

General Terms and Conditions of Business of Executive Pathway Pty Ltd

Last updated 21 January 2021

Executive Pathway Pty Ltd, referred to as "**EP**" is a businesses that trades in Australia.

1. Definitions

The following terms have the following meanings in the context of these General Terms and Conditions of Business ("**T&Cs**"):

- 1.1 "**Business**" means any Customer who enters into a legal transaction in the course of its trade, business or profession.
- 1.2 "**EP Website**" means any web page operated by EP for the sale of the Products and Services that is identifiable from the T&Cs as well as EP's legal information posted on it. Web pages operated by Suppliers are expressly not covered by this definition.
- 1.3 "**Consumer**" means any Customer who is a natural person and who enters into a legal transaction for a purpose that cannot be attributed to that person's trade, business or profession .
- 1.4 "**Customer**" means any natural or legal entity or partnership with legal capacity that places an order for Products and Services on an EP Website. The term Customer shall, unless otherwise specified, mean both, Consumers and Businesses.
- 1.5 "**Products**" means (a) a decryption or authorization code, a series or authorization number, a download link or similar code or mechanism, that gives the Customer access, first-time use or continued use of a Software or a Service, or (b) other products (including physical products).
- 1.6 "**Service**" means all the Supplier's services sold by EP to the Customer via the EP Website.
- 1.7 "**Software**" means all the Supplier's computer programs marketed in any form and through any medium via EP Website.
- 1.8 "**Payment Interval Arrangement**" means recurring payment obligations for Products or Services ("**Payment Intervals Arrangement**"). The payments are due at the agreed interval(s).
- 1.9 "**Payment Interval**" means the agreed intervals at which the payments of Payment Interval Arrangement are due.
- 1.10 "**Supplier**" means any natural person or legal entity that provides, generates, manufactures, or delivers Products and Services to EP for the purpose of resale to a Customer.

2. Subject Matter and Scope

These T&Cs apply to all offers, acceptances, deployments, deliveries of services and supplies by EP or to the Customer in connection with the sale of Products and Services as defined in Clauses 1.5 and 1.6 via an EP Website. Deviating terms of the Customer or third parties shall only become part of this contract upon written acceptance by EP. These T&Cs shall apply even where EP performs its contractual obligations without reservation despite being aware that the Customer's conditions are inconsistent with the T&Cs. Where the sale of Products and Services includes the provision of Services or other performance by third parties, the particular license and other conditions of the third party shall apply above and beyond these T&Cs.

3. Entry into a Contract (Offer, Confirmation and Acceptance)

- 3.1 An order placed by the Customer represents an offer to EP for the purchase of Products and Services under these T&Cs. Such orders are subject to subsequent acceptance by EP. The Customer order is accepted through express confirmation or at the latest by the provision of the ordered Products and Services.
- 3.2 EP may, at its own discretion, use third parties to carry out part of its services.

4. Customer Warranties

The Customer warrants that all the information the Customer provided when placing the order (including, but not limited to, personal data, deposited information and payment data) was up-to-date and accurate in all material respects. The costs arising from any incorrect data submitted by Customer or data amended by Customer after the submission of Customer's order shall be borne by the Customer. To the extent that the Customer has access to a customer account with EP, the Customer is responsible for maintaining and immediately updating the Customer account details and deposited information to ensure constant and continuous accuracy and completeness; the Customer shall not disclose the password and/or process used to access the customer account to third parties for any reason.

5. Approvals, Exports, Customs Duties

- 5.1 To the extent that an approval or license from the government or other authority is required for the acquisition, transportation, or use of Products and Services, the Customer shall be obliged to obtain such approval or license at Customer's own cost and provide EP with evidence of the same upon request. The fact that the Customer has yet to obtain an approval or license shall not entitle the Customer to withhold or delay payment. All costs and expenses incurred to EP on the basis of such a failure to obtain an approval or license or its being obtained erroneously shall be for the account of the Customer.
- 5.2 The Products and Services sold by EP and made available to the Customer electronically or physically may give the Customer access to technologies and Software which are subject to the export controls of the Federal Republic of Germany, the export controls of the United States of America, the Commonwealth of Australia or those of the countries in which the Products and Services are being marketed or in which they are being used. The Customer undertakes to observe these export controls. EP shall be entitled to withdraw from the Contract where the Customer breaches export controls.

6. Prices, Payment Conditions, and Default

- 6.1 The payment of the purchase price is due immediately upon entry into the contract and shall take place in the manner specified on the EP Website. With the exception of purchase orders and pay-per-use products, payments shall take place prior to delivery. For pay-per-use products, Customer shall be billed automatically at the intervals indicated on the EP invoice. Where the Customer has purchased a service or product with Payment Interval Arrangement, the Customer shall at each Payment Interval pay the price of the Payment Interval Arrangement or make the corresponding purchase price available using the payment option agreed upon between the Customer and EP.

6.2 Payments by Businesses

To Business, the following provisions shall apply:

In the event that the Customer is a Business, it shall identify itself as such when the order is placed. EP may consider the address provided as Business's place of business, unless indicated otherwise. If Business's ABN is registered to another country, EP may also employ that information for tax purposes. EP will apply taxes to the extent required by law. EP may apply and charge taxes after the Business has made the payment for the Products and Services according to Clause 6.1. The Business is then obliged to subsequently pay the remaining amount of taxes to EP. Additionally, as a recipient of the Products and Services, the Business may have the obligation to remit GST, sales taxes, or similar consumption taxes ("Reverse Charge Mechanism"). If the Business is required to pay or withhold any tax for payments made to EP, EP remains entitled to the amount due under Clause 6.1 in full and free of any deductions. The purchase price shall be increased by the amount of taxes paid or withheld by the Business (gross-up). The Business will provide documentation to EP, which certifies that all applicable taxes have been paid to the relevant tax authority within 30 days after the date of payment of the purchase price. For purposes of this Clause, taxes means any

sales, use, gross receipts, business, occupation, and other taxes (other than taxes on the income of EP) and similar charges imposed by any government or other authority.

6.3 Individual Payment Methods

Customer's bank or credit card issuer may charge additional service fees for credit card payments ("Transaction Fee"), depending on whether the Customer provides the payment in a foreign currency or to a merchant established in another country (e.g. EP as merchant established in Germany).

Transaction Fees charges and amounts are individually agreed upon between banks / credit card issuers and Customers. EP has no insight into such agreements and can therefore provide no information on Transaction Fees and similar fees or charges. THE PARTIES AGREE THAT, THEREFORE, ANY LIABILITY ON THE PART OF EP FOR CHARGED TRANSACTION FEES IS EXCLUDED AND THAT THE CUSTOMER IS SOLELY AND EXCLUSIVELY LIABLE FOR PAYING SUCH TRANSACTION FEES.

6.4 Default of Payment

To the extent that, in case of purchase on account, the invoice includes a payment deadline the Customer shall be in default of payment if the full purchase price payment is not credited to an EP account or received by EP by such deadline. This also applies if selected payment method is insufficient to cover full amount within such deadline. In case EP and Customer have agreed on direct debit as payment method, this shall only apply if EP has reasonably tried to debit the amount from the bank account.

6.5 Default interest for Customers

Where a Consumer defaults, the Consumer shall pay EP late payment interest of five percentage points (5%) over the base rate applicable at the time of the default. Where a Business defaults, the interest rate shall be interest of five percentage points (5%) over the base rate. "Base rate" means a variable interest rate set at half-yearly intervals by the Reserve Bank of Australia ("RBA") which, increased by a fixed margin, gives the late-payment interest rate.

6.6 In case of default EP reserves the right to cancel the order and/or claim damages and/or terminate the licence to use, associated with a Product or Service.

7. Price Adjustment for Subscription Products and Subscription Services

- 7.1 The price for the Products and Services consists of the sales margin of EP, the procurement costs of EP for the Products and Services and the applicable taxes. The sales margin covers the costs of EP for the IT infrastructure, personnel and transaction processing. During the lifetime of a Subscription, the framework for the price calculation may change from one Subscription Payment Interval to the next. Therefore, in this Clause 7 the Parties agree upon the requirement and procedures for adapting the Subscription price.
- 7.2 Any additional taxes and duties imposed on the sales of Product and Service shall be borne by the Customer. This applies correspondingly to changes of the taxes and duties already billed to Customer; EP is also obliged to pass on abolitions and reductions of taxes and duties.
- 7.3 On the basis of this contract, EP will adapt the prices for the Products and Services to the change in costs EP incurs or in prices EP has to pay for Products and Services at its reasonable discretion. The price may be increased and will be decreased if e.g. the procurement costs for Products and Services rise or fall, or other changes in the economic and legal framework result in changed costs (e.g. through increased costs for the IT infrastructure or transaction processing). If costs of one type rise, e.g. procurement costs, EP may increase the price only to the extent there are no falling costs of another type. If costs of one type fall, e.g. procurement costs, EP will reduce the price to the extent this is not balanced out by rising prices of another type. Exercising reasonable discretion, EP will define the time of price change

in a way that cost reductions have at least the same effect on the price change as cost increases.

- 7.4 EP will inform Customer in a timely manner about any price changes so that the Customer is able to cancel the Subscription before the first billing of the changed price.

8. Delivery, Delivery Period

- 8.1 The delivery of the ordered goods shall be carried out according to the delivery information on the relevant EP Invoice, as amended from time to time, with the delivery dates being estimates only.
- 8.3 The agreed delivery period shall begin upon receipt of payment in full by EP and Customer's accurate supply of all data necessary for the processing of the order to EP or the payment services provider selected by the Customer.
- 8.4 Delivery delays caused by statutory or official arrangements (e.g. import and export restrictions) and that are not the fault of EP shall extend the delivery period for a time equivalent to the duration of such obstacles. In important cases EP shall immediately notify the Customer of their commencement and termination, to the extent EP is aware of the same.
- 8.5 Physical Products and Services
- 8.5.1 To the extent the Customer fails to accept the delivered Products, or to the extent the Customer rejects them, risk of damage or loss of the Product shall pass to the Customer without prejudice to all other rights to which EP is entitled:

EP shall be entitled, at the Customer's risk and cost, to endeavor to have the Product delivered by such means it deems suitable and reasonable and to put the Product into storage at the Customer's risk and cost.

- 8.5.2 EP shall be entitled to make partial deliveries to the extent this is reasonable. To the extent EP makes partial deliveries to Businesses each partial delivery shall represent a separate contract and Businesses shall, in case of defects in one or more partial deliveries, not be entitled to cancel subsequent partial deliveries.
- 8.5.3 The risk of accidental destruction and accidental deterioration is assumed by Businesses as soon as the Product is received by the person carrying out transportation but no later than upon entering the Customer's possession.

9. Retention of Title

EP retains title to the Product., including the underlying template and any amendments or adjustment made generally to for the specific Customer.

Our Products may use Microsoft and other software to enforce compliance with the T&Cs and Licence Conditions. This includes limits on access, use copying and printing, use of password controls and tracking of use. Interference with these controls is contrary to the terms of use.

For instance where the licence has been contravened EP will be entitled to be paid the original product or service price payable for the Product or Service.

10. Usage Rights, License

- 10.1 To the extent that the Products and Services delivered by EP consist of or include an access code as described in Clause 1.5 (a) or a Service, the Customer accepts that the use of the corresponding Software or respectively the provision of the corresponding Service is subject to limitations on reproduction, adaptation, transmission, make available, marketing, altering, disassembling, decompiling, re-transmitting or combining with other software or another Service.

- 10.2 Where the Customer does not agree to the licensing conditions and terms of use and does not wish to use the Software or the Service on the basis of these licensing conditions and terms of use, the Customer may contact EP and request the repayment of the amounts paid for the Software or the Service. EP may, in return, request the return of the Software or Service to EP (where possible). In this case, however, the Customer shall have no rights whatsoever to use such Software or such Service.

11. Privacy

Customer data is subject to electronic data processing. Where necessary, EP forwards personal data to the Supplier of the Products and Services purchased by the Customer, service partners or affiliated companies, some of which may be located outside the European Economic Area, including the USA, subject to compliance with the statutory requirements concerning appropriate safeguards. EP's full privacy policy can be viewed under "Privacy Policy".

12. Defects, Claims in respect of Defects and Exclusion of Liability

- 12.1 All information on EP's Products and Services is merely by way of description and does not represent a guarantee.

12.2 Defective Products and Services

A Product is defective where it lacks the agreed quality, is not suitable for the agreed use or appropriate for the customary use and does not demonstrate the quality usual for Products of the same type and which the purchaser can expect of this type of Product. A Product is also defective where it infringes industrial property rights, copyright or other third-party rights. The technical and legal regulations applicable in Australia shall apply unless specifically agreed otherwise.

Services or the provision of Services are defective to the extent they do not comply with the contractual agreements.

12.3 Duty of Inspection and Notification

Businesses shall be obliged to test the Products under normal operating conditions immediately after delivery and to make sure that they are in perfect condition, match the Product description and are complete. Claims may only be made with respect to rights based on Product defects or a short delivery if the Customer notifies EP in writing or by email of the Product defects or short delivery immediately and in any case no later than five days after receipt of the Products or in the case of a hidden defect, immediately after becoming aware of the respective hidden defect.

12.4 Claims for Defects by Customers placing their order from outside the USA

12.4.1 Claims for Defects by Businesses

Where the Product or Service includes an element for the Customer to provide comment on the Product or Service, then until the comment(s) have been provided and a reasonable time has elapsed since the Customer has provided the comment(s), this clause shall not apply. Specifically, until EP has had an opportunity to review each series of comment(s) and respond to each series, the Product or Service is not considered to be defective.

Where EP has carried out or delivered defective Products and Services to a Business, EP may choose either

1. to make good the defects by way of substitute performance or
2. to replace the defective Products and Services with a new Product or Service free of defects.

12.4.2 Claims for Defects by Consumers

Where EP has carried out or delivered defective Products and Services to a Consumer, the latter may choose whether EP should make good the defects by way of substitute performance or replace the defective Products and Services with a new Product or Service free of defects. EP is, however,

entitled to refuse the selected form of substitute performance where this is possible only at excessive cost and the other form of substitute performance is available without material disadvantage to the Consumer.

Where the substitute performance fails, it shall generally be at the Consumer's discretion to opt for a lowering of the purchase price (reduction) or to rescind the contract.

The limitation period for defects claims by Consumers shall be six (6) months from delivery of the Product.

12.5 Legal Consequences of Rescission

Where the Customer exercises an existing right of rescission, the contractual parties shall return the Services received and surrender any use or enjoyment derived. At the same time, the Customer's right to use the Products or Services shall cease. In the case of Software previously purchased the Customer shall immediately remove this from all installations, storage media and other files and shall destroy the physical components of the Products and Services as well as any copies made of the Software. In addition, the Customer shall make a separate statement in text form (e.g. in writing, by fax or by email) that it will undertake the actions set out above.

12.6 Disclaimer for Customers

The following provisions are subject to a rights in a consumer vested under a law in Australia.

- 12.6.1 any liability on the part of EP for consequences that have arisen from alterations made to the products and services by the customer or by a third party or that have arisen through the mishandling or incorrect operation of the products and services are excluded.
- 12.6.2 EP only sells products and services as defined in Clauses 1.5 and 1.6. therefore any liability on the part of EP for the adequacy of the operation of software and services provided by suppliers for the specific requirements of the customer or for the compatibility of these software and services with components within the specific hardware configuration at the customer's premises shall be excluded.
- 12.6.3 unless otherwise specified in this Clause 12.6, liability on the part of EP for acts or omissions shall be strictly excluded.
- 12.6.4 where EP negligently breaches a material contractual obligation, EP's liability for damages shall be limited to foreseeable damage typically arising in such circumstances. material contractual obligations are those that need to be complied with if the purpose of the contract is to be achieved.
- 12.6.5 where the customer brings damages claims based on EP'S deliberate or reckless breach or on the absence of a feature guaranteed by EP, EP shall bear liability within the statutory limits.
- 12.6.6 this shall be without prejudice to EP'S liability for culpable loss of life, personal injury or damage to health. the same shall apply to liability under the german product liability act.
- 12.6.7 where EP'S liability is excluded or limited, this shall also apply to the personal liability of EP'S workers, employees, co-workers, legal representatives and vicarious agents.
- 12.6.8 EP does not offer any warranty on Software purchased through the EP Website. EP makes no warranties and disclaims all representations, warranties, and conditions with respect to the software, whether express or implied, including those of merchantability, fitness for a particular purpose, title, non-infringement, system integration, quiet enjoyment, and accuracy.
- 12.6.9 in no event shall EP be liable to the customer for any indirect, special, incidental, punitive or consequential damages, whether or not foreseeable, even if EP has been advised of the possibility of such damages, including any loss of revenue, loss of customers, loss of

goodwill, or loss of profits, arising out of or concerning these terms, whether arising under contract, tort or any other legal or equitable theory. In no event shall EP'S total, cumulative liability hereunder exceed the purchase price for the specific products and services giving rise to the claim. Multiple claims will not enlarge this limit. This limitation of liability shall apply notwithstanding any failure of essential purpose of any exclusive remedy herein.

13. Cancellation of Service or Subscriptions

- 13.1 Customers may cancel the Service or Subscriptions to Products and Services as indicated on the with 30 days notice.

For a Subscription, the cancellation will only become effective starting with the date of from the expiry of the then current Subscription term.

For Services, the refund will be pro rata based on time spent on undertaking the Service.

- 13.2 EP may cancel the Subscription under the same conditions as the Customer.

- 13.3 The use of Products and Services sold by EP may depend on online platforms maintained by the Supplier, data processed by the Supplier, and on the Supplier's ability to provide the Services. If the Supplier fully or partially discontinues providing the respective online platform, stops processing the data, or stops providing the respective Services ("Shut Down"), EP shall be entitled to cancel the Subscription with effect from the date of Shut Down. EP shall refund Customer on a pro-rata basis for the time period of the then current Subscription term remaining after the Shut Down.

14. Place of Performance

In the case of contracts with Businesses, the place of delivery and payment shall be agreed as the place where EP has its offices i.e. Queensland, Australia.

15. Jurisdiction and Applicable Law

- 15.1 Jurisdiction and applicable law

Customers may contact EP via email at admin@digitalexecutor.au to resolve any disputes and/or claims. The general jurisdiction shall be determined on the basis of the Australian law.

Initial enquiries can be made by phone – +61 (0)449 554 926

- 15.1.1 EP and the Customer agree to arbitrate all disputes and claims between the two parties (the "Parties"). This contract to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:

1. Claims arising out of or relating to any aspect of the relationship between the Parties, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
2. Claims that arose before this or any prior agreement between the Parties (including, but not limited to, claims relating to advertising);
3. Claims that are currently the subject of purported class action litigation in which Customer is not a member of a certified class; and
4. Claims that may arise after the termination of any agreement between the Parties.

Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration provision shall survive termination of the contract entered into by the Parties.

15.2.2 A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to EP should be addressed to: Executive Pathway Pty Ltd, on the Site ("Notice Address"). The Notice must:

1. describe the nature and basis of the claim or dispute

2. set forth the specific relief sought ("Demand").

If EP and Customer do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, Customer or EP may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by EP or Customer shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which Customer or EP is entitled.

15.2.3 The arbitration will be governed by the Commercial Arbitration Act. All issues are for the arbitrator to decide, including the scope of this arbitration provision, but the arbitrator is bound by the terms of these terms and conditions. Unless EP and Customer agree otherwise, any arbitration hearings will take place in the Queensland. If Customer's claim is for Ten Thousand AUS Dollars (AUD\$10,000) or less, Executive Pathway Pty Ltd that Customer may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator through a telephonic hearing, or by an in-person hearing.

15.2.4 This contract will be construed in accordance with and governed in all respects by the laws of the State of Queensland, Australia, without regard to any conflicts of law principles that would result in application of laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this contract.

16. Entire Contract

These T&Cs cover the entire contract between the Parties concerning the stated dealings and replace any previous or simultaneous agreements, communications and arrangements between the Parties (whether oral or in writing) concerning the present subject matter. Amendments and additions to these T&Cs shall be in writing. The written-form requirement may only be waived in writing.

17. Validity

Should a provision of these T&Cs or a provision within the context of any other agreements be or become invalid then this shall not affect the validity of the other agreements or provisions. The applicable statutory law shall apply in place of the invalid provisions.