

The Smash Pit Pty Ltd ABN 99 620 755 482

TERMS OF SERVICE

A) INTRODUCTION

The Smash Pit Pty Ltd ABN 99 620 755 482 provides a destruction therapy experience, website and its associated services. The Company allows Users of its services to use the following services:

Use its website to access information and purchase session tickets for entry to The Smash Pit; and enter the Smash Pits to break items.

IMPORTANT TERMS

B) KEY DEFINITIONS

The following terms are used regularly throughout these Terms and Conditions and have a particular meaning.

Agreement means these Terms and Conditions.

Attire means suitable clothing and attire to use the Smash Pits, subject to item E.1.

Booking means a booking to use the Smash Pit.

Booking Fee means the Fee for a Booking.

Smash Pit means the Smash Pits operated by the company in which Users are allowed to break items.

Company mean The Smash Pit Pty Ltd ABN 99 620 755 482

Content means any written, video, audio or other material provided to a User, in which the company holds Intellectual Property Rights.

Fee means any fee payable by a User for access to, or use of a Service.

Implement means any object used to break items.

Privacy Policy means The Smash Pits' privacy policy as updated from time to time.

Representative means an employee, instructor or other representative of the Company.

Service means any of the following where implied by context:

Access to the information, tools and features available via the Site;

Use of the Smash Pits; Providing the User with items; and any other service provided by the Company to a User,

Site means the Company's website accessible at www.thesmashpit.com.au or such other URL used by the Company from time to time.

Items means any objects or materials permitted by the Company to be broken in the Smash Pits.

Third Party means any person that is not a User.

User means any or other User of a Service.

C) AGREEMENT

This agreement governs the use of the site and services by any User and limits the liability of the company to any User. This agreement has specific terms of use (in addition to the general Conditions) that apply to all Users.

In addition to any other express implied consents, by using the site or any other services, the User accepts and agrees to the terms of; The Agreement and The Privacy Policy.

D) USING THE SMASH PIT

1. The User acknowledges that a risk of personal injury is inherent in the use of the Smash Pits. The Company takes reasonable steps to mitigate the risks and make the Smash Pit experience as safe as possible for each User. However, the User acknowledges that they use the Smash Pit at their own risk.
2. Only one User is permitted in the Smash Pits at a time.
3. In order to qualify to use the Smash Pit, a User must:
 - a. Be over the age of 18 and in good health;
 - b. Dress in suitable attire; and
 - c. Pay a booking fee for use of the Smash Pit.
4. A booking fee shall in default include:
 - a. The value of one unit of Items to be broken by a User in the Smash Pits during a booking; and
 - b. The use of any safety equipment or implement provided by the company for use by the User in the Smash Pits.
5. Despite D.4(a) the company may allow a User to supply their own items subject to any pricing and additional terms the company may set from time to time as:
 - a. Described on the site; or
 - b. Determined by a representative in their discretion.
 - c. The company may charge the User an additional fee for any additional units of items to be used during a booking.
 - d. Any items supplied by a User must be approved by a representative prior to the User being allowed to use the items in the Smash Pits.
6. The User may only break items within the Smash Pits, and must not:
 - a. Break items outside the Smash Pits;
 - b. Damage any window, door, wall, light, floor, door handle or any other furniture, fixture or fitting at the premises where the Smash Pit is located;
 - c. Damage anything a representative specifically states is not items;
 - d. Damage any camera equipment present at the Smash Pits;
 - e. Use an implement in a threatening manner towards any person;
 - f. Deliberately break or damage any implement or safety equipment provided by the company.
7. The Company may impose additional safety rules, and rules of conduct specific to a Smash Pit, and any items from time to time, which shall apply to each User of the Smash Pit.
8. No User may use a Smash Pit until the User has completed a safety briefing required by the company.
9. A User must notify a representative of any health condition that could reasonably affect their ability to safely use the Smash Pit. The representative may refuse a User entry if they determine that the User may be unable to safely use the Smash Pit. The company may

provide a User denied access to use the Smash Pit for health reasons a refund at the company's absolute discretion.

10. Every User must comply with any direction given by a representative.
11. No user may enter the Smash Pit under the influence of alcohol, drugs or any other substance that may affect the User's ability to safely use the Smash Pit.
12. A representative may evict a User from a Smash Pit in the event that the User:
 - a. Has failed to follow the reasonable directions of the representative; or
 - b. Presents a hazard to the safety and wellbeing of any person including them self.
13. No items whether broken or not may be removed from the Smash Pit, except for any unbroken items the User may have brought with them.
14. The company may monitor the Smash Pits to ensure the User's safety and compliance with the agreement. The company will not use any footage recorded of the User in a manner inconsistent with the Privacy Policy, or otherwise without the User's consent.

E) ATTIRE AND SAFETY EQUIPMENT

1. Each User that uses the Smash Pit must wear suitable clothing as directed by the company, and in default a User's attire must cover the Users full body including:
 - a. A sleeved top;
 - b. Full length pants;
 - c. Socks.
2. A User must use the safety clothing and equipment provided by the company, which may consist of:
 - a. Full coveralls that covers the full arms and up to the neck;
 - b. Padded safety vest;
 - c. Face shield;
 - d. Gloves;
 - e. Steel capped safety boots;
 - f. or such other safety equipment that the User supplies, subject to the approval of a representative.

F) BOOKINGS

1. A User must make a booking prior to using the Smash Pit either via the site or such other method accepted by the company from time to time.
2. A booking fee shall apply to each booking and must be paid in advance at the time of booking is made.
3. The company will provide the User with a confirmation for each booking, if a User does not receive a booking confirmation within 24 hours of making payment, the User should contact the company to ensure their booking is confirmed.
4. Each User must arrive not less than 15 minutes prior to the scheduled commencement of their booking in order to undertake a safety briefing and be fitted out in the safety equipment.
5. Each User must vacate the Smash Pits promptly at the scheduled end time for their booking to allow the company to reset the Smash Pit for next User.
6. A User must provide not less than 48 hours' notice of cancellation if the User will be unable to attend the booking.
7. The company shall only provide a refund for bookings that are cancelled in accordance with item F.6.

G) FEES

1. Fees and pricing apply as advertised on the site for the use of each service, and the terms of those fees are set out in the General Conditions.
2. A User shall pay any applicable fees as directed by the company, including via:
 - a. The company's payment gateway on the site;
 - b. At the company's premises; or
 - c. Such other method as directed by the company from time to time.
3. Notwithstanding any provision of the agreement to the contrary, no refunds are offered except as required by law.

H) USER TERMS OF USE

1. Each User agrees and accepts that:
 - a. The User is solely responsible for their use of the Smash Pit and each service, and indemnifies the company in the event that their use causes damage to property, personal injury, death, loss or harm whether direct or consequential to the User, the company or any third party. Under no circumstance will the company be liable for any injury, illness, death or damage to property resulting from the use of a service;
 - b. The User shall replace or reimburse the company the value of any company property that the User damages or destroys that is not items, including without limitation any Implement, safety equipment, camera, window, door, wall, light, floor, door handle or any other furniture, fixture or fitting;
 - c. The company may send a User emails, text messages, and/or push notifications regarding the services and the company's business from time to time;
 - d. Any consent made by a User through the site or via email is valid and binding unless and until revoked by the User, and the company may rely on a consent made through the site without any need to further verify the veracity of that consent;
 - e. The site may be hosted on servers located outside Australia and may also use email servers located outside or Australia. Such services may host or transmit a User's personal information;
 - f. The User shall only use content provided to them by the company, for the purpose for which it was provided, and shall not otherwise infringe the company's intellectual property rights by copying or distributing the content without the consent of the company.

I) ELECTRONIC TRANSACTIONS

1. The User agrees that when it provides any consent, authority or agreement through the site it does so as an electronic transaction and warrants that such transaction shall be binding on the party.

J) TERMS AND LIMITATIONS

1. Term
 - a. The User's licence to access the site or service shall be ongoing until terminated by the company in accordance with this agreement.
2. Limitation on Use
 - a. The company may limit or restrict access to the services from time to time as it sees fit, including (but not limited to);
 - b. Location. The company may restrict access to the services to certain location where it is able to offer the services,

- c. Age. The company may restrict access to the Smash Pit to people under the age of 18, unless the consent of a parent or guardian is provided.

K) TERMINATION

1. This agreement may be terminated at any time by written notice of one party to the other.

Governing Law. Queensland, Australia.

Reference City. Sunshine Coast

GENERAL CONDITIONS

1. BACKGROUND

- 1) The User wishes to access the services provided by the company.
- 2) The terms and conditions in the agreement govern the provision of the services to the user by the company.

2. INTERPRETATION

The following definitions apply in the document:

ABN means Australian Business Number.

ACN means Australian Company Number.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the Reference City set out in item K of the Important Terms.

Fees mean the fees and charges as set out in the Important Terms.

General Conditions means the terms and conditions set out in the section of the agreement entitled "General Conditions".

GST has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property means all copyright, patents, inventions, trade secrets, know how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property; Intellectual Property Rights means, for the duration of the rights in any part of the world, and Moral Rights, industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property, application for the registration of any Intellectual Property and any improvements, enhancements or modifications to any Intellectual Property registrations.

Moral Rights means;

Moral rights pursuant to the Copyright Act 1968 (Cth);

Or any rights analogous to the rights set out in Article 6 of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended from time to time).

Important Terms means this agreement's details and variables set out in the section of this Agreement entitled "Important Terms"

Pricing means the pricing as notified to the User in writing by the company from time to time.

Privacy Act means the Privacy Act 1989 (Cth).

Services means the services described in the Important Terms.

Site means the company's website described in the important terms.

Special Conditions means the terms and conditions set out in the section of this agreement entitled "Special Conditions".

Tax Invoice has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

User consent means data that is uploaded or input into the Site by the User or that forms part of the User's Intellectual Property.

Headings are only for convenience and do not affect interpretation. The following rules apply unless the context requires otherwise:

The singular includes the plural and the opposite also applies.

If a word or phrase is defined, any other grammatical form of the word or phrase has a corresponding meaning.

A reference to a clause refers to clauses in the Agreement.

A reference to legislation is to that legislation as amended, reenacted or replaced, and includes any subordinate legislation issued under it.

Mentioning anything after includes, including, or similar expressions, does not limit anything else that might be included.

A reference to a party to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).

A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.

A reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

3. APPLICATION OF THIS AGREEMENT

- 1) This Agreement applies to use of, and access to the Services.
- 2) Where the User does not accept the terms and conditions of the Agreement, the User must immediately cease using the Services.
- 3) This Agreement may be updated by the Company at its absolute discretion from time to time, and unless stated otherwise by the Company in writing, such updates shall come into effect for use of the Services the next time that the User uses a Service after the User receives written notice of the update(s).

4. THE SMASH PIT SITE AND SERVICES

- 1) The Site and Services are those described in the Important Terms.
- 2) The Site and Services are only accessible to the User for the term set out in the Important Terms.
- 3) The User agrees and accepts that the Site is;

- a. Hosted by the Company and shall only be installed, accessed and maintained by the Company, accessed using the internet or other connections to the Company servers and is not available “locally” from the User’s systems;

And

- b. Managed and supported exclusively by the Company from the Company servers and that no “back end” access to The Smash Pit is available the User unless expressly agreed in writing.
- 4) The Company reserves the right to:
 - a. Upgrade, maintain, tune, backup, amend, add or remove equipment, change the location and facilities associated with The Smash Pit or Service.
 - 5) The Company shall not exercise its rights under clause 4.4 in a manner that would intentionally cause the User to lose access to User Content or fundamentally decrease the utility of a Service to the User, other than in accordance with the terms of this Agreement.

5. LICENCE

- 1) By accepting the terms and conditions of the Agreement, the User is granted a limited, non-exclusive and revocable licence to access and use the Services for the duration of this Agreement, in accordance with the terms and conditions of the Agreement.
- 2) The Company may issue the licence to the User on the further terms or limitations including the number of Users or volume of use or transactions as it sees fit.
- 3) The Company may revoke or suspend the User’s licence(s) in its absolute discretion for any reason that it sees fit, including for breach of the terms and condition in this Agreement by the User. The Company will ordinarily advise the User of any suspension or revocation however it is under no obligation to do so.

6. USE

- 1) The User agrees that it shall only use the Services for legal purposes and shall not use them to engage any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.

7. AUTHORISED USERS

- 1) The User shall authorise users to access the Services in its absolute discretion.
- 2) The Company accepts no liability for access to User Content by users authorised by the User of using login details of users authorised by the User.
- 3) The User is solely responsible for the security of its username and password for access to the Site.
- 4) The User shall notify the Company as soon as it becomes aware of any unauthorised access of its Site account.

8. USER CONTENT

- 1) The Company obtains no right, title or interest in User Content including any Intellectual Property found within it. The Company accepts no liability for the content of User Content.
- 2) The User is responsible for the accuracy, quality and legality of User Content and the User’s acquisition of it, and the users that create, access and/or use User Content.
- 3) Despite clause 8.1 the Company shall be authorised to permanently delete User Content where outstanding Fees remain unpaid in accordance with clauses 10 and 11.

- 4) The Company shall not access, use, modify or otherwise deal with User Content except where required by compulsion of law or upon the User's authority (such as to provide support for the Services).

9. PRIVACY

- 1) The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Act for data that it collects about the User and other customers.
- 2) The Site may use cookies (a small tracking code in your browser) to improve a User's experience while browsing, while also sending browsing information back to the Company. The User may manage how it handles cookies in its own browser settings.

10. FEES

- 1) The User agrees to pay all Fees as and when they fall due and to the extent permissible by law. Fees are non-cancellable and/or non-refundable once ordered or paid.
- 2) The Company may introduce new services with corresponding Fees by giving the User written notice of their availability and applicability.
- 3) The Company shall maintain all Fees for the terms of the licence paid for by the User.
- 4) The Company may revoke or suspend the User's licence to access Services for unpaid Fees without liability.
- 5) Where the Company:
 - a. Is required to perform any services for the User outside of what is set out in the Agreement or otherwise in writing; and
 - b. Is subject to delays caused by changes or complexities outside of what is set out in the Agreement or otherwise in writing; and
 - c. Is subject to delays caused by changes or complexities outside of its control and not caused by its breach of the Agreement; then
 - d. The User agrees that the Company shall be entitled to charge the User an additional amount that is reasonable for the service performed.
- 6) All transactions are processed in Australian dollars and conversion rates may apply for foreign currencies.
- 7) GST is applicable to any Fees charged by the Company to Users within Australia. Unless expressed otherwise, all Fees shall be deemed exclusive of GST. The Company will provide the User with a Tax Invoice for its payment.
- 8) No refunds of Fees are offered other than as specified in the Agreement or as required by law.

11. INVOICING AND PAYMENTS

- 1) The Company shall issue the User a Tax Invoice for all Fees for which GST applies.
- 2) The terms of payment set out in the Fees section of the Important Terms shall apply.
- 3) Should the User dispute a Tax Invoice, the User must notify the Company of the disputed item within 5 Business Days of the date of the Tax Invoice. The User must pay the amount of the Tax Invoice not in dispute within the prescribed payment period.
- 4) Overdue Tax Invoices shall accrue interest at the rate of 2% per month, or in default, the maximum rate of penalty interest prescribed under law.
- 5) The User authorises the Company to use the User's information for the purposes of obtaining a credit assessment or to otherwise make investigations as to the User's payment history.

12. DATA

- 1) Security. The Company takes the security of the Site and the privacy of its users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.
- 2) Transmission. The Company shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards. It is up to the User to ensure that any transmission standards meet the User's operating and legal requirements.
- 3) Storage. The Company may limit the amount of data that the User stores on the Site, and shall advise the User of such. Data that is stored on the Site shall be stored according to accepted industry standards.
- 4) Backup. The Company shall perform backups of the Site in as reasonable a manner at such times and backup or recover specific User Content from any period of time unless so stated in writing by the Company.

13. ACCESS

- 1) By accepting the terms of this Agreement, the User agrees that the Company shall provide access to the Services to the best of its abilities, however;
 - a. Access to the Services may be prevented by issues outside of its control; and
 - b. It accepts no responsibility for ongoing access to the Services.

14. INTELLECTUAL PROPERTY

- 1) Trademarks. The Company has moral and registered rights in its trademarks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.
- 2) Proprietary Information. The Company may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of the Services.
- 3) The Smash Pit Site. The User agrees and accepts that the Site is the Intellectual Property of the Company and the User further warrants that by using the Site the User will not:
 - a. Copy the Site or the services that it provides for the User's own commercial purposes; and
 - b. Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in the Site or any documentation associated with it.
- 4) Content. All content (without limitation) any source code, analytics, insights, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to the Site and Services.

15. LIABILITY AND INDEMNITY

- 1) The User agrees that it uses the Site and Services at its own risk.
- 2) The User acknowledges that the Company does not provide Items for use anywhere else, other than the Smash Pit.
- 3) The User agrees that it has had reasonable opportunity to obtain legal advice on the Agreement.

- 4) The User acknowledges that the Company is not responsible for the conduct or activities of any user and that the Company is not liable for such under any circumstances.
- 5) The User agrees to indemnify the Company for any loss, damage, cost or expense that the Company may suffer or incur as a result of or in connection with the User's use of or conduct in connection with the Services, including any breach by the User of these Terms.
- 6) In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, personal injury, death, damage to property, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the User's access to , or use of, or inability to use a Service or any content, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not the Company knew or should have known of the possibility of such damage, to business interruption of any type, whether in tort, contract or otherwise.
- 7) Certain rights and remedies may be available under the Competition and Consumer Act 2010 (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company and Company's related entities excluded all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:
 - a. The re-supply of services or payment of the cost of re-supply of services; or
 - b. The replacement of repair of goods or payment of the cost of replacement or repair.

16. TERMINATION

- 1) Breach. Where a party is in material breach of the Agreement, the other party may terminate this Agreement by giving written notice of termination, which shall become effective 5 business days after the date of the notice.
- 2) Expiry or termination of this Agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of the Agreement up to the date of expiry or termination.
- 3) The rights and obligations under the relevant provisions of clauses 7,9,10,11,14,15,16,17,18 and 18.6 survive termination of the Agreement.

17. DISPUTES

- 1) All disputes shall be handled in accordance with the Company's dispute resolution policy.
- 2) Where the Company does not have a relevant dispute resolution policy for a type of dispute, the following process shall apply:
 - a. Negotiation. If there is a dispute between the parties relating to or arising out of the Agreement, then within 5 business days of a party notifying the other party of a dispute, senior representatives from each party must meet (or discuss directly via the telephone or internet) and use all reasonable endeavours acting in good faith to resolve the dispute by joint discussions;
 - b. Mediation. If the dispute between the parties relating to or arising out of this Agreement is not resolved within five business days of notification of the dispute under Clause 17.1, the parties must agree to submit the dispute to mediation, administrated by lawyers engaged in alternative dispute resolution; and Court proceedings. A party may not commence court proceedings in relation to a dispute relating to or arising out of this Agreement until it has exhausted the procedures in the clause (a) unless the party seeks appropriate injunctive or other interlocutory

relief to preserve property or rights or to avoid losses that are not compensable in damages.

18. ELECTRONIC COMMUNICATION, AMENDMENT AND ASSIGNMENT

- 1) The words in this clause that are defined in the Electronic Transactions Act 1999 (Cth) have the same meaning.
- 2) The User can direct notices, enquiries, complains and so forth to the Company as set out in the Agreement.
- 3) The Company will notify the User of a change of details from time to time.
- 4) The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the Company of from time to time, It is the User's responsibility to update its contact details as they change.
- 5) A consent, notice or communication under the Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.
- 6) Notices must be sent to the parties' most recent known contact details.
- 7) The User may not assign or otherwise create an interest in the Agreement.
- 8) The Company may assign or otherwise create an interest in its rights under the Agreement by giving written notice to the User.

GENERAL

- 1) Special Conditions. The parties may agree to any Special Conditions to the Agreement in writing.
- 2) Prevalence. To the extent that the Important Terms are inconsistent with the general Conditions, the terms of the Important Terms will prevail. To the extent that the Special Condition are inconsistent with the Important Terms, the Special Conditions will prevail.
- 3) Disclaimer. Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in the Agreement.
- 4) Relationship. The relationship of the parties to this Agreement does not form a joint venture or partnership.
- 5) Waiver. No clause of the Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- 6) Further Assurances. Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.
- 7) Governing Law. This Agreement is governed by the laws of the state set out in item K of the Important Terms. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.
- 8) Severability. Any clause of the Agreement, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of the Agreement.