

# Terms of Use for Wacom Services

These Terms of Use for Wacom Services (“Terms”) are a binding agreement between you and Wacom Australia Pty. Ltd. (“Wacom”) and govern your account registration and use of the online services offered by Wacom, which includes Wacom Australia eStore available at <https://estore.wacom.com/en-AU/> and Wacom New Zealand eStore available at <https://estore.wacom.com/en-NZ/> (collectively the “Wacom Service(s)”). Your Wacom account (“Wacom Account”) may also be used to sign on to other online services offered by Wacom and/or its affiliated companies that use the Wacom Account (collectively the “Wacom Site(s)”). You further acknowledge and agree that any goods, software, subscriptions or other services (collectively “Offerings”) that are made available through the Wacom Services or that you may purchase from Wacom, its affiliates, or third parties through the Wacom Services may be subject to additional terms and conditions.

## 1 Scope; Wacom Account

1.1 These Terms govern your access to and/or use of the Wacom Services, the Wacom Sites, and any associated Offerings. Other terms or conditions may apply to or govern your access to and/or use of specific Wacom Services, Wacom Sites, and/or Offerings. You agree that in the event of any conflict or inconsistency between these Terms and such additional terms or conditions, such additional terms or conditions shall govern and control, but only with respect to the specific Wacom Services, Wacom Sites, and/or Offerings to which such additional terms or conditions relate. Except as set forth in the preceding sentence or as otherwise expressly set forth in these Terms, Wacom will not be bound by any term, condition or other provision which is different from or in addition to the provisions of these Terms, including for example, any term, condition or other provision submitted by you in any order, receipt, acceptance, confirmation, or other document.

1.2 For any Wacom Services (or parts thereof) that do not require a Wacom Account to access and/or use, these Terms are effective upon your access and/or use of any such Wacom Services (or parts thereof) and your access to and/or use of any such Wacom Services (or parts thereof) constitutes your acceptance of these Terms. For any Wacom Services and/or Wacom Sites (or parts thereof) that require a Wacom Account to access and/or use, these Terms become effective upon your: (i) signing up for and activating your Wacom Account as described in Section 1.2.1 below, or by signing in to a Wacom Service using an existing Wacom Account created on a different Wacom Site; and (ii) accepting these Terms of Use as described in Section 1.2.2 below. In particular, you acknowledge and agree that:

1.2.1 When you sign up for a Wacom Account by selecting a user name and password and by providing a valid email address (or alternatively, by using an existing social media account to provide your information), you are requesting that Wacom make you an offer to access and use the Wacom Services pursuant to the terms and conditions of these Terms. Wacom will confirm receipt of your registration request by email. If Wacom chooses to make you an offer (such decision to be made in Wacom’s sole and absolute discretion), Wacom will do so by sending you an activation link by email. This may also be combined with the aforementioned confirmation of receipt. You accept Wacom’s offer, and these Terms become effective, if and when you activate your Wacom Account by clicking the activation link. The following terms and conditions also apply to any Wacom Account created through the Wacom Services:

a) You agree that the information you provide to Wacom as part of obtaining a Wacom Account and/or using the Wacom Services is and will be accurate, current, and complete. You further agree to keep your Wacom Account information, including without limitation, your email address and, if applicable, billing

information (including billing address), current and up-to-date.

b) Your Wacom Account is personal to you and you acknowledge and agree that you may not assign, rent, lease, loan, sell, resell, sublicense, distribute or otherwise transfer your Wacom Account to any third party. Any licenses granted to you as part of any Offering tied to your Wacom Account are likewise personal to you and subject to the foregoing restriction, except to the extent any other terms and conditions applicable to such Offering permit transfer or assignment, or the foregoing restriction on transfer or sale is prohibited by applicable law. You further agree not to use the Wacom Account, user name, or password of any other user, or permit any third parties to use your Wacom Account, user name, or password.

c) You will keep the user name and password for your Wacom Account secure and confidential. You agree to inform Wacom immediately if you have reason to suspect that your user name and/or password has been disclosed to or otherwise obtained by any third party. Notwithstanding the preceding sentence, anyone using your Wacom Account on behalf of any Subscribing Organization (defined below) is not a "third party" for this purpose.

d) You acknowledge and agree that you are solely responsible for any and all uses of your Wacom Account, and any transactions and/or fees resulting therefrom.

1.2.2 When you sign in to any Wacom Service with your Wacom Account for the first time, you will be prompted to accept these Terms. You must accept these Terms by clicking "I ACCEPT" or taking such other action as prompted by the Wacom Service to indicate your acceptance of these Terms. If you do not accept these Terms, you will not be permitted to complete the sign in process, and as such, you will not be permitted to use the Wacom Service. Your Wacom Account will be subject to the terms and conditions applicable to it at the time you accepted and created your Wacom Account, except as such terms and conditions are later amended or modified by Wacom as permitted by these Terms.

1.3 The use of the Wacom Services is limited to persons over the age of 18 or equivalent minimum age in the relevant jurisdiction. Accordingly, you may not sign up for a Wacom Account, and Wacom may refuse to offer or provide you a Wacom Account, if you are under the age of 18 or equivalent minimum age in the relevant jurisdiction and do not have your parent or legal guardian's permission to use the Wacom Services. Wacom further reserves the right to refuse to offer or provide you a Wacom Account if your prior Wacom Account was previously terminated by Wacom, or if Wacom has previously terminated or cancelled any other agreement previously entered into by you and Wacom. Accordingly, you represent and warrant that: (i) you are at least 18 years old or equivalent minimum age in the relevant jurisdiction, or have obtained your parent or legal guardian's permission to use the Wacom Services; and (ii) Wacom has not previously terminated any prior Wacom Account owned or controlled by you, or any other agreement previously entered into by you and Wacom.

1.4 If you are using or opening a Wacom Account on behalf of a company, entity, or organization (collectively, a "Subscribing Organization"), then you represent and warrant that you are an authorized representative of that Subscribing Organization with the authority to bind such Subscribing Organization to these terms, and that you agree to these terms on behalf of such Subscribing Organization. In such a case "you" in these terms refers to your Subscribing Organization, which shall ensure that each individual user accessing and using the Wacom Account on behalf of the Subscribing Organization complies with the obligations, limitations and restrictions contained herein.

1.5 Your Wacom Account, where applicable, may be used across a number of online services and platforms operated by Wacom and/or its affiliated companies. However, you acknowledge and agree that

additional terms and/or conditions may apply to your purchase of, access to, and/or use of any Offerings made available on or through the Wacom Services. You will be given the opportunity to review and accept any such additional terms and conditions prior to completing your purchase or signing up for any such Offerings. Notwithstanding the preceding sentence, your purchase of, access to, or use of an Offering will be considered your acceptance to the additional terms and conditions applicable to such Offering. You agree that in the event of any conflict or inconsistency between these Terms and such additional terms or conditions, such additional terms or conditions shall govern and control, but only with respect to the specific Offerings to which such additional terms or conditions relate.

## **2 Use of Wacom Services and Wacom Sites**

2.1 Subject to the terms and conditions of these Terms, Wacom will permit you to access the Wacom Services and use the features and/or functions associated with the Wacom Services. You may use the Wacom Services and the Wacom Sites when and as available. Although Wacom generally intends for the Wacom Services and the Wacom Sites to be available on an uninterrupted basis, the Wacom Services and the Wacom Sites will not always be available (e.g., during maintenance, changes, outages, and for other reasons). Wacom reserves the right to change or eliminate and restrict or block access to all or any part of the Wacom Services and/or the Wacom Sites, including any features, functions, or content displayed or made available through the Wacom Services and/or the Wacom Sites, from time to time with or without notice to you, in Wacom's sole and absolute discretion.

2.2 You may enter into other agreements with Wacom, Wacom affiliates, and/or third parties through the Wacom Services that are specific to your access to and/or use of certain Offerings. For third party Offerings, your access to and/or use of the Offering is subject to the respective terms and conditions communicated to you by the respective third party vendor. In the event of any conflict between these Terms and the any terms and conditions specific to a certain Offering, the terms and conditions specific to the Offering shall prevail with respect to your access to and/or use of the Offering only.

2.3 The vendor of any Offering will be clearly identified on the respective description page within the Wacom Services. Third party Offerings are made available by Wacom as a convenience to you. Unless Wacom specifically says so, Wacom does not endorse the third party provider of the Offering or the Offering itself, and Wacom is not responsible for, and shall have no liability in connection with, your access to and/or use of such third party Offering. If you purchase or sign up for a third party Offering, your transaction is not with Wacom, so you should review the third party's terms of use, other contracts, and/or privacy policies specific to the Offering prior to completing your transaction.

2.3.1 From time to time there may be information on the Wacom Services and the Wacom Sites, whether or not posted by Wacom or by other users, that is outdated or that contains errors, inaccuracies, or omissions ("Inaccuracies"). The information on the Wacom Services and the Wacom Sites is informational only. Wacom reserves the right to correct any such Inaccuracies at any time. Furthermore, you acknowledge and agree that Wacom does not pre-screen User Content and cannot guarantee that the Wacom Services or the Wacom Sites will be free from content that is inaccurate, deceptive, offensive, defamatory, unlawful or otherwise objectionable. You acknowledge that Wacom is acting only as a passive channel for such distribution. Wacom will have no liability relating to any User Content or activities of other users. If you have concerns about any User Content, please notify Wacom using the copyright notice procedures in Section 7 of these Terms.

## **3 Your Obligations**

3.1 You acknowledge that your Wacom Account and the Wacom Services are not data backup services.

You agree to create and maintain adequate regular backups of any and all User Content you upload or share using your Wacom Account and/or the Wacom Services.

3.2 You agree that you will not violate any law, breach any contract or other legal duty owed to a third party, infringe or misappropriate any intellectual property right, or commit any tort, in connection with your use of the Wacom Services. More particularly and/or in addition to, you agree not to:

- a) access or tamper with or attempt to access or tamper with any area of the Wacom Services that you are not authorized to access or otherwise attempt to probe, scan, or test the vulnerability of any Wacom or third party system or network;
- b) reverse engineer any aspect of the Wacom Services, do anything that might discover source code, or bypass or circumvent measures employed to prevent or limit access to any area, content or code of the Wacom Services;
- c) modify, translate, or otherwise create derivative works of any part of the Wacom Services;
- d) interfere or attempt to interfere with the proper workings of or any activities conducted on the Wacom Services, or access or attempt to access the Wacom Services with any bot, spider, crawler, or other automated system or process, or bypass robots.txt exclusion files or other measures as may be used to prevent or regulate access to the Wacom Services;
- e) post, upload, or distribute any User Content that is defamatory, libelous, inaccurate, unlawful (including in violation of any applicable intellectual property, personality rights, youth protection or similar laws), or that a reasonable person would deem to be objectionable, offensive, indecent, pornographic, harassing, threatening, embarrassing, distressing, vulgar, hateful, racially or ethnically offensive, or otherwise inappropriate;
- f) post or upload any User Content that contains any viruses, adware, spyware, worms, or other malicious code or any content or file that may have the effect of compromising any security or access control feature of the Wacom Services or of any Offering;
- g) impersonate any person or entity, falsely claim an affiliation with any person or entity, or access the Wacom Account of any other user without permission, forge another person's digital signature, misrepresent the source, identity, or content of information transmitted via the Wacom Services, or perform any other similar fraudulent activity;
- h) post or send unsolicited commercial messages or advertise any goods, software, products, or services other than the Offerings available through any Wacom Services;
- i) use the Wacom Services to create products or perform services which compete or interfere with those of Wacom or its licensors;
- j) use the Wacom Services in any manner that would require the Wacom Services to be compliant with the U.S. Health Insurance Portability and Accountability Act of 1996, as amended and/or supplemented ("HIPAA");
- k) store, maintain, process or transmit an individual's government issued personal identifications number(s) (such as, social security numbers, driver's license or passport numbers) or protected health

information (as defined by HIPAA);

- l) infringe or misappropriate any patent, trademark, trade secret, copyright, right of publicity, or other intellectual property right or other proprietary right;
- m) invade the privacy of a third party and use personal data of third parties for commercial purposes or in some other manner that violates their rights or applicable laws.
- n) access or use the Wacom Services for any unlawful, unintended, or harmful purpose, or other than in full compliance with applicable law and these Terms;
- o) take any action which might impose a significant burden on the infrastructure for the Wacom Services;
- p) use the Wacom Services in connection with life support systems, medical devices, or any application where failure or malfunction could lead to possible loss of life; or
- q) interfere with the ordinary operation or mission of the Wacom Services.

#### **4 Intellectual Property Rights and Licenses**

4.1 The Wacom Services may feature, without limitation, data, text, designs, graphics, logos, slogans, interfaces, icons, software, and other information (“Content”). Content that is posted by you in connection with your use of the Wacom Services is referred to herein as “User Content.” Content that is posted by or that otherwise originates from Wacom is referred to herein as “Wacom Content.”

4.2 You retain ownership of any User Content posted or transmitted to or through the Wacom Services. You hereby grant to Wacom, a non-exclusive, royalty-free, worldwide, and sublicensable license and authority to use, copy modify, post, transmit, download, store, distribute, incorporate and otherwise exploit the User Content solely: (i) to the extent necessary to perform Wacom’s obligations or enforce Wacom’s rights under these Terms; or (ii) to ensure Wacom’s compliance with applicable laws.

4.3 You represent and warrant to Wacom that: (i) you own the User Content which you post or transmit on or through the Wacom Services, or otherwise have the legal right to post or transmit such User Content on or through the Wacom Services; and (ii) the User Content or the posting thereof to or through the Wacom Services does not violate the privacy rights, publicity rights, intellectual property rights, or any other proprietary rights of any third party.

4.4 The Wacom Services and all Wacom Content featured on the Wacom Services is the property of Wacom or its affiliates, licensors or suppliers, and is protected by intellectual property laws. No Wacom Content may be used, copied, distributed, republished, uploaded, posted or transmitted in any way except pursuant to the express provisions of these Terms, or with Wacom’s prior written consent. All rights not expressly granted to you are reserved. Modification or use of the Wacom Services and the Wacom Content for any other purpose may violate Wacom’s intellectual property rights, and no title to copies or to intellectual property rights in the Wacom Services and/or the Wacom Content are transferred to you – all title and rights remain with Wacom. You are granted only a limited, non-exclusive, non-transferable license to use the Wacom Services for your internal, non-commercial use, subject to these Terms, and for the period of time in which you maintain a Wacom Account.

4.5 Any comments, feedback, suggestions, or ideas (“Feedback”) you provide through the Wacom

Services may be used by Wacom in an anonymous or pseudonymous form. While you may continue to own all such Feedback, you hereby grant to Wacom a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, disclose, sublicense, distribute, modify and otherwise commercialize and exploit the Feedback (provided that the Feedback is in anonymized or pseudonymised form). If you do not want Wacom to use the Feedback, do not provide any such Feedback to Wacom.

## **5 Disclaimer; Limitation of Liability**

5.1 YOU USE THE WACOM SERVICES AT YOUR OWN SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, WACOM DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, QUALITY, PERFORMANCE, MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY AND NON-INFRINGEMENT RELATED TO OR ARISING OUT OF THE WACOM SERVICES, ANY MATERIALS OR CONTENT, OR ANY PRODUCTS OR SERVICES PURCHASED OR MADE AVAILABLE THROUGH THE WACOM SERVICES, AS WELL AS WARRANTIES IMPLIED FROM ANY ALLEGED COURSE OF DEALING OR COURSE OF PERFORMANCE. WACOM DOES NOT WARRANT THAT THE WACOM SERVICES WILL PROVIDE CONTINUOUS, PROMPT, SECURE, OR ERROR-FREE SERVICE. WACOM ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS, INCLUDING THE INACCURACY OF CONTENT, OR FOR ANY DAMAGES OR LOSSES THAT YOU OR ANY THIRD PARTY MAY INCUR AS A RESULT OF THE UNAVAILABILITY OF THE WACOM SERVICES. WACOM ASSUMES NO RESPONSIBILITY, AND SHALL NOT BE LIABLE FOR, ANY DAMAGES TO, OR VIRUSES THAT MAY AFFECT, YOUR COMPUTER EQUIPMENT OR OTHER PROPERTY ARISING FROM YOUR USE OF THE WACOM SERVICES.

5.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WACOM SHALL NOT BE LIABLE TO YOU OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (REGARDLESS OF WHETHER WACOM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE OTHERWISE FORESEEABLE), HOWEVER CAUSED, WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT, WARRANTY OR ANY OTHER LEGAL THEORY. WACOM'S TOTAL AGGREGATE LIABILITY TO YOU SHALL IN NO EVENT EXCEED THE GREATER OF: (i) THE TOTAL OF ANY FEES WITH RESPECT TO ANY SERVICE OR PRODUCT PURCHASED THROUGH THE WACOM SERVICES IN THE SIX MONTHS PRIOR TO THE ACCRUAL OF THE INITIAL CLAIM AGAINST WACOM; OR (ii) US \$100.00. Applicable law may not allow certain limitations or exclusions of liability, so some of the above limitations may not apply to you. Notwithstanding anything to the contrary in these Terms, nothing in these Terms excludes or limits Wacom's liability for fraud or for death or personal injury caused by Wacom's gross negligence.

5.3 These limitations of liability also apply for the benefit of Wacom's directors, officers, employees, licensors, freelancers, subcontractors, representatives and agents of any kind.

5.4 For clarity, the warranties and liability of the relevant provider of any Offerings you may purchase from Wacom, its affiliates and/or any third parties through the Wacom Services are subject to the separate terms and conditions applicable to the relevant Offering, if any.

## **6 Indemnity**

You agree to defend, indemnify and hold harmless Wacom, its affiliates, licensors and service providers,

and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against any and all claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys' fees) arising out of or relating to: (i) your breach or violation of these Terms; or (ii) your User Content; or (iii) your use of: (a) the Wacom Services, your Wacom Account, or the Wacom Sites, (b) the Wacom Content; or (c) the services and products obtained through the Wacom Services, in each case other than as expressly authorized in these Terms.

## **7 Copyright Infringement Notification Procedure**

Wacom respects third party intellectual property rights. If you believe your copyrighted work has been copied or posted on or through the Wacom Services in a way that constitutes copyright infringement, then please contact us at [copyright@wacom.com](mailto:copyright@wacom.com) and provide the following information:

- a) A description of the copyrighted work that you believe has been infringed;
- b) A description of what the allegedly infringing work is;
- c) A description of the location where the allegedly infringing work is located on the Wacom Services;
- d) An address and telephone number where you can be contacted, including an email address if possible;
- e) A statement that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law;
- f) A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright; and
- g) A statement, made under penalty of perjury, that the above information is accurate and that the signatory is the copyright owner or is authorized to act on behalf of the copyright owner.

We recommend that you consult with your legal advisor before filing an infringement notice, because there can be penalties for false claims.

Please use the same procedure for any claimed infringement of any trademark rights or infringements or misappropriations of other intellectual property or third party rights.

## **8 Payments**

Wacom may provide certain paid or free services associated with the use of the Wacom Services and/or certain Offerings. All fees charged by Wacom may be modified or changed at any time in its sole discretion. When your use of the Wacom Services and/or an Offering requires the payment of a fee, you will have the opportunity to review and accept the fees that you will be charged. If you do not agree to pay the fee, do not proceed with your transaction. You are responsible for paying all fees and applicable taxes associated with your use of the Wacom Services and/or an Offering in a timely manner with a valid payment method. If your payment method fails or your Wacom Account is past due, Wacom may collect fees owed using other collection mechanisms. This includes charging other payment methods on file with Wacom, or retaining collection agencies and legal counsel in Wacom's discretion.

## **9 Term and Termination**

We reserve the right in our sole discretion to: (i) terminate your Wacom Account; (ii) delete any of your User Content; (iii) restrict your use of all or any part of the Wacom Sites or the Wacom Services; and (iv)

suspend, modify or discontinue the Wacom Sites or Wacom Services (or any part thereof), for any or no reason, without notice, and without liability to you or anyone else. We also reserve the right to block users from accessing or posting content to the Wacom Sites or the Wacom Services by using any technology available, such as blacklisting certain IP addresses or device numbers. In the event of a no-cause termination or discontinuance by Wacom, you will be entitled to reimbursement of a pro rata portion of any unused, prepaid fees paid to Wacom.

## **10 Modification of Terms**

Wacom has the right to change these Terms at any time. Wacom will post a notice of the changes on the Wacom Sites and, if you provided us with an email address, email you a notice of the changes to the email address Wacom has on file. The changes will be effective 30 days after posting and emailing such notice. Your continued use of the Wacom Services or the Wacom Sites will be considered your acceptance to the revised Terms.

## **11 Miscellaneous**

11.1 Information on Wacom's use of personal data can be found in the privacy policy available at <https://www.wacom.com/privacy>. Our use of cookies in collecting and processing personal data is described in Wacom's Cookie Notice available at <https://www.wacom.com/cookie-notice>.

11.2 These Terms will be governed by the laws of Australia, without giving effect to its conflict of laws provisions. To the extent it may be applicable, you agree to opt out from and expressly exclude any applicability of the Uniform Computer Information Transactions Act.

11.3 You agree to submit to the personal and exclusive jurisdiction in the courts located in Sydney, and agree you will not object to such jurisdiction or venue on the grounds of lack of personal jurisdiction, forum non conveniens or otherwise.

11.4 These Terms shall be governed and construed using the English language. Accordingly, the English version of these Terms controls in the event of any discrepancy with other translated versions of these Terms.

11.5 If any part of these Terms is found by a court of competent jurisdiction to be invalid or unenforceable, then that part will be deemed superseded by an enforceable provision that most closely matches the intent of the original and honors the allocation of risks in these Terms and the remainder of the Terms will continue in effect.

11.6 Wacom's failure to act with respect to a breach of these Terms does not waive Wacom's rights to act or as to subsequent or similar breaches.

Last modified: October ,15 2020

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