

BUILDXACT TERMS OF SERVICE

Welcome to www.buildxact.com.au. These Terms of Service contain the terms and conditions that govern all use of our Platform (as defined below) and Services (as defined below) and all content, services and/or products available on or through the Platform (collectively, the “Buildxact Services”).

The Buildxact Services are offered to you subject to your acceptance, without modification (other than Special Terms (as defined below) agreed by the parties pursuant to these Terms of Service), of all of the terms and conditions contained herein and all other operating rules, policies (including, without limitation, our Privacy Policy at www.buildxact.com.au/privacy), the Guidelines (as defined below) and any future modifications thereof, and procedures that may be published from time to time on the Buildxact Platform or made available to you on or through the Buildxact Services (collectively, the “Terms”). When accepted by you (as defined below), these Terms form a legally binding contract between you and Supplier (as defined below).

If you are entering into these Terms on behalf of an entity, such as your employer or the company you work for, you represent that you have the legal authority to bind that entity.

PLEASE READ THESE TERMS CAREFULLY. BY REGISTERING FOR, ACCESSING, BROWSING, AND/OR OTHERWISE USING THE BUILDXACT SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, DO NOT ACCESS, BROWSE OR OTHERWISE USE THE BUILDXACT PLATFORM OR THE BUILDXACT SERVICES.

Supplier may, at its sole discretion, elect to suspend or terminate access to, or use of the Buildxact Services to anyone who violates these Terms.

If you register for a free trial of the Buildxact Services, the applicable provisions of these Terms will govern that Free Trial.

If you register for use of the Buildxact Services as part of an authorised Educational Trial, the applicable provisions of these Terms will govern that Educational Trial.

1. Definitions

Account	the primary means for accessing and using the Buildxact Services, subject to payment of a Fee designated in the selected Plan;
Agreement	means this Terms of Service agreement and the terms and conditions (“Terms”) contained therein and includes any notices published on the Buildxact Platform;
Approved Purpose	means the use of data for provision of the Buildxact Services, or as required by law.
Authorisation	the set of rights and privileges on the Buildxact Website assigned to a User by a Client;
Buildxact	the Supplier of the Buildxact software-as-a-service and other related services to the Construction industry
Buildxact Materials	the visual interfaces, graphics, design, systems, methods, information, computer code, software, trademarks, services, “look and feel”, organisation, compilation of the content, code, data, and all other elements of the Buildxact Services and Buildxact Platform;
Buildxact Services	the Buildxact software as a service including related Website, Services, System, Content, Interfaces, Portals and all content, services, Data and/or products available on or through the Buildxact Platform that is used to access describe or enable Buildxact to show or deliver its Services; and information exported out of the Buildxact Platform in the form of reporting or third-party visualisation tools;
Client	a natural or legal person who has accepted these Terms with the Supplier;
Commencement Date	means the date a Client first registers online (either through a trial, or by paying a subscription Fee) or otherwise with Supplier or otherwise confirms acceptance of this;
Content	any data and information available through Buildxact Services or contained within the structure of the System, articles, documents, brochures, presentations, pictures, images, audiovisual works, other informational materials and any comments;
Data	files and any other digital data and information including but not limited to Personal Information and Personal Data, which is subjected to, created by or inserted into the Buildxact Services or otherwise inserted to the System by Buildxact or the Client (including the specific Users, Customers, Sub Contractors, Organisations, Tasks, Descriptions, Templates, Supplier Data, Estimates, Jobs associated with the Client);
Educational Trial	access to enable authorised training bodies to include the Buildxact Services as part of their teaching materials and online learning management systems in their courses for building and construction.

	Student Users are provided access for non-commercial use to the Buildxact Services for a period defined in the agreement with their authorised training body;
Enterprise Customer	has an arrangement with Supplier for multiple Clients to share branding, and share information with the Enterprise Customer, as set out in agreements between the Enterprise Customer and their Clients and the Clients Users;
Fee	regular payment for using the activated Account to access and use Buildxact Services;
Files	documents of any kind (images, drawings, spreadsheets, text files, etc.) that are inserted to the System by the Client, and usually associated with a particular contact, customer, organisation, estimate or job;
Free Trial	temporary access for the purposes of trying out the Website and Buildxact Services in accordance with any selected Plan without paying a Fee;
Guidelines	additional guidelines or rules applicable to specific features, applications, products, or services which may be posted from time to time on the Platform or otherwise made available on or through the Buildxact Services;
Personal Information	is information about an identifiable individual that is normally included in Data, and may include information such as the individual's name, email address, telephone number, address and company information;
Plan	various criteria related to the use and functionality of the Buildxact Services and on which the Fee is based;
Rate Sheet	Means the then current pricing documentation made available to Clients on the Website or provided by Supplier to its Clients, the content of which may be varied at any time and from time to time;
Subscriber	Means a person who is a User of the Buildxact Services
Supplier	Buildxact Ltd. a limited company established under the laws of Australia, having its principal place of business at Level 7, 446 Collins Street, Melbourne, Victoria 3000. (ACN 630 502 751);
System	the integrated cloud "software as a service" computing solution for providing the Buildxact Services, including applications, software, databases, Data, interfaces, associated media, documentation, updates, new releases and other components or materials provided therewith;
User	a natural person granted with the Authorisation to use the Account on behalf of a Client. Unless otherwise set out in a separate agreement, or the User is in an Educational Trial, each user is a Paying Subscriber;
Website	means the internet site with the URL www.buildxact.com.au or www.buildxact.com and any other site that Supplier may use or provide its Clients in respect of the Buildxact Services;

2. Term

This Agreement commences on the Commencement Date and will continue to apply until it is terminated in accordance with clause 12. For the avoidance of doubt, the terms and conditions of this Agreement continue to apply regardless of any changes in the type of subscription which may be varied at any time and from time to time.

3. The Buildxact Services

3.1 Use of Buildxact Services

For the duration of the Term, Supplier grants a non-exclusive, non-transferable (except as expressly provided in this Agreement), limited licence to the Client and its Authorised Users to:

- a. Collect, store and organise Data, such as add new suppliers and clients, create estimates and jobs, upload plans and pricelists, add new Users and grant them Authorisations, link and integrate to third party applications;
- b. Modify and delete Data;
- c. Configure the standard features of Buildxact Services;
- d. Receive reasonable help and guidance from Supplier regarding the use of the Buildxact Services.

3.2 Technical Support

Supplier shall provide reasonable technical support to Client and its authorised User at the reasonable request of the Client. Supplier shall respond to enquiries of support from a Client utilising the contact methods set forth below as soon as reasonably possible or as advertised on the Buildxact Platform including our Website from time to time. Responding to enquiries of Clients and Users who have accepted these Terms but do not have an Account may be less expedient or may not occur at all.

The contacts for all enquiries of support are:

- a. built-in live-chat application on the Website,
- b. e-mail: support@buildxact.com.au
- c. a dedicated 1800 telephone number

3.3 Modifications to Services

Supplier reserves the right to modify the Buildxact Services or any part or element thereof from time to time without prior notice, including, without limitation:

- a. rebranding the Buildxact Services at its sole discretion;
- b. ceasing providing or discontinuing the development any particular Buildxact Service or part or element of the Platform temporarily or permanently in any jurisdiction;
- c. taking such action as is necessary to preserve Supplier's rights upon any use of the Buildxact Services that may be reasonably interpreted as violation of Supplier's intellectual property rights, distribution of Internet viruses, worms, Trojan horses, malware, and other destructive activities or illegal activity;
- d. taking such action as is necessary to protect the Buildxact Services, the Supplier and Clients from any exposure arising out of Data breaches, intellectual property infringements or other destructive activities or illegal activity.

As applicable, Client may be notified of such modifications when logging in to the Account. Modifications, including but not limited to change in applicable rates for the Buildxact Services ("the Modification", will become effective and notified on the Website thirty (30) days before the Effective Date of such Modification that is the date it becomes applied in full force.

If the Client does not accept the Modification, the Client shall notify Supplier before the Effective Date of the Modification, and these Terms will terminate on the Effective Date of the Modification except for Terms surviving such termination of this Agreement. On or before the Effective Date the Client must cease use of the Buildxact Services.

The Client's continued use of the Buildxact Services, or any part or element thereof, after Effective Date of each or any Modification shall indicate its consent to the Modification and to all Terms then applying. Supplier shall not be liable to the Client or to any third person for any modification, suspension or discontinuance of the Buildxact Services, or any part or element thereof.

4. Using the Buildxact Services

4.1 Subscription Type

Supplier provides different Subscription Types to support the needs of different Clients and organisations in accessing Buildxact Services.

Subscription Types include:

- Free Trial Subscription – to enable a Client to try the Buildxact Services before paying a subscription Fee
- Paid Subscription – (covers a number of different Subscription Types)
- Educational Trial Subscription – offered by authorised training bodies to their students.

Subscription Services provided by the Supplier are related to the Subscription Type a Client subscribes to.

4.2 Establishing an Account

Certain features, functions, parts or elements of the Buildxact Services can be used or accessed only by holders of an Account. The person who wishes to create an Account must:

- a) complete the sign-up form on the Website; and
- b) accept these Terms and the Privacy Policy by clicking “Proceed”, “Get Started”, “Sign up”, “Buy Now”, or other similar button

4.2.1 CLIENTS

Each Client may have only one Account and if desired multiple Users always in accordance with the Subscription Type. If two or more persons use or access an Account on behalf of Client, Client must designate such persons as individual paying Users. Each such User shall be subject to the restrictions set forth in these Terms. For the avoidance of doubt, each User must have their own unique ID created in the Account of the Client

If Client has designated Users and granted them Authorisation, such Users will be deemed to be authorised to act on behalf of Client when using the Account. Supplier is not responsible for verifying the right of representation or validity of Authorisation of any User. However, Supplier may ask additional information or proof of the person’s credentials.

4.2.2 USERS

The Client and any User associated with an Account must provide Supplier with true, accurate, current, and complete information including Personal Information about the Client, Users or Account and keep such information up to date.

4.2.3 ENTERPRISE CUSTOMERS WITH MULTIPLE CLIENTS

Enterprise Customers may have arrangements with Supplier to allow their Clients to be grouped under that Enterprise Customer. In this case there may be sharing of information from the Client to the Enterprise Customer as set out in

the agreements between the Enterprise Customer and their Clients. Supplier provides such information sharing as directed by or agreed with Enterprise Customer and Supplier.

An Enterprise Customer will have an Account that allows these arrangements to be managed and can have Users in their own right.

4.3 Logging into an Account

Supplier shall provide Client with a username and password (“Login Credentials”) to be used to log in to its Account. These Login Credentials are for single User use only and must not be used by multiple persons. If Client has designated several Users, each User will be provided with separate Login Credentials. Client and each User are responsible for keeping confidential all login credentials associated with an Account. Client must promptly notify Supplier of any disclosure, loss or unauthorised use of any Login Credentials. For the avoidance of doubt, each User is not permitted to share their login credentials with another Client to log on to the Services either at the same time, or at a different time, on either the same device, or alternate device.

4.4 Termination of an Account

Client may terminate these Terms at any time as provided in Clause 12. Supplier shall deactivate the Account as soon as reasonably practicable after the effective date of the termination (“Termination”). No Data is available to the Client after Termination and the Supplier makes no warranty as to the availability or capability to transfer, use or export any Data after Termination, or that any previously saved Data will be available for use in the resumption of Buildxact Services after Termination.

4.5 Fees

The use of an Account is subject to a Fee. Upon sign-up for an Account, the Client must select a Plan. Different rates apply to different Plans. The applicable Fee is charged in advance on monthly or annual payment intervals, unless agreed otherwise between parties.

All Fees are non-refundable, i.e. there are no refunds or credits for periods where the Client did not use an activated Account, used it only partially, or deactivated the Account or terminated these Terms during an ongoing payment interval. If, after signing up, Client elects to upgrade to a more expensive Plan, the unused portion of any prepaid Fees shall be allocated as agreed by the parties.

4.6 Free Trial

A new Client may be entitled to a Free Trial. The Client is not required to provide any credit card information during the period of Free Trial. If the period of Free Trial has expired, the Account will be automatically deactivated. In order to prevent deactivation or to reactivate the Account, the Client is required to select a suitable Plan and pay the first Fee.

5. Client Data

5.1 Uploading Client Data to Platform

If the Client uploads or enters Data to the Platform, such Data is defined as Client Data and any processing of such Data must be in compliance with these Terms and applicable law. All rights, title and interest in and to the Client Data belong to the Client or third persons (including Users, persons and Organisations) whether posted and/or uploaded by Client or made available on the Buildxact Services by Supplier.

By uploading Client Data to the Platform, Client authorises Supplier to process the Client Data and generate other data and information from Client Data.

Information including Data supplied by other third parties under license to Buildxact or generated or created by Buildxact Services is the result of algorithms and processes that are the exclusive property of Buildxact or of a Licensor of Buildxact and the Client is permitted to use such Data in the normal conduct of its business but not for other than the Approved Purposes under these Terms. Buildxact or its licensors has right title and interest in all Information and Data other than Client Data and Personal Data. For the avoidance of doubt the Client does not have the right to control, share, exploit or commercially sell or deal with Data for any other purpose than defined herein except the Client has the right to use the subset limited to the Client Data.

Buildxact may offer additional Services that we expect would be helpful to you our Clients, or to your customers and some of these Services may wish to include some Client Data and or Personal Data. If we propose to offer these Services that rely on your Client Data and/or Personal Data, your permission will first be sought on an Opt-In basis. You will have the option to accept or decline to participate and if you decline such data will not be used.

The Client is responsible for ensuring that:

- a. the Client and any of the Users associated with the Account do not create, transmit, display or make otherwise available any Data that violates the terms of these Terms, the rights of Supplier, other Clients or Users, persons or organisations or is harmful (for example viruses, worms, malware and other destructive codes), offensive, threatening, abusive, harassing, tortuous, defamatory, vulgar, pornographic, obscene, invasive of another's privacy, defamatory, hateful or otherwise unlawful; and
- b. the Client and all of the Users associated with the Account have the necessary rights to enter the Client Data and use the Data, including to insert it into the Platform and process it by means of the Account.

5.2 No Guarantee of Accuracy

Supplier does not guarantee any accuracy with respect to any information contained in any Data, and strongly recommends that you think carefully about what you transmit, submit or post to or through the Buildxact Services. You understand that all information contained in Data is to be used only for Approved Purposes under these Terms and its accuracy and use is the sole responsibility of the person from whom such Client Data originated. This means that Client, and not Supplier, is entirely responsible for all Data that is uploaded, entered, transmitted, or otherwise made available through the Buildxact Services, as well as for any actions taken by the Supplier or other Clients or Users as a result of such Data.

5.3 Unlawful Client Data

Supplier is not obliged to pre-screen, monitor or filter any Data or acts of its processing by the Client in order to discover any unlawful nature therein. However, if such unlawful Data or the action of its unlawful processing is discovered or brought to the attention of Supplier or if there is reason to believe that certain Data is unlawful, Supplier has the right to:

- a. notify the Client of such unlawful Data;
- b. deny its publication on the Website or its insertion to the System;
- c. demand that the Client bring the unlawful Data into compliance with these Terms and applicable law;
- d. temporarily or permanently remove the unlawful Data from the Website or Account, restrict access to it or delete it.

If Supplier is presented convincing evidence that the Data is not unlawful, Supplier may, at its sole discretion, restore such Data, which was removed from the Website or Account or access to which was restricted.

In addition, in the event Supplier believes in its sole discretion Data violates applicable laws, rules or regulations or these Terms, Supplier may (but has no obligation), to remove such Data at any time with or without notice.

The Client indemnifies the Supplier from any actions that arise out of the Client entering unlawful Data into the Buildxact Services as per clause 10.

5.4 Compelled Disclosure

Supplier may disclose a Client's confidential information including Personal Information to the extent compelled by law to do so. In such instance, Supplier will use commercially reasonable efforts to provide Client with prior notice of the compelled disclosure (to the extent legally permitted) and Client shall provide reasonable assistance, at its cost, if Client wishes to contest the disclosure. If Supplier is compelled by law to disclose Client's confidential information as part of a civil proceeding to which Supplier is a party, and Client is not contesting the disclosure, Client will reimburse Supplier for its reasonable cost of compiling and providing secure access to that confidential information.

6. Pricing

Upon sign-up for an Account, the Client must select a Plan. Different rates apply to different Plans. The applicable Fee is charged in advance on monthly or annual payment intervals, unless agreed otherwise between parties.

6.1 Standard Pricing

The standard pricing options for each subscription type are shown on the Buildxact Services pricing page at <https://www.buildxact.com.au/pricing/>.

7. Restrictions

7.1 Prohibited Activities

Client and its authorised Users may use the Buildxact Services and any part or element thereof only in the scope, with the means and for purposes as identified in these Terms and applicable law. By way of example, neither the Client nor any User may:

- a. use the Buildxact Services or any part or element thereof to commit a crime, breach any applicable law or entice or invite others to carry out such illegal actions;
- b. copy, duplicate, distribute, modify, adapt, hack, create derivative works, reverse engineer or decompile the Buildxact Services or any part or element thereof, or attempt to extract the source code thereof, unless (i) it is expressly allowed under applicable law, and (ii) to the extent that the Supplier is not permitted by that applicable law to exclude or limit the foregoing rights;
- c. use the Buildxact Services or any part or element thereof unless it has agreed to these Terms.

7.2 Certain Uses Require Supplier Consent

The Client or any User may not, without Supplier's prior express written consent (e-mail, fax, Skype, etc.):

- a. sell, resell, lease, license, sublicense, distribute, provide, disclose, divulge, exploit or otherwise grant Access or make the Buildxact Services available in whole or in part to any third persons, unless such third person is another authorised User of the same Client or Enterprise Customer;
- b. use the Buildxact Services or any part or element thereof in a scope, with means or for purposes other than those for which their functionality was created;
- c. use the Buildxact Services or any part or element thereof by means of programs that send them automatic enquiries or requests, unless such program has been made available by Supplier;

8. Privacy

Supplier takes the privacy of its Clients and Users very seriously. Supplier's Privacy Policy at www.buildxact.com.au/privacy is hereby incorporated into these Terms by reference. Please read the Privacy Policy carefully as it governs Supplier's collection, use, and disclosure of Client's or User's personal information.

9. Intellectual Property

9.1 Reservation of Rights and Ownership

Supplier reserves all rights not expressly granted to you in this Agreement. The Buildxact Materials are protected by copyright and other intellectual property laws and treaties. The Supplier owns the title, copyright, and other intellectual property rights in the Buildxact Services and Buildxact Materials and Platform. The Buildxact Services are licensed to you only on a subscription basis for which you pay a Fee and are not sold to you.

9.2 Warranty

Supplier represents and warrants that he has full title and ownership to the Buildxact Application and has the authority to grant the license hereunder. To the best of the Supplier's knowledge the Buildxact Application does not infringe upon the intellectual property rights of any third party and that it has not received any notice regarding any alleged infringement thereof.

10. Indemnification

You agree to defend, indemnify and hold harmless Supplier and its affiliates, and their respective directors, officers, employees and agents, from any claims, losses, damages, liabilities, including attorney's fees, arising out of your use or misuse of the Buildxact Services, Buildxact Materials, representations made to the Supplier, its affiliates and/or third parties, violation of these Terms, violation of the rights of any other person or entity, or any breach of the foregoing representations, warranties, and covenants. Supplier reserves the right, at its own expense, to assume the exclusive defence and control of any matter for which you are required to indemnify Supplier, and you agree to cooperate with such defence of these claims.

11. Limitation of Liability

11.1 Warranty Disclaimer

In so far as is permitted by law, the Buildxact Services and its related material are provided on an “AS IS” basis and without warranty of any kind. The Supplier expressly disclaims all other warranties, expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

11.2 Internet Performance Disclaimer

Supplier does not and cannot control the flow of data via the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt the internet. Supplier will use commercially reasonable efforts to remedy and avoid such events, but cannot guarantee that such events will not occur. Accordingly, Supplier disclaims any liability resulting from or relating to such events.

11.3 Exclusion of Incidental, Consequential and Certain Other Damages

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE SUPPLIER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT, AND

EVEN IF THE SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.4 Limitation of Liability

In no event shall the Supplier's liability exceed license fee paid for single month, if any.

12. Termination

12.1 For Convenience

These Terms may be terminated for convenience upon written notice to the other party as indicated in the "Notice" Section below:

- a. by the Client any time by clicking the cancellation link on the Website, when logged in to the Account;
- b. by Supplier providing at least 30 days advance written notice;
- c. immediately by either party, if proceedings are initiated for the other party's liquidation or insolvency or a negotiated settlement with the other party's creditors is concluded or an assignment is made on behalf of the other party for the benefit of creditors.

12.3 For Default

These Terms may be terminated for default upon written notice to the other party as indicated in the "Notice" Section below:

- a. by either party in case of breach of these Terms by the other party, if the breach has not been cured within 30 days of receipt of a notice from the non-breaching party; or
- b. immediately by either party if the other party breaches its obligations, as applicable under Sections 9 [Intellectual Property Rights] and 10 [Indemnification] of these Terms.

12.3 Effect of Termination

Upon termination of these Terms,

- a. Supplier shall deactivate the Account, as soon as reasonably practicable after the effective date of termination of these Terms. If the Client has specifically requested for an earlier deactivation of the Account, Supplier shall fulfil such request within 1 month of its receipt of such request.
- b. Client must:
 1. stop using and prevent the further usage of the Buildxact Services, including, without limitation, the Platform;
 2. pay any amounts owed to Supplier under these Terms; and
 3. discharge any liability incurred by the Client before under these Terms prior to their termination; and
- c. The following provisions shall survive the termination of these Terms: Sections 1, 5.4, 7, 8, 9, 10, 11, 14 and 15

12.4 No Refunds

Supplier offers a 14-day trial for Clients to try before they buy. It is important that you use this period to determine the Buildxact Application's suitability for use within your business before you subscribe.

Except where this Agreement is terminated as a result of breach by Supplier or as required by law, the Client is not entitled to any refund of all or part of the Fees paid but not used (whether in respect to the number of Authorised Users or length of use of the Buildxact Application or otherwise) and on termination and in all other circumstances Supplier is entitled to retain all Fees and amount paid by the Customer, whether in advance under an Annual Subscription or otherwise.

12.5 Remedies

If Supplier terminates these Terms as a result of an uncured breach by a Client or User, Supplier is entitled to use the same or similar remedies against any other persons who use the Buildxact Services in conflict with these Terms.

Notwithstanding the foregoing, Supplier may also apply any other remedies available to it under the applicable law. Upon application of any remedies, the Client or User may lose Access or suffer a loss of certain features, functions, parts or elements of the Buildxact Services.

If Supplier has reasonable grounds to believe that the Client's or User's use of the Buildxact Services, including the Account may harm any third persons, Supplier has the right to take adequate measures under its control to prevent, stop and eliminate the harm, where possible, in order to protect those third persons.

13. Modifications to Terms

Supplier reserves the right, at its sole discretion, to change, modify, add, or remove portions of the Terms at any time by posting such changes on or through the Website, Buildxact Platform or the Buildxact Services. Please check these Terms periodically for changes. Your continued use of the Buildxact Services after such changes have been posted as provided above constitutes your binding acceptance of such changes. Such amended Terms will automatically be effective upon the earlier of (i) your continued use of the Buildxact Services, or (ii) 30 days from posting of such modified Terms on or through the Buildxact Platform. Notwithstanding the foregoing, the resolution of any dispute that arises between you and Supplier will be governed by the Terms in effect at the time such dispute arose.

14. Dispute Resolution

14.1 Dispute resolution procedure

If a party believes that there is a dispute regarding this Agreement or the Subscription Services, it must not commence court proceedings (unless urgent interlocutory relief) without first complying with the following dispute resolution procedure:

- a. the party must give notice in writing to the party in dispute (together, the Disputing Parties) specifying:
 - i. the nature of the dispute;
 - ii. the outcome required by the party; and
 - iii. the action the party believes will settle the dispute,

(Dispute Notice)

- b. Upon receipt of a Dispute Notice, the Disputing Parties shall use their best efforts and endeavours to resolve the dispute by mutual negotiation;

14.2 Mediation

- a. If the Disputing Parties are unable to resolve a dispute within twenty (20) Business Days (or within a longer period agreement in writing by them) of receipt of a Dispute Notice, either party may serve a notice on the other

requiring the Disputing Parties to refer the dispute to a mediator and to participate in the mediation (Mediation Notice). If the Disputing Parties are unable to determine within fifteen (15) Business Days of receipt of a Mediation Notice referred to in this clause:

- i. the procedures to be adopted in the mediation; and
- ii. the timetable for all the steps in those procedures; and
- iii. the identity and fees of the mediator,

the President of the Law Society of Victoria or their representative will appoint the mediator and determine all procedural matters in relation to the mediation.

- b. The Disputing Parties must attend the mediation and make a determined and genuine effort to resolve the dispute.

14.3 Costs

The Disputing Parties must bear its own costs of complying with this clause and the Disputing Parties must bear equally the costs of any mediator engaged.

14.4 Court Action

Nothing in this clause prevents a party taking any court action where the proceedings are to seek urgent injunctive, interlocutory or declaratory relief in respect of a dispute to preserve property or rights or to avoid any losses, costs, charges, claims, liabilities or expenses which are not compensatable in damages.

15. General Provisions

15.1 Entire Agreement

This Agreement, including the Rate Sheet, constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties or their respective officers, employees or agents.

15.2 Force Majeure

If a party is prevented, hindered or delayed from performing its obligations under this agreement by a Force Majeure Event, then as long as that situation

continues, that party will be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation will be extended accordingly. If a party is affected by a Force Majeure Event it will immediately give the other party a notice of its occurrence and its effect or likely effect, and use all reasonable endeavours to minimise the effect of the Force Majeure Event and to bring it to an end.

15.3 Assignment

The Client may not assign or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of Supplier. Supplier may assign, novate or otherwise deal with all or part its rights under this Agreement at any time and from time to time, which will be effective immediately upon Supplier notifying its Clients of the assignment or novation.

15.4 Partial Unenforceability

In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, then such provision shall be severed from this Agreement. In all other respects, the remaining provisions of this Deed shall remain in full force and effect.

15.5 Attorneys

Each person who executes this Deed on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this Deed under that power.

15.6 Rights, Remedies Additional

Any rights and remedies that a person may have under this Agreement are in addition to and do not replace or limit any other rights or remedies that the person may have.

15.7 Waiver

The failure by a party to enforce at any time or for any period any one or more of the terms and conditions of this Agreement shall not be a waiver of those rights nor of the right at any time subsequent to enforce all of the terms and conditions

of this Agreement. A waiver of any power or right under this Agreement:

- a. must be in writing signed by the party entitled to the benefit of that power or right;
and
- b. is effective only to the extent set out in that written waiver.

15.8 Survival

- d. The obligations under this Agreement are of indefinite duration and the following provisions shall survive termination or cessation of this Agreement (however occurring): Sections 1, 5.4, 7, 8, 9, 10, 11, 14 and 15.

15.9 Joint and Several

An agreement warranty representation or obligation which binds or benefits two or more persons under this Agreement binds or benefits those persons jointly and separately.

15.10 Costs

Each party will bear its own costs with respect to the negotiation and preparation of this Deed, and the implementation of the transactions contemplated by this Deed.

15.11 Notices

Except as otherwise specified in these Terms, all notices related to these Terms will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim (“Legal Notices”), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to you will be addressed to the relevant billing contact designated by you. All other notices to you will be addressed to the relevant Buildxact Services administrator designated by you.

15.12 Governing Law

This Agreement will be construed and interpreted in accordance with the laws of the state of Victoria, Australia and each party submits to the nonexclusive jurisdiction of courts of that jurisdiction.

Last update: October 29, 2019