



Terms and Conditions of Use

These terms and conditions of use (**Terms**) cover the use of the Services (as that term is defined in the Terms) offered by Drawboard.

Last Updated: 15 September 2021

ACCEPTANCE OF TERMS

1.1	When do these Terms apply?	<p>These Terms:</p> <p>1.1.1 set out the agreement between Drawboard Pty Ltd ACN 156 607 028 (Drawboard) and the person or entity taken to agree to these Terms (you); and</p> <p>1.1.2 govern any Drawboard products and services (Services) provided to you through its website https://www.drawboard.com or associated landing pages (Website), third party online application stores, including the Apple App Store and Microsoft Store (Third Party App Stores) or that Drawboard otherwise provides or makes accessible to you and any individual users of the Services that you nominate (End Users).</p>
1.2	When do these Terms not apply?	<p>These Terms do not apply if you have signed a separate Enterprise Licence Agreement (ELA) with Drawboard for the provision of the Services unless such ELA expressly incorporates these Terms.</p>
1.3	How are these Terms accepted?	<p>You are taken to agree to these Terms when you submit an Order, create an account on the Website, or by clicking on the 'I agree' button that is presented to you at the time of submitting your Order. If you do not agree with these Terms, do not click the 'I agree' button and stop using and uninstall the services. The Terms become binding on the date that Drawboard accepts your Order or first makes the Services available to you, whichever is earlier (Commencement Date).</p>

SCOPE

1.4	What is the scope of the agreement formed under these Terms?	<p>1.4.1 By accepting these Terms you agree to be bound by (and these Terms are taken to incorporate):</p> <ul style="list-style-type: none">(a) the terms and conditions set out in the relevant order form completed pursuant to clause 1.11; and(c) Drawboard's Privacy Policy, and any other Drawboard policies posted on the Website, each of which may be modified from time to time (Drawboard Policies). <p>1.4.2 You also agree to comply with, and not do or omit to do anything that would cause Drawboard to breach, any applicable terms and conditions prescribed by a Third Party App Store as it relates to your access to any of the Services.</p>
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SERVICES

1.5	What Services does Drawboard provide pursuant to these Terms?	<p>The Services include:</p> <p>1.5.1 all services, technology, data, information, programs, material and other content that Drawboard makes accessible to you through the Website or any Third Party App Store, including on any desktop, mobile telephone or handheld device (Device) owned or controlled by you or your End Users; and</p> <p>1.5.2 any other services that Drawboard provides to you.</p>
1.6	What changes can Drawboard make to the Services?	<p>Drawboard may:</p> <p>1.6.1 change the Services in its sole discretion from time to time, including the functionality, performance, user interface, usability and the service description and you agree that these Terms will apply to any changes or updates to the Services; and/or</p> <p>1.6.2 discontinue any Service in whole or in part at any time without notice or liability to you, except as may be required to fulfil any existing Orders.</p>

<p>1.7</p>	<p>Do you need an account to access the Services?</p>	<p>1.7.1 You will need a Drawboard account to access or receive the Services and to receive notices and information from Drawboard (Customer Account).</p> <p>1.7.2 All End Users (other than free users) must establish a named account on the Drawboard Platform (End User Account).</p> <p>1.7.3 Each person creating a Customer Account or End User Account, must:</p> <ul style="list-style-type: none"> (a) be at least 16 years of age; (b) possess the legal right and capacity to enter into a legally binding agreement with Drawboard; (c) provide their name and email address and nominate a username and password to register, activate and login to their Customer Account or End User Account; and (d) agree to use the Services in accordance with these Terms. <p>1.7.4 You are responsible for your Customer Account and all End User Accounts under your Customer Account (together, Your Accounts), including:</p> <ul style="list-style-type: none"> (a) maintaining the confidentiality of the passwords associated with each of Your Accounts; (b) ensuring that only those individuals authorised by you have access to Your Accounts; and (c) ensuring that all activities that occur in connection with Your Accounts comply with these Terms.
<p>1.8</p>	<p>What are your rights of use in relation to the Services?</p>	<p>1.8.1 Drawboard grants you the right to access and use the Services.</p> <p>1.8.2 This right is non-exclusive, non-transferable and limited by and subject to these Terms.</p>

FREEMIUM SERVICES

<p>1.9</p>	<p>Do these Terms apply to Freemium Services offered by Drawboard?</p>	<p>1.9.1 Drawboard may offer certain Services to you at no charge, including free accounts, trial use, and access to pre-release and beta products (Freemium Services).</p> <p>1.9.2 These Terms and any additional terms that Drawboard specifies apply to your use of any Freemium Services.</p> <p>1.9.3 You may use any Freemium Service only for the period, in the manner and for the purposes determined from time to time by Drawboard.</p> <p>1.9.4 Drawboard may terminate your right to use any Freemium Service at any time and for any reason in Drawboard's sole discretion, without liability to you.</p>
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FEES AND CHARGES

<p>1.10</p>	<p>What fees and charges are payable in connection with the Services?</p>	<p>1.10.1 Unless you are accessing a free tier Service, or have otherwise entered into a separate agreement with Drawboard regarding pricing, Drawboard will bill you for your use of a particular Service in accordance with the subscription type, pricing model, method, frequency (typically, monthly or annually) and for the Subscription Term offered by Drawboard and accepted by you in connection with such Service (Subscription Plan).</p> <p>1.10.2 You must pay the Fees for such Services to Drawboard as and when they fall due and payable in accordance with the applicable Subscription Plan.</p> <p>1.10.3 Drawboard reserves the right to collect applicable Fees from you using any third-party billing system specified in the Order, including, but not limited to via a Third Party App Store or Chargebee or similar platform, and you agree to be subject to the terms and conditions associated with that third party billing system.</p> <p>1.10.4 Details of Drawboard's Subscription Plans are available from time to time on the Website and may be modified by Drawboard at any time at its discretion.</p> <p>1.10.5 You are responsible for any duties, customs fees, or taxes (other than Drawboard's income tax) associated with the supply of the Services or any other goods or services provided by Drawboard to you, including any value added tax, goods and services tax, or other applicable sales tax, and any related penalties or interest (Taxes) and you will</p>
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pay Drawboard for the Services without any withholding for Taxes.

1.10.6 If Drawboard is required to collect or pay Taxes, the Taxes will be invoiced to you.

1.10.7 You must provide Drawboard with any information Drawboard reasonably requests to determine whether Drawboard is obliged to collect Taxes from you.

ORDERS

1.11 *How do you subscribe for a Subscription Plan?*

To access a Subscription Plan, you must complete and submit to Drawboard an order located on the Website (**Order**), which contains details of (among other things):

1.11.1 the Services being ordered;

1.11.2 the term of the Subscription Plan (**Subscription Term**);

1.11.3 the applicable fees (**Fees**);

1.11.4 your billing address;

1.11.5 any additional information, including purchase order number;

1.11.6 the number of End Users associated with your Customer Account; and

1.11.7 payment method information.

RESTRICTIONS ON USE

1.12 *What restrictions apply to your access to and use of the Services?*

1.12.1 Except where the following restrictions are prohibited by Law, you must not, and not permit any End Users associated with your Customer Account or anyone else to, directly or indirectly:

(a) access or use the Services except as permitted in these Terms;

(b) host images or content on Drawboard servers or through the Services for any purpose other than for the purpose of using the Services;

(c) use the Services to store or transmit malicious code;

(d) interfere with or disrupt the integrity or performance of the Services or third party data contained therein;

(e) use the Services in any other manner that puts an excessive burden on the bandwidth of the Services;

(f) hack, violate, attempt to violate, attempt to gain unauthorized access to the Services or their related systems or networks;

(g) attempt to probe, scan, or test the vulnerability of the Services or perform any penetration testing against or on the Services;

(h) use the Service to encourage or facilitate any illegal activities, break any Laws, including but not limited to those related to e-commerce, defamation, copyright or privacy;

(i) post or transmit via the Services any material that is, in our opinion, likely to cause annoyance, or which is racist, obscene, threatening, pornographic or otherwise which is detrimental to or in violation of Drawboard's or a third party's systems or network security.

1.12.2 You must not, and must not permit any End Users associated with your Customer Account or anyone else to):

(a) sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services in any way or reverse engineer or access the Services to:

(i) build a competitive product or service to any of the Services;

(ii) build a product using similar ideas, features, functions or graphics of the Services; or

(iii) copy any ideas, features, functions or graphics incorporated into the Services;

(b) modify or alter any of the Services without the prior written consent of Drawboard.

INTELLECTUAL PROPERTY

1.13 *Who owns intellectual property rights in the Services and Customer Data?*

1.13.1 In this clause 1.13:

- (a) **Customer Content** means data, information, content, images, plans, drawings, documents, annotations, markups or other material or information of any type that you upload or is uploaded to any Customer Account or End User Account associated with you;
- (b) **Drawboard's Intellectual Property** means:
 - (i) all Intellectual Property Rights subsisting in:
 - (A) the Services, any trade marks or brand names, and any advertising and promotional materials used by Drawboard;
 - (B) any modified, additional or substituted Intellectual Property; and
 - (C) any other materials provided by Drawboard to the Customer, including but not limited to instructional materials, scripts and related documentation; and
 - (ii) anything created during the development of the things listed above, including software, HTML codes, CSS style sheets, Java Script Code, source and object codes, scripts, records, documents, specifications, plans, program listings, designs, calculations and drawings; and
- (c) **Intellectual Property Rights** means any:
 - (i) copyright;
 - (ii) design, patent, trademark, semiconductor, or circuit layout rights (whether registered, unregistered or applied for);
 - (iii) trade, business, company or domain name; and
 - (iv) know-how, trade secret, inventions, processes, confidential information (whether in writing or recorded in any form); andany other proprietary, licence or personal rights (including without limitation moral rights) arising from intellectual activity in the business, industrial, scientific or artistic fields.

1.13.2 Drawboard and its licensors have and retain all right, title and interest, in Drawboard's Intellectual Property.

1.13.3 You and your licensors retain ownership of all rights, including Intellectual Property Rights, in the Customer Content.

1.13.4 Subject to the terms of Drawboard's Privacy Policy, you grant to Drawboard, or must procure the grant to Drawboard of, a non-exclusive, worldwide, irrevocable, royalty-free licence (including the right to sublicense) to use and develop the Intellectual Property Rights in the Customer Content to the extent required to:

- (a) enable Drawboard to exercise its rights and discharge its obligations under these Terms, including to provide or support the Services, and to offer to provide you with any other goods or services (including other products);
- (b) generate aggregated data sets, reports and analysis relating to technical data about customer use of the Services in a form that is anonymised and does not identify you or any individual (**Aggregated Data**). You acknowledge and agree that Drawboard will own all Intellectual Property Rights in Aggregated Data.
- (c) Drawboard may use Aggregated Data to analyse, improve, support and operate the Services and for related internal business purposes.

LIMITATION OF LIABILITY

1.14 *How is liability limited under these Terms?*

1.14.1 Except as expressly stated in these Terms or required under any applicable Law, the Services and any other goods or services provided by Drawboard to you are provided on an 'as is' basis, and Drawboard does not make any representation or warranty (express or implied) in respect of the Services or any other goods or services provided by Drawboard to you, including, without limitation, any implied warranty of merchantability, of fitness for a particular purpose, that operation of the Services will be uninterrupted or error free, that all defects will be corrected, or that Drawboard will maintain Customer Content without loss or corruption.

- 1.14.2 If you reside in Australia and are a 'Consumer' for the purposes of Schedule 2 of the Competition and Consumer Act 2010 (Cth) (**ACL**), the following provisions apply:
- (a) in this clause 1.14.2:
 - (i) Consumer; and
 - (ii) Consumer Guarantee,
 each have the same meaning as under the ACL;
 - (b) The Services come with guarantees that cannot be excluded under the ACL. For major failures with the Services, you are entitled:
 - (i) to cancel your Subscription Plan; and
 - (ii) to a refund for the unused portion or to compensation for its reduced value.
 You may have other rights under the ACL where the failure in the Services does not amount to a major failure.
 - (c) If the Services fail to meet any Consumer Guarantee, and the total amount paid by you for the Services pursuant to these Terms is less than the then applicable statutory monetary threshold (currently, AUD \$100,000), Drawboard's liability to you for failure to meet such Consumer Guarantee is limited, to the extent permitted by Law, to (at Drawboard's election) supplying the Services again or paying for the cost of having the Services supplied again.
- 1.14.3 To the maximum extent permitted by Law, in no event will Drawboard be liable to you or any third party in connection with this Agreement, whether in contract, tort, equity, statute or otherwise for:
- (a) your misuse of the Services, acts or omissions of your personnel;
 - (b) outages or interruptions, or any damage or losses, arising from networks or websites outside of Drawboard's control;
 - (c) any injury, damage to property, or loss to any person in relation to your use of the Services; or
 - (d) loss of profits, loss of revenue, loss of anticipated savings, loss of use, loss or corruption of data, costs of delay or procurement of substitute or replacement goods and services, business interruption, failure of security mechanisms, loss of goodwill, and any other form of indirect, incidental, special or consequential or punitive damages.
- 1.14.4 To the maximum extent permitted by Law, in no event will either Drawboard's or your aggregate liability for any claims in connection with these Terms exceed the total Fees actually paid by you for any Services during the twelve month period immediately prior to the event giving rise to the liability.

TERM AND RENEWAL

1.15 *For how long do these Terms apply?*

- 1.15.1 The agreement between you and Drawboard formed pursuant to these Terms commences on the Commencement Date and ends when all Subscription Terms have expired, and all other Orders have been completed, unless otherwise terminated in accordance with these Terms.
- 1.15.2 Unless otherwise set out in the relevant Order, each Subscription Term will automatically renew for periods equal to the initial Subscription Term at the then current Fees and will be taken to incorporate the then current version of these Terms, except if:
- (a) you elect not to renew the Subscription Term in the manner and within the timeframe prescribed by the relevant Subscription Plan; or
 - (b) Drawboard provides you notice at any time prior to the expiry of the then current Subscription Term that such Subscription Term will not renew. In that case, the Subscription Plan relating to such Subscription Term expires at the end of the then current Subscription Term.

TERMINATION AND SUSPENSION

- 1.16** *In what circumstances can a Service be suspended or a Subscription Plan terminated?*
- 1.16.1 You may terminate any Service at any time by following the process specified from time to time by Drawboard for cancelling your Subscription Term. If you choose to terminate a Service in accordance with this clause, you will not be entitled to any credits or refunds as a result of such termination
- 1.16.2 Either party may terminate a Subscription Plan in whole or part, including any particular Order(s), immediately upon providing notice to the other party if:
- (a) the other party is in material breach of these Terms and does not cure the breach within thirty (30) days after written notice of the breach; or
 - (b) if the other party ceases to operate, has an administrator appointed, enters a deed of company arrangement or other form of administration involving one or more of its creditors, is subject to an order that it be wound up, declared bankrupt, or that a liquidator or receiver be appointed, or otherwise becomes insolvent or is unable to meet its financial obligations.
- 1.16.3 Drawboard may suspend the Services (including any of Your Accounts) immediately without providing you notice, or terminate any Subscription Plan in whole or part, including any particular Order(s), immediately upon notice to you, if:
- (a) you are in material breach of these Terms;
 - (b) you have failed to pay any Fees within sixty (60) days after the relevant due date;
 - (c) you infringe Drawboard's Intellectual Property Rights; or
 - (d) your use of the Services breaches any applicable Law or any of the Drawboard Policies
- 1.16.4 If Drawboard suspends your use of the Services pursuant to its rights under these Terms:
- (a) Drawboard will continue to charge you Fees during the suspension period and you must pay any outstanding Fees prior to Drawboard resuming the provision of the Services; and
 - (b) Drawboard may, in its sole discretion, refuse to resume the provision of the Services until it is satisfied that you have cured the breach which caused the suspension to Drawboard's reasonable satisfaction
- 1.16.5 On the date that any Subscription Plan or any Order expires or is terminated:
- (a) subject to any further access to the Services granted by Drawboard under clause 1.16.6, you and your End Users must cease all access and use of the relevant Services to which such Subscription Plan or Order relates;
 - (b) if a Subscription Plan or any Order is terminated:
 - (i) by Drawboard for your breach, then you must pay to Drawboard any and all outstanding Fees due for the balance of the Subscription Term relating to such Subscription Plan or Order, which amount will become due and payable immediately on termination; and
 - (ii) unless the terms of the Subscription Plan allow you to retain a local instance of any Drawboard software, you must delete from any Devices any software or other materials that Drawboard has provided to you, or made accessible for download by you, for use in connection with the Services.

GENERAL

- 1.17** *What other general provisions apply?*
- 1.1** An amendment or variation to these Terms is not effective unless it is in writing and approved by Drawboard.
- 1.2** The laws of Victoria, Australia govern these Terms. You agree to submit to the exclusive jurisdiction of the courts of Victoria and the Federal Court of Australia (sitting in Melbourne) and agree that any lawsuit must be heard in those courts.
- (a) If anything in these Terms is unenforceable, illegal or void then it is severed and the rest of these Terms remain in force.