



## MATTEPAINT TERMS OF SERVICE

### 1. ACCEPTANCE OF TERMS

- 1.1 Thank you for using our website located at [www.mattepaint.com](http://www.mattepaint.com). The website is operated by Matte Paint Pty Ltd and the terms and conditions (the **Terms**) on this page govern your use of the website.
- 1.2 You agree to be bound by the Terms by using the website. Please read these Terms carefully. These Terms govern and apply to all and any use, access and availability of our services (collectively, the **Service**). If you do not agree to the Terms, then you must not use the website.
- 1.3 We may amend the Terms at any time, and by continuing to use the website, you accept the Terms as they apply from time to time.

### 2. DEFINITIONS

- 2.1 Unless the context requires otherwise, the following definitions apply in these Terms and the singular includes the plural and vice versa.

**Account** means a member account to the Site.

**Creation** means artwork, 3D assets, templates, print or digital media, or any other written or electronic matter, including pictorial or graphic creations which contain our Work.

**Credit Pack** means the pack of credits selected (details and tiers available are on the Site) and purchased by you:

- (a) to enable you to purchase Works in exchange for credits purchased by you as part of the Credit Pack, and
- (a) are stored in your account for immediate or future use with an expiry date of three (3) years from the date of your purchase.

**GST** means goods and services tax in Australia as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property'** means all intellectual property rights, including all copyright, patents, trademarks, design rights, trade secrets, circuit layouts, domain names, knowhow and other rights of a similar nature worldwide, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application.

**Works** means any material offered for supply on the Site including without limitation photographs, pictures, graphic works or images.

**Seat** means the number of concurrent logins available on a Member's Account.

**Site** means MattePaint.com.

**Social Media** means any website or application that enables users to create and share content or participate in social networking on the Internet.

**Subscription** means the monthly plan selected (details and tiers available are on the Site) and purchased for a fixed 30-day period supply of credits.

**Transformative Work** means a work that makes use of the Work but where the transformative work qualifies as an original work of authorship qualifying for separate copyright protection.

### 3. ACCOUNT REGISTRATION

3.1 To obtain access to the Works on the Site, you must register for an Account. By registering for an Account, you will be required to accept the Terms by clicking “I accept” in the user interface as a condition of joining as a member (**Member**).

3.2 As part of the registration process for membership, and as a condition of your access to the Works, you may create only one (1) Account and must provide current, complete and accurate identification, and other information required during the registration process, including but not limited to:

- (a) a valid email address;
- (b) preferred username; and
- (c) a password.

#### (Registration Data)

3.3 As a Member, you can activate your Account on up to the number of Seats available on your subscription tier.

3.4 Once you have completed the registration process, you will be a registered Member bound by the Terms to form an agreement with us.

3.5 If your contact information changes, you must promptly update the Account information to reflect those changes.

3.6 As a Member, you agree that:

- the Registration Data you provide for accessing the Works is personal to you and you are responsible for maintaining the confidentiality of your Registration Data;
- each Member is entirely responsible for any activities conducted through an Account;
- some of our Members are offered access to our service through a whitelisted IP address. All activities undertaken through a whitelisted IP address shall be deemed to have been authorised by you;
- if you think your Registration Data or Account has been compromised in any way you should inform us immediately;
- we are not obliged to confirm the identity of Site users including any Members;
- we cannot be held responsible for any improper use of your Registration Data, Account or such use by any third party;
- your access to and use of the Works on the Site is non-transferable;
- you will use the Works only for purposes permitted by the Terms;
- you will abide by any applicable law, regulation or generally accepted practices or guidelines regulating any supply on this Site in the relevant jurisdictions.

### 4. ORDERS AND FEES

4.1 After registration as a Member, you can log into your Account and gain access to the Works by purchasing a Credit Pack or a Subscription (**Order**).

4.2 By activating your Order, you expressly authorise us to charge you a fee (**Fees**) to the payment method listed (**Acceptance**) at the time of your Order. You also agree to the billing frequency specified at the time of your Order.

- 4.3 The Fees are subject to change or withdrawal at any time prior to Acceptance of an Order by us. You will be notified of any changes and will have the option of continuing your Order if you agree with the change in accordance with the terms provided in any notice from us. If you do not agree with the change, you will have the option of terminating your Order but you may use your Order until the end of the then current Order period.
- 4.4 All Fees are in US Dollars (USD). Fees may be converted to your local currency at the time of your order.
- 4.5 We will be entitled to add on GST for any supply in Australia.
- 4.6 Members are responsible for ensuring their credit card details are correct. Changes to credit card details can be made by contacting us at our contact details in clause 22.
- 4.7 If your credit card expires or your payment method is invalid, your Subscription may automatically be terminated and access to the Works disable or revoked.
- 4.8 We may store your Account data and payment information for Order renewals.
- 4.9 We have the right to deny any Member access to the Works or terminate any Member's Credit Pack or Subscription if we are unable to process the applicable Fees.
- 4.10 Your Order is deemed exclusive to you and your employees only and you may not allow any other person to use your Order.
- 4.11 You are responsible for all use, activities and charges associated with your Order. If any misuse is detected your Credit Pack or Subscription may be terminated.

## **5. CREDIT PACKS (BILLED IN FULL AT TIME OF PURCHASE)**

- 5.1 Your Account must be active and current to access Credit Packs for our Service.
- 5.2 Credit Packs can be purchased through your Account. The Fees for the relevant Credit Pack will be the fees specified on the Site and the number of credits purchased will be credited to your Account at the time of purchase, according to the tier purchased. Credit Packs are:
  - (a) billed once and in full at the time of your purchase; and
  - (b) your allotment of credits will be credited to your Account for the tier purchased; and
  - (c) any unused credits will expire three (3) years from the time of purchase (**Credit Pack Expiry Date**).
- 5.4 If expressly permitted in your Order, we will rollover your unused credits in a new Credit Pack in accordance with the terms permitted in the Order provided the total rollover credits does not exceed the total number of credits allowable for the new Order.
- 5.5 Your access to the Works will be disabled when your Credit Pack depletes.
- 5.6 Credit Packs are not transferrable and are not redeemable for cash.
- 5.7 Your access to any free Works offered by us in our sole discretion will be disabled if your Account is not current or only fifty (50) credits remain in your Credit Pack.

## **6. SUBSCRIPTION PLANS (BILLED ANNUALLY)**

- 6.1 Your Account must be active and current to access monthly Subscriptions for our Service.
- 6.2 Subscriptions can be purchased through your Account. The Fees for the relevant Subscription will be the fees specified on the Site and the number of credits purchased will be credited to your Account each month during the term of the Subscription, according to the Tier purchased. Subscriptions are:

- (a) billed annually; and
  - (b) your allotment of credits will be credited each month to your Account for the tier purchased; and
  - (c) access to subscription credits is available only for active subscription and expire thirty days **(30)** after your subscription period ends unless a new subscription is made.
  - (d) after your subscription lapses, remaining credits are only accessible with the purchase of a subscription of equal or greater value.
- 6.3 Your Subscription plan will automatically renew at the end of your billing period for successive renewal periods of the same time for the subscription term selected and the Fees will be billed automatically to the credit card you provide at the time of your order unless you terminate your Subscription in accordance with clause 11.
- 6.4 Subscriptions are available on a month-by-month basis.
- 6.5 If expressly permitted in your Order, we will rollover your unused credits in a new Subscription in accordance with the terms permitted in the Order provided the total rollover credits does not exceed the total number of credits allowable for the new Order.
- 6.6 Your access to the Works will be disabled when your Subscription ends.
- 6.7 Subscriptions are not transferrable and are not redeemable for cash.
- 6.8 Your access to any free Works offered by us in our sole discretion will be disabled if your Account is not current or only fifty (50) credits remain in your Subscription.

## **7 REFUND POLICY**

- 7.1 Except as required by law, any Fees paid by you are final and non-refundable.
- 7.2 Orders for the Service cannot be cancelled or refunds made after payment is processed, such as, for example, buyer's remorse.
- 7.3 We are under no obligation to refund any Fees, in part or in full, for any reason, including, without limitation, early termination of your Credit Pack or Subscription and you:
- (a) will not be entitled to a refund or credit for any unused Credit Packs purchased but not used before the Credit Pack Expiry Date, and
  - (b) will not be entitled to a refund or credit for any unused monthly credits in the Subscription purchased but not used by the end of each Rolling Expiry Date.
- 7.4 We handle returns and process refunds for defective products and services in accordance with the Australian Consumer Law:
- (a) should you wish to cancel your Order or obtain a refund, you must contact us within 14 calendar days of performance of the Service to report any discrepancies or faults to make a claim otherwise you will be deemed to have accepted the products and services;
  - (b) returns or refunds are made in our discretion subject to any guarantees that cannot be excluded under the Australian Consumer Law; and
  - (c) except as required by the Australian Consumer Law, we will only facilitate a refund if we are unable to facilitate the completion of the Service or, if we determine, in our absolute discretion, it is reasonable to do so.

## **8 INTELLECTUAL PROPERTY**

- 8.1 The Works on the Site are protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the Works

and compilation of the Site (including but not limited to text, graphics, logos, button icons, video images, audio clips, code, scripts, design elements and interactive features) are owned or controlled by us.

- 8.2 All Intellectual Property including any trademarks, service marks, trade names and any other proprietary designations are owned, registered or licensed by us. Any other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks or property of the respective parties.
- 8.3 We retain all rights, title and interest in and to the Works and our Service. Nothing you do on or in relation to the Site will transfer any:
- (a) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
  - (b) right to use or exploit a business name, trading name, domain name, trade mark or industrial design, or
  - (c) thing, invention, design, system, work or process that is the subject of a patent, registered design or copyright or any other Intellectual Property right (or an adaptation, improvement, modification of such a thing, invention, design, system, work or process).
- 8.4 Except as provided in these Terms, the Site and its Works may not be copied, reproduced, publicly displayed, translated or distributed in any way (including mirroring) to any other device, server, app or other medium for publication or distribution, without our consent.
- 8.5 The obligations accepted by the Member under this clause survive termination or expiry of these Terms.

## **9 LICENCES**

- 9.1 These Terms do not constitute a sale of any of the Works. Except as expressly granted by the licence in these Terms, we retain all rights, title and interest in and to the Works.
- 9.2 Subject to your compliance with these Terms, we grant you a non-exclusive, perpetual, worldwide, non-sublicensable, non-transferable license to use, reproduce, modify or display the Work for:
- (a) marketing, promotional, and advertising materials;
  - (b) internal presentation or decorative materials;
  - (c) digital productions such as websites, mobile advertising, mobile applications, e-publications (e.g. e-books, e-magazines, blogs);
  - (d) film productions and interactive entertainment products; and
  - (e) personal or non-commercial uses.
- 9.3 You may distribute the Work only if the Work has been modified in a Creation and the Creation is:
- (a) not the same or substantially similar to the Work; and
  - (b) qualifies as a Transformative Work of authorship.
- 9.4 You must not use, sell, license, share, distribute or display the Work or any modified Works:
- (a) as a stand-alone digital file; or
  - (b) as part of a digital or online database that permits a third party to use, download, extract or access the Work as a stand-alone digital file.
- 9.5 You must not use data mining, screen scraping software, programs, scripts, robots or other automated data gathering or extraction methods to access or download the Works on this Site.
- 9.6 You must not use, post or upload the Works or any version of it on any Social Media.
- 9.7 You must not remove any water marks or copyright notices contained in the Works, if any.

## 10 OTHER RESTRICTIONS ON USE

10.1 Your use of the Site is governed and enforced exclusively by us. Your cooperation in complying with the rules stated in these Terms is essential to ensure that all Members can enjoy their experience with our Service. Without limiting any other provision of the Terms, you also agree not to do any of the following:

- use the Works in a pornographic, defamatory, fraudulent, lewd, obscene or otherwise illegal manner, including but not limited to infringing any third-party Intellectual Property or privacy rights, whether directly or in context or by juxtaposition with other works;
- use the Works as part of a trademark, design mark, tradename, business name, service mark, or logo;
- falsely represent that you are the original creator of a Work that is made up largely of the Works provided on the Site;
- hack, attempt to hack, modify, adapt, merge, translate, decompile, disassemble, reverse engineer or create derivative works out of the Site or any part of it; or
- remove, disable, modify, add to or tamper with any program code or data, copyright, trademark or other proprietary notices and legends contained on or in the Site.

## 11 TERMINATION

11.1 The Terms will continue to apply until terminated by either you or by us as set out below.

11.2 We may at any time, terminate the Terms with you if:

- (a) you have breached any provision of the Terms;
- (b) we are required to do so by law;
- (c) the provision of our Service to you by us is, in our opinion, no longer commercially viable.

11.3 We reserve the right to discontinue or terminate your Subscription and/or Account at any time and may suspend or deny, in our sole discretion, your access to all or any portion of the Site without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts our name or reputation or violates the rights of those of any other third party.

11.4 If you want to terminate the Terms, you may do so by closing your Account and terminate your Subscription.

11.5 If you have not logged into your Account within a prior twelve (12) month period, we reserve the right to terminate your Account.

11.6 Except as required by law, if your Subscription is terminated either by you or us, you will forfeit:

- (a) the right to access the Works regardless of download status, and
- (b) your unused Credits that will expire, and
- (c) you will not receive a refund for any unused Credits.

## 12 LIMITATION OF LIABILITY

12.1 To the maximum extent permitted by applicable law, we exclude all representations and warranties relating to the subject matter of these Terms and your use of our Site.

12.2 Any use of or reliance on the Works made available on the Site is solely at the Member's own risk. This Site and the Works are provided "as is" without representation, warranty or condition of any kind, either express or implied, including, but not limited to the implied representations,

warranties or conditions of merchantability, or fitness for a particular purpose.

12.3 We do not warrant or represent:

- (a) the Site will meet your requirements or expectations;
- (b) the accuracy of the captioning, keywording, heading, or any other information, representation or thing depicted on or associated with the Works;
- (c) that the Site or any Service on the Site will remain available, uninterrupted, timely, or error free; or
- (d) that any errors or defects on the Site or Works will be corrected.

12.4 Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law which by law may not be limited or excluded.

12.5 We will not be liable for any special, indirect or consequential loss or damage, loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Site or these Terms whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

12.6 You expressly understand and agree that we, our affiliates, employees, agents, contributors and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to:

- (a) any losses arising out of any event or events beyond our reasonable control;
- (b) any business losses, including (without limitation) loss of or damage to profits (whether incurred directly or indirectly), income, revenue, use, production, anticipated savings, business reputation, contracts, commercial opportunities, goodwill or any other intangible loss;
- (c) any loss or corruption of any data, database or software; and
- (d) any special, indirect or consequential loss or damage.

12.7 None of our affiliates, directors, officers, employees, agents, contributors and licensors make any express or implied representation or warranty about the Works made available on the Site. This includes (but is not limited to) loss or damage you may suffer as a result of any of the following:

- (a) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, virus or other harmful component, loss of data, communication line failure, unlawful third-party conduct, or theft, destruction, alteration or unauthorised access to records;
- (b) the accuracy, suitability or currency of any information on the Site or any services (including third-party material and advertisements on the Site); and
- (c) costs incurred as a result of you using the Site; or
- (d) any defamatory, threatening, offensive or unlawful conduct of third parties or publication of any Works relating to or constituting such conduct.

12.8 These Terms are to be read subject to any legislation that prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible we limit our liability as follows, at our option:

- (a) for any claims relating to these Terms, to the fees payable under this Agreement for the preceding one (1) month;
- (b) in the case of products including any digital products (a) the replacement of the products or the supply of equivalent products; (b) the repair of the products; (c) the payment of the cost of replacing the products or of acquiring equivalent products or (d) the payment of having the products repaired;
- (c) in the case of services, the supply of the services again or the payment of the cost of having the services supplied again.

12.9 We reserve the right to discontinue or alter any or all of the Service and Works on the Site, and to stop publishing the Site, at any time in our sole discretion without notice or explanation; and save to the extent expressly provided otherwise in these Terms or otherwise required by law, we will not pay you any compensation or other payment upon the discontinuance or alteration of any services, or if we stop publishing on the Site.

12.10 This clause survives the termination or expiry of this Agreement for whatever reason.

### **13 INDEMNITY**

13.1 You agree to indemnify us, our affiliates, employees, agents, contributors, third party content providers and licensors from and against:

- (a) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with your use of the Site and its Works;
- (b) any direct or indirect consequences of you accessing, using or transacting on the Site or attempts to do so; and/or
- (c) any breach of the Terms.

13.2 You hereby indemnify us, and undertake to keep us indemnified, against any and all losses, damages, costs, liabilities and expenses (including without limitation legal expenses and any amounts paid by us to a third party in settlement of a claim or dispute) incurred or suffered by us and arising directly or indirectly out of your use of the Site or any breach by you of any provision of these Terms.

### **14 DISPUTES**

14.1 If a dispute arises out of or relates to the Terms as between us and you as a Member, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought):

- (a) Compulsory process. A party may not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of these Terms (Dispute) unless it has complied with this clause.
- (b) Notification. A party claiming that a Dispute has arisen may notify each other party to the Dispute giving details of the Dispute.
- (c) Initial period – efforts to resolve Dispute. During the 30-calendar day period after a notice is given (or longer period agreed in writing by the parties to the Dispute) (Initial Period) each party to the Dispute (Disputant) covenants with the other to cooperate and take all reasonable steps necessary to attempt to resolve the Dispute.
- (d) Mediation. If the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees that the Dispute shall be referred for mediation, at the request of any Disputant, to:
  - (i) a mediator agreed on by the Disputants; or
  - (ii) if the Disputants are unable to agree on a mediator within seven days after the end of the Initial Period, request that an appropriate mediator be appointed by a person appointed by the Chair of Resolution Institute (ACN 008 651 232) or the Chair's designated representative and the Resolution Institute Mediation Rules shall apply to the mediation.
- (e) Role of mediator. The role of any mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a Disputant unless that Disputant has so agreed in writing.



- (f) Information. Any information or documents disclosed by a Disputant under this clause shall be kept confidential and may not be used except to attempt to resolve the Dispute.
- (g) Costs of mediation. Each Disputant shall pay its own costs. The Disputants may pay equally the costs of any mediator engaged.
- (h) The mediation will be held in Brisbane, Australia.
- (i) Failure to resolve. After the Initial Period, a Disputant that has complied with this section may terminate the dispute resolution process by giving notice to each other Disputant. A party to a dispute will only be entitled to pursue other remedies available to it at law or otherwise, if the parties have failed to resolve the dispute within thirty (30) calendar days after commencement of dispute resolution.

## **15 VARIATION**

- 15.1 We may revise these Terms (**'Revised Terms'**) and announce the Revised Terms on the Site.
- 15.2 The Revised Terms shall apply to the use of the Site from the date of publication of the Revised Terms on the Site, and you hereby waive any right you may otherwise have to be notified of, or to consent to, revisions of these Terms.
- 15.3 In the event that you do not wish to agree to the Revised Terms, we will provide you a refund to the remaining Subscription or Credits on your Account.

## **16 NO WAIVER**

- 16.1 No waiver of rights under this agreement or any of our policy, or agreement between us and a Member shall constitute a subsequent waiver of this or any other right under this Agreement.
- 16.2 Any failure on our part to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision.

## **17 ASSIGNMENT**

- 17.1 You agree that we may assign, transfer, sub-contract or otherwise deal with our rights and/or obligations under these Terms.
- 17.2 You may not without our prior written consent assign, transfer, sub-contract or otherwise deal with any of your rights and obligations under these Terms.

## **18 THIRD PARTY RIGHTS**

- 18.1 A contract under these Terms is for our benefit and your benefit, and is not intended to benefit or be enforceable by any third party.
- 18.2 The exercise of the parties' rights under a contract under these terms and conditions is not subject to the consent of any third party.

## **19 ENTIRE AGREEMENT**

- 19.1 These Terms shall constitute the entire agreement between you and us in relation to your use of the Site and shall supersede all previous agreements between you and us in relation to your use of the Site.

## **20 SEVERABILITY**

- 20.1 If any part of 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 of the provision otherwise it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.

## **21 LAW AND JURISDICTION**

21.1 These Terms are governed by and construed in accordance with the laws of the State of Queensland, Australia. You irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Courts of Queensland and Courts of Appeal from them for determining any dispute concerning these Terms. If any provision of these Terms is found to be invalid or unenforceable by a Court of Law, such invalidity or unenforceability will not affect the remainder of the Terms which will continue in full force and effect.

## **22 FORCE MAJEURE**

22.1 Notwithstanding any other provision of these Terms, we need not act if it is impossible to act due to force majeure, meaning any cause beyond its control (including war, riot, natural disaster or law taking effect after the date of these Terms). We have no responsibility or liability for any loss or expense suffered or incurred by you because of not acting for so long as the force majeure continues.

## **23 FEEDBACK**

23.1 We welcome and encourage you to provide feedback, comments and suggestions for improvements to the Site ("Feedback"). You may submit Feedback by emailing us at [Support@MattePaint.com](mailto:Support@MattePaint.com). You acknowledge and agree that if you submit any Feedback to us, you hereby grant to us a non-exclusive, worldwide, perpetual, irrevocable, fully-paid, royalty-free, sub-licensable and transferable license under any and all intellectual property rights that you own or control to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any purpose, including (but not limited to) advertising and promotional purposes.

## **24 OUR DETAILS**

24.1 This Site is owned and operated by Matte Paint Pty Ltd

24.2 Our principal place of business is at 10 Rustic St Kenmore, Brisbane.

24.3 You can contact us:

- (a) by post, using the postal address [given above];
- (b) using our contact form;
- (c) by email, using [given above].

**MattePaint © All Rights Reserved.**

Terms last updated March 21 2018.