

## BARTERDAYZ MARKETPLACE TERMS AND CONDITIONS

### 1. Introduction

1.1 These BarterDayz Marketplace Terms and Conditions, together with our Privacy Policy, comprise the terms of a legal agreement between the person or entity listed in the Registration Portal (**you** or **your**) and BarterDayz Pty Ltd (ACN 658 206 476) (**BarterDayz, we, our** or **us**) (collectively, the **agreement**).

1.2 By downloading, accessing and using the BarterDayz App, you warrant that you have read this agreement and agree to be bound by this agreement. If you are using the BarterDayz App as a representative of an entity, you are agreeing to the agreement on behalf of that entity.

### 2. The BarterDayz App

2.1 The BarterDayz App is a portal or online marketplace through which users can connect with other users within a specific location for the purpose of trading or exchange goods and services. We are a mere online trading marketplace or conduit for introducing users to each other. We are not a party to any trade between users and we are not a trader, barterer, buyer or seller of goods or services. Our role in providing you with access and use of the BarterDayz App should be construed strictly in this context only.

2.2 When you create an Account on the BarterDayz App, you are granted a non-exclusive, non-transferable, personal, revocable and non-sublicensable licence to download, access and use the BarterDayz App for the Term. You will not acquire or be entitled to any rights other than those rights expressly set out in this agreement.

### 3. Changes

We reserve the right to change any provision of this agreement in any way and we may, in our absolute discretion, add, change or remove any functions or features of the BarterDayz App, any fees

charged by us under this agreement, remove or add any users or Trade Listings, Trade Review or any ancillary products or services offered on, or via, the BarterDayz App with, or without notice, to you. If we provide you with notice of changes to this agreement, we shall do so either by email or by posting it on the BarterDayz App.

### 4. Term

This agreement commences on the date you create an Account with us on, or via, the BarterDayz App and continues until terminated in accordance with clause 17 (**Term**).

### 5. Registration and access

5.1 If you wish to access and use the BarterDayz App, you must create an account with us (**Account**) via the BarterDayz App.

5.2 Your Account will be operated by a username and password. You can select your own username and password using the Registration Portal. You can change your password at your convenience using the Registration Portal.

5.3 When you create an Account, you are also required to provide us with registration information (such as your full name, telephone number, email address, date of birth and location). You have the option to upload a profile image or business logo onto your User Profile. If you wish to change your telephone number and/or email address, you must email us with your request, and we may, at our absolute discretion, request proof of identity for verification purposes.

5.4 In order to open an Account or otherwise access and use the BarterDayz App, you must:

- (a) over 18 years of age, and legally able to enter into contractual relations. If you are under the age of 18 years, you may only access and use the BarterDayz App if you have your parents'/guardians' permission to access and use the

- BarterDayz App. Your continued use of the User Profile constitutes an acknowledgement by you that you are: (i) over 18 years of age; or (ii) under 18 years of age, but have your parents'/guardians' permission to access and use the BarterDayz App and that your parents'/guardians have agreed to abide by this agreement; and
- (b) provide accurate, current and complete registration information (including any proof of identity documentation we may request to verify your identity);
- 5.5 You are solely responsible for the activity conducted on or through your Account. In relation to your Account, you undertake that you will:
- (a) not disclose your password to any third party and take reasonable measures to prevent the disclosure of your password to any third party. Please notify us immediately if you become aware that your Account or password is being used without authorisation;
- (b) provide only accurate, complete registration information and Personal Information (including full name, telephone number, email address, date of birth, profile image or business logo), and update that information if it changes. All Personal Information as well as the information you provide to register is subject to our Privacy Policy; and
- (c) not impersonate another account holder or provide false identity information to gain access to or use the BarterDayz App.
- 5.6 We have the right to suspend or terminate any Account or password or your access to or use of all or any part of the BarterDayz App, at any time, if, in our opinion, you have failed to comply with any of the provisions of this agreement.
- 5.7 At any time, you may edit, update, de-activate or change your User Profile (except if you wish to change your telephone number or email address, you will need to first complete our identity verification process).

## 6. Your general obligations

- 1.1 When accessing and using the BarterDayz App, you must:
- (a) download the BarterDayz App onto your mobile phone or other device;
- (b) obtain and maintain all hardware, software and communication equipment necessary to access, and use the BarterDayz App;
- (c) comply with all Relevant Laws with respect to your obligations under this agreement; and
- (d) comply with all of our directions, policies and guidelines, advised in writing to you from time to time (including our Acceptable Use Policy).
- 1.2 We will not be liable to you or anyone else if, for any reason, the BarterDayz App is unavailable at any time or for any period. From time to time, we may suspend or restrict access to all, or some parts of the BarterDayz App. You are also responsible for ensuring that all persons who access the BarterDayz App (such as through your mobile phone or other device) are aware of this agreement, and that they comply with them.
- 1.3 You must not:
- (e) reverse engineer, decompile, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the BarterDayz App including any object code and source code available to any third party;
- (f) violate any BarterDayz IP;
- (g) modify, alter, adapt, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the BarterDayz App or any Account, including any images contained on the BarterDayz App;
- (h) access all or any part of the BarterDayz App in order to build a product, service or code which competes with the BarterDayz App; and
- (i) data mine the BarterDayz App or access, store, distribute or transmit any viruses, worms, trojans or other malicious code, or any material when using the BarterDayz App that may be unlawful, unethical,

- harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive.
- 1.4 We reserve the right to limit your use of the BarterDayz App, your right to trade or exchange goods and/or services and/or access and use any other ancillary products or services made available to you on, or via, the BarterDayz App, including the right to restrict, suspend, delete or terminate your Account, User Profile or Trade Listings if we believe you are in breach of this agreement or you are misusing the BarterDayz App.
- 7. Trading Listings**
- 7.1 To exchange or trade goods or services on, or via, the BarterDayz App, you must:
- (a) create a User Profile; and
  - (b) create a Trade Listing by submitting or publishing a description and image of the goods and/or services you wish to trade or exchange with other users of the BarterDayz App.
- 7.2 If you and another user are within the same Locality, each user can view:
- (a) active Trade Listings published or posted by the other user using map or list grid view features made available through the BarterDayz App; and
  - (b) the User Profile of the other user (including the other user's Trade Reviews).
- 7.3 If you and another user are within the same Locality, each user can submit a trade request to acquire goods and/or services published or displayed by the other user in a Trade Listing in exchange for: or (i) goods and/or services offered by the user in their Trade Listings; (ii) money; or (iii) a combination of both goods and/or services or money.
- 7.4 If a user receives a trade request from another user, the user can either accept or decline the trade request or enter into further negotiation with the other user via the chat function within the BarterDayz App or other messaging system on your mobile device.
- 7.5 If a user accepts a trade request, then the other user will receive a notification via the BarterDayz App that the trade request has been accepted. The users must then use the chat function within the BarterDayz App (or other messaging system on your mobile device) to organise for the trade request to be completed.
- 7.6 If a user rejects the other's user's trade request, then the other user will receive a notification via the BarterDayz App that the trade request has been rejected. The users cannot use the chat function) to accept or further negotiate the rejected trade request, unless a user creates and posts a new Trade Listing.
- 7.7 Provided the Trade Review feature is active, you can post or publish a Trade Review about another user who you have interacted with on, or via, the BarterDayz App. Your Trade Review can contain information relating to a failed trade request or if a trade request was accepted, the accuracy, completeness, quality or performance of the goods or services provided by the other user.
- 7.8 By listing, publishing or displaying Trade Listing and otherwise supplying goods and services in connection with an exchange or trade, you warrant and guarantee that at all times:
- (a) you are owner of the goods (or you an authorised agent acting on behalf of the owner of the goods) and that the goods are free of encumbrances;
  - (b) you have the requisite qualifications, licences, certificates, insurances, experience and resources to perform the services;
  - (c) nothing in the Trade Listings will cause you or us (or anyone else) to breach any Relevant Laws;
  - (d) no Trade Listing is or could reasonably be considered to be obscene, inappropriate, defamatory, disparaging, indecent, seditious, offensive, pornographic, threatening, abusive, liable to incite racial hatred, discriminatory, blasphemous, in breach of confidence or privacy;
  - (e) the Trade Listing do not contain, nor will they cause, any software viruses or any other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;

- (f) nothing in the Trade Listing would bring BarterDayz or the BarterDayz App, into disrepute or adversely affect the reputation and goodwill of BarterDayz or the BarterDayz App;
  - (g) that you will not publish Trade Listings that: (i) you know (or ought to know) are inaccurate, misleading, deceptive or fraudulent; and (ii) offer to provide, supply, barter, trade or exchange Excluded Goods and Services. For example, the goods are not stolen;
  - (h) the Trade Listing do not infringe the Intellectual Property Rights or other rights of any person; and
  - (i) all information provided by you in relation to the Trade Listings are true, complete and accurate. You will immediately update your User Profile and/or Trade Listings if any details or information you submit or upload to the BarterDayz App is inaccurate, incomplete, or out of date.
- 7.9 We will not be liable to you, another user or anyone else for any:
- (a) error, omission, failure to update or change any Account details, your User Profile or Trade Listings which are published, listed or displayed by you on, or via, the BarterDayz App following your request; or
  - (b) Loss or Claim incurred by you, another user or any third party as a result of, or in connection with any content, materials or information supplied by you (or another user) which is uploaded, published or submitted in relation to the BarterDayz App (including, but not limited to any Trade Review).
- 7.10 We are not responsible for monitoring or censoring any content or information advertised, published or listed on the BarterDayz App, including any User Profiles, Trade Reviews or Trade Listings. However, if you fail to comply with this clause 7 (for example, if BarterDayz receive a report or complaint that your Trade Listing has contravened the Intellectual Property Rights of a third party or is misleading), we may, in our absolute discretion and without notice to you:
- (a) remove, modify, refuse to publish or alter or delete any of your content, material or Trade Listing without any notice to you, if we consider that such content, material or Trade Listing does not comply with this agreement (including any of our policies or guidelines published by us from time to time); and/or
  - (b) restrict, suspend or terminate your Account or User Profile on the BarterDayz App.
- 7.11 BarterDayz shall not be responsible for any Loss, destruction, alteration, corruption or disclosure of a User Profile or Trade Listing caused by your acts or omissions or the acts of omissions of other users of the BarterDayz App or any third party.
- 7.12 You agree to make your own enquiries to verify information, content or materials displayed on, or via, the BarterDayz App (including information contained in any third party products and services, Trade Listings and Trade Reviews) and to assess the suitability of any information, content or materials posted or published in Trade Listings by other users before relying upon such information, content or materials. If you choose to rely upon any information, content or materials displayed or published on, or via, the BarterDayz App (including information contained in any Trade Listings, Trade Reviews or any third party products and services) you do so at your own risk. We make no representations or warranties that use of the content, materials or information on any User Profiles, Trade Reviews, Trade Listings and/or third party products and services will not infringe any third party's Intellectual Property Rights.
- 8. The provision of good and services**
- 8.1 If you perform or supply services for, or deliver goods to, a user introduced to you on, or via, the BarterDayz App, you warrant and guarantee that:
- (a) any goods supplied by you will be fit for purpose, of merchantable quality and free from defects (unless otherwise agreed); and
  - (b) performance of the services by you shall be fit for purpose and meet the description, specifications and

- quality standards as described in your Trade Listing;
- (c) the services will be supplied with all due care and skill and you and all of your Personnel have all the required qualifications, expertise, skills and training necessary to competently provide the goods and/or services;
  - (d) the supply of goods and the performance of services will comply with all Relevant Laws; and
  - (e) all information you provide to us in relation to the goods and/or services offered by you for exchange or trade on, or via, the BarterDayz App (including any information you publish in a Trade Review or in the chat function) is true, complete and accurate. You will immediately update your Trade Listing if any of the details or information you submit or upload to the BarterDayz App is inaccurate, incomplete or out of date.
- 8.2 You acknowledge and agree that, to the maximum extent permitted by Relevant Laws, we make no representation, warranty or guarantee in relation to:
- (a) the standard, availability, reliability, accuracy, currency, or quality of the BarterDayz App, the goods or services exchanged or traded by users on, or via, the BarterDayz App, or any other ancillary products or services which may be made available to you on, or via, the BarterDayz App. You acknowledge that the BarterDayz App, the Trade Listings, Trade Reviews, any goods and services, or any other ancillary products or services made available to you on, or via, the BarterDayz App are provided 'as is';
  - (b) the existence, condition, quality, safety, legality or genuineness of any goods and/or services offered or made available for exchange or trade on, or via, the BarterDayz App;
  - (c) the accuracy, validity or completeness of any: (i) photographs or images of goods published in any Trade Listings; or (ii) content or description provided in relation to goods or services displayed for exchange or trade on
- or via, the BarterDayz App, including, but not limited to, the colour, dimension, measurement or size of such goods or the quality or availability of such services; and
  - (d) the ability of a user to provide the goods or services to you.
- 8.3 You acknowledge and agree that, to the maximum extent permitted by Relevant Laws:
- (a) it is your responsibility to determine whether the goods or services displayed or listed, on or via, the BarterDayz App, meet your personal or business needs, or are otherwise suitable for the purposes for which they are used, traded or changed; and
  - (b) BarterDayz is not responsible for monitoring or censoring Trade Listings; however, we may (at our absolute discretion and with notice to you) remove, modify, refuse to publish or alter the Trade Listings in accordance with clause 7.10.
- 8.4 If you fail to comply with this clause 8, BarterDayz may, at our absolute discretion and with or without notice to the Buyer, restrict, suspend, delete or terminate your Account, User Profile, Trade Listings or your access to, or use of, the BarterDayz App.
- 9. Acceptable Use Policy**
- 9.1 By downloading, accessing and using the BarterDayz App (including the chat function contained within the BarterDayz App), you agree to comply with the rules for the acceptable use of the BarterDayz App as specified herein (**Acceptable Use Policy**).
- 9.2 You are solely responsible for the accuracy, currency, completeness and use of Trade Listings published or posted by you on, or via, the BarterDayz App (including information, content and materials you publish or post in a Trade Review or on the chat function contained within the BarterDayz App), and you agree to post or publish information, content and materials on, or via, the BarterDayz App at your own risk. BarterDayz accepts no responsibility and assume no liability for any information, content and materials posted, published

- or otherwise transmitted by you, any other user or any third party on, or via, the BarterDayz App.
- 9.3 BarterDayz is under no obligation to monitor, review, or otherwise control the use of the chat function within the BarterDayz App or any Trade Listings or Trade Review listed, published or posted on, or via, the BarterDayz App by you, any other user or any third party. However, BarterDayz reserves the right, but is not obligated to:
- (a) edit, remove or refuse to edit or remove any Trade Listing or Trade Review published, posted or otherwise made available on, or via, the BarterDayz App; or
  - (b) remove any user who contravenes the Acceptable Use Policy from any chatroom within the BarterDayz App.
- 9.4 You must access and use the BarterDayz App only for lawful purposes. You must not access and use the BarterDayz App (including the chat function contained within the BarterDayz App):
- (a) in any way that breaches any Relevant Laws;
  - (b) in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect;
  - (c) to publish, post or upload any Trade Reviews or content, information or materials on your User Profile or Trade Listings that is intended to harm someone in any way or that is libellous, defamatory, obscene, vulgar, offensive, pornographic, indecent, racist, harassing, threatening, seditious, blasphemous, invasive of privacy or publicity rights, abusive, inflammatory, discriminatory otherwise objectionable;
  - (d) to publish, post or upload any Trade Reviews or content, information or materials to your User Profile or Trade Listing that is false, misleading or deceptive or is likely to be false, misleading or deceptive (including, but not limited to, impersonating another person or user or misrepresenting your identity to users of the BarterDayz App);
  - (e) to share another user's profile information with anyone else without first seeking the user's prior consent;
  - (f) to publish, post or upload any Trade Listings that contain Excluded Goods and Services or contains confidential, secret or proprietary information of another person;
  - (g) to upload, publish or transmit content, materials or information that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware; and
  - (h) to publish, post or upload content, materials or information to your User Profile or Trade Listings that may infringe the intellectual property rights or other rights of BarterDayz, other users or any third party; and
  - (i) to promote any illegal activity or advocate, promote or assist any unlawful act.
- 9.5 By accessing or using BarterDayz App (including posting or publishing a Trade Review or using the chat function contained within the BarterDayz App) you acknowledge that it is your responsibility to:
- (a) ensure that all communications with other users, are polite, respectful and courteous;
  - (b) ensure that any content or information posted or transmitted through the BarterDayz App by you is accurate, reliable, up-to-date, and complete;
  - (c) respect the privacy rights of other users and third parties;
  - (d) ensure that you have adequate legal rights to publish, post, transmit, reproduce or otherwise use the information or content transmitted through the BarterDayz App; and
  - (e) comply with the Acceptable Use Policy at all times.
- 9.6 BarterDayz reserves the right, at our absolute discretion, to determine whether the Acceptable Use Policy has been breached and to terminate this agreement in accordance with clause 17. If you believe that another user has

breached the Acceptable Use Policy, you can lodge a report or complaint using the BarterDayz App or by email at [barterdayz@gmail.com](mailto:barterdayz@gmail.com).

## 10. Our obligations

10.1 We shall use reasonable endeavours to provide you with access and use of the BarterDayz App.

10.2 In the event that we fail to provide you with access and use of the BarterDayz App in accordance with clause 10.1 we will use reasonable endeavours to correct any such non-conformance in order to accomplish the desired performance. The foregoing constitutes your sole and exclusive remedy for any breach of clause 10.1.

## 11. Subscription Fees

11.1 We do not charge you a fee to download, access and use the basic features and functions of the BarterDayz App (**Free Version**). However, if you wish to access the advanced or premium features and functions of the BarterDayz App (including, but not limited to, features that give you the right to display or publish an unlimited number of Trade Listings or reoccurring Trade Listings and priority ranking of your Trade Listing on the BarterDayz App within your selected Locality), you must, except during the Trial Period, pay the Subscription Fees to us for the Term (payable on a monthly basis in advance in accordance with the Direct Debit Authority).

11.2 All Subscription Fees are in Australian Dollars and are inclusive of any goods and services taxes. To the maximum extent permitted by Relevant Laws and except as otherwise contemplated in this agreement, the Subscription Fees and all other amounts owing to BarterDayz under this agreement are non-refundable.

11.3 Payment of the Subscription Fees must be made by credit card, debit card or Third Party Payment Processors. You agree to provide the Third Party Payment Processors with accurate and complete billing information, and you authorise us to share billing information with our Third Party Payment Processors for the purpose of processing your

payment. We recommend that you refer to the Third Party Payment Processor terms and conditions and privacy policy prior to using a Third Party Payment Processor to make payment of the Subscription Fees. You use Third Party Payment Processors at your own risk.

11.4 We may, at our absolute discretion and without notice to you, change the payment methods that can be used to access and use the BarterDayz App.

11.5 BarterDayz may, at our absolute discretion, change the Subscription Fees at any time, by giving you written notice, or by otherwise posting it on the BarterDayz App. Where a change relates to an increase in Subscription Fee, we shall provide you with 30 days prior written notice or by otherwise posting it on the BarterDayz App. If you do not agree to these changes, you should terminate the agreement in accordance with clause 17, no later than 30 days after the date you received written notice of the changes or the changes were posted on the BarterDayz App.

## 12. Direct debit authority

12.1 By accepting this agreement, you authorise us to arrange for the Subscription Fees or any other amount owing to BarterDayz under this agreement to be debited from your credit card or bank account (as applicable) as and when such fees are due and payable under this agreement (**Direct Debit Authority**).

12.2 You may cancel, defer or change your Direct Debit Authority by notifying BarterDayz in writing at least 7 days before the day on which your next debit is due. If you cancel or defer Direct Debit Authority, BarterDayz may not be able to provide you with access to, and use of, the advanced or premium features and functions of the BarterDayz App, unless you provide BarterDayz with new Direct Debit Authority.

12.3 It is your responsibility to ensure that there are sufficient funds available on your credit card or bank account (as applicable) to allow each debit to be made in accordance with the Direct Debit Authority. If there are insufficient funds:

- (a) the transaction will be rejected and the payment will be treated as if it were never made;
  - (b) your financial institution may charge you a fee and/or interest;
  - (c) BarterDayz may charge you a dishonour fee at our prevailing rate at the time; and
  - (d) you must arrange for the debit to be made by another method or arrange for sufficient funds to be available by an agreed time so that BarterDayz can process the debit.
- 12.4 It is your responsibility to check your credit card or bank account statement (as applicable) to verify that the amounts debited from your credit card or bank account are correct.
- 12.5 If you believe that an error has been made in debiting your credit card or bank account (as applicable), you should notify BarterDayz as soon as possible in writing. BarterDayz will promptly investigate and BarterDayz will adjust your credit card or bank account balance as required.
- 12.6 If you cancel the Direct Debit Authority or your payment fails to be processed for any reason, we will send you an email notifying you that payment will need to be made within 7 days to ensure you can continue to access and use the advanced or premium features of the BarterDayz App.
- 12.7 If no payment is received within 7 days of receiving our email, your right to access and use the advanced or premium features of the BarterDayz App will automatically cease (excluding your right to continue to access and use the Free Version). This means that your 2 oldest Trading Listings and 5 offers will remain active on the BarterDayz App, and all other Trading Listings or offers published or posted by you on, or via, the BarterDayz will be deleted or will not be visible to other users of the BarterDayz App.
- 12.8 If you wish to access the advanced or premium functions and features of the BarterDayz App, you will need to re-activate your subscription by paying the Subscription Fees prevailing at the time.

### 13. Intellectual Property Rights

- 13.1 You acknowledge that we, or our licensors, are the owner of the BarterDayz App (or any Intellectual Property Rights contained therein) including any information, data or Content that may be provided to, or accessed by, you in connection with your use of the BarterDayz App (including any modifications, enhancements of the foregoing (collectively, the **BarterDayz IP**). Accessing and using the BarterDayz App does not give you (or anyone else) ownership of, or any right, title or interest in any of the BarterDayz IP, or any information, content or technology that may be provided to, or accessed by, you in connection with their use, all of which is, and will remain, owned by us or our licensors.
- 13.2 All Intellectual Property Rights discovered, developed or which otherwise come into existence as a result of, or in connection with, the BarterDayz App will automatically vest in, and will be assigned to, us.
- 13.3 You will remain the owner of your User Profile and Trade Listing, provided you grant us (and our third party service providers) for the Term a worldwide, non-revocable, non-exclusive, royalty-free and perpetual licence to use, disclose, share, reproduce, store, distribute, publish, export, adapt, edit, translate, produce derivative works from or copy, your User Profile and any content, materials, Trade Reviews and Trade Listings you create, publish or post on, or via, the BarterDayz App, for the purpose of:
- (a) enabling BarterDayz to provide the BarterDayz App to you and otherwise perform our obligations and exercising our rights under this agreement;
  - (b) informing you of other products or services that BarterDayz may offer from time to time or in relation to third party products and services;
  - (c) complying with a legal requirement, such as a law, regulation, court order, subpoena, warrant, legal proceedings or in response to a law enforcement agency request;



- (d) using usage patterns, trends, and other statistical or behavioural data derived from use of the BarterDayz App for the purposes of providing, operating, maintaining, or improving the BarterDayz App, or our other products and services; and
- (e) sharing User Profile, Trade Reviews and Trade Listing with an Affiliate or other third party (with whom BarterDayz may contract or be affiliated with from time to time) for the purposes of performing or improving the BarterDayz App.

#### 14. Warranties

- 14.1 To the maximum extent permitted by Relevant Laws, we exclude all express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise) given in connection with the provision of the BarterDayz App or any other ancillary products and services made available to you on, or via, the BarterDayz App.
- 14.2 Nothing contained in this agreement excludes, restricts or modifies the application of any condition, warranty or other obligation, the exercise of any right or remedy, or the imposition of any liability under the *Competition and Consumer Act 2010 (Cth)* or any other national, State or Territory legislation where to do so is unlawful.
- 14.3 We do not recommend or endorse any user of the BarterDayz App, or any Trade Listings, Trade Reviews, materials, content, comments or submissions published, posted or appearing on the BarterDayz App or our Website or related social media pages.
- 14.4 You acknowledge and agree that, to the maximum extent permitted by Relevant Laws, we make no representation, warranty or guarantee in relation to the availability, continuity, reliability, accuracy, currency or security of the BarterDayz App, or any other ancillary products or services made available to you on, or via, the BarterDayz App.

- 14.5 You acknowledge that the BarterDayz App, the Trade Listings, Trade Reviews or any other ancillary products or services made available to you on, or via, the BarterDayz App, are provided on an 'as is' basis, and that we will not be liable to you or anyone else if the BarterDayz App, or any other ancillary products or services are unavailable for any reason, including directly or indirectly as a result of:
  - (a) telecommunications unavailability, interruption, delay, bottleneck, failure or fault;
  - (b) negligent, malicious or wilful acts or omissions of third parties (including our third party service providers);
  - (c) maintenance (scheduled or unscheduled) carried out by us or any third party service provider, including in respect of any of the systems or network used in connection with the provision of the BarterDayz App;
  - (d) products or services provided by third parties ceasing or becoming unavailable; or
  - (e) a Force Majeure Event.
- 14.6 You warrant, acknowledge and agree that:
  - (a) your use of the BarterDayz App has not been made on the basis of any representations as to features or functionality of the BarterDayz App;
  - (b) you have the full power and authority to enter into this agreement and perform your obligations contemplated by this agreement, and in doing so, will not breach any third party rights; and
  - (c) we make no representation, warranty or guarantee that: (i) users of the BarterDayz App are willing or able to trade or exchange goods or services with you; or (ii) any Trade Listings or Trade Reviews displayed or listed on or via, BarterDayz App, are reliable, accurate, current, legitimate, reputable or creditable or that the user who has published or displayed the Trade Listing has the necessary experience, qualifications, licences and resources to provide the goods and/or services to you.

- 14.7 BarterDayz shall use reasonable endeavours to make the BarterDayz App available 24 hours a day, 7 days a week, except for:
- (a) planned maintenance carried out at times advised in advance by BarterDayz; and
  - (b) unscheduled maintenance which may need to be performed from time to time. BarterDayz will, where practicable, use reasonable endeavours to conduct any unscheduled maintenance outside of Business Hours.

**15. Limitation of Liability**

- 15.1 To the maximum extent permitted by Relevant Laws, we will not be liable to you, other users or any third party for:
- (a) any Claims or Losses (including Consequential Loss); or
  - (b) loss of or damage to any property or any personal injury or death,

which arises out of, is connected to, or relates to, the provision or use of the BarterDayz App or any goods or services traded or exchanged on, or via, the BarterDayz App, any transaction entered into between users as a result of using the BarterDayz App, any other ancillary products or services made available to you or supplied to you on, or via, the BarterDayz App, any Trade Review or under this agreement, regardless of the cause of action on which they are based, even if advised of the possibility of such damage occurring.

- 15.2 Under no circumstances will our aggregate liability, whether based upon warranty, contract, statute, tort (including negligence) or otherwise, exceed the greater of \$100 or Subscription Fees paid by you under this agreement in the preceding 1 month of the claim.

- 15.3 You agree to defend, indemnify and hold us, our Affiliates and our Personnel (collectively, the **Indemnified**) harmless from and against any and all Claims and Losses (including legal costs on a full indemnity basis) that may be brought against the Indemnified or which the Indemnified may pay, sustain or incur as a direct or indirect result of, or arising out of:

- (a) the access and use by you, your Affiliates or your Personnel of the

BarterDayz App or any other ancillary products or services made available to you or supplied to you on, or via, the BarterDayz App;

- (b) negligence, fraud, intentional torts or unlawful conduct committed by you, your Personnel, your Affiliates or any third party; and
- (c) any breach by you, your Affiliates or your Personnel of this agreement.

**16. Privacy**

16.1 All Personal Information you provide to us to open an Account, to create a User Profile and any Trade Listing or Trade Review you upload, generate, share, or publish on, or via, the BarterDayz App, is subject to BarterDayz's Privacy Policy, which is incorporated into this agreement. Except as otherwise stated in this agreement and in our Privacy Policy, BarterDayz will not share, sell or disclose your User Profile to any third party. You warrant that, in relation to any Personal Information comprising your User Profile, Trade Listing or any other information disclosed by you to BarterDayz on, or via, the BarterDayz App:

- (a) it has been collected in accordance with Privacy Laws;
- (b) you have the authority to upload, post, publish or otherwise transmit such information on, or via, the BarterDayz App; and
- (c) you have obtained the informed consent of the individuals who are the subject of such Personal Information in order for BarterDayz to use, disclose, store, transfer, process or handle it.

**17. Termination**

17.1 During the Term you may terminate this agreement at any time by selecting the 'Delete Account' function in your User Profile or you delete the BarterDayz App. In this case, you will not be entitled to a pro rata refund of the Subscription Fees for the unused portion of the Term.

17.2 BarterDayz may terminate the agreement any time (without liability to you except BarterDayz will provide you with a pro rata refund of the Subscription Fees for the unused portion of the Term) by giving you 14 days' written notice.

- 17.3 Either party may terminate this agreement by giving notice with immediate effect if the other party:
- (a) breaches any material term of this agreement and such breach is not remedied within 14 days after receiving notice of the breach;
  - (b) breaches any material term of this agreement and such breach is not capable of remedy; or
  - (c) suffers an Insolvency Event.
- 17.4 You agree that we may, at any time and at our sole discretion, with or without cause or any notice to you, terminate, suspend or block your access to (either temporarily or permanently):
- (a) the BarterDayz App;
  - (b) the Website or any social media pages linked to our business or the BarterDayz App; or
  - (c) any other products and services offered on, or via the BarterDayz App.
- 17.5 Cause for such suspension or termination under clause 17.4 may include, but are not limited to:
- (a) any serious or repeated breaches or violations of this agreement, our policies and guidelines (including our Privacy Policy and Acceptable Use Policy) and any other agreements entered into between the parties;
  - (b) serious or repeated breaches or violations of another person's Intellectual Property Rights or privacy rights;
  - (c) your failure to pay the Subscription Fees or any amount owing to us under this agreement (except when you are using the Free Version of the BarterDayz App or during the Trial Period);
  - (d) your activities, conduct or transactions on, or via, the BarterDayz App, brings, or has the capacity to bring, us into disrepute;
  - (e) requests by law enforcement or other government agencies.
- 17.6 You agree that all such suspensions or terminations shall be made at our sole discretion and that we shall not be liable to you or any third party for any such suspension or termination.
- 17.7 On termination of this agreement for any reason:
- (a) all licences and rights of access to the BarterDayz App granted under this agreement will immediately terminate;
  - (b) you must immediately pay all outstanding Subscription Fees and any other fees and charges you may owe us under this agreement; and
  - (c) you will deliver all goods or perform all services you have agreed to exchange or trade prior to the date of termination but which remain undelivered or unperformed at the date of termination; and
  - (d) we will delete or de-activate your Account.
- 17.8 If you do not pay the Subscription Fee in advance for the next billing period, you will automatically revert back to the Free Version of the BarterDayz App and your right to use the advanced functions and features of the BarterDayz App will cease.
- 18. Third party links**
- 18.1 You acknowledge that the BarterDayz App may contain third party content or content that may link to other websites, tools, links, applications, services, products or resources on the Internet. These websites, tools, links, applications, services, products or resources are not under our control and are not maintained by us. We are not responsible for the content of those websites, tools, links, applications, resources, products or services, and accept no responsibility for them or for any loss or damage that may arise from your use of them (notwithstanding anything else contained herein). We only provide links to third party websites, applications or tools for your information and convenience.
- 18.2 Links, references or other connections to these websites, tools, applications, resources, products or services do not imply any endorsement of them or any association with their owners, operators or advertising material (as the context permits).
- 18.3 Your linking to or from these sites, or use of, or reliance on, such websites, resources, products or services is at your own risk. You should carefully review the

terms and conditions and privacy policies of all off-site pages and other websites or third-party suppliers that you visit or transact with.

## **19. Dispute Resolution**

19.1 You must, before resorting to court proceedings, refer any dispute with BarterDayz (excluding any dispute between you and another user of the BarterDayz App in connection with a transaction) under or relating to this agreement initially to a nominated representative of each party to endeavour to resolve the dispute within 20 days. If the dispute is not resolved within this period, then either party may, in its absolute discretion, initiate court proceedings.

19.2 If there is a dispute between you and another user of the BarterDayz App relating to, or in connection with, any transaction, trade, exchange, supply or delivery of goods and/or services, the parties must resolve the dispute between themselves (and not involve BarterDayz).

## **20. Force Majeure**

We will have no liability to you or anyone else under this agreement if we are prevented from or delayed in performing our obligations under this agreement or otherwise, or are otherwise prevented from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control. Such events include strikes, lock-outs or other industrial disputes, pandemics, epidemics, mandatory government shut-downs or lockdowns, failure of a utility service or transport or telecommunications network, acts of God, natural disasters, , sabotage, war, riot, civil commotion, computer hacking, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, pandemics, or default of hosting or data centre providers or other suppliers or sub-contractors, shortage of suppliers, equipment and materials (**Force Majeure Event**).

## **21. Notice**

21.1 By accessing and using the BarterDayz App, you accept that communication with us will be mainly electronic. We will contact you by email, SMS or provide you with information by posting notices on the BarterDayz App.

21.2 You acknowledge that all contracts, notices, information and other communication (**notices**) we may provide electronically comply with any legal requirements that such documents be in writing.

21.3 Notice will be deemed received and properly served immediately when posted on the BarterDayz App or 24 hours after a notice is sent to you. As proof of service, it is sufficient that the email was sent to the email address specified by you in the Registration Portal.

## **22. Updates and variations**

22.1 Without notice to you, we may, at our absolute discretion, from time to time:

- (a) change, add or delete the functions, features, performance, or other characteristics of the BarterDayz App; or
- (b) apply or install updates to, or new versions of, the BarterDayz App.

22.2 You acknowledge that the BarterDayz App and Content is subject to change at any time and may be out of date at any given time. We are under no obligation to:

- (a) update, correct or fix any Content or the BarterDayz App; or
- (b) notify you of any changes to the Content or the BarterDayz App unless required by Relevant Laws to do so.

22.3 Some of the provisions contained in this agreement may also be superseded by provisions or notices published elsewhere on the BarterDayz App. Any changes are effective immediately upon posting to the BarterDayz App. Your continued use of the BarterDayz App thereafter constitutes your acceptance of all such changes to the agreement.

22.4 Please read this agreement before using the BarterDayz App as the agreement may have changed since the last time you accessed and used the BarterDayz App. If you do not agree to any change,

then you must immediately stop using the BarterDayz App.

### **23. General**

- 23.1 A waiver of any right under this agreement is only effective if it is in writing, and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 23.2 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 23.3 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 23.4 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangements, understandings or agreements between them relating to the subject matter they cover.
- 23.5 Neither party shall, without the prior written consent of the other party (which will not be unreasonably withheld) assign or transfer all or any of our rights or obligations under this agreement, except that we may assign, sell or transfer our rights or obligations under this agreement to any of our Affiliates or bona fide third party purchaser of our business.
- 23.6 Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way.
- 23.7 The laws of the state of New South Wales govern this agreement. You agree to submit to the exclusive jurisdiction of the courts of the state of New South Wales.

### **24. Contact Us**

If you have any questions about this agreement, please contact us via email at [admin@barterdayz.com](mailto:admin@barterdayz.com).

### **25. Definitions**

25.1 In this agreement, the following words shall have the following meanings:

- (a) **Account** has the meaning in clause 5.1.
- (b) **Affiliate** means in relation to any party, a person which, directly or indirectly, (i) is Controlled by that party; or (ii) Controls that party; or (iii) is Controlled by a person referred to in (ii) above, and for this purpose **Control** means the power of a person to secure (whether by the holding of shares, possession of voting rights or by virtue of any powers conferred by articles of association, constitution, partnership agreement or other document regulating such person) that the affairs of another are conducted in accordance with its wishes.
- (c) **BarterDayz App** means the online trading marketplace made available through a mobile application (including all Intellectual Property Rights contained therein) which allows users to trade or exchange goods and/or services with others users in a specific location.
- (d) **BarterDayz IP** has the meaning in clause 13.1.
- (e) **Business Day** means any day which is not a Saturday, Sunday or public holiday in New South Wales.
- (f) **Business Hours** means 9:00am to 5:00pm local time on Business Days.
- (g) **Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whether present or future, fixed or unascertained, actual or contingent, at law, in equity, under statute or otherwise.
- (h) **Consequential Loss** means the following, however arising and even if it is reasonably contemplated by the parties on the date you created your Account as a likely result of breach of the agreement:
- (i) direct, indirect, consequential, incidental, special, remote or unforeseeable loss, damage, cost or expense;

- (ii) loss of revenue, profit, income, bargain, opportunity (including marketing or advertising opportunity), use, production, customers, business, contract, goodwill, or anticipated savings, loss caused by business interruption, or the cost of obtaining new financing or maintaining existing financing, loss of or corruption to data, loss of use of data or loss of privacy;
  - (iii) costs or expenses incurred to prevent or reduce loss or damage which otherwise may be incurred or suffered by a third party; or
  - (iv) loss or damage of the nature set out above in clauses (i) to (iii) (inclusive) that is incurred or suffered by or to a third party.
- (i) **Content** means all the content, information, text, data, materials, graphics, logos, button icons, images, video and audio clips, trade marks (whether registered or not), layout, arrangement, graphical user interface, look and feel, databases, functionality and control features of the BarterDayz App.
- (j) **Excluded Goods and Services** means all or any of the following:
- (i) endangered species of flora and fauna;
  - (ii) firearms;
  - (iii) hazard goods;
  - (iv) drugs, medicines and therapeutic substances;
  - (v) pornography;
  - (vi) financial products or services;
  - (vii) any property, equipment or item that is the subject of any current criminal or civil proceedings, including the proceeds of crime;
  - (viii) recalled products;
  - (ix) any other property, equipment or item that is prohibited by any state or federal authority or regulatory body;
  - (x) prostitution services or adult escort services; and
  - (xi) stolen goods or goods otherwise unlawfully obtained.
  - (xii)
- (k) **Force Majeure Event** has the meaning in clause 20.
- (l) **Free Version** has the meaning in clause 10.1.
- (m) **Insolvency Event** means any of the following:
- (i) a receiver, receiver and manager, liquidator, provisional liquidator, controller or any form of external administrator has appointed over a party or any property belonging to the party;
  - (ii) the party enters into a scheme, arrangement, agreement or compromise with its creditors or calls a meeting of creditors;
  - (iii) the party becomes bankrupt or insolvent; or
  - (iv) the party has a winding-up or bankruptcy petition presented against it.
- (n) **Intellectual Property Rights** means designs, copyright, trade marks, patents, operations, software or systems, trade names and domain names, rights in goodwill, rights in confidential information, databases or other intellectual property rights, whether under statute, common law, equity, custom or usage, and whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights and all similar rights which subsist or will subsist now or in the future in any part of the world.
- (o) **Locality** means the geographic radius or location selected by you or another user on, or via, the BarterDayz App which are the same or overlapping.
- (p) **Loss** means loss, damage, liability, charge, expense, outgoing, payment or cost of any nature or kind, including all legal and other professional costs including Consequential Loss.
- (q) **Personnel** means any director, officer, employee, contractor or agents, of a party (in your case, includes any person acting for or on your behalf).
- (r) **Personal Information** has the meaning set out in section 6 of the *Privacy Act 1988 (Cth)*.

- (s) **Relevant Laws** means any relevant rules of common law, principles of equity, international, federal, state and local laws, statutes, rules, regulations, proclamations, ordinances and by-laws and other subordinate legislation, rulings, or legal requirements and Privacy Laws, anywhere in the world.
- (t) **Privacy Policy** means our privacy policy, which is incorporated into this agreement.
- (u) **Registration Portal** means the registration portal on BarterDayz App used by you to create an Account on, or via, the BarterDayz App.
- (v) **Trade Listing** means goods or services listed, displayed or offered for trade or exchange by you or another user (as the context permits) on, or via, the BarterDayz App, including, but not limited to, images, photographs and descriptions of such goods or services.
- (w) **Subscription Fees** means the fees payable by you to access and use the advanced or premium features and functions of the BarterDayz App for the Term as further described on the BarterDayz App and/or Apple Store or Google Play.
- (x) **Trade Review** means a review about a user published on the BarterDayz App by other users, and which may contain information or details relating to a failed trade request with the user or if a trade request was accepted, the accuracy, completeness, quality or performance of the goods or services provided by the user.
- (y) **Term** has the meaning in clause 4.
- (z) **Third Party Payment Processor** means Apple Pay, Google Pay and any other a third party payment processors from time to time.
- (aa) **Trial Period** means 2 weeks from the date you register and setup your Account.
- (bb) **user** means a person or entity who accesses and uses the BarterDayz App, and where context permits, may include you.
- (cc) **User Profile** means your user profile that is displayed on the BarterDayz App and which contains your full name, profile picture or business logo, Service Location, Trade Reviews, trading history and Trade Listings.
- (dd) **Website** means the BarterDayz website located at [www.barterdayz.com](http://www.barterdayz.com) and social media linked page or any other internet site notified by BarterDayz from time to time.
- (ee) **you or your** has the meaning in clause 1.1 and where the context permits, includes your Affiliates and Personnel.