

FINLAYSONS

Open4Sale.com.au General Terms and Conditions

1. Definitions and Interpretation

1.1 Definitions

Agreement means any agreement formed by the acceptance of the Membership Form by Open4Sale.

Claim means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising (whether or not presently ascertained, immediate, future or contingent) and includes legal costs on a full indemnity basis.

Contract End Date means the date specified as such on the Membership Form.

Contract Start Date means the date specified as such on the Membership Form.

Customer means the party as specified on the Membership Form.

Initial Term means the period from (and including) the Contract Start Date to (and including) the Contract End Date.

Insolvency Event means the happening of any of the following events:

- (a) An application is made to a court for an order or an order is made that a body corporate be wound up;
- (b) An application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed whether or not under an order;
- (c) A receiver, receiver and manager or controller is appointed or takes possession in respect of any part of the property of a body corporate;
- (d) An administrator is appointed to a body corporate under sections 436A, 436B or 436C of the Corporations Act 2001 (Cth);
- (e) A body corporate enters into, or resolves to enter into a deed of company arrangement, a scheme of arrangement or composition with, or assignment for the benefit of all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (f) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so;
- (g) A body corporate is or its directors state that it is unable to pay its debts as and when they become due and payable;

- (h) A body corporate is presumed to be insolvent within the meaning of section 459C(2) of the Corporations Act 2001 (Cth);
- (i) A judgment is entered against a body corporate for a sum in excess of \$20,000 and remains unsatisfied or unappealed for a period of 15 days;
- (j) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act 2001 (Cth) or action is taken which could result in such an event; or
- (k) Anything having a substantially similar effect to any of the events specified above happens under any law or any applicable jurisdiction.

Intellectual Property means any patent, invention, discovery or process improvement whether patentable or not, any proprietary information, any trade mark, copyright, trade secret, computer program, design procedure or technique, and includes Confidential Information;

Membership Form means the membership form accepted by Open4Sale.

Open4Sale means Open4Sale Pty Ltd ABN 60 119 754 933, Suite 1, Innovation House, First Avenue Mawson Lakes SA 5095.

Services means the services as specified on the Membership Form.

Subscription Fee means any fee payable by the Customer to Open4Sale as specified on the Membership Form as varied from time to time by Open4Sale.

Term means, subject to clause 4.2, the Initial Term.

Website means the website hosted by Open4Sale at www.open4sale.com.au.

2. Status of Terms

- 2.1 These Terms and Conditions set out the standard terms governing all agreements entered into between the Customer and Open4Sale and are to be read in conjunction with any other agreement entered into between the parties.
- 2.2 These Terms and Conditions are displayed on the Website.

3. Variation to Terms

Open4Sale will publish any changes to these Terms and Conditions on the Website.

4. Term of Agreement

4.1 The Agreement between Open4Sale and the Customer will commence on the Contract Start Date and continue in place for the Term unless earlier terminated in accordance with clause 13.

4.2 Upon the expiration of the Initial Term the Agreement will continue in place unless terminated in accordance with clause 13.

5. Services

Open4Sale agrees to provide to the Customer the Services and the Customer agrees to take the Services for the Term.

6. Payment of Fees and Charges

6.1 The Customer agrees to pay the Subscription Fee to Open4Sale for the Services.

6.2 The Customer will pay the Subscription Fee monthly by each calendar monthly day corresponding with the Contract Start Date.

6.3 If at any time during the Term the Customer fails to pay any fee on time, then:

(a) Open4Sale may suspend the Services without notice and without affecting any other rights Open4Sale may have, until any amounts owing are paid by the Customer; and

(b) The Customer will pay any costs and expenses incurred by Open4Sale in relation to such default.

7. Use of Intellectual Property

7.1 The Customer grants to Open4Sale a free, non-exclusive licence to publish, copy, display, modify and use the Customer's Intellectual Property for the purposes of providing the Services.

7.2 The Customer warrants to Open4Sale that it is the owner, or is otherwise authorised to use, all Intellectual Property the Customer displays on our Website including any copyrighted materials or trademarks. The Customer further warrants that it is authorised to grant the licence referred to in clause 7.1.

7.3 The use of the Website or the Open4Sale services by the Customer does not grant the Customer any rights to use any of Open4Sale's Intellectual Property.

8. Customer's use of the Website

8.1 The Customer is responsible for all content published by it on the Website. The Customer will not publish content, submit data or include links to any website publishing content that:

- (a) Violates any Intellectual Property or other rights of any person any where in the world;
- (b) Is defamatory, threatening, harassing, abusive, discriminatory, obscene, offensive, profane, indecent, or otherwise objectionable or illegal;
- (c) Contains or propagates any computer viruses, worms or other malicious code;
- (d) Is misleading or deceptive or is likely to mislead or deceive;

8.2 The Customer will ensure that any content published on the website complies with editorial guidelines provided by Open4Sale from time to time. In particular, the Customer will ensure that all content published:

- (a) Is correctly punctuated without repeated or unnecessary punctuation;
- (b) Is correctly capitalised without excessive capitalisation;
- (c) Is correctly spelt using generally accepted Australia English spellings;
- (d) Is grammatically correct and logical;
- (e) Conforms with any word limits imposed by Open4Sale;
- (f) Is correct, accurate and up-to-date; and
- (g) Does not contain excessive repetition of words.

8.3 The Customer will not use the Website to:

- (a) Engage in conduct that is misleading or deceptive or likely to mislead or deceive;
- (b) Transmit or otherwise distribute spam or other message prohibited by the *SPAM Act 2003 (Cth)*.

8.4 The Customer will not:

- (a) Rent, resell, sub-licence or otherwise grant rights to use space provided to it on the Website by Open4Sale;
- (b) Undertake any action which may damage, modify, interfere with or destroy any data, files, passwords or other devices belonging to Open4Sale or otherwise take any action that compromises the security or stability of the Website;
- (c) Copy material from the Website and display it, reformatted or otherwise, on any other website.

- 8.5 Open4Sale accepts no responsibility for any loss or damage incurred by the Customer or any third party as a result of publication of material by the Customer.
- 8.6 Open4Sale reserves the right to edit, remove or delete from the Website any content it considers in its absolute discretion to be in violation of this clause 8 or of any other editorial guidelines provided by Open4Sale to the Customer.

9. Customer Indemnifies Open4Sale

The Customer indemnifies Open4Sale, its officers, employees, contractors, agents and related parties for any loss or damage including consequential loss sustained as a result of:

- (a) The Customer's use of the Website;
- (b) Any breach of the Agreement; or
- (c) Any breach of a warranty provided herein.

10. Customer Details

- 10.1 The Customer warrants that all information provided by it to Open4Sale is correct and accurate.
- 10.2 The Customer must notify Open4Sale if there are any material changes to any information provided by the Customer to Open4Sale in writing.
- 10.3 If the Customer requires any modifications to the Services as a result of any changes notified to Open4Sale, Open4Sale reserves the right to charge a further fee to the Customer or increase the Subscription Fee.

11. Privacy

- 11.1 Open4Sale will use, collect and store information about the Customer in accordance with its privacy policy and the Customer consents to such use, collection and storage.
- 11.2 Open4Sale will not disclose any information about the Customer except:
- (a) To the extent necessary to supply the Services; or
 - (b) As required by law.

12. Disclaimers and Limitation of Liability by Open4Sale

- 12.1 Open4Sale takes care in publishing and providing the Website and Services however Open4Sale makes no representations:
- (a) Regarding the accuracy of any information published on the Website or that the Website is free from errors;

- (b) Regarding the ability of third parties to access the Website and view information;
 - (c) That the Website is free of computer virus or other harmful or malicious code; or
 - (d) That the Website is free from technical faults.
- 12.2 Open4Sale does not distribute spam or other junk mail messages and takes no responsibility for use of any material published by a Customer on the Website in spam or junk mail attacks.
- 12.3 To the extent permissible by law, Open4Sale:
- (a) Makes no warranty in respect of the provision of the Services; and
 - (b) Excludes any warranty implied by the operation of law.
- 12.4 Open4Sale's liability for loss or damage suffered by the Customer is limited to the amount equal to the Subscription Fee payable for a period of 3 months.
- 12.5 Under no circumstances will Open4Sale be liable for any special, indirect or consequential loss or damage.

13. Termination

- 13.1 The Agreement may not be terminated except in accordance with this clause 13.
- 13.2 Open4Sale may terminate the Agreement as follows:
- (a) By written notice if the Customer commits a breach of the Agreement and such breach is not remedied within one (1) month of receipt of written notice of such breach;
 - (b) Immediately if the Customer undergoes an Insolvency Event.
- 13.3 Customer may terminate the Agreement as follows:
- (a) If Open4Sale commits a breach of the Agreement and such breach is not remedied within one (1) month of receipt of written notice of such breach; or
 - (b) With one (1) month's written notice provided within fourteen (14) days of any further fee or any increase in the Subscription Fee being charged by Open4Sale.
- 13.4 Either party may terminate this Agreement with one (1) month's written notice, at any time after the Initial Term.

14. GST

- 14.1 Unless the contrary intention appears the terms and phrases used in the Agreement have the meanings given to those terms and phrases in *A New Tax System (Goods and Services) Act 1999 (GST Act)*.
- 14.2 Unless otherwise specified in the Agreement, the consideration expressed in this agreement for any taxable supply made under or in connection with the Agreement does not include GST (***GST exclusive consideration***).
- 14.3 The recipient of a taxable supply under or in connection with the Agreement must in addition to and at the same time as the GST exclusive consideration is payable, pay to the supplier of the taxable supply, an amount equal to the amount of GST imposed by GST law from time to time on the taxable supply.
- 14.4 The supplier of a taxable supply made under or in connection with the Agreement must deliver to the recipient of the taxable supply, a tax invoice in respect of the taxable supply, within 7 days of being requested to do so by the recipient.

15. Assignment

- 15.1 The rights and obligations of Customer under the Agreement are personal. They cannot be Disposed of, Encumbered or otherwise dealt with and no party may attempt, or purport, to do so without the prior written consent of Open4Sale.
- 15.2 Open4Sale may assign its rights and obligations to any third party without the Customer's consent.
- 15.3 If Open4Sale assigns its rights or obligations under the Agreement, the Customer must sign any document reasonably required by Open4Sale to give effect to such assignment.

16. Notices

- 16.1 Any notice given under this agreement must be in writing and signed by or for the sender.
- 16.2 Notices must be delivered by post, hand or fax to the relevant address below:

- (a) To Open4Sale
Open4Sale Pty Ltd
Suite 1
Innovation House
First Avenue
MAWSON LAKES SA 5095
Attention: Mr Darren Evans
Fax: +618 8262 8093
- (b) To Customer
See the address, contact and fax details specified for Customer on the Membership Form

16.3 When delivered

- (a) Notices will be taken to be duly given:
 - (i) In the case of delivery in person, when delivered;
 - (ii) In the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); and
 - (iii) In the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error.
- (b) If the result under clause 16.3(a) is that a notice would be taken to be given on a day that is not a Business Day in the place to which the notice is sent, then it will be taken to have been given on the next Business Day in that place.

17. Governing Law and Jurisdiction

- 17.1 The laws of South Australia govern the Agreement.
- 17.2 Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning the Agreement.