shall use its best endeavours to obtain all necessary releases, licenses, permits or other authorisation to use testimonials, copyrighted materials, photographs, art work or any other property or rights belonging to third parties obtained by the Consultant for use in carrying out the Services.

9.2.1. The Consultant however, does not warrant that the same will not infringe any third-party intellectual property rights or any person's moral rights or any breach of license, but the Consultant will advise the Client if it becomes aware of any such infringement. The Client indemnifies, and agrees to keep the Consultant, indemnified, against any and all loss arising out of any such infringement.

9.3. All intellectual property which is owned by, or is proprietary to, a party at the commencement of this Agreement shall remain owned exclusively by that party.

9.4. All Intellectual Property which is created as a result of, or in connection with, the provision of the Services will be the absolute property of the Consultant and, subject to the terms of this Agreement, will at all times be owned and controlled by the Consultant and is protected by copyright, trademarks and intellectual property laws in Australia. Any use of the Intellectual Property by the Client can only occur with the prior written authority of the Consultant and this applies to any carried out by the Consultant within the Client's social media account(s) and/or any account(s) owned by the Client.

9.5. Except where expressly authorised by the Consultant, or as permitted under the *Copyright Act 1968* (Cth), no Services provided to the Client by the Consultant may be reproduced, adapted, provided to a third party (unless in the ordinary course of the Client's business), distributed or transmitted in any form by any process, without the specific prior written consent of the Consultant.

- 9.6. Unless otherwise agreed between the Consultant and the Client, upon termination of this Agreement, each party shall return to the other, any Intellectual Property which is exclusively owned by the other party.

## 10. TERMINATION

- 10.1. The Agreement shall continue until terminated by either party, with no less than one (1) month's notice in writing given by either party to the other.
- 10.2. The Consultant shall not be liable for any loss or damage from the cancellation of the Agreement under this clause, including any of the Services which are not completed by the Consultant.
- 10.3. Either party, however, may immediately terminate this Agreement by giving written notice to the other party if either party is:
- 10.3.1. Declared Bankrupt; or
  - 10.3.2. Has a receiver, agent or manager appointed for all or substantially all of its property; or
  - 10.3.3. Enters into an arrangement or composition with its creditors; or
  - 10.3.4. Becomes insolvent within the meaning of section 95A of the *Corporations Act 2001 (Cth)*.
- 10.4. The Consultant may also terminate this Agreement immediately if the Client does not provide requested material in a timely manner and/or the Consultant considers that mutual confidence and trust no longer exists.
- 10.5. If the Consultant terminates the Agreement the Client will not be charged for the Services which the Consultant has not delivered at the date of termination (not inclusive of any disbursement(s) which is/are to be paid to any third-party). All other fees collected by the Consultant, prior to the date of termination are not refundable.
- 10.6. If the Client cancels the Agreement outside of this clause 10, the Client must reimburse the Consultant for any and all costs, expenses or losses incurred by the Consultant as a result of the Client's cancellation. The Client must make payment for such cancellation costs incurred within fifteen (15) days from receipt of an Invoice from the Consultant detailing such costs.

## 11. WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY

- 11.1. The Consultant makes no warranties regarding the likelihood of success of the Services including but not limited to marketing or promotional activity undertaken pursuant to the Agreement.
- 11.2. If it is agreed that the Consultant will provide to the Client, as part of the Services, a digital marketing campaign, and/or social media advertising, the Consultant will use its reasonable endeavours to optimise the performance of the Client's digital marketing campaign, and/or social media advertising, however, the Consultant gives no warranties and makes no guarantees in respect of its performance.
- 11.3. This Agreement does not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial law which cannot be excluded, restricted or modified.
- 11.4. To the extent permitted by law, all terms, conditions, warranties and representations, expressed or implied, by statute or otherwise, are hereby expressly excluded.
- 11.5. To the extent permitted by law, the Consultant shall not be liable to the Client for any injury, harm, loss, damage, costs, expense or other claim including consequential loss, economic loss or loss of profits, however arising, and whether direct or indirect, from the Services and/or advice given as a result of the Services or arising from any breach, default or negligence of the Consultant in connection with the Services and/or advice given as a result of the Services.
- 11.6. Subject to the Australian Consumer Law, the Consultant will not accept the return of, or give credit for, any Services provided in accordance with the Agreement.
- 11.7. Subject to the Australian Consumer Law, the Consultant will not be liable for:

- 11.7.1. Loss of profit or other economic loss; or
  - 11.7.2. Any direct or indirect consequential, special, general or other damages or other expenses; or
  - 11.7.3. Costs arising out of a breach of contract or any common law duty (including negligence) by the Client, the Client's agents or the Client's employees.
  - 11.7.4. No liability is assumed for any consequential damages caused from use of the Services by the Client.
- 11.8. To the full extent permitted by law, the Consultant excludes:
- 11.8.1. All liability for the infringement of the Intellectual Property rights of any third party arising from any of the material or content published during the performance of the Services.
  - 11.8.2. All liability in respect of loss of data, third party integration failure, breach of security, interruption of business or any consequential or incidental damages; all representations, warranties or terms (whether express or implied) other than those expressly set out in the Agreement.

## 12. NON-COMPETITION

- 12.1. Throughout the term of this Agreement and for a period of 6 months after termination of this Agreement, the Client agrees that it will not:
- 12.1.1. canvass, solicit, induce or encourage any person who was an employee or contractor of the Consultant to leave the Consultant to work for the Client or any other third party; and
  - 12.1.2. interfere in any way with the relationship between the Consultant's and its employees, clients, customers, contractors, or suppliers.

## 13. CONFIDENTIAL INFORMATION

- 13.1. The Consultant will collect, retain, record, use and deal with the Client's personal information (including name, address, telephone contact, or personal details) only in accordance with the *Privacy Act 1988 (Cth)* to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Consultant including but not limited to a debt collector, financial advisor, accountant, credit check organisation and/or any other individual or organisation which maintains credit reference and/or default listing.
- 13.2. The Client authorises the Consultant to make enquiries with respect to the Client's consumer and commercial credit worthiness, to exchange information with other credit providers in respect of the Client's previous consumer and commercial defaults and to notify other credit providers of a consumer default by the Client.
- 13.3. The Client agrees that the Consultant may disclose personal information to organisations which provide services to or which assist the Consultant in providing the Services to the Client.
- 13.4. The Client and the Consultant shall, except for legal and other advisers and as is required by law, keep strictly confidential all information shared under the Agreement.

## 14. RELATIONSHIP

- 14.1. The relationship of the Consultant to the Client shall be only that of independent contractor.
- 14.2. Nothing contained in this Agreement shall be deemed or construed to constitute either party a partner, joint ventures, employer, employee, principal, agent, trustee (whether express or constructive), beneficiary, fiduciary or representative of the other party.
- 14.3. Neither the Client nor the Consultant has the authority to act or to incur any liability or obligation on behalf of the other except as expressly provided in this Agreement.

## 15. DISPUTE RESOLUTION

- 15.1. Any disputes between the Client and the Consultant arising from the performance of the Services or any other provisions of the Agreement must first be attempted to be settled in a meeting of authorised representative of both the Client and the Consultant with such meeting to occur within fourteen (14) days of notice of the dispute being provided in writing to the other party to this Agreement. Such a meeting is to take place within the state of South Australia at a place nominated by the Consultant.
- 15.2. If the meeting referred to at clause 15.1 above does not result in settlement of the dispute between the Client and the Consultant, the dispute may then be referred to mediation, if agreed by both parties. The mediator is to be appointed by agreement between the Client and the Consultant and in the event that the parties agree to mediate but cannot agree to the mediator to be appointed then the mediator is to be appointed by the then current President of the Law Society of South Australia. The costs of any mediation are to be borne equally between the Client and the Consultant.
- 15.3. If the dispute cannot be settled through mediation, or the parties do not both consent to a mediation, then either party is at liberty to commence legal proceedings.
- 15.4. During the period in which the dispute is being resolved, the parties must continue to perform all of the provisions of the Agreement which are not under dispute.

## **16. ASSIGNMENT**

- 16.1. This Agreement shall not be assigned by the Client without prior written consent of the Consultant.
- 16.2. Any consent that may be given by the Consultant under clause 16.1 may be granted or withheld in the Consultant's absolute discretion and shall not at any time constitute a waiver of the Consultant's rights and interests under this Agreement.
- 16.3. The Consultant may assign the Consultant's obligations, rights and interest to any third party whatsoever without the Client's consent, however, the Consultant agrees to advise the Client as soon as is practicable after any such assignment is made.

## **17. GUARANTEE**

- 17.1. The person signing this Agreement on behalf of the Client hereby personally guarantees the payment of all monies that become due and payable under this Agreement. This guarantee will continue following the termination of this Agreement until all monies owing to the Consultant are paid in full.

## **18. NOTICES**

- 18.1. Any notice or other communication by any party to another party shall be:
  - 18.1.1. in writing and in the English language; and
  - 18.1.2. addressed to the recipient at its postal or email address as provided in this Agreement or to such other address as it may have notified by either party to the other from time to time.
- 18.2. In addition to any means authorised by law any communications may be given by:
  - 18.2.1. being personally served on a party;
  - 18.2.2. being left at the party's street address;
  - 18.2.3. being sent to the party's address by prepaid ordinary mail;
  - 18.2.4. in the case the party is a Company, then via ordinary prepaid mail to the office address which is registered with the Australian Securities Investment Commission as the party's registered office address; or
  - 18.2.5. by email to the address provided in this Agreement.
- 18.3. Proof of posting by prepaid registered or ordinary post or will be proof of receipt, in the case of a letter, on the third day after posting; in the case of an email, on the day of which the email is sent.



## **19. GST AND OTHER TAXES**

- 19.1. The Client must pay to the Consultant GST for the Services as is required by the Australian Taxation Office as well as any other taxes, duties, fees and levies for the Services provided that may be applicable at law. The amount the Client owes the Consultant for the GST will be stated in the Invoice issued to the Client.

## **20. NO WAIVER**

- 20.1. Failure or omission by the Client or the Consultant at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision, or the right of the Consultant to avail itself of the remedies it may have in respect of any breach of any such provision, in any way.

## **21. GENERAL MATTERS**

- 21.1. This Agreement contains the entire agreement between the Consultant and the Client and it is agreed that any negotiations that led to the Agreement have been accurately incorporated in the Agreement.
- 21.2. In entering into the Agreement, the Client and the Consultant hereby acknowledge that warranties or representations have not been made to each other except as incorporated in this Agreement.
- 21.3. This Agreement is governed by the laws of South Australia and the parties submit to the exclusive jurisdiction of the Courts of South Australia.
- 21.4. If any part of this Agreement is found to be void, voidable or not enforceable, that part shall be struck out without affecting or eroding the enforceability or validity of the remaining parts and such severance shall not detract from the obligations each party has under this Agreement.

**SCHEDULE 1**

**Client Name:**

**ABN / ACN:**

**Address:**

**Ph:**

**Email:**

**Contact:**

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**Scope of Services:**

**Exclusions:**

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**Fee Proposal:**

**Deposit Required:**

**Deposit Sum:**

**Hourly Rates:**

**Purple Giraffe Pty Ltd**

Signed:

Date:

**Client Acceptance**

Signed:

Name and Position:

Date: