
Scintilla Design Pty Ltd
TERMS AND CONDITIONS

Last updated on 31 January 2020

These terms and conditions (**Terms**) govern your use of the Scintilla Design Pty Ltd (Scintilla) website located at <https://scintilladesign.com/> (**Website**). By using the Website, you agree to be bound by these Terms which form a binding contractual agreement between you, the user of the Website and us, Scintilla Design Pty Ltd ABN 82 602 214 862 (**Scintilla, our, we or us**).

These Terms set out the terms and conditions that apply when you use this Website.

We may change these Terms at any time by updating this page of the Website, and your continued use of the Website following such an update will represent an agreement by you to be bound by the Terms as amended.

1. USE OF THE WEBSITE

1.1 ACCESS AND USE OF THE WEBSITE

You must only use the Website in accordance with these Terms and any applicable laws, and must ensure that your employees, sub-contractors and any other agents who use or access the Website comply with the Terms and any applicable laws.

1.2 YOUR OBLIGATIONS

You must not:

- (a) copy, mirror, reproduce, translate, adapt, vary, modify, sell, decipher or decompile any part or aspect of the Website without the express consent of Scintilla;
- (b) use the Website for any purpose other than the purposes of browsing or reviewing website content;
- (c) use, or attempt to use, the Website in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity;
- (d) use, or attempt to use, the Website in a manner that may interfere with, disrupt or create undue burden on the Website or the servers or networks that host the Website;
- (e) use the Website with the assistance of any automated scripting tool or software;
- (f) act in a way that may diminish or adversely impact the reputation of Scintilla, including by linking to the Website on any other website or social media platform; and
- (g) attempt to breach the security of the Website, or otherwise interfere with the normal functions of the Website, including by:
 - (i) gaining unauthorised access to Website accounts or data;
 - (ii) scanning, probing or testing the Website for security vulnerabilities;
 - (iii) overloading, flooding, mailbombing, crashing or submitting a virus to the Website;
 - (iv) instigating or participating in a denial-of-service attack against the Website.

1.3 INFORMATION ON THE WEBSITE

While we make every effort to ensure that the information on the Website is as up-to-date and accurate as possible, you acknowledge and agree that we do not (to the maximum extent permitted by law) guarantee that:

- (a) the Website will be free from errors or defects;
- (b) the Website will be accessible at all times;
- (c) messages sent through the Website will be delivered promptly, or delivered at all;
- (d) information you receive or supply through the Website will be secure or confidential; or
- (e) any information provided through the Website is accurate or true.

We reserve the right to change any information or functionality on the Website by updating the Website and or Website content at any time without notice.

1.4 INTELLECTUAL PROPERTY

- (a) Scintilla retains ownership of the Website and all materials on the Website (including text, graphics, logos, design, icons, images, sound and video recordings, pricing, downloads and software) (**Website Content**) and reserves all rights in any intellectual property rights owned or licensed by it not expressly granted to you.
- (b) You may make a temporary electronic copy of all or part of the Website for the sole purpose of viewing it. You must not otherwise reproduce, transmit, adapt, distribute, sell, modify or publish the Website or any Website Content without prior written consent from Scintilla or as permitted by law.

1.5 LINKS TO OTHER WEBSITES

- (a) The Website may contain links to other websites that are not our responsibility.
- (b) We have no control over the content of the linked websites and we are not responsible for it.
- (c) Inclusion of any linked website on the Website does not imply our approval or endorsement of the linked website.

1.6 SECURITY

Scintilla does not accept responsibility for loss or damage to computer systems, mobile phones or other electronic devices arising in connection with use of the Website. You should take your own precautions to ensure that the process that you employ for accessing the Website does not expose you to risk of viruses, malicious computer code or other forms of interference.

1.7 REPORTING MISUSE

If you become aware of misuse of the Website by any person, any errors in the material on the Website or any difficulty in accessing or using the Website, please contact us immediately using the contact details or form provided on our Website.

1.8 PRIVACY

You agree to be bound by the clauses outlined in Scintilla's Privacy Policy, which can be found <https://scintilladesign.com/privacy-policy/>.

2. LIMITATION OF LIABILITY AND GENERAL

2.1 LIABILITY

- (a) **(Limitation of liability)** To the maximum extent permitted by applicable law, Scintilla excludes completely all liability to any person for loss or damage of any kind, however arising whether in contract, tort (including negligence), statute, equity, indemnity or otherwise, arising from or relating in any way to this Website, these Terms or any goods or services provided by Scintilla.
- (b) **(Indemnity)** You agree to indemnify Scintilla and its employees and agents in respect of all liability for loss, damage or injury which may be suffered by any person arising from your or your representatives' use of the Website or of any goods or services provided by Scintilla.
- (c) **(Consequential loss)** To the maximum extent permitted by law, under no circumstances will Scintilla be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with this Website, these Terms or any goods or services provided by Scintilla (except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth)).

2.2 GENERAL

- (a) **(Governing law)** This agreement is governed by the law applying in New South Wales, Australia.
- (b) **(Jurisdiction)** Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia, and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (c) **(Amendments)** These Terms may only be amended by Scintilla in accordance with the Terms.
- (d) **(Waiver)** No party to these Terms may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.
- (e) **(Further acts)** Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to these Terms.
- (f) **(Assignment)** A party cannot assign, novate or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of the other party.
- (g) **(Entire Agreement)** These Terms embody the entire agreement between the parties and supersede any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of the Terms.
- (h) **(Interpretation)** In these Terms, the following rules of interpretation apply:
 - (i) **(singular and plural)** words in the singular includes the plural (and vice versa);
 - (ii) **(gender)** words indicating a gender includes the corresponding words of any other gender;
 - (iii) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (iv) **(person)** a reference to "**person**" or "**you**" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
 - (v) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;

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- (vi) **(these Terms)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of these Terms, and a reference to these Terms includes all schedules, exhibits, attachments and annexures to it;
 - (vii) **(document)** a reference to a document (including these Terms) is to that document as varied, novated, ratified or replaced from time to time;
 - (viii) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
 - (ix) **(includes)** the word "**includes**" and similar words in any form is not a word of limitation; and
 - (x) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision.