

Terms & Conditions

All Terms and Conditions incorporate Launch Internet and Launch Internet's subsidiary business units.

GENERAL TERMS AND CONDITIONS FOR INTERNET SERVICES

1. Definitions and Interpretation

1.1 Company means:

- In the case of Launch Internet Pty Ltd ACN 120 849 934 or any of Launch Internet's affiliated companies under this ACN.

"Acceptable Use Policy" means the general use of the Launch Internet's Internet services.

"Agreement" means the Application and these terms and conditions as varied by Company.

"Application" means the application to us for Service to you, completed in full and accepted by Company either by notice in writing or by Company providing the Service.

"Billing month" means calendar month or anniversary month as applicable.

"Commencement Date" means the date on which Company commences providing the Service to Customer.

"Customer" means a person whose Application is accepted by Company. You represent that you are at least 18 years old and that you have the right and ability to enter into this Agreement.

"Law" means any law (including common law), regulation, standard or code of practice including any Law governing the Service or this Agreement.

"Agreement Term" means any minimum period of service as stated in any written information or on the Company website and selected in the Application.

"Company website" means the website at the URL www.launch.net.au or such other websites as may be notified by Company from time to time.

"Products" means the provision of products and items sold at Company shops and Company authorised distributors.

Provider means any of Company's infrastructure, service or utilities providers including providers of infrastructure, services or utilities used in providing the Services.

Service means the provision of services to access and/or utilise the Internet including services to host webpages on its servers and to provide electronic mail accounts and any other services as may be introduced and provided by Company.

1.2 (a) Words denoting the singular include the plural and vice versa.

(b) Including and include are not to be treated as words of limitation.

2. Fees and Charges

2.1 From the Commencement Date, the Customer will pay the fees and such other charges relating to the Service or this Agreement at the rates notified by Company from time to time ("Fees").

Invoices. Notices for billing invoices are sent via electronic mail. Requests for paper invoices will incur a charge of \$3.30(GST inclusive) per mail out.

Payment Terms. Fees are due and payable 7 days from date of invoice. Company may charge the greater of a late payment fee of \$10 per month or interest on any overdue Fees at 10% per year from the due date of payment together with any prevailing reminder fee notified by Company.

Monthly Subscription Fees. Monthly subscription fees are billed in advance while excess usage fees are billed in arrears. For accounts with minimum monthly charges, this amount is payable irrespective of the services being used or not.

Additional Charges. Rejected cheques or invalid credit card transactions will be automatically charged back to the Customer's account. A charge of \$22.00 is charged for dishonoured cheques while credit card chargeback's will attract a fee as advised by the Customer's credit card provider. A charge of \$3.30 applies for posted or faxed invoices. All fees and charges are inclusive of GST.

Change in Charges. Company reserves the right to modify fees and charges for services and products it provides at any time by notice to you. Your continued use of the service after such notice will constitute acceptance of the variation. Notices under this agreement must be sent by post, by facsimile, or by email, unless Company specify an alternative means of giving notice in order to verify your identity. Customers will be notified via email not less than 14 days prior to any such changes.

Invoice Disputes. The Customer must notify Company of any dispute, as soon as practicable but in any event no later than 14 days after issue date of the invoice. A valid notice will contain the full Customer details plus the reasons for disputing the fees or charges. Once Company receives a valid request, it will acknowledge and confirm receipt of the notice to the Customer within 48 hours. The minimum time for Company to review a disputed bill is 14 days.

Credits on Account. Customer must notify Company of any credit request as soon as possible. Full Customer details will be required including the reasons for credit. Once Company receives a valid request, it will acknowledge and confirm receipt of the request within 48 hours. All credit on account requests are to be investigated before it can be granted. Approved credit applications will be given by crediting the Customer's account. The minimum turnaround of a credit on account is 14 days.

Refunds. Customer must notify Company of any refund request as soon as possible but in any event no later than 14 days after the date on which the reason for the refund request arose. Full Customer details will be required including the reasons for refund. Once Company receives a valid request, it will acknowledge and confirm receipt of the request within 48 hours. All refund applications are to be investigated before it can be granted. The minimum turnaround of a refund application is 14 days. Approved refund applications will be refunded free of interest.

If, in Launch Internet's reasonable opinion, the Customer breaches any of the terms and conditions in the Agreement or the Acceptable Use Policy, Company may suspend the Customer's access. The Customer is not entitled to a credit or refund for loss of access during the suspension period.

Payment Options. Fees and charges are payable by credit card, invoice or as specified by Company.

Credit Card. If a credit card number has been supplied for billing purposes, this is taken as permission to bill this card for any money owing to the Company. Should this credit card number expire or should Company otherwise be unable to debit valid charges to this credit card number, Company may immediately and without notice withdraw the Customer's access to the Service. The Customer is responsible for updating or advising Company of any changes relating to their credit card. A standing credit card payment authority may be required if credit card payment is elected.

2.2 Customer will pay to Company such security deposits as Company may require and will pay additional deposits if required by Company.

2.3 Customer must pay Fees even if Customer disputes the Fees. In the event that Company decides a dispute in Customer's favour, Company will refund to Customer any excess amount paid by Customer free of interest.

2.4 Multiple log-ins are prohibited on any Company service or product unless specified. Unauthorised multiple log-ins will result in automatic suspension without notice.

2.6 If there are any unauthorised or illegal log-ins to Customer's account, Customer must pay on demand to Company any Fees incurred prior to Customer giving notice in writing to Company in accordance with clause 5.6.

2.7 Customer must pay and will indemnify Company against any charges incurred as a result of the use or purported use (whether authorised or unauthorised) of Customer's account including international and local telecommunications charges.

2.8 GST

Unless the price for a service is stated on the Agreement to be GST inclusive, if any GST is payable by Company on any taxable supply made under this agreement, Customer must pay to Company an additional amount equivalent to the product of the consideration for that supply and the then prevailing GST rate, subject to receipt of a valid tax invoice. GST exempted Customers are required to send in a notice of exemption from the Australian Tax Office.

2.9 Customer must pay all telecommunications charges (including STD charges if applicable) for use of Service. Company does not assess what telecommunications charges apply to the location from which Customers connect to a Company point of presence.

2.10 Company's product list (as amended from time to time) located on the Company website specifies the amount of data transfer available to Customers for particular products or services. If Customer transfers data in excess of these megabyte limits, Customer will be charged at the rate specified on the Company website.

2.11 Reconnection. If Company has suspended or terminated Customer's service for any reason, it reserves the right to charge Customer a Reconnection Fee before Company will reconnect the account or lift the suspension.

3. Company's Rights

Company has the right to manage and control access to systems and information stored within the Company system, as Company deems appropriate. Company may vary or suspend the Service (or any part of it) including removal of all or part of the content of webpages hosted on its servers, removal of all or part of the postings on its news service and the blocking of electronic messages through its mail servers. Notwithstanding this right, Company does not have the responsibility or capability to edit or review Customer webpages, postings on news services or electronic messages through its mail servers.

Unless the Service through which Customer accesses the Company system is a permanent connection to Company, Company may disconnect a Customer from the Company system (forced logout) without notice if there is no use of the Company system by that Customer for a specified period (which in the case of a dial-up Service is 30 minutes)

Company reserves the right to suspend, without prior notice, some or all of the Service, if Company in its absolute discretion, considers that the Customer has not complied with one or more of the terms in the Agreement or the Acceptable Use Policy or as otherwise misused or abused the Service.

In the event that Company suspends the Service, the Service will be automatically terminated 3 months subsequent to the suspension date if the account has not been reconnected prior to this date.

Special Promotions. Company reserves the right to apply special terms and conditions on special promotions applied to its new services, plans, products or offers. Customers will be advised of these special conditions upon sign ups or product purchases. The terms of a promotion will override these terms to the extent of any inconsistency.

4. Obligations

Customer will, at Customer's own cost:

- (a) be responsible for the set-up or configuration of Customer's equipment and obtaining all licences, consents, approvals and rights for access to and use of the Service;
- (b) be responsible for all information retrieved, stored and transmitted through the Service and for managing the use of storage capacity so that it does not exceed the capacity allocated to Customer and/or cause congestion in Company's network system;
- (c) not intentionally attack, damage or otherwise interfere with Company's network system and/or the Service or use it to cause harm to any other person including other users of the Service or other Internet service providers;
- (d) not send unsolicited bulk emails to third parties using the Company network;
- (e) comply with any Laws in connection with the Service;
- (f) not share the Service with any person without the prior written approval of Company and will use the Service only for the purpose for which it is subscribed;
- (g) comply with the Acceptable Use Policies

4.1 It is the Customer's responsibility to keep their details up to date. Accounts may be suspended if Company is unable to contact the Customer via the details supplied by the Customer.

4.2 It is the Customer's responsibility to ensure that the content of their webpages, postings on news services and electronic messages is not illegal, defamatory, offensive or otherwise in breach of the Acceptable Use Policies.

5. Security

5.1 As information transmitted through the Internet is generally not confidential, Company does not guarantee the protection of Customer's privacy. Customer will take all necessary measures (including changing Customer's password from time to time) to protect the secrecy of Customer's User Identification Name ("UIN") and/or password. Change of password over the phone will only be permitted and given to the authorised account holder. Verification of the identity of the account holder will be conducted as required by Company. Company is not liable for any loss suffered by Customer or any third party due to any wrongful or fraudulent use of Customer's account by Customer or any other person.

5.2 Where a Userid is necessary to access the Service, Customer will use only Customer's own Userid.

5.3 Customer does not acquire rights to any mailbox number, the Userid, IP address, circuit reference and any codes assigned to Customer by Company and Company reserves the right to change or re-assign the same to Customer at its sole discretion without being liable to Customer for any loss suffered by Customer.

5.4 Company will not perform system backups on information stored within its system. Company is not responsible or obligated to provide historical data or to assist Customer in downloading, faxing or reading to Customer any of Customer's electronic mails.

5.5 If at any time Customer requests Company to reset Customer's password, Customer must immediately reset that password to a new password.

5.6 Customer must immediately notify Company of any unauthorised use of Customer's account or any other breach of security known to Customer. Liability of the Customer only ceases at the time of notice of an unauthorised or illegal account use.

5.7 Company does not warrant that the Service will be uninterrupted or error free.

6. Software

6.1 If Company provides software for use with the Service, Customer is responsible for ensuring that it is suitable for Customer's needs (including its compatibility for use with the Customer's equipment)

6.2 Company is not responsible for software not distributed, approved or recognised by Company including software downloaded from the Internet. If Customer uses such software in connection with the Service, Company will not be liable for any fault, loss and/or damage resulting directly or indirectly from such use.

7. Changes in Service

Company requires a minimum of 14 days notice before the intended change in service. If Company receives a valid request, it will acknowledge and confirm receipt of the requested change of Service by e-mail within 48 hours. The effective date of such change will be the first day of the next billing month. If Company receives the change request earlier than 14 days prior to the end of the current billing month, the change should be effective from the first day of the next billing month. Change in charges will only be effective from the 1st day of the next billing month. Any fees are payable for the remaining term of the previous plan. No pro-rata refund is applicable for change of plans.

8. Termination

8.1 Company requires a minimum of 30 days notice before the intended account termination date. Once the Company receives a valid request, it will acknowledge and confirm receipt of termination requests by e-mail within 48 hours. The account will remain open and available for use until the end of the current billing month. Account charging will cease from the 1st day of the next billing month. Parts of months are not refundable.

8.2 Company may terminate this Agreement immediately if:

- (a) Customer has breached any provision of this Agreement;
- (b) Customer has at any time provided any false or incomplete information to Company;
- (c) in the opinion of Company or any regulatory authority, it is not in the public interest to continue providing the Service to Customer;
- (d) (where Customer is an individual) if Customer dies or is declared a bankrupt; or
- (e) (where Customer is a corporation) if Customer becomes insolvent, subject to administration or receivership or ceases to carry on business or is subject to anything having a similar effect.

8.3 Company reserves the right to delete the Customer's personal files and email at any time after suspension or termination.

9. Liabilities of Customer upon Termination

9.1 If this Agreement is terminated pursuant to clause 8, Customer will be liable for all Fees up to and including the expiry date of the relevant Minimum Subscription Period. These Fees are payable by Customer in accordance with our payment terms as stated in clause 2.

9.2 Company may use any security deposits paid by Customer and Customer credit card supplied for billing to offset any amounts due from Customer under this Agreement or any other agreement between Company and Customer, and any remaining balance will then be refunded to Customer free of interest.

9.3 Indemnities given by Customer and Customer's obligations of confidentiality survive the termination of this Agreement.

10. Suspension of Service

10.1 Company may at any time in its sole discretion suspend any Service, without incurring any liability or prejudicing any of its other rights or remedies, for whatever reason, including:

- (a) where Company suspects that Customer's account has been hacked or accessed by an unauthorised person or that the security of Customer's account has been compromised in any way; or
- (b) where any Fees payable by Customer are overdue or any deposit or increase in Fees required by Company is not paid by Customer.

10.2 Upon Suspension, the Service will be deemed to be terminated and Customer will be liable for all Fees up to the date of Suspension and if the Minimum Subscription Period has not expired, Customer will be liable for all Fees up to the end of the relevant Minimum Subscription Period. Customer will also be liable for any reminder fees invoiced by Company following Suspension and prior to any termination of this Agreement pursuant to clause 8 at rates prescribed by Company.

10.3 Company may, in its discretion, reconnect the Service or service(s), as the case may be, in which event this Agreement will be deemed to continue as if it had not been terminated. Company reserves the right to impose on Customer a reconnection fee before Company will reconnect the account or lift the suspension.

11. Support

Company may, but is not obligated to, provide Customer with on site technical support. Company does not guarantee such support and will not be liable for any loss or damages to equipment, software, information incurred by Customer in connection with such support. Company reserves the right to impose charges for support services provided to Customer. Company's invoice will be evidence of Customer's request for such services. Company will only provide support for equipment, which is approved for use in a public telecommunications network by the relevant statutory authority.

12. Limitation of Liability

12.1 When the Customer is a consumer as defined by any relevant law such as the Trade Practices Act 1974 ('Consumer'), then certain terms will be implied into this Agreement for the benefit of the Consumer and, where prescribed by law, those terms cannot be modified or excluded by this Agreement ('Statutory Warranties'). Two of these Statutory Warranties are implied warranties that Company will provide services to a Consumer with due care and skill and that any goods supplied to a Consumer in connection with those services will be reasonably fit for the purpose supplied. In all other cases and except where inconsistent with these Statutory Warranties, the provisions of sub-clauses 12.2 to 12.5 and clause 13 apply.

12.2 For Customers who are not Consumers, Company's liability for breach of a Statutory Warranty is limited to (at the election of Company):

- (a) in the case of services, supplying the services again or the cost of having the services supplied again;
- (b) in the case of goods, the lowest of the cost of replacing the goods, acquiring equivalent goods or having the goods repaired.

12.3 Except in relation to breach of a Statutory Warranty, Company excludes all liability for:

- (i) breaches of any express or implied term, condition or warranty; and
- (b) negligence, in connection with its performance of this Agreement. Except in relation to breach of a Statutory Warranty, Company is not liable for any loss of information caused as a result of any interruption, suspension, or termination of the Service, or for any information available, received or transmitted through the Service.

12.4 Except in relation to breach of a Statutory Warranty, Company is not liable to you for:

- (a) any economic loss or damage including any loss of revenue, profits, actual or potential business opportunities, contracts or anticipated savings or profits;
- (b) any indirect or consequential loss or damage;
- (c) any loss or damage relating to the acts or omissions of any third party including any acts or omissions by a Provider; and
- (d) any loss or damage resulting from computer viruses or other defects.

12.5 Company makes no warranty or representation regarding any advertiser, goods, software or services purchased or obtained through the Service or any transactions entered into through the Service. Customer's participation in promotions or advertisements is solely between Customer and such advertiser and Company is not liable for any loss or damage incurred as a result of such dealings or the presence of such advertisers on the Service.

13. Indemnity

Customer indemnifies Company at all times against all claims, actions, proceedings, costs, expenses (including legal costs on a full indemnity basis), demands, liabilities, losses (whether direct, indirect or consequential) and damages which Company may incur arising out of or pursuant to any negligent or illegal act or omission by Customer, breach by Customer of the terms of this Agreement or any of Company's Acceptable Use Policies, or any unauthorised use by Customer of the Service.

14. Confidentiality and Privacy

14.1 Customer must not disclose to any person or use for any purpose any confidential information which comes to Customer's knowledge in connection with the Service or this Agreement.

14.2 Company may access Customer's content and other parts of the Service as necessary to identify or resolve technical problems or to respond to service complaints.

14.3 Company complies with the requirements of the Privacy Act. The Company Privacy Statement can be viewed and printed at <http://www.launch.net.au/privacypolicy.html> Customer consents to the Company dealing with Customer's personal information in the manner described in the Privacy Statement.

15. Variation and Waivers

15.1 Company reserves the right to amend these terms and conditions, any service plans, or Fees at any time upon notice (in such form as may be determined by Company) to Customer. Notice via electronic mail to the Customer's electronic mail addresses, by the posting on Company's website and the Customer's continued use of or subscription to the Service will be sufficient notice for this purpose.

15.2 Any provision of this Agreement may be waived only if Company so agrees in writing.

15.3 The failure of Company to exercise any of its powers, rights or remedies under this Agreement will not constitute a waiver of those powers, rights or remedies.

16. Assignment

Customer must not assign or agree to assign any right and must not delegate performance of any of its obligations under this Agreement. Company may assign any of its rights or obligations under this Agreement.

17. Force Majeure

If Company is prevented by reason of any event or circumstance beyond its control and without the wilful default or negligence of Company (Force Majeure Event) from performing any of its obligations under this Agreement, it will not be liable to Customer for not performing, or for the manner of its performance of, such obligation to the extent which, and for the period of time during which, it is so prevented.

8. Governing Law and Jurisdiction

This Agreement is governed by the laws in force in Queensland , Australia and each of Customer and Company submit to the exclusive jurisdiction of the Queensland courts.

19. Notices

19.1 Notices sent by Customer under this Agreement must be in English and in legible writing and may be delivered by hand, by mail, by facsimile or by email. Notices delivered by hand, by mail, or by facsimile must be delivered to the Company's address or fax number respectively set out in the Company information page on the Company Website. Notices sent by e-mail must be sent to the Company at the following addresses.

- a) Email notices pursuant to clause 2 must be sent to accounts@launch.net.au
- b) Email notices pursuant to clause 7 must be sent to accounts@launch.net.au
- c) Email notices pursuant to clause 8.1 must be sent to accounts@launch.net.au

19.2 Notice by Customer will be deemed given:

a) in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agreement or representative of the Company;

b) in the case of facsimile, upon receipt by the Customer of an acknowledgment or transmission report generated by the facsimile machine used to send the notice;

c) in the case of e-mail:

(i) on receipt of email acknowledgment from the Company of the Customer's email for any matter relating to:

A any invoice dispute or a claim for refund or credit under clause 2;

B a change of service or plan under clause 7; or

C a termination of service under clause 8.1, and

(ii) on receipt by the Customer of a delivery confirmation report on the Customer's computer, for any other matter.

20. Severability

If any provision of this Agreement is prohibited, invalid or unenforceable that provision will be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this Agreement.

21. Legal Costs

Customer will be liable for and indemnifies Company against all costs and expenses (including legal costs on a full indemnity basis) which Company may incur or pay in protecting or enforcing any rights under this Agreement (including Customer's failure to pay Fees).

22. Entire Agreement

This Agreement constitutes the entire agreement between Company and the Customer. No understanding, arrangement or provision not expressly set out in this Agreement will bind the parties