

# SurvaCAD Technology Solutions – Terms & Conditions

## **Terms & Conditions – BBCAD Australia Pty Ltd T/A SurvaCAD**

These terms and conditions apply to all Goods and Consulting Services resold, supplied or performed by **BBCAD Australia Pty Ltd Trading As SurvaCAD (SurvaCAD)** to you, and your use of such Goods and Consulting Services, where SurvaCAD accepts an offer from you to supply such Goods and Consulting Services based on a written CED, except where:

- SurvaCAD and you have entered into an Individual Contract formed pursuant to an agreed SurvaCAD Head Agreement; or
- SurvaCAD has expressly agreed in writing to provide such Goods and Consulting Services to you pursuant to a separate written agreement.

You acknowledge that, unless expressly agreed by SurvaCAD in writing, the terms and conditions included on any document issued by you (such as a purchase order, confirmation, receipt—including terms on any pre-printed purchase order form or standard retainer document) will not apply to the sale or supply of Goods and Consulting Services by SurvaCAD or otherwise vary these terms and conditions.

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## **General Obligations**

You agree to perform your own specific obligations and responsibilities in accordance with this Individual Contract. You agree to cooperate fully, act reasonably and in good faith to assist in the timely progress and fulfilment of our obligations, including by not unreasonably withholding or delaying provision of agreements, acceptances, information, access or other resources required by us. You must ensure all necessary site preparation is completed to enable efficient delivery and implementation of Goods and Consulting Services. You agree to ensure our personnel, agents or subcontractors are sufficiently trained in and aware of your policies and procedures, including workplace safety.

SurvaCAD agrees to cooperate fully and act reasonably and in good faith to ensure timely progress and fulfilment of our obligations.

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## **Your Requirements and Specification Information**

You warrant that all information you provide about your hardware, software or service requirements is complete, accurate and supplied prior to entering into an Individual Contract. You agree to promptly update SurvaCAD if you become aware of any errors or omissions in the information supplied.

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## **Procurement of Goods**

SurvaCAD agrees to procure and supply the Goods to you in accordance with the Individual Contract.

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## **Delivery**

Estimated delivery dates are based on information provided by third-party suppliers and are subject to change with notice, including by electronic mail. SurvaCAD will use commercially reasonable efforts to meet estimated delivery dates but is not responsible for delays caused by suppliers or circumstances outside our reasonable control. If a fixed Delivery Date is provided, we will meet that deadline unless prevented by circumstances outside our reasonable control.

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## **Risk and Title**

Risk of loss or damage to Goods (and, where applicable, Third Party Contracts) passes to you on delivery. Notwithstanding the passing of risk:

- All Goods (and, where applicable, Third Party Contracts) remain the property of SurvaCAD (or their respective owners) until all monies owed are paid in full. You acknowledge that the sale of Goods constitutes a registered security interest under the PPSA. SurvaCAD may register its interest and may not provide notification of registration.

- Prior to any on-sale, you hold the Goods as bailee for SurvaCAD and must return them on demand.
- Until payment is received in full, SurvaCAD may enter your premises at any reasonable time to inspect records relating to Goods supplied and your on-sale of those Goods.
- SurvaCAD may also enter your premises to recover possession of unpaid Goods.
- If ownership cannot be determined upon repossession, Goods will be deemed sold to you in the same sequence as delivered.

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### **Performance of Consulting Services**

Unless otherwise agreed, Consulting Services will be performed during Business Hours of each Business Day. SurvaCAD will perform Consulting Services using personnel, employees or subcontractors as deemed appropriate.

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### **Prices and Payment**

Prices for Goods and Consulting Services are those set out in the Individual Contract and exclude Incidental Costs unless otherwise stated.

Unless expressly agreed otherwise, SurvaCAD may invoice Goods and Consulting Services upon delivery, availability, or provisioning. Payment is not contingent on your use or consumption of Goods, Third Party Contracts, or Consulting Services.

Default payment terms are **100% of the payment amount shown on your invoice is to be received by BBCAD Australia Pty Ltd prior to orders being finalised for goods or services.**

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### **Confidentiality**

Both parties agree to maintain the confidentiality of the other's Confidential Information and comply with restrictions on use and disclosure.

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### **Materials Ownership and Licence**

SurvaCAD retains all rights in Materials created before or during Consulting Services. SurvaCAD grants you a non-exclusive licence to use, copy and distribute such Materials within your corporate group. Copyright notices must be reproduced on all copies.

Ideas, concepts, know-how or techniques developed during Consulting Services may be freely used by either party (subject to applicable intellectual property rights).

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### **Hardware, Third Party Software and Third Party Contract Warranty**

You accept the hardware manufacturer's warranty. SurvaCAD provides no additional hardware warranty but will, upon request, provide available warranty information and pass through any manufacturer warranties.

You acknowledge that Third Party Contract deliverables or services are governed solely by the Third Party vendor's contract. You agree to be bound by those terms and accept the Third Party warranty. SurvaCAD provides no additional warranty.

You acknowledge that Third Party Software is governed by its End User Licence Agreement (EULA). You agree to be bound by the EULA, and accept the Third Party Software owner's warranty. SurvaCAD provides no additional warranty.

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### **Consulting Services Warranty**

SurvaCAD warrants it will use commercially reasonable efforts to perform Consulting Services with due care and skill in accordance with the Individual Contract. If you believe this warranty has not been met, you must notify SurvaCAD in writing within **30 days** following delivery of the Consulting Services.

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### **Integration Warranty**

You accept the relevant third-party warranties regarding integration, compatibility or interoperability with other hardware, software or services.

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### **Assistance With Third-Party Hardware, Software and Services**

All issues relating to third-party hardware, software or services—including warranty claims—must be addressed directly with the relevant vendor. SurvaCAD may provide customer-relationship support where possible. An Individual Contract may specify that SurvaCAD will provide first-line warranty assistance for a specified Price.

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### **Australian Consumer Law**

Consumers may have rights under Australian Consumer Law which cannot be excluded. Goods come with guarantees that cannot be excluded. Consumers may be entitled to repair, replacement, refund or compensation depending on the nature of the failure. To claim a warranty, consumers must notify SurvaCAD within the manufacturer's warranty period. SurvaCAD will assist in facilitating warranty claims.

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### **Exclusion of Other Warranties**

To the extent permitted by law, SurvaCAD:

- (a) provides Goods and Consulting Services "AS IS";
- (b) excludes all express, implied or statutory warranties not expressly included here; and
- (c) limits remedies to (at SurvaCAD's discretion) repairing, replacing or paying the cost of repair or replacement of affected Goods or Services.

SurvaCAD accepts no liability for loss or damage arising from integration with Customer systems or incomplete/inaccurate Customer information.

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### **Limitation of Liability**

Except for death or personal injury caused by negligence, neither party is liable for indirect, special or consequential loss.

SurvaCAD's maximum aggregate liability is limited to:

- for Goods: the Price paid for those Goods;
- for Consulting Services: the Price paid for those Services.

Where a claim relates to both, the limits apply independently.

Liability is reduced to the extent the claimant contributed to the loss.

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### **Term and Termination**

This Contract remains in force for the term of the Individual Contract or until obligations are fulfilled. Either party may terminate on 30 days' written notice for material breach. SurvaCAD may terminate immediately if you become unable to pay your debts when due.

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### **Force Majeure**

SurvaCAD is excused from performing obligations to the extent prevented by events beyond reasonable control, including natural disasters, war, riots or strikes.

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### **General Provisions**

**Assignment:** SurvaCAD may assign or transfer its rights or obligations at any time. You may only do so with SurvaCAD's prior written consent (not to be unreasonably withheld).

**Severability:** If any provision is held invalid, the remaining provisions remain enforceable. Provisions may be modified to ensure validity.

**Variations:** Must be agreed in writing by both parties.

**Waiver:** Failure to enforce any provision is not a waiver of future enforcement unless agreed in writing.

**Entire Contract:** This Individual Contract constitutes the entire agreement and supersedes all prior agreements, representations or warranties.

**Governing Law:** This Contract is governed by the laws of Queensland, and each party submits to the non-exclusive jurisdiction of the courts of Queensland.

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## Definitions

- **Business Day** – A day other than weekends or public/bank holidays.
- **Business Hours** – 8:00am to 4:00pm on a Business Day.
- **CED (Commercial Engagement Document)** – A SurvaCAD quotation or proposal referencing specifications applicable to the supply of Goods/Services.
- **Consulting Services** – Services supplied by SurvaCAD personnel, excluding resale of Goods or Third Party Services.
- **Individual Contract** – A binding contract consisting of the CED and these Terms & Conditions.
- **Confidential Information** – Non-public business, technical or commercial information of either party.
- **SurvaCAD, Us, Our, We** – BBCAD Australia Pty Ltd Trading As SurvaCAD, ABN 32 685 074 079, of PO Box 5446 Q SUPERCENTRE QLD 4218.
- **Goods** – Hardware, Third Party Contracts or Third Party Software procured or supplied by SurvaCAD.
- **EULA** – End User Licence Agreement governing use of Third Party Software.
- **Hardware** – Physical products manufactured by third parties.
- **Head Agreement** – SurvaCAD's umbrella agreement for supply of Goods and Services.
- **Incidental Costs** – Delivery, tax, installation, support, site preparation, travel, etc.
- **Material** – Works of authorship delivered as part of Consulting Services (excluding licensed software).
- **Price** – The amount payable under an Individual Contract.
- **Third Party Software** – Software owned/licensed by third parties, governed by their EULA.
- **Third Party Contract** – Contracts for third-party services resold by SurvaCAD.
- **You** – The customer entity identified in the Individual Contract.