

Business Australia Terms of Business

Which terms apply to you?

The terms that apply to you as a Business Australia member or customer (or an authorised user of a Business Australia member or customer) vary depending on which of our products and/or services you have ordered and subscribe to. You must read and accept the terms relevant to each of our products and/or services that you have ordered and subscribed to.

For:

- **Member+**, please see the [Member+ Terms](#) below; and
- **Business Australia Cyber** subscriptions, please see the [Cyber Terms](#) below.

Publication

These terms of business are available at <https://www.businessaustralia.com/ecommerce-terms-of-use>.

Contact us

If you are unsure which terms apply to you please contact us by phone on 13 26 96, by email at onlinesupport@businessaustralia.com or by writing to us at:

Attention: Business Australia – Product and Operations Department
140 Arthur Street, North Sydney NSW 2060

Formation of binding agreement(s)

By proceeding to purchase or subscribe to any of the products/services noted above a binding agreement between us on the terms linked above for each product/service so purchased will be formed once the relevant tick box on the 'checkout page' at <https://store.businessaustralia.com/checkout/cart/> has been ticked and the purchase has been finalised

Member+ Terms

1 The Terms

1.1 What the Terms cover

These Terms are the terms on which we sell the 'Member+' subscription Product (**Member+**) to you via our website, which is hosted on the domains businessaustralia.com and businessaustralia.b2clogin.com (**Platform**).

1.2 Why you should read them

Please read the Terms carefully before you purchase Member+. The Terms tell you what rights and privileges are conferred by Member+.

Breach of any of the Terms may, in our absolute discretion, result in your use of the Platform and/or subscription of Member+ ceasing.

1.3 Changes to the Terms

The Terms may change from time to time. Significant changes to the Terms will be highlighted on the Platform's login page.

1.4 When the Terms become binding on you

You agree to the Terms and that they are binding on you on the earliest of you placing an Order.

1.5 Other Terms applicable to you

By accessing the Platform (including to purchase Member+) you agree to the Website Terms of Use, which are accessible at <https://www.businessaustralia.com/website-terms-of-use> whether or not you purchase Member+. Also, as per clause 3.2, all Members will also be subject to and bound by the Membership Terms and Conditions.

2 Our relationship with you

2.1 You

You are 18 years of age or older.

2.2 How to contact us

You can contact us in relation to an Order by phone on 13 26 96, by email at onlinesupport@businessaustralia.com or by writing to us at:

Attention: Business Australia - Product and Operations Department, 140 Arthur Street North Sydney NSW 2060

2.3 How we may contact you

If we have to contact you we will do so using the telephone number, email address and/or postal address that you provide us by creating a Member Account or when placing an Order.

3 Membership and your member account

3.1 Eligibility to purchase Member+

You must first apply and be admitted as a Member of the Company (in a membership class other than the Honorary Member membership class) before you can purchase Member+.

3.2 Becoming a Member

You can apply to become a Member and open a Member Account by visiting <https://www.businessaustralia.com/> and clicking 'Join for Free' at the top of the page and then following the prompts to complete the membership application process. On completion of the membership application process you will be provided with login details for your Member Account.

The Membership Terms and Conditions, accessible at <https://www.businessaustralia.com/membership-terms-and-conditions>, and the Constitution, accessible at <https://www.businessnsw.com/about/Governance/constitution>, apply to you on becoming a Member whether or not you purchase Member+.

3.3 Logging into your Member Account

To purchase Member+ you must first log into your Member Account. You do so at the login page which is accessible by visiting <https://www.businessaustralia.com/> and clicking 'Login' at the top of the page.

3.4 You must keep your login details confidential and safe

You must keep your login details safe and must not share them with any person other than Authorised User(s). You are responsible for any actions of your Authorised User(s) and/or taken using your Member Account, whether or not they are taken by the Member or any Authorised Users. If you lose or forget your login details or notice any suspicious activity associated with your Member Account, you must notify us immediately using the contact details in clause 2.2.

You must not use any other person's login details to access the Platform (except where you are an Authorised User of a Member and you use that Member's login details to access the Platform).

3.5 Maintaining your Member Account

You can edit the details associated with your Member Account on the Platform by logging in using your login details and clicking 'My Account'. You must always keep these details up to date.

4 Purchasing Member+

4.1 Ordering Member+

You can place an Order for Member+ by:

- (a) adding Member+ to your 'cart'; and
- (b) clicking the 'Complete Purchase' button and making successful payment of the total purchase price.

Doing so constitutes your offer to us to purchase Member+ in your 'cart' at the price(s) indicated on the Platform.

4.2 How we will accept your Order

Our acceptance of your Order is subject to payment of the associated price and will take place when you receive an email from us notifying you that we have accepted your Order. Please contact us by phone on 13 26 96 or by email at onlinesupport@businessaustralia.com if you have not received an email confirming your Order from us within 24 hours of placing your Order.

4.3 If we cannot accept your Order

If we are unable to accept your Order for any reason we will inform you of this by email and cancel your Order. This might occur because of limits on our computing resources or an unexpected technical error.

4.4 Your Order number

Your Order will be assigned a unique transaction ID which we will include on any email we send pursuant to clauses 4.2 or 4.3. If you contact us about any Order, we may require you to quote the relevant transaction ID number or your Member number or email address.

5 Changes to Member+

At any time we may make minor changes to Member+ and/or the benefits associated with Member+:

- (a) to improve Member+ to be more useful to Members in general; or
- (b) to update Member+ so it continues to accurately reflect relevant laws and regulatory requirements, which may change over time.

6 Providing Member+ to you

6.1 Benefits of Member+

Member+ is a subscription Product that attaches to a membership interest in the Company. It is not a separate membership class. It confers on Members, who purchase it, benefits in addition to those attaching to their membership class.

Member+ confers:

- (a) subject to these Terms and the terms of the Constitution, voting rights on Members whose membership class does not already confer voting rights. Subject to the Constitution, the representative (i.e. primary contact) of a Member which has voting rights is eligible to nominate for election to one or more bodies within the governance structure of the Company. For example, the relevant Regional Advisory Council, the Company's Council or the Board of the Company.
- (b) preferential access (on a 'first come first served basis' and subject to any specified period during which preferential access is made available) to Member-only events where there is a limit on attendees; and
- (c) the opportunity, as offered by the Company (in its discretion) from time to time, to participate in policy and advocacy events, activities, committees or initiatives organised by the Company.

Member+ also offers Members the ability to contribute, via their subscription for Member+, to the funding of the Company's policy and advocacy activities, the purpose of all of which is to benefit Members and Australian business more generally.

6.2 Cessation of benefits

Voting rights conferred by Member+ will immediately cease:

- (a) if you cancel or otherwise do not renew your subscription for Member+, at the end of the relevant subscription period;
- (b) if your Membership ceases for any reason;
- (c) we cancel or otherwise terminate your Member+ subscription for breach of these Terms;
- (d) if, after acceptance of your initial Order, any payment for Member+ is outstanding for more than 60 days.

Access to the benefits set out in paragraphs 6.16.1(a) and 6.1(b) will also immediately cease if you default in any payment for Member+.

6.3 When we will provide Member+ to you

You will be able to access any service or benefit (other than voting rights) associated with Member+ within a reasonable time of our acceptance of your Order having regard to the nature of the service and we will contact you with further information. Voting rights will, subject to the Constitution, be available once your Member record on the Member register has been updated to reflect the activation of voting rights (which should normally occur within 24 hours of our acceptance of your Order).

6.4 We are not responsible for delays outside our control

Some benefits or services may rely on the provision of goods or services by a third party. In such cases the delay in or failure to supply the content may be outside of our control and, if so, we will inform you of the delay and take steps to minimise the impact of such. Provided we do this we will not be liable for delays or failure to deliver caused by the event but, if there is a risk of failure to deliver or substantial delay, you may contact us to cancel your purchase of Member+ and receive a refund of the value of the benefit or service you have paid for but not received.

7 Price and payment

7.1 Where to find the price for Member+

The price for Member+ is clearly shown on the Platform. Unless otherwise noted all prices are displayed in Australian dollars inclusive of GST.

7.2 When and how to pay

When you 'check out' your cart on the Platform you will be provided with payment options. You will be required to pay for Member+ before you will be able to access or obtain it. In addition to the price of Member+ you must also pay us any applicable GST, which is included in the total price of your cart. After making successful payment of the total price of your cart the Platform will generate and automatically email you an invoice for the completed transaction.

7.3 Automatic payments

Member+ is a subscription Product. The available subscription periods for Member+ are clearly shown on the Platform. On the notified date of expiry of your subscription, your subscription will automatically renew for the subscription period you have selected unless you cancel it prior to that date. You can cancel the automatic renewal of your subscription at any time by logging into your Member

Account using your login details, clicking 'My Account' and, under the 'Manage Subscriptions' tab, clicking the 'Auto-Renew' link against your subscription and then selecting 'Cancel' under the 'Actions' tab. The subscription cancellation will come into effect at the end of your current subscription period, so you can continue to enjoy full access to the applicable benefits until that date. An email confirming the cancellation will be sent to you.

7.4 Refunds

If Member+ breaches a consumer guarantee under the Australian Consumer Law you may have the right to request a refund. Otherwise, amounts paid for Member+ are not refundable.

8 Our responsibility for loss or damage

8.1 What we are responsible to you for

If we fail to comply with the Terms and that failure is responsible for loss or damage you suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill we are liable to you, subject to clauses 8.3 and 8.4, but we are not responsible for any loss or damage that is not foreseeable or for any consequential loss or damage. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us.

8.2 You indemnify us where you breach the Terms

You agree to indemnify and hold us harmless from any demands, loss, liability, claims or expenses arising out of your use of or in connection with your use of the Platform contrary to the Terms.

8.3 Application of the Australian Consumer Law

We have certain obligations and you have certain rights under the Australian Consumer Law. We do not exclude or limit our liability to you where it would be unlawful for us to do so under that law or any other Australian law. Under the Australian Consumer Law, consumer guarantees apply in respect of Orders of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

Pursuant to section 64A of the Australian Consumer Law, the following applies in respect of any of the goods or services supplied under the Terms which are not of a kind ordinarily acquired for personal, domestic or household use or consumption (unless you establish that our reliance on the following would not be fair and reasonable). Liability for breach of a guarantee conferred by the Australian Consumer Law, other than those conferred by sections 51 to 53 of the Australian Consumer Law, is limited:

- (a) in the case of goods, to any one of the following as determined by us:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of services, to any one of the following as determined by us:

- (i) the supplying of the services again; or
- (ii) the payment of the cost of having the services supplied again.

8.4 Our total liability to you

Our total liability to you under the Terms, in negligence and/or otherwise, is limited to the fees or charges paid for Member+ by you.

9 Rules about your use of the Platform

You must not and must ensure that your Authorised User(s) that use your Member Account do not, and you and your Authorised User(s) must not attempt to, change, add to, remove, deface, hack or otherwise interfere with the operation of the Platform or any material or content displayed on the Platform unless you are authorised by us to do so.

You must not:

- (a) impersonate another person on the Platform;
- (b) provide inaccurate information about your identity on the Platform;
- (c) do anything unlawful, misleading, fraudulent or for an illegal or unauthorised purpose;
- (d) interfere with or impair the operation of the Platform or other individuals' legitimate use of the Platform;
- (e) use or attempt to use any automated computer program (e.g. a bot or web scraper) to access the Platform;
- (f) enter, upload or post any content to the Platform that is bullying, harassing, defamatory, objectionable or explicit in nature;
- (g) attempt to buy, sell or transfer your Member Account or login details to another person;
- (h) post private or confidential information about yourself or any other person; or
- (i) use the Platform to violate any other person's rights, including intellectual property or moral rights.

10 Availability and downtime

We do our best to ensure the Platform is accessible at all times. However, from time to time the Platform may not be accessible or may suffer service degradation due to scheduled maintenance such as software patches, platform upgrades and configuration changes, disaster recovery operations and/or failures or service degradation of third party systems outside the Platform infrastructure.

11 Content and intellectual property

11.1 Content on the Platform is not professional advice

Content on or available via the Platform, including content in Products, does not constitute legal, financial or business advice, is not intended as a substitute for and should not be relied on as such. You should seek professional legal, financial or business advice (as appropriate) in relation to your business' circumstances.

11.2 Who owns intellectual property?

Unless otherwise noted, all intellectual property rights in software in the Platform including any source code in the Platform, any visual content or copy displayed on the Platform and the Company logos are our property (or property of our licensors). You agree not to reproduce, transmit, distribute, disseminate, sell, publish, broadcast or circulate materials comprising the Platform or any of our intellectual property without our express prior written consent.

11.3 Intellectual property rights in content

For all Products we (and/or, as applicable, our licensees) reserve all intellectual property rights in such.

11.4 Third party websites

The Platform and digital content accessible or downloadable from the Platform may contain links to other websites operated, controlled or produced by third parties. Unless otherwise indicated, we do not control, endorse, sponsor or approve any such third party websites or their content. We do not provide any warranty or take any responsibility for any aspect of those websites or their content.

12 Your privacy

12.1 We and you are subject to the Privacy Act and the Privacy Policy

We are subject to and will comply with the Privacy Act and our Privacy Policy, which is accessible at businessaustralia.com/privacy-policy. By accessing the Platform or providing any personal information to us you acknowledge that we will collect, use and disclose your personal information (as operator of the Platform) in accordance with our Privacy Policy.

13 Other terms

13.1 Nobody else has any rights under the Terms

The Terms are between you and us. No other person has any rights to enforce any of its terms.

13.2 Even if we delay in enforcing the Terms, we can still enforce them later

If we do not insist immediately that you do anything you are required to do under the Terms, or if we delay in taking steps against you in respect of your breaching the Terms, that does not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.

13.3 Which law applies to the Terms and where you may bring legal proceedings

The Terms are governed by the laws applicable in the State of New South Wales. Both you and we are subject to the jurisdiction of the courts of the State of New South Wales.

Should a dispute, controversy or claim arise between you and us out of, relating to or in connection with the Terms, both parties must first negotiate in good faith to resolve the dispute. If (and only if) the dispute is not resolved after 15 Business Days of negotiation either party may submit the dispute to arbitration at the Australian Disputes Centre (**ADC**). The arbitration will be conducted in Sydney in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred to ADC (**ADC Rules**). The ADC Rules are hereby incorporated into the Terms.

Nothing in this clause 13.3 prevents either you or us from seeking urgent equitable relief before an appropriate court.

14 Definitions

In the Terms unless the context otherwise requires:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Authorised User means the employee, partner or officer of the Member who is authorised representative of the Member;

Business Day means a weekday that is not a public holiday in the State of New South Wales;

Company, we, us or our means NSW Business Chamber Limited (ABN 63 000 014 504) whether we trade under the trading name 'Business Australia', 'Business NSW' or another trading name;

Constitution means the constitution of the Company;

Member means an entity (whether an individual, body corporate or otherwise) that, under and in accordance with the terms of our *Membership Terms and Conditions* (<https://www.businessaustralia.com/membership-terms-and-conditions>), and the Constitution (<https://www.businessnsw.com/about/Governance/constitution>) is a member of Company and has a Member Account;

Member+ has the meaning given to that term in clause 1.1;

Member Account means the account you may use to access Member+;

Membership means the status of being a Member;

Order means a request by you to purchase Member+ via the Platform;

Platform has the meaning given to that term in clause 1.1;

Privacy Act means the *Privacy Act 1988* (Cth);

Product means any product and/or service that we offer to you for purchase on the Platform; and

You means you as a Member or as the Authorised User, as the case may be.

Cyber Terms

1 The Terms

1.1 What the Terms cover

These **Terms** are the terms on which we sell the 'Business Australia Cyber' subscription product (**Cyber**) to you via our website, which is hosted on the domains www.businessaustralia.com and www.cyber.businessaustralia.com (**Platform**).

1.2 Why you should read them

Please read the Terms carefully before you purchase Cyber. The Terms tell you how we sell the Cyber subscriptions to you, on what terms, what to do if there is a problem and other important information about your use of Cyber and will be binding on you in accordance with clause 1.4 below.

Breach of any of the Terms may, in our absolute discretion, result in your use of the Platform and/or Cyber subscription ceasing.

1.3 Changes to the Terms

The Terms may change from time to time. Significant changes to the Terms will be highlighted on the Platform's login page. Your continued use of the Platform after a change in the Terms is your deemed acceptance of the changes.

1.4 When the Terms become binding on you

You agree to the Terms and that they are binding on you when you complete the steps in clause 4.1 to place your Order and we complete the steps in 4.2 to accept your Order.

1.5 Other Terms applicable to you

By accessing the Platform (including to purchase Cyber) you agree to the Website Terms of Use, which are accessible at <https://www.businessaustralia.com/website-terms-of-use>, whether or not you purchase Cyber.

Also, as per clause 3.2, all Members will also be subject to and bound by the Membership Terms and Conditions.

2 Our relationship with you

2.1 You

You are 18 years of age or older.

2.2 How to contact us

You can contact us in relation to an Order by phone on 13 26 96, by email at onlinesupport@businessaustralia.com or by writing to us at:

Attention: Business Australia – Product Department
140 Arthur Street, North Sydney NSW 2060

2.3 How we may contact you

If we have to contact you we will do so using the email address that you provide us by creating a Member Account or when placing an Order.

3 Membership and your Cyber Account

3.1 Eligibility to purchase Cyber

You must first apply and be admitted as a Member of the Company (in a membership class other than the Honorary Member membership class) before you can purchase Cyber.

3.2 Becoming a Member

You can apply to become a Member and open a Member Account by visiting <https://www.businessaustralia.com/> and clicking 'Join for Free' at the top of the page and then following the prompts to complete the membership application process. On completion of the membership application process you will be provided with login details for your Member Account.

The Membership Terms and Conditions, accessible at <https://www.businessaustralia.com/membership-terms-and-conditions>, and the Constitution, accessible at <https://www.businessnsw.com/about/Governance/constitution>, apply to you on becoming a Member, whether or not you purchase Cyber.

3.3 Logging into Cyber

To access Cyber you must either:

- (a) log into your Member Account. You do so at the login page which is accessible by visiting <https://www.businessaustralia.com> and clicking 'Login' at the top of the page; or
- (b) log into your Cyber Account.

3.4 You must keep your login details confidential and safe

As a Member, you must keep your Cyber login details safe and must not share them with any person other than your Authorised User(s). You are responsible for any actions of your Authorised User(s) and/or taken using your Member Account, whether or not they are taken by the Member, Learners or any Authorised Users.

If you lose or forget your login details or notice any suspicious activity associated with your Cyber Account, you must notify us immediately using the contact details in clause 2.2.

You must not use any other person's login details to access the Platform (except where you are an Authorised User of a Member and you use that Member's login details to access the Platform).

3.5 Maintaining your Cyber Account

You can edit the details associated with your Cyber Account on the Platform by logging into Cyber using your login details, clicking the circle with your initials at the top-right corner of the screen and proceeding to 'My Account'. You must always keep these details up to date.

As a Member, you are responsible for protecting the confidentiality and security of any personal information that is uploaded to the Platform, including by your Authorised Users and Learners.

4 Purchasing your Cyber subscription

4.1 Ordering Cyber

As or on behalf of a Member you can place an Order for Cyber by:

- (a) adding Cyber to your 'cart';
- (b) proceeding to check-out;
- (c) checking the box to indicate that you agree to the relevant terms and conditions; and
- (d) clicking the 'Complete Purchase' button and making successful payment of the total purchase price.

Doing so constitutes your offer to us to purchase Cyber in your 'cart' at the price(s) indicated on the Platform.

4.2 How we will accept your Order

Our acceptance of your Order is subject to payment of the associated price and will take place when you receive an email from us notifying you that we have accepted your Order. Please contact us by phone on 13 26 96 or by email at onlinesupport@businessaustralia.com if you have not received an email confirming your Order from us within 24 hours of placing your Order.

4.3 If we cannot accept your Order

If we are unable to accept your Order for any reason we will inform you of this by email and cancel your Order. This might occur because of limits on our computing resources or an unexpected technical error. Any funds we charge you will be refunded.

4.4 Your Order number

Your Order will be assigned a unique transaction ID which we will include on any email we send pursuant to clauses 4.2 or 4.3. If you contact us about any Order, we may require you to quote the relevant transaction ID number or your Member number or email address.

5 Providing Cyber to you

5.1 Benefits of Cyber

Benefits included in Cyber vary depending on the subscription plan you choose and are set out on the Platform.

Core benefits of Cyber include:

- (a) access to the Cyber Security Health Check tool;
- (b) access to the Cyber Awareness Training library and associated learning management tools;
- (c) the ability to set up and run Phishing Simulations; and
- (d) access to a suite of cybersecurity-related policies, checklists and other documents.

5.2 Changes to Cyber

At any time, we may make minor changes to Cyber and/or the benefits associated with Cyber:

- (a) to improve Cyber to be more useful to Members in general; or
- (b) to update Cyber so it continues to accurately reflect relevant laws and regulatory requirements, which may change over time.

However, we will not remove the core benefits set out in clause 5.1 from Cyber without a reasonable corresponding adjustment in your favour (e.g. lowered pricing).

5.3 When we will provide Cyber to you

You will be able to access Cyber within a reasonable time of our acceptance of your Order having regard to the nature of the service and we will contact you with further information.

The benefits of Cyber are available to a Member and its Authorised Users and Learners during the term of the Member's subscription to Cyber.

5.4 Usage statistics

We collect de-identified statistical information based on Members' use of Cyber.

5.5 Assistance with getting started

If, as a Member, you experience difficulty using Cyber, you may contact us and authorise one of our representatives to log into your Cyber Account on your behalf and perform the initial configuration of your organisation's Cyber Account for you. Otherwise, Cyber Accounts do not include any support services.

5.6 We are not responsible for delays outside our control

Some benefits or services may rely on the provision of goods or services by a third party. In such cases the delay in or failure to supply the content may be outside of our control and, if so, we will inform you of the delay and take steps to minimise the impact of such. Provided we do this we will not be liable for delays or failure to deliver caused by the event but, if there is a risk of failure to deliver or substantial delay, you may contact us to cancel your purchase of Cyber and receive a refund of the value of the benefit or service you have paid for but not received.

5.7 Cancellation of Cyber subscription by us

We may cancel your subscription to Cyber at any time by giving 10 days' notice. In such event, you will receive a refund of the value of the benefit or service you have paid for but not received.

6 Price and payment

6.1 Where to find the price for Cyber

We offer different subscription plans for Cyber and you should choose the plan that best suits your needs. The pricing model applicable to each subscription plan is stipulated on the Platform. Unless otherwise noted all prices are displayed in Australian dollars inclusive of GST.

6.2 When and how to pay

When you 'check out' your cart on the Platform you will be provided with payment options. You will be required to pay for Cyber before you will be able to access or obtain it. In addition to the price of Cyber you must also pay us any applicable GST, which is included in the total price of your cart. After making successful payment of the total price of your cart the Platform will generate and automatically email you an invoice for the completed transaction.

6.3 Automatic payments

Cyber is a subscription Product. The available subscription periods for Cyber are clearly shown on the Platform. On the notified date of expiry of your subscription, your subscription will automatically renew for the subscription period you have selected unless you cancel it prior to that date. You can cancel the automatic renewal of your subscription at any time by logging into your Member Account using your login details, clicking 'My Account' and, under the 'Manage Subscriptions' tab, clicking the 'Auto-Renew' link against your subscription and then selecting 'Cancel' under the 'Actions' tab. The subscription cancellation will come into effect at the end of your current subscription period, so you can continue to enjoy full access to the applicable benefits until that date. An email confirming the cancellation will be sent to you.

6.4 Refunds

If we reject your Order you are entitled to a refund. If Business Australia breaches a consumer guarantee under the Australian Consumer Law in respect of Cyber you may have the right to request a refund. Otherwise, amounts paid for Cyber are not refundable.

7 Our responsibility for loss or damage

7.1 You indemnify us where you breach the Terms

If we fail to comply with the Terms and that failure is responsible for loss or damage you suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill we are liable to you, subject to clauses 7.2 and 7.3, but we are not responsible for any loss or damage that is not foreseeable or for any consequential loss or damage. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us.

7.2 Application of the Australian Consumer Law

We have certain obligations and you have certain rights under the Australian Consumer Law. We do not exclude or limit our liability to you where it would be unlawful for us to do so under that law or any other Australian law. Under the Australian Consumer Law, consumer guarantees apply in respect of Orders of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

Pursuant to section 64A of the Australian Consumer Law, the following applies in respect of any of the goods or services supplied under the Terms which are not of a kind ordinarily acquired for personal, domestic or household use or consumption (unless you establish that our reliance on the following would not be fair and reasonable). Liability for breach of a guarantee conferred by the Australian Consumer Law, other than those conferred by sections 51 to 53 of the Australian Consumer Law, is limited:

- (a) in the case of goods, to any one of the following as determined by us:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and

- (b) in the case of services, to any one of the following as determined by us:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

7.3 Our total liability to you

Our total liability to you under the Terms, in negligence and/or otherwise, is limited to the fees or charges paid for Cyber by you.

8 Rules about your use of Cyber

You must not and must ensure that your Authorised User(s) and Learners that use your Cyber Account do not, and you and your Authorised User(s) and Learners must not attempt to, change, add to, remove, deface, hack or otherwise interfere with the operation of the Platform or any material or content displayed on the Platform unless you are authorised by us to do so.

You must not:

- (a) impersonate another person on Cyber;
- (b) provide inaccurate information about your identity on Cyber;
- (c) do anything unlawful, misleading, fraudulent or for an illegal or unauthorised purpose;
- (d) interfere with or impair the operation of the Platform or other individuals' legitimate use of Cyber;
- (e) use or attempt to use any automated computer program (e.g. a bot or web scraper) to access Cyber;
- (f) enter, upload or post any content to Cyber that is bullying, harassing, defamatory, objectionable or explicit in nature;
- (g) attempt to buy, sell or transfer your Cyber Account or login details to another person;
- (h) post private or confidential information about yourself or any other person; or
- (i) use Cyber to violate any other person's rights, including intellectual property or moral rights.

9 Availability and downtime

We do our best to ensure the Platform is accessible at all times. However, from time to time Cyber may not be accessible or may suffer service degradation due to scheduled maintenance such as software patches, platform upgrades and configuration changes, disaster recovery operations and/or failures or service degradation of third party systems outside the Platform infrastructure.

10 Content and intellectual property

10.1 Content on Cyber is not professional advice

Content on or available via the Platform, including content in Cyber and other Products, does not constitute legal, financial or business advice, is not intended as a substitute for and should not be relied on as such. You should seek professional

legal, financial or business advice (as appropriate) in relation to your business' circumstances.

10.2 Who owns the intellectual property?

Unless otherwise noted, all intellectual property rights in software and content in Cyber including any source code in the Platform, any visual content or copy displayed on the Platform and the Company logos are either:

- (a) our property; or
- (b) the property of our licensors.

Intellectual property rights in the 'Health Check', 'Training' and 'Phishing Simulation' features of Cyber are owned by Leto Pty Ltd (which trades as **Cyber Aware**).

You agree not to reproduce, transmit, distribute, disseminate, sell or re-sell, publish, broadcast or circulate materials comprising any of the Cyber content or any of the Platform including any of our intellectual property or the intellectual property of our licensors without our express prior written consent.

10.3 Intellectual property rights in content

For Cyber (and all Products on the Platform) we and/or, as applicable, our licensees reserve all intellectual property rights in such including in relation to the content.

10.4 Third party websites

Cyber and/or the Platform and digital content accessible or downloadable from the Platform may contain links to other websites operated, controlled or produced by third parties. Unless otherwise indicated, we do not control, endorse, sponsor or approve any such third party websites or their content. We do not provide any warranty or take any responsibility for any aspect of those websites or their content.

11 Your privacy

We are subject to and will comply with the Privacy Act and our Privacy Policy, which is accessible at <https://businessaustralia.com/privacy-policy>.

By accessing Cyber or the Platform or providing any personal information to us you acknowledge that we will collect, use and disclose your personal information (as operator of the Platform) in accordance with our Privacy Policy.

In addition, by using Cyber or the Platform your personal information may be collected by and/or disclosed to Cyber Aware (who license Cyber to us). For information about Cyber Aware's collection, use and disclosure of your personal information, please read Cyber Aware's Privacy Policy, which is accessible at <https://cyberaware.com/privacy-policy/>. Also, you can contact Cyber Aware using the contact details on their website, cyberaware.com.

12 Other terms

12.1 Nobody else has any rights under the Terms

The Terms are between you and us. No other person has any rights to enforce any of its terms.

12.2 Even if we delay in enforcing the Terms, we can still enforce them later

If we do not insist immediately that you do anything you are required to do under the Terms, or if we delay in taking steps against you in respect of your breaching

the Terms, that does not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.

12.3 Which law applies to the Terms and where may legal proceedings be brought?

The Terms are governed by the laws applicable in the State of New South Wales. Both you and we are subject to the jurisdiction of the courts of the State of New South Wales.

Should a dispute, controversy or claim arise between you and us out of, relating to or in connection with the Terms, both parties must first negotiate in good faith to resolve the dispute. If (and only if) the dispute is not resolved after 15 Business Days of negotiation either party may submit the dispute to arbitration at the Australian Disputes Centre (**ADC**). The arbitration will be conducted in Sydney in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred to ADC (**ADC Rules**). The ADC Rules are hereby incorporated into the Terms.

Nothing in this clause 12.3 prevents either you or us from seeking urgent equitable relief before an appropriate court.

13 Definitions

In the Terms unless the context otherwise requires:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Authorised User means the employee, partner or officer of the Member who is authorised to operate the Member's Cyber Account on behalf of the Member under the 'Admin Management' panel of 'Portal Setting' on the Platform;

Business Day means a weekday that is not a public holiday in the State of New South Wales;

Company, we, us or our means NSW Business Chamber Limited (ABN 63 000 014 504) whether we trade under the trading name 'Business Australia', 'Business NSW' or another trading name;

Constitution means the constitution of the Company;

Cyber has the meaning given to that term in clause 1.1;

Cyber Account means an account on the Platform associated with a Member's subscription to Cyber;

Learner means an individual who is nominated by the Member to access learning resources associated with the Member's Cyber Account on the domain cyber.businessaustralia.com;

Member means an entity (whether an individual, body corporate or otherwise) that, under and in accordance with the terms of our Membership Terms and Conditions accessible at <https://www.businessaustralia.com/membership-terms-and-conditions> and the Constitution accessible at <https://www.businessnsw.com/about/Governance/constitution> is a member of Company and has a Member Account;

Member Account means the account on the Platform associated with your Membership;

Membership means the status of being a Member;

Order means a request by you to purchase a Cyber subscription via the Platform;

Platform has the meaning given to that term in clause 1.1;

Privacy Act means the *Privacy Act 1988* (Cth);

Product means any product and/or service that we offer to you for purchase on the Platform and includes Cyber; and

You means you as a Member, Learner or the Authorised User, as the case may be.