
Diimex Site Terms


1 Terms of use

In these Diimex Site Terms, **Diimex** means Diimex Pty Limited (ABN 22 157 964 040) of PO Box 542, Woollahra NSW 1350, Australia. Please read these Diimex Site Terms carefully as they apply to your use of this website including any content (such as photographs and video footage) on it (the **Diimex Site**). By accessing or using the Diimex Site you agree to be bound by these Diimex Site Terms.

Diimex may revise these Diimex Site Terms from time to time. Diimex will display a notice on the Diimex Site indicating when any such revisions have been made. These Diimex Site Terms were last updated on 14th October 2013.

If you do not agree to abide by these Diimex Site Terms, including any revisions of these please Diimex Site Terms, do not use or access the Diimex Site. It is your responsibility to regularly review these Diimex Site Terms.

2 Registration

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- (a) Certain areas of the Diimex Site are only intended for access and use by:
- (i) buyers who have registered with us, and agreed to our Diimex Buyer Agreement, <http://www.diimex.com/Content/Legal>, (**Buyer Agreement**); and
 - (ii) contributors who have registered with us, and agreed to our Diimex Contributor Agreement, <http://www.diimex.com/Content/Legal>, (**Contributor Agreement**).
- (b) You may not access any part of this website that is intended for access and use by buyers or contributors unless you have a current registration with us to do so.
- (c) Diimex is under no obligation to accept the registration of any particular person as a buyer or contributor.
- (d) The use of any areas of the Diimex Site that are only intended for access by a buyer or contributor are subject to the Buyer Agreement or Contributor Agreement (as applicable). If there is any inconsistency between these Diimex Site Terms and those agreements, those agreements will prevail to the extent of the inconsistency.

3 Licence to use the Diimex Site

- (a) The Diimex Site is subject to copyright and other intellectual property rights as specified in clause 8 below.
- (b) You may be granted particular licence rights for content that you buy under a Buyer Agreement. Where that is the case, those other licence rights apply in addition to this clause 3.

- (c) Diimex grants you a limited, non-transferable licence to access and use the Diimex Site solely for your personal use, and solely for purposes that are permitted by these terms and any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from any relevant countries).
 - (d) Diimex (or its licensors) retain all right, title, and interest in and to the Diimex Site, and nothing you do on or in relation to the Diimex Site will transfer any intellectual property rights to you or, except for the licence referred to in paragraph (c), licence you to exercise any intellectual property rights unless this is expressly stated.
 - (e) Without limiting paragraph (d), except where permitted under the terms of a Buyer Agreement you have entered into, you may not copy or republish any part of the Diimex Site. Diimex reserves all rights not expressly granted under this Agreement.
 - (f) Subject to applicable law, Diimex may revoke the licence granted under paragraph (c) at any time and may suspend or deny, in our sole discretion, your access to or use of the Diimex Site at any time without notice.
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4 Linking to the Diimex Site

- (a) Diimex encourage you to provide links to the Diimex Site, except for those areas that are intended only for access and use by a buyer or contributor. While you may use the name “www.diimex.com” in the text of any such link, you may not use the Diimex logo or any of Diimex’s other trade marks without Diimex’s prior written consent.
 - (b) You must not provide links to those areas of the Diimex Site that are intended only for access and use by a buyer or contributor.
 - (c) You must not frame the Diimex Site, or represent or imply that any part of the Diimex Site belongs to anyone other than us.
 - (d) If Diimex notify you that it objects to the manner in which you provide links to the Diimex Site, you must immediately cease providing such links.
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5 Accuracy of content

- (a) While every effort has been made to show as accurately as possible the colours of any content forming part of the Diimex Site, Diimex cannot guarantee that your computer monitor will display the colour of such content accurately.
- (b) Some of the information on the Diimex Site may be provided by third parties, including, for example, descriptions of content and the circumstances in which it was obtained and statements as to whether any particular content was obtained on a particular basis (e.g. on an exclusive basis). While Diimex believe that these third parties are reliable sources of this information, Diimex cannot guarantee that this information is always accurate, up-to-date or complete.

6 User Representations and Warranties

By using the Diimex Site, you represent, warrant and covenant that you:

- (a) have the power and authority to enter into and be bound by the Diimex Site Terms;
- (b) will not use any rights granted under this Diimex Site Terms for any unlawful purpose;
- (c) will use the Diimex Site only as set forth in these Diimex Site Terms; and
- (d) are 13 years of age or older. If you are under the age of 13, you are not allowed to use the Diimex Site. We recommend that persons under 18 get parental permission to use the Diimex Site.

7 General restrictions

In using the Diimex Site, you must not:

- (a) provide us with inaccurate or incomplete information;
- (b) post, upload, transmit or otherwise disseminate information that is obscene, indecent, vulgar, pornographic, sexual, hateful or otherwise objectionable in the sole discretion of Diimex;
- (c) violate the contractual, personal, intellectual property or other rights of any party including using, uploading, transmitting, distributing, or otherwise making available any information made available through the Diimex Site in any manner that infringes any copyright, trademark, patent, trade secret, or other right of any party (including rights of privacy or publicity);
- (d) violate any applicable laws, or use the Diimex Site for any purpose that is unlawful;
- (e) distribute viruses, spyware, corrupted files, or any other similar software or programs that may damage the operation of any computer hardware or software;
- (f) collect or store data about other users of the Diimex Site;
- (g) send automated queries of any sort to the Diimex Site without Diimex's prior written consent; or
- (h) engage in any other conduct that inhibits any other person from using or enjoying the Diimex Site.

8 Intellectual Property

- (a) You acknowledge that the Diimex Site has been developed, compiled, prepared, revised, selected and arranged by Diimex and others through the expenditure of substantial time, effort and money and constitutes valuable intellectual property and trade secrets of Diimex and others. It is our policy to enforce our intellectual property rights to the fullest extent permitted under law.

- (b) The trademarks, logos and service marks (“Marks”) displayed on the Diimex Site are the property of Diimex or third parties and cannot be used without the written permission of Diimex or the third party that owns the Marks. Without limitation, the Diimex™ trademark is owned by Diimex.
- (c) The Diimex Site is also protected as a collective work or compilation under United States copyright and other foreign and domestic laws and treaties. Nothing contained in these Diimex Site Terms will be construed by implication, estoppel or otherwise as granting to the user an ownership interest in any copyright, trademark, patent or other intellectual property right of Diimex or any third party.

9 Warranties and liability; Indemnity

- (a) SUBJECT TO PARAGRAPH (c), THE CONTENT ON THE DIIMEX SITE IS PROVIDED “AS IS, AS AVAILABLE” AND DIIMEX EXCLUDES AND DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY LAW ALL GUARANTEES, CONDITIONS, WARRANTIES OR TERMS OF ANY KIND, WHETHER EXPRESS OR IMPLIED OR IMPOSED BY ANY APPLICABLE LAW.
- (b) IN PARTICULAR, AND WITHOUT LIMITING PARAGRAPH (a):
 - (i) WHILE DIIMEX ENDEAVOUR TO PROVIDE A CONVENIENT AND FUNCTIONAL WEBSITE, DIIMEX DO NOT GUARANTEE THAT YOUR REQUIREMENTS WILL BE MET, THAT THE DIIMEX SITE IS ACCURATE OR COMPLETE, OR THAT YOUR USE OF THE DIIMEX SITE WILL BE UNINTERRUPTED, ERROR FREE OR THAT THE DIIMEX SITE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; AND
 - (ii) DIIMEX CANNOT BE RESPONSIBLE FOR ANY LOSS, CORRUPTION OR INTERCEPTION OF DATA SENT TO OR FROM THE DIIMEX SITE WHICH OCCURS OUTSIDE OF DIIMEX’S COMPUTER SYSTEMS (SUCH AS THOSE WHICH OCCUR WHILE BEING SENT OVER THE INTERNET).
- (c) SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF GUARANTEES, CONDITIONS, WARRANTIES OR TERMS IMPLIED OR IMPOSED BY ANY APPLICABLE LAW, OR DO NOT ALLOW LIMITATIONS ON HOW LONG ANY SUCH GUARANTEE, CONDITION, WARRANTY OR TERM MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. NOTHING IN THIS AGREEMENT EXCLUDES, RESTRICTS OR MODIFIES ANY GUARANTEE, WARRANTY, TERM OR CONDITION, RIGHT OR REMEDY IMPLIED OR IMPOSED BY ANY APPLICABLE LAW WHICH CANNOT LAWFULLY BE EXCLUDED, RESTRICTED OR MODIFIED.
- (d) IF ANY GUARANTEE, CONDITION, WARRANTY OR TERM IS IMPLIED OR IMPOSED BY ANY APPLICABLE LAW AND CANNOT BE EXCLUDED (A **NON-EXCLUDABLE PROVISION**), AND DIIMEX IS ABLE TO LIMIT YOUR REMEDY FOR A BREACH OF THE NON-EXCLUDABLE PROVISION, THEN DIIMEX’S LIABILITY FOR BREACH OF THE NON-EXCLUDABLE PROVISION IS LIMITED EXCLUSIVELY (SO FAR AS APPLICABLE LAWS DO NOT PROHIBIT) TO ONE OR MORE OF THE FOLLOWING AT DIIMEX’S OPTION:

- (i) IN THE CASE OF GOODS, THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS, THE REPAIR OF THE GOODS, THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS, OR THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; OR
 - (ii) IN THE CASE OF SERVICES, THE SUPPLYING OF THE SERVICES AGAIN, OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.
- (e) SUBJECT TO PARAGRAPH (c), AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, DIIMEX'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS UNDER OR RELATING TO THESE DIIMEX SITE TERMS OR THEIR SUBJECT MATTER IS LIMITED TO AUD\$100.
- (f) SUBJECT TO PARAGRAPH (c), AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DIIMEX IS NOT LIABLE TO YOU FOR:
- (i) ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR PUNITIVE LOSS OR DAMAGE; OR
 - (ii) LOSS OF PROFITS, REVENUE, BUSINESS, GOODWILL, BARGAIN, ANTICIPATED SAVINGS OR MANAGEMENT TIME,

WHETHER OR NOT DIIMEX WAS AWARE OF SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

- (g) DIIMEX'S LIABILITY TO YOU UNDER OR IN RELATION TO THESE DIIMEX SITE TERMS OR THEIR SUBJECT MATTER IS REDUCED TO THE EXTENT THAT YOUR ACTS OR OMISSIONS, OR THOSE OF A THIRD PARTY (OTHER THAN DIIMEX'S LICENSORS OR SUBCONTRACTORS), CONTRIBUTE TO OR CAUSE ANY SUCH LIABILITY.
- (h) THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS CLAUSE 9 APPLY REGARDLESS OF THE BASIS ON WHICH SUCH LIABILITY ARISES, WHETHER IN CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), IN EQUITY, UNDER STATUTE, OR UNDER AN INDEMNITY, EVEN IF DIIMEX HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES.
- (i) YOU AGREE TO INDEMNIFY AND HOLD DIIMEX HARMLESS AGAINST ANY LIABILITY, LOSS, DAMAGE, COST OR EXPENSE DIIMEX, OR ANY OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND GROUP COMPANIES OF DIIMEX, SUFFER OR INCUR IN CONNECTION WITH:
- (i) YOUR VIOLATION OF ANY TERM OF THESE DIIMEX SITE TERMS;
 - (ii) YOUR VIOLATION OF ANY THIRD PARTY RIGHT, INCLUDING WITHOUT LIMITATION ANY COPYRIGHT, PROPERTY OR PRIVACY RIGHT;
 - (iii) ANY CLAIM THAT ONE OF YOUR USER SUBMISSIONS CAUSED DAMAGE TO A THIRD PARTY; OR
 - (iv) ANY CONTENT YOU POST OR SHARE ON OR THROUGH THE DIIMEX SITE.

10 Variation of the Diimex Site

Diimex may from time to time and without notice, vary, modify or discontinue, temporarily or permanently, any or all of the Diimex Site.

11 Links and advertisements

The Diimex Site may contain links to other third party websites, and also advertisements which include embedded links. Diimex have not reviewed any of the sites linked to the Diimex Site and are not responsible for the content or accuracy of any off-site pages or any other sites linked to the Diimex Site. The inclusion of any link or advertisement does not imply that Diimex endorse the linked site or the subject matter of the advertisement.

12 Force majeure

Notwithstanding any other provision of this Agreement, Diimex will not be liable for any failure to perform any of its obligations under this Agreement where that performance is delayed, prevented, restricted or interfered with for any of the following reasons: acts of God, acts of government, war or war-like situations, strikes, lock-outs, industrial action, riots, fires, floods, earthquakes, droughts, tempests, malicious attacks on the Diimex website, or any other event beyond Diimex's reasonable control.

13 Infringing or objectionable content

If you believe the Diimex Site contains elements that are objectionable, or infringe copyright or any other rights, please contact Diimex in accordance with our take down policy at <http://www.diimex.com/Content/Legal>.

14 Dispute resolution

- (a) The parties agree to resolve any dispute, conflict or issue between them in relation to these Diimex Site Terms, including a dispute or difference about the meaning or effect of these Diimex Site Terms or any matter arising under or out of these Diimex Site Terms (a **Dispute**) in accordance with this clause 14.
- (b) A party may submit notice of a Dispute to the other party (the **Dispute Notice**), which notice must provide a reasonable description of the matters the party submitting the notice considers are in Dispute.
- (c) Following receipt of a Dispute Notice, the parties will attempt to resolve the Dispute by consultation between the parties.
- (d) If the parties have failed to resolve a Dispute within 21 days after submission of the Dispute Notice, either party may refer the Dispute to arbitration by submitting a notice to the other party specifying the Dispute to be decided (the **Referral Notice**).

- (e) Upon referring any such Dispute to arbitration:
 - (i) the arbitration must be conducted in accordance with the UNCITRAL Arbitration Rules (the **Rules**), and the arbitrator will have the optional powers set out in Division 3 of Part III of the *International Arbitration Act 1974* (Cth);
 - (ii) the arbitration will be conducted under the laws referred to in paragraph (e)(i);
 - (iii) the number of arbitrators will be one, the place of arbitration will be Sydney, Australia, and the language of the arbitration will be English;
 - (iv) if the parties cannot agree on the choice of the arbitrator in accordance with the Rules, the arbitrator will be appointed by the current President of the Institute of Arbitrators and Mediators of Australia; and
 - (v) in the event of any conflict between this paragraph (e) and the Rules, this paragraph (e) will take precedence over the Rules to the extent of the conflict.
- (f) Any judgment or award rendered by the arbitrator may be entered in any court having jurisdiction to do so including the enforcement of any arbitration award in accordance with the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, June 10 1958.
- (g) A party may only commence legal proceedings or take similar action in relation to the Dispute:
 - (i) to apply for urgent interim relief; or
 - (ii) if a Referral Notice has not been submitted within 28 days of a party becoming entitled to do so under paragraph (d).
- (h) To the extent permitted by law, you agree that any cause of action arising out of or related to the Diimex Site must commence within one (1) year after the cause of action first accrues.

15 General

- (a) Any provision of these Diimex Site Terms which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement is not affected.
- (b) This Agreement is governed by the laws of New South Wales, Australia.
- (c) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia.
- (d) These Diimex Site Terms are the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.

- (e) Each party represents and warrants that it has not relied on any representations or warranties about the subject matter of these Diimex Site Terms except as expressly provided in these Diimex Site Terms.
- (f) Your use of the Diimex Site is conducted electronically and you agree that Diimex may communicate with you electronically for all aspects of your use of the Diimex Site, including sending you electronic notices.
- (g) The provisions of these terms of use which by their nature survive termination or expiry of these terms of use will survive termination or expiry of these terms of use.
- (h) No waiver of a right or remedy under these Diimex Site Terms is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- (i) A single or partial exercise of a right or remedy under these Diimex Site Terms does not prevent a further exercise of that or of any other right or remedy.
- (j) Failure to exercise or delay in exercising a right or remedy under these Diimex Site Terms does not operate as a waiver or prevent further exercise of that or of any other right or remedy.
- (k) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement.
- (l) The words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation.

