

FLIPPA NON-DISCLOSURE AGREEMENT

This Agreement relates to the use and disclosure of Confidential Information disclosed by a Seller to a Buyer or vice versa in relation to a Transaction.

Subject to the following section, this Agreement will apply automatically to all Confidential Information disclosed between the Seller and a Buyer.

WHERE THIS AGREEMENT DOES NOT APPLY

Subject to the section marked "FLIPPA.COM SERVICES AGREEMENT" below (which will bind the Seller and the Buyer), this Agreement will not apply if the Seller, on their Listing, specifies that a different non-disclosure agreement will apply to the use and disclosure of Confidential Information between the Seller and the Buyer.

PARTIES

The parties to this Agreement are the Seller and the Buyer. This Agreement will apply to you in your capacity as either a Seller or a Buyer in respect of the disclosure and use of Confidential Information in relation to a Transaction.

DATE OF THIS AGREEMENT

This Agreement will be entered into between the Seller and the Buyer at the earlier of:

- (a) the Buyer and the Seller indicating through Flippa.com (or via any other means) that they agree to be bound by this Agreement;
- (b) the Buyer placing a bid in an Auction for the Seller's Website; or
- (c) the Buyer making any other offer to purchase the Seller's Website (including without limitation, offers made via a Private Sale).

FLIPPA.COM SERVICES AGREEMENT

By using Flippa.com, you have agreed to be bound by our Flippa.com User Agreement ("**Services Agreement**"). A copy of that agreement may be found here:

<http://flippa.com/termsandconditions>

To the extent that there is any inconsistency between the terms of this Agreement, any other agreement between you and another Buyer or Seller, and the Services Agreement, then those documents will be read in the following order of precedence:

- (a) first, the Services Agreement will take precedence over all other documents; and
- (b) second, any separate agreement between you and another Buyer or Seller will take precedence over this Agreement (apart from **clause 8** of this Agreement which will take precedence over that separate agreement).

FLIPPA DOES NOT PROVIDE YOU WITH LEGAL ADVICE

You acknowledge that if you choose to use the terms and conditions of this Agreement in relation to the use and disclosure of Confidential Information between a Buyer and Seller:

- (a) The terms and conditions of this Agreement have been provided by Flippa as a suggested set of terms and conditions for Buyers and Sellers to use in relation to the use and disclosure of their Confidential Information. It is not mandatory for Buyers and Sellers to choose to be bound by these terms and conditions.
- (b) You have had the opportunity to obtain legal advice in relation to the use of these terms and conditions and their suitability for your purposes.
- (c) By providing these terms and conditions to you, Flippa does not warrant that they are suitable for your needs nor is Flippa providing you with legal advice in relation to them.

TERMS

If you agree to be bound by this Agreement, then, in addition to the above terms and conditions, the following terms and conditions will apply to you in your capacity as either a Buyer or as a Seller in relation to the use and disclosure of Confidential Information.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following words will have the following meanings, unless the context otherwise requires:

- (a) The terms **“Auction”**, **“Buyer”**, **“Flippa”**, **“Flippa.com”**, **“Listing”**, **“Private Sale”**, **“Seller”** and **“Website”** will have the meanings given in the Services Agreement.
- (b) **“Confidential Information”** of a party will refer to all information of a confidential or sensitive nature of that party including, without limitation, all information relating to the Transaction, due diligence information and materials, financial information, the party’s customers and suppliers, marketing plans, employees, contractors, the party’s intellectual property, trade secrets, drawings, know-how, plans, models, techniques, source and object code. Confidential Information will also include, without limitation, any of the preceding information in relation to the party’s related bodies corporate or affiliated entities.
- (c) **“Recipient”** means a party who receives Confidential Information from the other party. For the avoidance of doubt, both the Seller and the Buyer may be bound by the obligations imposed on a Recipient under this Agreement.
- (d) **“Transaction”** means the sale or potential sale of the Seller’s Website to the Buyer.

1.2 For the purpose of this Agreement:

- (a) a reference to:
 - (i) one gender includes the others;

- (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a body corporate;
 - (iv) a party includes the party's executors, administrators, successors and permitted assigns; and
 - (v) any statutory provision includes any amended or re-enacted version of it from time to time and any replacement statutory provision; and
- (b) "including" and similar expressions are not words of limitation;
 - (c) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
 - (d) headings do not form part of this Agreement or affect its interpretation.

2. AGREEMENT TO MAINTAIN CONFIDENTIALITY

Each party agrees to maintain the confidentiality of the Confidential Information of the other party and to not use, or disclose that Confidential Information to any person, other than as permitted by this Agreement. Each party acknowledges however that nothing in this Agreement requires a party to disclose any of their Confidential Information to the other party or to enter into a Transaction with the other party.

3. USE OF CONFIDENTIAL INFORMATION

A party may only use the Confidential Information of the other party solely for the purposes of evaluating the Transaction and/or for entering into and undertaking the Transaction with the other party. The Confidential Information must not be used for any other purpose.

4. WHAT A PARTY CAN DISCLOSE

4.1 A Recipient of another party's Confidential Information, may disclose any part of that Confidential Information which:

- (a) is in the public domain (other than through a breach of this Agreement);
- (b) is set out in the Seller's Listing;
- (c) the Recipient can prove through documentary evidence it had knowledge of prior to entering this Agreement;
- (d) was obtained by the Recipient from an independent third party (apart from where the disclosure of the Confidential Information by the independent third party was in breach of an obligation of confidentiality owed to the other party);
- (e) the Recipient discloses to its employees who have a need to know the Confidential Information solely for the purposes of evaluating, entering into and/or implementing the Transaction;
- (f) the Recipient is required to disclose by law; or

- (g) the Recipient discloses to its professional advisors, consultants or financiers solely for the purpose of seeking advice, but only where such professional advisors consultants or financiers are under an obligation to maintain the confidentiality of the Confidential Information.

5. MUTUAL OBLIGATIONS

- 5.1 Each party must destroy or return to the other party, any Confidential Information of the other party in its possession within **7 days** of receiving written notice from the other party requesting the destruction or return of such Confidential Information (as the case may be).
- 5.2 Each party must use its reasonable endeavours to:
 - (a) keep the Confidential Information of the other party secure and protect the Confidential Information of the other party from unauthorised use, disclosure, access, damage or destruction; and
 - (b) do anything reasonably required by the other party to restrain a breach of this Agreement or any infringement of the other party's rights arising out of this Agreement by any person.

6. INJUNCTIONS

Each party agrees that if conduct is engaged in or threatened which is or may be a breach of this Agreement, then subject to the court's discretion, a party may restrain any such conduct or threatened conduct by injunction or other remedy.

7. WHEN THIS AGREEMENT TERMINATES

Unless otherwise agreed in writing between the parties, the obligations of each party under this Agreement will terminate 5 years after the date of this Agreement.

8. LIABILITY OF FLIPPA AND ITS THIRD PARTY PROVIDERS

The parties each acknowledge and agree:

- (a) Flippa and its third party service providers are not parties to this Agreement; and
- (b) Flippa and its third party service providers shall each not be liable or responsible for any breach of this Agreement by any party to this Agreement.

9. MISCELLANEOUS

- (a) Any notice given under this Agreement must be in writing and must be signed by the party or its agent giving the notice. A notice is taken to be received:
 - (i) in the case of a notice delivered by hand, when so delivered;
 - (ii) in the case of a notice sent by pre-paid post, on the third day after the date of posting;

- (iii) in the case of a notice sent by facsimile, upon the receipt by the sender of a transmission report from the despatching facsimile machine which confirms that the facsimile has been successfully sent; or
 - (iv) in the case of a notice sent by email, (including, without limitation, an electronic messages sent via Flippa.com) upon the receipt by the sender of a confirmation from the recipient or the recipient's email server that the email has been received by the recipient.
- (b) A right under this Agreement may only be waived by a notice in writing given by the party who takes the benefit of that right.
- (c) If any provision of this Agreement is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of this Agreement to the intent that the invalid or unenforceable provision will be treated as severed from this Agreement.
- (d) This agreement is governed by, and must be construed in accordance with, the laws of the State of Victoria, Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Victoria, Australia and their Courts of Appeal.