

BuildUp Australia

Standard Terms

For the provision of professional industry networking and mentoring services and resources within the construction and associated industries (**Services**) by BUILDUP AUSTRALIA PTY LTD (ACN 069 764 989) (**we/us/our/BuildUp**).

These Terms (**Terms**) in conjunction with any agreement between you and BuildUp (where applicable) form the basis of our agreement with you (collectively the **Agreement**).

The Agreement governs the relationship between BuildUp and you/your organisation, as well as your use of our **website, app and Services**.

1. Introduction

1.1 Our Role

BuildUp, in collaboration with its associated entities, is an Australian-based platform that provides mentoring and professional development services to businesses and individuals in the construction and related industries.

Our primary focus is on facilitating connections between experienced professionals and those seeking to enhance their skills and knowledge within a specific field or as a business owner generally.

As the provider of these services, we act as an intermediary, creating a structured environment for knowledge sharing and skill development.

Our website and portal aims to support the growth of individuals and businesses at various stages of their careers in the construction industry, from apprentices just starting their journey to seasoned professionals looking to stay current with industry trends and best practices.

2. Acceptance and Term

2.1 Acceptance

You agree to be bound by the Agreement where you:

- (a) register your membership with us;
- (b) sign and return any agreement with us;
- (c) accept any agreement with us by written communication;
- (d) make payment of the of the Fees; or
- (e) continue to engage with us, our services, our website or app.

2.2 If you do not agree to these Terms, please do not use our Services, our website or app.

2.3 Term

The Agreement will continue to apply from the date of your acceptance in accordance with clause 2.1 and continues until termination under clause 11.1 or 11.2.

3. Variations

- (a) These Terms may be varied from time to time at our discretion or as required by law.

- (b) Where there is a material change to these Terms, we will use reasonable commercial endeavours to notify you of the changes.
- (c) If you disagree with the Agreement, you must cease using the services, website and app immediately.

2. Eligibility

2.1 General

- (i) Age: You must be at least 18 years old to subscribe to our services, **except for the Apprentice Membership as specified below.**
- (ii) Legal Capacity: You must have the legal capacity to enter into a binding contract.
- (iii) Geographic Restrictions: Our Services are intended for use by residents of Australia.

2.2 Professional Membership/ "Founding Partners"

- (i) Qualifications: You must hold relevant qualifications within the construction industry, such as a trade certificate, diploma, or degree in a construction-related field.
- (ii) Experience: A minimum of 10 years of professional experience in the relevant industry is required.
- (iii) Licensing: Where applicable, you must hold current and valid professional licenses or registrations as required by your state or territory for your specific trade or profession.
- (iv) Professional Standing: You must be in good standing with relevant professional bodies and not be subject to any disciplinary actions that prohibit you from practicing in your field.
- (v) Authorised Representative: Where You engage with us on behalf of a corporate entity, You must have the requisite authority to act on behalf of the organisation.
- (vi) Subscription: You must maintain a current subscription with BuildUp.

2.3 Apprentice Membership

- (i) Age: **Apprentice members must be at least 16 years old. Those under 18 require parental or guardian consent.**
- (ii) Enrolment: You must be currently enrolled in a recognized apprenticeship program in the construction industry.
- (iii) Verification: We may require proof of enrolment in an apprenticeship program

2.4 Mentor Membership

- (i) Professional Experience: Mentors must have a minimum of 6 years (including apprenticeship or at least 2 years post apprenticeship) of professional experience in the construction industry or a related field.
- (ii) Current Industry Engagement: Mentors should be currently active in the construction industry or have retired within the last 5 years.

- (iii) Professional Standing: Mentors must be in good standing with relevant professional bodies and not be subject to any disciplinary actions.
- (iv) Interpersonal Skills: Mentors should demonstrate strong communication, leadership, and interpersonal skills.
- (v) Commitment: Mentors must be willing to commit a specified minimum number of hours per month to mentoring activities.
- (vi) References: Prospective mentors may be required to provide professional references.
- (vii) Background Check: Mentors may be subject to a background check, especially if working with apprentices or in sensitive areas of the industry.
- (viii) Training: Mentors must be willing to undergo any required mentor training programs provided by our organization.
- (ix) Code of Conduct/Mentor Policy: Mentors must agree to abide by our Mentor Code of Conduct, which will be provided separately.
- (x) Technological Proficiency: Mentors should have basic technological proficiency to use our online mentoring platforms and tools.
- (xi) Specialisation: We may require mentors to demonstrate specific expertise in particular areas of the construction industry or other industries as agreed between the parties.

2.5 Verification Process

- (a) We reserve the right to verify your eligibility at any time, which may include requesting additional documentation or information:
 - (i) For Professional and Mentor Memberships, this may include proof of qualifications, licenses, or employment history; and
 - (ii) For Apprentice Memberships, we may require confirmation from your apprenticeship program or employer.
- (b) Ongoing Eligibility
 - (i) You are required to maintain your eligibility throughout the duration of your membership.
 - (ii) You must inform us promptly of any changes in your status that may affect your eligibility.
 - (iii) We reserve the right to terminate or suspend your membership if you no longer meet the eligibility criteria.
- (c) Discretionary Acceptance
 - (i) Meeting the eligibility criteria does not guarantee acceptance into the membership program.
 - (ii) We reserve the right to refuse membership to any applicant at our discretion, in compliance with applicable laws.
- (d) False Information

- (i) Providing false or misleading information about your eligibility is grounds for immediate termination of your membership and may result in legal action.
- (e) Updated Information
 - (i) You must keep your information current and update us in the event your information or circumstances change.
- (f) Changes to Eligibility Criteria
 - (i) We reserve the right to modify eligibility criteria at any time.
 - (ii) Any changes will be communicated to members and will apply from the next renewal date of their membership, unless otherwise agreed.

3. Fees, and Subscription Terms

3.1 Monthly Subscription

- (a) Our Services are offered by way of a monthly subscription fee (**Fee**).
- (b) The billing date will be the date you initially subscribed and will recur on the same date each month for the month ahead. If a billing date falls on a date that doesn't exist in a given month (e.g., 31st), you'll be billed on the last day of that month.
- (c) The Fee is processed by direct debit, the details for which are required at the time of membership registration, which you authorise us to charge in accordance with the Agreement.
- (d) By providing us with your payment details, you authorise us to charge the Fee in accordance with the Agreement.
- (e) Your subscription will automatically renew each month unless terminated in accordance with these Terms.

3.2 Refunds

- (a) We do not provide refunds for partial months of service.
- (b) If you cancel your subscription, you'll continue to have access to the Services through the end of your current billing period.

3.3 Late Payments

- (a) If we are unable to process your payment, we may suspend your access to our Services until payment is received.
- (b) You are responsible for all applicable fees and charges incurred, including any collection costs or charges resulting from overdue amounts.

3.4 GST

- (a) Unless otherwise expressly stated in our Proposal, all amounts payable to us under this Agreement are exclusive of GST.
- (b) If GST is imposed on any supply made under or in accordance with this engagement and GST has not been accounted for in determining the consideration

payable for the supply, then we may recover from you an amount on account of GST. That amount is equal to the value of the supply calculated in accordance with the *A New Tax System (Goods and services Tax) Act 1999* (Cth) multiplied by the prevailing GST rate.

4. Intellectual property

4.1 Background IP

- (a) Nothing in these Terms or any applicable agreement transfers intellectual property rights (**IPR's**) belonging to a party that were created prior to the parties entering into the Agreement (**Background IP**).
- (b) You grant us a licence to use Background IP provided by you for the purpose of us providing the Services, including the right to use, reproduce, modify and create derivative works of the Background IP for that purpose only.
- (c) You warrant that the Background IP does not infringe the IPR's of any third party and fully indemnify us in our use of Background IP with respect to the Services and materials.
- (d) Nothing in these Terms prohibits us from using or licensing our IPR's in the Materials to third parties, including creating alterations and reproductions of new works where required for the performance of the Services.

4.2 Moral Rights

- (a) Where we have provided you with a licence to the Materials and the Materials were:
 - (i) created by us, we irrevocably and genuinely consent, as the author, to any acts or omissions of any person, including you, in connection with the relevant works after the date of the licence, which might otherwise infringe our moral rights, provided such actions are strictly in line with the purposes for which the works were created; and
 - (ii) created by a subcontractor of ours, we will use our best endeavours to obtain and provide to you irrevocably and genuinely given consents from the authors of the works in the same terms as required under sub-clause 8.3(a)(i).

5. Third Party Content and Resources

5.1 Third-Party Providers:

- (a) Our Services include content, resources, and services provided by third-party mentors, instructors, or content creators (**Third-Party Providers**).

5.2 No Endorsement

- (a) While we make efforts to curate and facilitate the delivery of high-quality content and resources, we do not endorse or guarantee the accuracy, completeness, or usefulness of any third-party content or resources.
- (b) Without limiting any other disclaimer or limitation set out in the Agreement, we are not responsible for any errors, omissions, or inaccuracies in third-party content or resources and you acknowledge and agree to hold us harmless and release us from any loss and claims

that may arise in relation to your reliance on or use of any third-party content or resources.

5.3 Third-Party Terms

- (a) Some third-party content or resources may be subject to additional terms and conditions. You are responsible for reviewing and complying with any such terms.

5.4 Third-Party Intellectual Property

- (a) Third-Party Providers retain all intellectual property rights in their content and resources. You may not use, reproduce, or distribute such content without explicit permission from the Third-Party Provider.

5.5 Complaints and Removal

- (a) If you believe any third-party content violates your rights or is inappropriate, please contact us immediately. We reserve the right to remove any third-party content from our platform at our discretion.

5.6 Interactions with Third-Party Providers

- (a) Any interaction or transaction between you and a Third-Party Provider is solely between you and that provider.
- (b) We are not responsible for any disputes, losses, or issues arising from such interactions.

5.7 Changes to Third-Party Content

- (a) Third-Party Providers may update or modify their content at any time, at their discretion.
- (b) We are not responsible for notifying you of such changes.
- (c) We do not guarantee the continued availability of any third-party content or resources on our website or portal.

6. Confidentiality, privacy and data security

6.1 Recipient must keep Confidential Information confidential

Each party must:

- (a) keep confidential all Confidential Information;
- (b) only use Confidential Information for the purpose of providing or receiving (as the case may be) the Services; and

6.2 Disclosure exceptions

The obligations in sub-clause 8.1 do not apply:

- (a) to the extent necessary to enable a party to make any disclosure required by law;
- (b) to the extent necessary to enable a party to perform its obligations under this Agreement;
- (c) where disclosure is required for any quality assurance or insurance purposes;
- (d) to the extent necessary to receive professional (legal or financial) advice;
- (e) to any disclosure agreed in writing between the parties; or

- (f) in respect of any portion of the Confidential Information which has entered the public domain other than as a result of a breach of this Agreement.

1.2 Privacy

We will:

- (a) comply with the *Privacy Act 1988* (Cth) and any other applicable privacy laws;
- (b) comply with the terms of our Privacy Policy, that is made available at [\[INSERT LINK ON WEBSITE\]](#) and
- (c) not do any act, engage in any practice, or omit to do any act or engage in any practice that would cause you to breach any Australian privacy law.

2. Disputes

- (a) If a dispute (**Dispute**) arises between the parties, which they cannot resolve, then the party claiming that a Dispute has arisen must deliver to the other parties a notice containing particulars of the Dispute (**Dispute Notice**).
- (b) During the period of 14 business days after delivery of the Dispute Notice, or any longer period agreed in writing by the parties to the Dispute (**Initial Period**), the parties must meet in good faith in an attempt to resolve the Dispute.
- (c) If the parties cannot resolve the Dispute within the Initial Period then unless they all agree otherwise, they must appoint a mediator to mediate the Dispute in accordance with the rules of the Resolution Institute. The parties must participate in the mediation in good faith.
- (d) The mediator must be agreed on by the parties within 10 business days after the Dispute Notice is given to the parties and if they cannot agree within that time the mediator will be nominated by the president of the Resolution Institute.
- (e) The mediation concludes when:
 - (i) all the parties agree in writing on a resolution of the Dispute; or
 - (ii) a party, not earlier than 20 business days after appointment of the mediator, has given 5 business days' notice to the other parties and to the mediator, terminating the mediation, and those 5 business days has expired without all the parties agreeing in writing on a resolution of the issue.

3. Limitation of liability

- (a) Subject to paragraphs (b) and (d), unless otherwise required by Law, our liability for any Loss arising from any breach of the Agreement or any issue with the Services we have provided, in contract, tort or equity (including under the indemnity) are limited to the greater of:
 - (i) the amount paid or due to be paid under this Agreement in a six-month period for our Services (excluding any applicable expenses); and

- (ii) the amount paid out to us under an insurance policy we hold (less any excess).

- (b) We will not be liable for Loss you suffer as a consequence of the suspension of our Services pursuant to clauses 4.5 and 5.3 above.
- (c) To the maximum extent permitted by Law, we will not be liable for any Loss you suffer for any loss of profit, loss of goodwill, loss of opportunity and/or special, punitive, indirect or consequential loss or damage incurred by you or any other person whether directly or indirectly related to this Agreement.
- (d) We are not liable for any loss or damage caused to you by reason of any delay, lack of supply, industrial action, fire, riot, war, embargo, civil commotion, act of God or any other event which is beyond our control.
- (e) Liability for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by ss 51 to 53 of the Australian Consumer Law) is limited (at our election) to us repairing or providing the Goods or Services again or the cost of having the Goods repaired/supplied or Services supplied again.

4. Indemnity

4.1 Mutual indemnity

Each party agrees to indemnify the other against any Loss that may be incurred by us arising from or in connection with:

- (a) a material breach or default of the Agreement by a party or a person they are responsible for;
- (b) a negligent act or omission of a party or a person they are responsible for;
- (c) a failure by a party to comply with any Law; and
- (d) any Claim made against a party by any third party in connection with the information, material or documents provided to it by the other party.

4.2 Limitation

- (a) To the extent that any Claim or Loss occurs as a result of any negligent act or omission caused by the other party, or the other party's failure to comply with the material obligations of this Agreement, a party's liability under clause 11.1 will be proportionately reduced.
- (b) A party who suffers Loss must use reasonable steps to mitigate its Loss. The other party will not be responsible for any Loss to the extent that the injured party could have avoided or reduced the amount of the Loss by taking reasonable steps to mitigate its Loss.

5. Term and termination

5.1 Termination

Either party may terminate at any time by [giving 30 days' written notice](#) to the other party.

5.2 Termination for breach

- (a) If either party breaches these Terms or those set out in a Services Agreement and such a breach is capable of rectification, the other party must give the defaulting

party written notice requesting that the breach be rectified within 5 business days (**Breach Notice**).

- (b) If a breach has not been rectified within 5 business days of the giving of a Breach Notice, the party giving the Breach Notice may terminate this Agreement immediately by notice in writing to the other.
- (c) If any party breaches a material term and the breach is not capable of rectification, the other party may terminate this engagement immediately by notice in writing to the party in breach.

5.3 Consequences of termination

- (a) Following termination, you must return or delete all of our Confidential Information that has been provided to you during the provision of our Services.

6. General matters

6.1 Relationship of parties

Nothing in these Terms gives rise to any relationship of agency, partnership, employment or otherwise between the parties.

6.2 Survival and essential terms

- (a) Clauses 5, 6.1, 7, 9, 10, 11, 12.3, 13.8 and 13.9 and are taken to survive on an ongoing basis.
- (b) Clauses 4, 5, 6, 7 and 8 are essential terms of these Terms.

6.3 Assignment

- (a) Subject to clause 15.4(b), you cannot assign, novate or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of the other party.
- (b) You agree that if we merge or amalgamate with another entity or otherwise sell or dispose of our business, we may assign or novate this Agreement, including all materials, personal information, confidential information and ideas supplied by you, to that other entity, provided that entity agrees to be bound by the stipulations in these Terms or to stipulations equivalent in effect.

6.4 Further assurances

Each party must promptly do all further acts and execute and deliver all further documentation reasonably requested by the other party to give effect to the contemplations of this Agreement.

6.5 Consents

Unless these Terms expressly state otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under these Terms. To be effective any consent under these Terms must be in writing.

6.6 Force majeure

A party will not be liable for any failure or delay in the performance of its obligations under the Agreement to the extent that such failure or delay:

- (a) is caused by a circumstance not within the reasonable control of the party; and

- (b) could not have been reasonably avoided, prevented or circumvented by the party.

6.7 Waiver

The non-exercise of or delay in exercising a right of a party will not operate as a waiver of that right, nor does a single exercise of a right preclude another exercise of it or the exercise of other rights. A right may only be waived by written notice signed by the party to be bound by the waiver.

6.8 Jurisdiction

This engagement is governed by the law in force in the State of Queensland and each of us submit to the non-exclusive jurisdiction of the courts of Queensland.

6.9 Severability

Any provision of these Terms that is illegal, void or unenforceable will be severed without prejudice to the balance of the conditions which will remain in force.

7. Acknowledgement

You acknowledge that:

- (a) you have read, understood and have agreed to be bound by these Terms and our Services Agreement (as applicable);
- (b) you have received and will retain your own copies of these Terms and our Proposal;
- (c) you have been informed by us that you should seek independent advice in relation to the Agreement prior to accepting our offer of Services; and
- (d) Any person that accepts this Agreement on your behalf, represents and warrants to us that they are duly authorised by you to accept this Agreement on your behalf and their acceptance on your behalf is effective to legally bind you to this Agreement.

8. Definitions

In these Terms the following definitions apply:

Confidential Information means information that is by its nature confidential and:

- (a) is designated by a party as confidential;
- (b) is described in the Proposal as confidential; or
- (c) a party knows or ought to know is confidential, but does not include information that:
 - (d) is or becomes generally available in the public domain, other than through any breach of confidence;
 - (e) is rightfully received from a third person other than as a result of a breach of confidence; or
 - (f) has been independently developed by a party without using any Confidential Information of the other.

Consequential Loss means indirect economic loss, loss of income or profit, loss or damages resulting from wasted management time, damage to goodwill or business reputation, loss of contract, loss of data, liability under other agreements or to third parties, loss of opportunity or any other special, indirect, remote or punitive loss or damage.

Copyright Act means the *Copyright Act 1968* (Cth).

Claim includes, in relation to a person, a demand, claim, action, dispute or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

IPR's means all intellectual property rights of whatever nature including all rights conferred under statute, common law or equity, including all copyrights, patent rights, trade mark rights (including any goodwill associated with those trade mark rights), design rights and trade secrets together with any documentation relating to those rights but does not include moral rights.

Loss includes any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim) including penalties, fines and interest whether prospective or contingent and any amounts that for the time being are not ascertained or ascertainable.

Personnel means employees, agents and contractors.

Services mean the services set out in these Terms or any applicable agreement with us.

Fees means our fees for the provision of our Services.

Termination Date means the date that this Agreement is taken to be terminated in accordance with clause 13.