

**FASTMARK PTY LTD** ACN 677 810 043 (**we, us, our**) makes available our trade mark filing platform (**Services**) through the website located at [www.fastmark.com.au](http://www.fastmark.com.au) and such other technological means from time to time (**Platform**).

These terms of service (**Terms**) constitute a legally binding agreement between the party that is filing a trade mark application and/or otherwise using the Services (**you, your**) and us upon which we offer you access to the Services.

**IMPORTANT:**

By browsing or accessing the Platform and/or filing a trade mark application via the Platform, you acknowledge and agree that:

- you have read, understood and agree to be bound by these Terms and our Privacy Policy (available at [www.fastmark.com.au/privacy-policy](http://www.fastmark.com.au/privacy-policy)) (**Privacy Policy**);
- you consent to our collection, use, storage and disclosure of your Personal Information and Sensitive Information (as defined in the *Privacy Act 1988* (Cth)) that you provide to us, in accordance with our Privacy Policy;
- if you do not agree to these Terms, we will not licence the Platform to you and you must cease using the Platform immediately;
- the Platform is a trade mark filing service only, and we do not provide any type of advice;
- we are not a law firm or trade mark attorney firm, we do not provide legal advice, or any form of intellectual property advice, and we do not employ any lawyers or trade mark attorneys;
- we do not guarantee that you will, by filing a trade mark application through the Platform, obtain a trade mark registration;
- you should always obtain legal advice or intellectual property advice to ensure you are aware of your rights;
- the party that is listed as the owner of the trade mark application is the lawful owner of, and intends to use, the trade mark;
- you have, in filing an application, checked that the information relating to the trade mark application is accurate and correct, and you understand that you cannot, through the Platform, change the goods and services, or any information relating to the trade mark application, after filing the application;
- in filing a trade mark application, you are making a trade mark application only, trade mark registration is uncertain and not guaranteed, and IP Australia will determine whether your trade mark application will be accepted or refused;
- we have no control over whether your trade mark application will be accepted or refused by IP Australia;
- users of the Platform must be 18 years of age or older. If you are under the age of 18, then you are not permitted to use the Platform and you must cease using the Platform immediately; and
- we only provide you with (through the Platform) access to the Services, and we make no warranties as to the accuracy or reliability of the information contained on the Platform, and we disclaim all associated liability.

## 1 GENERAL ACKNOWLEDGMENTS AND WARRANTIES

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- (a) We may change these Terms at any time for any reason. In the event of such change, we will notify you the details of the change through your nominated email or when you next access the Platform (where the terms may be displayed on-screen and you may be required to read and accept them to continue your use of the Services and the Platform).
- (b) You warrant that you are, or have obtained permission from, the owner of the device(s) that the Platform has been accessed from (**Devices**) to be used in connection with the Platform. The owner of the Device may be charged by their service provider for internet access on the Devices. You accept responsibility in accordance with these Terms for the use of the Platform and any Services on or in relation to any Device, whether or not owned by you.
- (c) The Platform may make use of location data sent from the Devices. You can turn off this functionality at any time by turning off the location services settings for the Platform on the Device. If you turn off location services, some functions of the Platform may not function. If you turn on location services, you consent to our (and our affiliates' and licensees') transmission, collection, maintenance, processing and use of your location data, in accordance with our Privacy Policy, to provide and improve the Services. You may withdraw this consent at any time by turning off the location services settings on the Device.
- (d) By using this Platform, you acknowledge and agree that internet transmissions are never completely private or secure. You understand that any message or information you send using the Platform may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.
- (e) The Platform may contain links to other independent third-party websites (**Third-party Sites**). You acknowledge and agree that the Third-party Sites are not under our control, and we are not responsible for and do not endorse their content or their privacy policies (if any). You will need to make your own independent judgement regarding your interaction with any Third-party Sites, including the purchase and use of any products or services accessible through them.
- (f) By using the Platform, you consent to us:
  - (i) collecting and using technical information about the Devices, for the purposes of improving our Services, and providing any services to you; and
  - (ii) monitoring your conduct while using the Platform and collecting information associated with your conduct to be used by us in relation to the Platform.

## 2 INFORMATION

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- (a) To use the Services and Platform you may be required to set-up an account or provide your information to us.
- (b) By providing your information to us, you agree:
  - (i) to submit your own valid information, which may include your full name, e-mail address, mobile phone number and postal address;
  - (ii) that all information which you submit to us will be true and accurate, and not misleading, deceiving or fraudulent;

- (iii) that you are responsible for any and all uses of the Platform, whether or not you have authorised such use;
  - (iv) that you will not use the Services for any unlawful or otherwise prohibited activity; and
  - (v) to maintain and promptly update your information to keep it accurate, current and complete at all times or as soon as reasonably practicable following any changes.
- (c) We may, from time to time (despite not having an obligation to do so) confirm or check the accuracy of any information provided by you to us. Where we make a request, you must promptly provide to us any information we require to confirm that the information you submit to us is true and accurate (and not misleading, deceiving or fraudulent).
- (d) We reserve the right to refuse your access to the Platform or Services, terminate your access to the Platform, remove or edit Content, or engage in any other act that we deem necessary, at any time, for any reason, at our sole discretion.

### 3 INTELLECTUAL PROPERTY

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#### 3.1 Ownership

- (a) You acknowledge and agree that:
- (i) all rights, title and interest in the Intellectual Property, anywhere in the world, belong to us or our licensors;
  - (ii) all rights in relation to the Intellectual Property are licensed (not sold) to you;
  - (iii) you hold no proprietary rights, title or interest in the Intellectual Property, other than the right to use such property in accordance with these Terms; and
  - (iv) nothing contained in these Terms shall be construed as an assignment or transfer of the Intellectual Property to you.
- (b) For the purposes of these Terms:
- (i) **Feedback** means any notes, messages, ideas, comments, concepts, feedback, suggestions, recommendations, or any other like content (in any form whatsoever) which you provide to us through our Platform and Services, in email or chat correspondence, or through any other means whatsoever, which relate to the functionality, operations or features of the Platform or Services, and any intellectual property rights associated with, or subsisting within, the same;
  - (ii) **Intellectual Property** means all present and future industrial and intellectual property rights relating to the Platform, Services, Materials, Feedback, and/or us, including, without limitation:
    - (A) inventions, patents, copyright, trade business, company or domain names, rights in relation to registered designs, registered and unregistered trade marks, know how, trade secrets and the right to have confidential information kept confidential, and any and all other rights to intellectual property which may subsist anywhere in the world; and

- (B) any application for or right to apply for registration of any of those rights;
- (iii) **Materials** means all of the materials displayed on or via the Platform, including (without limitation) all information, text, graphics, images, names, logos, trade marks, design, software and advertisements.

### 3.2 Licences

- (a) We grant you a limited, royalty-free, non-exclusive, non-transferrable, non-sublicensable, revocable, Australia-wide licence to use the:
  - (i) Intellectual Property to access the Platform and the Services; and
  - (ii) Platform on the Devices,  
  
for non-commercial purposes only, for the duration of these Terms, subject to these Terms and the Privacy Policy (**Use Licence**).
- (b) You acknowledge and understand that you are solely responsible for your use of the Intellectual Property, Platform and the Services.
- (c) You grant us an irrevocable, perpetual, sub-licensable, transferable, non-exclusive, worldwide, royalty-free licence to use, reproduce, modify, alter, improve, distribute, publish, make derivative works from, and otherwise exploit (for both commercial and non-commercial purposes), any content that you provide to us through the Platform (**Content**), in whole or in part, and in any form, media or technology, whether now known or hereafter devised, in connection with our (and our successors', licensees' or affiliates') business (**Content Licence**), which shall survive the expiry or termination of these Terms.
- (d) You warrant and represent that:
  - (i) all rights, title and interest in the Content are your sole and exclusive property;
  - (ii) the Content (and its commercial or non-commercial use) will not in any way infringe upon or violate the rights of any other party (including without limitation any rights of copyright, patent, trade secret or other intellectual property rights);
  - (iii) but for you, no other party, or employee, contractor, shareholder, officer, associate and/or affiliate of you has or will have a legally enforceable right, title or interest in the Content, irrespective of whether or not the Content was created before, on or after these Terms; and
  - (iv) your submission of the Content to us does not (and will not) violate or infringe any third-party rights.
- (e) You irrevocably and unconditionally consent to (and warrant that your employees, agents, and contractors irrevocably and unconditionally consent to) all uses, acts or omissions by or on behalf of us, our assigns, licensees, or successors in title or any of its authorised persons of, or in relation to, the Feedback and Content, including any uses, acts or omissions which would otherwise breach any of your (and/or your employees', agents', or contractors') moral rights (as defined in Part IX of the *Copyright Act 1968* (Cth)).

### 3.3 Use Licence Restrictions

Except as expressly set out in these Terms or as permitted by any local law, you undertake and agree that you will not (and will not allow any person to), without our prior written consent:

- (a) rent, lease, sublicense, loan, sell or use for commercial purposes, the Intellectual Property, Platform and/or Services;
- (b) modify, alter, merge, adapt, translate, reverse-engineer, decompile, disassemble, or make derivative uses of, the whole or any part of the Intellectual Property, Platform and/or Services;
- (c) copy, imitate, mirror, reproduce, distribute, disseminate, publish, download, display, perform, post or transmit any Intellectual Property in any form or by any means;
- (d) permit the Platform or any part of it to be combined with, or become incorporated in, any other programs;
- (e) copy the Platform except where such copying is incidental to normal use of the Platform, or where it is necessary for the purpose of back-up or operational security;
- (f) use the Intellectual Property, Platform and/or Services in a way that may (or does) damage, disable, overburden, interfere with, or adversely affect the functionality of the Intellectual Property, and/or Services;
- (g) use any data mining bots, spiders, automated tools or similar data gathering and extraction methods, directly or indirectly, in connection with the Platform or Services, or collect any information from the Platform or Services;
- (h) use the Intellectual Property, Platform and/or Services in a way that may (or does) bring our business, the Platform or Services into disrepute;
- (i) use the Intellectual Property unlawfully, in an inappropriate way or in a manner inconsistent with these Terms;
- (j) infringe our rights (or the rights of any third parties) in relation to the Intellectual Property;
- (k) bypass or avoid our security features or measures which have been implemented on the Platform or in connection with the Services (or attempt to do the same);
- (l) apply to register, or challenge the validity of, the Intellectual Property;
- (m) provide or otherwise make available the Platform in whole or in part (including object and source code), in any form to any person without prior written consent from us; and
- (n) fail to comply with all technology control or export laws and regulations that apply to the technology used or supported by the Platform or any Service.

## 4 PLATFORM USE

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### 4.1 Acceptable Use Terms

- (a) You must not (and will not allow any person to):
  - (i) use the Platform or any Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the Platform or any operating system;
  - (ii) infringe our Intellectual Property or the intellectual property of any third party in relation to your use of the Platform or any Service;
  - (iii) upload any Content which would be, or act in any manner that is (or may be seen to be) unlawful, not for a proper purpose, in contravention of third party rights, misleading or deceptive (or likely to mislead or deceive), fraudulent, or that does (or may) result us being vulnerable to any legal proceedings, liabilities or other sanctions;
  - (iv) transmit any material or Content that is defamatory, offensive or otherwise objectionable in relation to your use of the Platform or Services (as determined at our sole and exclusive discretion);
  - (v) use the Platform or any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and
  - (vi) collect or harvest any information or data from the Platform, any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service.
- (b) You will only:
  - (i) upload Content to the Platform yourself (or cause or permit Content to be uploaded to the Platform by persons who have agreed to comply with these Terms, who you will ensure will comply with these Terms);
  - (ii) upload Content to the Platform that is correct and error-free, and you are responsible for all such Content; and
  - (iii) disclose Personal Information to us regarding yourself or others who have consented to that disclosure and subsequent use by us in accordance with our Privacy Policy.

### 4.2 General Use Acknowledgements

You acknowledge and agree that:

- (a) we may remove, alter or amend any Content that you upload to the Platform at any time, for any reason, at our sole and exclusive discretion; and
- (b) where you have provided contact details (through any method) of a person (**Contact Person**) we may contact that Contact Person in relation to the Platform to improve the Services, and you authorise us to contact that Contact Person via email, text, phone or any other method, unless you request that we provide otherwise.

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**5 PAYMENTS**

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- (a) You may engage us to file a trade mark application in Australia for you for the fee indicated on the “Pricing” page of the Platform or as otherwise specified by us at the time of purchase (which is exclusive of GST and government filing fees) (**Fees**).
- (b) Our Fees are based on the filing fees for trade mark applications in Australia using the “Pick-list”, without any special circumstances or adverse outcomes.
- (c) Our Fees are calculated exclusive of government fees (i.e. IP Australia’s trade mark filing fees). The government fees for filing a trade mark application are (currently) as follows:

<b>Fast Application</b>	<b>Standard Application</b>
\$330 per class	\$250 per class

- (d) We use third-party providers to facilitate the sale of the Services through our Platform (**Providers**). When you purchase any Services from us, you agree to the terms and conditions prescribed by the Providers.
- (e) You may make payment for the Services through the accepted payment methods specified by us on our Platform by us from time to time, at the time of placing your order for the Services.
- (f) By paying for the Services through the payment methods specified above, you acknowledge and accept that you will be charged by us (and you authorise us to charge you) for the Services that you have agreed to purchase.
- (g) We will notify you by email as soon as any payment has been successfully processed and received by us. If any payment is not successfully processed, you will receive a notification from us, and you will need to contact us to resolve the issue. We will not attempt to charge you again until the issue has been resolved.
- (h) If you believe that you were incorrectly charged, please contact us immediately, and we will attempt to rectify the error as soon as reasonably practicable.
- (i) You also agree that you will be responsible for any fees or charges that are incurred whilst processing your payment, including but not limited to, credit or debit card transaction processing fees, merchant settlement fees and other similar fees.
- (j) You warrant that you will have sufficient funds available for us to process payments.
- (k) We will only store and hold your payment credentials (if applicable) in accordance with our Privacy Policy.

## 6 FAST APPLICATIONS

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### 6.1 Applications

You understand that:

- (a) when you file a “Fast” trade mark application, you are not filing a formal trade mark application, and you are instead filing a preliminary trade mark application to IP Australia to determine whether your trade mark application will be likely to be accepted by IP Australia after you file a formal application;
- (b) a “Fast” application does not result in a trade mark application being filed with IP Australia until the “Fast” application is converted into a formal trade mark application (as detailed in clause 6.2 below);
- (c) no additional fees will be incurred to convert your “Fast” application into a formal trade mark application; and
- (d) if you wish to file a formal trade mark application from the outset, you should either, file a “Standard” trade mark application, or convert your “Fast” application into a formal trade mark application.

### 6.2 Adverse Examination Reports

- (a) If you select the “Fast” trade mark filing option, and your “Fast” trade mark application is refused by IP Australia, IP Australia will issue an “Adverse Results Report”.
- (b) We will provide you with the Adverse Results Report as soon as possible.
- (c) Following the receipt of the Adverse Results Report:
  - (i) you can (for no additional cost) convert your “Fast” trade mark application and file a formal trade mark application, which will prompt IP Australia to issue a formal examination report within three months. You will then have 15 months to address the issues identified by IP Australia;
  - (ii) if you proceed with a formal application (and convert your “Fast” trade mark application), you will not receive the \$150 refund (per class), and your trade mark application will become publicly visible on the Australian Trade Mark Search;
  - (iii) if you wish to receive the \$150 refund (per class) and allow your application to lapse, do not click the link in the email provided by us to you, as this decision cannot be reversed; and
  - (iv) if you would like to proceed with a formal application (and converting your “Fast” trade mark application), please click the link in the email provided by us to you, otherwise, your trade mark application will automatically lapse, and you will receive the \$150 refund (per class).
- (d) You understand that missing the deadline to file a formal trade mark application is irreversible, and if this occurs, you would need to file a new trade mark application and pay the associated filing fees again.



**7 REFUND**

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- (a) If you select the “Fast” trade mark filing option, and your “Fast” trade mark application is refused by IP Australia, being where IP Australia issue an “Adverse Results Report” we will refund to you, within 28 days, \$150 per class relating to your trade mark application to the payment method you used to file the trade mark in the first instance, unless you elect to convert your “Fast” application into a formal trade mark application (as detailed in clause 6 above).
- (b) Subject to your rights under the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), and unless otherwise provided in this clause, we do not provide refunds relating to any Services provided to you.

**8 TRADE MARK APPLICATIONS**

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You acknowledge and understand that:

- (a) we file trade mark applications with IP Australia on your behalf only;
- (b) we do not guarantee that you will, by having us file a trade mark application, guarantee a trade mark registration;
- (c) you consent to us being recorded as the “address for service” in relation to your trade mark application;
- (d) I understand that the trade mark and goods and services (and classes) cannot be changed after submitting the application;
- (e) in the event IP Australia does not accept your trade mark application (i.e. by issuing an Adverse Examination Report), we will contact you to notify you of the same, and you are solely responsible for responding to IP Australia’s Adverse Examination Report (and we have no liability to you in this regard);
- (f) if you do not respond to the Adverse Examination Report at the time and in the manner required by IP Australia, your trade mark application may lapse, and you may be required to file a new application (and pay IP Australia’s filing fees again); and
- (g) we rely on all information provided by you in relation to your trade mark application (including, but not limited to, the trade mark owner, the trade mark word or image, the goods and services, and all other information), and it is your sole responsibility to ensure that information is correct and accurate

**9 DISCLAIMER**

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You acknowledge and agree that:

- (a) the Platform has not been developed to meet your individual requirements;
- (b) it is your responsibility to ensure that the processes and functions of the Platform meet your requirements;
- (c) we assume no duty of care to you or any other party who relies on anything provided for by the Platform;

- (d) we have no responsibility for the outcome of your trade mark application, including, but not limited to, any determinations of IP Australia or other relevant parties;
- (e) IP Australia is solely responsible for examining the trade mark applications, and we rely on IP Australia's representations that they will examine the trade mark applications at the times and in the manner set out on our Platform. We have no responsibility for the ability of IP Australia to examine the trade mark applications at the time and in the manner set out on our Platform;
- (f) the use of the Platform and/or Services is at your own risk, and you assume all risk of injury, illness, damage or loss to you or any other parties in connection with such use;
- (g) the Platform and Services are provided on an "as is" and "as available" basis and we do not guarantee that the Platform and/or Services will be, available from to time and/or suitable for your needs;
- (h) we do not warrant or guarantee that the Platform will be provided in an uninterrupted, continuous and error-free manner;
- (i) while we will use reasonable endeavours to ensure that the Platform and Services (and all information provided thereto) are up-to-date and current, it is not our responsibility to monitor any changes in generally accepted standards and we assume no liability associated with the same;
- (j) we rely on all warranties and undertakings provided by you in relation to the Services and the Platform as set out in these Terms;
- (k) we cannot guarantee that our security procedures will be error-free, that transmissions of your data will always be secure or that unauthorised third parties will never be able to defeat our security measures or those of our third-party service providers;
- (l) while we may collect Personal Information in accordance with these Terms, without limiting our right to make reasonable enquiries to ascertain the accuracy of Personal Information, at no stage are we responsible for (nor do we make any representations or warranties with respect to) the Personal Information and/or the Content, nor are we obligated to confirm or check the accuracy of the Personal Information and/or the Content; and
- (m) we disclaim any and all warranties and representations (express or implied, oral or written) with respect to the Platform and/or Services, including any:
  - (i) implied warranties of merchantability;
  - (ii) implied warranties of fitness or suitability for any purpose; and
  - (iii) warranties of non-infringement or condition of title.

## 10 LIMITATION OF LIABILITY

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- (a) To the maximum extent permitted by law, we have no liability to you for:
  - (i) any loss of profit or anticipated profit, loss of data, loss of use, damage to goodwill, or loss due to delay, or any direct or indirect loss or damage (including, without limitation, consequential loss or damage) however caused (including, without limitation, due to breach of contract, negligence or breach of statute) which may be suffered or incurred by you or which may arise from or in connection with your use of the Platform or the Services, or your use of or reliance upon any of the information or the Intellectual Property provided through the Platform or Services, or otherwise provided by us to you;
  - (ii) any losses, costs, expenses and damages (including legal costs and disbursements) sustained or incurred, whether directly or indirectly or consequentially or in any other way, arising in connection with:
    - (A) death, personal injury or property damage resulting directly or indirectly from your use of the Platform and/or Services; and/or
    - (B) any failure or delay due to matters beyond our reasonable control.
  - (iii) any act or omission, made in error by you, in the course of using the Platform or the Services; and
  - (iv) your Device not being a compatible with the Platform.
- (b) Our maximum aggregate liability under or in connection with these Terms whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to the total price paid by you to us in the preceding 12 months for the Services.

## 11 EVENTS OUTSIDE OUR CONTROL

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- (a) We will not be liable or responsible for any failure to perform, or delay in the performance of, any of our obligations under these Terms that are caused by any act or event beyond our reasonable control, including but not limited to, acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labour stoppages or slowdowns or other industrial disturbances, epidemics, pandemic or passage of Law or any action taken by a governmental or public authority, including imposing an embargo (**Event Outside Our Control**).
- (b) If an Event Outside Our Control takes place that affects the performance of our obligations under these Terms:
  - (i) our obligations under these Terms will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and
  - (ii) we will use our reasonable endeavours to find a solution by which our obligations under these Terms may be performed despite the Event Outside Our Control.

**12 TERMINATION**

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- (a) Either party may, at any time, for any reason, terminate these Terms immediately by written notice to the other party.
- (b) On termination for any reason:
  - (i) all rights granted to you under these Terms shall immediately cease;
  - (ii) you will no longer be granted access to the Services or the Platform;
  - (iii) the Use Licence will be immediately and automatically revoked; and
  - (iv) you must immediately return to us any Intellectual Property, and any of our confidential information or other property that is in your possession at that time.

**13 RELEASE AND INDEMNITY**

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- (a) You discharge and forever release us from any claim, loss, actions, proceedings, demands, costs, expenses and liability relating to your use of the Platform and/or the provision of the Services to you.
- (b) You hereby defend, indemnify and hold harmless us, our officers, directors, employees, agents, subcontractors, licensors, and suppliers, from and against all claims, loss, actions, demands, liabilities and settlements, arising in connection with your use of the Platform and/or the Services, and/or your breach of these Terms.

**14 DISPUTES**

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In the event of any dispute under these Terms:

- (a) you will notify us of the complaint using the contact details provided in these Terms;
- (b) we will review your complaint and request any further information that we may require;
- (c) you and we will both negotiate in good faith to resolve the dispute; and
- (d) you agree to fully cooperate (in a timely manner) with all requests that we may make in the resolution process.

**15 OTHER IMPORTANT TERMS**

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- (a) A “day”, as used on our Platform, is a “business day” in Adelaide, South Australia.
- (b) These Terms may be amended or varied by us, at any time, for any reason, at our discretion, and may not be amended or varied in any other manner. While we will use reasonable endeavours to notify you as soon as such variations have been made, you are required to revisit these Terms before placing any orders on the Platform to ensure that these conditions have not changed. The new terms may be displayed on screen and you may be required to read and accept them to continue your use of the Services.
- (c) We control and operate the Platform and Services from Australia. We do not represent that the Platform and/or Services are appropriate or available for use cross-jurisdictionally. If you are accessing the Platform and Services from locations other than Australia, you acknowledge and understand that you are doing so at your own risk and on your own initiative, and you are solely responsible for compliance with local laws (as may be applicable).

- (d) We may assign these Terms and our rights or delegate our obligations without your consent. All provisions contained in these Terms shall extend to and be binding upon you and our successors and assignees. You may not assign these Terms to another person or entity without our prior written consent.
- (e) Enforcement of the Terms is solely at our discretion and our failure to enforce a provision in some instances does not constitute a waiver of our right to enforce such provision in other instances.
- (f) Each of the conditions of these Terms operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- (g) These Terms are governed by the laws of South Australia. You and we both agree that the courts of South Australia will have non-exclusive jurisdiction.