



OutOfCourt User terms of use

1 WHO WE ARE, WHAT WE DO AND HOW TO CONTACT US

- 1.1 OutOfCourt.com.au is a website (Site) operated by Out Of Court Pty Ltd (ACN 640 975 828) of Lvl 54, 111 Eagle Street, Brisbane, 4000, Queensland Australia (OutOfCourt/we/us/our).
- 1.2 OutOfCourt advertises, markets, and promotes Alternative Dispute Resolution Services (**ADR Services**). OutOfCourt also provides a facility whereby a party may submit, on the Site, details of a dispute it wishes to resolve (**Case**) through the use of ADR Services and a platform which users can use to facilitate the provision of ADR Services for each Case.
- 1.3 OutOfCourt does not provide ADR Services itself but, rather, refers Cases to third-party ADR Service providers. We are not a law firm and do not provide legal advice.
- 1.4 You agree and acknowledge that OutOfCourt is a private company, is not a Court, tribunal or any other government sponsored, or owned, entity or service provider. You agree and accept that we are not affiliated with any government.
- 1.5 To contact us, please email hello@OutOfCourt.com.au

2 OUR CONTRACT WITH YOU

- 2.1 These terms and conditions (**Terms**) apply to the supply of Services by us to you (**Contract**). To the extent permitted by law, no other terms are implied by trade, custom, practice or course of dealing.
- 2.2 The Contract is the entire agreement between you and us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.



2.3 Submission of the Case Form by you, or use of the Site or the OutOfCourt platform, communicates that you accept these Terms and agree to receive the Services for the purposes of this Contract

2.4 OutOfCourt reserves the right to refuse to provide the Services at its sole discretion and is under no obligation to provide any reasons, explanation, or other information to the you as to why it refuses to provide the Services.

3 PROVISION OF SERVICES by OutOfCourt

3.1 OutOfCourt is a neutral dispute resolution referral provider. Our role is limited to the administration of the dispute resolution. We are not able to comment on the merits of disputes or decisions made by Panelists, which act independently.

3.2 There can be serious consequences to making allegations against other people. You should seek independent legal advice on the merits of your case and whether you should make the allegations in the dispute/Case.

3.3 OutOfCourt provides the following services (**Services**):

- (a) **Enquiry Services:** to determine the interest of other parties to the Case to determine if they wish to resolve Cases submitted to the Site, by use of Alternative Dispute Resolution Services (**ADR Services**);
- (b) **Case Referral Services:** referral services to independent third-party ADR Service providers; and
- (c) **Platform Services:** access and use to the OutOfCourt platform with a view to facilitating any ADR Services provided by the third-parties for each Case.

3.4 ENQUIRY SERVICES

- (a) In consideration of the initial fee (**Filing Fee**) when a person submits a Case to the Site, we contact the other parties to the Case (as that person identifies them to us) to determine if those persons also wish to resolve the Case using ADR Services.



3.5 CASE REFERRAL SERVICES

- (a) If at least one other party (on opposite sides) indicates it wishes to resolve the dispute using OutOfCourt, in consideration of the continuation fee (**Continuation Fee**) we refer the Case including its details to an independent third-party with a view to that third-party providing ADR Services to you and the other parties to a Case.
- (b) OutOfCourt provides a referral only. We do not become involved with the provision of services by third-parties except to the extent of providing access and use to the OutOfCourt platform to facilitate the provision of ADR Services.
- (c) We do not warrant or guarantee any of the services (ADR Services or otherwise) or advice provided by any third-parties and we are not liable in relation to any of the services or advice provided to you, including for any loss or risk which may be incurred directly or indirectly as a consequence of the use of the services or reliance on any third-parties or contributors to the Site.
- (d) We are not responsible for any representations or advice provided by contributors to this Site (including without limitation Panelists), third-parties or for the accuracy or completeness of any advice or services provided by those persons. You should undertake your own assessment of the suitability of the services or advice and you rely on it at your own risk.
- (e) Where we provide referrals to third parties, those referrals are provided for your information only.
- (f) Referrals should not be interpreted as approval or sponsorship by us of those third-parties.



- (g) We have no control over the services provided by third-parties, and you use those services entirely at your own risk and subject to the terms and conditions of agreements with those third-parties.

3.6 PLATFORM SERVICES

- (a) OutOfCourt agrees to provide access to the on-line platform (**Platform**) under this Contract for each Case.

4 FILING A CASE AND CONTINUATION AND CASE DETAILS

- 4.1** A Case can be filed on the Site by following the screen prompts.
- 4.2** At the time of filing a Case, or shortly thereafter a person filing a case will be asked to pay the Filing Fee for each applicant to a case at the rates that then apply as advertised on the Site. If further applicants are added, further Filing Fees are payable.
- 4.3** If the Enquiry Services indicate the Case is to be referred to an ADR Service Provider, the Continuation Fees must be paid in full before the Case is referred to the ADR Service Provider. The Continuation Fees are charged at the rates that then apply as advertised on the Site.
- 4.4** Filing and Continuation Fees are:
 - (a) paid on a per person basis; and
 - (b) not refundable, for any reason.
- 4.5** You acknowledge and accept that all information provided to OutOfCourt in a Case, in relation to a Case or in any communication with OutOfCourt is not confidential and may be provided to any of the parties to a Case and any ADR Service Providers.
- 4.6** Our acceptance of a Case takes place when we send an email to acknowledging receipt of payment of the Filing Fees and accepting the Case.
- 4.7** If we are unable to supply you with the Services for any reason, we will inform you of this by email.



- 4.8** If any party to a Case fails to pay any monies due to us when we reserve the right to refuse to provide that party with Services.
- 4.9** You acknowledge and accept that your use, access and enjoyment of the Services may be adversely affected by others, including, without limitation, their exclusion from the Platform and OutOfCourt is not responsible, or liable to you due to the actions of third-parties or their exclusion from the Platform.

5 YOUR OBLIGATIONS

- 5.1** It is your responsibility to ensure that:
- (a) the details of information you submit on a Case are complete and accurate;
 - (b) you obtain independent legal advice in respect of the Case;
 - (c) the allegations you make within a Case have a proper foundation;
 - (d) you cooperate with us in all matters relating to the Services;
 - (e) you provide us with such information and materials we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (f) you obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (g) you comply with all applicable laws, including health and safety laws;
 - (h) you keep all of our materials, equipment, documents and other property (Our Materials) at your premises in safe custody at your own risk, maintain Our Materials in good condition until returned to us, and not dispose of or use Our Materials other than in accordance with our written instructions or authorisation; and
 - (i) you fully comply with the Platform Standards of Use in this Contact.



5.2 If our ability to perform the Services is prevented or delayed by any failure by you to fulfil any obligation under this Contract (**Your Default**):

- (a) we will be entitled to advise any applicable ADR Service Provider and all other parties to a Case of Your Default;
- (b) we will be entitled to suspend performance of the Services until you remedy Your Default, and to rely on Your Default to relieve us from the performance of the Services, in each case to the extent Your Default prevents or delays performance of the Services. In certain circumstances Your Default may entitle us to terminate the Contract.
- (c) we will not be responsible for any costs or losses you sustain or incur arising directly or indirectly from our failure or delay to perform the Services; and
- (d) it will be your responsibility to reimburse us on written demand for any costs or losses we sustain or incur arising directly or indirectly from Your Default.

6 Platform Standards of Use

6.1 The content standards in this clause 6 apply to the use of the Site (including the Platform) by you and applies to all content, information, documents or materials, whether displayed publicly or not, posted, submitted, uploaded, published, displayed or transmitted to the Platform by you or your representatives (**Contributions**).

6.2 You accept and acknowledge that:

- (a) the Platform is a tool which is to be used to assist the administration and facilitation of a Case;
- (b) the Platform is evolving to include additional features but OutOfCourt is not required to add or keep any features of the Platform;



- (c) the features of the Platform are to be used to the extent possible in respect of a case including case management, management of documentation, management of deadlines and reminders and correspondence with the customer; and
- (d) Contributions must in their entirety comply with all applicable federal, state, local and international laws and regulations.

6.3 You warrant:

- (a) the information in your Contributions is true, correct, complete and accurate in every way and is not misleading or deceptive;
- (b) you will only use the Platform, as it is intended to be used and only in accordance with the Policies set down by OutOfCourt as amended from time to time; and
- (c) You will maintain the accuracy and completeness of your Contributions.

6.4 You warrant your Contributions will not:

- (a) contain any material which is defamatory, obscene, abhorrent, indecent, abusive, offensive, harassing, violent, hateful, inflammatory or otherwise objectionable;
- (b) contain or promote sexual or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
- (c) infringe any patent, trade mark, trade secret, copyright or other intellectual property or other rights of any other person;
- (d) violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with this Agreement and the OutOfCourt privacy policy;



- (e) be likely to deceive any person;
- (f) promote any illegal activity, or advocate, promote or assist any unlawful act;
- (g) cause annoyance, inconvenience or needless anxiety or be likely to upset, embarrass, alarm or annoy any other person;
- (h) impersonate any person, or misrepresent an identity or affiliation with any person or organisation, including with OutOfCourt;
- (i) involve commercial activities or sales, such as contests, sweepstakes and other sales promotions, barter or advertising; or
- (j) give the impression that they emanate from or are endorsed by OutOfCourt or any other person or entity, if this is not the case.

6.5 Whenever you make use of a feature that allows you to upload content, download or view content, or use the Platform to make contact with other users of the Platform, you must comply with the content standards in this Clause 6.

6.6 OutOfCourt may report any breach of the warranties under this Clause 6 to the relevant authorities and will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, OutOfCourt has a right to immediately terminate this Contract and immediately terminate your right to the Platform without liability to you or anyone else.

6.7 OutOfCourt does not warrant that the Platform will be error-free, fit for purpose, free of any defects or will operate without interruption or that it will meet your requirements.

6.8 You represent and warrant that:

- (a) you own or control all rights in and to your Contributions and have the right to grant the license granted above to OutOfCourt;
- (b) all of your Contributions do and will comply with this Agreement;
- (c) you understand and acknowledge that you are responsible for any Contribution you submit or contributes, and you (and not OutOfCourt)



have full responsibility for such content, including its legality, reliability, accuracy and appropriateness.

- (d) OutOfCourt is not responsible, or liable to any third party, for the content or accuracy of any Contributions posted any user of the Platform.

- 6.9** OutOfCourt has the right to remove, edit, amend, refuse to post or take any action with respect to any Contributions for any or no reason in its sole discretion.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1** All intellectual property rights in or arising out of or in connection with the Services (other than intellectual property rights in any materials provided by you or third-parties) will be owned by us.

- 7.2** You grant us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by you to us for the term of the Contract for the purpose of providing the Services to you.

8 HOW WE MAY USE YOUR INFORMATION

- 8.1** Details of how we will process personal information are set out in our privacy policy on our Site.

- 8.2** You acknowledge and accept that we have a right to correct the record (including the public record) and have right to disclose details of your Case, your use of the Platform, Site and our Services, your correspondence with us, your correspondence with other users of the Platform and your identity to any third party in order to correct the record.

- 8.3** We may use, and you permit us to use, your trade marks, service marks, trade names, logos, symbols or brand names for marketing purposes but may not, without your written permission reveal details of your Case.

- 8.4** You permit us to use de-identified information regarding a Case with which you are involved for marketing and promotion purposes.



9 LIMITATION OF LIABILITY

- 9.1** Nothing in this Contract limits or excludes our liability where liability cannot be limited or excluded by applicable law.
- 9.2** Subject to Clause 9.1 we will not be liable to you, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this Contract, including any:
- (a) the allegations within a dispute or case;
 - (b) your making of allegations against other people, or our notification of those allegations to other persons;
 - (c) loss of profits;
 - (d) loss of sales or business;
 - (e) loss of production;
 - (f) loss of agreements or contracts;
 - (g) loss of business opportunity;
 - (h) loss of anticipated savings;
 - (i) loss of or damage to goodwill;
 - (j) loss of reputation; or
 - (k) loss of use or corruption of software, data or information.
- 9.3** OutOfCourt is not and cannot be responsible for any allegations or merits of a Case. You understand and accept that OutOfCourt is merely a conduit for information regarding a Case and does not warrant, endorse or otherwise accept the allegations therein.
- 9.4** Subject to Clauses 9.2 and 9.3, our maximum aggregate liability to you for any loss or damage or injury arising out of or in connection with the performance or non-performance of Services under this Contract, including any breach by us of this Contract however arising, under any indemnity, in tort (including



negligence), under any statute, custom, law or on any other basis, is limited to the amount of \$500.

- 9.5** Nothing in this Contract is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the Australian Consumer Law in Schedule 2 of the Competition and Consumer Act 2010 (Cth) (ACL), or the exercise of a right conferred by such a provision, or any liability of ours in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of services.
- 9.6** If we are liable to you in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, our total liability to you for that failure is limited to, at our option, the resupply of the services or the payment of the cost of resupply.
- 9.7** This clause 9 will survive termination of the Contract.

10 CONFIDENTIALITY

- 10.1** Subject to the terms of this Contract, we each undertake that we will not at any time disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers, except as permitted by Clause 10.2.
- 10.2** We may disclose your confidential information:
- (a) to ADR Service Providers and other parties to a Case for the purposes of the Services;
 - (b) where the information is in the public domain as at the date of this Contract (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on either of us);
 - (c) if required to disclose the information by applicable law or the rules of any recognised stock exchange or other document with statutory content requirements, provided that the recipient has to the extent



practicable having regard to those obligations and the required timing of the disclosure consulted with the provider of the information as to the form and content of the disclosure;

- (d) where the disclosure is expressly permitted under this Contract;
- (e) if disclosure is made to our respective officers, employees and professional advisers to the extent necessary to enable either of us to properly perform our obligations under this Contract or to conduct our business generally, in which case the we each must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;
- (f) where the disclosure is required for use in legal proceedings regarding this Contract; or
- (g) if the party to whom the information relates has consented in writing before the disclosure.

10.3 Each of us may only use the other's confidential information for the purpose of fulfilling our respective obligations under the Contract.

10.4 You understand and accept that the other parties to a Case and ADR Service Providers will share your information including your confidential information with us and each other.

11 TERMINATION

11.1 Without affecting any of our other rights, we may suspend the performance of Services, or terminate this Contract with immediate effect by giving written notice to you if:

- (a) you fail to pay any undisputed amount due under this Contract on the due date for payment and you remain in default not less than 7 (seven) days after being notified in writing to make such payment;
- (b) you commit a material breach of any other term of this Contract and that breach is irremediable or (if that breach is remediable) you fail to



remedy that breach within a period of 7 (seven) days after being notified in writing to do so;

- (c) an insolvency event occurs in relation to you; or
- (d) there is a change of control of the your company.

11.2 On termination of the Contract you must return all of Our Materials and any deliverables specified in your order which have not been fully paid for. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you will be solely responsible for their safe keeping and must not use them for any purpose unconnected with the Contract.

11.3 Termination of this Contract does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for any breach of the Contract that existed at or before the date of termination.

11.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

12 FORCE MAJEURE

12.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by any act or event beyond our reasonable control (Event Outside Our Control).

12.2 If an Event Outside Our Control takes place that affects the performance of our obligations under the Contract:

- (a) we will contact you as soon as reasonably possible to notify you; and
- (b) our obligations under the Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. We will arrange a new date for performance of the Services with you after the Event Outside Our Control is over.



12.3 You may cancel the Contract affected by an Event Outside Our Control which has continued for more than 30 days. To cancel please contact us.

13 NOTICES

13.1 When we refer to “in writing” in these Terms, this includes email.

13.2 Any notice or other communication given by one of us to the other under or regarding the Contract must be in writing and be delivered personally, sent by pre-paid post or email.

13.3 A notice or other communication is deemed to have been received:

- (a) if delivered by hand to the nominated address, when delivered to the nominated address;
- (b) if sent by pre-paid post, at 9.00 am (addressee’s time) on the second Business Day after the date of posting; or
- (c) if sent by email, at the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

13.4 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.

13.5 The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

14 VARIATION

14.1 Any variation of the Contract only has effect if it is in writing and signed by you and us (or our respective authorised representatives).

15 NO WAIVER

15.1 Neither of us may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this Contract unless the other party or parties expressly grant a waiver of the right,



power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.

- 15.2** Words or conduct referred to in Clause 15.1 include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.

16 ASSIGNMENT AND NOVATION

16.1 We may assign or transfer our rights and obligations under the Contract to another entity without notice to you.

16.2 You may only assign or transfer your rights or your obligations under the Contract to another person if we agree in writing.

16.3 A breach of Clause 16.2 by you entitles us to terminate this Contract.

17 SEVERABILITY

17.1 If the whole or any part of a provision of this Contract is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

17.2 Clause 17.1 does not apply if the severance of a provision of this Contract in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this Contract.

18 RELATIONSHIP OF THE PARTIES

18.1 The Contract is between you and us. No other person has any rights to enforce any of its terms

19 ANNOUNCEMENTS

- 19.1** You must not make, or permit any person to:
- (a) make any public announcement statement, press release or other publicity or marketing materials concerning the existence, subject matter or terms of this Contract, the wider transactions contemplated by it, or the relationship between the parties; or



(b) use the other party's trade marks, service marks, trade names, logos, symbols or brand names, in each case;

without the prior written consent of the other party,[such consent not to be unreasonably withheld, conditioned or delayed,] except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

20 24. GOVERNING LAW AND JURISDICTION

20.1 These terms and conditions, their subject matter and their formation, are governed by the laws of Queensland, Australia. You and we both agree that the courts in Queensland, Australia will have exclusive jurisdiction.