



## Terms of use

This website, accessible at [motyl.com.au](http://motyl.com.au) and its related services, products, websites, tools and applications is owned and operated by Motyl Interiors Pty Ltd and Motyl Shopfitters Pty Ltd ("Motyl Group"). By accessing and using the Website you agree to the following terms. We may update these terms from time to time at our discretion without notice to you. The updated terms come into effect upon publishing. Accordingly, each time you use our Website you should revisit these Terms of Use.

## Definitions and Interpretation

### 1.1 Definitions

In these Terms of Use unless inconsistent with the context or subject matter:

- (a) Account means a User's online account to use our Website;
- (b) Applicable Laws means any applicable laws (including orders, by-laws and regulations) in the jurisdiction in which you are located or which in any way govern or affect the use of the Services;
- (c) Content includes written and visual content used for the Services and on the Website including any material, text, pictures, sound, image, artwork, computer code, graphics, video and other data;
- (d) Intellectual Property means all intellectual property rights, including without limitation inventions, patents, copyright, trademarks, know-how, processes, concepts, including Content, the Website including any other platform developed by Motyl Group and the source code for those systems and any application or right to apply for registration of any of the these rights throughout the world whether registered or unregistered and whether developed before or after the date of these Terms of Use;
- (e) our, us and we means Motyl Group and its related entities and related bodies corporate (as defined in the Corporations Act 2001 (Cth)) and its officers, personnel, subsidiaries and affiliates;
- (f) Personal Information has the same meaning appearing in section 6 of the Privacy Act 1988 (Cth);
- (h) Privacy Policy means our privacy policy accessible on the Website;
- (i) Services means any services and products we provide to you, including but not limited to the provision of the Website and related functions and services;
- (j) Terms of Use means this document;
- (k) User means any person who uses the Website;
- (l) you and your means a consumer of the Services.

### 1.2 Interpretation

In these Terms of Use, unless inconsistent with the context or subject matter:

- (a) a reference to a person includes any other legal entity and vice versa;
- (b) words importing the singular number include the plural number and vice versa;
- (c) a reference to a party includes the party's heirs, executors, successors and permitted assigns;
- (d) headings are for reference purposes only;
- (e) where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
- (f) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail;
- (g) unless otherwise stated, a reference to a monetary amount is a reference to an Australian dollar currency amount; and
- (h) an obligation of two or more parties binds them jointly and each of them severally.

## Using the Motyl's Website

2.1 The Website provides general information and information regarding architectural designs and architectural lining systems. It is intended to complement our personal services but not replace them. We encourage you to contact us directly.

2.2 Your use of the Services is subject to these Terms of Use. By accessing and using the Services, you agree to and accept these Terms of Use which form a binding contract between you and Motyl Group.

2.3 Your use of this Website is by personal, non-exclusive licence granted by us strictly in accordance with these Terms of Use to use, access, download, view, copy and print the Services and Content available on the Website for your sole use as a licensee. As a condition of this grant of licence, you agree not to distribute Content to any third party. For enquiries for additional uses not permitted by these Terms of Use, please contact us.

2.4 Our Services are available only to, and may only be used by, persons who can form legally binding contracts under Applicable Laws. If you do not qualify, you must not use our Services.

2.5 Your use of the Website, our Services, and information you provide, must not:

- (a) be false, inaccurate or misleading;
- (b) be fraudulent or deceptive;
- (c) infringe any third party's copyright, patent, trademark, trade secret, intellectual property or other proprietary rights or rights of publicity or privacy;
- (d) violate any Applicable Laws (including those governing consumer protection, unfair competition, criminal law, anti-discrimination or trade practices law);
- (e) be defamatory, libellous, unlawfully discriminatory, threatening or harassing;
- (f) be obscene or contain comments of a religious, political or social nature;
- (g) contain any viruses, trojan horses, worms, time bombs, trap doors, back doors, easter eggs, spiders, robots, screen scrapers, data aggregation tools or other devices or other computer programming routines that may or are intended to damage, modify, delete, interfere with, surreptitious intercept, access without authority or expropriate any system, data or personal information or otherwise affect the integrity, operation or security of the Website;
- (h) create liability for us or cause us to lose (in whole or in part) the services or custom of our internet service provider, other Users or other suppliers;
- (i) damage the credibility or integrity of the Website or Motyl Group, or dilute, tarnish, or otherwise harm our brand in any way;
- (j) breach or violate any of our policies;
- (k) copy, store or otherwise access or use any information contained on the Website for purposes not expressly permitted by these Terms of Use;
- (l) use the Website for any purposes that are not permitted by these Terms of Use or in any way that is inconsistent with the purpose of the Website, or in a manner that falsely implies Motyl Group endorsement, partnership or otherwise misleads others as to your affiliation with Motyl group;
- (m) use our Website in connection with the distribution of unsolicited commercial email ("spam") or advertisements;
- (n) attempt to gain unauthorised access to the Website or computer systems or networks connected to the Website through any means;
- (o) interfere with or disrupt the Website or servers or networks connected to the Website, or disobey any requirements, procedures, policies, or regulations of networks connected to the Website;
- (p) reverse engineer, decompile or disassemble the Services or the Website or any part thereof;
- (q) tamper with, hinder the operation of or make unauthorised modifications to the Website or any part thereof;
- (r) collect, store, input, upload, post, disclose or transmit personal information or data about others, including, without limitation email addresses; or
- (s) stalk or harass any other User or collect or store any personally identifiable information about any other User.

## **Your Account**

3.1 To access and use the Website, you may need to register with us and set up an Account with your email address and a password. You are solely responsible for maintaining the confidentiality of your password and you are liable for all activities that happen under your Account, even if you do not authorise such activities.

3.2 If we enable you to connect to the Website with a third-party service (e.g. Facebook or Google+), you hereby grant us permission to access, store, and use your Information from that service as permitted by that service and as may be described in our privacy policy. You should contact us immediately if you believe your Account has been compromised or misused in any way.

3.3 When you notify us of your Account being accessed without your authority or your Account not being secure, we may restrict your use of the Services in our absolute discretion.

## **Services**

4.1 Information provided by us on our Services constitutes an invitation to treat and not an offer. All Services supplied by us are subject to additional terms and conditions which will be supplied to you at the time that an order enquiry is made. You agree to notify us if you do not agree to such other terms and conditions or otherwise abide by them.

4.2 You may find out more information regarding our Services by following the instructions on the Website, including the ability to download files.

4.3 We reserve the right in our sole discretion to charge you a fee, and to modify or terminate any fees, services or charges on the Website at any time and without prior notice. If we charge a fee for a Service, the fee payable by you for that Service will be the then current stated fee on the Website or other amount as stated in additional terms and conditions. For the most up to date fee information, contact us.

## **No Advice**

6.1 The Content on the Website and in any linked or referred to materials or websites is not and should not be construed as architectural or other advice. The Content is provided as a convenience to you and is to be taken as general information only.

6.2 This Website is not intended to establish a relationship between us and you, nor is it intended to replace the services of a professional architect or adviser. The Website should not be relied on as a substitute for any professional advice.

6.3 You should not rely on any information contained in the Website or linked or referred to materials or websites in making any decisions of any kind.

## **Sign Up Forms**

- You may submit your information to us for the purpose as identified by the sign-up form on the Website (such as for a quote).
- You represent and warrant by submitting any form on the Website that:
  - the information provided in the form is valid and correct in all respects, and that you have not engaged in misleading or fraudulent conduct;
  - you have the right to submit this information;
  - you have read and consent to the purpose for which the information is gathered (which will be made known to you at the time of collection).

## **Links to Other Websites**

8.1 The Website may contain links to other third-party websites. These links are provided solely as a convenience and not as a guarantee or recommendation by us for the services, information, opinion

or any other content on such third party websites or as an indication of any affiliation, sponsorship or endorsement of such third party websites. If you decide to access a linked website, you do so at your own risk.

## **Access and Termination**

9.1 We reserve the right, at any time and without prior notice, to remove or disable access to this Website or any part of it, including your Account, for any reason and you agree that we are not liable for any loss suffered by you or any third party as a result of the removal or disablement of this Website.

9.2 These Terms of Use will continue to apply until terminated or superseded by us. You can terminate your agreement with us by discontinuing your use of the Services at any time. You do not need to inform us if you choose to discontinue use of the Services.

9.3 We may also terminate our agreement with you or cease providing all or any part of the Services immediately without notice to you if:

- (a) you breach any of the Terms of Use or act in a manner that demonstrates you are unable to or do not intend to comply with them, in our opinion;
- (b) where we are required to by law, for example due to a change in law governing the Services;
- (c) the Services relies on data or services provided by a third party partner and the relationship with such partner has expired, been terminated or altered in a manner which we consider to be adverse;
- (d) provision of the Services is no longer commercially reasonable to us.

## **Intellectual Property Rights**

10.1 You acknowledge and agree that:

- (a) you will not copy, reproduce, alter, modify, create derivative works, or publicly display (other than on the Website) any Motyl group Intellectual Property except with the prior written permission of Motyl Group or the appropriate third party authorised to grant such permission and when doing so you must adequately acknowledge us and, in the case of websites, include a link from your website to our Website;
- (b) Motyl Group owns all Intellectual Property of the Website and no right, title or interest in any of the Intellectual Property is transferred or granted to you, except so far as expressly stated in these Terms and Conditions;
- (c) any works, items, materials or information of whatever nature produced or developed or discovered in connection with the shall remain the sole and exclusive property of Motyl Group, whether such property is tangible or is in the nature of industrial and intellectual property rights (including copyright and rights of confidential information) and you will promptly sign all documents and do all things necessary to register, vest or transfer any interest or ownership in such additional or further property to Motyl Group;
- (d) you acknowledge that when you provide us with Content, we may receive additional related data, such as the time, date and place you provided the Content;
- (e) when you provide us with Content you agree to allow us to distribute or use that Content as we consider necessary in accordance with our Privacy Policy;
- (f) Motyl Group is not liable or responsible for any loss that you may experience in submitting Content to Motyl Group or for Motyl Group's use of your Content in accordance with the licence granted; and
- (g) you must not falsely express or imply a relationship between you and Motyl Group

10.2 Any of the foregoing, whether merely attempted or successfully executed, is a material breach of these Terms of Use and your use of the Services will be immediately terminated without notice or compensation to you.

10.3 Motyl Group may in its sole and absolute discretion refuse or remove any Content from the Website.

## **Disclaimer**

11.1 You acknowledge and agree that your use of this Website is at your own risk. We provide our Services on an "as-is" and "as available" basis and whilst every effort is taken to ensure the Content

and Website is accurate, we make no representations and give no warranties about the currency, suitability, reliability, availability, timeliness and/or accuracy of the Content and the Website for any purpose. To the maximum extent permitted by applicable law, anything contained in this Website is without warranty of any kind and we expressly exclude such warranties.

11.2 We are not responsible for any information made available on the Website. We do not make any representations in relation to the continuing availability of the Services or the Website and will not be liable for the Services or Website being unavailable or discontinued. We do not promise that the Website or any Content will be error-free or uninterrupted, or that your use of the Website will provide any specific results. We do not represent or warrant that your use of the Services will meet your particular requirements, whether those requirements are disclosed to us or not. You assume total responsibility for your use of the Website. We cannot ensure that any files or other data you download from the Website will be free of viruses or contamination or destructive features.

11.3 This disclaimer applies to the fullest extent permitted by law and shall survive any termination or expiration of these Terms of Use or your use of the Services.

### **Limitation of Liability**

12.1 In no event shall we or our officers, directors, employees, agents, contractors or other personnel be liable for any direct or indirect loss, damage, cost or expense suffered by you arising in connection with your use of, or reliance upon, the Content or the Website. The limitation and exclusion of liability in this clause applies whether the liability claim is based on breach of contract, under a warranty or an indemnity, tort (including negligence), under statute, in equity or otherwise.

12.2 You expressly understand and agree that we will not be liable to you for:

(a) any direct, indirect, incidental, special, consequential or exemplary damages that may be incurred by you, howsoever caused and under any theory of liability including but not limited to loss of profit, loss of goodwill or business reputation, loss of data, costs of procurement of substitute goods or services, or other intangible losses;

(b) any reliance placed by you on the completeness, accuracy or existence of any Content, including but not limited to advertising or as a result of any relationship or transaction between you and any third party who is in any way associated or appears on the Website or on the Services;

(c) any changes that we make to the Services or any permanent or temporary cessation of the provision of the Services or any features thereof;

(d) the deletion of, corruption of, or failure to store any Content and other communications or data maintained or transmitted by or through your use of the Website or the Services

(e) Your failure to provide us with accurate account information or your failure to maintain your account or secure your account details including but not limited to your password;

and you agree that this is a proper allocation of risk in the circumstances and will apply whether you have advised us or we should have been aware of the possibility of any such loss or damages.

12.3 This limitation of liability applies to the fullest extent permitted by law and shall survive any termination or expiration of these Terms of Use or your use of our Services.

### **Indemnity**

13.1 You agree to indemnify and hold us and our officers, directors, agents, employees and contractors harmless from and against any actions, claims, demands, proceedings, loss of every kind and nature, known and unknown, including legal fees (on a solicitor and own client basis) and claims made by third parties, due to or arising out of:

(a) your use of the Website or your violation of any law or the rights of a third party;

(b) your breach of these Terms of Use; and/or

(c) our acts or omissions in respect of the Website.

### **Privacy**

14.1 The Privacy Policy applies to your use of this Website, and its terms are incorporated into these Terms of Use by this reference.

14.2 By using this Website you acknowledge and agree that internet transmissions are never

completely private or secure and understand that any message or information you send to the Website may be read or intercepted by others.

14.3 You authorise us to use, store or otherwise process any information including personal information which relates to and/or identifies you, to the extent reasonably necessary for the provision of any goods and services requested by you.

## **Miscellaneous**

15.1 Accessing information from the Website is done at your own risk and you will be responsible for compliance with the laws applicable within your jurisdiction.

15.3 These Terms of Use shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.

15.4 If a clause of these Terms of Use is void or unenforceable it must be read down to the minimum extent necessary to ensure compliance with the law. If it cannot be read down, the term is to be severed from these Terms of Use and the clauses that are not void or unenforceable shall be unaffected by the severance.

15.5 You agree that these Terms of Use and all incorporated agreements may be assigned by us in our sole discretion without notice. You may not assign these Terms of Use without obtaining our prior written consent which may be withheld in our absolute discretion.

15.6 Our failure to enforce a provision of these Terms of Use or act with respect to a breach by you or others does not constitute a waiver of that provision or breach or a waiver of our right to act with respect to that breach or subsequent or similar breaches. The waiver of any such provision or breach will be effective only if in writing and signed by a duly authorised representative of Motyl Group.

15.7 You agree that these Terms of Use may not be construed adversely against us solely because we prepared them.

15.8 These Terms of Use and our policies comprise the entire understanding and agreement between you and us with respect to the subject matter hereof.

15.9 Nothing in these Terms of Use or your use of the Website establishes or creates a joint venture, partnership, consortium, franchise, employment or agency relationship between Motyl Group and its Users.