

# Terms and Conditions of Use of the Elsema Website and Elsema Mobile App

WHEN YOU ACCESS AND USE THE ELSEMA WEBSITE (<https://www.elsema.com>) OR THE ELSEMA MOBILE APP, YOU AGREE TO THE FOLLOWING "TERMS AND CONDITIONS", WHICH FORM A LEGALLY BINDING AGREEMENT BETWEEN YOU AND ELSEMA. YOU ACKNOWLEDGE AND AGREE THAT THESE TERMS AND CONDITIONS APPLY TO YOUR ACCESS TO, AND USE OF, THIS SITE, THE APP AND THE SERVICES. IN ACCESSING OR USING THIS SITE, THE APP AND THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD, AND AGREE TO BE BOUND BY, THESE TERMS AND CONDITIONS OF USE. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU SHOULD CEASE USING THE SITE, APP AND SERVICE.

**IMPORTANT APP USE WARNING:** THE ELSEMA MOBILE APP CAN REMOTELY OPEN AND CLOSE YOUR GATE. YOU MUST ENSURE THAT YOU AND YOUR AUTHORISED USERS OF THE APP KEEP YOUR APP LOGIN DETAILS SECURE AND THAT THE APP IS NOT USED IN A WAY WHICH MIGHT CAUSE PHYSICAL HARM, DEATH OR PROPERTY DAMAGE. DO NOT USE THE APP TO OPERATE THE GATE UNLESS YOU HAVE FULL VIEW OF THE GATE AND HAVE CONFIRMED IT IS FREE OF ALL OBSTRUCTIONS.

## 1. Definitions

### 1.1 In these Terms and Conditions of Use:

**App** means the Elsema mobile application(s) offered by Elsema from time to time;

**Elsema** means Elsema Pty Ltd ABN 77 001 562 563 and its related bodies corporate and their respective officers, directors, employees, agents, representatives, information providers, distributors or licensors and any assignee or successor of Elsema;

**Elsema website** means the website(s) offered by Elsema from time to time;

**Goods** means goods supplied by Elsema to a customer (and where the context so permits, shall include any supply of services as defined below);

**Intellectual Property** means all intellectual property rights as defined in Article 2 of the World Intellectual Property Organisation Convention 1967, in any inventions, designs, trade marks, trade names, circuit layouts plant varieties, business and domain names, logos and get-up, confidential information, matter, materials or works accessible on or via the Elsema website or App;

**Loss** means loss, costs, liability or damage of any kind (including liability to a third party);

**Material(s)** means any content, materials or documents made available on the Elsema website or App including, without limitation, information, specifications, catalogues, images and diagrams;

## 2.

**Post** means to make Materials on the Elsema website, App and Intellectual Property of Elsema publically available.

**Services** means all services supplied by Elsema and includes the App, any advice or recommendations;

**Terms and Conditions of Use** means these terms and conditions of use;

**User** means any person who has access to, or uses the Elsema website or the App and, in relation to the App, includes the administrator of the device on which the App is used;

**User Content** means any Intellectual Property, materials and other submissions from the Elsema website or App submitted to Elsema, or Posted on the Elsema website or App (if applicable) by You; and

**You** means each person who accesses or uses the Elsema website or the App.

## 2. Use of the Elsema website and App

- 2.1 Your use of the Elsema website or App constitutes Your agreement to these Terms and Conditions of Use.
- 2.2 If you purchase Goods through the Elsema website, the terms of sale available on the website will apply to your purchase and use of those Goods separately to these Terms and Conditions of Use, which apply to your use of the Elsema website, App and related Services.
- 2.3 Any third party links provided by or on the Elsema website or App are provided for Your convenience only and do not imply any association, sponsorship, connection, endorsement or other relationship between Elsema and the owners of any of the sites to which Elsema provides a link. Elsema provides this service at its discretion and accepts no responsibility for the currency of the link or the content of the website to which the link leads.
- 2.4 You must not link Your site to the Elsema website or App without the express permission of Elsema. Any link to the Elsema website must be to the home page.

## 3. Rights of Elsema

- 3.1 Elsema has the right at any time to change, add or discontinue any aspect or feature of the Elsema website or App including, but not limited to, the Materials and features provided, compatibility with devices and hours available.
- 3.2 Elsema has the right at any time to change or modify these Terms and Conditions of Use applicable to Your use of the Elsema website and App or any part of it or to impose new conditions or to remove conditions. Such changes, modifications, additions or deletions will be effective from the time the new Terms and Conditions of Use are published by Elsema on the Elsema website or App. Any use of the Elsema website or App by You after the publishing of the new Terms and Conditions of Use will be deemed to be acceptance by You of the new Terms and Conditions of Use.

### 3.

- 3.3 All Elsema Goods and Materials appearing on the Elsema website and App are intended for Australia. The Goods appearing on the Elsema website may not necessarily be available in territories other than Australia.

## 4. **Services**

- 4.1 By accessing and using the Elsema website or the Service, You assume all risks associated with such access and use. Elsema does not represent or warrant that the Elsema website, the App or the Services generally available through the Elsema website will be uninterrupted, error-free or defect-free.
- 4.2 Elsema does not represent or warrant to You that any materials available through the Elsema website or the Service will be free of Harmful Code.
- 4.3 Elsema reserves the right, at any time, to disable, close or render inaccessible the Service for so long as Elsema desires for any reason whatsoever, and without the need to provide any reasons. To the maximum extent permitted by law, Elsema does not accept liability for any Loss which You may suffer or incur as a result of such actions.
- 4.4 Elsema does not guarantee that the App will be compatible or function as intended with any particular mobile device or any unit, product or Goods supplied by Elsema. Without limiting the foregoing, the App generally requires a valid Elsema user account, a compatible and correctly installed unit, a compatible mobile device, an internet connection, location services enabled on the relevant mobile device and associated mobile device permissions to be provided. There may be other requirements applicable to Your use of the App or your mobile device which limit or prevent Your ability to use the App. You are responsible for the costs associated with all such matters. If you are unsure whether the App is compatible with particular Goods, You should speak with us before purchasing the Goods.

## 5. **Intellectual Property**

- 5.1 The Materials contained on the Elsema website or made available through the App are owned by (or licensed to) Elsema and are the subject of copyright and other Intellectual Property and legal rights (including third party rights).
- 5.2 Subject to these Terms and Conditions of Use, You may use and view the Elsema website, the App and their respective Materials solely for the purposes of using and receiving the Services for personal use in accordance with any additional instructions presented on the Elsema website or App or provided with Your Goods purchase. You must not use, view or otherwise access the Elsema website or App for any other purpose.
- 5.3 You must not (and must not attempt or encourage or procure someone else to) copy, reproduce, distribute, licence, infringe, reverse engineer, exploit, sell, tamper or otherwise deal with all or any part of the Elsema website, the App or any Materials or Intellectual Property comprised in them in any way which is not expressly permitted by these Terms and Conditions of Use without Elsema's prior written consent.
- 5.4 The trade mark "Elsema" and any other logos and Materials displayed on the Elsema website or App are owned by (or licensed to) Elsema. You must not use any trade mark appearing on the Elsema website or App without the prior written consent of Elsema or in accordance with a written agreement between You and Elsema.

4.

5.5 You may only promote or refer to Elsema, its Intellectual Property, the Materials or the Goods or Services in the form and manner (if any) which has been agreed between You and Elsema in writing.

## 6. Prohibited User Content

6.1 You must not Post any User Content or use the App in a way that:

- (a) may or does infringe the rights of any other person, including without limitation Intellectual Property rights;
- (b) may or does defame or damage the reputation of Elsema or another person;
- (c) may or does disclose person's confidential information;
- (d) is not accurate, complete or current or may otherwise mislead or deceive other persons;
- (e) is illegal or may constitute or encourage any contravention of any Applicable Laws by any person;
- (f) is unsafe or may cause injury, death or property damage to any person;
- (g) is discriminatory, threatening, offensive or abusive or is intended or likely to discriminate, threaten, offend or abuse another person;
- (h) is prohibited by these Terms and Conditions of Use; or
- (i) is otherwise, in our view, inappropriate.

## 7. Ownership of User Content

7.1 You acknowledge and agree that, upon Posting, all User Content is and becomes Elsema's absolute property. To the extent that any Intellectual property in and to the User Content belongs to You, You unconditionally and irrevocably:

- (a) assign to Elsema all of Your Intellectual Property to such User Content that includes the intellectual property of Elsema; and
- (b) consent to use of the User Content by Elsema in whatever manner Elsema sees fit (including, without limitation, where such use would otherwise, in the absence of such consent, infringe any moral or authors rights under laws), without any compensation or royalty to You.

## 8. Disclaimer and Limitation of Liability

8.1 Elsema does not attempt to exclude any conditions, warranties, rights or remedies which You may have pursuant to legislation (including the Australian Consumer Law) to the extent that those rights and remedies cannot be excluded by agreement ("**Non-Excludable Rights**").

8.2 While Elsema takes reasonable steps to maintain the Elsema website and App, Elsema does not warrant that the Materials contained in the Elsema website or App are accurate, complete or current or that any Services will be uninterrupted, available, timely, secure or free from error, viruses or other harmful components.

8.3 You acknowledge that You access and use the Elsema website, App and Services at your own risk and cost and that You are responsible for taking such precautions as you see fit in order to protect Yourself and Your devices from risks such as errors, unauthorised access, viruses and other harmful components.

8.4 Subject to any Non-Excludable Rights:

- (a) You accept that, to the maximum extent permitted by law, Elsema is not liable for any indirect, incidental, special, consequential, punitive or other damage, loss, cost, expense or any other liability arising directly or indirectly out of Your use of the Elsema website, App, Services or Materials, Your inability to access the Elsema website, App or Services or in connection with any Goods, Services or Materials advertised, offered or supplied through the Elsema website or App; and
- (b) You hereby release Elsema from any claims You would otherwise have against Elsema now or in future arising directly or indirectly from the Elsema website, the App or your access or use of either of them.

8.5 The remedy in respect of any breach by Elsema of any condition or warranty not otherwise excluded by this clause 8 will, to the maximum extent permitted by law, be limited, at the option of Elsema, to:

- (a) the provision of the Services again; or
- (b) the cost of having those Services resupplied.

## 9. Indemnity

9.1 You must indemnify Elsema and keep Elsema indemnified against all losses, claims, liabilities, expenses (including legal fees on a solicitor-client basis) or losses that may be made against or sustained by Elsema arising from Your breach of these Terms and Conditions of Use or in connection with Your use of the Elsema website or App.

## 10. Privacy

10.1 By accessing, browsing and using the Elsema website or App, You acknowledge that You have read and understood the Elsema Privacy Policy (as published on the Elsema website) and consent to the collection, use and disclosure of any personal information You provide to Elsema in accordance with that policy and these Terms and Conditions of Use. If You do not consent to any of the foregoing or experience any issues with the handling of your personal information by Elsema, please cease using the Elsema website and App and contact Elsema as soon as possible using the contact details specified in the Privacy Policy.

10.2 In order to use the App, You will be required to provide a user name, email address, password and any other information which may be requested on the App for each person who requires use of the App ('**User Credentials**'). You warrant that you have the authority of each individual to provide their User Credentials to Elsema.

10.3 User Credentials will be collected, used and disclosed by Elsema for the purposes of operating the App, communicating with You in relation to the App and for the other usual business purposes set out in the Elsema Privacy Policy. Elsema may disclose User Credentials to service providers who assist Elsema with maintaining, developing

and operating the App (for example, User Credentials may be stored with a cloud service provider who authenticates those credentials when You use the App).

- 10.4 In addition, when You visit the Elsema website or use the App, a range of information relating to Your access and use may be recorded (collectively called "**meta data**"). Elsema may examine meta data to determine the traffic through the server as well as access levels to specific pages and features. No attempt will be made to identify You personally or Your browsing activities from meta data except if Elsema or any authority suspect that unauthorised access or use of the Elsema website or App has occurred or may occur or be attempted. In these circumstances, Elsema may use and disclose more extensive information than indicated above regarding access or attempted access to the Elsema website or App for the purposes of prevention, detection, investigation or prosecution.

11. **Jurisdiction and Applicable Law**

- 11.1 The laws of New South Wales, Australia apply to these Terms and Conditions of Use, the Elsema website and App and all use of the Elsema website, App and Services.

11.2 Elsema and You each agree that the courts of New South Wales and the New South Wales division of the Federal Court of Australia have non-exclusive jurisdiction to hear any matter arising out of these Terms and Conditions of Use or Your use of the Elsema website, App or Services.

11.3 You are responsible for complying with all laws applicable to Your access to and use of the Elsema website, App and Services in any jurisdiction from which You access the Elsema website, App or Services (as applicable).

12. **Severance**

13. If any provision of these Terms and Conditions of Use is unlawful, void or for any reason unenforceable, then that provision shall be deemed severed and shall not affect the validity and enforceability of any remaining provisions.

14. **Termination of Your right to access and use the Services**

15. If You breach any provision of these Terms and Conditions of Use then (without limiting Your other liabilities) Your authorisation to view and use the Elsema website, App and Services automatically terminates and You must immediately destroy any downloaded or printed Materials.