

Terms & Conditions

1. Preamble

This Agreement and any Attachment set out the terms and conditions upon which OTP agrees to provide Services to You. Please read this Agreement carefully.

If You agree to these terms and conditions, please click the 'I Agree' button at the head of this page. By clicking the 'I Agree' button, You accept these terms and conditions and enter into a legally binding and enforceable agreement with OTP on the terms and conditions set out in this Agreement .

OTP reserves the right to amend all or part of these terms and conditions at any time by publishing the new terms and conditions on OTP's website. Your subsequent or continued use of the OTP website constitute Your acceptance of those terms. Should You object to any of these terms and conditions, You must immediately cease to use the OTP website.

2. Definitions and interpretation

2.1. In this Agreement:

- (a) '**Agreement**' means the agreement You enter into with OTP by accepting these terms and conditions in the manner stated in clause 1, and includes any Attachments.
- (b) '**Attachment**' means any documents attached to this Agreement including without limitation the Privacy Policy.
- (c) '**Intellectual Property**' means any rights in the nature of copyrights, trademarks, industrial designs, inventions or trade secrets or proprietary and/or confidential information.
- (d) '**Material**' means any artwork, images, text or information You provide to OTP in connection with the Services, regardless of medium or whether or not it is displayed on the Site.
- (e) '**OTP**' means Offtheplan.com Pty Ltd (ACN 151 295 288) and/or its related bodies corporate whether in Australia or overseas.
- (f) '**Privacy Policy**' means OTP's Privacy Policy which may be accessed at <https://offtheplan.com.au/Privacy-policy>
- (g) '**Services**' means the provision of advertising services by means of the Site of the kind and in the manner specified at the time You place Your order for Services with OTP.
- (h) '**Site**' means the website maintained by OTP at www.offtheplan.com.au, and includes any website maintained or controlled by OTP.
- (i) '**Term**' means the period You specify for which You require Services at the time of ordering those Services.
- (j) '**You**' means the person seeking to use OTP's Services, and '**Your**' has a cognate meaning.

2.2. In this Agreement, unless repugnant to sense or context, all terms importing gender refer to all genders, all plural terms include the singular and vice versa, all references to persons include references to corporations, and all reference to clauses are references to clauses of this Agreement.

3. Services

3.1. OTP agrees to use its reasonable endeavours to display the Material You provide to it for that purpose on the Site in the manner and for the period You specify when placing Your order with OTP in the manner provided on the Site.

3.2. OTP is not liable to create, improve, or otherwise alter any Material on Your behalf.

3.3. You agree that OTP may alter Material in immaterial particulars if OTP considers it reasonably necessary or convenient to do so in order to provide You with the Services.

- 3.4. OTP reserves the right to refuse or withdraw the display of any Material on the Site at any time if, in OTP's opinion, such Material is illegal, defamatory, offensive, obscene and or contrary to its business interest, goodwill and or reputation or any of its customers or is likely to infringe on the rights of third parties (even if the Material has previously been published on the Site).
- 3.5. If You wish to vary or withdraw any of the Material prior to the end of the Term, You must give OTP 7 days prior written notice of Your requirements. OTP must give effect to Your request as soon as is reasonably possible after the expiry of that notice period.

4. Fees and disbursements

- 4.1. You agree to pay OTP's fees in respect of OTP's provision of the Services for the Term in the amount notified to You in the process of placing Your order for Services with OTP, or in the amount appearing on OTP's invoice, as the case may be. You agree that You will remain liable under this clause despite any request You make under clause 3.5.
- 4.2. You agree to pay OTP's fees in respect of OTP's provision of the Services for the Term, or such part of those fees as OTP may require, in advance of provision of those Services if OTP requests You to do so, and agree that OTP is not liable to provide You with Services until You have complied with OTP's request.
- 4.3. You agree that if You request OTP to incur disbursements on Your behalf for any reason whatsoever, You will pay OTP such deposit against the cost to OTP of those disbursements, inclusive of any goods and services tax payable, as and when OTP requests.
- 4.4. You must pay OTP's invoices in full within 14 days of the date of the invoice, unless You and OTP have agreed other terms and have recorded them in writing.
- 4.5. OTP is entitled to charge interest on overdue invoices at a rate of 8% per annum, calculated for each day payment is overdue.
- 4.6. OTP is entitled to recover its costs of recovering unpaid debts from You. Those costs may include fees charged by process servers, commercial agents, debt collectors, solicitors, courts and tribunals, and bailiffs, sheriffs or similar court officers.

5. Acknowledgments, warranties and liability

- 5.1. You warrant to OTP that the display of the Material on the Site does not and will not breach or infringe:
 - (a) the Competition and Consumer Act 2010 (Cth) and any other legislation;
 - (b) the Intellectual Property of any third party; or
 - (c) any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth, or a State of Territory).
- 5.2. OTP does not accept responsibility for any errors submitted by You or Your agent.
- 5.3. You acknowledge that OTP does not provide You with advice in respect of Your use of the Site, or in relation to any dealing or transaction connected with Your use of the Site. You acknowledge that OTP does not hold itself out as a licensed real estate agent, and does not act for You in that capacity, and agree that nothing in this Agreement constitutes OTP Your agent, representative, or professional advisor for any purpose.
- 5.4. You agree that OTP is not responsible for enquiring as to Your purposes in using the Services prior to providing the Service to You, and that OTP has made no warranty or representation as to the fitness of the Services for any particular purpose. All warranties, whether or fitness for purpose or otherwise, that would be implied into this Agreement by law are excluded to the greatest extent allowed by law.

- 5.5. OTP's liability to You, and the remedies You may seek from OTP, are limited to the greatest extent allowable by law. If any provision of this Agreement purports to limit OTP's liability or the remedies to which You are entitled against OTP to any greater extent, that provision is to be read down to the point where it is permitted by law.
- 5.6. You indemnify OTP and its officers, employees, contractors and agents (the "**Indemnified**") against any costs, expenses, losses, damages and liability suffered or incurred by the Indemnified arising from Your breach of this Agreement and any negligent or unlawful act or omission by You in connection with this Agreement.
- 5.7. OTP will not be liable for any delay or failure to provide the Services caused by a factor outside its reasonable control (including but not limited to any act of God, war, breakdown of plant, industrial dispute, electricity failure, epidemic, pandemic, governmental or legal restraint).

6. Termination

- 6.1. This Agreement will terminate automatically at the end of the Term, without need for further action by any party.
- 6.2. OTP may terminate this Agreement immediately by written notice to You if:
- (a) You fail to pay any of OTP's fees or invoices in the manner and at the times required under this Agreement;
 - (b) You become insolvent for the purposes of the Corporations Act 2001 (Cth) or the Bankruptcy Act 1966 (Cth), suffer the appointment of a provisional liquidator, liquidator, trustee in bankruptcy, administrator or deed administrator pursuant to Part 5.3A of the Corporations Act 2001 (Cth), receiver or receiver and manager, or propose or enter into any form of compromise of Your debts with Your creditors generally, other than for the purposes of a bona fide business reconstruction; or
 - (c) You breach clauses 4.1, 4.4, 7.3 or 7.4 of this Agreement.
- 6.3. OTP may terminate this Agreement immediately and without giving You prior notice if OTP forms the view, on reasonable grounds, that You are using the Services, the Site, or any other OTP service or facility to convey explicit or implicit information or representations which are incorrect, misleading or deceptive, made without reasonable grounds, or to publish material which is in any way distasteful, obscene, defamatory, illegal, or conducive to illegality.
- 6.4. Nothing in this Agreement deprives any party of any right to terminate this Agreement given by statute, at common law, or in equity.
- 6.5. Termination of this Agreement pursuant to clauses 6.1 or 6.2 will not affect any rights accruing to either party as at the date of termination. If OTP terminates this Agreement pursuant to clause 6.3, it may remove any Material You have displayed on the Site from the Site immediately and without giving You prior notice. Upon termination of this Agreement for any reason, all amounts that You have agreed to pay to OTP will become immediately due and payable in full.
- 6.6. Clauses 4.4 to 4.6, 5.3, to 5.5, 7.1 to 7.4, 8 and 9 inclusive will survive termination of this Agreement.

7. Intellectual property

- 7.1. Nothing in this Agreement gives either You or OTP any right of ownership over or in any Intellectual Property the other party owns at the time of entering into this Agreement, or (subject only to clause 7.2) after that time.
- 7.2. All Intellectual Property OTP generates pursuant to this Agreement or in the course of OTP's provision of Services is the sole property of OTP. You must do all things reasonably requested by OTP at OTP's expense to

assist OTP to protect such Intellectual Property against infringement, or to secure its rights to such Intellectual Property by registration or other appropriate means.

7.3. You warrant to OTP that You have sufficient Intellectual Property rights in or to any Material You provide to OTP pursuant to this Agreement to allow OTP to deal with that Material in any manner reasonably necessary or convenient to allow OTP to provide You with Services, and You hereby grant a worldwide, royalty-free, non-exclusive, irrevocable licence OTP to:

- (a) use any Material You provide to OTP in any manner OTP reasonably considers necessary or convenient to allow OTP to provide You with Services; and
- (b) retain a copy of any Material in its archives, and to use such Material as it sees fit for promotional, administrative, or regulatory purposes, or in the course of legal proceedings.

8. Confidentiality

8.1. You acknowledge that pursuant to the Agreement You may have access to OTP's Confidential Information.

8.2. You must for 2 years following termination of this Agreement keep confidential and secure at all times such Confidential Information You receive from OTP (whether directly or indirectly) that is marked or otherwise nominated by OTP as confidential or private, and may only disclose it to third parties in the following circumstances:

- (a) the information is part of or becomes part of the public domain other than by breach of this Agreement;
- (b) the disclosure is required by any statute, legislative regulation, or order of a court or tribunal of competent jurisdiction;
- (c) the disclosure is made to the disclosing party's staff or agents for the purposes of the engagement, or to the disclosing party's professional legal, accounting, architectural, engineering, or technical advisers for the purpose of taking advice.

8.3. For the purposes of this clause, Confidential Information means:

- (a) OTP's private business information including without limitation financial and business information, plans, projections, systems, documents, technical specifications and diagrams, marketing specifications;
- (b) the terms of this Agreement (including terms relating to pricing);
- (c) any other information that ought in good faith to be treated as confidential given the circumstances of disclosure or the nature of the information; and
- (d) any information derived wholly or partly for any information referred to in (a) to (c) above.

9. Privacy

9.1. OTP may collect, use, store and transfer Your information to provide the Services to You and for invoicing purposes and otherwise as set out in the Privacy Policy.

9.2. Such information includes, but is not limited to:

- (a) any information about You from which You can be identified. It does not include data where the identity has been removed (anonymous data);
- (b) first name, maiden name, last name, username or similar identifier, marital status, title, date of birth, gender and photographs, including CCTV images;
- (c) postal address, email address and telephone numbers;
- (d) bank account and payment card details;
- (e) details about payments to and from you and other details of transactions You have entered with OTP;
- (f) internet protocol (IP) address, Your login data, browser type and version, time zone setting and location, browser plug-in types and versions, operating system and platform and other technology on the devices You use to access this Site;

- (g) Your username and password to any online service, your interests, preferences, feedback and survey responses;
- (h) information about how You use our website and services; and
- (i) Your preferences in receiving marketing from us and our third parties and your communication preferences.

9.3 Subject to clause 9.4 and the Privacy Policy, OTP will not provide any of Your personal information (as that term identified in the Privacy Act 1988 (Cth)), or personal information in respect of any member of Your business organisation, that it obtains pursuant to this Agreement, to any other person without permission.

9.4 You agree that OTP may use and disclose Your personal information:

- (a) for its own internal and marketing purposes;
- (b) to its related bodies corporate, credit reporting agencies and other third parties as part of the provision of the Services; and
- (c) for overdue accounts, to debt collection agencies to recover amounts owing.

10. Notices

All notices or communications required or permitted under this Agreement will be deemed validly given if hand delivered, posted, or sent by facsimile or e-mail transmission to the receiving party at:

- (a) in OTP's case, any address, facsimile number, or e-mail address appearing on the 'Home Page' page of the Site at the time You deliver that particular notice or communication; and
- (b) in Your case, the address, fax number, or e-mail address You provide to OTP at the of entering this Agreement, as updated from time to time at Your request.

11. Governing law

This Agreement is governed by the law of Western Australia. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

12. Severance

If any provision of this Agreement is illegal or unenforceable, it is to be severed from this Agreement, and the rest of this Agreement will continue to apply in full force and effect.

13. GST

You agree that OTP may recover amounts it must pay in goods and services tax in respect of any taxable supply made to You under this Agreement. OTP may do so by including an amount in respect of GST in its invoices or requests for pre-payment, or may separately invoice You in respect of any such amount.

14. Entire Agreement

This Agreement, with its Attachments, represent the entire agreement between You and OTP in relation to the provision of the Services. This Agreement and its Attachments may only be varied in writing by an authorised officer of OTP. No purchase order or other document issued by You will vary this Agreement.

End.