

Home Building Australia – Terms of Service

Welcome to our site <https://www.homebuilding.com.au> ('Site') and thank you for choosing Home Building Australia as your directory listing site of choice. These Home Building Australia Terms of Service ('Terms') shall govern your use of the Site, which shall include any Services (as defined herein) offered by Us (Home Building Australia Pty Ltd [Reg No. ACN 635 466 170], c/- Suite 205, Level 2, 23 Gipps Street, Collingwood, VIC 3066) and purchased by You, through the Site. 'You' shall mean the entity you're duly authorised to represent in accepting these Terms or, if that is not applicable, to you individually.

By accessing and/or interacting and/or purchasing Services off the Site, you agree to be bound by these Terms. If you do not wish to be bound by these Terms, you may not use this Site.

Our Services may be subject to additional terms specific to such Services. These additional terms shall be Service-Specific Terms ('Specific Terms') which may be contained in a separate order form upon purchase of such Services. By accessing or using a Service covered by the Specific Terms, you also agree to be bound by the Specific Terms. In the event of a conflict between these Terms and the Specific Terms, the Specific Terms shall prevail. Nothing in these Terms is intended to limit any rights you might have as a customer under applicable Australian law or other statutory rights that may not be excluded.

We reserve the right to change these Terms from time to time without prior notice.

OPERATIVE PART

1. Interpretation

1.2 In the interpretation of this Agreement:

- (a) '**Intellectual Property**' includes know-how, technology, trade secrets, copyright, trade-marks or trade names.
- (b) The word '**person**' means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not;
- (c) references to '**Our**', '**We**' and '**Us**' refers to Home Building Australia Pty Ltd, and any employee, servant, sub-contractor, associate, partner, director or officer of Home Building Australia Pty Ltd;
- (d) when a party comprises two or more persons the rights and obligations of such persons pursuant to these Terms shall ensure for the benefit of and bind all of them jointly and each of them severally;
- (e) references to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (f) words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;
- (g) grammatical forms of defined words or phrases have corresponding meanings;

- (h) parties must perform their obligations on the dates and times fixed by reference to the capital city of New South Wales;
- (i) reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (j) if the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- (k) references to a party are intended to bind their executors, administrators and permitted transferees; and
- (l) obligations under these Terms affecting more than one party bind them jointly and each of them severally.

2. Basis for an Agreement

- 2.1 Upon the purchase of Our Services through the Site, We agree to provide the Services in accordance with the provisions of these Terms and any further Specific Terms, as applicable.
- 2.2 We do NOT warrant that any particular results will be achieved through the provision of the Services. Where We have indicated specific targets that We will attempt to meet during the provision of Services, such targets are not warranted and a failure to meet such targets will not be a breach of these Terms or the Specific Terms, as applicable.

3. Services and Subscription Period

- 3.1 This Agreement contains the requirements regarding the Services, as ordered, to be provided to You.
- 3.2 We will provide You with the following Services:

A. Online Directory Listing

We operate an online smart directory listing site (www.homebuilding.com.au) (hereinafter referred to as the 'Site'). We will optimise the Site through search engine optimisation (SEO) and utilise digital marketing strategies on the Site that will promote and market listings.

and/or

B. Sponsorship Opportunity

We will provide sponsorship to You by way of maximising Your position on the Site, with additional features that will include:

- an optimised keyword generator;
- strategic branding bundle;
- social media sharing;
- niched directory services; and
- smart presentation.

in accordance with the requirements of each package, as determined by the following 'Subscription Fee':

- Basic:** We will charge the fee of \$270 per year (excl. GST) **PLUS** Out-of-Pocket Expenses, Disbursements and Charges.
- Standard:** We will charge the fee of \$570 per year (excl. GST) **PLUS** Out-of-Pocket Expenses, Disbursements and Charges.
- Premium:** We will charge the fee of \$970 per year (excl. GST) **PLUS** Out-of-Pocket Expenses, Disbursements and Charges.

3.2 The Services shall commence on the date on which the Services are purchased through the Site in accordance with the Subscription Fee and shall continue for a period not exceeding 12 (twelve) months (the 'Subscription Period'), unless terminated in accordance with clause 10 of these Terms.

3.3 We shall, in accordance with these Terms and any further Specific Terms:

- deliver the Services with such effort as would be made by a reasonable entity of the same kind in the same circumstances;
- deliver the Services with reasonable skill and care and to the best of their ability, employing their particular knowledge, experience and technical know-how;
- comply with all reasonable requests from time to time given to Us by You to manage the relationship; and
- comply with and behave in accordance with business ethics.

4. Subscription Fees and Payments

- 4.1 Subscription Fees are based on the Services purchased and not actual usage and are, therefore, NON-REFUNDABLE.
- 4.2 All Subscription Fees, Out-of-Pocket Expenses, Disbursements and Charges shall be exclusive of GST (unless otherwise stated).
- 4.3 Any adjustments to the Subscription Fees (discounts or supplementary charges), if applicable, will be incorporated in a final invoice.
- 4.4 We will invoice You for all Out-of-Pocket expenses, disbursements and/or charges, as per clause 5 of these Terms. All invoices shall be payable on or before the due date, as specified, by electronic transfer through the Site.
- 4.5 If You default on any payment and/or fail to make payments as they fall due, then all outstanding amounts due by You to Us shall immediately become due and payable and We may levy an interest charge of 10% per annum on any such outstanding balance. This provision will be without prejudice to any other remedy that may be available to Us.

5. Out-of-Pocket Expenses, Disbursements and Charges

- 5.1 We may incur expenses and disbursements (being money which we pay or are liable to pay) to others on your behalf. We will inform You of these expenses and disbursements as well as any other payments required to be made, as soon as is reasonably practicable.
- 5.2 We will charge You for services we use or supply such as telephone calls, photocopying and postage.
- 5.3 You agree to meet all necessary out-of-pocket expenses, which We may incur in connection with the provision of the Services. If not paid directly then such expenses will be billed to You as a disbursement.

6. Your Obligations

- 6.1 You agree to:
- 6.1.1 abide by these Terms and the Specific Terms, as applicable;
 - 6.1.2 obtain, procure and give any consents, permissions, access, facilities, information, cooperation, permits, authorities, notices and licences (whether or not required by law) which are reasonably needed to enable Us to provide the Services, as required;
 - 6.1.3 Provide Us with all the required information, materials and/or resources, or otherwise, as may be reasonably required to provide the Services;
 - 6.1.4 Warrant that any intellectual property provided by You to Us shall not breach any third party's intellectual property rights (including moral rights);
 - 6.1.5 Warrant that You are the owner or authorised licensee of any intellectual property provided by You to Us and you are entitled to provide Us with such intellectual property for its designated use; and
 - 6.1.6 Warrant that any information or material provided to Us to enable us to provide the Services will not breach or infringe any laws or persons' rights.
- 6.2 You agree that we will suspend and/or cancel your access to all or any part of the Service/s if You are in material breach of these Terms and/or the Specific Terms, as applicable or performance of the Service is impossible or impractical as a result of causes beyond Our control caused by acts of a third party or Your acts/actions.

7. Intellectual Property Rights

- 7.1 Both You and We warrant that in carrying out obligations and responsibilities in accordance with these Terms and the Specific Terms, as applicable, both parties will not infringe the intellectual property rights of any third party and that the Services will not require Us to make any additional payment in respect of any third party intellectual property rights.
- 7.2 All content created by Us shall remain Our intellectual property, unless otherwise agreed.

8. Confidential Information

- 8.1 The Parties agree not to disclose Confidential Information. Neither Party may use or take advantage of any Confidential Information without the discloser's consent, even beyond the duration of these Terms and/or the Specific Terms.
- 8.2 This obligation does not apply to:
- information known to the receiver before disclosure by the other Party, or
 - information which becomes public knowledge without fault on the part of the receiver, or
 - disclosures made to the extent required by some applicable legal or regulatory requirement.

9. Relationship of the Parties

- 9.1 The Parties agree that these Terms, including any applicable Specific Terms, shall not be construed as creating a relationship of employer and employee, or any such legal association, including a partnership

or agency, that would give either party the express or implied right, power or authority to create any duty or obligation of the other party, other than as expressly authorised, in writing.

10. Privacy

10.1 You consent to Us collecting and using of personal information about You, as provided by You or any other sources, for the purpose of fulfilling the objects of these Terms and the purchased Services. Disclosure of such information may be compelled by law. You also authorise Us to disclose such information where necessary to others in furtherance of the Service/s You have purchased from Us.

11. Retention of Documents

11.1 We will, on completion of the Subscription Period, retain any papers to which You are entitled, but leave in Our possession, for no more than 7 years, and on the understanding that We have Your authority to destroy the file 7 years after the date of final invoice rendered by Us.

12. Indemnity

12.1 It is acknowledged that whilst We agree to exercise all due skill, care and diligence in rendering the Services to You, We take no responsibility for Your actions or any consequences flowing therefrom.

12.2 You agree to indemnify and release Us, including any employees, contractors, representatives, or agents in respect of any claim or demand made or action commenced by any person against You, or Us or for which You are liable in connection with any loss or damage suffered in connection with these Term or the Specific Terms, as applicable, including but not limited to any legal costs as between solicitor and client.

12.3 The indemnity provided in the preceding clause shall be continuing and is irrevocable. It is not limited by any time or times mentioned in these Terms or the Specific Terms, as applicable but shall continue to have full force and effect during and after the Subscription Period. The indemnity shall continue to have full force and effect and be enforceable against You, and Your successors, assigns and legal personal representatives notwithstanding their death, insolvency, the expiration of the Subscription Period or any other event.

13. General:

13.1 These Terms, and the Specific Terms, as applicable, shall be governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

13.2 If any of the provisions of these Terms, including the Specific Terms, are determined by any competent authority to be invalid, unlawful or unenforceable, such provision will to that extent be severed from the remaining Terms, including the Specific Terms, which will continue to be valid and enforceable to the fullest extent permitted by law.

Should you have any questions regarding these Terms and/or our Services, please don't hesitate to contact us.