

BEANS by Dumb Ways to Die NFT Terms of Sale

When you purchase non-fungible tokens (**NFTs**) from Digital Chamber Pty Ltd (ACN 656 667 720) (**DCPL, us**) acting under licensed from Playside Studios Limited (ACN 154 789 554) you must agree to the terms and conditions set out in this document (**NFT Terms**), which apply to you and any subsequent person to whom you sell the NFT(s) you purchased from DCPL in the first instance.

1. DEFINITIONS

In these NFT Terms:

Business Day means any day except a Saturday or a Sunday or other public holiday in Victoria, Australia.

Claim includes a claim, notice, demand, action, proceeding, litigation, investigation, however arising whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to these Terms and where and to the extent the context permits, includes all associated Loss.

Confidential Information means:

- (a) information, in any form, relating to a party's business including but not limited to any products, fees, markets, operations, processes, techniques, technology, forecasts or strategies; and
- (b) negotiations in relation to, and the terms of, these Terms,

but not:

- (c) information in the public domain other than because of a breach of these Terms; or
- (d) information already known to a party prior to the disclosure by the other party.

Corporations Act means the *Corporations Act 2001* (Cth).

Digital Currency means a cryptographically secured virtual currency or virtual asset which we identify as an acceptable means of payment or transacting with us.

Digital Wallet means the applicable location, wallet, address, account or storage device designated by you for the delivery of the NFTs provided by us.

Purchase Price means the amount advertised for the purchase (or pre-purchase) of any NFT or bundle containing an NFT, which may be denominated in a Digital Currency.

Sales Tax means any form of value added tax including GST as defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or other similar sales tax.

Insolvency Event means the happening of any of the following events in relation to a body corporate:

- (e) the body corporate becomes an externally-administered body corporate
- (f) a person is appointed a controller (as defined in section 9 of the Corporations Act), administrator, receiver, provisional liquidator, trustee for creditors in bankruptcy or an analogous appointment is made in respect of the body corporate;
- (g) in Australia, the body corporate is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act;
- (h) the body corporate suspends payment of its debts, or enters, or takes any step towards entering, a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (i) a secured creditor of the body corporate enforces its security in relation to its debt for an amount in excess of \$50,000; or
- (j) the body corporate is, or its directors state that it is, unable to pay its debts as and when they become due and payable.

Intellectual Property Rights means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including:

- (k) patents, inventions designs, copyright, trademarks, brand names, product names, domain names or rights in designs, art, images, drawings, know how, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration
- (l) any application or right to apply for registration of any of these rights
- (m) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (n) all renewals and extensions of these rights.

Loss includes and loss, damage, cost, charge, liability or expense (including legal costs and expenses).

Own means, with respect to an NFT, any NFT we have issued where proof of ownership is recorded on a blockchain system and you control the private key associated with a Digital Wallet to which the NFT is associated or located.

Personnel means any employee, contractor, subcontractor, agent, partner, shareholder, ultimate beneficial owner, director or officer of a party.

Your Jurisdiction means the country or state where you are ordinarily resident or from which you enter into any agreement with us.

Your Warranties means the warranties set out in clause 7.1.

2. APPLICABILITY OF NFT TERMS

- (a) All NFTs purchased or procured by you are subject to these NFT Terms, unless otherwise agreed in writing and by purchasing or pre-purchasing any NFT you are agreeing to be bound by these NFT Terms.
- (b) The use of any NFTs issued by us is subject to these NFT Terms.
- (c) Termination of these NFT Terms will not affect any obligations which have arisen prior to termination.

3. PURCHASING NFTS

3.1. Pre-sales of NFTs

- (a) We may conduct pre-sales of NFTs from time to time, either as a stand-alone or with bundles.
- (b) Orders placed for pre-purchase of NFTs are non-refundable, cannot be cancelled for change of mind, and require payment of the Purchase Price at the time of the pre-purchase.
- (c) We may require that register an account with us to pre-purchase an NFT.
- (d) We may that you nominate your Digital Wallet at the time of the order, or nominate a Digital Wallet at a later time, for delivery of any pre-purchased NFT.
- (e) We will undertake reasonable endeavours to delivery any pre-purchased NFTs to your nominated Digital Wallet by any date we provide for delivery. You acknowledge, however, that the delivery date may change for reasons including for reasons outside or within our control, including at our sole discretion.

3.2. Sales of NFTs

- (a) We may list NFTs for sale from time to time, which may be stand-alone or as part of a bundle of other digital goods.
- (b) Orders placed for NFTs are non-refundable, cannot be cancelled for change of mind, require payment in full of the Purchase Price at the time of purchase and may require that you connect or provide a Digital Wallet for delivery of the NFT at the time of sale.

3.3. Pre-conditions to sale

- (a) You must make payment in full in any nominated Digital Currency or via any other nominated payment method as a pre-condition to any purchase of an NFT, as determined by DCPL.
- (b) In the event that any payment is reversed or becomes invalid, including via either a double spend attack or recall or refund request by a payment processor, you agree to immediately return to us any NFTs the subject of a sale where the Purchase Price has no longer been retained in full by us.

3.4. Title and Risk

Risk and title in any NFT purchased transfers to you upon delivery of the NFT.

4. INTELLECTUAL PROPERTY

4.1. No transfer of Intellectual Property

Except as expressly stated in these NFT Terms, nothing in these NFT Terms are intended to give you ownership of any Intellectual Property Rights in, or other rights in respect of, any trademarks, business names, logos, trading styles, get-up, processes, methodologies or other intellectual property belonging to us or our licensors. All ownership of Intellectual Property Rights in the NFTs remains with the creator.

4.2. Grant of Licence

- (a) Subject to your continued compliance with these NFT Terms, we grant you a non-exclusive, transferable, worldwide, royalty free and limited licence to use, copy and display the design and art associated with the NFTs you have purchased.
- (b) You agree that you may not, nor permit any third party to, without our written consent, modify the art or design associated with an NFT you have purchased; or use such NFT to promote, advertise, market or sell any third party product or service; or use the NFT in connection with images, videos or other media which depict hatred, intolerance, violence or cruelty; or attempt to trademark or copyright other acquire additional intellectual property rights to the design or art associated with the NFT; or use the NFT for any commercial benefit.
- (c) Your licence terminates immediately if you:
 - (i) Use the NFT in any way which would be reasonably considered to bring the Intellectual Property Rights owner into disrepute, or which would be reasonably seen to disparage the Intellectual Property Rights owner; and
 - (ii) Use the NFT for any unlawful or illegal purpose; and
 - (iii) You sell the NFT, and do not ensure that the buyer is notified of and agrees to be bound by these NFT Terms.

5. TERMINATION

5.1. Termination with cause

These NFT Terms may be terminated with immediate effect:

- (a) If one of the warranties in clause 7 is breached; or
- (b) by either party if the other party commits any material breach of its obligations under these Terms and fails to remedy such breach (if capable of remedy) within 30 days of receipt of notice from the non-defaulting party requiring it to do so.
- (c) Termination of these Terms does not affect the rights of the parties which have accrued prior to termination.

6. ACKNOWLEDGEMENTS

You acknowledge and agree that:

- (a) the NFTs we provide have been created in conjunction and under a licensing agreement with Playside Studios Limited ACN (154 689 554);
- (b) NFTs are not intended for speculative use, are not sold or represented to be financial product and nothing we publish is in any way financial advice to you or any other person;
- (c) NFTs may experience extreme price volatility, including being worthless in the future;
- (d) we are not providing and will not provide any fiduciary, advisory, brokerage, exchange or other similar services to you or any other person;
- (e) you are solely responsible for any decision to enter into a transaction subject to these NFT Terms, including the evaluation of any and all risks related to any such transaction;
- (f) a significant degree of IT sophistication is required to safely deal in and store NFTs of any kind using a Digital Wallet;
- (g) we are not a custodian for the purposes of the Corporations Act, and transfers of any NFTs are for transaction purposes only;
- (h) all transactions entered into and conducted under these Terms are deemed to have occurred within the jurisdiction of Victoria, Australia;
- (i) we are not responsible for any Loss caused by your failure to act in accordance with our policies, procedures or in accordance with our reasonable directions;
- (j) you purchase NFTs entirely at your own risk and understanding we have not made any representations or warranties as to the IT security or ongoing availability of such NFTs or that your access to use your NFTs will be uninterrupted, timely or secure at all times;
- (k) you understand and acknowledge that your ownership of NFTs remains contingent upon you remaining in control of the seed phrases and private key associated with your Digital Wallet and that we will not store any information in connection with your Digital Wallet beyond that required for the sale of NFTs;
- (l) we do not and cannot guarantee there will be any use for, or any particular price available for any NFT you purchase from us; and
- (m) we do not represent or guarantee any outcomes, or any financial return from your acquisition of any NFT from us.

7. WARRANTIES

7.1. Our Warranties

We represent and warrant that:-

- (a) We own, or use under licence, the Intellectual Property Rights in the NFTs which we sell and are legally entitled to, and are capable of, selling the NFTs offered for sale;
- (b) We will give you notice before we discontinue or alter the rights or features of any NFTs which you have purchased; and
- (c) We will undertake reasonable efforts to deliver any pre-purchased NFTs within the planned time indicated for delivery.

7.2. Purchaser warranties

You warrant and assure us that in acquiring an NFT (from us or a third party):

- (a) You are sufficiently experienced and educated to make decisions regarding the procurement or purchase of NFTs from us, including sufficient experience in dealing with and storing NFTs using a Digital Wallet;
- (b) You have all necessary experience, resources, certificates, licences, permits and approvals to procure or purchase of NFTs applicable in Your Jurisdiction, and that any transactions under these NFT Terms will be legal under the applicable laws of Your Jurisdiction;
- (c) all information you supply to us is true and accurate as at the time it is given, and that any Digital Wallet address you provide to us has been generated in accordance with best practice security measures and no other party, other than you or your authorised representative, has used, or has access to, the seed phrases, private keys or analogous passwords required to effect transfers from the Digital Wallet;
- (d) as far as you are aware, there are no facts, circumstances or other information which both:
 - (i) you have not fully and fairly disclosed to us in a manner and to an extent that it would impact our ability to make a reasonable assessment of those facts, matters and circumstances prior to entering into a transaction to sell you an NFT; and
 - (ii) is of such nature and materiality that a reasonable person, had it been made aware of, could not reasonably be expected to consider prior to entering into a transaction for the sale of NFTs;
- (e) you are not involved in any capacity in any claim, legal action, proceeding, suit, litigation, prosecution, investigation, enquiry, mediation or arbitration (nor which are pending or threatened) concerning NFTs;
- (f) if we request, you will identify and substantiate the source of funds involved in transactions to acquire NFTs;
- (g) no Digital Currency transferred to us as part of a Purchase Price has been derived from any illegal or unlawful activity;
- (h) you are the lawful owner of any Digital Wallet nominated for delivery of NFTs and each Digital Wallet is owned and operated solely for your benefit, and no person has any right, title or interest in you nominated Digital Wallet; and

- (i) you have had the opportunity to obtain independent legal advice in relation to the terms and effect of these Terms.

7.3. Continuous warranties

You represent and warrant to us that each of the Purchaser Warranties is true and accurate, and not misleading or deceptive as at the date of these Terms and, except as expressly stated, will be true, accurate and not misleading or deceptive each time a NFTs are provided to you.

7.4. Notification

You must disclose to us anything that has or will constitute a material breach of a Purchaser's Warranty or cause a Purchaser's Warranty to be untrue or inaccurate, as soon as practicable after you become aware of it.

7.5. Mutual warranties

Each party warrants and assures the other party that:

- (a) if it is a company, it is duly incorporated and validly exists under the law of its place of incorporation;
- (b) it is not subject to an Insolvency Event; and
- (c) these terms constitute a legal, valid and binding terms enforceable in accordance with its terms by appropriate legal remedy.

7.6. Consumer Guarantees

- (a) Certain legislation, including the Australian Consumer Law (**ACL**) contained in the *Competition and Consumer Act 2010*(Cth) and similar consumer protection laws and regulations, may provide you with rights, warranties, guarantees and remedies relating to your purchase of NFTs which cannot be excluded, restricted or modified in these NFT Terms (**Statutory Rights**).
- (b) Nothing in these NFT Terms does, or is intended to, exclude any Statutory Rights to which you are entitled.
- (c) Where the Purchase Price has been paid in a Digital Currency and you are entitled to a refund in relation to a Statutory Right or for any reason, you agree the refund is to be made in the same form of Digital Currency used in the initial transaction, or at our option in Australian dollars equivalent to the value of the Digital Currency used in the initial transaction on the date the Purchase Price was paid.

7.7. Knowledge and awareness

Where a warranty is given 'to the best of a party's knowledge, belief and awareness', or 'as far as the party is aware' or with a similar qualification as to the relevant party's awareness or knowledge, the party giving the warranty will be deemed to know or be aware of a particular fact, matter or circumstance if that party's directors or senior management employees are aware of that fact, matter or circumstance, or would have become aware if they had made reasonable enquires as at the date of these Terms.

8. INDEMNITY

- (a) You hereby indemnify us and our Personnel and will keep us and our Personnel indemnified at all times to the fullest extent permitted by law in respect of any Loss or Claim which we or our Personnel may suffer, sustain or incur arising from, or connected with, a breach of a Purchaser Warranty without limitation.
- (b) In addition, you must indemnify us and our Personnel and keep us and our Personnel indemnified at all times to the fullest extent permitted by law in respect of any Claim which we or our Personnel may suffer, sustain or incur arising from, or connected with, any breach of these NFT Terms, other than a breach of a Purchaser Warranty, or any breach of all applicable laws, reduced to the extent of the Loss in respect of the Claim was caused by the negligent act or omission of us or our Personnel.

9. LIMITATIONS OF LIABILITY

9.1. Limitation of liability

In the absence of a material breach of these NFT Terms by us or the gross negligence, fraud or wilful misconduct by us when providing NFTs to you under these NFT Terms, we will not be liable to you on account of anything done, omitted or suffered by us acting in good faith when providing NFTs to you pursuant to these NFT Terms, including in respect of a Force Majeure Event.

9.2. Third party services

Subject to clause 9.1, we will not be liable for the performance, errors or omissions of unaffiliated, nationally or regionally recognised third parties or decentralised networks such as, by way of example and not limitation, blockchain networks (whether private or public) courier companies, national postal services and other delivery, telecommunications and other companies not under our reasonable control, and third parties not under our reasonable control providing services to the blockchain industry generally, such as, by way of example and not limitation, companies and other entities providing processing and payment or transaction services (including "Layer 2" services), banking partners, custody services, market making services and/or third party pricing services and decentralised blockchain networks such as, by way of example and not limitation, the blockchain(s) upon which any NFT depends or forks of those blockchain(s).

9.3. Compliance with laws – No monitoring responsibilities

- (a) We will have no liability or responsibility for your compliance with laws or regulations governing the transfer and use of NFTs. Further, you are solely responsible for compliance with all applicable requirements of any laws, rules, and regulations of governmental authorities in Your Jurisdiction.
- (b) You further acknowledge that neither we nor any of our Personnel is, and will not be, by virtue of providing NFTs to you, an advisor or fiduciary to you.

9.4. No Consequential Loss

Neither party to these NFT Terms will be liable to the other for any Claim, howsoever arising, for loss of profits, loss of opportunity, loss of expectation, loss of chance, or in the nature of an indirect or consequential loss.

9.5. Liability Cap

You agree that our liability to you arising in respect of any matters in connection with these NFT Terms are limited to the greater of:

- (a) The total amount paid to us for any NFT, in respect of a claim concerning an NFT; or
- (b) AUD\$100.

10. CONFIDENTIALITY

10.1. Confidential Information

- (a) Each Party acknowledges that it may receive access to Confidential Information (**Receiving Party**) of the other party (**Disclosing Party**) pursuant to these Terms.
- (b) The Receiving Party will not, and must ensure that each member of the Receiving Party's Personnel do not, use the Confidential Information for any purpose other than strictly for the purposes of complying with the Receiving Party's obligations, or exercising the Receiving Party's rights, under these Terms.
- (c) The Receiving Party will ensure that the Receiving Party, and each member of the Receiving Party's Personnel, will not disclose or permit the disclosure of the Confidential Information to any person other than to the extent the Receiving Party can prove:
 - (i) the disclosure is to a member of the Receiving Party's Personnel who requires the Confidential Information for the purpose of performing the Receiving Party's obligations under these Terms, is aware of the Receiving Party's obligations under this clause 10 and has agreed to comply with the Receiving Party's obligations under this clause 10 as if the person was a party to these Terms;
 - (ii) the disclosure is in accordance with the Disclosing Party's specific and prior written consent; or
 - (iii) the disclosure is required by law.

10.2. Remedy

Without prejudice to any other rights or remedies that a Disclosing Party may have, the Receiving Party acknowledges that damages alone would not be an adequate remedy for any breach or threatened breach by the Receiving Party of this clause 10 and accordingly, the Disclosing Party shall be entitled without proof of special damage to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this clause.

11. SALES TAX

- (a) The Purchase Price for any transaction will be considered to be inclusive of any applicable Sales Tax.
- (b) If any additional Sales Tax is applicable by virtue of any law under Your Jurisdiction, you agree to pay such amount as is payable on behalf of us, and inform us of that payment forthwith.
- (c) Any reference to a cost or expense incurred by a party in these Terms excludes any amount of Sales Tax forming part of the relevant cost or expense when incurred by the party for which the party can claim an input tax credit.

12. NOTICES

- (a) Unless a provision of these NFT Terms expressly state otherwise, a notice, consent, approval, waiver or other communication (notice) in connection with these NFT Terms must be in writing and in English and sent to, in the case of us, our nominated email or in the case of you, published on the relevant NFT website with public access to such notice.
- (b) Any notice will be deemed to be received within 24 hours of sending the electronic message or publication online.

13. DISPUTES

13.1. Proceedings suspended

- (a) A party must not begin legal proceedings in connection with a dispute arising out of or in connection with these Terms unless the steps in this clause 13 have been followed. However, this limitation does not apply:
 - (b) to a party who wants to apply for equitable relief or urgent interlocutory relief; or
 - (c) to a party who attempts in good faith to comply with clauses 13.2, 13.3 and 13.4 but cannot do so because the other party does not comply with those clauses.

13.2. Notice of dispute

If a dispute arises out of or in connection with these Terms (including the validity, breach or termination of it), a party may notify the other party to the dispute. The notice must specify the dispute and indicate that the notifying party wants the dispute to be referred to mediation.

13.3. Commencement of mediation

- (a) If the dispute is not resolved within 10 Business Days after a notice under clause 13.2 has been served (**Notice Period**), the dispute is by this clause 13.3 submitted to mediation.
- (b) The mediation must be conducted in Victoria in accordance with the mediation guidelines / rules of the Resolution Institute, save any process in this clause which is inconsistent with those guidelines or rules.

- (c) If the parties have not agreed on the mediator and the mediator's remuneration within **5 Business Days** after the end of the Notice Period:
- (i) the mediator is the person appointed by; and
 - (ii) the remuneration of the mediator is the amount or rate determined by,

the President of the Law Institute of Victoria or the President's nominee, acting on the request of any party.

13.4. If dispute not resolved

If the dispute is not resolved within **1 month** after the appointment of the mediator, any party may take legal proceedings to resolve the dispute.

13.5. Confidentiality

Each party must keep confidential, all information relating to the subject matter of a dispute as disclosed during or for the purposes of dispute resolution under this clause¹³, unless that party is compelled by a regulatory or government authority, court or tribunal to disclose that information.

14. GENERAL

14.1. Governing law and jurisdiction

These Terms are governed by the laws of Victoria and Australia. The parties irrevocably submit to the exclusive jurisdiction of the courts of Victoria and the Victorian division of the Federal Court of Australia and the courts of appeal from them.

14.2. Amendment

We reserve the right to amend these NFT Terms from time to time. Amendments will be effective as soon as such changes are notified to you in writing from time to time.

14.3. Force Majeure

We will not be liable for any delay or failure to perform our obligations under these NFT Terms if such delay is due to any circumstances beyond our reasonable control (including but not limited to epidemics, pandemics, blockchain congestion or attacks, Government sanctions or orders, whether known or unknown at the time the parties enter into these NFT Terms) (**Force Majeure Event**).

14.4. Waiver

A provision of these NFT Terms or a right created under it may not be waived except in writing signed by the party granting the waiver.

14.5. Exercise of a right

A party may exercise a right at its discretion and separately or together with another right. If a party exercises a single right or only partially exercises a right, then that party may still exercise that right or any other right later. If a party fails

to exercise a right or delays in exercising a right, then that party may still exercise that right later.

14.6. Remedies cumulative

The rights and remedies provided in these NFT Terms are cumulative with and not exclusive of the rights and remedies provided by law independently of these NFT Terms.

14.7. No merger

The rights and obligations of the parties (including under the warranties) will not merge on completion of any transaction under these NFT Terms. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

14.8. Assignment

- (a) These NFT Terms are for the benefit of the parties and their successors and assigns. The parties and their successors and assigns are bound by these Terms.
- (b) To the extent that any party purchasing an NFT from you is taking an assignment of these NFT Terms, you must provide that party with a link or copy of these NFT Terms.
- (c) We may assign our rights under these NFT Terms without your consent, including at any time.

14.9. Severance

If any provision of these NFT Terms are void, voidable, unenforceable, illegal, prohibited or otherwise invalid in a jurisdiction, in that jurisdiction the provision must be read down to the extent it can be to save it but if it cannot be saved by reading it down, words must be severed from the provision to the extent they can be to save it but if that also fails to save it the whole provision must be severed. That will not invalidate the remaining provisions of these NFT Terms nor affect the validity or enforceability of that provision in any other jurisdiction where it is not invalid.

14.10. Entire agreement

- (a) These NFT Terms constitute the entire agreement of the parties in respect of the subject matter of these NFT Terms and supersedes all prior discussions, representations, undertakings and agreements.
- (b) None of our agents or representatives are authorised to make any representations, conditions or agreements not expressed by us in writing nor are we bound by any such statements.

14.11. Further assurances

Each party must, at its own expense, do everything reasonably necessary to give effect to these NFTs Terms and the transactions contemplated by it, including but not limited to the execution of documents.

14.12. Relationship

Nothing in these NFT Terms constitutes the parties as partners or agents of the other and no party has any authority to bind the other legally or equitably save as expressly stated in these NFT Terms.

14.13. Knowledge

In these NFT Terms, a reference to the awareness or knowledge by you is a reference to the actual knowledge, information and belief you have as at the date of any transaction taking place pursuant to these NFT Terms.

14.14. Costs

Each party must pay its own fees, costs and expenses incurred by it incidental to or in connection with the negotiation, preparation, execution, delivery and completion of these NFT Terms and the transactions contemplated by these NFT Terms including without limitation its own legal, accounting and corporate advisory fees.