

**SERVICES TERMS AND CONDITIONS**

**1. AGREEMENT**

- 1.1 This Agreement sets out the terms and conditions on which the Supplier will supply the Services to MOVUS. The appointment of the Supplier is non-exclusive.
- 1.2 This Agreement will continue for the Term, unless terminated earlier or extended.

**2. SUPPLY STANDARDS**

- 2.1 Supplier must provide the Services:
  - (a) in strict accordance with the terms of this Agreement;
  - (b) promptly, carefully and to the highest possible standards;
  - (c) exercising all due care, skill and judgment; and
  - (d) in accordance with directions given by MOVUS.
- 2.2 Supplier must hold all authorisations, permits, licences, insurances and comply with all laws applying to the supply of the Services.
- 2.3 Supplier must immediately notify MOVUS in writing after becoming aware of anything that may, or will, delay the supply of the Services.
- 2.4 MOVUS may, by written notice to Supplier within 3 Business Days from the date of delivery, refuse to accept any Equipment that has been provided where—
  - (a) the Services, Goods and/or Equipment is considered to be defective; or
  - (b) the Services, Goods and/or Equipment was not ordered by MOVUS.
- 2.5 Any Equipment returned to Supplier in accordance with clause 2.4(a) will be replaced as soon as practicable at Supplier's cost, unless the defect is the result of unreasonable neglect, use or damage by MOVUS.

**3. FEES AND PAYMENT**

- 3.1 MOVUS must issue to Supplier a PO detailing the Services required to be provided by Supplier, including details on the FitMachines or other Goods to be supplied to MOVUS.
- 3.2 Supplier must issue MOVUS with a Tax Invoice detailing the Fees to be paid by MOVUS for the Services within 10 Business Days of delivering the Goods and/or Services.
- 3.3 MOVUS must pay all correctly rendered Tax Invoices issued by Supplier in accordance with clause 3.2 within 30 days from the date of the Tax Invoice.
- 3.4 Unless otherwise specified, all Fees are exclusive of GST and any other applicable taxes and duties (which must be paid by MOVUS).
- 3.5 MOVUS may withhold payment of any amount that it disputes in good faith until the dispute has been resolved. MOVUS must pay the undisputed part of the Tax Invoice within the time specified in clause 3.2.
- 3.6 If an error is discovered by Supplier in the amount payable under a Tax Invoice, the Supplier must immediately notify MOVUS of the error and issue a revised Tax Invoice.
- 3.7 If a Tax Invoice is found to have been incorrectly rendered after payment—
  - (a) any overpayment will be immediately repaid by Supplier to MOVUS or, at the election of MOVUS, offset against any subsequent Tax Invoice; and
  - (b) any underpayment will be included in the following Tax Invoice.
- 3.8 Failure by MOVUS to make the payments in accordance with clause 3.3 may cause Supplier, at its discretion, to discontinue the Services or terminate this Agreement in accordance with clause 8.

**4. WARRANTY**

- 4.1 Supplier warrants that the Services will:
  - (a) conform precisely in quality and specification with the requirements of this Agreement and/or the PO;
  - (b) be new and of merchantable quality;
  - (c) be free from Defects in composition, materials and workmanship;
  - (d) be fit for purpose;
  - (e) be free of any liens, charges or encumbrances; and
  - (f) be available for MOVUS's complete and uninterrupted possession of the Equipment supplied pursuant to this Agreement.
- 4.2 Subject to clause 4.3 and 4.4, if at any time during the Warranty Period MOVUS finds the Equipment to be Defective, MOVUS may

(at MOVUS's discretion and without limiting its rights, including under statute) notify Supplier to rectify or replace the Defective Services, Goods and/or Equipment at Supplier's own cost and within the timeframe reasonably nominated by MOVUS.

- 4.3 To make a warranty claim pursuant to clause 4.2, MOVUS must return the Equipment to Supplier and provide Supplier with a written statement of the Defect.
- 4.4 The acceptance by Supplier of any warranty claims made by MOVUS under this clause 4 is subject to the Equipment not having been used abnormally, damaged by accident, misused, used with improper voltage, or having been altered, or serviced, by anyone other than Supplier or its authorised agent

**5. INDEMNITY**

- 5.1 Subject to clauses 5.2 and 5.3, Supplier agrees to indemnify MOVUS and each of its Indemnified Persons from, and against, any Claim of any kind which those Indemnified Persons may suffer, or incur, in connection with—
  - (a) loss of, or damage to, property of Supplier whether owned, hired or leased by Supplier resulting from the performance of the Services;
  - (b) personal injury, including sickness, disease or death to any of Supplier's Indemnified Persons arising from, or relating to, the performance of the Services;
  - (c) personal injury including sickness, disease or death, or loss of or damage to the property of any Third Parties to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) by Supplier,

only to the extent that the Claim is not caused or contributed to by MOVUS or its Indemnified Persons.

- 5.2 Subject to clauses 5.1 and 5.3, MOVUS agrees to indemnify Supplier and each of its Indemnified Persons from, and against, any Claim of any kind which those Indemnified Persons may suffer, or incur, in connection with—
  - (a) loss of, or damage to, property of MOVUS whether owned, hired or leased by MOVUS resulting from the performance of the Services;
  - (b) personal injury, including sickness, disease or death to any of MOVUS's Indemnified Persons arising from, or relating to, the performance of the Services;
  - (c) personal injury including sickness, disease or death, or loss of or damage to the property of any Third Parties to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) by MOVUS,

only to the extent that the Claim is not caused or contributed to by Supplier or its Indemnified Persons.

- 5.3 Neither Party will be liable to the other under, or in connection with, this Agreement, or any collateral contract for any economic loss; loss of income, revenue, business or contracts; loss of, or inability to use, equipment; down time costs; loss of goodwill or any increased cost of working; wasted overheads; loss of actual, or anticipated, profits; loss of anticipated savings; loss of, damage to or corruption of data; any punitive or exemplary damages; or indirect, or consequential, loss or damage of any kind whatsoever.

**6. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 6.1 Both Parties acknowledge and agree that—
  - (a) each Party retains ownership of its Background IP and nothing in this Agreement is intended to transfer any ownership of each Party's Intellectual Property Rights to the other Party;
  - (b) each Party grants the other Party a non-exclusive, worldwide and royalty free licence of its Background IP that is necessary (and only to the extent necessary) to enable the other Party to carry out its obligations under this Agreement;
  - (c) all Intellectual Property Rights in relation to the product design of the FitMachine, in every aspect, is owned by MOVUS; and
  - (d) all Intellectual Property Rights in relation to the design of custom text fixtures and software for FitMachine remain the property of Supplier.
- 6.2 Supplier acknowledges and agrees that—
  - (a) MOVUS owns all Intellectual Property Rights with regards to the engineering files, drawings and specifications produced

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by Supplier in providing the Services in accordance with this Agreement and Supplier must do everything in its capabilities to ensure that all Intellectual Property Rights are vested in MOVUS.

- (b) all Intellectual Property discovered, developed or otherwise coming into existence as a result of, for the purposes of, or in connection with the performance of the Services will vest in, and is assigned to, MOVUS on creation. Supplier must execute all documents and do all things required by MOVUS for the purposes of this clause. Supplier agrees to procure the irrevocable consent of its employees, contractors and agents not to enforce any and all moral rights that those individuals may have, presently or in the future.

### 7. CONFIDENTIALITY

- 7.1 Subject to clause 7.2, where Supplier receives Confidential Information from MOVUS under this Agreement or otherwise in connection with the supply of the Services, Supplier must—
- (a) keep the Confidential Information confidential and not use, disclose or reproduce the Confidential Information for any purpose other than for the purposes of this Agreement and may only disclose same to employees who need the information for the purposes of this Agreement; and
- (b) establish, and maintain, effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.
- 7.2 Subject to first providing MOVUS reasonable written notice, Supplier may use, or disclose Confidential Information to the extent necessary to comply with any law.
- 7.3 Supplier acknowledges and agrees that in addition to any other remedies available at law or in equity, MOVUS may seek specific performance or injunctive relief against any breach or threatened breach of this clause.

### 8. TERM AND TERMINATION

- 8.1 This Agreement commences from the date that MOVUS provides Supplier with a PO and will continue until the PO is satisfied.
- 8.2 Either party may terminate this Agreement immediately by providing written notice to the other party if the other party breaches any material term of this Agreement and such breach is not capable of being remedied, or the other party breaches any material term of this Agreement and, if it is capable of being remedied, does not remedy that breach within 14 days after receipt of notice of breach.
- 8.3 Termination of this Agreement is without prejudice to accrued rights and obligations of a party as at the date of expiry or termination. MOVUS is entitled to a refund of any Fees paid in advance.
- 8.4 Clauses 2, 3, 4, 5, 6, 7, 8, 10, 12, as well as any other clauses that are intended to survive termination, shall survive termination of this Agreement.

### 9. VARIATION

- 9.1 MOVUS may vary Agreement provided that it provides Supplier with not less than 14 days' prior notice.
- 9.2 Supplier may terminate this Agreement by giving 30 days' notice to MOVUS upon receipt of a notice in accordance with clause 9.1.

### 10. NOTICES

- 10.1 All notices under this Agreement must be in writing and by email and will be deemed to be delivered when acknowledgement of receipt is recorded on the sender's computer.
- 10.2 Notices to Supplier will be sent to the address specified by Supplier following the PO (or such other address as Supplier may notify MOVUS of from time to time). Notices to MOVUS must be sent to [support@movus.com.au](mailto:support@movus.com.au) or as otherwise notified to Supplier from time to time.

### 11. GENERAL

- 11.1 This Agreement does not create a relationship of partnership, employment or agency between MOVUS and Supplier.
- 11.2 Supplier may not assign nor novate this Agreement, or any benefit arising thereunder, without MOVUS's prior written consent.
- 11.3 This Agreement constitutes the entire agreement between the Parties supersedes all previous agreements or representations, whether recorded in writing or otherwise.
- 11.4 A provision of, or a right created by, this Agreement may not be waived, except in writing and signed by the party giving the waiver.

11.5 This Agreement is governed by the law in force in Queensland, Australia. Each party submits to the jurisdiction of the courts of Queensland in relation to this Agreement.

11.6 If any provision of this Agreement is unlawful, invalid, or void, that provision must be read down so that is valid and enforceable (or, if it cannot be read down, severed) so that the validity and enforceability of the remaining provisions are not affected.

### 12. DEFINITIONS

In this Agreement, unless the context otherwise requires:

**Agreement** means this Services Terms and Conditions.

**Background IP** means any Intellectual Property that a Party owns, or has the right to use prior to the date of this Agreement, and includes Intellectual Property Rights created independently of this Agreement that a Party makes available for the purpose of the Services applicable to this Agreement.

**Business Day** means a day from 9:00 a.m. to 5:00 p.m., other than a Saturday, Sunday, or a public holiday in Brisbane, Queensland.

**Claim** includes any claim, action, demand or proceedings by, or against, either Party for any Loss, including by way of indemnity, under contract, in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty) (to the maximum extent possible), in tort (including negligence or negligent misrepresentation) or otherwise (including restitution)

**Confidential Information** means information that relates to the business, assets, or affairs, of the disclosing Party and is by its nature confidential or the receiving Party knows, or ought to know, is confidential.

**Defect or Defective** means any part of the Services that do not strictly comply with the requirements of this Agreement.

**Equipment** means the FitMachine and any other Goods that are to be supplied by Supplier relating to the FitMachine or as detailed in the PO.

**Fees** means the fees payable by MOVUS to Supplier in accordance with clause 3.

**FitMachine** means MOVUS's FitMachine product, including the sensors, gateways, wifi products, communication protocols and software and dashboard.

**Goods** means the products to be supplied by Supplier in accordance with a PO.

**GST** has the meaning given to that term in the *A New Tax System (Equipment and Services Tax) Act 1999* (Cth).

**Indemnified Person** means a Party's officers, directors, employees, agents, consultants and contractors.

**Intellectual Property** means any and all—

- (a) current, and future, registered and unregistered rights in respect of copyright, designs, rights in semiconductor or circuit layouts, trade marks, trade names, business names, trade secrets, know-how, Confidential Information, patents, inventions (including patents and patent applications) and discoveries, and includes any application for grant of any of the aforementioned;
- (b) other rights of a similar nature arising (or capable of arising) under statute or at common law in the Commonwealth of Australia or anywhere else in the world; and

**Intellectual Property Rights** means any, and all, rights in respect of, or in connection with, any Intellectual Property, whether subsisting now or in the future, and includes any right to apply for the registration, renewals and extensions and licences of any Intellectual Property.

**Loss** means loss, damage, cost, expense or liability of any kind, including liability to a third party, any loss of profits or indirect, consequential, incidental, special exemplary, or punitive loss or damage.

**MOVUS** means MOVUS Australia Pty Ltd (ACN 612 412 611) and its subsidiary and affiliated, or related, companies.

**Party** means either MOVUS or Supplier, and "Parties" means both MOVUS and Supplier collectively.

**PO** means an official purchase order provided by MOVUS.

**Service(s)** means the supply of Goods and/or the supply of the Equipment, including the FitMachine, to MOVUS.

**Supplier** means the company providing the Goods and/or Services to MOVUS as detailed in a PO.

**Tax Invoice** has the meaning given to that term in *A New Tax System (Equipment and Services Tax) Act 1999* (Cth).

**Third Party** means any entity other than either Party.

**Warranty Period** means 1 year from the date of the delivery of the Services.