

# MICROSOFT HOLOLENS ONLINE STORE TERMS OF USE AND SALE

Updated May 2018

Welcome to the Microsoft HoloLens Online Store (the "Microsoft HoloLens Store" or "Website"). The Microsoft HoloLens Store is a website operated by Microsoft Pty Ltd (ABN: 29 002 589 460) of 1 Epping Rd, North Ryde NSW 2113, Australia ("Microsoft," "We," "Us" or "Our")...

Through the Microsoft HoloLens Store, Microsoft provides you with access to a variety of resources, including the Website, and information about Microsoft HoloLens (collectively "Services"). The Services, including any updates, enhancements, new features, and the addition of any new web properties, are subject to these Terms of Use and Sale ("Terms of Use and Sale" or "Contract"). By using the Website, purchasing products and services from the Microsoft HoloLens Store, or using any Services, you accept and agree to these Terms of Use and Sale, Microsoft's Privacy Statement (see the PRIVACY AND PROTECTION OF PERSONAL INFORMATION section below), and applicable terms and conditions, policies or disclaimers found in the Microsoft HoloLens Store or referenced herein and accessible through the related hyperlinks (collectively the "Microsoft HoloLens Store Policies"). We encourage you to read the Microsoft HoloLens Store Policies carefully. YOU MAY NOT USE THE MICROSOFT HOLOLENS STORE OR SERVICES IF YOU DO NOT AGREE TO THE MICROSOFT HOLOLENS STORE POLICIES.

## 1. RESALE LIMITATION

The products sold at the Microsoft HoloLens Store (Microsoft HoloLens devices and accessories, collectively "the Devices") are sold solely for evaluation and development purposes, and you agree not to resell them (or to otherwise transfer them to any third party who is not working with you on your development effort). You must be a developer to purchase products from the Microsoft HoloLens Store -- resellers are not eligible to purchase.

## 2. SOFTWARE LICENSE TERMS

Additional license terms apply to Microsoft software and services installed on or offered for use in connection with the Devices (referred to collectively as the "EULA"). Nothing in this Contract modifies or supersedes the terms of the EULA, and you hereby also accept the EULA, posted at [https://www.microsoft.com/en-us/UseTerms/OEM/Windows/10Mobile/UseTerms\\_OEM\\_Windows\\_10Mobile\\_English.htm](https://www.microsoft.com/en-us/UseTerms/OEM/Windows/10Mobile/UseTerms_OEM_Windows_10Mobile_English.htm).

Any software made available to download or purchase from the Microsoft HoloLens Store or Services is the copyrighted work of Microsoft or its suppliers. When you purchase software, you are actually purchasing a license to use the software rather than purchasing the software itself. Software licenses purchased at the Microsoft HoloLens Store are subject to the license agreement that accompanies the software or that you agreed to separately (the "License Agreement"). You will be required to agree to the License Agreement when you install (and will, regardless, be deemed to have agreed to the License Agreement by installing) the software.

FOR YOUR CONVENIENCE, MICROSOFT MAY MAKE AVAILABLE AS PART OF THE MICROSOFT HOLOLENS STORE OR SERVICES OR IN ITS SOFTWARE OR MERCHANDISE, TOOLS OR UTILITIES FOR USE OR DOWNLOAD THAT ARE NOT PART OF THE PRODUCT OR SERVICES SOLD. TO THE EXTENT

PERMITTED BY APPLICABLE LAW, MICROSOFT DOES NOT MAKE ANY ASSURANCES WITH REGARD TO THE ACCURACY OF THE RESULTS OR OUTPUT THAT DERIVES FROM THE USE OF ANY SUCH TOOLS OR UTILITIES.

You agree to respect the intellectual property rights of others when using any tools and utilities made available on or through the Microsoft HoloLens Store or Services, or in software products or merchandise.

**PRERELEASE SOFTWARE UPDATES.** The Devices, along with Microsoft’s automatic updates to the software and services provided with the Devices, may include **experimental and early prerelease software and firmware**. This means that **you may experience occasional crashes and data loss**. To recover, you may have to reinstall your applications, the operating system, or re-flash your Devices. In some instances, once updates are installed, you may not be able to go back to the prior version of the software or firmware. **By using these Devices, you agree to receive automatic updates from Microsoft and to frequently backup your data.**

**Automatic software and services updates on your Devices may:** (i) automatically collect and transmit data to Microsoft and its partners regarding usage on your Devices; (ii) not be stable or tested to the same level as commercially-released software; (iii) stop working, be updated, or removed from your device automatically without notice (for example, the Device software may update automatically through Windows Update or otherwise); and (iv) change before commercial release or may never be commercially released. Automatic updating cannot be turned off. Some features may be removed or may stop working after a predetermined time period or at the end of an evaluation cycle once enough data has been collected. Some third party applications installed on the device may also not work, may stop working, or may be automatically deleted by the Devices software updates).

### **3. NOTICE SPECIFIC TO DOCUMENTS AVAILABLE ON THE WEBSITE OR SERVICES**

Permission to use documents (such as white papers, press releases, datasheets and FAQs) from the Microsoft HoloLens Store (“Documents”) and Services is granted, but only if (1) the following copyright notice: "© 2016 Microsoft Corporation. All rights reserved." that may appear in any such Documents is not removed, modified, or obscured in any way, (2) use of such Documents from the Microsoft HoloLens Store or Services is for informational and non-commercial or personal use only and will not be copied or posted on any network computer or broadcast in any media, unless permitted by exemptions under applicable copyright laws, and (3) no modifications of any Documents are made. Accredited educational institutions, such as primary and secondary institutions, universities, private/public colleges, and community colleges, may download and reproduce the Documents for distribution in the classroom. Distribution outside the classroom requires Microsoft’s express written permission. Use for any other purpose is expressly prohibited.

The Documents, related graphics published on the Microsoft HoloLens Store, or the Services could include technical inaccuracies or typographical errors. Changes are periodically added to the information in such Documents, graphics, and Services.

Microsoft or its respective suppliers may make improvements or changes in the product(s) or the program(s) described in this Contract or the Website at any time, without notice.

#### **4. MEMBER ACCOUNT, PASSWORD, AND SECURITY**

If the Microsoft HoloLens Store or any of the Services requires you to open an account, you must complete the registration process by providing us with current, complete, and accurate information as prompted by the applicable registration form. You also will choose a password and a user name. You may also be required to accept a service agreement or separate terms of use as a condition of opening the account. You are responsible for keeping your account information and password confidential and are responsible for all activity that occurs under your account. You agree to notify Microsoft without delay of any unauthorized use of your account or any other breach of security.

#### **5. NO UNLAWFUL OR PROHIBITED USE**

As a condition of your use of the Services, you will not, and have no right to, use the Services for any purpose that is unlawful or prohibited by these terms, conditions, and notices. You may not use the Services in any manner that could damage, disable, overburden, or impair any Microsoft server, or the network(s) connected to any Microsoft server, or interfere with any other party's use and enjoyment of any Services. You may not attempt to gain unauthorized access to any Services, other accounts, computer systems, or networks connected to any Microsoft server or to any of the Services, through hacking, password mining, or any other means. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Services. You may not use the Services in a way that infringes rights of third parties, including, but not limited to, willfully harming a person or entity, including Microsoft.

Microsoft reserves the right at all times to disclose any information, the disclosure of which is necessary to satisfy any applicable law, regulation, legal process, or governmental request, or to edit, refuse to post, or to remove any information or materials, in whole or in part, in Microsoft's sole discretion.

#### **6. MATERIALS THAT YOU PROVIDE TO MICROSOFT HOLOLENS STORE OR POST ON THE WEBSITE**

Microsoft does not claim ownership of the materials you provide to Microsoft (including feedback, ratings, and suggestions) or post, upload, input, or submit to any Services or associated services for review by the general public, or by the members of any public or private community (each a "Submission" and collectively "Submissions"). However, Microsoft shall be permitted to use your Submission, including your name, for the purpose for which it was submitted and may use any feedback or suggestions for any purpose, without regard to intellectual property rights or otherwise.

No compensation will be paid with respect to the use of your Submission. Microsoft is under no obligation to post or use any Submission you may provide, and Microsoft may remove any Submission at any time in its sole discretion.

You warrant and represent that you own or otherwise control all of the rights to your Submissions as described in these Terms of Use and Sale including, without limitation, all the rights necessary for you to provide, post, upload, input, or submit the Submissions.

## **7. LINKS TO THIRD-PARTY WEBSITES**

The Microsoft HoloLens Store may include links to third-party websites that let you leave the Website. These linked sites are not under the control of Microsoft, and Microsoft is not responsible or liable in any way for the contents of any linked site or any link contained in a linked site, or any changes or updates to such sites. Microsoft is providing these links to you only as a convenience, and the inclusion of any link does not imply endorsement by Microsoft of the site. Your use of the third-party website is subject to that third party's terms and conditions, if any.

## **8. GEOGRAPHIC AVAILABILITY AND EXPORT LIMITATIONS**

Microsoft is only making available for purchase the Devices in the Microsoft HoloLens Store in certain countries, and the Devices will be certified to meet hardware compliance requirements for these countries only. Microsoft cannot effectively prevent you from after-purchase transport of Devices, but any such transport and use of Devices is done solely at your discretion, without approval by or consultation with Microsoft, and you are entirely responsible and liable for any legal compliance and export requirements associated with your use of the Devices.

## **9. ACCURACY OF BILLING AND ACCOUNT INFORMATION**

You agree to provide current, complete, and accurate purchase and account information for all purchases made at the Microsoft HoloLens Store. You agree to promptly update your account and other information, including your email address and credit card numbers and expiration dates, so that we can complete your transactions and contact you as needed in connection with your transactions.

## **10. PRODUCT AVAILABILITY AND QUANTITY AND ORDER LIMITS**

Product prices and availability are subject to change at any time and without notice. Microsoft may place a limit on the quantities that may be purchased per order, per account, per credit card, per person, or per household.

Microsoft may refuse or reject any order at any time, refunding you any monies you have paid for the order, for reasons that include, but are not limited to, if you have not met the conditions specified at the time of the order, if your payment cannot be processed, if the ordered products

or services are not available, or for obvious errors on the Website or made in connection with your order.

Credits or refunds will be made to the same method of payment and account used to place the order.

## **11. PRICE AND PAYMENT**

Prices at the Microsoft HoloLens Store will be as stated on the Website.

Pricing is for individual purchasers. If you want to purchase for a commercial, educational, or government organization, please ask for information about our volume licensing programs.

The Microsoft HoloLens Store does not have a price match guarantee.

We may offer you the opportunity to pre-order a product from our Website before it is available for purchase. If you place such a pre-order, we may place a hold on your credit or debit card at the time of pre-order but will not charge your card until the product is available for download or we ship it. If the advertised price of the product decreases between the date you pre-ordered and the date the product is available for download or shipping, we will charge you the lower price. You may cancel your pre-order before the product is available for download or shipped by calling our customer support. Visit the [Microsoft Store Online Sales & Support page](#) for more information. Once your pre-order is downloaded or shipped, there are no refunds, except as required by applicable law. We will indicate on the Website if different pre-order terms apply to a specific product.

Prices shown on the Website are inclusive of applicable taxes, unless otherwise stated, (“Taxes”) that may apply to your purchase. Prices shown on the Website exclude delivery costs. Delivery costs will be added to the amount of your purchase and shown on the check-out page. You will have an opportunity to review the delivery costs before you confirm your purchase. Each item in your shopping cart is shown at the current price.

The Microsoft HoloLens Store offers different payment options as identified on our Website. We reserve the right to change our payment options at any time and for any reason or no reason. If offers are made in your local currency and are payable in another currency with an international credit card, final price in your currency will depend on the foreign exchange rates, taxes, and fees applied by your bank or the issuer of your international credit card. These transactions may be subject to taxes and fees on international transactions not charged by the Microsoft HoloLens Store.

## **12. SALES FINAL**

EXCEPT AS REQUIRED BY APPLICABLE LAW, ALL PURCHASES FROM THE MICROSOFT HOLOLENS STORE ARE FINAL, NON-CANCELABLE, AND NON-REFUNDABLE.

### **13. CUSTOMER SERVICE**

Please visit our customer support page [<https://support.microsoft.com>] for more information about customer service options. For avoidance of doubt, Microsoft has no obligation to provide any customer support, and any customer support Microsoft elects to provide is provided “as is” and without warranty of any kind.

### **14. CHANGING TERMS**

Microsoft may change the Terms of Use and Sale at any time and without notice to you. The Terms of Use and Sale in force at the time you place an order, however, will govern your purchase and serve as the purchase contract between us as applicable to that order. Before your next purchase, Microsoft may have changed the Terms of Use and Sale without notice to you. Please be sure to review the current Terms of Use and Sale each time you visit the Microsoft HoloLens Store and, in any case, before you place a new order. We recommend that you save or print a copy of the Terms of Use and Sale for future reference when you place any order.

### **15. LIMITATIONS ON USE BY MINORS**

You must have reached the age of majority in your state/province/territory of residence to purchase products from the Microsoft HoloLens Store.

### **16. PRIVACY AND PROTECTION OF PERSONAL INFORMATION**

Your privacy is important to us. We use certain information that we collect from you to operate and provide the Microsoft HoloLens Store and the Services. Additionally, we may also automatically upload information about your machine, your use of the Services, and Service performance. Please read our Privacy Statement [<https://www.microsoft.com/en-us/privacystatement/default.aspx>] to learn about how we use and protect your information.

### **17. PRODUCT DISPLAY AND COLORS**

Microsoft attempts to display product colors and images accurately but we cannot guarantee that the color you see on your monitor will exactly match the product’s color.

### **18. ERRORS ON SITE**

We work hard to publish information accurately, update the Website regularly, and correct errors when discovered. However, any of the content on our Website may be incorrect or out of date at any given time. We reserve the right to make changes to the Website at any time, including to product prices, specifications, offers, and availability.

## **19. TERMINATION OF SITE USE**

Microsoft may terminate your account or use of the Microsoft HoloLens Store at any time for any reason, including, without limitation, if you are in breach of these Terms of Use and Sale or if the Microsoft HoloLens Store is no longer operated by Microsoft. By using the Microsoft HoloLens Store, you agree to be responsible for any orders you make or charges you incur prior to such termination (which are deemed to include without limitation any such orders or charges made using your account criteria). Microsoft may change, discontinue, or otherwise suspend the Microsoft HoloLens Store at any time, for any reason, and without prior notice to you.

## **20. NO WARRANTIES**

EXCEPT AS REQUIRED BY APPLICABLE LAW, MICROSOFT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, GUARANTEES, OR CONDITIONS WITH RESPECT TO PRODUCTS OR SERVICES SOLD ON THE MICROSOFT HOLOLENS STORE. YOU UNDERSTAND THAT, SUBJECT TO APPLICABLE LAW, YOUR PURCHASE AND USE IS AT YOUR OWN RISK AND THAT WE PROVIDE PRODUCTS AND SERVICES ON AN "AS IS" BASIS "WITH ALL FAULTS" AND "AS AVAILABLE." EXCEPT AS REQUIRED BY APPLICABLE LAW, YOU ASSUME THE ENTIRE RISK AS TO THEIR QUALITY AND PERFORMANCE. SHOULD THEY PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING OR REPAIR EXCEPT AS REQUIRED BY APPLICABLE LAW. MICROSOFT DOESN'T GUARANTEE THE ACCURACY OR TIMELINESS OF INFORMATION AVAILABLE FROM THE MICROSOFT HOLOLENS STORE OR SERVICES. TO THE EXTENT PERMITTED UNDER YOUR LOCAL LAW, WE EXCLUDE ANY IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION FOR MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, TITLE, AND NON-INFRINGEMENT. YOU MAY HAVE CERTAIN RIGHTS UNDER YOUR LOCAL LAW. NOTHING IN THIS CONTRACT IS INTENDED TO AFFECT THOSE RIGHTS, IF THEY ARE APPLICABLE.

YOU ACKNOWLEDGE THAT COMPUTER AND TELECOMMUNICATIONS SYSTEMS ARE NOT FAULT-FREE AND OCCASIONAL PERIODS OF DOWNTIME OCCUR. WE DO NOT GUARANTEE THE MICROSOFT HOLOLENS STORE OR SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OR THAT CONTENT LOSS WON'T OCCUR.

## **21. LIMITATION OF LIABILITY**

Subject to applicable law, if, despite the other sections of this Contract, Microsoft is found liable to you for any loss or damage that arises out of or is in any way connected with your use of the Microsoft HoloLens Store, the Services, or any product or service offered under or in relation to any of the foregoing, you agree that your exclusive remedy is to recover from Microsoft or any affiliates, resellers, distributors, and vendors direct damages up to (1) an amount equal to the price or fee for one month of any service, subscription, or similar fee (not including the purchase price for hardware, software, support, or extended warranties), or (2) US \$100.00 if there was no service, subscription or similar fee.

If you have rights under the Australian Consumer Law consumer guarantees, you agree that the goods and services supplied from the Microsoft HoloLens Store are not used for personal, domestic or household purposes, and Microsoft, at its option, limits its liability and your remedies under the Australian Consumer Law consumer guarantees to: (a) replacing or repairing goods, or (b) reimbursing you for repairing or replacing the goods, or (c) re-supplying services, or (d) reimbursing you for paying someone else to supply the services. Please refer to the page at [www.microsoft.com.au/acl](http://www.microsoft.com.au/acl) for details of your rights under the Australian Consumer Law.

EXCEPT AS REQUIRED BY APPLICABLE LAW, YOU AGREE THAT YOU CAN'T RECOVER ANY OTHER DAMAGES OR LOSSES, INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT, INCIDENTAL, OR PUNITIVE. THESE LIMITATIONS AND EXCLUSIONS APPLY EVEN IF YOU INCUR DAMAGES AND EVEN IF WE KNEW OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF THE DAMAGES. SOME STATES OR PROVINCES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THESE LIMITATIONS AND EXCLUSIONS APPLY TO ANYTHING RELATED TO **THE MICROSOFT HOLOLENS STORE, THE SERVICES, THIS CONTRACT, OR ANY PRODUCT OR SERVICE OFFERED UNDER OR IN RELATION TO ANY OF THE FOREGOING**, INCLUDING LOSS OF CONTENT; ANY VIRUS AFFECTING YOUR USE OF THE MICROSOFT HOLOLENS STORE OR SERVICES; DELAYS OR FAILURES IN STARTING OR COMPLETING TRANSMISSIONS OR TRANSACTIONS; CLAIMS FOR BREACH OF CONTRACT, WARRANTY, GUARANTEE, OR CONDITION; CONSUMER PROTECTION; DECEPTION; UNFAIR COMPETITION; STRICT LIABILITY, NEGLIGENCE, MISREPRESENTATION, OMISSION, TRESPASS OR OTHER TORT; VIOLATION OF STATUTE OR REGULATION; OR UNJUST ENRICHMENT.

## **22. GENERAL LEGAL TERMS**

### **22.1. Interpreting the Contract**

All parts of this Contract apply to the maximum extent permitted by the relevant law; you may have greater rights in your jurisdiction of residence. If it is determined that we can't enforce a part of this Contract as written, we may replace those terms with similar terms to the extent enforceable under the relevant law, but the rest of this Contract won't change. Section 22.1.8 says what happens if parts of Section 22.1 (arbitration and class action waiver) are found to be illegal or unenforceable, and prevails over this Section 22.2 if inconsistent with it. Other terms may apply if you purchase products or services from other Microsoft websites.

### **22.2. Assignment**

We may assign, transfer, or otherwise dispose of our rights and obligations under this Contract, in whole or in part, at any time without notice to you. You may not assign this Contract or transfer any rights under it.

### **22.3. No Third-Party Beneficiaries**

This Contract is solely for your and our benefit. It is not for the benefit of any other person, except for permitted successors and assigns.

#### **22.4. Notices and Communication**

For customer support inquiries, contact at [msstoreis@microsoft.com](mailto:msstoreis@microsoft.com) or 866-425-4709. Microsoft has no obligation, however, to provide any customer support, and any customer support Microsoft elects to provide is provided “as is” and without warranty of any kind.

#### **22.5. Governing Law**

This Contract is governed by and is to be construed in accordance with the laws applicable in New South Wales regardless of conflict of laws principles.

#### **22.6. Other Terms**

In addition to any License Agreement applicable to software, other products and services available for purchase or trial on the Microsoft HoloLens Store may also be offered to you subject to separate end user license agreements, terms of use, terms of service, or other terms and conditions. If you purchase or use those products, you may be required to also accept those terms as a condition of purchase, installation, or use.

#### **22.7. Conflicts**

If the terms in this Contract conflict with those in any Microsoft HoloLens Store Policies, the terms in this Contract will control.

### **23. NOTICES AND RESERVATION OF RIGHTS**

Notifications of claimed copyright infringement should be sent to Microsoft's designated agent. For details and contact information, see Notice and Procedure for Making Claims of Copyright Infringement at: <http://www.microsoft.com/info/cpyrtInfrg.htm>. INQUIRIES THAT ARE SUBMITTED BUT ARE NOT RELEVANT TO THE PROCEDURE WILL RECEIVE NO RESPONSE.

#### **Copyright and trademark notices**

All contents of the Website and Services are Copyright ©2015 Microsoft Corporation or its suppliers, One Microsoft Way, Redmond, WA 98052, USA. All rights reserved. We or our suppliers own the title, copyright, and other intellectual property rights in the Website, Services, and (except as otherwise provided above) their content. Microsoft and the names, logos, and icons of all Microsoft products and services may be either trademarks or registered trademarks of Microsoft in the United States, Canada, or other countries.

A list of Microsoft trademarks can be found at: <http://www.microsoft.com/about/legal/en/us/IntellectualProperty/Trademarks/ENUS.aspx>. The names of actual companies and products may be the trademarks of their respective owners. Any rights not expressly granted in this Contract are reserved.