

# FRIGBOT TERMS AND CONDITIONS

## DECLARATION

By using the Frigbot App online via your web browser on your computer, tablet, smartphone or any other internet-enabled device You acknowledge that:

1. Activation of the Service, as well as subsequent use of the Service, signifies agreement to the Terms and Conditions;
2. You have read and understood the Terms and Conditions, or waived the opportunity to do so and/or get advice on the Terms and Conditions, at Your own risk;
3. If you are activating the Service for an organisation ("Organisation") you have the authority to bind the Organisation to the Terms and Conditions and you agree to the Terms and Conditions, in Your own right and on behalf of the Organisation;
4. The mobile device, on which the Frigbot App is being activated complies with the minimum requirements for the Frigbot App;
5. The computer and web browser on which the Service is accessed comply with the Licensor's minimum requirements;
6. The Frigbot Device is physically connected to a compatible electronic thermostat controller as defined by the Licensor;
7. The minimum requirements are set out on the Licensor's website at [www.frigbot.com](http://www.frigbot.com) and are updated from time to time.

## 1. PARTIES

1.1 The parties to this Licence are Frigbot Pty Ltd (ABN 98 168 666 144) of 3 / 7 Collingwood Street, Osborne Park, Western Australia 6017 ('Licensor') and all of the following (together, 'You'): the person who activates the Service; that person's employer if the activation is carried out in the course of the person's employment ('Employer'); and the Organisation, if any.

1.2 This Licence becomes binding on all the parties as soon as activation of the Service is completed, or the Service is accessed, however, unless there is a dispute as to authority, the Licensor will only enforce its rights against the Organisation if the activator and the Employer are not the only licensees.

## 2. HOW THE FRIGBOT APP AND THE SERVICE WORK

2.1 The Service allows you to: (a) provide all Your details via the online registration process; (b) collects the operational data from your equipment and presents it in an easy to read graphical representation; (c) find faults and troubleshoot equipment malfunctions; (d) predict equipment faults; (e) update equipment configuration; (f) backup all Your settings; and (g) alerts the fridge mechanic.

2.2 The Licensor warrants that the Service works as described in clause 2.1, however, (a) the Service relies on access to the internet and/or mobile telephone network to operate and it will fail to operate if connected to the internet and/or mobile telephone network is lost; (b) the Licensor cannot and does not warrant that the Frigbot Service is suitable for all localities in the world, and it is Your responsibility to ensure that the Frigbot Device and/or the Frigbot Service is suitable for the locality in which it will be used; (c) the Frigbot device is connected to an electronic thermostat controller which is deemed compatible by Licensor, the Licensor cannot and does not warrant that the Frigbot Service is suitable for all electronic thermostat controllers and it is Your responsibility to ensure that the Frigbot Device is connected to a compatible electronic thermostat controller (d) the Licensor cannot and does not warrant that the Frigbot App and/or the Frigbot Service totally error-free or that the Frigbot App and/or the Frigbot Service may not, in some circumstances, fail to function, but if the Frigbot App and/or the Service contain errors or the Frigbot App and/or the Service fail to function, the Licensor will endeavour to remedy the defects in subsequent upgrades.

### 3. EXTENT OF THE LICENCE AND PROHIBITIONS

3.1 The Licensor hereby grants to You a licence to use the Service (“Licence”) for the Subscription Term, such that You may: (a) use the Frigbot Service, subject to continued payment of the Subscription Fee; (b) give access to the Frigbot App and the Service to, and allow operation of the Frigbot App by: (i) You on the mobile device upon which the Frigbot App and the Service is activated; or (ii) if an Organisation, Your officers, employees, and authorised contractors on the computer or mobile device upon which the Frigbot App and/or the Service is activated; and (c) make backup copies of the Frigbot App and/or the Service in the ordinary course of backing up the computer and/or mobile device, as appropriate, on which the Frigbot App and the Service is activated.

3.2 The Initial Subscription Term commences on the Activation Date.

3.3 Unless You give the Licensor 30 days’ notice in writing that you do not wish the Licence to continue after the expiration of the Initial Subscription Term, or any Continuing Subscription Term (as appropriate), the Licence will automatically continue after the expiration of the Initial Subscription Term or any Continuing Subscription Term for a further Continuing Subscription Term.

3.4 All rights not expressly granted to You under this Licence are expressly reserved to the Licensor.

### 4. YOUR GENERAL OBLIGATIONS

4.1 You must: (a) keep Your details correct at all times; (b) keep user names and passwords confidential and secure; (c) immediately notify the Licensor in the event that it becomes aware of any actual or possible unauthorised use of Your user names or passwords; (d) Prepay the Subscription Fee via a valid credit card

4.2 You acknowledge that: (a) the acknowledgements in the declaration at the beginning of this Licence are correct; (b) no promise, representation, warranty, or undertaking has been made or given by the Licensor, or any person or company on its behalf, in relation to the profitability of, or any other consequences or benefits to be obtained from the delivery or use of the Frigbot App and/or the Service or any accompanying manuals, and written materials, other than those advised to the Licensor at [www.frigbot.com](http://www.frigbot.com) and acknowledged by the Licensor before activating the Service; (c) You are not entitled to rely on any representations unless they are acknowledged by return e-mail or letter by the Licensor; (d) no other representations have been made or relied on by You; (e) the entire risk as to the quality, performance and suitability of the Frigbot App and/or the Service is borne by You, and it is Your responsibility to test and evaluate the Frigbot App and/or the Service at all stages of operation thoroughly before paying the Subscription Fee; (f) the Licensor retains the right to use any derived code developed by You during use of the Frigbot App and/or the Service, (g) You are satisfied with the functionality of the Frigbot App and/or the Service; and (h) You have relied upon Your own skill and judgment in doing so, if You choose to pay the Subscription Fee.

4.3 You may not, without the express written permission of the Licensor: (a) reproduce the Frigbot App and/or the Service in any way, shape or form, except as envisaged by the Frigbot App and/or the Service itself or this Licence; (b) alter the Frigbot App and/or the Service except as permitted by the normal operation of the Frigbot App and/or the Service; (c) produce or manufacture or commission the manufacture or production of, any product or process that is similar to the Frigbot App and/or the Service; (d) loan, rent, lease, or transfer the Frigbot App and/or the Service material or programs containing the Frigbot App and/or the Service to a third party except as part of a transfer or other use expressly permitted by this Licence; (e) reverse engineer, decompile, or disassemble any the Frigbot App and/or the Service or any part thereof; (f) create systems to bypass or disable licensing measures within the Frigbot App and/or the Service; (g) transfer this Licence to a third party unless You first receive the written consent of the Licensor, the third party agrees to a Licence in the same terms as this Licence, the third party pays the required Licence transfer fee, and You cease to use the Frigbot App and/or the Service; or (h) carry on or be concerned or interested in any business (whether alone; or jointly with or as a director, consultant, manager, servant, agent, or partner of any person, firm, or corporation; or with their respective employees, servants, or agents; or as the trustee or beneficiary of

any trust; or otherwise by any means whatsoever) that does any of the things specified in paragraphs above in this clause 4.3.

## **5. OTHER RIGHTS OF THE LICENSOR**

5.1 The Licensor may: (a)immediately suspend Your access to the Service in the event of a breach of these Conditions by You; (b)engage contractors to perform any of the tasks to be performed by the Licensor; (c)alter the Terms and Conditions and the Subscription Fee on giving 10 business days' notice; and (d)provide the links to other sites as a convenience to you, but the existence of a link to other sites does not imply any endorsement of the linked sites by the Licensor and the Licensor is not responsible for the material contained on those linked sites.

5.2 The Licensor accepts no responsibility or legal liability for any storage, disclosure, errors in, use, misuse, loss or corruption of any data, electronic file, or information that is or is attempted to be filed, organised, viewed, or accessed in the course of Your use or attempted use of the Frigbot App and/or the Service.

## **6. MAINTENANCE AND SUPPORT OF THE FRIGBOT DEVICE THE FRIGBOT SERVICE**

6.1 During the term of this Licence, the Licensor will provide You with minor enhancements, minor upgrades, and bug fixes from time to time.

6.2 The Licensor shall in good faith, supply to You: (a)free website support at [www.frigbot.com](http://www.frigbot.com); (b)limited on-line contact with the Licensor via [www.frigbot.com](http://www.frigbot.com), with the Licensor reserving the right to advise You that Your support requirements go beyond that which can be provided free of charge and charge for support at an agreed rate; (c)electronic operating manuals relating to the Frigbot App and the Service, to ensure the full exploitation of the Licence granted under this Licence; and (d)details of all improvements and other developments in the Frigbot App and/or the Service hereafter produced or owned by the Licensor which can be downloaded from [www.frigbot.com](http://www.frigbot.com).

6.3 The Licensor will not modify the Frigbot App or the Service to comply with your specific requirements unless it believes that there is sufficient business merit. The Licensor may develop customised versions of the Frigbot App and/or the Service for You but this will be undertaken pursuant to a separately negotiated and priced contract.

## **7. LIMITED WARRANTY**

7.1 The Licensor hereby represents, warrants and undertakes to You that: (a)the Licensor has full right and title to grant this Licence and neither the entering of this Licence nor the performance by the Licensor of its obligations will cause it to be in breach of any Licence to which it is a party or is subject; (b)the use by You of the Frigbot Device and/or the Frigbot Service shall not infringe any copyright, trademark, registered design, or similar or other intellectual property rights of any third party, nor give rise to payment by You of any royalty to any third party or to any liability to pay compensation to a third party; and (c)the Frigbot Device and the Frigbot Service will be of merchantable quality and fit for the purpose.

7.2 In relation to transactions that are covered by the Australian Consumer Law: (a)the Frigbot Device and the Frigbot Service come with guarantees that cannot be excluded under the Australian Consumer Law. (b)You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Frigbot Device repaired or replaced if the Frigbot Device fails to be of acceptable quality and the failure does not amount to a major failure. (c)In addition to other rights and remedies of the Customer under the Australian Consumer Law: (i)The Licensor warrants the Frigbot Device for the period of 12 months after supply. (ii)You must seek a remedy under this warranty in writing to the Licensor within 5 business days of the fault becoming apparent. (iii)Each party shall be responsible for their own costs associated with making a claim pursuant to this clause 7.2.

7.3 Where the transaction is for the supply of goods or services other than goods or services of a kind ordinarily acquired for personal, domestic, or household use or consumption, i.e. supply for business purposes, the Licensor's liability is limited to replacement of the Frigbot Device, or correction of the defects in the Frigbot Device and/or the Frigbot Service, or refund of the Subscription Fee, at the exclusive option of the Licensor.

7.4 In relation to transactions that are not covered by the Australian Consumer Law: (a) Other than as specified in clause 7.1, the Licensor does not give, and no person purporting to act with the authority of the Licensor has given, any condition, warranty, or representation whatsoever in favour of You as to the condition or quality of the Frigbot App and/or the Service. (b) The limitation of liability in paragraph 7.3 applies to clause 7.4.

7.5 Except to the extent provided above, under no circumstances shall the Licensor or any agent, related company or related person be liable for any loss, damage or injury (including without limitation any loss of profit, indirect, consequential or incidental loss, damage or injury) arising from the supply or use of the Frigbot Device and/or the Frigbot Service, or any failure by the Licensor or any related company to perform any obligation or observe any Conditions.

7.6 Without prejudice to the generality of the foregoing, the Licensor does not guarantee that third party products that do presently interact with the Frigbot Device and/or the Frigbot Service will continue to do so after any upgrade and the Licensor accepts no responsibility for any failure of the Frigbot Device and/or the Frigbot Service to interact with any other product at any time.

7.7 The warranties given by the Licensor will not apply if the Licensor is not responsible for the problem, for example, if the problems result from: (a) any interruption to the availability of the internet; (b) an unauthorised modification made to the Frigbot Device and/or the Frigbot Service by You or any other party; (c) conflicts arising from or in connection with any application code written, developed, modified, or customised by You or any party other than the Licensor; (d) the media (where applicable) being subjected to accident, abuse, or improper use; or (e) being used on or in conjunction with hardware or software other than the hardware and software described in paragraphs (d) and (e) of the declaration at the beginning of this Licence.

## **8. SECURITY**

8.1 The Frigbot App incorporates code to prevent tampering or circumventing the security and licence control of the product. Any attempt to tamper or alter this functionality will result in the Licence being immediately revoked.

8.2 The Licensor will not be held liable for loss of data, security breaches, etc.

8.3 In particular when other systems are connected to the Frigbot Device and/or the Frigbot Service and/or they are connected to the internet and/or mobile telephone network for public access You and those licensed by You must: (a) maintain the systems with the latest patches, anti-virus and spyware software, and up to date definitions, and (b) take all necessary precautions to secure the environment, including, without prejudice to the generality of the foregoing, setting up any other software correctly.

8.4 The Licensee is responsible for access to and publication of data from within the Frigbot Device and/or the Frigbot Service within other applications and over the internet.

8.5 The Licensor cannot be held liable for any misuse of the Frigbot Device and/or the Frigbot Service.

8.6 Some data within the Frigbot Service (especially user passwords) is hashed to prevent reading of sensitive information. This information is not available to external systems and the algorithm will not be made available to third party providers or clients etc.

## **9. TERMINATION**

9.1 This Licence shall immediately terminate if you use the Frigbot Device and/or the Frigbot Service otherwise than in accordance with this Licence or otherwise breaches this Licence.

9.2 You may cancel the Service at any time on 30 days' notice subject to clause 9.6.

9.3 We may limit, suspend or cancel the provision of the Service at any time: (a) without notice to You: (i) in the event of an emergency or in order to provide resources to emergency and other essential services; (ii) if the supply or use of the Service is, or is likely to become, unlawful; or (iii) if, in the Licensor's reasonable opinion, the provision of the Service is liable to cause death, personal injury or damage to property; and (b) by notice to You: (i) if You do not pay any Subscription Fee on time; (ii) if Your use of the Service interferes (or threatens to interfere) with the efficiency of the Licensor's network and You fail to rectify the situation; (iii) if You are or become a carrier or carriage service provider (as defined in the Telecommunications Act 1997 (Cth)); or (iv) if an administrator, receiver, liquidator or provisional liquidator is appointed to You, or You resolve to enter into any settlement, moratorium or similar arrangement for the benefit of Your creditors, or You are unable to pay Your debts when they are due.

9.4 Where the provision of the Service has been suspended or cancelled under paragraph 9.3(b)(i), the Licensor may require You to pay a reconnection charge when the Service is reconnected.

9.5 Upon termination, your access to the Frigbot App and/or the Service shall forthwith be terminated.

9.6 If you or we terminate this Service before the expiry of the Subscription Term, other than for our material breach and unless otherwise set out in this Service Schedule, we may charge you an Early Termination Charge. You acknowledge that this amount is a genuine pre-estimate of the Licensor's loss.

## 10. CONFIDENTIALITY

10.1 Subject to the provisions of this clause, the parties must: (a) keep the Terms and Conditions and all Confidential Information, confidential and secure; and (b) not use, disclose, or permit the use or disclosure of, the Terms and Conditions or any part of the Confidential Information to any third party, other than for the purpose of properly exercising Your rights or discharging Your obligations under this Licence.

10.2 The parties may disclose the Confidential Information to, or permit the use of the Confidential Information by, those of Your officers, employees and advisers who: (a) have a specific need to have access to the Confidential Information; and (b) have been made aware of the terms upon which the Confidential Information has been disclosed to the party.

10.3 Each party must, upon request of the other party, provide details of the third parties to whom a disclosure has been made, and why such disclosure or use was necessary.

10.4 The provisions of clause 10.1 do not apply in circumstances where a party discloses the Terms and Conditions or any part of the Confidential Information to comply with any applicable law or legally binding order of any court or governmental agency. The parties must only disclose the minimum required to comply with the applicable law or order.

10.5 The parties' obligations under this clause: (a) will survive the termination or expiration of this Licence; and (b) will continue until the Confidential Information disclosed to it, falls into the public domain other than by the that party's breach of this Licence.

## 11. PRIVACY

11.1 We: (a) respect Your privacy; (b) will not use Your information for any purpose other than to allow the Frigbot Device and/or the Frigbot Service to operate as intended, and (c) will keep secure all the information that you provide.

11.2 You have access to Your own information via the Frigbot Device and/or the Frigbot Service and You can change it at any time.

## 12. GENERAL

12.1 This Licence embodies all the terms that are binding between the parties and replaces all previous representations and proposals not embodied herein.

12.2 This Licence shall be governed by the laws of Western Australia and shall be deemed to have been made in Western Australia. Any proceedings arising out of or in connection with this Licence may be brought in any court of competent jurisdiction in Western Australia.

12.3 If any provision of this Licence is held by a court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, the validity and enforceability of the remaining provisions shall not be affected.

## 13. DEFINITIONS

13.1 In this agreement, unless the context otherwise requires, the following terms have the following meanings: Activation Date means the date upon which the Service is activated Conditions means the terms and conditions set out in this document. Confidential Information means all information pertaining to the Frigbot Device and/or the Frigbot Service and the terms of this Licence and includes all the ideas upon which the Frigbot Device and/or the Frigbot Service are based and includes: (a)the contents of the Frigbot App whether in whole or in part; (b)financial and technical information; (c)any commercially valuable information in whatever form; and (d)any information which the Licensor identifies as confidential, but excludes the information which is: (e)already in the public domain; (f)in the public domain subsequently, other than as a result of an unauthorised disclosure by the receiving party or Your representatives; or (g)becomes available to the receiving party from a third party who is legally entitled to possess and provide the information to the receiving party without a confidentiality restriction.

Continuing Subscription Term means a term of equal duration to the expiring subscription.

Frigbot App means the web application by which the Service may be accessed on mobile devices.

Intellectual Property Rights means any and all intellectual and industrial protection rights throughout the world including rights in respect of, or in connection with: (a)the Frigbot Device; (b)the Frigbot Service; (c)any Confidential Information; (d)any patent, trademarks, copyright, registered design or other design right, electronic or circuit layout right and any corresponding property or right under the laws of any jurisdiction throughout the world; (e)any right under the laws of Australia, or of any other jurisdiction throughout the world, to apply for the grant of registration of a patent, trade mark, copyright, design, electronic or circuit layout right or any corresponding property or right; and (f)any rights throughout the world in respect of an invention, discovery, trade secret, know-how, concept, idea, information, data, algorithm or formula, whether or not now existing, and whether or not registered or registrable and includes any right to apply for the registration of such right and includes all renewals and extensions. Service means the service provided by the Licensor to You, pursuant to this agreement. Subscription Fee means the fee payable for the Service. Subscription Term means the duration of the subscription. Subscription Term Expiry Date means the date upon which the Subscription Term actually expires or is terminated, pursuant to this agreement. 13.2 Unless expressed to the contrary: (a)words importing: (i)the singular includes the plural and vice versa; (ii)any gender include the other genders; (b)if a word or phrase is defined cognate words and phrases have corresponding definitions; (c)a reference to: (i)a person includes a firm, unincorporated association, corporation and a government or statutory body or authority; (ii)a person includes its legal personal representatives, successors and assigns; (iii)a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them; (iv)a right includes a benefit, remedy, discretion, authority or power; (v)an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation, and (vi)time is to local time in Western Australia.