

# QUIKSTARTWEBSITE

**INFLUENCE IT CONSULTING PTY LTD** and **NET FUSION TECHNOLOGY PTY LTD** work in partnership in delivering Quikstart solutions (QUIKSTART, QUIKSTARTWEB and QUIKSTARTSHOP) to their clients and are hereto after referred to as **QUIKSTART**.

Please refer to the business which sold you the package in the first instance should you need to.

**Part A** of these Legal Notices is the **Standard Terms and Conditions** relating to the supply of Services and/or Products. If you are ordering Services and/or Products from **QUIKSTART**, you must read Part A as the Standard Terms and Conditions form part of your legal agreement with Us.

**Part B** of these Legal Notices is the **Website Legal Notices** (including any disclaimers and our Privacy Policy). If you visit our website, whether or not you acquire Services and/or Products from us, you must read Part B as the Website Legal Notices set out the Terms and Conditions on which you visit, access, view and/or use the website of **QUIKSTART**.

## **PART A: STANDARD TERMS AND CONDITIONS**

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When you accept a Quotation issued by **QUIKSTART** relating to the supply of Services and/or Product, a binding agreement (the **Agreement**) is formed between You and **QUIKSTART (Provider, Us, We, Our)** and the following terms and conditions form part of that Agreement and you agree to be bound by them.

### **1. Agreement**

- (a) The parties agree to the supply of and payment for the Services and/or Products specified in the Quotation in accordance with the terms of this agreement.
- (b) Where the Services or supply of Product is ongoing, then this agreement will be for a term as set out in the Quotation or until otherwise terminated in accordance with this agreement.

### **2. Services & Products**

- (a) The Provider will:
  - (i) Supply the Services and/or Product as set out in the Quotation in accordance with the timeframes set out therein;
  - (ii) Will follow any special instructions set out in the Quotation;
  - (iii) Use reasonable care and diligence in the performance of the Services and/or supply of the Product; and
  - (iv) Otherwise carry out its responsibilities under this Agreement in a professional manner.
- (b) In the event that You require a variation to the Services or priority with which they are provided, then:
  - (i) You may request such variation in writing;
  - (ii) We will issue to You a further quotation (Variation Quotation) in writing with respect to the requested variation; and
  - (iii) We will only be required to action such variation upon written acceptance of the Variation Quotation being provided to Us.

### **3. Your Responsibilities**

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(a) In relation to the supply of Services, You:

- (i) Will provide the information, resources and access to files, records, and information technology systems as set out in the Quotation to permit Us to supply the Services;
- (ii) Acknowledge that We will rely on the accuracy of the information provided by You without independently verifying it; and
- (iii) Will ensure that timely approval, development and sign-off of all reports, specification, and other deliverables required to provide the Services.

(b) Where the Services include maintenance, support and upgrade services, We reserve the right to perform those services at any time and from time to time, however We will endeavour to provide You with reasonable notice of maintenance, support and upgrades as set out in the Quotation or as soon as practicable after becoming aware of the need for unscheduled maintenance or support that will result in an outage of more than 60 minutes.

(c) In the event of data corruption or equipment failure, Our support services may include disaster recovery services, and in that case, You acknowledge that any data We or You have retained and which is used to recover Your Site may be out of date and require updating by You.

(d) Where We provide a hosting service or otherwise provide a service which includes working with Your content, You are entirely responsible for the content / data of Your Site (including all content that we host on Your behalf as part of this Agreement), including:

- (i) That You warrant that the use, display, publication or distribution of the content does not infringe any laws;
- (ii) That the content does not contain any virus or otherwise disrupt or corrupt the data or systems of any person;
- (iii) All dealings You have with users of Your website.

(e) Where we provide Product, You acknowledge and agree that you have ordered that Product on the basis of information provided by the manufacturer and/or ultimate supplier and Your own enquiries as to the suitability of the Product, and that the Providers role is unless specified otherwise on the Quotation, limited to facilitating the order and provision of the Product to You.

(f) You will indemnify and hold harmless the Provider against all costs (including legal costs), expenses, damages, accounts or other losses or liability, including those from any actions, suits, proceedings, claims or demands made against or suffered by the Provider in connection with:

- (i) Provision of the Services and/or Product;
- (ii) Your website and the content that We host for You as part of a hosting service, social media service or other related service; and
- (iii) Any act or omission by You with respect to Your responsibilities described in this agreement;

Including any and all claims made against the Provider:

- (iv) By users of Your website; or
  - (v) By any third party alleging that the content on Your Site, or any content hosted by Us on Your behalf, infringes any Intellectual Property Rights or Moral Rights of any person or otherwise breaches any law.
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### 4. Fees, Invoicing and Payment

(a) You must pay the Provider the Fees for the Services and/or Product set out in the Quotation at the times specified in the Quotation as the date for payment (**Due Date**).

(b) You will pay the Providers' tax invoices without set-off, deduction or otherwise.

(c) Where the Quotation provides for ongoing Services or the supply of Product, the Provider will submit to You a valid tax invoice at intervals nominated in the Quotation which will be required to be paid by Direct Debit from your nominated bank account, unless otherwise agreed in writing.

(d) In addition to the Fees, the Provider will be entitled to reimbursement by You for travel, accommodation and other out of pocket expenses reasonably incurred in connection with the provision of the Services or delivery of the Product.

(e) If payment of any invoice is not made on the Due Date, the Provider will be entitled to:

(i) suspend the provision of the Services and/or the supply of the Product until such times as any invoice due for payment is made in full; and

(ii) recover from You interest at the rate 5% accruing daily and all administration costs associated with late payment and recovery thereof.

(f) In the event that provisions of the Services and/or Product is suspended, the Provider will not be liable for any loss or damage including consequential loss You suffer.

(g) All right, title and interest in any Product supplied does not pass to You until payment in full in accordance with the Provider's invoices;

(h) In the event that the Provider has agreed to provide Products to You without first receiving payment in full, then You agree, as grantor, to:

(i) grant to Us as the Secured Party, a security interest capable of registration over the Products (being the collateral) as security for the payment (the Secured Obligation);

(ii) sign any documents and provide all reasonable assistance required by Us to effect registration of the security on the Personal Properties Security Register (PPSR);

(iii) pay all fees associated with the registration on the PPSR; and

(iv) indemnify Us as the Secured Party for all costs and expenses incurred by Us as the Secured Party in exercising Our rights in enforcing the Secured Obligation, including but not limited to recovering from You any costs associated with the registration, and such costs and expense shall form part of the Secured Obligation.

The terms herein shall have the same meaning as under the *Personal Property and Securities Act 2009* (Qld).

(i) In addition to the rights created by sub-paragraph (h), if any invoice remains unpaid after the Due Date specified in the Providers Quotation, the Provider has the right to engage debt collection or legal services for the collection of the unpaid Invoice, and the right to commence legal proceedings for any outstanding amounts owed to the Provider. You acknowledge and agree that You are liable for and will pay all costs including debt collection, commission, solicitor's fees and any out of pocket expense, and that the Provider may place a default against You with a credit reporting agency. You will indemnify us for the amount of our legal and debt recovery costs on a full indemnity basis;

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- (j) All amounts payable under this Agreement are expressed as excluding GST;
- (k) In respect of any taxable supply, You must pay to the Provider an additional amount equal to the prevailing GST rate, payable at the same time and in the same manner as the Fees, subject to the receipt by You of a valid tax invoice.

### 5. Personnel

- (a) The Provider will ensure that their personnel have the appropriate qualifications training and experience to perform their tasks comprising the Services competently and in a professional manner and that they will conduct themselves diligently with due skill and care.
- (b) The Provider may subcontract any work hereunder to any third party without Your prior written consent.

### 6. Termination and Consequences Following Termination

- (a) This agreement expires on the Expiry Date, or if none is specified at the end of the supply of Services and/or Product under this agreement.
- (b) A party may terminate this agreement by written notice to the other if any of the following events has occurred in respect of the other party:
  - (i) A material breach of this Agreement, which is not remediable or if capable of remedy, where the other party fails to remedy within 14 days of written notice; and
  - (ii) Any insolvency event occurs, other than an internal reconstruction with notice to the other party.
- (c) The Provider may immediately terminate this agreement by written notice if You commit a serious breach of any of Your obligations, seriously damage the reputation of the Provider, commit an act of dishonesty, fraud, or is charged with a criminal offence or wilfully neglects its obligations for the provision of the Services the subject of this agreement.
- (d) On expiry or termination of this agreement, You will return all hard copies of any Confidential Information You have received or become aware of during the provision of the Services and/or Product, and all other items of the Providers property.
- (e) The expiry or termination of this agreement for any reason will be without prejudice to any rights or liabilities of the parties which have accrued prior to the date of expiry or termination.

### 7. Limitation of Liability

- (a) To the fullest extent permitted by law, the Provider excludes all:
    - (i) liability in respect of loss of data, interruption of business or any consequential or incidental damages arising out of or in respect of provision of the Services and/or Product; and
    - (ii) representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement.
  - (b) The Providers' total aggregate liability for all claims relating to this Agreement is limited to the Fees payable under this Agreement.
  - (c) Either party's liability for any claim relating to this Agreement will be reduced to the extent to which the other party contributed to the damage arising from the claim.
  - (d) This Agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such
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legislation applies, to the extent possible, the Provider limits its liability in respect to any claim to, at the Providers option, in the case of the Services and/or Product:

- (i) The supply of the Services or the Product again; or
- (ii) The payment of the cost of having the Services or Product supplied again.

### 8. Confidentiality

(a) A party must not, without the prior written consent of the other, use or disclose the others party's Confidential Information unless expressly permitted by this Agreement or required to do so by law or any regulatory authority.

(b) A party may:

- (i) Use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights under this Agreement; and
- (ii) Disclose the Confidential Information to its personnel or advisers to the extent necessary for them to know the information for the purposes related to this agreement, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.
- (iii) Each party must implement and maintain effective security measures to prevent unauthorised use and disclosure of the other party's Confidential Information whilst it is in the receiving party's possession or control.
- (iv) Each party must return, or at the other party's options destroy, all Confidential Information of the disclosing party in the receiving party's possession or control, on the earlier of the Service Providers request or on termination of this Agreement for any reason.

### 9. Intellectual Property

(a) Nothing in this Agreement constitutes a transfer of any Intellectual Property Rights.

(b) You acknowledge that the Provider owns all Intellectual Property Rights in the intellectual property including all information and material accessed by You in the provision of the Services including any of the Providers unregistered or registered trademarks.

(c) You must not directly or indirectly do anything that would or might invalidate or put in dispute the Provider's title in or to their Intellectual Property.

### 10. General Clauses

(a) Relationship: Nothing in this agreement constitutes the Provider as an employee, partner, joint venture partner or agent of You.

(b) Governing Law: This agreement is governed by the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that state.

(c) No Assignment: You may not assign any rights or benefits under this agreement without Your prior written consent.

(d) Entire agreement: This agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this agreement, and supersedes any prior

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understanding, arrangement, representation or agreements between the parties as to the subject matter contained in this agreement.

(e) Amendment: An amendment or variation to this agreement is not effective unless it is in writing and signed by all the parties.

(f) Dispute Resolution: If a dispute arises between the parties, the complainant must not commence any court or arbitration proceedings, except where that party seeks urgent interlocutory relief, unless it has first complied with this clause:

(i) The complainant must inform the respondent in writing of the following:

- A. The nature of the dispute;
- B. The outcome the complainant desires, and
- C. The action the complainant believes will settle the dispute.

(ii) Endeavour to resolve dispute

(iii) On receipt of the complaint by the respondent, both parties will make every effort to resolve the dispute by mutual negotiation within 14 business days.

(iv) Any unresolved dispute or difference whatsoever arising out of or in connection with this agreement shall be submitted to mediation.

(v) This clause survives termination of this agreement.

(g) Waiver and amendments: Any waiver by any party to a breach of this agreement shall not be deemed to be a waiver of a subsequent breach of the same or of a different kind.

(h) Events beyond control: Neither party shall be liable to the other party for any loss caused by any failure to observe the terms and conditions of this agreement, where such failure is occasioned by causes beyond its reasonable control including but not limited to by fire, flood, riot, strike, war, restrictions and prohibitions or any other actions by any government or semi government authorities.

(i) Severance: If anything in this agreement is unenforceable, illegal or void, it is severed and the rest of the agreement remains in force.

(j) Notices: A notice or other communication to a party must be in writing and delivered to that party or that party's practitioner in one of the following ways:

- (i) Delivered personally; or
- (ii) Posted to their address when it will be treated as having been received on the second business day after posting; or
- (iii) Sent by email to their email address, when it will be treated as received when it enters the recipient's information system.

(k) Counterparts: This agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the agreement will be the date on which it is executed by the last party.

(l) Electronic Signature: This agreement may be executed by any and all parties by way of affixing an electronic signature which identifies the person affixing the signature. It is agreed that affixing an electronic signature is a reliable method of indicating approval of the contents of this agreement. This agreement may also be executed and delivered by email and the parties agree that such scanned execution and email delivery will have the same force and effect as delivery of an original document with original signatures. In either case, each party may use such electronic signature or scanned

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signature as evidence of the execution and delivery of this Agreement by all parties to the same extent that an original signature could be used.

(m) Costs: Each party will pay their own costs in relation to this agreement.

### Part B Website Legal Notices

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If you visit our website, whether or not you acquire Services and/or Products from us, our Website Legal Notices set out the Terms and Conditions on which you visit, access, view and/or use the website of QUIKSTART.

#### 1. Acceptance and Agreement

1.1 Our Website Legals are the terms and conditions on which You visit, access, view and/or use the website of QUIKSTART (**Our Website**) and by which You acquire products or services referenced on Our Website and include Our:

- (a) Terms of Use of Our Website;
- (b) Disclaimers and limitations of liability relating to Our Website;
- (c) Privacy Policy; and
- (d) Other terms and conditions relating to products and services We offer or reference on Our Website.

#### (Our Website Legals)

1.2 You should review the contents of Our Website Legals before proceeding to visit, access, view or use Our Website and before acquiring any products or services referenced on Our Website, including third party products or services from Our Affiliates and other third parties with whom We have an alliance (**Third Party Provider/s**).

1.3 By visiting, accessing, viewing or using Our Website or acquiring products or services referenced on Our Website, You:

- (a) Express Your understanding and acceptance of the matters set-out in these Website Legals;
- (b) You warrant to Us that You have the legal capacity to enter an agreement on the terms and conditions set out in Our Website Legals; and
- (c) You enter into a legally binding agreement with Us on the terms and conditions set out in Our Website Legals.

#### 2. License to Use Website

2.1 Subject to compliance with Our Website Legals, We grant You a limited, non-exclusive and non-transferable license to use Our Website in accordance with Our Website Legals (**License**).

2.2 You may visit, access, view and use Our Website in the normal manner, but must not except as permitted under the Copyright Act 1968 (Cth) copy, reproduce, republish, distribute or display any information on Our Website without Our written permission.

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2.3 The License to use Our Website does not include the right to use any data mining robots or other extraction tools or to metatag or mirror Our Website.

### 3. Website Content and Access – No Warranties or Representations

3.1 While We endeavor to take reasonable care in preparing and maintaining the information on Our Website, We do not warrant the accuracy, reliability, adequacy or completeness of any of the content of Our Website, nor provide any specific advice for Your circumstances. It is Your responsibility to enquire with us directly to ensure the accuracy and currency of the material or information you seek to rely upon.

3.2 You acknowledge and accept that the content of Our Website:

- (a) may include technical inaccuracies and typographical errors;
- (b) may not necessarily be up to date or accurate at the time you view it;
- (c) is subject to change at any time without notice.

3.3 To the fullest extent permitted by law We exclude all representations, warranties or terms (whether express or implied) other than those set out in Our Website Legals.

3.4 We do not guarantee that access to Our Website will be uninterrupted or that Our Website is free from viruses or anything else which may damage any computer which accesses Our Website or any data on such a computer.

### 4. Intellectual property

4.1 The content and materials displayed on Our Website, including without limitation all editorial materials, information, photographs, illustrations, artwork and other graphic materials, and names, logos and trade marks, are Our property (or we are licenses to use them) and are protected by copyright, trade mark and other intellectual property laws (**Intellectual Property**).

4.2 Any such material or content may be printed solely for Your personal, non-commercial use within Your organisation provided that any copyright notice on such a display or page is not removed. You agree not to reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any such material to any third party without Our express prior written consent.

4.3 We do not grant You any license or right in, or assign all or part of, Our intellectual property rights in the content or applications incorporated into Our Website or in the user interface of Our Website.

### 5. Submissions On or Via Our Website

5.1 Any material You send to Us on or via Our Website (including without limitation any data, questions, comments, suggestions, ideas or other information) will be deemed to be non-confidential and non-proprietary, unless it is indicated to be otherwise. We will be entitled to use any such material which has not been indicated to be confidential or proprietary for any purpose we see fit without compensation to You.

### 6. Links to Third Party Websites / Third-Party Provider Websites

6.1 Our Website contains links to other websites operated, controlled or produced by third parties or Third-Party Providers. Unless otherwise indicated, We do not control, endorse, sponsor, evaluate or approve any third-party websites or their content (including the websites of Third-Party Providers) nor

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do We provide any warranty or take any responsibility whatsoever for any aspect of those websites, their content or the products or services they provide.

6.2 The views of others included on the websites of third parties or Third-Party Providers, whether linked to Our Website or not are not necessarily the views held by Us. We do not assume any responsibility for acts or omissions of those who have authored or made accessible that content. You should view their terms of use, terms of trade, disclaimers, privacy policy or similar documents before You rely on their information and content or acquire their products or services.

### 7. Interference With Our Website

7.1 You must not attempt to change, add to, remove, deface, hack or otherwise interfere with Our Website or any material or content displayed on Our Website. Without limiting the foregoing, You must not add any content to Our Website:

- (a) Unless You hold all necessary rights, licenses and consents to do so;
- (b) That would cause You or Us to breach any law, regulation, rule, code or other legal obligation;
- (c) That is or could reasonably be considered to be obscene, inappropriate, defamatory, disparaging, indecent, seditious, offensive, pornographic, threatening, abusive, liable to incite racial hatred, discriminatory, blasphemous, in breach of confidence or in breach of privacy;
- (d) That would bring Us, Our Website or Our Third-Party Providers into disrepute; or
- (e) That infringes the Intellectual Property or other rights of any person.

7.2 You warrant to Us that You have complied with the preceding sub-clause. Should You not comply or act contrary to any of the matters in that sub-clause You agree to indemnify and hold Us harmless against any and all claims, actions, proceedings, losses, damages, expenses and costs including without limitation reasonable legal expenses arising directly or indirectly out of or in connection with Your use of Our Website.

7.3 If You wish to establish a link to Our Website, You must first seek approval from Us and provide the URL of the website that You seek to establish a link from, a brief description of Your website and the reason that You wish to establish a link.

7.4 If We agree to Your proposed link, You must comply with any terms and conditions imposed by Us as a condition of such agreement. If the nature and/or content of Your website changes in any material way, You must contact Us and provide a new description of Your website so We may assess whether to continue that approval.

### 8. Products and Services Provided by Third-Party Providers

8.1 Where We refer You to or connect You with a Third-Party Provider (whether through Our Website or otherwise) or You make such connection:

- (a) We make no representation and give no warranty regarding any product or service which the Third-Party Provider supplies or its functionality, fitness for purpose or otherwise;
  - (b) You acknowledge that You will make Your own enquiries and exercise Your own judgment as to whether to acquire such products or service and whether it is suitable for Your business; and
  - (b) You acknowledge that any agreement to acquire that product or service will be entered between You and the Third-Party Provider and that We will not be a party to that agreement, nor have any liability with respect to the acquisition of that produce or service.
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8.2 Where we provide invoicing services to a Third-Party Provider we do so for the benefit of the Third-Party Provider and such service will not constitute a relationship between You and Us.

### 9. Our Products and Services

9.1 Where You acquire Products or Services from Us, You to enter into a binding legal agreement with Us on the Standard Terms and Conditions set out in Part A governing the provision of those Products and/or Services.

### 10. Descriptions of Product and Services

10.1 We aim to ensure Our products and services and those of Third-Party Providers are described as accurately as possible on Our website, however We do not warrant that any such description provided is accurate. Where We become aware of any misdescription, We reserve the right to correct any misdescription, error or omission.

10.2 Images on Our Website are provided for illustrative purposes only and We do not guarantee that any image will reflect or portray the full design or options relating to any product or service You purchase from us or from a Third-Party Provider.

### 11. Orders for Product and Services and Payment and Delivery

10.1 All prices listed on Our Website are in Australia Dollars (AUD) and are inclusive of GST unless specifically stated otherwise on Our Website. We endeavor to ensure Our price list is current, although reserve the right to amend Our prices at any time.

10.2. Where there is a geographic limit on where We supply and dispatch our products and services that is listed on Our Website.

10.3 Unless agreed in writing by way of a service or product agreement or otherwise with Us:

- (a) Once you have submitted an order for products or services through Our Website You may not cancel or vary that order;
- (b) Payment is to be made via payment options offered at the time of order of the products or services;
- (c) Where there is a due date for payment later than the time of order, if no payment is received by that due date, the product or service delivery may be terminated at Our discretion;
- (d) Delivery of products and/or services will be as set out on Our Website;
- (e) Title in any products or services You order passes to You when We have received payment in full for the product or service; and
- (f) All risk of loss or damage to the products or services passes to You when We dispatch the products or provide the service to You;
- (g) Where a payment application that stores, processes and/or transmits data is used to receive payment, We will endeavour to provide an environment which is compliant with appropriate data security standards.

### 11. Limitation of liability

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11.1 To the maximum extent permitted by law We exclude all liability for any loss or damage of any kind (including special, indirect or consequential loss and including loss of business profits) arising out of or in connection with the content of Our Website and Your reliance on it, Your use of Our Website and/or the performance of Our Website, except to the extent that the loss or damage is directly caused by Our fraud or willful misconduct.

11.2 Where the law (including without limitation the Competition and Consumer Act 2010 (Cth)) implies a warranty or guarantee into these Website Legals which may not lawfully be excluded, then provided it is fair and reasonable to do so, Our liability for breach of such a warranty or guarantee shall be limited at its option, to any one or more of the following:

(a) in the case of products: replacement of the products or the supply of equivalent products; repair of the products; payment of the cost of replacing the products or acquiring equivalent products; or payment of the cost of having the products repaired; and

(b) in the case of services, to either resupplying the services or payment of the cost of having the services supplied again.

11.3 Where our *goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:*

(a) *to cancel your service contract with us; and*

(b) *to a refund for the unused portion, or to compensation for its reduced value.*



*You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.*

## 12. Privacy Policy

12.1 We may collect personal information about you from time to time in a lawful, transparent manner and by fair means:

(a) to the extent that it is necessary to provide a product or service, to carry out Our internal administrative operations or to meet relevant regulatory requirements; or

(b) for the purposes of enhancing our ability to provide improved products or services or to improve service delivery to You and other persons in the future.

12.2 We have processes and procedures in place to comply with privacy legislation (applicable from time to time) and You may request a copy of our Privacy Policy from us at any time by contacting us directly in writing.

## 13. General Terms

13.1 These Website Legals are governed by and construed in accordance with the State of Queensland, Australia. You agree to submit to the non-exclusive jurisdiction of the courts of Queensland, Australia in respect of any dispute which may arise.

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13.2 You must not assign, sublicense or otherwise deal in any way with any of Your rights contained in these Website Legals.

13.3 If a provision of these Website Legals are invalid or unenforceable it is to be read down or severed to the extent necessary without effecting the validity or enforceability of the remaining provisions.

13.4 Unless agreed with You in writing otherwise, these Website Legals constitute the entire agreement between You and Us relating to use of this Website and matters contemplated in it.

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