



## Arc Hardware Incubator

3/186 Brunswick St  
Fortitude Valley QLD  
4006 Australia

+61 738 461 590

[www.arc.space](http://www.arc.space)

# TERMS AND CONDITIONS

## 1 INTERGRATION WITH MEMBERSHIP AGREEMENT

- 1.1 These General Conditions will be read as and deemed part of the Membership Agreement for the Member. Arc reserves the right to amend these Terms and Conditions from time-to-time and at its sole discretion. The latest version will be displayed on the official website [www.arc.space](http://www.arc.space).

## 2 SUPPLY OF MEMBERSHIP SERVICES

- 2.1 Arc will supply to the Member the Membership Services:-
- (a) in accordance with and so as to meet the requirements of the Membership Services, including without limitation, in accordance with any due dates for Membership Services;
  - (b) in a professional, efficient and safe manner, without negligence;
  - (c) in compliance with all applicable standards, awards, laws and regulations (including without limitation, awards and laws applicable to Arc's employees).

## 3 MEMBERSHIP OBLIGATIONS

- 3.1 The Member agrees to abide by the Membership Obligations.

## 4 PRICE AND PAYMENT

- 4.1 The Selected Membership Plan states either or both of the Price payable under this Agreement and how the Price is to be calculated.
- 4.2 Arc will invoice the Member monthly, specifying how those amounts are calculated.
- 4.3 The parties agree that, unless otherwise stated, all amounts payable under this Agreement by the Member are referred to on a GST exclusive basis.
- 4.4 Words or expressions used in this clause which are defined in the *A New Tax System (Goods and Membership Services) Act 1999* (Cth) have the same meaning.

## 5 WAIVER

- 5.1 As a Member, you acknowledge that you are using the facilities and equipment at your own free will and risk. You acknowledge that:
- (a) Arc does not have any liability with respect to your access, participation in, use of the facilities, or any loss resulting from such participation or use.
  - (b) The Member waives all right of recovery against Arc for any damage or claim with respect to any injury to person or damage to, or loss or destruction of, any property of yours, due to the use of Arc's facilities.
  - (c) Arc is not responsible for any damage, loss or theft incurred to personal property and/or equipment that a Member brings into Arc, or generates/creates in any area of Arc
  - (d) Arc does not make any representations as to the security of Arc's network or the internet or of any information that the client places on it. Arc cannot guarantee that a particular degree of availability will be attained in connection with your use of Arc's network or internet. A Member's sole and exclusive remedy shall be the remedy of such failure by Arc within a reasonable time after written Notice.

## 6 WARRANTIES, INDEMNITIES AND INSURANCES

- 6.1 Arc warrants that: -
- (a) in supplying the Membership Services, Arc will not wilfully infringe the IP Rights or Moral Rights of any person;
  - (b) use of the Membership Services (including all deliverables supplied as part of the Membership Services) by the Member or its contractors in accordance with this Agreement will not infringe the IP Rights or Moral Rights of any person;
  - (c) all Membership Services will be supplied: -
    - (i) in accordance with the applicable service levels (if any) specified in the Membership Services or this Agreement; and
    - (ii) with due care and skill.
- 6.2 The Member indemnifies Arc against all losses, liabilities, damages and costs suffered or incurred by Arc as a result of any claim by a third person that: -
- (a) any of Member Materials infringe; or
  - (b) use of any Membership Services (including any deliverables supplied as part of the Membership Services) infringes,
- the IP Rights or Moral Rights of any person.

Arc must effect and maintain in a form appropriate to Arc's activities and with comprehensive insurance in respect of the Membership Services, including liability insurance, including public liability and product liability insurance, appropriate to Arc's activities, and in the aggregate, including loss of or damage to personal and real property of the Member (including documents and records); ("Insurance Policies").

## 7 EXCLUSION AND LIMITATION OF LIABILITY

- 7.1 **Extent of warranties.** If the Membership Services are provided under the Agreement by Arc to the Member as a 'consumer' of Membership Services within the meaning of that expression in the Australian Consumer Law, then the Member will have the benefit of the non-excludable rights and remedies within the Australian Consumer Law.
- 7.2 Subject to clause 8.1, Arc does not give any warranty in relation to the performance of the Membership Services, save that Arc warrants that the Membership Services will be performed;
- (a) to the extent that the Membership Services can be performed; and
  - (b) without the infringement of the intellectual property of a third party.

- 7.3 If, apart from clause 8.2, any warranty would be implied whether by law, custom or otherwise, that warranty is, to the full extent permitted by law, excluded.
- 7.4 Nothing in this Agreement shall be read so as to purport to exclude, restrict or modify any condition, warranty, right or remedy conferred by the Australian Consumer Law, save as is permitted by the Australian Consumer Law.
- 7.5 **Limitation of liability.** In no event will Arc be liable for any claims or damages whatsoever or howsoever arising (save for a breach of the warranties in clause 8.2 or the warranties necessarily implied by the Australian Consumer Law) including, but not limited to, claims for:
- (a) negligent or misleading advice, damages arising from loss or use of the Membership Services provided to the Member under this Agreement, injury to any person, and any indirect, special, consequential, incidental, punitive or exemplary damages or loss of profits;
  - (b) default or failure in performance of its obligations pursuant to this Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortage of suitable parts, components, materials including ink, chemicals and paper, labour or transportation or any other cause beyond Arc's reasonable control; or
  - (c) liabilities, loss or damages suffered by the Member in relation to an error or defect in the Membership Services caused by any third party (including subcontractors engaged by Arc) including, but not limited to, any liabilities arising from the modification of the Membership Services by the Member or any third party.
- 7.6 **Period of liability.** Arc's liability in respect of the Membership Services provided under the Agreement whether under the law of contract, in tort, under the Australian Consumer Law or otherwise shall, if not already excluded by operation of this Agreement, cease after the expiration of one (1) year from the date of the completion of the Membership Services, and the Member (and persons claiming through or under the Member) shall not be entitled to commence any action or claim whatsoever against Arc (or any of its employees) in respect of the Membership Services after that date.
- 7.7 **Cap on liability.** In all circumstances, save as is provided for in clause 8.8 (and to the extent permissible under the Australian Consumer Law (should it apply)), the maximum liability of Arc to the Member arising out of or in connection with the performance or non-performance of the Membership Services, whether under the law of contract, tort, under statute or otherwise shall be limited to the amount equivalent to the Price.
- 7.8 If the Membership Services are provided under the Agreement by Arc to the Member as a 'consumer' of Membership Services within the meaning of that expression in the Australian Consumer Law, and where the Membership Services provided by Arc to the Member in accordance with this Agreement are Membership Services not ordinarily acquired for personal, domestic or household use or consumption pursuant to s.64A of the Australian Consumer Law, Arc's liability for breach of any consumer guarantee implied by the Australian Consumer Law will be limited to:
- (a) supplying the relevant Membership Services again; or
  - (b) reimbursement of the cost of having the relevant Membership Services supplied again.
- 7.9 **Steps to mitigate.** Each party shall take reasonable steps to mitigate any loss or damage for which it may seek recourse against the other party.

## **8 CONFIDENTIAL INFORMATION AND PRIVACY**

- 8.1 Arc:-
- (a) may use the Member's Confidential Information solely as licensed;
  - (b) except as permitted under this clause 2, must keep confidential all Confidential Information of the Member; and

8.2 Arc must comply with:

- (a) the reasonable directions of the Member in relation to the handling of any Personal Information; and
- (b) all applicable privacy laws including the *Privacy Act 1988* (Cth) in respect of any Personal Information of which it becomes aware pursuant to this Agreement.

## 9 DISPUTES

- 9.1 Neither party may start court proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless it has first complied with this clause.
- 9.2 A party claiming that a Dispute has arisen must notify the other party in writing of the event occurring that has given rise to the Dispute.
- 9.3 If a Dispute is not resolved within a 20 day working period (or if the parties agree a longer period, that longer period), of a Dispute being notified under clause 10.2, the Dispute must be referred:-
  - (a) for mediation, in accordance with the Australian National Mediation Standards; and
  - (b) to a mediator agreed by the parties, or if the parties do not agree on a mediator, a mediator nominated by the then current President of the Queensland Law Society (or the President's nominee).

## 10 TERMINATION

- 10.1 The Agreement terminates if: -
  - (a) The Selected Membership Plan Time Period expires;
  - (b) a party terminates the Agreement in accordance with clause 11.2 or 11.3.
- 10.2 A party may terminate this Agreement with immediate effect by giving notice to the other party if that other party: -
  - (a) breaches any term of this Agreement and:
    - (i) such breach is not capable of remedy; or
    - (ii) fails to remedy such breach within 30 days after receiving notice requiring it to do so; or
  - (b) becomes subject to an Insolvency Event.
- 10.3 the Member may terminate the Agreement with immediate effect by giving notice to Arc if: -
  - (a) after the date this Agreement is executed, there is a change in control of Arc; or
  - (b) the Membership Services are to be completed by a specified date or in accordance with a specified timetable, and the Membership Services are not completed by that date or in accordance with that timetable;
- 10.4 As soon as possible after termination or expiry of this Agreement: -
  - (a) each party ("first party") must return to the other party (or at the other party's direction, destroy) all Confidential Information of that other party in material form (including without limitation, those parts of all notes or records of the first party containing Confidential Information of the other party) in the first party's possession or control;

## 11 INTERPRETATION

- 11.1 In this Agreement, unless the context otherwise requires, the following expressions will have the meanings as ascribed to them below: -

<b>Membership Application</b>	that Application made by the Member to Arc for the Membership Services; and " <b>Applied</b> " will have a corresponding meaning;
<b>Agreement</b>	this Membership Agreement and amendments hereto and the Collateral and any other instrument expressed to be supplemental to this Agreement and all amendments thereto;

<b>Australian Consumer Law</b>	the <i>Australian Consumer Law</i> , being Schedule 2 to the <i>Competition and Consumer Act 2010</i> (Cth);
<b>Collateral</b>	Each and every one of those instruments ancillary to the Agreement being the Particulars and the Terms and Conditions;
<b>Confidential Information</b>	all information (including without limitation, trade secrets and confidential know-how) which is identified as confidential (orally or in writing) or which may reasonably be considered to be confidential, relating to that party from time to time of which the other party becomes aware, both before and after the day this Agreement is executed;
<b>Dispute</b>	a dispute arising out of or relating to this Agreement, including without limitation, a dispute about the breach, termination, validity, or subject matter of this Agreement, or a claim in equity or in tort relating to the performance or non-performance of this Agreement.
<b>GST</b>	the goods and Membership Services tax imposed under the <i>A New Tax System (Goods and Membership Services) Tax Act 1999</i> (Cth) and any associated legislation and regulations in so far as they relate to GST;
<b>IP Rights</b>	all intellectual property rights, including without limitation patents, copyright, rights in circuit layouts, registered designs, trade marks the right to have confidential information kept confidential and any application or right to apply for registration of any of those rights;
<b>Materials</b>	all documents associated with the Business, the IP Rights, the Membership Services or the deliverables including but not limited to inventions, software, databases, models, drawings, plans, artwork, designs, logos, reports, advices, proposals, records, formulae, notes, correspondence, diagrams, photographs, specifications and software, and being either: -  (a) Arc Materials; or  (b) Member Materials;
<b>Moral Rights</b>	an author's right of attribution and integrity under the <i>Copyright Act 1968</i> (Cth);
<b>Personal Information</b>	information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or who can be reasonably ascertained, from the information or opinion;
<b>Price</b>	the total amount the Member is required to pay under this Agreement;
<b>Membership Services</b>	the document forming part of this Agreement describing the Membership Services Arc will supply to the Member, and other relevant details about those Membership Services which may be amended from time to time by Arc with Notice to the Member;
<b>Supplier materials</b>	all Materials created, or provided to the Member, by Arc in the course of the Appointment, including any developments or improvements to such Materials by or for either Arc or the Member at the time and from time to time;
<b>Terms and Conditions</b>	each and every one of these provisions, being Collateral to the Agreement, and set out on the Website;
<b>Insolvency Event</b>	any one or more of the following events in relation to a party (" <b>affected party</b> ") namely:  (a) an order or court application is made, or the affected party passes a resolution, for:  (i) winding up; or

- (ii) the appointment of a controller, provisional liquidator, trustee for creditors or in bankruptcy;
- (b) an administrator, liquidator, receiver, receiver-manager or controller is appointed to the affected party or any of its property;
- (c) the holder of a security interest takes possession of any of the affected party's property;
- (d) the affected party is taken under s459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (e) the affected party is taken under s40 of the Bankruptcy Act 1966 (Cth) to have failed to comply with a bankruptcy notice;
- (f) the affected party becomes or is taken to become insolvent or unable to pay its debts, suspends payment of its debts, ceases or threatens to cease to carry on a material part of its business;
- (g) the process or any court or authority is invoked against the affected party or its property to enforce a judgement or order for the payment of money or the recovery of property, unless the affected party can demonstrate to the other party's satisfaction that there is no substantial basis for such order or judgement;
- (h) the affected party dies, loses full legal capacity or otherwise becomes unable to manage its own affairs for any reason;
- (i) the affected party takes any step that could result in it becoming an insolvent under administration (as that term is defined in the Corporations Act);
- (j) the affected party takes any step toward entering into a compromise or arrangement with, or assignment for the benefit of its members or creditors;
- (k) any analogous event;

unless such event or events take place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been notified to and approved by the other party;

<b>Particulars</b>	those details of the Member set out in the Agreement;
<b>Specified Membership Plan</b>	that plan selected by the Member set out in the Agreement;
<b>Website</b>	that website conducted by Arc being <a href="http://www.arc.space">www.arc.space</a>
<b>Membership Obligations</b>	the document forming part of this Agreement describing the obligations the Member has undertaken to Arc, and other relevant details about those obligations, which may be amended by Arc from time to time with Notice to the Member;

- 11.2 **Governing law.** This Agreement is governed by the law applicable in Queensland, Australia, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that state.
- 11.3 Headings are for ease of reference only and will not affect the interpretation or construction of this Agreement.
- 11.4 Any reference to any Act, or any section of any Act of Parliament or Government or any ancillary Statutory Regulation whether in Australia or elsewhere, will be read as though the words "or any effectual modification or re-enactment thereof" were added to such reference.
- 11.5 Words denoting the singular number include the plural and vice versa and words denoting any gender include every gender.

## 12 MISCELLANEOUS

12.1 **Subcontracting and Assignment.** Arc must not assign or subcontract to any person this Agreement or any right under this Agreement without the Member's prior written consent. However, Arc agrees that:-

- (a) the Member may assign or transfer, with Arc's approval, part or all of this Agreement and its related rights and obligations under this Agreement to any purchaser of the Member's business ("Purchaser") and procure the Membership Services on behalf of, or for the benefit of, the Purchaser; and
- (b) it will, on request by the Member, sign a deed of novation or such other document as may be necessary to effect any such assignment or transfer.

12.2 **Relationship.** Arc acknowledges that: -

- (a) Arc will supply the Membership Services as an independent contractor;
- (b) this Agreement does not create a relationship of employer and employee, principal and agent, or partnership between the Member and: -
  - (i) Arc;
  - (ii) any of Arc's subcontractors; or
  - (iii) any of Arc's or Arc's subcontractor's employees; and
- (c) this Agreement does not give Arc, its subcontractors or their employees, authority to bind the Member.

12.3 **Notices.** Any notice given under this Agreement must be: -

- (a) made in writing; and
- (b) addressed to the last known address of the intended recipient, or to agents known to be in communication with the intended recipient, or to a receiver liquidator or other properly appointed person having authority by virtue of their appointment over the affairs of the intended recipient.

A notice sent: -

- (c) by prepaid, registered mail, will be deemed to have been properly given five (5) business days after the date of dispatch;
- (d) by email or facsimile will be deemed to have been properly given: -
  - (i) if transmitted during business hours of the intended recipient – one (1) hour after dispatch; or
  - (ii) if not transmitted during business hours of the intended recipient – at 9:00am on the next business day;

unless actual receipt at an earlier date or time is established by the sender. Proof that: -

- (e) an email or facsimile was sent; or
- (f) a letter was properly addressed and deposited;

will be sufficient evidence of service on the intended recipient.

12.4 **Further Assistance.** Each party agrees that it will at all times do such further acts, matters and things and execute and deliver all such further deeds, documents and instruments as may be necessary in order fully to perform, give effect to and carry out the provisions of this Agreement.

12.5 **Entire agreement.** This Agreement is the entire agreement between the parties and supersedes all prior agreements with respect to the transactions contemplated herein and therein.

12.6 **Waiver.** Except where a party ("First Party") waives its right in writing, a First Party's: -

- (a) consideration or negotiation of a request by the other party ("Other Party") to vary this Agreement in a way that would vary any obligation of the Other Party under this Agreement; or

(b) failure to insist that the Other Party perform any obligation under this Agreement, is not a waiver of the First Party's right to:-

(c) insist the Other Party perform any obligation; or

(d) claim damages for breach of any obligation.

12.7 **Variation.** If the parties want to vary this Agreement they must do so by a document signed by an authorised representative of each party.

12.8 **Severability.** If any provision (or part thereof) of this Agreement is deemed to be unenforceable or invalid, such provision (or part thereof) will be severed without affecting the enforceability or validity of any other provisions of this Agreement unless such severance would substantially alter the commercial efficacy and intent of the remaining provisions of this Agreement.

12.9 **Costs.** Except as otherwise provided, each party will bear its own costs of and incidental to the preparation, execution and performance of this Agreement.

12.10 **Counterparts.** The Agreement may be executed in any number of counterparts and all such counterparts when executed and taken together will constitute the Agreement.