

TERMS OF USE – BOOKIT INSTALL MANAGEMENT



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INTRODUCTION TO THESE TERMS OF USE

BookIT Install Management, is a live cloud-based booking system developed for flooring industry retailers, installers and customers.

These Terms of Use are intended to explain Our obligations as a service provider, and similarly, the obligations that bind You as a Subscriber or Invited User. Please read them carefully.

These terms are binding on any use of the Service and apply to You from the time that We provide You with access to the Service.

These terms are an evolving document, and may be revisited and revised from time to time. We reserve the right to change these terms at any time, effective upon the posting of modified terms and We will endeavour to communicate any changes to You via email or notification via the Website. Invariably, the terms will change over time. It is Your obligation to ensure that You have read, understood and agree to the most up-to-date terms available on the Website.

Use of the Service acknowledges that You have read and understood these terms and have the authority to act on behalf of any person for whom You are using the Service. You are considered to have agreed to these terms on behalf of any entity for whom You use the Service. If You disagree with any part of these Terms of Use then You may not access the Service.

AGREED TERMS

1. DEFINITIONS

In this document:

Agreement means these Terms of Use;

Access Fee means the monthly fee (excluding any taxes) payable by You in accordance with the fee schedule set out on the Website (which, with one week's notice to You, We may change from time to time);

Confidential Information means all information exchanged between the parties to this Agreement, whether written, electronic or oral. This includes the Service but does not include information which is, or becomes, publicly available other than through unauthorised release by any party to this Agreement;

Content means any promotional material, advertising or any other material in general owned by a third party;

Data means any data and/or any information inputted by You or with Your authority into the Website (and for such purposes, authority shall be deemed at all times of access);

Intellectual Property Right means any patent, trade mark, service mark, copyright, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered;

Invited User means any person or entity, other than the Subscriber, that, on occasion, uses the Service with the consent and/or at the invitation of the Subscriber. This includes staff members that are attached to retail accounts and any customers of retailers who provides their personal information;

Job means the relevant work or installation ordered or committed through the use of the Service;

Service means the online booking and Job management services made available (as may be changed or updated periodically by Us) via the Website;

Subscriber means the person who registers to use the Service, and, context permitting, includes any entity using the Service on the Subscriber's behalf;

We means BookIT Aus Pty Ltd ACN 621 701 139 as owners of the BookIT Install Management Service. Here the use of 'Our' and 'Us' is synonymous;

Website means the Internet site at the domain www.bookitim.com.au or any other site operated by Us;

You means the Subscriber, and in certain circumstances, an Invited User. Here, the use of 'Your' is synonymous.

2. USE OF SOFTWARE

We permit You the right to access and use the Service via the Website with the particular user roles available to You in accordance with Your subscription type. This right is non-exclusive, non-transferable, and limited by the subject to this Agreement. You acknowledge and agree that, subject to any applicable written Agreement between the Subscriber and the Invited Users, or any other applicable laws:

- (a) the Subscriber determines who is an Invited User and what level of user role access to the relevant organisation and Service that Invited User has;
- (b) The Subscriber is responsible for all Invited User's use of the Service;
- (c) The Subscriber controls each Invited User's level of access to the relevant organisation and Service at all times and can revoke or change an Invited User's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be an Invited User or shall have that different level of access, as the case may be;
- (d) If there is any dispute between a Subscriber and an Invited User regarding access to any organisation or Service, the Subscriber shall decide the level of access to the relevant Data or Service by the Invited User.

3. YOUR OBLIGATIONS

3.1 Payment Obligations

An invoice for the Access Fee will be sent monthly, commencing one month from the date You opened a BookIT Install Management account. All invoices will include the Access Fee for the preceding one month period of use. We will continue invoicing You monthly until this Agreement is terminated in accordance with clause 8.

3.2 Pricing

Pricing is based on the fees that are displayed on the Website . Without prejudice to any other rights that We may have under these Terms or at law, We reserve the right

to render invoices for the full Access Fees due or suspend or terminate Your use of the Service in respect of any or all of Your related or associated entities if any invoices for those Access Fees are not paid in full by the due date for payment.

3.3 General Obligations

Use of the Service and Website is limited to Your own lawful internal business purposes, in accordance with these Terms. You may use the Service and Website on behalf of others or in order to provide services to others but if You do so You must ensure that You are authorised by us to do so and that all persons for whom or to whom services are provided comply with and accept all terms of this Agreement that apply to You.

3.4 Access Conditions

- (a) All usernames and passwords required to access the Service are to be kept secure and confidential. You must immediately notify Us of any unauthorised use of Your passwords or any other breach or security. We will reset Your password and You must take all other actions that We deem reasonably necessary to maintain or enhance the security of Our computing systems and networks and Your access to the Services.
- (b) As a condition of these Terms, when accessing the Website or using the Services, You must:
 - (i) Not attempt to undermine the security or integrity of Our computing systems or networks or, where the Services are hosted by a third party, that third party's computing systems and networks;
 - (ii) Not use, or misuse, the Services in any way which may impair the functionality of the Services or Website, or other systems used to deliver the Services or impair the ability of any other user to use the Services or Website;
 - (iii) Not attempt to gain unauthorised access to any materials other than those to which You have been granted exclusive permission to access or to the computer system on which the Services are hosted;
 - (iv) Not input any files that may damage any other person's computing devices or software, Content that may be offensive, or material or Data in violation of any law (including Data protected by copyright, of which You are not granted use); and
 - (v) Not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services.

3.5 Mobile and Other Devices

We currently provide applications associated with the Services which can be found on various app stores (namely IOS and Google Play) free to download and use for Subscribers to our Website. Please be aware that Your carrier's normal rates and fees, such as text messaging and Data charges, will still apply. In the event You change Your phone number, or discontinue Your existing one, You will amend this by

notifying Us within 48 hours or as soon as reasonably practicable thereafter to ensure that Your messages are not sent to those not permitted to see them.

3.6 Usage Limitations

Use of the Service may be subject to limitations, including, but not limited to, monthly booking volumes and the number of users per account. Any such limitations will be advised upon enquiry by You.

3.7 Third Party Websites, Content, Products and Services

- a) The Website provides links to web sites and access to Content, products and services of third parties, including users, advertisers, affiliates and sponsors of the Website. We are not responsible for third party Content provided on or through the Website and You bear all risks associated with the access and use of such Websites and third party Content, products and services.
- b) Any use of communication tools available through the Website (such as any forum, chat room or message centre), must be used for lawful and legitimate purposes. Information You post here will be made public and cease to be Confidential Information under these terms. No communication tool is to be used for posting or disseminating any material unrelated to the use of the Services, including (but not limited to): offers of goods or services for sale, unsolicited commercial e-mail, corrupted files, potentially harmful to any other's computing devices, Content that may be offensive to any other users of the Services or the Website, or material in violation of any law (including material that is protected by copyright or trade secrets which You do not have the right to use).
- c) When entering into any communication on the Website, You must make it expressly clear that You are permitted to make sure communication. We are under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Services. We reserve the right to remove any communication at any time in its sole discretion.
- d) Through the 'add a Retailer' or 'add an Installer' function (also known as a 'work request'), You give full permission to allow Your registered username to be listed under the relevant directory. Please be advised that calendar availability will not be shown until the work request has been accepted by both parties.

3.8 Indemnity

You indemnify Us against: all claims, costs, damage and loss arising from Your breach of any of these Terms or any obligation You may have to Us, including (but not limited to) any costs relating to the recovery of any Access Fees that are due but have not been paid by You.

4. CONFIDENTIALITY AND PRIVACY

4.1 Confidentiality

Unless the relevant party has the prior written consent of the other or unless required to do so by law, each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms.

Neither party will, without the prior written consent of the other, disclosure or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.

4.2 Privacy

We maintain a Privacy Policy that sets out the parties' obligations in respect to personal information. It is recommended that You read this at: www.bookitim.com.au. You will be taken to have accepted that policy when You accept these Terms or access the Website, whether as a Subscriber or Invited User or other Website visitor.

5. INTELLECTUAL PROPERTY

5.1 General

Title to, and all Intellectual Property Rights in the Services, the Website and any documentation relating to the Services remain the property of BookIT Aus Pty Ltd ACN 621 701 139 (or its licensors).

5.2 Ownership of Data

Title to, and all Intellectual Property Rights in, the Data remain Your property. However, Your access to the Data is contingent on You fulfilling all payment requirements due to Us and applicable laws. You grant Us a licence to use, copy, transmit, store, and back-up Your information and Data for the purposes of enabling You to access and use the Services and for any other purpose related to provision of services to You.

5.3 Backup of Data

You must maintain copies of all Data inputted into the Service. We adhere to best practices, policies and procedures to prevent Data loss, including a daily system Data back-up regime, but does not make any guarantees that there will be no loss of Data. We expressly exclude liability for any loss of Data no matter how caused.

5.4 Third-Party Applications and Your Data

If You enable third-party applications for use in conjunction with the Services, You acknowledge that We may allow the providers of those third-party applications to access Your Data as required for the interoperation of such third-party applications with the Services. We are not responsible for any disclosure, modification or deletion of Your Data resulting from any such access by third-party application providers.

5.5 Overseas

Your Data may be stored, backed-up or otherwise disclosed to overseas recipients. Such recipients may not be obliged by local law or otherwise adhere to the provision of the Australian Privacy Principles under the *Privacy Act 1988* (Cth). By using the Service or visiting the Website, You consent to such disclosures to overseas recipients.

6. WARRANTIES AND ACKNOWLEDGEMENTS

6.1 Authority

You warrant that where You have registered to use the Service on behalf of another person, You have the authority to agree to these Terms on behalf of that person and agree that by registering to use the Service You bind the person, on whose behalf You act, to the performance of any and all obligations that You become subject to by virtue of these Terms, without limiting Your own personal obligations under these Terms.

6.2 Acknowledgement

You acknowledge that:

- (a) You are authorised to use the Services and the Website and to access the information and Data that You input into the Website, including any information or Data input into the Website by any person You have authorised to use the Service. You are also authorised to access the processed information and Data that is made available to You through Your use of the Website and the Services (whether that information and Data is Your own or that of anyone else).
- (b) We have no responsibility to any person other than You and nothing in this Agreement is directly for the benefit of any person other than You. If You use the Services or access the Website on behalf of or for the benefit of anyone other than Yourself (whether a body corporate or otherwise) You agree that:
 - (i) You are responsible for ensuring that You have the right to do so;
 - (ii) You are responsible for authorising any person who is given access to information or Data, and You agree that We have no obligation to provide any person access to such information or Data without Your authorisation and may refer any requests for information to You to address; and
 - (iii) You will indemnify Us against any claims or loss relating to:
 - (A) Our refusal to provide any person access to Your Data in accordance with these Terms,
 - (B) Us making available Data to any person with Your authorisation.
- (c) The provision of, access to, and use of, the Services and/or the Website is on an “as is” basis and responsibility for this lies entirely with You.
 - (i) We do not warrant that the use of the Service will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Service, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Services. We are in no way responsible for any such interruptions.

- (ii) It is Your sole responsibility to determine that the Services meet the needs of Your business and are suitable for the purposes for which they are used.
- (iii) You remain solely responsible for complying with all applicable laws. It is Your responsibility to check that storage of and access to Your Data via the Service and/or the Website are in accordance with laws applicable to You (including any laws requiring You to retain records).

6.3 No Warranties

We give no warranty about the Services other than statutory warranties which We cannot by law exclude. Without limiting the foregoing, We do not warrant that the Services will meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

6.4 Consumer Guarantees

You warrant and represent that You are acquiring the right to access and use the Services for the purpose of a business and that, to the maximum extent permitted by law, any statutory consumer guarantee or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Services, the Website or these Terms.

7. LIMITATION OF LIABILITY

- (a) To the maximum extent permitted by law, We exclude all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, Data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Service or Website.
- (b) If You suffer loss or damage as a result of Our negligence or failure to comply with these Terms, any claim by You against Us arising from Our negligence or failure will be limited in respect of any one incident, or series of connected incidents, to the Access Fees paid by You in the previous 12 months.
- (c) If You are not satisfied with the Service, Your sole and exclusive remedy is to terminate these Terms in accordance with clause 8.

8. TERMINATION

8.1 Trial Policy

When first signing up to access the Services You can evaluate the Services under the defined trial usage conditions, with no obligations to continue to use the Services. If, following the trial period, You choose to continue using the Services, You will be billed from the day You first added Your billing details into the Services. If You choose to discontinue usage upon conclusion of Your trial, You may delete Your account by

emailing info@bookitim.com.au from the email address corresponding to Your account.

8.2 Prepaid Subscriptions

We will not provide any refund for any remaining prepaid period for a prepaid Access Fee subscription.

8.3 No-Fault Terminations

These terms will be relevant for the whole of the period covered by the Access fee. At the end of each billing period these Terms will automatically continue for another period of the same duration as that period, provided You continue to pay the prescribed Access Fee when due, unless either party terminates these Terms by giving notice to the other party at least 30 days before the end of the relevant payment period. If You terminate these Terms You shall be liable to pay all relevant Access Fees on a pro-rata basis for each day of the then current period up to and including the day of termination of these Terms.

8.4 Breach

If You:

- (a) Breach any of these Terms (including, without limitation, by non-payment of any Access Fees) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
- (b) Breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3.4 or any payment of Access Fees that are more than 30 days overdue); or
- (c) You or Your business become insolvent or Your business goes into liquidation or has a receiver or manager appointed of any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction,

We may take any or all of the following actions, at its sole discretion:

- (d) Terminate this Agreement with immediate effect and all the clauses that lie within it;
- (e) Suspend Your use of the Services and the Website for the amount of time that is deemed necessary.
- (f) Suspend or terminate access to all or any Data.
- (g) Take either of the actions in sub-clauses (d), (e) and (f) of this clause 8 (4) in respect of any or all other persons whom You have authorised to have access to Your information or Data.

For the avoidance of doubt, if payment of any invoice for Access Fees due in relation to any of Your billing contacts, billing plans or any of Your organisations is not made in full by the relevant due date, We may: suspend or terminate Your use of the Service, the authority for all or any of Your organisations to use the Service, or Your rights of access to all or any Data (subject to any applicable laws).

8.5 Accrued Rights

Termination of these Terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will:

- (a) remain liable for any accrued charges and amounts which become due for payment before or after termination; and
- (b) immediately cease to use the Services and the Website.

8.6 Expiry or Termination

Clauses 3.1, 3.9, , 4, 5, 6, 7 and 8 survive the expiry or termination of these Terms.

9. HELP DESK

9.1 Technical Problems

In the case of technical problems You must make all reasonable efforts to investigate and diagnose problems before contacting Us. Some technical problems are unavoidable, and, upon notification from You to www.bookitim.com.au, We will endeavour to resolve any interruptions in an effective and timely manner.

9.2 Service Availability

Whilst it is Our intention that Services are available 24 hours a day, seven days a week, it is possible, on occasion, that the Services or Website may be unavailable to permit maintenance or other development activity to take place. If for any reason We should interrupt the Services for longer periods than We would normally expect, We will use reasonable endeavours to publish in advance details of such activity on the Website.

10. GENERAL

10.1 Entire Agreement

These Terms, together with the BookIT Privacy Policy and the terms of any other notices or instructions given to You under these Terms, supplant and extinguish all prior Agreements, representations (whether oral or written), and understandings and constitute the entire Agreement between You and Us relating to the Services and other matters dealt with in these Terms.

10.2 Waiver

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

10.3 Delays

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

10.4 No Assignment

You may not assign or transfer any rights to any other person.

10.5 Governing Law and Jurisdiction

These terms are governed by the laws of the state of Queensland, Australia and You submit to the exclusive jurisdiction of the courts of Queensland, Australia.

10.6 Severability

If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties and remains unchanged.

10.7 Notices

Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to Us must be sent to info@bookitim.com.au or such other email addresses agreed by You and Us. Notices to You will be sent to the email address which You provided when setting up Your access to the Service.

10.8 Rights of Third Parties

Any party not covered by these Terms has no right to benefit under or to enforce any term of these Terms.