

## Outta Gas Terms and Conditions

### 1. Our Disclosures

Our complete terms and conditions are contained below, but some important points for you to know before you become a customer are set out below:

- We will handle your personal information in accordance with our privacy policy, available at <https://www.waffleconegames.com/privacypolicy>.
- Subject to your Consumer Law Rights, our liability under these Terms is limited to \$10, and we will not be liable for Consequential Loss, any loss that is a result of a Third Party Service, or any loss or corruption of data.
- We may receive a benefit (which may include a referral fee or a commission) should you visit certain third-party websites via a link on the Platform or for featuring certain products or services on the Platform.

Nothing in these terms limit your rights under the Australian Consumer Law.

### 2. Introduction

- 2.1. These terms and conditions (**Terms**) are entered into between Waffle Cone Pty Ltd ACN 637 506 097 (**we, us or our**) and you, together the **Parties** and each a **Party**.
- 2.2. We provide an action-based mobile application game (**Platform**).
- 2.3. In these Terms, **you** means the person using the Platform.

### 3. Acceptance and Platform Licence

- 3.1. You accept these Terms by clicking “accept” or by downloading and using the Platform.
- 3.2. To use and access the Platform you must be at least 18 years old or have obtained the consent of your parents or guardian to use and access the Platform. If you are a parent or legal guardian permitting a person who is under 18 (a **Minor**) to use and access the Platform, you agree to: (i) supervise the Minor’s use of the Platform; (ii) assume all risks associated with, and liabilities resulting from, the Minor’s use of the Platform; (iii) ensure that the content on the Platform is suitable for the Minor; (iv) ensure all information submitted to us by the Minor is accurate; and (v) provide the consents, representations and warranties contained in the Terms on the Minor’s behalf.
- 3.3. We may amend these Terms at any time, by providing written notice to you. By continuing to use the Platform after the notice or 30 days after notification (whichever date is earlier), you agree to the amended Terms. If you do not agree to the amendment and it adversely affects your rights, you may end your access and seek to have your game data deleted by providing written notice to us. If you cancel your access, you will no longer be able to use the Platform on and from the date of cancellation.
- 3.4. If you access or download our mobile application from (1) the Apple App Store, you agree to any Usage Rules set forth in the App Store Terms of Service or (2) the Google Play Store, you agree to the Android, Google Inc. Terms and Conditions including the Google Apps Terms of Service.
- 3.5. Subject to your compliance with these Terms, we grant you a personal, non-exclusive, royalty-free, revocable, worldwide, non-transferable licence to download and use our Platform in accordance with these Terms. All other uses are prohibited without our prior written consent.
- 3.6. When using the Platform, you must not do or attempt to do anything that is unlawful or inappropriate, including:
  - (a) anything that would constitute a breach of an individual’s privacy (including uploading private or personal information without an individual’s consent) or any other legal rights;
  - (b) using the Platform to defame, harass, threaten, menace or offend any person, including using the Platform to send unsolicited electronic messages;
  - (c) tampering with or modifying the Platform (including by transmitting viruses and using trojan horses);
  - (d) using data mining, robots, screen scraping or similar data gathering and extraction tools on the Platform; or
  - (e) facilitating or assisting a third party to do any of the above acts.

### 4. Outta Gas! Services

- 4.1. In consideration for your interaction with the Platform, we agree to provide you with access to the Platform and any other services we agree to provide from time to time, such as access to in-app purchases to enhance your in-game experience.

- 4.2. From time to time, we may perform reasonable scheduled and emergency maintenance, and the Platform may be unavailable during the times we are performing such maintenance.
- 4.3. You acknowledge and agree that the Platform may be reliant on, or interface with third party systems that are not provided by us (for example, cloud storage providers, CRM systems, and internet providers) (**Third Party Services**). To the maximum extent permitted by law, we shall have no Liability for any Third Party Services, or any unavailability of the Platform due to a failure of the Third Party Services.
- 4.4. You acknowledge and agree that data loss is an unavoidable risk when using any software. To the extent you input any data into the Platform, you agree to maintain a backup copy of any data you input into the Platform.
- 4.5. To the maximum extent permitted by law, we shall have no Liability to you for any loss or corruption of data, or any scheduled or emergency maintenance that causes the Platform to be unavailable.
- 4.6. When using our mobile application, you may make internal purchases for virtual items to enhance your game experience (**In-app Purchase**). In-app Purchases are processed through the App Store or Google Play store, you acknowledge and agree to the App Store or Google Play Store's terms of service for making any In-app Purchase.
- 4.7. Where you have made a successful In-app Purchase, as determined by us, we will provide you access to the relevant virtual item through our mobile application.

## 5. **Our Intellectual Property**

- 5.1. You acknowledge and agree that any Intellectual Property or content (including copyright and trademarks) available on the Platform, the Platform itself, and any algorithms or machine learning models used on the Platform (**Our Intellectual Property**) will at all times vest, or remain vested, in us.
- 5.2. We authorise you to use Our Intellectual Property solely for your personal use. You must not exploit Our Intellectual Property for any other purpose, nor allow, aid or facilitate such use by any third party. You may only access Our Intellectual Property on your personal device, and you may not use Our Intellectual Property for any commercial purpose.
- 5.3. You must not, without our prior written consent:
  - (a) copy, in whole or in part, any of Our Intellectual Property;
  - (b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of Our Intellectual Property to any third party; or
  - (c) breach any intellectual property rights connected with the Platform, including (without limitation) altering or modifying any of Our Intellectual Property, causing any of Our Intellectual Property to be framed or embedded in another website, or creating derivative works from any of Our Intellectual Property.
- 5.4. Nothing in the above clause restricts your ability to publish, post or repost Our Intellectual Property on your social media page or blog, provided that:
  - (a) you do not assert that you are the owner of Our Intellectual Property;
  - (b) unless explicitly agreed by us in writing, you do not assert that you are endorsed or approved by us;
  - (c) you do not damage or take advantage of our reputation, including in a manner that is illegal, unfair, misleading or deceptive; and
  - (d) you comply with all other terms of these Terms.
- 5.5. This clause will survive the termination or expiry of your access to the Platform.

## 6. **Your Data**

- 6.1. You own all data, information or content you upload into the Platform (**Your Data**).
- 6.2. You grant us a limited licence to copy, transmit, store, backup and/or otherwise access or use Your Data to:
  - (a) communicate with you (including to send you information we believe may be of interest to you);
  - (b) supply the Platform to you and otherwise perform our obligations under these Terms;
  - (c) diagnose problems with the Platform;
  - (d) enhance and otherwise modify the Platform;
  - (e) perform Analytics;
  - (f) develop other services, provided we de-identify Your Data; and
  - (g) as reasonably required to perform our obligations under these Terms.

- 6.3. You agree that you are solely responsible for all of Your Data that you make available on or through the Platform. You represent and warrant that:
- (a) you are either the sole and exclusive owner of Your Data or you have all rights, licences, consents and releases that are necessary to grant to us the rights in Your Data (as contemplated by these Terms); and
  - (b) neither Your Data nor the posting, uploading, publication, submission or transmission of Your Data or our use of Your Data on, through or by means of our Platform will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
- 6.4. You acknowledge and agree that we may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Platform, in an aggregated and anonymised format (**Analytics**). You acknowledge and agree that we own all rights in the Analytics, and that we may use the Analytics for our own internal business purposes, provided that the Analytics do not contain any identifying information.
- 6.5. We do not endorse or approve, and are not responsible for, any of Your Data.
- 6.6. This clause will survive the termination or expiry of your access to the Platform.

## 7. Warranties

- 7.1. You represent, warrant and agree that:
- (a) you will not use our Platform, including Our Intellectual Property, in any way that competes with our business;
  - (b) there are no legal restrictions preventing you from entering into these Terms; and
  - (c) all information and documentation that you provide to us in connection with these Terms is true, correct and complete.

## 8. Australian Consumer Law

- 8.1. Certain legislation, including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the Platform by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**).
- 8.2. If the ACL applies to you as a consumer, nothing in these Terms excludes your Consumer Law Rights as a consumer under the ACL. You agree that our Liability for the Platform provided to an entity defined as a consumer under the ACL is governed solely by the ACL and these Terms.
- 8.3. Subject to your Consumer Law Rights, we exclude all express and implied warranties, and all material, work and services (including the Platform) are provided to you without warranties of any kind, either express or implied, whether in statute, at law or on any other basis.
- 8.4. This clause will survive the termination or expiry of your access to the Platform.

## 9. Liability

- 9.1. Despite anything to the contrary, to the maximum extent permitted by law:
- (a) we will not be liable for, and you waive and release use from and against, any Liability caused or contributed to by, arising from or connected with: (1) your negligent acts or omissions; (2) any use or application of the Platform by a person other than you; (3) any works, services, goods, materials or items which do not form part of the Platform; and (4) any loss of data on, or functioning of the device used to access our Platform, including any and all software and hardware connected with the device;
  - (b) neither Party will be liable for Consequential Loss;
  - (c) each Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party or any of that Party's personnel, including any failure by that Party to mitigate its losses; and
  - (d) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to \$10.
- 9.2. This clause will survive the termination or expiry of your access to the Platform.

## 10. Termination

- 10.1. You may terminate these Terms at any time by sending us an email to the address at the end of these Terms. These Terms will terminate on the date that we receive your termination notice.
- 10.2. We may terminate these Terms immediately if you are in breach of these Terms, any applicable laws, regulations or third-party rights. We may also terminate these Terms without cause by giving you 7 days' notice.

- 10.3. These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party.
- 10.4. Should we suspect that you are in breach of these Terms, we may suspend your access to the Platform while we investigate the suspected breach.
- 10.5. Upon expiry or termination of the Terms in accordance with this clause, we will terminate your access to the Platform. Where these Terms are terminated as a result of your unrectified default, you also agree to pay us our reasonable additional costs directly arising from such termination, including recovery fees.
- 10.6. Termination of the Terms and your access to the Platform will not affect any rights or liabilities that a Party has accrued under these Terms.
- 10.7. This clause will survive the termination or expiry of your access.

## 11. Notice Regarding Apple

- 11.1. To the extent that you are using or accessing our Platform on an iOS device, you further acknowledge and agree to the terms of this clause. You acknowledge that these Terms are between you and us only, not with Apple Inc. (**Apple**), and Apple is not responsible for the Platform and any content available on the Platform.
- 11.2. Apple has no obligation to furnish you with any maintenance and support services with respect to our Platform.
- 11.3. If our mobile application fails to conform to any applicable warranty, you may notify Apple and Apple will refund the purchase price of the mobile application to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the mobile application and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be our responsibility.
- 11.4. Apple is not responsible for addressing any claims by you or any third party relating to our mobile application or your use of our mobile application, including but not limited to: (1) product liability claims; (2) any claim that our mobile application fails to conform to any applicable legal or regulatory requirement; and (3) claims arising under consumer protection or similar legislation.
- 11.5. Apple is not responsible for the investigation, defence, settlement and discharge of any third-party claim that our mobile application infringes that third party's intellectual property rights.
- 11.6. You agree to comply with any applicable third-party terms when using our mobile application.
- 11.7. Apple and Apple subsidiaries are third-party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary of these Terms.
- 11.8. You hereby represent and warrant that: (1) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (2) you are not listed on any U.S. Government list of prohibited or restricted parties.

## 12. General

- 12.1. **Assignment:** Subject to the below clause, a Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- 12.2. **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.
- 12.3. **Disputes:** A Party may not commence court proceedings relating to a dispute without first meeting with the other Party to seek (in good faith) to resolve the dispute, failing which the Parties agree to engage a mediator to attempt to resolve the dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 12.4. **Entire Terms:** Subject to your Consumer Law Rights, these Terms contains the entire understanding between the Parties and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in these Terms, and these Terms supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 12.5. **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event, provided the Party seeking to rely on the benefit of this clause, as soon as reasonably practical, notifies the other party in writing about the Force Majeure Event and

the extent to which it is unable to perform its obligations and uses reasonable endeavours to minimize the duration and adverse consequences of the Force Majeure Event.

- 12.6. **Governing law:** These Terms are governed by the laws of Victoria. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 12.7. **Notices:** Any notice given under these Terms must be in writing addressed to us at the details set out below or to you via in-app notification where you have downloaded and are using the app, by post or email. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email or upon acceptance in the case of in-app notification.
- 12.8. **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 12.9. **Publicity:** With your prior written consent, you agree that we may advertise or publicise the fact that you are a user of our Platform, including on our website or in our promotional material.
- 12.10. **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.
- 12.11. **Third party sites:** The Platform may contain links to websites operated by third parties. Unless we tell you otherwise, we do not control, endorse or approve, and are not responsible for, the content on those websites. We recommend that you make your own investigations with respect to the suitability of those websites. If you purchase goods or services from a third party website linked from the Platform, such third party provides the goods and services to you, not us. We may receive a benefit (which may include a referral fee or a commission) should you visit certain third-party websites via a link on the Platform (**Affiliate Link**) or for featuring certain products or services on the Platform. We will make it clear by notice to you which (if any) products or services we receive a benefit to feature on the Platform, or which (if any) third party links are Affiliate Links.

### 13. Definitions

- 13.1. **Consequential Loss** means, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise; any loss or damage that cannot be considered to arise according to the usual course of things from the relevant breach, act or omission, whether or not such loss or damage may reasonably be supposed to have been in the contemplation of the Parties at the time they entered into these Terms as the probable results of the relevant breach, act or omission, and/or, any real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data. The Parties agree that your obligation to pay us the Fee under these Terms will not constitute "Consequential Loss".
- 13.2. **Force Majeure Event** means any event or circumstance which is beyond a Party's reasonable control.
- 13.3. **Intellectual Property** means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or confidential information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable.
- 13.4. **Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a party to these Terms or otherwise.

#### For any questions or notices, please contact us at:

Waffle Cone Pty Ltd (ACN 637 506 097)

Email: [info@waffleconegames.com](mailto:info@waffleconegames.com)

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