

General Terms and Conditions for Rural, Residential and Commercial Subscriptions to www.gympierealestate.com.au

Effective 7 April 2011

The following are the standard terms and conditions ("**Terms and Conditions**") that apply to your use of the Service. Receipt of an Order Form signed by you will constitute your acceptance of the Terms and Conditions. Please read the Terms and Conditions in conjunction with your Order Form, and any other document provided to you at the time of signing the Order Form.

1. Defined terms

"**Agreement**" means these Terms and Conditions and your Order Form.

"**Order Form**" means the form specifying your subscription details for the Service.

"**Our web site**" refers to the web site located at the URL "www.gympierealestate.com.au".

"**Service**" may include any of the following or a combination thereof:

- (a) a process that will facilitate you uploading property details (including images) to either:
- (b) the extensive property search engine accessible on our web site;
- (c) the products set out in these Terms and Conditions;
- (d) having your properties featured on our web site;
- (e) phone support; and
- (f) any associated or ancillary service we agree in writing to provide to you.

"**Term**" means any Initial Term or Further Term of this Agreement.

"**We**", "**our**", "**us**" refer to gympierealestate.com.au, which operates the web site located at the URL www.gympierealestate.com.au (among other websites), and its subsidiaries, employees, officers, agents, affiliates or assigned parties.

"**You**", "**your**" or "**the client**" refer to you as the user of the Service.

2. Your obligations and acknowledgements

2.1 You represent and warrant in respect of each property you list on our web site that:

- (a) you are the owner or have a signed authority to sell from the owner or vendor (such as an Agency Agreement or Authority to Sell); and
- (b) you are authorised to make available the material uploaded or submitted to use the Service;

(c) this does not entitle you to authorise any other person to make use of the one subscription; and

(d) any such conduct is in breach of these Terms and Conditions; and

2.2 You must:

(a) comply with our Acceptable Use Policy

(b) only upload properties to our web site, or through a third party provider who has agreed to comply with our terms and conditions for uploading properties to our web site;

(c) within 72 hours of a sale or leasing contract being entered into for a property, advise us to either mark the property as "under contract", transfer the property to the sold database or remove that property from our web site;

(d) when requested by us to update your listings, you must extend the listing for a further period, transfer the property to the sold database, withdraw the listing or otherwise comply with any direction we give to ensure our web site is up-to-date. We may remove any property from our web site if the listing is not extended, transferred to the sold database, withdrawn or otherwise updated. However it is your responsibility to advise us in writing to remove all inactive or sold properties from the active database;

(e) ensure that material you upload through use of the Service is not unlawful or uploaded for an improper purpose, including information that is defamatory, misleading or deceptive, in breach of copyright or would otherwise expose us to any liability, legal proceedings or other sanction;

(f) ensure that you do not make, arrange or authorise the insertion of any reference to us or our web site in any document (including promotional or merchandising material) or on any web site other than our web site without our prior written consent;

(g) abide by any applicable Code of Practice (incorporating privacy and advertising codes) issued by your local Internet Industry Association (Australian codes of practice can be found at www.iaa.net.au);

(h) comply with all applicable laws, including without limitation, the Trade Practices Act 1974 (Cth); local fair trading legislation; and any other applicable advertising standards and regulations;

(i) ensure that:

(ii) material submitted through the Service by you refers only to listing details of a particular property;

(iii) the listing details for a particular property through the Service are only listed by you once; and

(iv) any reference to material other than listing details for a property must receive our written approval prior to being submitted through the Service; and

(j) ensure that no other person, authorised or otherwise, makes use of your subscription to the Service in breach of these Terms and Conditions. However you are responsible for any

use of the Service using your subscription by any person (whether authorised or otherwise) and, without limitation, you must pay any charges incurred as a result of that use.

2.3 You acknowledge that:

(a) you have read and agree to be bound by the terms of all legal notices posted on our web site including our Acceptable Use Policy, Privacy Policy, Disclaimer and Copyright notices;

(b) by using the Service, you grant us an irrevocable, world-wide, royalty free licence to commercialise, copy, license to other persons, use and adapt for any purpose any material you generate or submit to make use of the Service;

(c) we are not under any obligation to monitor or censor the material uploaded by you that appears on our web site. However we reserve the right to do so and to take any action we deem appropriate (including removing material from our web site without notice);

(d) we are not responsible for the Service's content or for any errors or omissions in any property data provided by or on behalf of you;

(e) we cannot guarantee the continuous or fault-free operation of the Service; systems or technological failure may impede or prevent access to all or any part of the property data and transmission of data over the internet can be subject to errors and delays;

(f) you are responsible for the security and integrity of your data;

(g) a residential subscription to the Service provides you with the ability to list only residential properties and premises;

(h) our products are subject to change, development and discontinuation. We will endeavour to notify you when this happens;

(i) we will contact you from time to time to make you aware of opportunities, products and services offered by us. You authorise us to contact you via email, SMS, MMS and other electronic media for that purpose unless you explicitly request us not to contact you via these media; and

(j) where you provide us with personal information of an individual estate agent, you warrant that you have informed that estate agent that their personal information will be used and disclosed by us in accordance with our Privacy Policy.

3. Term

3.1 Unless otherwise stated in your Order Form, this Agreement shall have an Initial Term of three (3) months from the Contract Start Date specified on your Order Form.

3.2 Following the expiry of the Initial Term, this Agreement shall continue for further terms of the same period as the Initial Term ("**Further Terms**") until terminated in accordance with these Terms and Conditions. You do not need to take any action for the Agreement to continue for Further Terms

4. Termination of Service by you

4.1 If you do **not** wish for this Agreement to continue for a Further Term, at least thirty (30) days before the expiration of the Initial Term or the then current Further Term, you must provide us with clear written notice of your intention to terminate the Agreement upon the expiration of the Initial Term or the then current Further Term. Your obligation to provide us with at least thirty (30) days clear written notice of your desire to terminate this Agreement exists regardless of whether or not you receive any communication from us regarding a Further Term.

4.2 You agree that once the Initial Term or any Further Term commences, you may not terminate the Agreement for any reason until the expiry of that Initial Term or Further Term. If you purport to terminate the Agreement before the expiry of the Initial Term or a Further Term, you acknowledge that the remaining fees payable under this Agreement for the remainder of the relevant Term are debts due to us payable at the time of the purported termination and you agree to pay those fees within fourteen (14) days of the purported termination. You agree that this is not a penalty, but a reasonable measure of actual damage to us as a result of your early termination.

5. Termination or suspension of Service by us

5.1 We may terminate this Agreement at any time for any reason provided that we give you at least seven (7) days' written notice.

5.2 Notwithstanding clause 5.1 and without limiting our other rights, we may immediately suspend or temporarily remove details of any property uploaded by you to our web site or terminate this Agreement if:

(a) you fail to pay any fees or charges due to us by the due date;

(b) you breach any part of this Agreement and the breach is material and not capable of being rectified;

(c) you breach any part of this Agreement and fail to rectify the breach within 7 days of the breach;

(d) you breach any warranties provided or representations made in this Agreement;

(e) any material supplied by you (including material uploaded to our web site) is false or misleading;

(f) you enter into bankruptcy, liquidation, provisional liquidation, administration, receivership, receivership and management, a composition of arrangement with your creditors, or appoint a receiver, manager or controller over all or any part of your assets, or are protected from creditors under any statute, or become or are deemed to become insolvent; or

(g) you die, or if you are in a partnership, are dissolved or an application to dissolve is filed, or if you are a company, are wound up or an application for winding up is filed.

6. Effect of termination (by you or us)

6.1 Termination of this Agreement (by you or by us) does not:

(a) relieve you of your accrued obligations and liabilities pursuant to this Agreement and we reserve our right to enforce such obligations and liabilities after termination; and

(b) waive any breach of this Agreement by you.

6.2 In addition to clause 6.1, you acknowledge that:

(a) you remain liable for all fees incurred before termination of this Agreement and you must pay all outstanding amounts to us within seven (7) days of termination; and

(b) if you continue to use the Service following termination of this Agreement, you shall remain liable for any and all fees incurred by you (these fees may be calculated at our "out of contract" rate which is higher than our usual rates).

7. Packages, fees and billing

7.1 We offer a number of different packages that vary in terms of price, products and services included. You may subscribe to any of these packages, but switching, or addition of special conditions to, packages is at our sole discretion.

7.2 The current fee for the Service is specified in your Order Form.

7.3 We reserve the right to amend the terms and conditions of this Agreement, including package components, products and fees, at any time. You will be given written notice of any changes to our fees or package components.

7.4 Service fees for the initial 3 months of the Term are payable from the Contract Start Date specified on your Order Form. The initial 3 month's service fees may be billed in advance or in arrears to fall within our regular billing cycle. Fees for subsequent months are payable in advance.

7.5 If we do not receive payment by the due date, we may:

(a) remove any reference or prevent access to property data submitted by you to our web site;

(b) charge an administration fee of \$5.00 plus any applicable GST per month on overdue accounts;

(c) charge interest on any overdue amount at a rate equal to 2% per calendar month; and

(d) demand that you pay for any costs of collecting the overdue amount, including but not limited to collection of agency fees and legal fees.

7.6 You will pay all taxes, duties and other government charges payable in connection with this Agreement whether applying as at the date of this Agreement or in the future including, without limitation, any applicable goods and services tax (GST), other value added tax, sales tax, stamp duty and turnover tax, but excluding taxes, duties and government charges based on our income.

8. Limitation of liability and indemnity

8.1 To the extent allowable under the Trade Practices Act 1974 (Cth) or any other applicable law, we:

(a) exclude all conditions and warranties implied into this Agreement;

(b) exclude consequential, special or indirect loss or damage (including but not limited to loss of opportunity, loss of revenue, loss of data and loss of profits);

(c) limit our liability for breach of any condition or warranty that we cannot exclude to (at our option):

- (i) resupplying the Service; or
- (ii) paying the cost of having the Service resupplied; and

(d) limit our liability in respect of any other claim under or in connection with this Agreement, whether the claim is based in contract, tort (including negligence), statute or otherwise, to the amount paid to us by you under this Agreement and reduce that liability to the extent you cause or contribute to the loss the subject of the claim.

8.2 You must take all reasonable steps to minimise any loss you suffer or are likely to suffer and that is the subject of a claim against us under this Agreement. If you do not take reasonable steps to minimise that loss, then our liability to you for the relevant claim will be reduced accordingly.

8.3 We will not be liable under this Agreement to the extent that liability is caused by:

(a) any breach of your obligations under this Agreement or a negligent act or omission by you; or

(b) any delay in performance or breach of this Agreement which arises as a result of any matter beyond our control including but not limited to viruses, other defects or failure of the server hosting our web site.

8.4 You indemnify us and our officers, employees and agents ("those indemnified") against any direct or consequential liabilities, losses, damages, expenses and costs (including legal expenses on a solicitor and own client basis) incurred or suffered by any of those indemnified as a result of any claim or proceedings brought by a third party against those indemnified in connection with any material uploaded or submitted by you in connection with the Service or any other act or omission by you in connection with your use of the Service.

8.5 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement for whatever reason.

9. General

9.1 We may change these Terms and Conditions at any time by giving you at least 30 days' prior written notice. You acknowledge that our publishing the amended version of the Terms and Conditions at this link on our web site constitutes written notice to you of such changes.

9.2 No delay or failure by us to enforce any provision of this Agreement will be deemed a waiver or create a precedent or will prejudice our rights. No waiver by us will be effective unless it is in writing and signed by us.

9.3 We will send all notices and other communications to you at the email address and/or facsimile number you have provided to us. It is your sole responsibility to ensure that you provide us with your current contact email address and/or facsimile number.

9.4 All notices from you to us (including termination notices) must be sent by email to info@gympierealestate.com.au or by facsimile to (07) 5482 3959. These contact details may be amended from time to time. It is your responsibility to check these Terms and Conditions for the current contact details.

9.5 You must not assign this Agreement or appoint an agent without our prior written consent.

9.6 We may assign this Agreement at any time. If we assign this Agreement, we will notify you of the assignment.

9.7 This Agreement (together with any documents referred to in the Agreement or provided by us at the same time as the Agreement) comprises the entire agreement between us about its subject matter. It supersedes all prior understandings, agreements or representations and you may not rely on any representations or warranties about the subject matter of this Agreement except as expressly provided in this Agreement.

9.8 The laws of Queensland, Australia govern the Agreement.

9.9 You submit to the exclusive jurisdiction of the Courts of Queensland, Australia and you waive any right you have to object to an action being brought in the Courts of Queensland (including that the action has been brought in an inconvenient forum, or that those Courts do not have jurisdiction).

9.10 If any term of this Agreement is void, unenforceable or illegal, that term is severed. The remainder of the Agreement has full force and effect.

9.11 Our rights and remedies provided in this Agreement are in addition to other rights and remedies given to us by law and equity independently of this Agreement.