



MADISON MARCUS
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Terms and Conditions

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Terms and Conditions

By browsing, accessing or otherwise using this website, application for mobile devices or any data or content from this website or any application for mobile devices (**Services**), you agree to be irrevocably and unconditionally bound by these Terms and Conditions.

1. No Warranty

- (a) Succar Pty Limited ACN 641 449 694 (**Mindshift**) and its contractors are responsible for maintaining this website and all applications, publications, content, data or the like uploaded on this website or application and make no warranty as to the accuracy or reliability of the information contained therein. This extends to any content, data or information generated or uploaded to the Services by or on behalf of Mindshift and/or any third party and/or any user or subscriber to this website.
- (b) Mindshift, its associated entities, related entities, officers and employees are not liable or responsible for any loss or damage which may be caused to any recipient by directly or indirectly relying on anything contained in or omitted from the Services or any information or data contained therein.
- (c) You acknowledge that you access to the Services and any of its contents at your sole and absolute risk and by accessing the Services you expressly and irrevocably release Mindshift from any and all liability which may accrue as a direct or indirect result of your access and access to the Services and reliance upon any data or information therein.

2. Restrictions

- (a) By browsing, accessing or otherwise using the Services, you warrant and agree that you must not and will not:
 - (i) use any device, software, hardware, process or any other technology of any means to access, retrieve, scrape or index the Services or information, content or data contained therein;
 - (ii) interfere with the operation of the Services by any means, through any technology or through any third party;
 - (iii) cause excessive and burdensome internet traffic to the Services or Mindshift infrastructure;
 - (iv) use any data, information or content of the Services to compete with Mindshift in any capacity whatsoever, whether by website or otherwise;
 - (v) violate any proprietary rights, property rights, copyrights, privacy or intellectual property rights of Mindshift or any other person;
 - (vi) violate these Terms and Conditions or any New South Wales or Australian law, regulation, requirement or code of conduct;
 - (vii) copy, modify or create derivative works based on the Services;
 - (viii) distribute, transfer, sublicense, lease, lend or rent the Services to any third party;
 - (ix) reverse engineer, decompile or disassemble the Services;
 - (x) make the functionality of the Services available to multiple users through any mean;
 - (xi) solicit any unauthorised financial benefit from any other user of the Services;

- (xii) copy, reproduce, retransmit, create derivative works, sell or display or in any way exploit the Services, without the prior express written authorisation of Mindshift.
- (b) You acknowledge that if you fail to adhere to the restrictions set out in clause 2(a) above, Mindshift may proceed with any of the following actions against you:
 - (i) reporting your conduct to Australian or New South Wales regulatory officials such as the New South Wales Police Force or the Australian Federal Police;
 - (ii) institute technological barriers however Mindshift deem necessary;
 - (iii) commence Court proceedings seeking damages from you; or
 - (iv) commence Court proceedings seeking injunctive and/or declaratory relief against you.
- (c) You must indemnify Mindshift and its related associated entities from any loss suffered as a direct or indirect result of your contravention of clause 2(a) including but not limited to damages, costs, legal expenses, disbursements, fees, charges and the like.

3. Copying of Data

- (a) This clause is subject to the *Copyright Act 1968* (Cth) and nothing in this clause is intended to affect or alter the operation of the *Copyright Act 1968* (Cth). In the event of an inconsistency between this clause and the *Copyright Act 1968* (Cth), the *Copyright Act 1968* (Cth) shall prevail to the extent of that inconsistency.
- (b) All content included in the Services, including but not limited to applications, data, information, content, material, text, images, audio, videos, logos, button icons, is the intellectual property of Mindshift, its associated entities or related entities or its third party content suppliers. Use of the Services does not transfer any intellectual property rights or copyrights to the user.
- (c) Mindshift grants users of the Services, revocable permission to download copyright material on this website for their own personal use to the extent required to use the Services provided that such use is non-commercial and not to obtain any financial benefit whilst excluding Mindshift.
- (d) You must not reproduce, copy or alter information, data or content contained in the Services without the prior express written authority of Mindshift.

4. Third Party Content

- (a) You acknowledge that the Services, may from time to time contain information, data and content uploaded by third parties (**Third Party Content**).
- (b) Mindshift does not in any way monitor the Third Party Content in the Services, and makes no warranty as to the accuracy of such Third Party Content. For that purpose, Mindshift is not liable or responsible for any matters pertaining from the Third Party Content whether directly or indirectly.
- (c) You rely upon Third Party Content in the Services at your sole and absolute risk and you acknowledge that Mindshift makes no express or implied representations as to the Third Party Content or the accuracy thereof.
- (d) You are responsible for making your own independent enquiries in respect of the Third Party Content in the Services. You acknowledge that the Third Party Content does not necessarily represent the view of Mindshift.
- (e) You release and hold harmless Mindshift from any and all liability arising from any Third Party Content in the Services.

5. Advertising

- (a) Mindshift is entitled to, at its sole and absolute discretion, upload and include advertisements and links to third party material (such as contact details of users) and other third party websites in the Services.
- (b) Such third party material and third party websites are not part of the Services, and are not controlled by Mindshift by any means whatsoever. Mindshift makes no warranty or express or implied representations as to the accuracy or reliability of the third party material and third party websites or any information, data or material contained therein.
- (c) You acknowledge that you access such third party material and third party websites at your sole and absolute risk. For that purpose, Mindshift is not liable or responsible for any matters or liability pertaining from the third party material and third party websites/services and you agree to release Mindshift from such liability.

6. Accounts

- (a) By subscribing to the Services, you may be required to create a user account and provide to Mindshift your personal information such as, but not limited to your:
 - (i) full name;
 - (ii) email address;
 - (iii) age; and
 - (iv) gender.
- (b) You expressly acknowledge and warrant that:
 - (i) any password connected to your user account will not be disclosed to anyone or any third party; and
 - (ii) you are responsible for all activities that occur under your user account, whether or not known to you.

7. Purchases

- (a) The use of the Services may require payment before access is provided to them.
- (b) Payment for the Services may be:
 - (i) one-off in nature (**Lifetime Subscription**);
 - (ii) on a monthly basis (**Monthly Subscription**); or
 - (iii) payable yearly (**Yearly Subscription**),
(**Subscription**).
- (c) The Subscription offered to you (and the terms and features of each Subscription) will be notified to you on the Services or by other communications from Mindshift to you.
- (d) The nature of the Subscription and the amount payable by you must be processed and confirmed received from Mindshift before access to the Services may be granted.
- (e) From time to time, Mindshift may offer a free trial period(s) to the Services. A subscription fee will not be payable in respect of the free trial period(s). A subscription fee will be payable in accordance with the nature of the Subscription, if you do not cancel your subscription to the free trial period:
 - (i) within 24 hours prior to the expiry of the trial period if the Services are

purchased directly with Mindshift; or

- (ii) within the time specified in the terms of your account with an app store or app distribution platform.

Please note that on your subscription to the free trial period(s), a small nominal amount may be charged to your nominated credit card to verify its authenticity, however will be refunded to you subsequently thereafter should you cancel the subscription to the free trial period in accordance with this clause.

- (f) Once payment for your transaction is received by Mindshift, you will receive confirmation from Mindshift.
- (g) You acknowledge that in relation to any payment made by you:
 - (i) your payment information may be provided by Mindshift to third party service providers so that Mindshift may complete your transaction;
 - (ii) you will be charged to your credit card or third-party payment processing account, which includes but is not limited to, your account with an app store or app distribution platform;
 - (iii) in respect of Monthly Subscriptions, will be charged to your credit card on a monthly basis on the same day in each corresponding month until the expiry of the subscription term, or until you cancel your subscription;
 - (iv) in respect of Yearly Subscriptions, will be charged to your credit card on a yearly basis on the same day in each corresponding year until the expiry of the subscription term, or until you cancel your subscription; and
 - (v) may bear additional charges that your app provider, bank or other financial service provider may charge on you as well as any GST or fees that may apply to your transaction.
- (h) All payments made by you are non-refundable and non-transferable except as expressly provided in these Terms and Conditions.
- (i) If you're located in Australia, all amounts stated in the Services are in Australian Dollar terms. If you're located anywhere else in the world, all amounts stated in the Services will be in US Dollar terms.
- (j) You may cancel the renewal of your Monthly Subscription or Yearly Subscription by contacting us at "info@modernmindshift.com" or alternatively if purchased through an app provider, then through the app provider. Any amounts already paid in respect of any Subscription will not be refunded upon cancellation.
- (k) Mindshift reserves the right to:
 - (i) not process or to cancel any transaction if Mindshift suspects, in its sole and absolute discretion, that the transaction is fraudulent or inappropriate;
 - (ii) verify your identity before completing the transaction;
 - (iii) change its pricing terms for any Subscription at any time with notice to you.

8. Uploading Data

- (a) By subscribing to Mindshift or the Services, you may be entitled to upload material, information, data, content, text, images, video, audio or the like with the approval of Mindshift (**uploaded data**). Mindshift may reject any request by you to upload any uploaded data to the Services, at its sole and absolute discretion.

- (b) You expressly warrant that the uploaded data is not:
- (i) in contravention of any law, regulation, code of conduct or requirement imposed by any authority;
 - (ii) in contravention of copyright or the intellectual property rights of any third party;
 - (iii) misleading or deceptive;
 - (iv) inappropriate noting the purpose of this website;
 - (v) materially incorrect;
 - (vi) obscene;
 - (vii) offensive;
 - (viii) defamatory;
 - (ix) maliciously false;
 - (x) unlawful;
 - (xi) corrupt;
 - (xii) likely to damage the reputation of Mindshift; or
 - (xiii) likely to damage or adversely affect the operation of this website.
- (c) You expressly warrant that the uploaded data is:
- (i) owned and controlled by you, including any rights in the uploaded data;
 - (ii) able to be lawfully displayed by Mindshift on this website;
 - (iii) lawfully obtained by you, including obtainment of all necessary licences, rights, consents and permissions required to use the uploaded data
- (d) In the event that you contravene clauses 6(b) or 6(c), you agree and acknowledge that:
- (i) Mindshift may remove, alter, delete or disable the uploaded data at its sole and absolute discretion;
 - (ii) you indemnify Mindshift and its related and associated entities from any loss suffered as a direct or indirect result of your contravention of clause 6(b) and/or 6(c) including but not limited to damages, costs, legal expenses, disbursements, fees, charges and the like.
- (e) You grant Mindshift a global, royalty-free, perpetual, transferable and irrevocable licence to use, reproduce, modify, adapt, translate, distribute, publish, create derivative works from and display your uploaded data through any medium, whether currently in existence or not.
- (f) Mindshift is not liable to you for any loss which may be occasioned by use of your uploaded data by a Services user. You acknowledge that you upload data to the Services, at your sole and absolute risk.

9. Warranties

- (a) You expressly warrant that:

- (i) you read, understood and agree to be irrevocably and unconditionally bound by these Terms and Conditions;
- (ii) your use of the Services is conditional upon compliance with these Terms and Conditions at all times.

10. General Indemnity

- (a) It is an essential term of these Terms and Conditions that you must indemnify Mindshift, its related and associated entities, its officers and its employees for any loss or damage arising out of, whether directly or indirectly, your use of and access to the Services, and any contravention of these Terms and Conditions.
- (b) The indemnity provided in clause 10(a) is a continuing indemnity and continues notwithstanding your cessation of use of this website.

11. Disclaimer

- (a) No term or condition of these Terms and Conditions has the effect of replacing, overriding, or otherwise removing, your statutory rights.

12. No advice

- (a) All information or content displayed on the Services is of general nature only and is included for the sole purpose of providing general information. Material provided by Mindshift does not and is not intended to constitute advice or any statement on which medical reliance should be placed. You should seek advice as appropriate from a suitably qualified medical professional on all specific situations, health issues and conditions of concern to you.
- (b) You acknowledge that any information contained in the Services, are not intended, designed or implied to diagnose, prevent or treat any medical condition or disease, or be a substitute for professional medical advice and care.
- (c) Nothing contained in the Services is intended to be used for medicinal purposes or as a substitute for your own health professional's advice.
- (d) If you suffer from any medical conditions, you should consult with an appropriate medical professional immediately and must not rely upon the Services as a substitution for medical advice and treatment.
- (e) Mindshift does not warrant the suitability of any activities contained in the Services.
- (f) You are solely responsible for your use of any advice or information contained in the Services.

13. Amendments or Variations

- (a) Mindshift may, from time to time, make changes to these Terms and Conditions, or to specific functions of the Services. It is your responsibility to monitor these Terms and Conditions from time to time to ensure that you remain compliant with what is required from you when using the Services. Changes to these terms and conditions will be effective immediately upon publishing on the Services or by notification to you.

14. Severability

- (a) If any term or condition of these Terms and Conditions are deemed invalid, void, or unenforceable for any reason whatsoever, that term or condition will be deemed severable and will not affect the overall validity and enforceability of the remainder of the Terms and Conditions.

15. Termination

- (a) Mindshift reserves its right to terminate or suspend your access to the Services, and shall not be required to provide you with any reasons why it has suspended or terminated your access. However, generally, such suspension or termination will only occur if you are found to be in serious violation of any of these Terms and Conditions.
- (b) In addition to clause 15(a) above, Mindshift reserves the right to terminate, discontinue or abandon the Services at any time and without penalty. If Mindshift exercises such right, Mindshift may in its sole and absolute discretion, refund the balance of any payment you made for your Subscription which relates to the period following such termination, discontinuance or abandonment of the Services.

16. Governing Law

- (a) You irrevocably agree that by using the Services and subsequently, your acceptance of these Terms and Conditions, that these Terms and Conditions are governed by and construed in accordance with the laws of New South Wales and Australia.
- (b) You agree, to submit to the non-exclusive jurisdiction of the Courts of New South Wales and Australia.

17. Additional Terms for app distribution platforms

- (a) If your access of the Services is through the Apple Store, you agree that:
 - (i) you will only use the Services on Apple branded products that you own and control and also as permitted by the specific usage rules and exceptions as set out in Apple's Media Services Terms and Conditions;
 - (ii) these Terms and Conditions are solely between you and Mindshift and that subject to any other terms contained in these Terms and Conditions, Mindshift is responsible for the Services;
 - (iii) the Apple Store has no responsibility to provide any maintenance or support in respect of the Services;
 - (iv) the Apple Store is not responsible for any claims you may have in respect of the Services;
 - (v) if the Services provided through a mobile application fails to conform with any applicable warranty, you may notify the Apple Store and the Apple Store will refund the purchase price to you; and
 - (vi) such refund provided by the Apple Store in clause 17(v) above will be the maximum warranty obligation of Apple whatsoever.