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## REAL BYTES PTY LTD ACN 620 082 706 TERMS AND CONDITIONS

### DEFINITIONS

#### 1. In this Agreement, the following definitions apply:

- (a) **"Agreement"** means this Agreement between the Parties, incorporating these Terms.
- (b) **"Company"** means Real Bytes Pty Ltd ACN 620 082 706 and its subsidiaries as defined in the *Corporations Act 2001* (Cth) and each of its servants or agents.
- (c) **"Goods"** means any products and/or goods provided or sold to You by the Company. This may be detailed in our Letter of Engagement or described in invoices.
- (d) **"Parties"** means the Company and You.
- (e) **"PPSA"** means the *Personal Property Securities Act 2009*.
- (f) **"Price"** or **"Prices"** means the Price and/or Prices for the Goods and Services as detailed in the Quote.
- (g) **"Quote"** means the written quote given with these Terms.
- (h) **"Secured Money"** means any monies secured by the Company by way of a security interest.
- (i) **"Services"** means the services detailed in the Quote.
- (j) **"Terms"** means these Terms and Conditions.
- (k) **"Website"** means [www.realbytes.com.au/](http://www.realbytes.com.au/).
- (l) **"You"** or **"Your"** means any person, firm, corporation, government, semi-government or local government department or authority, its successors, assignees, trustees, administrators or liquidators, to whom or to which Goods and Services are provided or sold to by the Company.

### GENERAL PROVISIONS

#### 2. Applicability and Acceptance of these Terms and Conditions

- 2.1 By entering into this Agreement, approving the Quote and/or purchasing Goods and Services from the Company, You accept and agree to be bound by these Terms.
- 2.2 The Company may make changes to these Terms from time to time to accommodate changes in law, business practice or the introduction of new Goods or Services without notice to You or by general notice on the Website.

### PRICES AND CHARGES

#### 3. Supply of Goods and Services

- 3.1 The supply of Goods and Services is contingent upon You complying with this Agreement.
- 3.2 The supply of Goods and Services by the Company is subject to availability of the Goods and Services.
- 3.3 Any order cancellation must be in writing and is subject to the Company's approval.

#### 4. Prices

- 4.1 Unless otherwise stated, all wholesale Prices quoted are exclusive of settlement discount and GST, duty, taxes or any other statutory charge or fee payable in connection with the sale of the Goods to You by the Company.
- 4.2 The Company reserves the right to amend rates and/or Prices from time to time without prior notice to You.
- 4.3 All Prices do not include shipping and posting costs.

#### 5. Title

Until each invoice is paid in full, ownership of all Goods supplied remains with the Company.

#### 6. Risk

The risk of the Goods passes to You on delivery, and delivery to the carrier constitutes delivery. The Company accepts no responsibility for the Goods once they have been delivered to You.

### CREDIT ACCOUNT

#### 7. Credit Terms

- 7.1 Payment of all accounts shall be made in accordance with the payment terms noted on the invoice.
- 7.2 When making a payment, you agree:
  - 7.2.1 to include the invoice number as the reference to ensure the payment is allocated to Your account in the correct manner; and
  - 7.2.2 if Your payment does not reflect the statement amount, a brief note must be included regarding any variations.
- 7.3 The Company may at any time without notice, terminate or suspend Your right to purchase Goods and Services from the Company on credit and shall not be liable

for any damages, costs, penalties or charges incurred by You as a result of the non-supply of the Goods and Services by the Company.

- 7.4 The Company reserves its rights to automatically suspend all accounts unpaid at fourteen (14) days from the due date for payment, no further orders will be shipped, and we will suspend all further Services to be provided to You.
- 7.5 Suspended accounts may attract a default account keeping fee of two percent (2%) per month or \$25.00 per invoice whichever is the greater amount, until the account is returned to the agreed trading terms. You agree that that this is a fair and reasonable charge and is directly relevant to the likely damage that the Company might suffer as a result of non-payment by You. Interest will be calculated on all outstanding amounts from the date of issue of the outstanding invoice.
- 7.6 All invoices shall immediately become due and payable in the event of default on payment by You of any invoice or account, regardless of whether or not some invoices may not otherwise have become due for payment.

#### 8. Credit History

- 8.1 You hereby give the Company authority to make enquiries as to the credit and financial responsibilities of You and/or Your Directors and/or Shareholders in order to suitably qualify Your capacity to incur debt and repay any amounts to the Company. These enquiries shall include but not be limited to obtaining reports from credit reporting agencies and references from current and/or past providers of credit to You.
- 8.2 In accordance with section 18E(8)(c) of the *Privacy Act 1988* (Cth), You acknowledge that the Company has informed You that certain items of personal information about You contained in or relating to Your Application for Credit, and permitted to be kept on a credit information file, might be disclosed to a credit reporting agency. Furthermore, You agree, in accordance with s18H(3), s18K(1)(b), s18K(1)(c), s18K(1)(h) and s18N(1)(b) of the *Privacy Act 1988* (Cth) that use by the Company of the relevant information referred to in those sections may occur for the purpose of assessing Your credit application.

### SECURITY AND CHARGES

#### 9. Lien

The Company reserves the following rights in relation to the Goods until all amounts owed by You to the Company are fully paid:

.....  
Initial (s)

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- 9.1 Ownership of the Goods remain with the Company.
- 9.2 You authorise an authorised agent or representative of the Company to enter Your premises (or the premises of any associated Company) where the Goods are located, without liability for trespass or any resulting damage, and retake possession of the Goods and You agree that the Company has an irrevocable license to do so.
- 9.3 You authorise the Company to keep or resell any Goods repossessed pursuant to Clause 11 of this Agreement.
- 9.4 If the Goods are resold by You, You shall hold such part of the proceeds of any such sale as represents the invoice Price of the Goods sold in a separate identifiable account as the beneficial property of the Company and shall pay such amount to the Company upon demand.
- 9.5 Notwithstanding the above, the Company shall be entitled to maintain an action against You for the invoice Price.
- 9.6 In connection with the Goods, while they remain the property of the Company, You agree that:
- 9.6.1 You have no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation that the Company may owe You;
- 9.6.2 You cannot claim any lien over the Goods;
- 9.6.3 You warrant and undertake that You will not create any absolute or defensible interest in the Goods in relation to any third party except as may be authorized by the Company in writing; and
- 9.6.4 where You are in actual or constructive possession of the Goods:
- 9.6.4.1 You will not deliver them or any document of title to the Goods to any person except as directed by the Company; and
- 9.6.4.2 You are in possession of the Goods as a bailee of the Goods and owe the Company the duties
- and liabilities of a  
bailee.
- 9.7 Pending payment in full for the Goods, You:
- 9.7.1 must not supply any of the Goods to any person outside of its ordinary or usual course of business;
- 9.7.2 must not allow any person to have or acquire any security interest in the Goods;
- 9.7.3 must insure the Goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorized to conduct the business of insurance in the place where You carry on business.
- 9.8 Despite the above provisions, if You supply any of the Goods to any person before all moneys payable by You have been paid to the Company (and have not been claimed or clawed back by any person standing in the place of or representing You), You agree that:
- 9.8.1 it holds the proceeds of re-supply of the Goods on trust for and as agent for the Company immediately when they are receivable or received;
- 9.8.2 You must either pay the amount of the proceeds of re-supply to the Company immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit taking institution as trustee for the Company.
- 10. Charges**
- 10.1 As security for payment to the Company of all moneys payable by You and for Your obligations generally under this Agreement, You charge in favour of the Company the whole of your undertaking, property and assets (including without limitation all of your interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired. You irrevocably appoint each officer as your attorney to do all things necessary to create and register each such charge.
- 11. Personal Property Securities Act 2009 (Cth)**
- 11.1 You acknowledge that this Agreement will constitute a security agreement which create a security interest in favour of the Company over all Your present and after acquired property, including all Goods supplied by the Company to You, to
- secure the payment of the Price or any other amount owing under this Agreement from time to time including further advances.
- 11.2 You acknowledge that by accepting this Agreement and by virtue of the retention of title clause as provided for in Clause 7 of this Agreement, the security interest is a purchase money security interest ("PMSI") as defined under Section 14 of the PPSA for all present, after acquired Goods including any Commingled Goods.
- 11.3 The security interest will continue to apply as an interest in the Collateral for the purposes of PPSA with priority over registered or unregistered security interest.
- 11.4 The Company may register the security interest as PMSI on the Personal Property Securities Register ("PPSR") under the PPSA without providing further notice to You.
- 11.5 You agree the Company is not required to disclose information pertaining to the Company's security interest to an interest party unless required to do pursuant to PPSA or under the general law.
- 12. Undertaking**
- You agree and undertake:
- 12.1 to sign any documents and/or provide further information reasonably required by the Company to register financing statement or financing change statement on the PPSR;
- 12.2 to indemnify the Company for all expenses and/or costs incurred by the Company in registering a financing statement or financing change statement on PPSR including the costs of amending, maintaining, releasing and enforcing any security interest in the Goods;
- 12.3 not to register and/or make a demand to alter a financing statement in the collateral without prior written consent of the Company;
- 12.4 to provide the Company with 7 days' written notice of any change or proposed change to Your company name, address, contact details or other changes in Your details registered on the PPSR;
- 12.5 to waive any rights of enforcement under Section 115 of the PPSR for Collateral not used predominantly for personal, domestic or household purposes; and



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12.6 to waive any rights to receive verification statement in respect of any financial statement or financing charge statement under Section 157 of the PPSA.

**DEFAULT**

**13. Default**

In the event that you Default on these Terms, You consent to pay the Company any costs, charges and expenses (including legal fees and costs on a full indemnity basis as a liquidated debt) incurred by the Company in connection with the entry into this Agreement, the exercise or attempted exercise of any power, right or remedy under these Terms and/or the failure of You to comply with these Terms.

**MISCELLANEOUS**

**14. No Guarantee**

The Company makes no guarantee that the investigations undertaken by the Company following a cyber incident will confirm whether data has been released to third parties.

**15. Limitation of Liability**

15.1 The Company shall not be liable for any contingent, consequential, direct/indirect or punitive damages or loss arising, in relation to the ownership or use of the Goods, whatsoever. You acknowledge this express limit or liability and agrees to limit any claim accordingly.

15.2 The Company shall not be liable for any loss or damage incurred as a result of:

15.2.1 Your failure to disclose all information necessary for the Company to carry out the Services;

15.2.2 Your failure to follow the recommendations provided by the Company; or

15.2.3 any data which is released following a cyber incident which occurred prior to the commencement of the Services.

15.3 The Company's maximum liability for any damage or loss arising in relation to the Services is the Price of those Services.

15.4 The Company will not be held liable for any loss or damage incurred due to a Force Majeure, which means any cause outside the parties' reasonable control, including but not limited to an act of God, government or quasi government, act or regulation, riot, act of terrorism, war, flood, fire, industrial disputes and epidemics or any risks to health or safety.

**16. Reporting**

You acknowledge that, in accordance with the *Security of Critical Infrastructure Act 2018* (Cth), where You are a victim of a cyber incident and have not reported it to the Australian Signal Directorate's Australian Cyber Security Centre (ACSC) the Company obligated to report the cyber incident to the ACSC.

**17. Jurisdiction**

17.1 This Agreement is deemed to have been entered into in the State of Queensland, Australia. Any legal action arising out of, or in respect of this Agreement and/or its interpretation must be brought only in the State of Queensland or another jurisdiction if it is deemed appropriate by the Company.

17.2 The parties further agree to issue any proceedings in the Brisbane registry of the appropriate court having monetary jurisdiction over the matter or another jurisdiction if it is deemed appropriate by the Company.

**18. Amendment**

The terms contained in this Agreement are binding, and cannot be altered except by clear, written acceptance of the alteration by the Company and You.

**19. Counterparts**

This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same Agreement. The Agreement may be entered into by and becomes binding on the parties named in the Agreement upon one party signing the Agreement that has been signed by the other (or a photocopy or email copy of that Agreement) and transmitting a email copy of it to the other party.

**ACKNOWLEDGMENT**

**20. Acknowledgment**

20.1 You acknowledge that You have carefully read, fully understood and agreed to be bound by all the provisions of this Agreement.

20.2 The Company will not be liable for any loss and/or damages suffered whatsoever, whether directly and/or indirectly, from Your failure to obtain independent legal advice in relation to this Agreement.

I/We the undersigned declare that all information provided to the Company for the purposes of assessing Your suitability for credit, purchase and rental is true and correct in every particular.

I/We the undersigned further acknowledge that I/we have read understand and agree to the terms of this Agreement.

**Client to complete the below and initial each page.**

COMPANY NAME

.....

TRADING NAME (if applicable)

.....

PRINT NAME

.....

TITLE

.....

SIGNATURE

.....

DATE

.....

.....  
Initial (s)