

# SHELTER

## **Shelter & Co Terms and Conditions**

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Updated July 2024

These Terms and Conditions apply to all Users who purchase a Membership or Casual Pass to attend a Shelter Studio.

## **1 General Provisions**

- 1.1 Definitions
- 1.2 Interpretation

## **2 Application**

## **3 Users, Memberships and Casual Passes**

- 3.1 Becoming a User
- 3.2 Memberships
- 3.3 Casual Passes
- 3.4 Additional Classes
- 3.5 Purchasing a Membership or Casual Pass
- 3.6 Minimum Membership Term
- 3.7 Bookings & Class Cancellations
- 3.8 Sales & Offers
- 3.9 Hold
- 3.10 Cancellation

## **4 Payments and Fees**

- 4.1 Memberships
- 4.2 Casual Passes
- 4.3 Payment information

## **5 Services**

## **6 Warranties**

- 6.1 Mutual warranties
- 6.2 User warranties
- 6.3 No reliance
- 7 Liability and Indemnification
- 7.1 Limitation of liability
- 7.2 Indemnification

## **8 Health and Safety Risks**

- 8.1 General
- 8.2 Acknowledgements

## **9 Confidentiality**

## **10 Dispute Resolution**

- 10.1 Dispute
- 10.2 Discussion
- 10.3 Mediation
- 10.4 Legal proceedings
- 10.5 Continued performance

## **11 Force Majeure**

## **12 Termination**

- 12.1 Termination by Shelter
- 12.2 Termination by User
- 12.3 Consequences of Termination
- 12.4 Accrued rights

## **13 General**

- 13.1 Assignment
- 13.2 Agency
- 13.3 Entire Agreement
- 13.4 Severability
- 13.5 Amendment
- 13.6 Waivers
- 13.7 Survival
- 13.8 Taxes
- 13.9 Non-Recourse
- 13.10 Notices
- 13.11 Governing law

## 1 General Provisions

### 1.1 Definitions

The following terms have the following meaning in the Shelter & Co Terms and Conditions:

- (a) Account means the registered Shelter account of a User.
- (b) AEST means Australian eastern standard time.
- (c) AEDT means Australian eastern daylight savings time.
- (d) Business Day means a day other than a Saturday, Sunday or a public holiday in New South Wales.
- (e) Force Majeure Event means a cause beyond the reasonable control of a party includes an act of God, war, act of public enemy, blockade, revolution, riot, insurrection, civil commotion, lightning, storm, flood, fire, earthquake, explosion, embargo, strike, trade dispute, industrial action, delay in transportation, accident of any kind, damage to stoppage or breakdown of plant or machinery or shortage of any labour or material or inability to secure a necessary approval from a Government Agency, but does not include:
  - (i) an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or
  - (ii) a lack of funds for any reason.
- (f) GST means the Goods and Services Tax, defined pursuant to section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (g) User is a person who has an Account with Shelter.
- (h) Notice means a written notice.
- (i) Policies means the Privacy Policy and/or any other policy included on Website from time to time.
- (j) Services means any services provided to a User pursuant to a Membership or Casual Pass.
- (k) Shelter means Shelter and Co Pty Ltd (ACN 623 300 550).
- (l) Shelter Studio means any health, wellbeing and fitness studio operated by Shelter from time to time.
- (m) Subscription Fee means the applicable fee payable for the relevant Membership or Casual Pass.
- (n) Terms and Conditions means the terms and conditions set out in this document as amended from time to time.
- (o) Website means Shelter's website at [www.the-shelter.com.au](http://www.the-shelter.com.au), as amended from time to time.

### 1.2 Interpretation

In these Terms and Conditions, unless the context otherwise requires:

- (a) headings or subheadings are inserted for guidance only and do not govern the meaning or construction of any provision of these Terms and Conditions;
- (b) a reference to any document is to that document as amended, novated, supplemented or replaced from time to time;
- (c) words expressed in the singular include the plural and vice versa;
- (d) words expressed in one gender include the other gender;
- (e) a 'person' includes a company, partnership, firm, joint venture, association, authority, corporation or other body corporate;
- (f) a reference to a party includes that party's successors and permitted assignees and, in the case of a natural person, includes that person's personal representatives and administrators;
- (g) a reference to any thing or any amount is a reference to the whole and each part of it. A reference to a group of persons is a reference to all of them collectively, to 2 or more them collectively and to each of them individually;
- (h) references to time are to time in Sydney, New South Wales;
- (i) where a day, which is not a Business Day, is specified by or on which a thing must be done, that thing that must be done by or on the next succeeding Business Day; and
- (j) a covenant or document made by, or for the benefit of, two or more persons binds, and is enforceable against, or may be exercised by (as the case may be), those persons jointly and each of them severally.

## **2 Application**

- (a) These Terms and Conditions apply to all Users who hold an Account to the exclusion of all other terms and conditions, including any terms and conditions which the User purports to apply or which are endorsed on any correspondence or documents issued by the User irrespective of their date of communication to Shelter.
- (b) The User must accept these Terms and Conditions in order to create an Account and purchase a Membership or Casual Pass.

## **3 Users, Memberships and Casual Passes**

### **3.1 Becoming a User**

- (a) Any person must register an Account to become a User either:
  - (i) online, through the Mindbody application on the Website; or
  - (ii) in person, at any Shelter Studio.
- (b) All information provided by the User to Shelter when setting up an Account must be true, accurate and not misleading, including the User's name, address and relevant payment information. The User is responsible for keeping such information up to date.

### **3.2 Memberships**

Shelter offers various Memberships to users which include:

- (a) a membership for 15 classes per month for the period of 12 weeks (Platinum);
- (b) a membership for 10 classes per month for the period of 12 weeks (Gold);
- (c) a membership for 5 classes per week over a period of 12 weeks (Silver);
  
- (d) unlimited classes and spa access each week for the period of 4 weeks;
  
- (e) unlimited classes each week for a rolling period of 4 weeks;
  
- (f) unlimited spa access each week for a rolling period of 4 weeks;
  
- (g) any other membership option either included on Shelters website or as otherwise offered by Shelter from time to time,  
(each, a Membership).

For the avoidance of any doubt, a User with a Membership can use the allocated number of classes included with the Membership to attend any classes at the Shelter Studio (e.g. Ride classes, Boxing classes or Pilates classes).

### **3.3 Casual Passes**

Shelter offers various casual passes to Users which include:

- (a) a single session at a Shelter Studio (Session) with an expiry date of 1 month from the date of purchase;
- (b) up to 5 Sessions at a fixed price with an expiry of 3 months from the date of purchase;
- (c) up to 10 Sessions at a fixed price with an expiry date of 3 months from the date of purchase;
- (d) up to 20 Sessions at a fixed price with an expiry date of 3 months from the date of purchase;
- and
- (e) any other casual pass options either included on Website or as otherwise offered by Shelter from time to time,  
(each, a Casual Pass).

### **3.4 Additional Classes**

With respect to Users with a Membership who wish to attend more classes in a given week in excess of the number of classes included with the Users respective Membership, the User may purchase additional classes during a given week at the same average cost per class as included

with the Users Membership. For the avoidance of any doubt:

(a) Users with a Gold Membership may purchase and attend additional classes during a week for a cost determined by dividing the cost per month of the membership by the number of classes. And;

(b) Users with a Silver or Platinum Membership may purchase and attend additional classes during a week for a cost determined by dividing the cost per month of the membership by the number of classes.

A User will be required to pay the cost of any additional classes either through direct debit through the booking software used by Shelter from time to time or in person at the Shelter Studio.

### 3.5 Purchasing a Membership or Casual Pass

In order to purchase a Membership or Class Pass, the User must subscribe to the relevant Membership or Casual Pass:

(a) online, through the Mindbody (or any other software used by Shelter from time to time) application on the Website; or

(b) in person, at any Shelter Studio.

### 3.6 Minimum Membership Term

(a) Platinum, Gold and Silver Memberships are for a minimum period of 12 weeks from the date a User subscribes for a Membership (Minimum Membership Term).

(b) Unlimited Membership is for a minimum of 4 weeks from the date a User subscribes

(c) Following the expiry of the Minimum Membership Term, a User's Membership will automatically renew on a basis as defined by the memberships.

### 3.7 Bookings & Class Cancellations

(a) If a User has purchased a Membership or Casual Pass, they may book in a session at the Shelter Studio to access the relevant Services provided under the Membership or Casual Pass.

(b) If a User makes a booking to attend a Session, they must attend the booked session (Booked Session). The User may cancel or amend the time of the Booked Session at least 12 hours before the relevant Booked Session.

(c) If the User fails to attend a Booked Session or fails to cancel or amend the Booked Session at least 12 hours before the Booked Session, the Booked Session:

(i) with respect to a User with an Unlimited Membership, the Booked session will be deducted from their remaining Sessions available to the User through their Membership and a Late Cancel Fee of \$30 will be applied to the User's account for each late cancellation; and

(ii) with respect to a User with a Platinum, Gold or Silver Membership, the Booked Session will be deducted from the remaining Sessions available to the User through their Membership; and

(ii) with respect to a User with a Casual Pass, the Booked Session will be deducted from the remaining Sessions available to the User through their Casual Pass.

### 3.8 Sales and Offers

(a) Shelter may, from time to time, offer sales, discounts, or special promotions on Memberships or Casual Passes ("Offers").

(b) All Offers are subject to availability and may be withdrawn or modified by Shelter at any time without prior notice.

(c) Offers cannot be used in conjunction with any other promotion or discount unless explicitly stated.

(d) Users must meet all eligibility requirements specified for each Offer to qualify.

(e) Shelter reserves the right to verify a User's eligibility for any Offer and to refuse, cancel, or limit orders at its sole discretion.

(f) Unless otherwise specified, Offers apply only to the initial term of a Membership and do not extend to renewal periods.

(g) Any attempt to manipulate or abuse an Offer may result in disqualification and cancellation of the User's Membership or Casual Pass.

### 3.8.1 Unlimited Memberships - Pre-Launch Offer

- (a) Shelter offered a pre-launch promotion for new Unlimited Memberships:
  - (i) Unlimited classes and spa access for \$79 per week (regular price \$89 per week)
  - (ii) Unlimited classes for \$69 per week (regular price \$79 per week)
- (b) The pre-launch offer is available for a limited time only and is restricted to a limited number of memberships.
- (c) Once the predetermined number of promotional memberships has been reached, the offer will automatically end.
- (d) These promotional rates are subject to the same 4-week rolling contract terms as regular Memberships.
- (e) At the end of the initial 4-week period, Users who secured this offer will be given the option to either:
  - (i) Continue their membership at the standard rate for their respective membership type, or
  - (ii) Cancel their membership.
- (f) Regular pricing will apply to all new Memberships once the pre-launch offer ends or the limited number of promotional memberships has been reached, whichever occurs first.
- (g) Shelter reserves the right to withdraw or modify this offer at any time without prior notice.
- (h) This offer cannot be combined with any other promotions or discounts.
- (i) Users who sign up under this pre-launch offer are subject to all other applicable terms and conditions as outlined in this document.

### 3.9 Hold

- (a) A User with an Unlimited membership are not eligible to put their membership on hold. Membership may be held in extraordinary circumstances where the user acknowledges they will supply relevant documentation when they submit their request to modify the membership.
- (b) A User with a Platinum, Gold or Silver membership may request by written Notice to put their Membership on hold (Hold) in subsequent Membership Terms, for up to 2 weeks. Membership may be held in extraordinary circumstances where the user acknowledges they will supply relevant documentation when they submit their request to modify the membership.
- (c) For the avoidance of doubt, if a Membership is put on Hold, the relevant period of the Membership will be extended by the amount of time that the Membership is put on Hold.

### 3.10 Cancellation

- (a) Users may with Unlimited Memberships may cancel their Membership at any time during the 4-week period.
- (b) If a User cancels their Unlimited Membership, they will be required to complete the remainder of the current 4-week period.
- (c) The cancellation will take effect at the end of the current 4-week period.

## 4 Payments and Fees

### 4.1 Memberships

Users may elect to pay the applicable Subscription Fee for a Membership:

- (a) upfront in full at the commencement of the Membership for the duration of the Minimum Membership Term, following which the User will be charged the applicable Subscription Fee

(i) Unlimited Memberships: on a weekly basis, payable in advance, until the Membership is terminated in accordance with these terms and conditions (Upfront Payment).

(ii) Platinum, Gold and Silver Memberships: on a 4-weekly basis, payable in advance, until the Membership is terminated in accordance with these terms and conditions (Upfront Payment).

#### 4.2 Casual Passes

Users must pay the applicable Subscription Fee for a Casual Pass upfront in full when subscribing for the Casual Pass.

#### 4.3 Payment information

(a) Upon Shelter's request and if the payment information previously provided to Shelter is no longer valid, the User agrees to provide updated payment information to Shelter through its Account or as otherwise directed by Shelter;

(b) Neither Shelter, nor Shelter's agents, will have any liability whatsoever for any insufficient funds or other charges incurred by the User as a result of attempts to charge, and/or place holds on, the User's specified payment method, as contemplated by these Terms and Conditions.

### 5 Services

(a) Shelter will provide the Services in accordance with the Membership or Casual Pass (as applicable) to the User.

(b) The User acknowledges that:

(i) the Services will only be used for their intended purpose, such use to be conducted in a proper manner for the purpose and within the capacity for which it was designed;

(ii) the use of the Services may cause significant strain, exertion or other health related risks to the User;

(iii) the User's use of the Services is at the User's own risk;

(iv) the User has considered and acknowledges the health and safety risks contained in clause 8 of these Term and Conditions; and

(v) the Services will not be used or received by unauthorised persons or for any unauthorised use whatsoever.

### 6 Warranties

#### 6.1 Mutual warranties

Each party represents and warrants to the other party that:

(a) if it is a corporation, it is duly registered and validly existing under the laws of its place of registration;

(b) it has full legal capacity and authority to sign, deliver and perform its obligations under this document; and

(c) this document constitutes a legal, valid and binding obligation of the party enforceable in accordance with its terms by appropriate legal remedy.

#### 6.2 User warranties

In addition to all other User representations and warranties identified through these Terms and Conditions, the User warrants that:

(a) nothing pursuant to a Membership or Casual Pass requires Shelter to do anything which is or will be a breach of the law;

(b) the User has read and understood the health and safety risks associated with the use of the Services as set out in clause 8; and

(c) the User will not use any other third party equipment with the Shelter Equipment, including, but not limited to, using third party shoes with the Equipment.

#### 6.3 No reliance

Unless this document expressly states otherwise, each party has entered into this document

without relying on any representation by the other party or any person purporting to represent that party.

## **7 Liability and Indemnification**

### **7.1 Limitation of liability**

- (a) Shelter's total liability to the User for all claims will not exceed the amount actually paid by the User to Shelter over the preceding 12 months from the date the claim arose.
- (b) Shelter may set off any final settled claims it may have against the User prior to paying anything to the User under the Membership.
- (c) The User may set off any final settled claims it may have against the Shelter prior to paying anything to Shelter under the Membership.
- (d) For the avoidance of doubt, Shelter is not liable for any personal property that is damaged, lost or stolen while the User is at a Shelter Studio including if the personal property is left in a locker, pigeonhole or anywhere else within a Shelter Studio.

### **7.2 Indemnification**

The User agrees to indemnify, defend and hold harmless Shelter, its directors, employees and agents from and against all Loss suffered or incurred by the User concerning:

- (a) any claims by any person, other than a User, arising out of or arising in connection with the Equipment and/or use of the Services;
- (b) any negligent act or omission by the User in connection with the Equipment and/or use of the Services; and
- (c) any violation of these Terms and Conditions by the User.

## **8 Health and Safety Risks**

### **8.1 General**

Shelter provides the Services for health and fitness purposes. The User accepts that these Terms and Conditions do not constitute health advice and should not be considered a substitute for professional medical advice to decide whether to subscribe to a Membership.

### **8.2 Acknowledgements**

- (a) The User acknowledges that there are health and safety risks associated with the use of the Services and, as such, represents and warrants that:
  - (i) the User has consulted the User's general practitioner or medical professional before using the Services;
  - (ii) the User has not relied on any information contained in the as a substitute for, or replacement for professional medical advice, diagnosis, or treatment;
  - (iii) if the User has any concerns or questions about its health, the User will consult with their general practitioner or medical professional;
  - (iv) the User has not, and will not, disregard, avoid or delay obtaining medical or health related advice from its healthcare professional because of something the User may have read on the User Interface, Website or through the Services;
  - (v) the use of the Services is solely at the User's own risk and does not constitute medical or healthcare advice; and
  - (vi) nothing stated or posted by Shelter or made available through the Services is intended to be, and must not be taken to be, the practice of, without limitation, psychiatry, psychology, psychotherapy, or providing health care treatment, instructions, diagnosis, prognosis or advice.
- (b) The User acknowledges that all of the following statements are true:
  - (i) no medical professional or general practitioner has ever informed the User that the User has a heart condition or that the User should only do physical activities recommended by a general practitioner or medical professional;
  - (ii) the User has never felt chest pain when engaging in physical activity;
  - (iii) the User has not experienced chest pain when not engaged in physical activity at any time within the past 6 months;



- (iv) the User has never lost balance because of dizziness nor has the User ever lost consciousness as a result of physical activity;
  - (v) the User does not have a bone or joint problem that could be made worse by the use of the Services;
  - (vi) the User's general practitioner or medical professional is not currently prescribing drugs for the User's blood pressure or heart condition;
  - (vii) the User does not have a history of high blood pressure, and no one in the User's immediate family has a history of high blood pressure or heart problems; and
  - (viii) the User does not know of any other reason as to why the User should not exercise;
  - (ix) the User's general practitioner or medical professional has been specifically consulted by you and approved of your use of the Services;
  - (x) The User is not pregnant, breastfeeding or lactating; and
  - (xi) If the User is pregnant, breastfeeding or lactating, the User's general practitioner or medical professional has been specifically consulted and approved the User's use of the Services.
- (c) Shelter reserves the right to refuse or cancel any Membership or Casual Pass if Shelter reasonably determines that the User has certain medical conditions or that the abovementioned representations and warranties are untrue in any respect.

## **9 Confidentiality**

- (a) These Terms and Conditions and all information obtained by the User or Shelter from the other party or its related parties as a result of the User procuring the Membership or Casual Pass constitutes confidential information.
- (b) The User and Shelter must keep confidential and not disclose the confidential information unless:
  - (i) the disclosure is to comply with a law (including a listing rule of any stock exchange on which it is listed), in which case the disclosing party must notify the other party as promptly as practicable prior to making the disclosure;
  - (ii) it is to their representatives, accountants, auditors and legal counsel who are under a duty of confidentiality; or
  - (iii) Shelter and the User consent in writing to the disclosure of confidential information.
- (c) The User and Shelter must not release or publish any media release or announcement in connection with the Membership or use the other party's name in any media release or announcement without the other party's prior written consent.

## **10 Dispute Resolution**

### **10.1 Dispute**

If a dispute arises under or in connection with the Terms and Conditions (Dispute), a party must give notice of the Dispute to the other party to the Dispute.

### **10.2 Discussion**

Within 10 Business Days of receiving a notice under clause 10.1, each party to the Dispute must meet and discuss in good faith with a view to resolving the Dispute.

### **10.3 Mediation**

If, after the steps in clause 10.2, the Dispute has not been resolved, a party to the Dispute must refer the Dispute to mediation in accordance with, and subject to, the Resolution Institute Mediation Rules.

### **10.4 Legal proceedings**

A party must not commence legal proceedings in relation to a Dispute unless:

- (a) it has complied with its obligations under this clause 10; or
- (b) those proceedings are for the purpose of seeking injunctive or interlocutory relief, despite this clause 10.

### 10.5 Continued performance

Each party must continue to perform its obligations under these Terms and Conditions despite the existence of a Dispute.

## 11 Force Majeure

Neither party will be liable to the other for delay or failure to perform its obligations under these Terms and Conditions if such delay or failure arose from a Force Majeure Event which has been occurring for a period of more than 3 months.

## 12 Termination

### 12.1 Termination by Shelter

Shelter may immediately terminate a Membership or Casual Pass by written Notice to a User:

(a) if the User:

(i) fails to make any payment required under these Terms and Conditions;

(ii) materially breaches any of these Terms and Conditions;

(iii) suffers an insolvency event; or

(b) for any other reason determined by Shelter using its absolute discretion (acting reasonably).

### 12.2 Termination by User

A User may terminate a Membership or Casual Pass by written Notice to Shelter if the User becomes permanently sick or unwell or suffers any permanent physical incapacity, preventing the User from using the Services offered under the Membership or Casual Pass, and the User provides a medical certificate evidencing these circumstances.

A User may terminate a Membership after the Minimum Membership Term via at least two (2) weeks written notice of its intention to terminate its Membership.

### 12.3 Consequences of Termination

If a Membership or Casual Pass is terminated in accordance with clause 12.1 or 12.2, the User will not be entitled to a refund for any money paid to Shelter to access the Membership or Casual Pass.

### 12.4 Accrued rights

The termination of the Membership or Casual Pass for any reason shall not relieve either party of any of its liabilities or obligations under the Membership or Casual Pass that accrued on or prior to the date of such termination. Termination of the Membership or Casual Pass is in addition to any other rights or remedies that it may have in law or equity.

## 13 General

### 13.1 Assignment

Neither party is permitted to assign its rights or obligations under the Membership without the prior written consent of the other party which must not be unreasonably withheld.

### 13.2 Agency

The Membership or Casual Pass does not create any relationship of partners, joint ventures or agency as between the User and Shelter.

### 13.3 Entire Agreement

(a) These Terms and Conditions incorporate Shelter's policies or procedures, referenced throughout these Terms and Conditions, which include:

(i) the Privacy Policy;

(ii) any other policy included on Website from time to time.

(b) To the extent that there are any inconsistencies between these Terms and Conditions and any of the Policies, these Terms and Conditions will prevail to the extent of the inconsistency.

(c) The combination of these Terms and Conditions and the Policies represent to the entire

understanding of the parties with respect to the User and supersedes all prior written agreements or understanding between the parties so far as it relates to the Membership.

#### 13.4 Severability

The invalidity or unenforceability of any of these Terms and Conditions will not affect the validity of any of these Terms and Conditions, and in the event that any provision is determined to be invalid or otherwise illegal, the Membership will remain in effect and will be construed in accordance with its terms as if the invalid or illegal provision were not contained herein; provided that the parties will negotiate in good faith an equitable adjustment to the Membership so as to give effect to the intent so expressed and the benefits so provided.

#### 13.5 Amendment

- (a) These Terms and Conditions and all Policies constitute the entire agreement and understanding between the parties with regard to the subject matter of the Memberships, Casual Passes and Services and supersedes all prior or contemporaneous oral or written proposals, agreements and representations between the parties.
- (b) Shelter reserves the right to unilaterally amend these Terms and Conditions and the Policies from time to time. The onus is on any User to revisit these Terms and Conditions and the Policies to keep themselves informed of such Terms and Conditions.
- (c) When Shelter makes amendments to the Terms and Conditions and the Policies, Shelter notify Members by uploading updated versions of the Terms and Conditions and Policies to the Website. The amendments will be effective from the date the amended Terms and Conditions and Policies are uploaded to the Website.

#### 13.6 Waivers

None of these Terms and Conditions or the Policies will be deemed waived, and no breach will be excused, unless such waiver or excuse is in writing and signed by the party against whom such waiver or excuse is claimed. The captions and headings in the Membership are intended only for convenience, and will in no event be construed to define, limit or describe the scope or intent of the Membership, or of any provision of the Membership, nor in any way affect the interpretation of the Membership.

#### 13.7 Survival

The following clauses survive the termination or expiration of the Membership:

- (a) Clause 6 – Warranties;
- (b) Clause 7 – Liability and Indemnities;
- (c) Clause 8 – Health and Safety Risks; and
- (d) Clause 9 – Confidentiality.

#### 13.8 Taxes

The User must pay Shelter an additional amount for GST payable by Shelter for any taxable supplies made by Shelter pursuant to the Membership. All Subscription Fees for Memberships will be displayed as GST inclusive, unless stated otherwise. The GST amount must be paid at the same time as the Subscription Fee.

#### 13.9 Non-Recourse

Notwithstanding anything contained in these Terms and Conditions or the Policies to the contrary, it is expressly understood and agreed by the parties hereto that each and every representation, warranty, covenant, undertaking and agreement made pursuant to the Membership was not made nor intended to be made as a personal representation, undertaking, warranty, covenant, or agreement on the part of any incorporator, member, stockholder, director, officer, partner, employee or agent, past, present or future, or any of them, and any recourse, whether in common law, in equity, by statute or otherwise, against any of them is hereby forever waived and released.

### 13.10 Notices

(a) A notice, demand, direction, determination, certification, consent, approval, request, waiver or similar communication given under this document must be in writing and signed by the sender or an authorised officer of the sender, unless this document expressly states otherwise.

(b) An email communication must state the first and last name of the sender and is taken to be signed by the named sender.

(c) A communication must be:

(i) sent by email to the relevant address, in which case it is taken to be received upon the earlier of:

(A) the sender receiving an automated message confirming delivery; and

(B) 6 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that delivery failed;

(ii) physically left at the relevant address; or

(iii) served by any other service method permitted by law.

(d) Despite anything else in this clause, if a communication is received or taken to be received after 5:00pm on a Business Day or on a non-Business Day, it is taken to be received at 9:00am on the next Business Day. For the purposes of this clause, the place in the definition of "Business Day" is taken to be the place of the relevant address of the recipient, and the receipt time is the time in that place.

### 13.11 Governing law

The Terms and Conditions are governed by the laws of New South Wales and the parties submit to its non-exclusive jurisdiction.

