

STAIRBIZ END-USER LICENCE AGREEMENT

Agreement Version: 1st May 2016



THIS AGREEMENT IS BETWEEN

STAIRBIZ SOFTWARE PTY LTD A.C.N. 002 028 766, incorporated in Australia, of Suite 3, 27 Gordon Street, Labrador, Australia ("we", "us", "our") of the first part

and

THE PERSON OR PEOPLE USING STAIRBIZ, ("you", "your") of the second part

WHEREAS:-

- A. We own the rights for a computer software system (StairBiz) for managing various aspects of the business of stair manufacturing.
- B. Agreement has been reached between the parties for us to supply StairBiz to you in accordance with the terms of this Agreement.

IT IS AGREED AS FOLLOWS:-

1. DEFINITIONS

In this Agreement the following terms shall have the following meanings:-

"STAIRBIZ"	means the computer software and associated documentation referred to in Recital A above (StairBiz).
"License"	means the end-user license to operate STAIRBIZ, being the subject of this Agreement.
"License Owner"	means the person or persons on whose authority the purchase of StairBiz was made. In the case of a registered company this is deemed to be the directors of such company jointly and severally. In the case of a partnership this is deemed to be the partners jointly and severally. In the case of a sole trader this is deemed to be that sole trader.
"License Period"	means the period from the date you first use STAIRBIZ until this Agreement is terminated in accordance with this Agreement.
"Licensed Site"	means the address referred to in Clause 5 of this Agreement.
"Password"	means a password specific to a single computer and single License to enable it to operate STAIRBIZ.
"Software Code"	means a code generated by StairBiz which uniquely identifies the single computer on which that copy of StairBiz is installed.

“StairBiz Standard”	means the standard STAIRBIZ program providing access to all aspects of the program except for StairBiz Estimate and StairBiz CNC.
“StairBiz Estimate”	means an optional module of STAIRBIZ used for costing and quoting stair production.
“StairBiz CNC”	means an optional module of STAIRBIZ used for controlling numeric controlled (CNC) routing machines for the manufacture of stairs.
“StairBiz Light”	means a “view and/or print” version of StairBiz Standard without the capacity to input job data (the exception being that new jobs can be created, and client and site information can be input).
“StairBiz Server application”	means the application program installed on a server computer to allow multiple StairBiz users to access common data.
“Invoice”	means any invoice presented to you by us (or our agents or representatives) for purchase of STAIRBIZ containing the fees and specific options as agreed between the parties. Such Invoice becomes part of this Agreement.
“Evaluation”	means any use of STAIRBIZ for the purposes of determining its suitability prior to purchase.
“Agreement Version”	means the date shown directly under the heading of this Agreement and used to indicate the version of the agreement.
“Force Majeure”	means an act, event, non happening, omission, accident or act of God beyond reasonable control of either party, including strikes, civil strife, riots, wars, threats of or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemics or failure of plant.
“Installation & training”	means the initial consultation, set-up and training normally required to use the StairBiz Program at a basic level. It does not imply that installation and training are complete in every respect.
“Current Pricing Schedule”	a document published by us and made available upon request which shows the prices for licenses, training, support, upgrades and related items and expenses at the current time.

2. SUPPLY OF STAIRBIZ

Upon payment of the Invoice, we shall supply you the most recent version of StairBiz Standard, StairBiz Lite, and/or optional modules as and if prescribed in the Invoice, ready to be installed. Upon your submission of the relevant Software Codes we shall make available to you throughout the License Period the number of Passwords required to operate STAIRBIZ for the number and type of Licenses prescribed in the Invoice pursuant to this Agreement.

By issuing you such passwords we agree to be bound by the terms of this Agreement.

3. LICENCE

We license you to use STAIRBIZ throughout the License Period provided that you comply with all of your obligations under this Agreement.

For Evaluation, all modules of the program are available, otherwise the modules available depend of the type of license(s) described in the Invoice and defined in Clause 1:

By installing, copying, or otherwise using STAIRBIZ, you agree to be bound by the terms of this Agreement. If you do not agree to any part of the terms of this Agreement, DO NOT INSTALL, USE, DISTRIBUTE OR REPLICATE ANY PART, FILE OR PORTION OF STAIRBIZ.

Updating to a more recent version of STAIRBIZ or purchasing additional licenses for STAIRBIZ or any of its modules is conditional upon you first accepting the terms and conditions of the then current End-User License Agreement as applicable to all licenses for all modules you use thereafter. The most recent End-User License Agreement is available directly from us or from our web site. After updating or purchasing, the version of the applicable End-User License Agreement is indicated in the Password window of STAIRBIZ and the terms and conditions can be viewed from the Help menu.

The License Owner shall ensure that all users of their StairBiz licenses are under their direct control and that such users are aware of their obligations under this Agreement. Without diminishing the responsibility of the individual users, the License Owner accepts ultimate responsibility for any breach of such obligations.

4. LICENCE FEE (7)

For evaluation, a license fee does not apply so long as you remain in compliance with this Agreement.

For purchase, the fee or fees shall be as agreed between the parties and indicated on the Invoice, at which time the Invoice becomes part of this Agreement.

5. LICENSED SITE

For Evaluation, the Licensed Site is your permanent office or home address, otherwise it is the address prescribed in the Invoice.

For Evaluation, STAIRBIZ may not be used to process actual work, otherwise STAIRBIZ may only be used to process work which is substantially undertaken at the Licensed Site, and may only be used where the usual place of work of the user is the Licensed Site. You shall notify us of any change in the location of the Licensed Site.

6. LICENSED COMPUTERS

For Evaluation, only one computer may have STAIRBIZ installed, otherwise the following shall apply:

Each Standard or Lite license (including any additional related modules) is for use on a single computer designated by you by supplying us with the Software Code for that computer according to our instructions. As and when required by you we shall provide you with instructions on how to change the designated computer.

The maximum number of computers on which STAIRBIZ may be installed or from which StairBiz may be used is determined by the number of Standard and Lite Licenses purchased as

prescribed in the Invoice. A StairBiz license must be purchased for each computer or client terminal using StairBiz to process work, regardless of where the related StairBiz application (used to process that work) is installed. Additional licenses may be purchased at any time at the price current at the time of those additional purchases.

StairBiz may only be installed on computers owned by the License Owner (e.g. they may not be installed on computers otherwise owned by staff or contractors).

7. THE LICENCE PERIOD AND TERMINATION

For Evaluation, the following applies:

The License Period is at our discretion, but in any case it shall not extend beyond the number of days indicated in the Splash window shown after launch of STAIRBIZ, or sixty days from the date STAIRBIZ is first installed on any computer related to your organization, whichever comes first.

After purchase, the following applies:

We may only terminate the License Period by written notice served on you if you commit a breach of any of the terms of this Agreement and, in the case of any such breach which is capable of rectification, you fail to rectify it.

8. INSTALLATION AND TRAINING

Fees and travel expenses for installation and training are not included in the license fees unless otherwise agreed in writing (usually in a quotation).

In the absence of a written quotation, our fees for installation and training shall be as per our Current Pricing Schedule, available from us upon request.

Our quotations for installation, training and/or on-site consultations are on a "per day" basis unless otherwise specified.

The number of days required for initial installation and training varies widely between users. Some of the factors include the complexity of the business, the requirements of the user, the user's previous experience with computers and with stair manufacturing software, the level of interruption, access to existing data in convenient formats, and the number of people involved. You accept that, despite our best intentions, it is not always possible for us to accurately predict the number of days you will require, and that some further training may, at your discretion, be required, and that such additional training shall be separate and chargeable at the time.

You accept also that "initial" training is not normally "complete" training in that it is unlikely that you would be suitably primed for training in some of the more advanced features, and that some further training may, at your discretion, be required, and that such additional training shall be separate and chargeable at the time.

Whereas StairBiz comes with standard sheets for job reporting and specification, it also comes with a tool (the Custom Editor) for the creation of customised sheets (if required). Whereas the number of days estimated for installation and training would normally include some instruction in the use of the Custom Editor, it would not normally include the actual creation of such customised sheets.

Where on-site visits are agreed to in writing (including via email) and subsequently cancelled or postponed by you, we and/or our representatives or agents shall take reasonable action to mitigate any travel and training cost losses, however losses which are not able to be mitigated shall be payable by you.

9. SUPPORT

For Evaluation, support is at our discretion, otherwise is it as follows:

Support is free of charge for three months after the installation of your first StairBiz license provided that such support pertains to issues not typically covered by full and adequate initial training (i.e. is not a substitute for adequate initial or follow-up training). Otherwise both email and phone support requests are chargeable at our then current rate (as published in the then current price list). Such rates shall not exceed typical industry standards.

There is no charge for bug (malfunction) notifications.

We shall not be obliged to support issues relating to hardware, operating systems, or other software which may be interfering with the normal functioning of StairBiz.

We shall not be obliged to support issues relating to versions of STAIRBIZ other than the latest available version and in accordance with the most recently available documentation

If any more than one person uses STAIRBIZ, you shall establish the following procedure in relation to any difficulties reported by your staff: All such difficulties are reported to a key operator, being the single person at the Licensed Site adequately trained and most fluent in the operation of STAIRBIZ. Where the key operator is able to resolve such difficulties, he or she shall do so. If the key operator is not able to resolve any such difficulties, he or she shall communicate such difficulties to us, and we will take all steps reasonably possible as soon as is reasonably possible to resolve such difficulties.

Support shall be via email where this is not unreasonably inefficient with regard to the nature of the assistance required.

Support shall not include traveling to the Licensed Site, unless otherwise agreed in writing between the parties.

10. MAINTENANCE AND UPGRADES

It is not possible for us to anticipate all the ways a user might apply StairBiz or the various combinations of options and features that might be used. In the user's best interest (on average) we have taken the approach that, rather than set "hard" limits to the use of STAIRBIZ in every situation, in many cases the user may keep pushing the possibilities until such time as the program fails to respond in the way anticipated. You agree that such failure does not necessarily represent cause for maintenance. You agree to check all output prior to quotation and manufacture and to satisfy yourself that such output is accurate and appropriate.

Upgrades consist of periodically released new or enhanced features and bug fixes.

Upgrades as they become available are free of charge for the first twelve months. Thereafter you have the option to participate in the Continuous Upgrade Program, the fee for which shall be 7% of total license fees (prior to any discounts being applied), per annum, indexed for inflation, payable from twelve months after installation of your first StairBiz license.

If you apply for participation in the Continuous Upgrade Program after a period of non-participation (excluding the initial twelve months free period), the fees for the period of such non-participation shall be made good prior to you joining or re-joining the program.

11. PAYMENT OF ACCOUNTS

You shall pay your account with us within the terms of trade shown in the invoice, or within 7 days if no such terms are specified. A breach of this clause is a fundamental breach of this Agreement and grounds for us to deactivate StairBiz.

12. CONSEQUENCE OF TERMINATION

Upon termination of the License Period in accordance with Clause 7 of this Agreement, each party shall be released from any further obligation under Clauses 9 and 10. However, you shall not be released from any obligations accruing prior to such termination, nor from any liability for damages in relation to any breach of this Agreement.

Upon termination of the License Period in accordance with Clause 7 of this Agreement, the following procedure shall apply: You shall immediately cease to use STAIRBIZ or any part thereof; You shall de-register all active Passwords in accordance with instructions given by us and shall supply to us evidence of such de-registrations by way of a valid verification code; You shall erase or otherwise destroy all copies of STAIRBIZ and related documentation in your possession or over which you have effective control.

13. LIMITATIONS IN THE USE OF STAIRBIZ

StairBiz was specifically designed to process most common timber stairs and balustrades in a reasonably fast, automated fashion. As such it has no ambitions to be or delusions about being a CAD program with unlimited scope. You acknowledge your understanding that StairBiz may have some limitations with regards some of your designs or methodology. You warrant that you have made adequate enquiry and accept any such limitations. We warrant that we will respond to your enquiries in this regard in good faith.

14. LIMIT OF LIABILITY AND INDEMNITY

StairBiz is a changing and evolving program. In the interests of our clients we release updates including bug fixes and new and enhanced features on a regular basis. You accept that it is not realistic for us to thoroughly test all combinations of options and features that may be used by each of our clients, and that despite our reasonable efforts bugs and malfunctions may be present in the software or introduced in updates.

You agree to check all output prior to quotation and manufacture and to satisfy yourself that such output is accurate and appropriate.

In particular, you agree to check all CNC output prior to running it on a machine or, at minimum and where appropriate, to test it on a machine in a manner that will exclude the risk of damage to the machine and work-pieces and injury to workers, and to satisfy yourself that such output is appropriate and safe. You accept that whereas this is necessary in all cases, it is particularly necessary in cases where your CNC configuration is new, where your CNC configuration has been changed, or where you have received a software update which, despite our reasonable efforts, may have introduced a bug.

We expressly disclaim any warranty for STAIRBIZ other than any such warranty which may be implied by law and cannot be legally excluded. STAIRBIZ and any related documentation is provided "as is" without warranty of any kind, either express or implied, including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, or non-infringement. The entire risk arising out of use or performance of STAIRBIZ remains with you. To

the maximum extent permitted by applicable law, in no event shall we or our agents or representatives be liable for any special, incidental, indirect, or consequential damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, damage to machines, theft or loss of data or records of any kind, or any other pecuniary loss) arising out of the use of or inability to use STAIRBIZ or the provision of or failure to provide support services, even if we or any of our agents or representatives have been advised of the possibility of such damages.

Notwithstanding the previous paragraph, our liability for any loss suffered by you under this Agreement shall be limited to rectifying any defect in STAIRBIZ, and we shall have no obligation to remedy defects in STAIRBIZ resulting from any of the following: Failure by you to operate the latest available version of STAIRBIZ and in accordance with the most recently available documentation; use of operating system software or any other software which is incompatible with the most recent version of STAIRBIZ; use of computer hardware unsuitable for use with the most recent version of STAIRBIZ.

15. OWNERSHIP

We retain all ownership of STAIRBIZ whether in its original form or as amended by us during the term of this Agreement.

All intellectual property rights in the software are retained by us. Nothing in this Agreement affects the ownership of moral rights in the software.

We retain all ownership of STAIRBIZ G-code templates whether in their original form or as amended by you.

16. WARRANTIES

We do not warrant that:

- 16.1. STAIRBIZ is error free, however, we warrant that we shall use all reasonable endeavors to ensure that STAIRBIZ is error free;
- 16.2. The use of STAIRBIZ shall be uninterrupted;
- 16.3. STAIRBIZ shall meet your requirements.

17. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

You shall promptly report to us in writing any infringement of the industrial or intellectual property rights of STAIRBIZ and/or any documentation relating to STAIRBIZ, or any loss or theft of STAIRBIZ and/or any documentation relating to STAIRBIZ, of which you become aware.

Before a computer registered via a Password to use STAIRBIZ is sold, disposed of or otherwise made redundant, you shall de-register that computer's Password in accordance with instructions we give you and shall supply to us evidence of such de-registration by way of a valid verification code.

18. REVERSE ENGINEERING

You shall not reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of STAIRBIZ.

19. RESELLERS AND CONSULTANTS

Resellers of and consultants for the STAIRBIZ product are independent agents and do not directly represent us unless otherwise stated in writing. As independent agents they are not liable for our performance under this Agreement.

20. ASSIGNMENT

We may assign our rights under this Agreement if we are reasonably satisfied that, at the time of such assignment, the assignee is competent to fulfil his obligations under this Agreement.

You may transfer your rights under this Agreement as part of a sale and transfer of the entire business.

You may otherwise assign your rights under this Agreement provided that (unless otherwise agreed between the parties in writing) the assignee purchases or has already purchased his first Standard StairBiz license directly from us (such that the licenses assigned become "additional" licenses) and has received adequate training by us for such license. For the purposes of assessing the cost of support and upgrades the licenses assigned will accrue as if they were purchased directly from us at current prices. For the purposes of assessing discounts on future licenses purchased from us the licenses assigned will not count.

21. FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement, if such failure or delay is due to Force Majeure.

The party to this Agreement seeking to rely on a circumstance of Force Majeure shall immediately notify the other party of any anticipated delay due to Force Majeure. The performance of the parties' obligations under this Agreement will be suspended for the period of delay due to Force Majeure.

If the period of the delay due to Force Majeure exceeds 60 days, the party for whose benefit and obligation remains unperformed may immediately terminate this Agreement on providing notice to the other party.

22. INTERPRETATION

This Agreement shall be construed, interpreted and governed by the laws of the State of New South Wales, Australia, or as otherwise agreed in writing between the parties. This Agreement gives you specific legal rights; you may have others that vary from state to state and from country to country.

In the event that any of the provisions of this Agreement are unenforceable, then the other provisions of this Agreement shall remain in full force and effect.