



TERMS OF SERVICE

Updated: January 2023

When you use our Services you confirm that you have read, accepted and agree to be bound by these Terms and our [Privacy Policy](#). If you do not agree to these Terms you must immediately cease to use our Services.

1. Definitions and Interpretation

Add-ons means any additional Services you purchase from us in connection with your use of Blakthumb.

Authorised User Accounts means the unique username and password issued or otherwise assigned by us to you or your Authorised Users for access to and use of Blakthumb.

Authorised User means the individual users who are authorised to use Blakthumb pursuant to the Plan you have purchased.

Australian Consumer Law means the Australian Consumer Law at Schedule 2 to the *Competition and Consumer Law Act 2010* (Cth), as amended from time to time.

Billing Cycle means either the month commencing from the first day you sign up for a Plan and carries on month to month until you cancel your Plan, or where you elect an annual plan, means the year commencing from the first day you sign up for a Plan and carries on year to year until you cancel your Plan.

Blakthumb is the software platform, including all its functionalities, software (including its source code), data and products, available via Blakthumb.com.

Customer Contract means a document outlining the details of any Services purchased by you from us.

Consequential Loss means any Loss that does not arise naturally in the ordinary course of things from the event or circumstance giving rise to the Loss.

Fees means the applicable fees for your Plan and any other Services you purchase, in accordance with clause 6 of these Terms.

GST has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, source code, business and domain names, confidential information, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered, registrable or patentable.

Loss means any judgment, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, or otherwise.

Order Form means any separate written agreement between us for the provision of any other Services, which will form part of this Agreement and be governed by these Terms.

Payment Method means payment method you elect to use when purchasing our Services.

Plan means the subscription tier you have purchased to access and use Blakthumb.

Pre-Existing IP means any Intellectual Property Rights in any materials existing at the date of this Agreement, including Intellectual Property Rights in software, hardware or documentation and materials used in our or your business including enhancements or modifications thereto.

Privacy Policy means our privacy policy as amended from time to time and available on Blakthumb at: www.blakthumb.com.au/privacy.

Services means any services provided by us including providing you with access to use Blakthumb, and any Add-ons or Training Services you purchase from us.

Taxable Supply has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Term means the length of time you have subscribed to your Plan, and will automatically renew at the end of each term, unless you cancel pursuant to your rights under clause 7.

Terms means these terms as amended from time to time and available Blakthumb at Blakthumb.com/terms.

Training Services means any training which you purchase from us from time to time and are governed by these Terms.

We/us/our means Blakthumb Pty Ltd ACN 636 256 785 and our subsidiaries.

Website means Blakthumb.com.

You means our customer who is a user of Blakthumb and pays the applicable Fee. Where you are a corporation, a reference to you includes your employees and contractors.

Your Content means all any content, including text, data, logos, documents, imagery, videos or other files entered, uploaded or created by you or your Authorised Users while using Blakthumb.

1.1 In this Agreement unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (d) references to statutes include all statutes amending, consolidating or replacing such statutes;
- (e) \$ means United States dollars (USD);
- (f) any reference to a party to this document includes its successors and permitted assigns; and
- (g) the use of the word "includes" or "including" is not to be taken as limiting the meaning of the words preceding it.

2. Formation

- 2.1 You can subscribe to a Plan (and if relevant, purchase Add-ons and Training Services) with us through our Website, Blakthumb or using a Customer Contract. When you do so an agreement is formed between you and Blakthumb Pty Ltd (ABN 71 636 256 785) (**us, we, our**) consisting of these Terms, our Privacy Policy and our Service Level Agreement (**Agreement**).
- 2.2 This Agreement will be ongoing, until or unless you cancel your Plan or the Agreement is terminated in accordance with these agreed Terms.
- 2.3 We may agree to supply you other Services which you may purchase from us using an Order Form, which will also be governed by these Terms.

3. Licence

- 3.1 Subject to the Terms, we grant to you a non-transferrable, non-exclusive, non-sublicensable license to access and use Blakthumb for the duration of the Term.
- 3.2 You may not assign, transfer or otherwise deal with this Agreement or any right under this Agreement without our prior written consent.

4. Setting up Your Account

- 4.1 To access and use Blakthumb, you must sign up to a Plan. You must provide your full name, a valid email address, and any other information requested in order to complete the signup process. You may also set up Authorised Users as permitted under your Plan.
- 4.2 You are also solely responsible for:
 - (a) ensuring each Authorised User Account is operated by only one person;
 - (b) ensuring Authorised Users do not share, publish or otherwise make available to any third party any Account details;
 - (c) all activity on your Account by you or your Authorised Users' Accounts including any unauthorised access by third parties;
 - (d) maintaining the confidentiality and security of your Account and your Authorised Users' Account and notifying us immediately of any unauthorised use; and
 - (e) protecting Your Content, including backing-up, and ensuring the security of Your Content, taking appropriate measures to protect Your Content from accidental, unlawful or unauthorised access, use or disclosure.

5. Your Compliance Obligations

- 5.1 You are responsible for ensuring you comply with any relevant laws and other requirements in your jurisdiction. Use of Blakthumb does not guarantee compliance with any applicable laws, regulations or other requirements.
- 5.2 You may not use Blakthumb for any illegal or unauthorized purpose.

6. Fees

- 6.1 The Fees will be notified when you sign up to a Plan via our Website, Blakthumb or in your Customer Contract.
- 6.2 You must pay the Fees for your chosen Plan and any other Services in accordance with this clause 6.
- 6.3 Your Fees will be payable in advance.
- 6.4 We will either direct debit the Fees for your Plan using your chosen Payment Method on the first day of your Billing Cycle, or where agreed by us, we may issue you an invoice for payment.
- 6.5 We will invoice you for all other Fees (as applicable).
- 6.6 On 30 days' notice to you, we may increase the Fees for any reason, including as a result of an increase in fees charged by third party suppliers. The increase will take effect on your next applicable Billing Cycle.
- 6.7 Unless otherwise expressly stated all Fees are exclusive of GST. If GST is payable in relation to a Taxable Supply, the amount payable for that Taxable Supply is the amount for that Taxable Supply specified in your chosen Plan plus GST.

7. Term and Cancellation

- 7.1 Your Plan and this Agreement will commence on the Start Date and will continue for sequential Billing Cycles until you terminate your Plan.
- 7.2 You may cancel your Plan at the end of each Term, provided you do so before the next Billing Cycle.
- 7.3 Fees are payable at the start of each Billing Cycle. If you terminate midway throughout the Billing Cycle you have paid for, no refund will be available but your access to your Plan will continue until the end of the period you have paid for.
- 7.4 Upon the cancellation of your Plan:
 - (a) this Agreement will terminate;
 - (b) you may download Your Content from Blakthumb prior to cancellation taking effect;
 - (c) we will deactivate your Authorised User Accounts and your access to Blakthumb;
 - (d) you must cease using Blakthumb;
 - (e) All Your Content will be deleted from Blakthumb after cancellation (this information cannot be recovered once your account is cancelled).
- 7.5 If you, or any of your Authorised Users, fails to abide by the terms of this Agreement, including without limitation that your Fees are not paid when due, we reserve the right to suspend your access to Blakthumb and/or permanently cancel your Plan.
- 7.6 If we cancel your Plan and withdraw access to Blakthumb in accordance with clause 7.5, your access to Blakthumb will be withdrawn immediately, no refund will be payable by us, we will have no liability to you for such cancellation including for any loss of Your Content, and you must pay to us all outstanding Fees owed to us as at the date of cancellation immediately.
- 7.7 Provision of access to any of Your Content that you have not downloaded off Blakthumb as at the date of any cancellation or termination will be at our sole discretion.

8. Intellectual Property

- 8.1 You must only use our Intellectual Property in a manner permitted under this Agreement.
- 8.2 You must not permit your Authorised Users or any third party to, except as expressly authorised by this Agreement:
 - (a) use or access Blakthumb in a way that infringes the Intellectual Property Rights or other rights of any person;
 - (b) decompile, reverse engineer, disassemble, or otherwise attempt to construct or identify the source code, formulas or processes used by Blakthumb;
 - (c) sell, sub-licence, transfer, transmit, publish or make available any part of Blakthumb;

- (d) do anything which will or may damage, disrupt access to or interfere with the proper operation of Blakthumb;
- (e) do anything which will or may place an unreasonable load on the infrastructure of Blakthumb;
- (f) transmit any material which contains viruses or other computer codes designed to interrupt, limit or destroy the efficient operation of Blakthumb.

9. Your Content

9.1 You must not submit, post or display any of Your Content that:

- (a) you do not have permission, right or license to use, upload, and permit use as contemplated by this Agreement;
- (b) is objectionable, offensive, unlawful, defamatory, deceptive or harmful; and/or
- (c) is illegal, fraudulent, or manipulative.

9.2 We may remove Your Content from Blakthumb if Your Content violates the terms of this Agreement, including if Your Content or is offensive or otherwise unacceptable to us in our sole discretion and/or including in the event any claims, threatened, alleged or issued in relation to Your Content, and/or for any other reasonable cause. We reserve the right to undertake back-ups of Blakthumb, however we are not obligated to do so and you are solely responsible for backing up Your Content.

10. Warranties

10.1 Throughout the Term you warrant:

- (a) you have the power and authority to enter into and perform your obligations under this Agreement and to carry out the transactions contemplated by this Agreement; and
- (b) there are no pre-existing rights or obligations which would prevent you from complying with your obligations under this Agreement.

10.2 You are responsible for ensuring Blakthumb is suitable for your purposes.

10.3 Subject to any express warranties in these Terms and in our Service Level Agreement but otherwise to the fullest extent permitted by law, we exclude all other warranties, and representations in whatever form, relating to Blakthumb including any warranties or representations relating to quality, accuracy, completeness, continuity, integration, merchantability, conformity with specifications, reliability, functionality, performance, fitness for use, fitness for any particular purpose, and/or guarantee of a particular result or outcome and/or in relation to the security and operation of Blakthumb, including that access to Blakthumb will be free from interruption or defects.

11. Intellectual property rights

11.1 You acknowledge that the Intellectual Property Rights in Blakthumb (including any source code, translations, compilations, partial copies and derivative works) (**Our IP**) contain confidential and proprietary information belonging exclusively to us.

11.2 Nothing in this Agreement transfers ownership of any Our IP to you or any Authorised User.

11.3 You own all Intellectual Property Rights in Your Content. You grant us a royalty-free, non-exclusive, revocable licence to use Your Content to the extent necessary to perform our obligations under this Agreement.

11.4 We grant you a non-exclusive and non-transferable licence to use Our IP solely to the extent necessary to exercise your rights and perform your obligations in accordance with this Agreement.

12. Privacy

12.1 Your use of Blakthumb may involve the transmission to us of certain personal information. Our policies with respect to the collection and use of such personal information are governed according to our Privacy Policy, which is incorporated into these Terms.

13. Liability

13.1 You indemnify, save, defend and hold us harmless against any Loss arising out of or in connection with:

- (a) any breach by you of the terms of this Agreement; and
- (b) any reliance by you on Blakthumb.

13.2 The use of Blakthumb is at your sole risk, and we:

- (a) disclaim any responsibility for your compliance or the compliance of any other person with any applicable law, regulation or code;

- (b) will not be liable for any penalty, Loss or claim arising in connection with any failure to comply with any such law, regulation or code.
- 13.3 We disclaim all responsibility for any Loss, injury, claim, liability, or damage of any kind resulting from, arising out of or any way related to:
- (a) any errors in or omissions from Blakthumb, including but not limited to technical inaccuracies and typographical errors;
 - (b) any delays, failures, errors or omissions or Loss of transmitted information;
 - (c) any viruses or other contaminating or destructive properties that may be transmitted via Blakthumb;
 - (d) any third party data including (without limitation) third party websites or their content, directly or indirectly accessed through links in Blakthumb, including but not limited to any errors in or omissions which are accessed through the third party websites;
 - (e) the unavailability of parts of or all of Blakthumb; or
 - (f) any delays, failures or errors affecting the equipment, systems or networks of third parties who provide services to Blakthumb.
- 13.4 Blakthumb comes with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with Blakthumb, you are entitled:
- (a) to cancel your Plan with us; and
 - (b) to a refund for the unused portion, or to compensation for its reduced value
- You are also entitled to be compensated for any other reasonably foreseeable loss or damage.
- 13.5 If the failure does not amount to a major failure, you are entitled to have any problems with Blakthumb rectified in a reasonable time and, if this is not done, to cancel your Plan and obtain a refund for the unused portion of the Plan.
- 13.6 To the fullest extent permitted by law we hereby exclude all other statutory guarantees, warranties and other terms which otherwise might be implied by statute, common law, or equity.
- 13.7 Subject to clause 13.5, we will not be liable for any Consequential Loss incurred by you or by any other person in connection with Blakthumb, or in connection with the use, inability to use, or results of the use of Blakthumb or any related material.

14. Security

- 14.1 We do not represent or warrant that Blakthumb is entirely secure, uninterrupted or error-free. You acknowledge that the public internet is an inherently insecure environment and that we have no control over the privacy of any communications or the security of any data outside of our internal systems.
- 14.2 You must not misuse Blakthumb by:
- (a) knowingly introducing viruses, trojans, worms, bots, logic bombs or other malicious software;
 - (b) gaining unauthorised access to Blakthumb or any platform on which Blakthumb is stored or any server, computer or database connected to Blakthumb; or
 - (c) attacking Blakthumb via a denial-of-service attack or a distributed denial-of service attack.
- 14.3 It is your responsibility to ensure you have up-to-date and effective anti-virus and anti-malware software on your phone, tablet, computer, server, network infrastructure or any other device through which you access Blakthumb.
- 14.4 We will not be liable for any Loss or damage caused by a distributed denial-of-service attack, viruses or other malicious software that may infect your computer equipment, computer programs, data or other proprietary material due to your use of Blakthumb or any information on or linked to Blakthumb.
- 14.5 We shall not be liable for any Loss or damage suffered by you as a result of using public network connections, failing to have up-to-date and effective anti-virus and anti-malware software or failing to notify us that your device has been infected by any type of malicious software.

15. General

- 15.1 We may sub-contract the performance of any part of our obligations and/or services to any third party.
- 15.2 The failure of either party to enforce any provisions under this Agreement will not waive the right of such party thereafter to enforce any such provisions.

- 15.3 If any term or provision of this Agreement is held by a court to be illegal, invalid or unenforceable under the applicable law, that term or provision will be severed from this Agreement and the remaining terms and conditions will be unaffected.
- 15.4 This Agreement is governed by, and construed in accordance with, the laws of New South Wales, Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 15.5 We reserve the right to amend these terms and conditions from time to time by either giving you notice via email and/or publishing the amended terms and conditions on our Website. Your continued use of Blakthumb after the date of notice or publication constitutes acceptance of the amended terms and conditions.
- 15.6 Any warranty, indemnity, or obligation of confidentiality in this Agreement will survive termination. Any other term which by its nature is intended to survive termination of this Agreement survives termination of this Agreement.