
BUILDXACT TERMS OF SERVICE

Welcome to www.buildxact.com.au. These terms and conditions (the “Terms of Service”) govern the use of the Buildxact Services, and all content, services and/or products made available through the Buildxact Services (including, via the Website).

The Buildxact Services are offered to you subject to your acceptance of the Terms of Service and all other operating rules, policies (including, without limitation, the Privacy Policy accessible at www.buildxact.com.au/privacy), Guidelines and procedures of Buildxact that may be published from time to time on the Website or made available to you through the provision of the Buildxact Services (collectively, the “Terms”).

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 WHICH CONSTITUTE AN AGREEMENT BETWEEN YOU AND BUILDXACT, AND IF YOU ARE AN AUTHORISED REPRESENTATIVE OF ANOTHER PERSON (I.E. A COMPANY), YOU CONFIRM THAT YOU HAVE AUTHORITY TO, AND DO IN FACT, BIND THAT PERSON TO THESE TERMS. YOU MUST IMMEDIATELY STOP USING THE BUILDXACT SERVICES AND YOUR ACCOUNT IF YOU DO NOT ACCEPT THESE TERMS.

From time to time, the Terms of Service will be reviewed and may be revised. Buildxact reserves the right to amend the Terms of Service at any time. Any such amendments will be posted on the Website. Your continued use of the Buildxact Services will constitute your acceptance of the variation of the Terms of Service. Notwithstanding the foregoing, the resolution of any dispute in respect of the Terms of Service will be governed by the Terms of Service in effect at the time such dispute arose.

Buildxact may, at its sole discretion and without notice, elect to suspend or terminate access to, or use of the Buildxact Services, to any person who violates these Terms.

1. Definitions

Account	the primary means for accessing and using the Buildxact Services;
Approved Purpose	the use of Data by a Client or User for the purposes of the Buildxact Services in accordance with the Terms;
Authorisation	the set of rights and privileges on the Website assigned to a User (or Users) by a Client;
Buildxact or us	Buildxact Software Limited (ACN 150 555 721) of Level 1, 411 Collins Street, Melbourne, Victoria 3000, being the supplier of the Buildxact Services to the construction industry;
Buildxact Materials	the visual interfaces, graphics, design, systems, methods, information, computer code, software, trademarks and other intellectual property, services, “look and feel”, organisation, compilation of the content, code, data, and all other elements of the Buildxact Services;
Buildxact Services	the Buildxact software as a service including the System, content, interfaces, portals and all other content, services, Data and/or: <ol style="list-style-type: none"> i. products made available on or through the System that are used to access, describe or enable Buildxact to display, deliver or provide its services; and ii. information exported out of the System in the form of reporting or third-party tools;
Claim	means in relation to any person, a claim, action or proceeding, judgment, damage, loss, cost, expense or liability incurred by or to or made or recovered by or against the person, however arising and whether present, unascertained, immediate, future or contingent;
Client	a natural or legal person, or an Enterprise Customer, who has accepted the Terms by registering for, creating an Account, accessing, browsing, or otherwise using the Buildxact Services;
Client Data	has the meaning given in clause 4.1;
Confidential Information	means any and all information which is disclosed by a party to the other party verbally, electronically, visually or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary;
Data	Files and any other digital data and information including, but not limited to, Personal Data, which is subjected to, created by or inserted into the Buildxact Services or otherwise inserted into the System by Buildxact or the Client (including the Users, customers, sub contractors, organisations, tasks, descriptions, templates, supplier data, estimates, jobs associated with the Client);

Educational Trial	a trial for a specified period under which authorised training bodies are granted permission to use the Buildxact Services as part of their teaching materials and online learning management systems for recognised building and construction courses, which for the avoidance of doubt, excludes any commercial use by such training bodies or their students;
Enterprise Customer	has an arrangement with Buildxact 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 client's users;
Fee	the fee to be paid in advance by the Client to activate the Account, which enables the Client and Users to access and use the 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	a trial for 14 days or such other period specified by Buildxact under which temporary access is granted to a Client by Buildxact for the purposes of the Client trialing the Website and Buildxact Services in accordance with a Subscription Type but without paying a Fee for the duration of the trial;
Guidelines	additional guidelines or rules applicable to specific features, applications, products, or services which may be posted from time to time on the Website or otherwise made available on or through the Buildxact Services;
Paying Client;	a Client that is being charged a Fee for use of the Buildxact Services (following completion of a Free Trial, Education Trial, or otherwise);
Personal Information or Personal Data	is information about an identifiable individual, and may include information such as the individual's name, email address, telephone number, address and company information and as otherwise set out in the Privacy Policy;
Subscription Types	the type of subscription for Buildxact Services that a Client subscribes to as set out in clause 3.1, which subscription is related to the use and functionality of the Buildxact Services;
System	the integrated cloud "software as a service" computing solution operated by Buildxact 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 (or persons) granted with an Authorisation to use an Account on behalf of a Client;
Website	means the internet website with the URL www.buildxact.com.au or www.buildxact.com and any other website that Buildxact may own, operate, use or provide to its Clients in respect of the Buildxact Services;

2. The Buildxact Services

2.1 Use of Buildxact Services

Upon registration of an Account and until these Terms of Service are validly terminated in accordance with clause 13, Buildxact grants to the Client and its Users a non-exclusive, non-transferable (except as expressly provided in these Terms of Service), limited licence 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 in accordance with the terms of the Subscription Type;
- b. modify and delete Data;
- c. configure the standard features of Buildxact Services; and
- d. receive reasonable help and guidance from Buildxact regarding the use of the Buildxact Services.

2.2 Technical Support

Buildxact shall provide reasonable technical support to the Client and its authorised Users at the reasonable request of the Client. Buildxact 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 Website from time to time. Responding to enquiries of Clients who do not have an activated Account may be less expedient or may not occur at all.

The contacts for all enquiries of support are:

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

2.3 Modifications to Services

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

Clients may be notified of such modifications when logging in to the Account. Modifications for the Buildxact Services ("the Modification"), will become effective on the date that is thirty (30) days following notification to Clients via the Account (the "Effective Date of the Modification"). Modifications relating to changes to Subscription Types (including applicable Fees) will be notified to Clients via the Website.

The Client's continued use of the Buildxact Services, or any part or element thereof, after Effective Date of the Modification shall constitute its consent to the Modification and to the Terms of Services then applying. Buildxact 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.

3. Using the Buildxact Services

3.1 Subscription Type

Buildxact provides different Subscription Types to support the needs of different Clients and organisations in accessing the Buildxact Services. The Subscription Types are detailed on the Website and include:

- a. Free Trial Subscription – to enable a Client to trial the Buildxact Services for a specified period before paying a Fee;
- b. Paid Subscription – covers a number of different Subscription Types; and
- c. Educational Trial Subscription – to enable authorised training bodies to utilise the Buildxact Services for a specified period for non-commercial purposes when teaching their students.

3.2 Establishing an Account

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

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

3.2.1 CLIENTS

Each Client may have only one Account and if desired, such number of Users as permitted by the Subscription Type. If two or more persons use or access an Account on behalf of a Client, the Client must designate such persons as individual Paying Clients. Each Paying Client shall be subject to the Terms. For the avoidance of doubt, each User must have their own unique ID created in the Account of the Client.

If a 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. Buildxact is not responsible for verifying the right of representation or validity of Authorisation of any User at any time. However, Buildxact may, at any time, request additional information or proof of a User’s credentials.

3.2.2 ENTERPRISE CUSTOMERS WITH MULTIPLE CLIENTS

Enterprise Customers may have arrangements with Buildxact to allow a number of Clients to be grouped under that Enterprise Customer. In this Subscription Type, there may be sharing of information from the individual Clients to the Enterprise Customer as set out in the agreements between the Enterprise Customer and their Clients. Buildxact provides such information sharing as directed by or agreed with Enterprise Customer and Buildxact.

An Enterprise Customer is required to have Account and Subscription Type that provides for the management of Clients. Enterprise Customers can also have Users in its own right.

3.3 Logging into an Account

Buildxact shall provide each Client with a username and password (“Login Credentials”) to be used to log into the Account. These Login Credentials are for single 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. The Client and each User are responsible for keeping confidential all Login Credentials associated with an Account. Client must promptly notify Buildxact of any disclosure, loss or unauthorised use of any Login Credentials. For the avoidance of doubt, you acknowledge and agree that each User is not permitted to share their Login Credentials with another person (including, another Client) to log on to the Buildxact Services either at the same time, or at a different time, on either the same device, or alternate device.

3.4 Termination or Suspension of an Account

Without limiting other remedies, Buildxact may limit, suspend or terminate access to an Account if Buildxact believes a Client or User is breaching these Terms. Buildxact also reserves the right to cancel deactivated Accounts or Accounts that have been inactive for a long time, or to modify or discontinue an Account or the Website.

No Data is available to the Client or its Users after termination of an Account and Buildxact makes no representation or 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 an Account or the Buildxact Services after termination.

Clients and Users agree that any information provided by them on or in relation to an Account is true, complete and accurate. Clients and Users agree to inform Buildxact promptly on becoming aware that any information provided to Buildxact is or has become untrue, incomplete and inaccurate. If a Client or its User(s) provide information that is or becomes untrue, incomplete or inaccurate, or Buildxact has grounds to suspect that such information is untrue, incomplete or inaccurate, without limiting any other rights or remedy available to us, Buildxact may limit, suspend or terminate access to the Account of the Client.

Buildxact may also limit, suspend or terminate access to an Account if a Client or User’s content or Client Data is inappropriate or of an offensive nature, or where a Client fails to make payment of any required Fees (if any).

The rights for you terminate these Terms of Service are provided for in clause 13.

3.5 Fees

The use of an Account is subject to payment of the Fee. Upon establishment of an Account, the Client must select a Subscription Type. Different Fees apply to different Subscription Types. The applicable Fee is charged monthly in to the Client in advance, unless as agreed otherwise with Buildxact.

The standard pricing options for each Subscription Type are shown on the Buildxact Services pricing page accessible at <https://www.buildxact.com.au/pricing/> . Buildxact may, at its absolute discretion, provide discounts to the fees charged on an Account on a case by case basis.

All Fees are non-refundable, meaning, for the avoidance of doubt, there are no refunds or credits for periods where the Client or its authorised Users did not use an activated Account, used an Account only partially, deactivated an Account, or terminated these Terms of Service during an ongoing payment interval. If, after establishing an Account, a Client elects to upgrade to a more expensive Subscription Type, the unused portion of any prepaid Fees shall be allocated as agreed with Buildxact.

3.6 Free Trial

A new Client (being, a Client that has not previously registered an Account) 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 Subscription Type and pay the initial Fee.

4. Client Data

4.1 Uploading Client Data to Platform

If the Client uploads or enters Data to an Account, such Data is defined as “Client Data” and any processing of such Data must be in compliance with the Terms and all applicable laws. All rights, title and interest in and to the Client Data belong to the Client or where it is not owned by the Client, such third persons who have authorised the Client to use the Client Data (including Users, persons and organisations) whether posted and/or uploaded by Client or made available on the Buildxact Services by Buildxact.

By uploading Client Data to an Account, the Client and such other persons irrevocably and unconditionally authorises Buildxact 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 the Buildxact Services is the result of algorithms and processes that are the exclusive property of Buildxact or of a licensor of Buildxact. The Client is not permitted to use such Data for any purpose other than the Approved Purposes. Buildxact and or its licensors have 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 it expects may be helpful to Clients, or their customers and some of these Services may involve the use of 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 available through the Buildxact Services that violates the Terms, the rights of Buildxact, other Clients or Users, or other third persons or organisations, or that 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, or that infringes another person's intellectual property rights; 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 process it by means of the Account.

4.2 No Guarantee of Accuracy

Buildxact 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 the

Terms and its accuracy and use is the sole responsibility of the person from whom such Client Data originated. In all circumstances, the Client, and not Buildxact, is solely responsible for all Data that is uploaded, entered, transmitted, or otherwise made available by the Client or its Users through the Buildxact Services, as well as for any actions taken by Buildxact or other Clients or Users as a result of such Data.

4.3 Unlawful Client Data

Buildxact 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 Buildxact or if there is reason to believe that certain Data is unlawful, Buildxact 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 the Terms and all applicable laws;
- d. temporarily or permanently remove the unlawful Data from the Website or Account, restrict access to it or delete it.

If Buildxact is presented convincing evidence that the Data is not unlawful, Buildxact 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 Buildxact believes, in its sole discretion, that Data violates any applicable laws, rules or regulations or the Terms, Buildxact may (but has no obligation), to remove such Data at any time with or without notice.

The Client indemnifies Buildxact from any actions that arise out of the Client entering unlawful Data into the Buildxact Services as per clause 11.

4.4 Liability in respect of Claims

The Client acknowledges and agrees that any Claim made in respect of ownership of, title to, or use of Client Data by any third party is the sole responsibility of the Client and Buildxact will not be liable for any Claim made by a third party in respect of such use of Client Data. Further, the Client agrees to indemnify Buildxact, its related bodies corporate and affiliates and their respective directors, officers, employees and agents from any such Claims arising in relation to Client Data under this clause 4.

4.5 Compelled Disclosure

You acknowledge and agree that Buildxact may disclose a Client's confidential information including Personal Information to the extent compelled by law to do so. In such instance, Buildxact 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 Buildxact is compelled by law to disclose Client's confidential information as part of a civil proceeding to which Buildxact is a party, and Client is not contesting the disclosure, Client will reimburse Buildxact for its reasonable cost of compiling and providing secure access to that confidential information.

5. Restrictions

5.1 Prohibited Activities

You will not:

- a. use the Buildxact Services and your Account other than for the Approved Purpose;
- b. infringe any laws, third party rights or our policies, procedures or Guidelines (including, for the avoidance of doubt, the Privacy Policy);
- c. use the Website or your Account in any way when you have been suspended from using the Website or your Account in accordance with these Terms;
- d. circumvent or manipulate the Fee structure, billing process, or Fees owed to Buildxact;
- e. post false, inaccurate, misleading, defamatory or offensive content (including Personal Information);
- f. transfer your Account, username and password to another person without our consent;
- g. distribute viruses or any other technologies that may harm Buildxact, the Website, your Account, other accounts on the Website, or the interests or property of other Account holders, Clients or other users of the Website and Buildxact Services;
- h. violate or attempt to violate the security of the Website, your Account, or any other account on the Website, or hack into the Website, your Account or other accounts of the Website which you are not authorised to use or have been suspended from using;

- i. copy, modify or distribute rights or content owned by Buildxact, other Account holders, Clients or other users of the Website including any copyrights and trademarks;
- j. harvest or otherwise collect information from Buildxact, other Account holders, Clients or other users of the Website, including email addresses, without their consent;
- k. 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; or
- l. 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.

5.2 Certain Uses Require Buildxact Consent

You will not, without Buildxact's prior express written consent:

- 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;
- 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; or
- 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 Buildxact.

6. Defects and Rectifications

You agree to use best endeavours to report any defect to Buildxact as soon as reasonably practicable after becoming aware of such defect.

Buildxact agrees to evaluate reported defects based on their impact to Buildxact's customer base and will prioritise the rectification of such defects at Buildxact's sole discretion. Buildxact agrees to rectify any defect that it considers a priority within a reasonable period of time after notification being made.

For the avoidance of doubt, you acknowledge and agree that Buildxact is not required to make the Buildxact Services function in a way that may be preferred by you, but which is not a defect of a function included in the Buildxact Services and that is used satisfactorily by other users of the Buildxact Services .

7. Privacy

Buildxact takes the privacy of its Clients and Users very seriously.

Buildxact does not provide Personal Information of a Client or User to any third parties without explicit consent. Buildxact may use your information only as described in the Privacy Policy. Clients and Users can access and modify information provided u by signing into the Account. If Buildxact provides a Client or User with information about another Client or User, the Client or User agrees that it will use the information only for the purposes it is provided. Clients and Users may not disclose, use or distribute another Client's or User's information to a third party for purposes unrelated to the Website or the Account.

Buildxact's Privacy Policy at www.buildxact.com.au/privacy is incorporated into these Terms of Service by reference. Please read the Privacy Policy carefully as it governs Buildxact's collection, use, and disclosure of the Personal Information of Clients and Users.

8. Intellectual Property

8.1 Reservation of Rights and Ownership

- a. Other than in respect of Client Data or other content created by a Client or Users on an Account, reproduction of part or all of the contents in any form of the Buildxact Services or an Account page is prohibited and no content may not be recopied and shared with a third party.
- b. The materials displayed on the Website and an Account (other than in respect of a Client's own content or Client Data), including without limitation all information, text, graphics, names, logos, trademarks, design, software and advertisements ("Intellectual Property") are protected by copyright, trade mark and other intellectual property laws unless expressly indicated otherwise on the Website or an Account. Clients and User's may access and display this Intellectual Property contained on the Website or an Account page on a computer or a monitor and print out for personal or internal business use only. All other use, copying or reproduction (including reproduction on any other website) of any part of the Buildxact Services or an Account (other than in respect of Client Data) is prohibited unless expressly stated otherwise. Clients and Users must not use the Buildxact Services and an Account in any manner

or for any purpose which is unlawful, or which violates the rights of any owner of any content or these Terms.

- c. Nothing contained in these Terms, the Buildxact Services or an Account constitutes a transfer or licence of any such Intellectual Property rights to you.

Buildxact reserves all rights not expressly granted to you in these Terms of Service.

8.2 Use of Intellectual Property

You acknowledge and agree that Buildxact may use your intellectual property in the marketing and promotion of these Terms of Service on the terms and conditions set out in these Terms of Service provided that:

- a. such use is limited to use by Buildxact for the purposes of these Terms of Service including, in relation to the provision of the Buildxact Services;
- b. such use is in compliance with your logo and branding guidelines as provided to Buildxact from time to time;
- c. Buildxact shall not modify, or adapt your name, logo or trademarks in any way without prior written consent (other than by way of reduction or enlargement in size in compliance with the Client or Enterprise Customer's logo and branding guidelines);
- d. Buildxact will provide you with samples of all advertising, literature, brochures, and other material using your intellectual property at least 10 business days prior to actual use or publication. You will review such samples and give approval or rejection (not to be unreasonably withheld) within 5 business days of receipt; and
- e. Buildxact will not distribute any advertising, literature, brochures or other material using your intellectual property without your prior written approval.

9. Representations and Warranties

The Client and each User represents and warrants to Buildxact that:

- a. it has full power and authority to accept and perform its obligations under these Terms of Service (including, for the avoidance of doubt, where it is a person entering into these Terms of Service on behalf of a corporation);
- b. if it is a corporation, it is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation;
- c. if it is a corporation, has taken all necessary action to authorise the acceptance, delivery and performance of these Terms of Service in accordance with its terms;
- d. if it is accepting these Terms of Service on behalf of a party under a power of attorney, it has no notice of the revocation of that power or of any fact or

- circumstance that might affect his or her authority to enter into these Terms of Service under that power;
- e. it will comply, at all times, with all applicable laws in the performance of its obligations under these Terms of Service and use, promotion and or marketing (as applicable to the Subscription Type) of the Buildxact Services; and
 - f. it has full right, title, interest and ownership in any and all Client Data or content uploaded to an Account. Further, any Client Data and content uploaded to an Account will not infringe upon the intellectual property rights of any third party and the Client and its Users (as applicable) have not received any notice regarding any alleged infringement thereof.

Buildxact represents and warrants that it has full title and ownership to the Buildxact Services and has the authority to grant the license hereunder. To the best of the Buildxact's knowledge the Buildxact Services do 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. Confidentiality

Each party agrees that it will not use or disclose to any third party any of the other party's Confidential Information (including, for the avoidance of doubt, price sensitive information and Personal Information) except as expressly permitted by these Terms of Service, or as authorised by the prior written consent of the other party.

These Terms of Service imposes no obligation upon the parties with respect to Confidential Information which:

- a. is or becomes generally known to the public without violation of these Terms of Service;
- b. is obtained by a party in good faith from a third party having the right to disclose it without an obligation of confidentiality; or
- c. is required to be disclosed by court order or applicable law, provided notice is promptly given to the owner of the Confidential Information, and provided further that diligent efforts are undertaken to limit disclosure.

A party must (and must ensure that each of its employees, advisers and agents does), immediately upon demand by the other party, cease to use or make any further disclosure of any of the other party's Confidential Information, including use or disclosure for the purposes of these Terms of Service.

A party must, within 5 days of a request by the other party and at its own expense, return to the other party, or at the option and direction of the other party destroy, all

copies of the other party's Confidential Information in its and its employees and agent's possession, power or control. A party's obligations under this clause extends to all documents, notes, memoranda, reports, models and other material (in any form) which reproduce, extract or contain any of the other party's Confidential Information or any information which is based upon, referable to or sourced in whole or in part from the other party's Confidential Information. Nothing in this clause prevents a party or any of its employees or agents from retaining, or requires a party or any of its employees or agents to return or destroy Confidential Information which is stored in electronic back up tapes or records. The return or destruction of the other party's Confidential Information does not release a party from its other obligations under these Terms of Service.

The obligations in this clause 10 survive termination or expiration of these Terms of Service.

11. Indemnity

You agree to indemnify Buildxact, its related bodies corporate (as defined in the Corporations Act) and affiliates, and their respective directors, officers, employees and agents, from any Claims, causes of action, damages, liabilities, losses (including loss of profits, loss of revenue, economic loss, loss of data, direct loss, indirect loss, or consequential or incidental loss, and including damage or loss arising in contract, tort (including negligence), statute or otherwise), costs, debts and expenses (including reasonable legal fees and costs) arising from or as a result of, or relating to:

- (a) your use of the Website, Buildxact Services or your Account, or any information you provide to us, including a breach of the Terms, or any of the representations and warranties given by you under the Terms, or any violation of applicable law or court order; and
- (b) any Claim or demand, including legal fees and costs, made against us by any third party due to or arising out of your breach of the Terms, or your infringement of any law or the rights of a third party in the course of using the Website, Buildxact Services or your Account.

12. Disclaimers and Limitation of Liability

12.1 No Advice

No part of the Website or any information contained on an Account is intended to constitute advice by us. We are not liable or responsible for any reliance placed on the

Website or the Account, and the contents of the Website or the Account, by you or anyone who you may inform of its contents.

12.2 Warranty Disclaimer

To the extent permitted by law, the Buildxact Services are provided on an “AS IS” basis. Buildxact makes no warranties, representations and guarantees (whether express or implied) in respect of the Website and Buildxact Services, including without limit all warranties, representations and guarantees related to merchantability or fitness for purpose, accuracy, completeness, reliability, usability, security, quality, performance, availability, or timeliness of the Website or the Buildxact Services, their content or the content of any website linked to or from the Website or an Account. Where you take action, or omit to act, make any decision, or enter into any agreement with any other person, as a result of your use of the Website and your Account, you acknowledge that you do so having independently made all such investigations and taken all such professional advice as may be necessary to enable you to make an informed and independent decision.

12.3 Internet Performance Disclaimer

Buildxact 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. Buildxact will use commercially reasonable efforts to remedy and avoid such events, but cannot guarantee that such events will not occur. Accordingly, Buildxact disclaims any liability resulting from or relating to such events.

12.4 Exclusion of Incidental, Consequential and Certain Other Damages

Buildxact, its related bodies corporate and affiliates and their officers, employees, agents and contractors are, to the maximum extent permitted by law, not liable to you or any other person for any losses, expenses, Claims or costs (including without limitation for any loss of profits, revenue or data, incidental, consequential, exemplary, special, or indirect damages) arising under or in connection with the Terms, the Website, the Buildxact Services or your Account, any information downloaded from the Website the Buildxact Services or your Account, your use of or access to (or inability to use or access) the Website, the Buildxact Services or your Account, or any third party or other Client’s or User’s use of or access to the Website, the Buildxact Services or your Account.

12.5 Limitation of Liability

To the extent that liability has not been or may not be excluded under the Terms, and to the extent permitted by law, our total liability to you under or in connection with the Terms, the Website, the Buildxact Services or your Account and any information downloaded from the Website, the Buildxact Services or your Account, or your use of or access to (or inability to use or access) the Website, the Buildxact Services or your Account, or any third party or other Client or User's use of or access to this Website, the Buildxact Services or your Account, will not exceed the Fee paid for one month of Buildxact Services under the applicable Subscription Type applying to the Account upon registration.

13. Termination

13.1 For Convenience

These Terms of Service may be terminated, and or access to an Account limited or discontinued, as follows:

- a. by you, as the Client, any time by cancelling your Account via the link on the Website;
- b. by Buildxact by providing at least 30 days written notice; or
- 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.

13.2 For Default

These Terms of Service may be terminated and or access to an Account limited or discontinued, as follows:

- 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 clause 8, 8, 10 and 11 of these Terms.

13.3 Effect of Termination

Upon termination of these Terms of Service:

- a. Buildxact 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, Buildxact 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;
 2. pay any amounts owed to Buildxact under these Terms; and
 3. discharge any liability incurred by the Client before under these Terms prior to their termination.

13.4 No Refunds

Buildxact offers a Free Trial for Clients. It is important that you use this period to determine the suitability of the Buildxact Services for use within your business before you subscribe under a Subscription Type.

Except where these Terms of Service are terminated as a result of breach by Buildxact 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 Services or otherwise) and on termination and in all other circumstances Buildxact is entitled to retain all Fees and other amounts paid by the Client.

13.5 Remedies

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

14. Dispute Resolution

14.1 Dispute resolution procedure

If a party believes that there is a dispute regarding these Terms of Service, it must not commence court proceedings (unless urgent injunctive or interlocutory relief) without first complying with the following dispute resolution procedure:

- a. the party must give notice in writing (a “Dispute Notice”) 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; and
- 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 of receipt of a Dispute Notice (or within such other period agreed by them), either party may serve written 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;
 - 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

Each of 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.

15. General Provisions

15.1 Entire Agreement

The Terms (including, for the avoidance of doubt, these Terms of Service and the Privacy Policy) constitute the entire agreement between you and Buildxact in connection with their subject matter and supersede all previous communications, representations, inducements, undertakings, agreements or arrangements between you and us and or our respective officers, employees or agents.

15.2 Relationship Between Us and You

The Terms do not create a relationship of employment, trust, agency or partnership between Buildxact and you.

15.3 Force Majeure and Viruses

Buildxact will not be liable by reason of the failure in the performance of obligations under these terms and conditions by reason of strikes, riots, fire, explosions, acts of God, war, governmental action, or any other cause which is beyond Buildxact's reasonable control.

Buildxact is not liable for and does not represent or warrant that the Buildxact Services, or your Account and any other information or material contained in, downloaded or accessible from the Website or your Account, is free from computer viruses or any other defect or error which may affect your software or systems. You acknowledge that is your responsibility to protect your software and systems by installing any required security systems.

15.4 Assignment

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

15.5 Third party content and links

The Website, the Buildxact Services and your Account contains content provided by Clients, Users, other users of the Website and third parties, and may include links to other websites. The inclusion of any content provided by any other person, and the inclusion of links to other websites does not imply any approval, recommendation, endorsement, or responsibility for, the contents, operations, products or operators of that content or those websites. We take no responsibility for any loss caused out of the inclusion of such content or links.

15.6 Severability

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

15.7 Waiver

The failure by Buildxact to exercise or enforce any rights or provisions of these Terms of Service shall not be a waiver of those rights or provisions nor of the right at any time subsequent to enforce these Terms of Service. A waiver of a right, power or remedy must be in writing and signed by us.

15.8 Survival

Clauses 1, 4, 5, 6, 8, 9, 10, 11, 12, 14 and 15, along with any provisions that are expressed to survive, or by their nature are intended to survive, termination or expiry of these Terms, shall survive termination or expiry of these Terms.

15.9 Governing Law

All matters related to your access to, and use of, the Buildxact Services shall be governed by the laws of Australia. These Terms of Service 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 the state of Victoria, Australia.

15.10 Copyright/Trademark

Buildxact is a registered trademark of Buildxact. Other names appearing on the Website may be trademarks of their respective owners. You agree that you will not use the Website to infringe Buildxact's intellectual property rights or the intellectual property rights of others. You may not remove, deface, overprint or otherwise alter any notice of copyright, trademark, logo or other notice of ownership from any originals or copies of the Buildxact software, third party software, or any products or content you access on or through the Website.

15.11 Google API Services User Data Policy

Buildxact's use of information received from Google API's will adhere to [Google API Services User Data Policy](https://developers.google.com/terms/api-services-user-data-policy#additional_requirements_for_specific_api_scopes) (https://developers.google.com/terms/api-services-user-data-policy#additional_requirements_for_specific_api_scopes), including the Limited Use requirements.

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