

Terms and Conditions of Use for TradeBox Australia's Terms and Conditions Products

TradeBox is all about making trade contract documents and information easy and affordable for subbies and trade contractors in the building and construction industry.

To do that we provide you with a 12-month licence to use our TradeBox products that you have selected (your TradeBox terms).

Our TradeBox products are drafted and updated by a building and construction law firm; we hired the lawyers so you don't have to. However, as a TradeBox customer you choose the type of terms and conditions and the schedules that best suit the needs of your business.

TradeBox does not provide any legal advice or legal services, we just publish the trade contract documents and information. If you require legal advice, feel free to contact Aitchison Reid Building and Construction Lawyers at www.subcontractors.arbuildinglaw.com.au with your specific needs and requirements.

1.0 This agreement

What do you get?

- 1.1 As part of this agreement, we will provide to you a 12 month licence to use:
 - (a) Your TradeBox terms;
 - (b) Your TradeBox docs, including:
 - i. A PDF version of your TradeBox terms;
 - ii. A template in Microsoft Word (for Microsoft Windows), if included in the product package for your TradeBox terms; and
 - iii. A link to your TradeBox terms hosted online by us.
- 1.2 The PDF and online version of your TradeBox docs will be marked by us with your logo, business name and address details provided by you as part of the engagement form.
- 1.3 Your TradeBox terms and your TradeBox docs will be updated on an ongoing basis for the duration of the licence. Updates may reflect changes in the law or feedback we have received from TradeBox customers.

What do you agree?

- 1.4 As part of this agreement, you agree:
 - (a) To pay us the setup fee and licence fee;
 - (b) To comply with and be bound by this agreement;
 - (c) To make sure that you have read and understood this agreement;
 - (d) That you have authority to act on behalf of any person/entity whom is named in the engagement form;
 - (e) You are deemed to have agreed to this agreement on behalf of any person/entity whom is named in the engagement form;
 - (f) We will not provide any legal advice to you because the content, your TradeBox terms and your TradeBox docs provided to you have not been tailored by us for your specific circumstances or requirements and we are not a law practice;
 - (g) You are not an excluded person or an excluded entity in accordance with Schedule A.

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- (h) You have provided us, and will continue to provide us, true and factual information about you;
- (i) We can use the information you have provided us to carry out our business relationship with you; and
- (j) That your TradeBox docs and the hosted online version of your TradeBox terms have not been tested on all devices and applications and we do not warrant at clause 11.0 that your TradeBox docs and the hosted online version of your TradeBox terms will work or be viewable on all devices and applications. Known limitations or issues with devices and applications are listed at Schedule C. We will continue to update Schedule C as and when new issues and limitations become known to us.

Amendments

- 1.5 You agree that we may change the terms of this agreement from time to time however, if the changes are detrimental to you, we will only make those changes in accordance with clause 1.7 below or by mutual agreement. We will notify you in writing of all changes to other provisions including changes required by law. Any change made for the purposes of enforcing or protecting TradeBox property is deemed to not be a change that is detrimental to you, as you agree that TradeBox products can only be provided at such economic rates if we are able to protect TradeBox property, including TradeBox's intellectual property rights and make changes to Schedules A and B.
- 1.6 If the terms of this agreement change, we will notify you via the email address that you have given us. If you choose to unsubscribe from our email messages and notifications, we will not have an ability to notify you of the changes to this agreement and it will be your responsibility to check any changes to this agreement published on the website.
- 1.7 If any changes are made to this agreement that are detrimental to you:
 - (a) The change will only occur after the expiry of the period of this agreement;
 - (b) We will notify you of the change at least 20 business days before the expiry of the period of this agreement (the notice of change);
 - (c) If the change is not acceptable to you, you may terminate this agreement by providing to us written notice by email to fix.it@tradebox.com.au. For your termination of this agreement to be effective under this clause, we must receive your notice of termination no later than 5 business days before the expiry of the period of this agreement.
 - (d) If we do not receive your written notice of termination in accordance with clause 1.7(c) above:
 - i. You are deemed to have accepted the changes stated in the notice of change, but your acceptance does not affect your other termination rights; and
 - ii. This agreement will be subject to the changes stated in the notice of change.
- 1.8 If you have chosen a Pick and Mix product and after your licence period has started, you wish to add a schedule:
 - (a) We are entitled to charge an additional setup fee for the additional schedule;
 - (b) The term of your licence for the additional schedule will be the same as the licence period left for your licence for your TradeBox terms and your TradeBox docs. This is so your licence for the additional schedule and your TradeBox terms is for the same period;

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- (c) You acknowledge that the monthly installment for the additional schedule will be charged separately from your TradeBox terms and will attract an additional transaction fee from our payment processing provider when deducted from your card.
- 1.9 If you have chosen a Basic product and after your licence period has started, you wish to upgrade your TradeBox terms to a Pick and Mix product:
- (a) Upgrades can only occur if the Pick and Mix product and the Basic Product are for the same TradeBox type;
 - (b) We are entitled to charge an additional setup fee for the upgrade;
 - (c) Your licence for the Basic product may be terminated or amended; and
 - (d) Your licence for the Pick and Mix product will be for 12 months from the upgrade.
- 1.10 If you require information about you to be changed in any way on your TradeBox terms, after we have accepted your offer in accordance with clause 6.4, we are entitled to charge an additional setup fee for carrying out the update to your TradeBox terms.

2.0 Your Licence

- 2.1 We grant you a limited, non-exclusive, non-transferable and revocable licence to use your TradeBox products and your TradeBox docs in accordance with this agreement (your licence) to:
- (a) Share your TradeBox products with your customers and your potential customers; and
 - (b) Use your TradeBox products in contract disputes and/or the enforcement of payment.
- 2.2 Your licence's validity is conditional upon, you:
- (a) Paying all setup fees and all instalment payments for the licence fee in accordance with this agreement;
 - (b) Complying with this agreement;
 - (c) Being capable of forming binding contracts;
 - (d) Using TradeBox only in the way that it is designed and permitted by TradeBox to be used;
 - (e) Being an Australian business with a valid ABN; and
 - (f) Being an Australian business primarily engaged in building and construction work in Australia.
- 2.3 Your licence permits your TradeBox terms and your TradeBox docs to only be hosted by TradeBox.
- 2.4 Your licence to use your TradeBox terms and your TradeBox docs does not allow, permit or sanction the online hosting of your TradeBox terms or your TradeBox docs by anyone other than TradeBox.

3.0 Hosted online terms and conditions

Hosted online terms and conditions not locally available

- 3.1 You agree and accept that the hosted online version of your TradeBox terms will only be

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accessible using the internet (or other connection to [our](#) or a third-party's servers), and will not be available locally from [your](#) own servers or computer systems.

Parts of TradeBox Systems Controlled or Operated by Third Parties

- 3.2 [You](#) agree and accept that [TradeBox](#) is operated from servers, which may include servers owned and controlled by a third party. As such, [you](#) acknowledge that certain functions are out of [our](#) control, including databases and application infrastructure.

Accessibility

- 3.3 From time to time, without notice, access to all or part of the hosted online version of [your TradeBox terms](#) may be disrupted or limited due to [unforeseen events](#). During such an interruption, [we](#) will use reasonable endeavours to restore access to the online version of [your TradeBox terms](#) as soon as practicable.

We can change your TradeBox terms and your TradeBox docs

- 3.4 [We](#) reserve the right to upgrade, maintain, tune, backup, amend, correct any errors, add to or remove features from, redesign, improve or otherwise alter [your TradeBox terms](#) and [your TradeBox docs](#) at [our](#) sole and absolute discretion.
- 3.5 [You](#) acknowledge and agree that [we](#) will not be liable for:
- (a) Any loss or damage that [you](#) or any other person incur by any changes made to [your TradeBox terms](#) and/or [your TradeBox docs](#); and/or
 - (b) [You](#) or another party not being able to access the hosted online version of [your TradeBox terms](#) or any part of it.

Errors

- 3.6 [You](#) agree, accept and acknowledge that there may be technical or administrative errors in the information on the [website](#), including but not limited to errors with respect to document description, pricing and availability.

Backup

- 3.7 [We](#) make no warranties or guarantees, implied or express, in respect of the retention of or continued accessibility of any backups in connection with [your TradeBox terms](#) or [your TradeBox docs](#). In particular, [you](#) accept and agree that [we](#) may not keep previous versions and copies of [your TradeBox terms](#) and/or [your TradeBox docs](#) and [you](#) are responsible for keeping [your](#) own current and historic records.
- 3.8 [You](#) accept and agree it is [your](#) responsibility to keep a copy of each version of [your TradeBox terms](#) and [your TradeBox docs](#).

TradeBox Content

- 3.9 All [content](#) is for informational purposes only and is to be used or relied on at [your](#) own risk.

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3.10 The [content](#) is not legal advice.

3.11 [We](#) make no warranty or representations as to the accuracy of the [content](#).

3.12 [You](#) may not upload or share any material or information which is illegal or prohibited by Australian law.

4.0 Account

4.1 By completing the [engagement form](#) and agreeing to [this agreement](#), [you](#) create an account with [us](#).

4.2 [You](#) undertake that:

- (a) The information that [you](#) have provided during [your](#) completion of the [engagement form](#) is accurate and complete in all respects;
- (b) As primary contact [you](#) have stated [your](#) own name and have not impersonated any other person while completing the [engagement form](#); and
- (c) [You](#) have the authority to represent the person or entity that [you](#) have named in the [engagement form](#).

4.3 [You](#) are solely responsible for:

- (a) The accuracy of the information that [you](#) have provided in the [engagement form](#);
- (b) Ensuring that [you](#) have authority to enter into [this agreement](#) on behalf of the person or entity named in the [engagement form](#).

5.0 Selecting your TradeBox Terms and Conditions Products

5.1 The [website](#) will provide [content](#) about the different types of terms and conditions products available to [you](#).

5.2 [You](#) are solely responsible for deciding which terms and conditions product will make up [your TradeBox terms](#).

5.3 [We](#) may, at [our](#) sole discretion, decline [your](#) order of a terms and conditions product including [you](#) are or represent an excluded person or an excluded entity in accordance with Schedule A, or that [you](#) have provided false or erroneous information on the [engagement form](#).

5.4 During the engagement process, [we](#) may send [you](#) a number of emails, however [you](#) agree that unless [we](#) carry out the actions stated in clause 6.3, [we](#) have not accepted an order of a terms and conditions product by [you](#).

5.5 If [we](#) decline [your](#) order in accordance with clause 5.3, [you](#) agree and accept [we](#) may cancel the order without refund of any payment made.

6.0 Payment

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- 6.1 Your order is an offer to purchase your TradeBox terms that you have selected in your order. By making your order you agree to be bound by this agreement.
- 6.2 We will send an email to you confirming our receipt of your order ('email confirmation'). If you do not receive the email in your inbox, it is your responsibility to check your junk and spam folders.
- 6.3 During the engagement process we may send a number of emails and documents to you. You agree that we only accept your offer once the following has been emailed to you by us:
- (a) Your TradeBox docs; and
 - (b) Our email which confirms payment has been made by you and is entitled "Receipt from TradeBox Australia" and which includes the receipt number in the subject line.
- 6.4 Our setup fees are charged up front and are non-refundable. Our subscription fees are charged monthly in advance.
- 6.5 You authorise us to make the following direct debits from your card:
- (a) The setup fee for your TradeBox terms;
 - (b) The monthly instalments for your TradeBox terms and/or the licence fee; and
 - (c) Our payment processor's fees applied to your transactions.
- 6.6 You must ensure that you will have enough funds on your card for all of the payments identified in clause 1.4(a).
- 6.7 All fees and prices, unless stated otherwise, are inclusive of legally applicable GST. Words defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause.
- 6.8 You may only use Australian issued debit cards or credit cards to make payments to us.
- 7.0 Intellectual Property Rights**
- 7.1 We own or have a license to use or have authorisation to use all intellectual property rights existing in TradeBox property, or any part of it.
- 7.2 You have no ownership or other intellectual property rights or property interest in TradeBox property.
- 7.3 You may not use TradeBox property in any fashion that infringes the copyright or proprietary rights in the TradeBox property.
- 7.4 You warrant that you will not permit any person or entity over whom, or system over which, you have effective control to do any of the following:
- (a) Copy, reproduce or create an adaptation or translation of all or part of TradeBox

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[property](#) in any way except that to the extent that reproduction occurs automatically through the ordinary authorised use of [this agreement](#);

- (b) Incorporate all or part of [TradeBox property](#) in any other webpage, site, application or other digital or non-digital format, without [our](#) express written permission;
- (c) (Subject to other rights explicitly granted under [this agreement](#)) sell, license, sublicense, lease, rent, distribute, disclose, permit access to, or transfer to any third party, whether for profit or without charge, any portion of [TradeBox property](#) on any medium;
- (d) Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, or algorithms contained in [TradeBox property](#) or any documentation or software associated with them;
- (e) Create [your](#) own online hosting system of standard form industry contracts; or
- (f) Obscure or remove the copyright notice or other notices contained on the [TradeBox products](#) or the [TradeBox property](#).

7.5 [You](#) warrant that [you](#) own or have the licence to use the branding that [you](#) provide to [us](#).

7.6 [You](#) grant to [us](#) a limited, non-exclusive, non-transferable and revocable licence to use the [branding](#) that [you](#) have provided to [us](#). In particular, [you](#) grant [us](#) a licence to publish [your branding](#) on the online and PDF versions of [your TradeBox terms](#) and [your TradeBox docs](#).

7.7 [You](#) warrant that the [branding](#) provided does not infringe any [intellectual property right](#).

7.8 [You](#) warrant that [you](#) will not provide any [branding](#) that infringes any [intellectual property right](#).

7.9 [You](#) indemnify [us](#) against claims for infringement of [intellectual property rights](#):

- (a) Arising out of [us](#) carrying out [our](#) obligations; and
- (b) Arising out of the use of the [branding](#) [you](#) provide.

7.10 [You](#) have no obligation to provide [us](#) with feedback.

7.11 If [you](#) provide feedback to [us](#), [you](#) grant [us](#) a non-exclusive, irrevocable, perpetual, royalty-free licence to act on and use your feedback without restriction and without any payment to [you](#).

8.0 Our Obligations

8.1 Subject to this agreement, [we](#) will provide to [you](#) a 12-month licence to use:

- (a) [your TradeBox terms](#); and
- (b) [your TradeBox docs](#).

8.2 [We](#) will provide [your TradeBox products](#) itemised in clause 8.1(b) above, within 7 days of [you](#) completing the online purchase.

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- 8.3 We will mark [your TradeBox terms](#) and [your TradeBox docs](#) with [your](#) logo, business name and address details that [you](#) have provided as part of the [engagement form](#). Where on [your TradeBox terms](#) and [your TradeBox docs](#) with [your](#) logo, business name and address details will be marked, is at [our](#) sole discretion.
- 8.4 If templates are included as part of [your TradeBox docs](#), templates will be provided:
- (a) In Microsoft Word .docx format (for Microsoft Windows) and will be capable of being changed and modified; and
 - (b) Without [your](#) logo, business name and address details. It is [your](#) responsibility to complete the templates with the appropriate information.
- 8.5 We will update [your TradeBox terms](#) and [your TradeBox docs](#) from time to time. When the updates occur, and the substance of the updates, is at [our](#) sole discretion.
- 8.6 The online hosted version of [your TradeBox terms](#) will not be downloadable or printable.
- 9.0 Your Obligations**
- 9.1 [You](#) warrant that all of the information that [you](#) provide to the company is accurate and complete in all respects.
- 9.2 [You](#) undertake:
- (a) To only use [TradeBox property](#) for lawful purposes;
 - (b) To bear all [your](#) own costs associated with [your](#) obligations in [this agreement](#);
 - (c) To take any and all necessary safeguards to ensure that no unauthorised person uses [your TradeBox products](#) or [TradeBox property](#); and
 - (d) Not to disable or circumvent any protection or disabling mechanism related to [your TradeBox products](#) or [TradeBox property](#).
- 9.3 [You](#) are responsible for the breach of any undertaking or warranty in this clause, regardless of whether that breach is caused by a security breach of any kind.
- 9.4 [You](#) are responsible for correctly inserting the link and linking sentence to the hosted version of [your TradeBox terms](#) into [your](#) accounting software quote template, if [we](#) do not provide [you](#) with a template as part of [your TradeBox docs](#).
- 9.5 [You](#) are responsible for [your](#) quoting, the level of information [you](#) include in [your](#) quotes and its pricing.
- 9.6 [You](#) are responsible for any business agreement [you](#) enter into. [Your TradeBox terms](#) and [your TradeBox docs](#) will not protect [you](#) from entering a bad business deal and any agreement [you](#) enter using [your TradeBox terms](#) and/or [your TradeBox docs](#) is entirely at [your](#) own risk.
- 9.7 If [we](#) provide a template to [you](#) as part of [your TradeBox docs](#), [you](#) are responsible for:

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- (a) Making the appropriate changes and edits to the templates to personalise them to **your** business needs, such as **your** logo and address details; and
- (b) Correctly completing the templates to ensure that **you** comply with **your** licensing obligations and protect **your** contractual interests.

10.0 Privacy

10.1 **You** agree and consent to **us** handling **your personal information** in accordance with **our privacy policy**.

10.2 **We** may change **our privacy policy** at any time by giving notice to **you**.

10.3 **We** may make any changes to **your TradeBox products** that **we** consider, at **our** sole and absolute discretion to be beneficial for compliance with:

- (a) **Privacy law**;
- (b) Any guidance issued by the Office of the Australian Information Commissioner, and **we** will notify **you** of any such change

11.0 Warranty

11.1 **We** make no warranties or guarantees:

- (a) That **your TradeBox docs** and the hosted online version of **your TradeBox terms** or the **website** will be accessible at all times, uninterrupted or error free;
- (b) That **your TradeBox docs** and the hosted online version of **your TradeBox terms** or the **website** will operate and be accessible across all types of computing devices (including tablets, mobile phones, laptops, personal computers), computing devices' operating systems or computing devices' browsers;
- (c) That **your TradeBox products** and the **website** are without bugs or viruses;
- (d) That any of the technical information is without error or inaccuracy;
- (e) That **your TradeBox products** and the **website** are immune to unauthorised access or security breach; and
- (f) In respect of the retention of, or continued accessibility of, any information including data.

12.0 Third Party Websites and Advertising

12.1 The **website** or **our** communications with **you** may contain hyperlinks, images, banners, information and advertising from third parties. **You** consent to receiving this information as part of **your** use of **our TradeBox property**.

12.2 **We** are not responsible for any information transmitted by third parties nor are **we** responsible

for the accuracy of any advertisements.

12.3 **You** decision to click on any third party advertisements or decision to accept any third party offer, is entirely at **your** own risk.

13.0 Liability

13.1 **You** acknowledge and agree that:

- (a) **Your** use of **TradeBox** is at your own risk; and
- (b) We are not responsible for the conduct or activities of any other user of **TradeBox** property.

13.2 If **you** are a consumer within the meaning of the **Consumer Law**, there are certain rights (such as the consumer guarantees implied by the **Consumer Law**, which cannot by law be excluded (**non excludable condition**)). This clause is subject to those **non excludable conditions**.

13.3 Subject to the application of any applicable **non excludable condition** and to the maximum extent permitted by law, **we**:

- (a) Exclude from **this agreement** all guarantees, conditions and warranties that might but for this clause be implied into **this agreement**;
- (b) Exclude **our** liability to **you** whether arising under or in connection with **this agreement** or the performance or non-performance of **this agreement** or anything incidental to **this agreement** and whether by way of indemnity, by statute, in tort (for negligence or otherwise) or on any basis in law or equity; and
- (c) Will not, under any circumstances, be liable to **you** for any **consequential loss**.

13.4 If **our** liability under **this agreement** cannot be lawfully excluded, to the maximum extent permitted by law, **our** liability for breach of any **non excludable condition** is limited:

- (a) In the case of goods, to (at **our** option) the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired;
- (b) In the case of **services**, to (at **our** option) the supplying of the **services** again; or the payment of the cost of having the **services** supplied again.

14.0 Indemnity

14.1 **You** indemnify **us**, including **our** directors, employees, contractors, suppliers, agents, subsidiaries and related bodies corporate against all costs suffered or incurred by **us**, however caused, arising wholly or partially, directly or indirectly, in connection with **this agreement** or **your** use of **TradeBox** property, including any costs arising directly or indirectly from:

- (a) **Your** breach of this agreement;

- (b) Your infringement of any third party intellectual property rights while using TradeBox property;
- (c) Any harm to, claim or action by a third party arising directly or indirectly from your use of TradeBox property; or
- (d) Your breach of any privacy laws.

15.0 Dispute Resolution

15.1 Subject to clause 15.1(f) any dispute which arises between the parties in connection with this agreement (dispute) must be dealt with in accordance with the requirements of this clause 15.0, before either party will be entitled to commence proceedings against the other party in respect of the dispute.

- (a) The party claiming that a dispute has arisen (complainant) must give the other party a written notice setting out a detailed explanation of the nature of the dispute; and what action the complainant thinks will resolve the dispute (dispute notice).
- (b) Within 10 business days of the dispute notice being received by the other party:
 - i. A nominated senior executive of each party must meet in either Brisbane City or Redland City, Queensland at a location nominated by us (unless otherwise agreed between the parties) or meet by live video using an online meeting platform nominated by us, or meet by phone using a phone conference system nominated by us
 - ii. Act in good faith and use best endeavours to resolve the dispute at that meeting, or such subsequent meetings as may be reasonably required; and
 - iii. We will decide the form of meeting to take place at our sole discretion, from the meeting options set out in clause 15.1 (b) i.
- (c) If the dispute is not resolved in accordance with clause 15.1(b) within 15 days of the dispute notice being received by the other party, the parties agree to attend a privately held mediation with a mediator, agreed on by the parties. If the parties are unable to agree on a mediator within 7 days, the mediator will be appointed by the President of the Resolution Institute. If the dispute is not resolved within a further 30 days in accordance with clause 15.1(c) then either party may commence proceedings against the other party in respect of the dispute.
- (d) Nothing in this clause 15.0 prevents a party from seeking urgent injunctive or similar relief from a court.

15.2 The dispute resolution procedure set out in this clause 15.0 will not apply in any instance where we seek to enforce a debt in connection with this agreement.

16.0 Period of Agreement

16.1 This agreement is for the minimum period of 12 months.

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- 16.2 **This agreement** will automatically renew on the day after the expiry of the 12-month period ('renewal') for an additional 12 month term, unless **you** provide **us** with a notice of termination in accordance with clause 1.7 or 17.1(a).
- 16.3 If **this agreement** automatically renews in accordance with clause 16.2, the price payable for **your TradeBox products** will be the price payable in the immediately preceding 12 months plus an annual adjustment (if any). A pre-determined annual adjustment may be specified in **your** written agreement with **us**, or if not, **we** will notify **you** of the adjustment at least 20 days before the renewal date.

17.0 Termination

- 17.1 Either party may terminate **this agreement** by providing written notice to the other party, on the basis that:
- (a) **You** may terminate this agreement, in whole or in part by giving **us** at least 30 days' written notice, to expire at the end of the final day of the 12-month period.
 - (b) **We** may terminate this agreement (in whole or in part) by giving **you** at least 60 days' written notice. **Our** only obligation in this event may be a pro rata refund of any charges paid by **you** in advance subject to clause 18.0.
- 17.2 On termination of **this agreement**, any licence granted under **this agreement** terminates (including the licence described and defined in clauses 1.0 and 2.0).

18.0 Suspension of Services

- 18.1 **We** may suspend or discontinue providing the **services** and/or **your TradeBox products** to **you** without notice and pursue any other remedy legally available to **us** if **you** fail to comply with any of **your** obligations in **this agreement**. In particular, **we** may suspend or discontinue providing the **services** and/or **your TradeBox products** to **you** if **you**:
- (a) Fail to ensure there are sufficient funds on **your card**, for the monthly fee to be deducted;
 - (b) Breach any of **your** obligations or undertakings in this agreement and either:
 - i. The breach is incapable of being remedied; or
 - ii. If the breach is capable of being remedied, **you** have failed to remedy the breach within 2 **business days** after **we** have notified **you** of the breach.
- 18.2 We will suspend or discontinue providing the **services** and/or **your TradeBox products** to **you** without notice and pursue any other remedy legally available to **us** if **you** have breached clauses 1.4(g), 7.3, or 7.4 in **this agreement**. **You** agree to pay **us** the **breach administration fee**, in addition to any fees **you** have already paid **us**, if **you** have breached clauses 1.4(g), 7.3, or 7.4 of **this agreement**.
- 18.3 In accordance with clause 18.2, **you** agree that any fees **you** have already paid **us** prior to **your** breach including **setup fees, licence fees, payment processor fees** and tax are not refundable to **you** and **you** have no claim to the services for which the fees had been paid.

19.0 Communication

19.1 In accordance with the Electronic Transactions (Queensland) Act 2001, the parties agree:

- (a) To receive information electronically including by email and text message.
- (b) [This agreement](#) can be accepted electronically and does not need to be physically signed.
- (c) [This agreement](#) and any documents created by the parties relating to [this agreement](#) can be signed electronically.

19.2 A notice under [this agreement](#) must be given by email and is deemed to be received when the email is capable of being retrieved by the addressee at an email address designated by the addressee.

19.3 [Our](#) designated email address is community@tradebox.com.au and any other designated email address the company notifies [you](#) of from time to time.

19.4 [Your](#) email address is the email address that [you](#) stated in [your](#) account details in the [engagement form](#).

20.0 Confidentiality

20.1 A party will not, without the prior written approval of the other party, disclose the other party's [confidential information](#).

20.2 A party will not be in breach of this confidentiality clause in circumstances where it is legally compelled to disclose the other party's [confidential information](#).

20.3 Notwithstanding any other provision of this clause, a party may disclose the terms of [this agreement](#) (other than [confidential information](#) of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.

20.4 Each party will take all reasonable steps to ensure that its employees and agents, and any subcontractors engaged for the purposes of [this agreement](#), do not make public or disclose the other party's [confidential information](#).

21.0 Our Relationship with you

21.1 [Our](#) relationship with [you](#) under [this agreement](#):

- (a) Does not form a joint venture, partnership or agency; and
- (b) Does not form a solicitor/client relationship.

21.2 [TradeBox](#):

- (a) Does not represent or advise clients or customers in any matter;

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- (b) Does not provide advice, legal or otherwise; and
- (c) Is not a law practice.

21.3 The [services](#) and the [TradeBox products](#) do not include:

- (a) The provision of legal advice, legal services, legal opinion or legal representation whatsoever on behalf of [us](#) or [our](#) personnel;
- (b) [Our](#) staff, contractors, other personnel or organisation turning their minds to [your](#) individual legal or business needs;
- (c) [Us](#) considering the information provided by [you](#);
- (d) [Us](#) determining or advising [you](#) as to which standard form terms and conditions, templates, schedules and terms and conditions products [you](#) should select as [your TradeBox terms](#).

21.4 It is [your](#) responsibility to obtain [your](#) own legal advice for [your](#) particular circumstances.

22.0 Miscellaneous

22.1 [You](#) cannot assign, novate or otherwise transfer any of [your](#) rights or obligations under [this agreement](#) without [our](#) prior written consent.

22.2 [We](#) may assign, novate or otherwise transfer any of [our](#) rights or obligations under [this agreement](#) to a third party without notice to, or the prior consent of, [you](#), but if [we](#) require, [you](#) will sign any documents to give effect to an assignment, novation or transfer by [us](#) under this clause.

22.3 The laws of the state of Queensland govern [this agreement](#) and each party submits to the non-exclusive jurisdiction of the courts in that jurisdiction. Any legal action arising out of or in respect of this agreement and/or its interpretation can be brought only in the Courts of Brisbane in the State of Queensland.

22.4 The parties agree to do everything required to give full effect to [this agreement](#).

22.5 [This agreement](#) and any other document incorporated by reference constitute the entire legal agreement. The parties agree that they have not relied on any representation or statements outside the terms of [this agreement](#).

22.6 The documents constituting [this agreement](#) may be executed in a multiple counterparts. The counterparts will be read as one legal document.

22.7 No right or obligation under [this agreement](#) will be waived unless the waiver is explicitly waived in writing

22.8 Any unenforceable or invalid term of [this agreement](#) will be severed to the extent of the unenforceability or invalidity without affecting any other term in [this agreement](#).

22.9 **This agreement** is binding on each party's successors and permitted assigns.

23.0 Definitions and Interpretation

23.1 Definitions

In **this agreement**, unless the context or subject matter requires otherwise:

Breach administration fee means either:

- Two times the **licence fee** (including GST and **our** payment processor fees), if **we** have supplied **you** with the terms and conditions product **you** selected; or
- Two times the **setup fee** (including GST and **our** payment processor fees), if **we** have not supplied **you** with the terms and conditions product **you** selected;

Branding means business and/or trading names (whether or not registered with ASIC), company names, logos, pictures, images, trade marks, and anything used to describe or identify in words or visually a brand or business;

Business day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Brisbane, Queensland;

Claim means a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against a person, however arising and whether: ascertained or unascertained; immediate, future or contingent; and subject of a dispute, litigation, arbitration, mediation, conciliation or administrative proceedings;

Confidential information means information that is by its nature confidential, including but not limited to information relating to the:

- (a) Personnel, policies, practices, clientele or business strategies of the parties;
- (b) **Intellectual property rights** of either party;
- (c) The terms of the Agreement;

but does not include information:

- (d) Already rightfully known to the receiving party at the time of disclosure by the other party; or
- (e) In the public domain (including information made publicly available via a mechanism on the **website**) other than as a result of disclosure by a party in breach of its obligations of confidentiality under the Agreement;

Consequential loss means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages;

Consumer law means the Competition and Consumer Act 2010 (Cth) or similar applicable legislation;

Content means all information, graphics, HTML, text, software, videos, blogs and materials on the **website** or special posts or pages;

Information update fee is a fee **we** charge **you** if **you** request that **your** information or **branding** on

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your TradeBox docs is changed or updated. The **information update fee** must be paid by **you** before any updates or changes are carried out by **us**. The **information update fee** is the same as the **setup fee**;

Engagement form means forms **we** host on **our website** for **our** customers and potential customers to use to select, register for and subscribe to **our** trade contract doc products. An **engagement form** may be one or several forms linked together, with one of the following phrases in their form title:

- "Trade Contract Doc Selection";
- "Engagement Form";
- "Your Subscription Order";

Feedback means comments, ideas, data, documents, suggestions, messages, links, images, bugs or crash reports;

Intellectual property right means all present and future rights conferred by statute, common law or equity in or in relation to business names, circuit layouts, computer software, **confidential information**, copyright, designs, domain names, formulas, inventions, knowhow, patents, plant varieties, recipes, trademarks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right;

Licence fee is the "Total Monthly Fee" stated on **our engagement forms** multiplied by 12, including GST and including payment processor fees;

Monthly instalment is the "Total Monthly Fee" stated on the **engagement form**, including GST and including payment processor fees;

Non excludable condition is a consumer guarantee implied by the **consumer law**, which cannot by law be excluded;

Notice of change is a written notice from **us**, notifying **you** of a change to **this agreement**;

Period of this agreement is 12 months;

Personal information has the meaning given to that term in the Privacy Act 1988 (Cth);

Pick and Mix product means a product listed and identified as a "Pick and Mix" product listed in the Product column in the Trade Contract Doc Fees table on **our engagement forms**;

Privacy policy means **our** privacy policy available on the **website** from time to time;

Privacy law means Privacy Act 1988 (Cth);

Representative means an employee, officer, director, auditor, advisor, researcher, partner, consultant, contractor, sub-contractor or related entity of that person or of a related body corporate of that person;

Services means publishing **your TradeBox products** and hosting **your TradeBox terms** online.

TradeBox property means **TradeBox products**, **Tradebox branding**, **TradeBox's intellectual property rights** and includes all material (including tangible and intangible information), any wording provided for quotes, links to online hosted **your TradeBox terms**, software (in source and object code forms), marking **your TradeBox terms** and **your TradeBox docs** with **your** logo, business name and address details provided by **you**, web applications, images, files, manuals, documents, devices, data,

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databases, supplied, created, written, developed or otherwise brought into existence (whether before, on or after the date of [this agreement](#)) by [us](#) or on [our](#) behalf, and all their subsequent versions, updates and enhancements;

[Setup fee](#) is the "Total Setup Fee" stated on [our engagement forms](#), including GST and including payment processor fees;

[This agreement](#) means these terms and conditions of use and [our engagement forms you](#) completed when [you](#) selected [your TradeBox terms](#) and conditions products. If there is a conflict between the documents and forms making up this agreement, the documents and forms should be read in the following order of precedence;

- (a) These terms and conditions of use; and
- (b) [Our engagement forms](#);

[TradeBox](#) means TradeBox Pty Ltd trading as [TradeBox](#) and [TradeBox Australia](#), ACN 618 832 321, ABN 58 618 832 321 and its subsidiaries and related bodies corporate;

[TradeBox product](#) means the products available on the [TradeBox website](#) including [TradeBox terms](#) and [TradeBox docs](#);

[TradeBox type](#) means one of the contract product types listed in Schedule B.

[Unforeseen event](#) means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption including but not limited to the effects of a computer virus, trojan, malware or other malicious code;

[We, us, our](#) means TradeBox Pty Ltd trading as [TradeBox](#) and [TradeBox Australia](#) ACN 618 832 321, ABN 58 618 832 321 and its subsidiaries and related bodies corporate;

[Website](#) means www.tradebox.com.au and any other subdomains of www.tradebox.com.au, and any other applications, software, platforms, and /or domains belonging to [us](#) or third parties, which [we](#) use with/or link to www.tradebox.com.au for [our website](#);

[You, your](#) means:

- (a) The entity or person named in the [engagement form](#) as the customer (including all employees, owners, directors, agents and the person completing the form on the customer's behalf); or
- (b) The person completing the [engagement form](#), if the person completing the [engagement form](#) does not have authority to enter this agreement on behalf of the entity or person named in the [engagement form](#);

[Your card](#) means the credit card or debit card, for which [you](#) give [us](#) the details of and authority to charge, including to debit on a monthly basis [your](#) payments for [your](#) subscription with [us](#);

[Your TradeBox docs](#) means:

- (a) A PDF version of [your TradeBox terms](#);
- (b) A template in Microsoft Word (for Microsoft Windows), if included in the product package for [your TradeBox terms](#); and
- (c) A link to [your TradeBox terms](#) hosted online by [us](#);

[Your TradeBox products](#) means [your TradeBox docs](#) and [your TradeBox terms](#);

Your TradeBox terms means the TradeBox terms and conditions that you have selected with your selected schedules (if any) in all formats including the hosted online version or the PDF version;

23.2 Interpretation

Unless the terms and conditions of this agreement explicitly state otherwise, this agreement will be interpreted as follows:

- (a) A reference to a party includes that party's permitted assigns, administrators, successors, executors, representatives and any novated party;
- (b) Any reference to a trustee includes any substituted or additional trustee;
- (c) Unless used for the usual grammatical purpose, inverted commas around a term indicate industry jargon that will be interpreted according to how that term would be understood by an individual with expertise in the relevant industry;
- (d) "including", "includes" or any derivation of those words does not limit the matter in question to the things specifically mentioned in the applicable context;
- (e) Where a term is defined, other grammatical forms of that term will be taken to have the same meaning;
- (f) Headings are for convenience and will not affect interpretation;
- (g) Words in the singular will be taken to include the plural and also the opposite;
- (h) "\$" means the Australian dollar;
- (i) A reference to a document will be to that document as updated, varied or amended;
- (j) A document referenced by this agreement will not take precedence over the referencing document;
- (k) When any kind of legislative instrument is referenced, the reference will be taken to be that instrument as updated or substituted for by the legislative body in any way;
- (l) Where a "URL" is mentioned, the non-operation of the "URL" will not render the rights and obligations associated with it invalid;
- (m) Any referenced digital resource may be replaced with another digital resource that is a "copy" of the original resource;
- (n) A reference to a party's conduct includes omissions as well as acts;
- (o) If a party is described as having discretion in a matter, the discretion in that matter will be interpreted as sole and absolute; and
- (p) Where a party is required to do "anything necessary", this includes executing agreements and other legal instruments.

Schedule A: Excluded People and Entities

People and entities listed in this schedule are not permitted to enter into [this agreement](#) with [us](#). Specific people or entities who would otherwise be considered excluded in accordance with Schedule A, may enter into this agreement with [us](#) by having explicit written permission from [us](#) and [we](#) may withdraw that permission at [our](#) sole discretion at any time. At [our](#) sole discretion:

- (a) [We](#) determine the form, the content and the duration of [our](#) explicit written permission; and
- (b) [We](#) may change Schedule A at any time, including the excluded people and entities listed in this schedule.

The excluded people and entities are listed below:

- (1) All people and entities outside Australia;
- (2) All who do not work as, or do not work as an employee or principal of, a subcontractor or trade contractor in the building and construction industry in Australia;
- (3) All who do not primarily work in the building and construction industry in Australia;
- (4) All incorporated and unincorporated industry associations and societies, including staff, personnel and contractors employed and/or engaged by those industry associations and societies;
- (5) All legal practitioners and law practices, including staff, personnel and contractors employed and/or engaged by those legal practitioners and law practices;
- (6) All bookkeeping and accounting practitioners and practices, including staff, personnel and contractors employed and/or engaged by those practitioners and practices; or
- (7) All who do not have and operate under a current, valid ABN while working in the building and construction industry in Australia.

Schedule B: TradeBox Type

The following are [TradeBox types](#), being different types of base contracts. We note that some of these [TradeBox](#) types may not be currently available to purchase:

- i. Queensland commercial;
- ii. Queensland domestic building level 1 regulated; and
- iii. Queensland domestic building level 2 regulated;

Schedule C: Issues and Limitations

- 13 Sep 2020: First observed by us on 4 Sep 2020, the PDF version of [your TradeBox terms](#) cannot be opened for direct viewing in the default PDF viewing application deployed by Apple on an iPhone XS;
 - We have observed an iPhone XS operating the Adobe Acrobat Reader DC application [version 20.08.00 (20200818.142433)] successfully opened for viewing, PDF versions of "your TradeBox terms" documents;
 - Based on our observation, we believe, but do not confirm (in accordance with clause 1.4(j)):
 - That the PDF version of [your TradeBox terms](#) may not open for viewing in the default PDF viewing application deployed by Apple on all Apple iOS devices;
 - That the PDF version of [your TradeBox terms](#) may open for viewing in an Adobe Acrobat Reader DC application, when that Adobe application is installed on Apple iOS devices;