

This document sets out the terms for use of service on our Website. Please review the terms carefully.

## **TERMS OF SUBSCRIPTION SERVICE**

### **1. Acceptance of Terms of Subscription Service**

1.1 You agree to the Terms of Subscription Service when you register as a member of the Website.

1.2 You must not register as a member if you do not agree to the Terms of Subscription Service.

### **2. Customer Service Policy**

2.1 We aim to provide exceptional service and customer experience.

2.2 We strive to ensure that:

- (a) all services meet your expectations;
- (b) prices are accurate; and
- (c) we respond to your orders within 2 Business Days.

2.3 If we:

- (a) cannot provide the service; or
- (b) have provided you inaccurate pricing;

we will notify you as soon as practicable to arrange an alternative agreement or refund your payment.

### **3. Membership**

3.1 You must register as a member to access and use our Services.

3.2 We may refuse to register you as a member for any reason.

3.3 In registering for membership, you must:

(a) pay such membership subscription (if any) as we charge, and as such terms as we detail, from time to time.

(b) not create accounts with false information;

(c) not transfer your account to someone else or allow someone else to share your account; and

(d) at your sole responsibility keep your username and password safe.

## **4. Intellectual Property Rights**

### **Our Content**

**4.1** We retain ownership of all Intellectual Property in Content we provide you by our Service.

**4.2** Subject to clause 4.3, we grant you a limited, non-exclusive, revocable licence to use our Content for purposes reasonably related to your enjoyment of the Services.

**4.3** You must not, without our express consent:

(a) republish any Content;

(b) present any Content in public;

(c) reproduce or exploit any Content for commercial purposes; or

(d) redistribute any Content.

### **Content You Create**

**4.4** You absolutely and unconditionally assign to us all right, title and interest in all Intellectual Property rights in any Content you upload to or create via the Website.

**4.5** We grant you a limited, non-exclusive, revocable licence to use the Content you provide us for purposes reasonably related to your enjoyment of the Services.

**4.6** By uploading to or creating your Content via our Website, you warrant that:

(a) you have the right to provide the Content in the manner it is uploaded; and

(b) have the right to assign or license copyright and other Intellectual Property to us in accordance with the Terms of Subscription Service.

**4.7** We are not responsible or liable in any way for loss of your Content and you are solely responsible for storing and backing up your Content.

## **5. Order Placement**

**5.1** We may charge Fees for our Services as we determine from time to time and the total price for the Services you order will be calculated on the order form on the website.

**5.2** You may order the Service that you wish to use and with each order you agree to:

- (a) pay the specified subscription Fees (if any);
- (b) the specified period of subscription; and
- (c) the specified billing frequency if you agree to a recurring subscription.

**5.3** We may accept or reject your order for any reason and if we accept your order:

- (a) you must pay the subscription Fees; and
- (b) we grant you access to use the Services you ordered.

**5.4** If you pay with a credit card, you warrant that you are authorised to charge that credit card.

**5.5** You must indemnify us from and against any loss or damage we suffer in connection with a breach of warranty in sub-clause 5.4.

**5.6** All prices are in Australian Dollar (\$AUD) unless otherwise indicated.

## **6. Recurring Charges**

**6.1** This clause applies where we provide membership and/or Services as the basis that you agree to make regular recurring payments.

**6.2** You agree that:

- (a) you authorise us to debit applicable Fees from your account every billing cycle; and
- (b) we may continue to renew the Service and/or membership until:
  - (i) you discontinue the automatic renewal; or
  - (ii) terminate the Service and/or membership.

### **Fees May Change for Recurring Charges**

**6.3** You acknowledge that the Fees for membership and Services may change from time to time.

**6.4** You authorise us to debit the changed Fees from the next billing cycle if we:

- (a) notify you via email of the changed Fees two weeks in advance of the next billing cycle; and
- (b) provide you an opportunity to discontinue the automatic renewal before the next billing cycle.

## **Discontinuation of Recurring Subscription**

**6.5** You may discontinue your automatic renewal at anytime by notifying us in writing.

**6.6** If you discontinue your automatic renewal, your access to the membership and/or Services end at the end of the billing period.

**6.7** We may revoke your membership or Services from the next billing cycle if your payment is revoked.

## **7. Security**

**7.1** All credit card transactions are implemented under industry standard Secure Sockets Layer (SSL) protocol which encrypts information as it is being transmitted over the internet.

**7.2** For credit card transactions we use a third party processor and/or payment gateway so that:

- (a) payments are processed in real time; and
- (b) we do not have access to your credit card numbers.

**7.3** We use database management systems to store any personal information we collect and it contains security features, such as encryption, firewall and anti-virus, to ensure the protection and integrity of our data.

## **8. Termination or Suspension of Membership and Service**

**8.1** We may, at our discretion, suspend or terminate your membership and your access to our Service immediately if you:

- (a) breach any of the Terms of Subscription Service;
- (b) transfer your account to a third party or share your account with a third party;
- (c) cause damage or interfere with accessibility of our Website or business;
- (d) store, transmit or distribute Malicious Computer Programs;
- (e) conduct any systematic or automated collection of data;
- (f) breach our Intellectual Property Rights; or
- (g) upload Content on our Website that:
  - (i) is unlawful or promotes illegal behaviour;
  - (ii) is harmful, threatening, abusive or harassing;
  - (iii) incites violence or is graphical of violence;

- (iv) is pornographic or exploits people in a sexual manner;
- (v) is defamatory or libellous;
- (vi) relates to gambling;
- (vii) relates to alcohol;
- (viii) promotes racism, bigotry, hatred, physical harm or any other discriminatory behaviour;
- (ix) is false, misleading or fraudulent;
- (x) consists of Malicious Computer Program;
- (xi) impersonates any person or entity or falsely misrepresent your affiliation with a person or entity;
- (xii) violates or encourages violation of these terms and conditions;
- (xiii) infringes or violates another's rights including copyrights or intellectual property rights;
- (xiv) invades another's privacy;
- (xv) includes photograph or image of another person or another person's property without their consent;
- (xvi) reveals anyone's identification documents or sensitive financial information;
- (xvii) is posted to disrupt the operation of the Website and its related services; and
- (xviii) advertises any company or their goods or services other than us.

**8.2** If we suspend or terminate your membership and your access to our Service, you:

- (a) will be notified that your account has been terminated or suspended for a specified period of time; and
- (b) will not be able to access our Service using your membership.

## **9. Refund Policy**

**9.1** We do not generally refund membership subscription Fees.

**9.2** We will refund Fees for Services if:

- (a) Service is not provided with due care and skill;

(b) Service is not fit for any specified purpose;

(c) Service is not provided within reasonable amount of time for Service that has no specified delivery date; or

(d) there is a breach of any other warranties or rights you have under any legislation.

**9.3** You must provide us with necessary information to process your request for refund including the reason you are requesting the refund.

**9.4** We may need to conduct an assessment of your request and our Service to:

(a) in case of minor failure – at our discretion, either provide repair, refund or pay you the difference in the service you received and what you paid for; or

(b) in case of major failure – at your discretion, provide repair, refund or pay you the difference in the service you received and what you paid for.

**9.5** All refunds for credit cards are made only to the credit cards that was used in the Order.

**9.6** To the fullest extent permitted under the law, we do not refund any Fees for the Service that you cannot use as a result of suspension or termination of your membership.

**9.7** To the fullest extent permitted under the law, we do not provide refunds other than in accordance with this clause.

## **10. Privacy Policy**

**10.1** We are dedicated to securely store and handle your private information. Please visit our Website to view our Privacy Policy.

## **11. Warranties and Guarantees**

**11.1** To the full extent permitted by law, we exclude all representations, warranties or terms (whether express or implied).

### **Implied Terms**

**11.2** This Agreement includes, by implication, only those warranties, conditions and terms that:

(a) law or legislation implies into this Agreement; and

(b) law or legislation prohibits the parties from modifying, excluding or contracting away.

## **12. Limitation of Liability**

**12.1** To the fullest extent permitted by law, we are not liable in any way for indirect, special or consequential Liability.

**12.2** To the fullest extent permitted by law, our Liability to you for Service is limited to the amount of the Fees you have paid us for the Service.

**12.3** To the fullest extent permitted by law, our Liability for any breach of any condition, warranty or guarantee (including any condition, warranty or guarantee implied under sub-clause 11.2) is, at our discretion, limited to the lesser of:

(a) if the breach relates to goods:

(i) the replacement of the Goods or the supply of equivalent goods;

(ii) the repair of the goods;

(iii) the payment of the cost of replacing the goods or acquiring equivalent goods;

(iv) the payment of having goods repaired; or

(v) a refund of the Purchase Price you have paid to us in respect of any damaged Goods;  
and

(b) if the breach relates to services:

(i) re-supplying services;

(ii) paying the reasonable costs of re-supplying the services; or

(iii) refunding the portion of the Purchase Price that you have paid to us in respect of any services.

**12.4** Nothing in this agreement will exclude or limit our ability in respect of any:

(a) death or personal injury caused by our negligence;

(b) fraud or fraudulent misrepresentation on the part of us;

(c) matter which it would be illegal or unlawful for us to exclude or limit, or attempt to or purport to exclude or limit, its liability.

## **13. Indemnity**

**13.1** You indemnify us against all losses, Claims, Liabilities and expenses arising out of or in connection with:

(a) you using our Services to supply service to a third party;

- (b) your use of the Services contrary to any of our instructions or directions; and
- (c) a breach of this Terms of Subscription Service by you or your employees, agents or subcontractors.

## **14. No Waiver**

### **Method of Waiver**

**14.1** A Party waives a right under this Agreement only by giving written notice that it waives that right.

### **Limitation of Waiver**

**14.2** A waiver is limited to the instance referred to in the writing (or if no instance is referred to in the writing, to past instances).

### **No deemed Waiver**

**14.3** A right is not impaired or waived by:

- (a) a failure to exercise that right;
- (b) a delay in exercising that right;
- (c) a partial exercise of that right;
- (d) a previous exercise of that right; or
- (e) negotiations between the Parties.

## **15. Jurisdiction**

**15.1** Our Service is directed at and restricted to use by individuals or entities that reside in Australia only.

**15.2** This Agreement is governed by the laws of New South Wales.

**15.3** The Parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.

**15.4** No Party may object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.

## **16. Severability**

**16.1** If all or any part of any provision of this Agreement is invalid or unenforceable, then:

- (a) that provision is severed from this Agreement to the extent necessary to remove the invalidity or illegality; and
- (b) the remaining provision of this Agreement remains valid and enforceable.



## **17. Survival of Certain Terms**

**17.1** The terms of this Agreement which are capable of having effect after this Agreement ends continue to have full effect, including clauses in relation to:

- (a) protection of intellectual property;
- (b) post-agreement restraints; and
- (c) guarantees, warranties, indemnities and limitation of liability.

## **18. Interpretation**

**18.1** In this Agreement, unless the contrary intention appears:

- (a) a reference to this Agreement or any instrument includes any variation or replacement of any of them;
- (b) a reference to a person includes a body corporate, joint venture, association, government body, firm and any other entity;
- (c) a reference to legislation includes any amendments to it, any legislation substituted for it, and any subordinate legislation made under it;
- (d) the singular includes the plural and vice versa;
- (e) words of one gender include any gender;
- (f) headings do not affect the interpretation of this Agreement;
- (g) reference to a Party includes that Party's personal representatives, successors and permitted assigns;
- (h) reference to a thing (including a right) includes a part of that thing;
- (i) if a Party comprises two or more persons:
  - (i) reference to a Party means each of the persons individually and any two or more of them jointly;
  - (ii) a promise by that Party binds each of them individually and all of them jointly;
  - (iii) a right given to that Party is given to each of them individually; and
  - (iv) a representative, warranty or undertaking by that Party is made by each of them individually;
- (j) a provision must not be construed against a Party only because that Party prepared it;

- (k) a provision must be read down to the extent necessary to be valid and if it cannot be read down to that extent, it must be severed;
- (l) if a thing is to be done on a day which is not a Business Day, it must be done on the Business Day before that day;
- (m) another grammatical form of a defined expression has a corresponding meaning;
- (n) the word “include” is used without any limitation;
- (o) the rights, duties and remedies in this Agreement operate to the extent that they are not excluded by law; and
- (p) examples are descriptive only and not exhaustive.

## **19. Definitions**

### **19.1** Unless the context otherwise requires:

- (a) Agreement means these Terms of Subscription Service and any schedules and annexures to it, as amended and substituted from time to time.
- (b) Australian Consumer Law means Schedule 2 of Competition and Consumer Act 2010 (Cth).
- (c) Business Day means a day except a Saturday or Sunday or other public holiday.
- (d) Claim means any claim, suit, action, demand, or right.
- (e) Content means any material uploaded to or created via our Website including computer software, documents, images, photos, writings, or any other form of material.
- (f) Consequential Loss includes all forms of indirect loss including loss of revenue, loss of profits, failure to recognise profits or savings and any other commercial and economic loss, howsoever caused.
- (g) Fee means the money and other consideration as we determine from time to time that you are obligated to pay to us for the right to use our Service.
- (h) GST has the meaning given in the GST Act.
- (i) GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (j) Intellectual Property means all existing or future species of industrial and intellectual property, whether registered or unregistered, registrable or not:
  - (i) as defined in Article 2 of the World Intellectual Property Organisation (WIPO) Convention; or
  - (ii) recognised by any statute or any principle of law or equity,

including copyrights, patents, designs, trade marks, circuit layout rights, confidential information, trade secrets and the right to register all such intellectual or industrial property rights.

(k) Malicious Computer Program includes programs that contain viruses, Trojan horses, worms or any other computer programming that may damage, modify, delete, detrimentally interfere with, access without authority or expropriate any system, data or personal information.

(l) Liability means responsibility for any loss (either direct or indirect), damage, or expense and includes liability for Consequential Loss.

(m) Party means a person or entity who executes this Agreement.

(n) Parties mean all the persons or entities who execute this Agreement.

(o) Terms of Subscription Service means the terms and conditions set out in this document as amended from time to time.

(p) Service means any goods or service we provide to users in addition to membership.

(q) We (with capitals or not) means Pycon Homes and Constructions Pty Ltd trading as Pycon Homes and Constructions Pty Ltd and its related corporations, successors and assigns and the words "us" and "our" have corresponding meanings.

(r) Website means any website owned or control by Pycon Homes & Constructions Pty Ltd including [www.pyconhomes.com.au](http://www.pyconhomes.com.au), [www.pyconhomes.com](http://www.pyconhomes.com), and [www.pycon.com.au](http://www.pycon.com.au).

(s) You (with capitals or not) means the user of this Website who places an Order with us and the words "your" and "yours" have the corresponding meaning.