

TERMS AND CONDITIONS

Certain legislation in Australia may provide consumer guarantees or impose obligations on Rapid Global which cannot be excluded, restricted or modified, or only to a limited extent. These terms and conditions are subject to such legislation, including without limitation the Australian Consumer Law.

1. DEFINITIONS AND INTERPRETATION

In this document:

Australian Consumer Law means the law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Authorised Users means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services under these terms and conditions.

Business Day means a day on which all banks (as defined in the *Banking Act 1959*) with offices in the City of Adelaide are open for business in the City of Adelaide.

Business Hours means between the hours of 9.00am and 5.00pm.

Confidential Information means all information provided by one party to the other in connection with these terms and conditions where such information is identified as confidential at the time of its disclosure or ought reasonably be considered confidential based on its content, nature or the manner of its disclosure, but excluding information that enters the public domain or is disclosed to a party by a third party, other than through a breach of these terms and conditions and information developed independently by a party.

Commencement Date means the date set out in an Order Acknowledgement or the date that access is provided to the Services or Software is downloaded.

Customer means the customer specified in an Order, Order Acknowledgement, Rapid Global's invoice or quotation or the person or entity that acquires the Services from Rapid Global.

Customer Data means all works and materials:

- uploaded to, stored on, processed using or transmitted via the Services by or on behalf of the Customer, Authorised Users, or Rapid Global on the Customer's behalf; and
- otherwise provided by the Customer to Rapid Global in connection with these terms and conditions.

Device means a device, usually electronic, that processes data according to a set of instructions, which may include workstations, personal computers, laptops, netbooks, personal digital assistants, tablets and smartphones.

Documentation means any documentation (whether electronic or printed) made available via the Website or otherwise provided by Rapid Global to the Customer or Authorised User which accompanies the Services.

Fees means the Instalment Fee, the User Subscription Fee and the Licence Fee, where the context permits.

Force Majeure Event means any event beyond the control of the relevant party.

GST means the tax payable on taxable supplies under the GST Legislation and **GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Instalment Fee means the amount set out on the Website or in the Rapid Global Proposal as confirmed in an Order Acknowledgement.

Intellectual Property Rights means any and all, current and future, intellectual and industrial, property rights and interests, including any:

- patents, trade marks, service marks, rights in designs, trade names, copyrights, topography rights, utility models, eligible layout rights, inventions, discoveries, trade secrets, Confidential Information, know-how, software and improvements, and any applications, or rights to apply, for registration of any of them;
- rights under licences and consents in relation to any of them; and
- other forms of protection of a similar nature or having equivalent or similar effect to any of them,

in Australia and in the world, whether registered or unregistered, for the duration of the rights and interests.

Liability means any claim, action, loss, cost, expense, damage or liability of any kind., charge, outgoing or payment (including any legal costs, on a full indemnity basis)

Licence Fee means the amount set out on the Website or in the Rapid Global Proposal, as confirmed in an Order Acknowledgement.

Maintenance Services means such routine maintenance services as Rapid Global considers necessary to ensure the proper functioning of the Services, including:

- reviewing the Services on a regular basis and applying updates where appropriate; and
- performing regular security and maintenance checks for evidence of security breaches, software malfunction and resource limit warnings.

Maximum Number of Users means the maximum number specified in an Order Acknowledgement.

Order means an order or offer to purchase Services made by the Customer to Rapid Global, including orders made via the Website.

Order Acknowledgement means a written acknowledgement of an Order provided in writing or electronically by Rapid Global to the Customer (including via the Website).

Payment Gateway means payment for the Services made on behalf of the Customer by its agents or contractors via eWay, facilities provided by National Australia Bank Limited or by other means specified on the Website or as advised by Rapid Global from time to time.

Privacy Policy means Rapid Global's privacy policy as amended by Rapid Global from time to time in its sole discretion, which is available on the Website.

Rapid Global means Rapid Global Nominee Pty Ltd ACN 161 913 882 as agent for Rapid Global Nominee Pty Ltd ACN 161 913 882 as trustee for the Rapid Global Unit Trust and TAPAI Pty Ltd ACN 131 827 426 as trustee for the TAPAI Family Trust, trading as "Rapid Global" ABN 54 229 322 834.

Services means the services to be provided by Rapid Global to the Customer under these terms and conditions via the Website or to be accessed via Devices using the Software, together with any Documentation as specified in an Order and confirmed in an Order Acknowledgement.

Software means any program or data file relating to the Services supplied by Rapid Global to the Customer or downloaded or installed by the Customer on a Device but excludes any Third Party Software.

Support Services means, if specified in an Order Acknowledgement, training, consultation by means of email and telephone during Business Hours, updates of Software as they become available and support for Authorised Users via email or telephone during Business Hours.

Third Party Software means freeware or open source software or software that is owned by third parties and licensed to Rapid Global.

Update means new versions of, and updates to, the Services, whether for the purpose of fixing an error, bug or other issue or enhancing the functionality of the Services but excludes any software, services or updates marketed, licensed or sold by Rapid Global as a new version or new release.

User Subscriptions: the user subscriptions purchased by the Customer which entitle Authorised Users to access and use the Services in accordance with these terms and conditions.

User Subscription Fee means the amount set out on the Website as confirmed in an Order Acknowledgement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Website means www.rapidglobal.com.

2. ORDERS AND TERMS AND CONDITIONS

- 2.1 An Order or an offer to purchase can be made by the Customer in writing, verbally or via the Website. An Order is accepted when the Customer receives from Rapid Global an Order Acknowledgement, access is provided to the Services or Software is downloaded, whichever first occurs.
- 2.2 These terms and conditions apply to every Order, unless otherwise agreed in writing by Rapid Global. Acceptance of Services by the Customer is conclusive evidence that these terms and conditions apply and are binding on the Customer.
- 2.3 These terms and conditions shall prevail over all inconsistencies in an Order, unless Rapid Global agrees otherwise in writing. Subject to clause 2.4, these terms and conditions are the only conditions to which Rapid Global will be bound and the Customer agrees that these terms and conditions will prevail over the Customer's terms and conditions of purchase (if any).

2.4 These terms and conditions are subject to any further written, executed agreement entered into between Rapid Global and the Customer (**Further Agreement**). In the event of any inconsistency between these terms and conditions and a Further Agreement, the provisions of the Further Agreement will prevail to the extent of the inconsistency.

3. RIGHT TO USE THE SERVICES

3.1 These terms and conditions is effective from the Commencement Date and shall remain in force until terminated in accordance with clause 13.5.

3.2 Rapid Global hereby grants to the Customer a non-exclusive, non-transferable right to permit the Customer and Authorised Users to use the Services solely for the Customer's internal business operations.

3.3 These terms and conditions shall not prevent Rapid Global from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these terms and conditions.

4. THE SERVICES

4.1 Rapid Global shall issue to the Customer or to its Authorised Users, a user name and password:

4.1.1 for each User Subscription, if the Customer is paying a User Subscription Fee; or

4.1.2 for Authorised Users up to the Maximum Number, if the Customer is paying an Instalment Fee, so as to enable access to the Services.

4.2 Rapid Global will use its best endeavours to maintain the reliability and efficiency of the Services subject to:

4.2.1 scheduled downtime for Maintenance Services or other interruptions to service specified in Clause 8.1; and

4.2.2 unscheduled interruptions to the availability of the Services due to factors beyond the control of Rapid Global including any actions of the Customer or third parties, including telecommunications providers.

4.3 The Customer will communicate any difficulties encountered with the Services to Rapid Global as soon as is reasonably practicable following detection.

4.4 Rapid Global may, in its sole discretion, make Updates available through the Services.

5. CUSTOMER'S OBLIGATIONS

5.1 General

The Customer shall:

5.1.1 Provide Rapid Global with:

(a) all necessary co-operation in relation to these terms and conditions; and

(b) all necessary access to such information as may be required by Rapid Global;

(c) in order to render the Services, including but not limited to Customer Data, security access information and configuration services.

5.1.2 Comply with all applicable laws and regulations with respect to its activities under these terms and conditions.

5.2 Hardware, Network and Systems

5.2.1 The Customer shall ensure that its hardware, network and systems comply with the relevant specifications provided by Rapid Global from time to time.

5.2.2 The Customer shall be solely responsible for:

(a) procuring and maintaining its network connections and telecommunications links;

(b) the support and maintenance of any computer hardware and non-Rapid Global software operated by the Customer; and

(c) all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the Internet.

5.3 Use of the Services

5.3.1 The Customer shall be responsible for ensuring that its Authorised Users comply with these terms and conditions.

5.3.2 The Customer undertakes that

- (a) each Authorised User shall keep their user name and password confidential; and
- (b) it shall permit Rapid Global to audit the Services to ensure the Customer's compliance with these terms and conditions.

5.3.3 Where the Customer is paying an Instalment Fee, the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the Maximum Number of Users.

5.3.4 Where the Customer is paying a User Subscription Fee, the Customer undertakes that:

- (a) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services;
- (b) if any of the audits referred to in clause 5.3.2(b) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Rapid Global's other rights, the Customer shall promptly disable such passwords and Rapid Global shall not issue any new passwords to any such individual; and
- (c) if any of the audits referred to in clause 5.3.2(b) reveal that the Customer has underpaid Subscription Fees to Rapid Global, the Customer shall pay to Rapid Global an amount equal to such underpayment within 10 Business Days of the date of the relevant audit.

5.3.5 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
- (f) causes damage or injury to any person or property.

5.4 Intellectual Property Rights

5.4.1 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under these terms and conditions, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services or the Software in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services or Software; or
- (b) access all or any part of the Services or Software in order to build a product or service which competes with the Services; or
- (c) unless otherwise agreed by Rapid Global in writing, use the Services or Software to provide services to third parties; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services or Software available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services or Software, other than as provided under these terms and conditions.

5.4.2 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services or Software and, in the event of any such unauthorised access or use, promptly notify Rapid Global.

6. CUSTOMER DATA

6.1 The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

6.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Rapid Global to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Rapid Global. Rapid Global shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

6.3 Rapid Global shall, in providing the Services, comply with the Privacy Policy.

7. SUSPENSION OF THE SERVICES

7.1 Rapid Global may suspend access to the Services:

7.1.1 to carry out the Maintenance Services;

7.1.2 to carry out modifications or updates to the Services, including the uploading of updates;

7.1.3 to preserve data and integrity; or

7.1.4 in the event of a security breach.

7.2 Rapid Global also reserves the right to terminate or suspend access to the Services to the Customer indefinitely and without refund or compensation in the event that the Customer uses the Services, or appears to Rapid Global to be intending to use the Services, in a manner reasonably deemed inappropriate by Rapid Global or which breaches the terms of these terms and conditions. Suspension of access to the Services will continue until the Maintenance Services, modifications or updates are carried out, the problem or breach is rectified, or until otherwise agreed in writing between the parties.

8. SUPPORT SERVICES AND ADDITIONAL SERVICES

8.1 Rapid Global will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Support Services during Business Hours.

8.2 The Customer may, from time to time, request in writing that Rapid Global provide the Customer with services additional to those set out in these terms and conditions (**Additional Services**).

8.3 Any provision of Additional Services by Rapid Global to the Customer will be at Rapid Global's sole discretion. The parties will negotiate in good faith the fees payable by the Customer to Rapid Global in respect of the Additional Services.

9. FEES

9.1 The Fees shall be the amounts set out on the Website or in the Rapid Global Proposal on the date of the Order, as confirmed in an Order Acknowledgement unless otherwise agreed in writing.

9.2 The Customer shall pay the Fees in the manner set out in the Order and confirmed in the Order Acknowledgement.

9.3 If the Order Acknowledgement specifies that payment of any Fees is to be made to Rapid Global directly by the Customer, payment shall be made by cheque, EFT or via the Payment Gateway by the Customer within 14 days of invoice by Rapid Global.

9.4 If the Order Acknowledgement specifies that payment of any Fees is to be made on the Customer's behalf by its contractors, payment must be made by the Customer's contractors via the Payment Gateway before any User Subscriptions are issued by Rapid Global.

9.5 All amounts payable under these terms and conditions are expressed exclusive of GST. In respect of any taxable supply, the Customer must pay to the Supplier an additional amount equal to the prevailing GST rate, payable at the same time and in the same manner as the Fees.

9.6 All Fees must be paid in full, without set off or counterclaim.

10. INTELLECTUAL PROPERTY

10.1 The Customer retains all Intellectual Property Rights in the Customer Data.

10.2 The Customer acknowledges and agrees that Rapid Global and/or its licensors own all intellectual property rights in the Services and the Software.

10.3 Except as expressly stated herein, these terms and conditions does not grant the Customer any Intellectual Property Rights, or any other rights or licences in respect of the Services.

10.4 Subject to payment of the Licence Fee, Rapid Global grants to the Customer a non-exclusive, world-wide, non-transferable licence to use Software solely in connection with the Services, subject to and in accordance with the terms and conditions set out in these terms and conditions.

11. CONFIDENTIALITY

- 11.1 A party must not, without the prior written consent of the other, use or disclose the other party's Confidential Information unless expressly permitted by these terms and conditions or required to do so by law or any regulatory authority.
- 11.2 A party may:
 - 11.2.1 use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights under these terms and conditions; and
 - 11.2.2 disclose the Confidential Information to its personnel or advisers to the extent necessary for them to know the information for purposes related to these terms and conditions, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.
- 11.3 Each party must implement and maintain effective security measures to prevent unauthorised use and disclosure of the other party's Confidential Information whilst it is in the receiving party's possession or control.
- 11.4 Each party must return, or at the other party's option destroy, all Confidential Information of the disclosing party in the receiving party's possession or control, on the earlier of Rapid Global's request or on termination of these terms and conditions for any reason.
- 11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Rapid Global's Confidential Information.
- 11.6 Rapid Global acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7 This clause 11 shall survive termination of these terms and conditions, however arising.

12. WARRANTIES

- 12.1 Rapid Global warrants that:
 - 12.1.1 it has all the rights in relation to the Services and the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these terms and conditions;
 - 12.1.2 the Services and the Software will not infringe the Intellectual Property Rights of any third party; and
 - 12.1.3 it will exercise reasonable skill, care and attention in providing the Services to the Customer in accordance with these terms and conditions.
- 12.2 Notwithstanding the foregoing, Rapid Global:
 - 12.2.1 takes no responsibility for any delay, malfunction, non-performance or other degradation of the Services caused by or resulting from any alteration, modifications or amendments to the Services requested by the Customer;
 - 12.2.2 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; and
 - 12.2.3 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 12.3 The Customer acknowledges that the speed of response from the Services is dependent on the Customer's internal connection and performance of the Services may be affected by such external factors as the Customer's speed of connection, infrastructure bandwidth and the number of users on the connection.
- 12.4 Where the Services include pre-written materials provided by Rapid Global or other third parties (**Materials**), Rapid Global and its content providers will use reasonable endeavours to ensure that the Materials are accurate. However, the Customer acknowledges and agrees that:
 - 12.4.1 the information provided in such Materials is intended only to provide a summary and general overview for the purposes of e-learning and training and is not intended to be a substitute for legal advice.
 - 12.4.2 It will seek legal or other professional advice before acting or relying on any of the Materials.
 - 12.4.3 If the Materials are edited by the Customer or its Authorised Users, neither Rapid Global nor its content providers will be responsible for any Liability arising from such amendments.

13. LIABILITY & INDEMNITY

- 13.1 To the full extent permitted by law, Rapid Global excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in these terms and conditions.
- 13.2 These terms and conditions is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, guarantees, conditions or obligations (including the Australian Consumer Law). If such legislation applies, to the extent possible, Rapid Global limits its liability in respect of any claim to, at Rapid Global's option:
 - 13.2.1 in the case of goods:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) the payment of having the goods repaired, and

13.2.2 in the case of services:

- (a) the supply of the services again; or
- (b) the payment of the cost of having the services supplied again.

- 13.3 Rapid Global's total aggregate liability for all claims relating to these terms and conditions is limited to the Fees payable under these terms and conditions.
- 13.4 To the full extent permitted by law, Rapid Global excludes all liability in respect of loss of data, interruption of business or any consequential or incidental damages, even to the extent that such loss or liability is caused by Rapid Global's negligence.
- 13.5 The Customer agrees to indemnify and keep indemnified Rapid Global from and against all Liability suffered by Rapid Global or any third party either directly or indirectly as a result of:
- 13.5.1 any breach of the Customer's obligations under these terms and conditions; and
 - 13.5.2 any claims arising from any information, data, text or messages transmitted using the Services including claims for defamation, invasion of privacy, infringement of Intellectual Property Rights or breach of any other applicable law, regulations or codes.
- 13.6 Either party's liability for any claim relating to these terms and conditions will be reduced to the extent to which the other party contributed to the damage arising from the claim.

14. TERMINATION

- 14.1 A party may terminate these terms and conditions by written notice to the other if any of the following events has occurred in respect of the other party:
- 14.1.1 a material breach of these terms and conditions which is not remediable or if capable of remedy, where the other party fails to remedy within 14 days of written notice;
 - 14.1.2 being a body corporate it becomes an externally-administered body corporate or has an application for winding up filed against it; or
 - 14.1.3 in the case of the Customer being an individual, it commits an act of bankruptcy or becomes an insolvent under administration.
- 14.2 If these terms and conditions is terminated or expires for any reason, then, in addition and without prejudice to any other rights or remedies available:
- 14.2.1 the parties are immediately released from their obligations under the Agreement except those obligations listed in clauses 12, 14, 18 and 19 and any other obligations that, by their nature, survive termination;
 - 14.2.2 each party retains the claims it has against the other;
 - 14.2.3 the Customer must immediately pay all outstanding Fees owing under these terms and conditions; and
 - 14.2.4 the Customer's right to use Services and the immediately ceases and the licences granted under these terms and conditions terminate.

15. GENERAL PROVISIONS

- 15.1 Notices given by Rapid Global will be deemed to be received:
- 15.1.1 if given by email, on being sent, provided the notice is sent to the email address of an officer or employee of the Customer responsible for placing or administering orders for Services and no "out of office" or other automated reply is received indicating that the message has not been or will not be received or read by the intended recipient;
 - 15.1.2 if given by facsimile transmission to a facsimile number shown in the application for credit (or any other number provided by the Customer) by production by Rapid Global of a copy of the facsimile transmission bearing the time and date of dispatch, on that date and at that time; and
 - 15.1.3 if given by post, on the third day after posting.
- 15.2 The Customer agrees to regularly check the Website for any notices of changes to these terms and conditions.
- 15.3 Rapid Global may appoint sub-contractors to perform Services under these terms and conditions.

- 15.4 Rapid Global shall have the right to advertise the Services and the fact that the Services have been provided to the Customer for the purpose of promoting Rapid Global's services to the public at large and for entering such work in competitions or for publication in award annuals, magazines, or publications.
- 15.5 The Customer shall not, without the prior written consent of Rapid Global, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms and conditions. Rapid Global may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms and conditions.
- 15.6 Nothing contained in these terms and conditions creates any relationship of partnership or agency between the parties.
- 15.7 If a provision of these terms and conditions is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- 15.8 Each party must at its own expense do everything reasonably necessary to give full effect to these terms and conditions and the events contemplated by it.
- 15.9 These terms and conditions (and any documents executed in connection with it) is the entire agreement of the parties about its subject matter and supersedes all other representations, arrangements or agreements. Other than as expressly set out in these terms and conditions, no party has relied on any representation made by or on behalf of the other.
- 15.10 These terms and conditions may be amended only by a document signed by all parties.
- 15.11 A provision of or a right under these terms and conditions may not be waived or varied except in writing signed by the person to be bound.
- 15.12 A party will not be responsible for a failure to comply with its obligations under these terms and conditions to the extent that failure is caused by a Force Majeure Event, provided that the party keeps the other closely informed in such circumstances and uses reasonable endeavours to rectify the situation.
- 15.13 All stamp duties and other government charges in relation to these terms and conditions must be paid by the Customer.
- 15.14 These terms and conditions is governed by the laws of South Australia and each party submits to the jurisdiction of the courts of South Australia.