



Netpresence Australia
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Terms and Conditions

These are the NETPRESENCE Standard Terms and Conditions for the Supply of Goods and/or Services. It applies to you if you are a NETPRESENCE subscriber or user ("you"). It is intended to ensure that you know your rights and obligations when using NETPRESENCE's services.

Please read it carefully. It is a condition of your use of our service that you comply with the terms of these terms and conditions.

Please look out for any amendments to the Terms and Conditions that NETPRESENCE ("we") might make in the future. From time to time we will make amendments to them by giving you notice of the change and you will then be obliged to comply with the policy as amended.

Netpresence Australia - ('NETPRESENCE')

Standard Terms and Conditions for the Supply of Goods and/or Services

1. Definitions

a. 'NETPRESENCE' is Netpresence Australia trading as 'Netpresence', and its employees, officers, agents and affiliates.

b. The 'Agreement' means Terms and Conditions and the details on the Application forms for NETPRESENCE services.

c. The 'Customer' refers to all other persons, companies, or other entities identified on the Application forms NETPRESENCE services.

d. The 'Service' means work undertaken by Netpresence on the clients behalf in the area of technical consultation, advice or development of web, software or related projects, as modified from time to time.

2. Application and Variation of these Terms

These terms and conditions are the terms on which NETPRESENCE provides services or goods to its customers, modified by any written contract between NETPRESENCE and its customers in any particular case. The terms so modified constitute the agreement in its entirety and supersede prior agreements. NETPRESENCE may modify these terms as applying to any agreement, the pricing structure for any Service or the terms of the operation by general notice on a page of the Internet referred to on the NETPRESENCE web site, and any use after that publication will constitute an acceptance of that modification.

3. Charges

The customer must pay for all goods and services as agreed from time to time. In particular the Customer must pay all Service data charges, minimum charges and other amounts incurred by the Customer or its designated Users or incurred as a result of any use of the Customer's password (whether authorised or not) in accordance with the billing option selected. These charges include but are not limited to charges for any purchase made through any Service and any surcharges incurred while using any supplementary networks or Services other than the Service. Data charges are charged to the next mega byte in mega byte increments. Prepaid data charges which are not used within a month will not be carried forward to the following month.

4. Customer Costs

In addition the Customer must provide and pay for:-

- a.the installation and use of telephone lines and all other equipment needed to access the Service at their own cost;
- b.all government taxes, duties and levies (if any) imposed on the customer or NETPRESENCE in respect of any Services or goods supplied.

5. Payment of Accounts

The Customer must pay all amounts billed in accordance with the billing option that they are on. No credit terms are given to Credit Card accounts. Upon registration of a Credit Card account, the Customer gives NETPRESENCE authorisation to debit their credit card for all charges. Billing period is generally on a monthly cycle beginning on the 1st days of each month.

Accounts are pre-paid for the billing cycle with invoices being generated by the 1st of the month. Payments are due by the 21st of the month. Accounts may be adjusted on a pro rata basis in the initial month.

The billing period may vary depending on the product or service being offered.

Netpresence reserves the right to suspend **ALL** services should payment of any invoice for any service exceed the period specified. (see Suspension of Services below)

6. Security Deposit

NETPRESENCE may require the payment of a security deposit before providing the service, or as a condition of continuing any Service, and may use the security deposit to meet any costs, loss or liability incurred by the Customer. When the Customer has fully performed his or her obligations, NETPRESENCE shall return the outstanding balance of the security deposit, without interest, to the Customer.

7. Project Deposits and Progress Payments

Projects may be subject to an initial deposit and progress payments.

The Client agrees to pay a 50% deposit of the quoted amount to commence the project.

Once research, resources allocated or design work has commenced on a project, this deposit is non-refundable. In the case of a change of mind by "The Client" this deposit is non-refundable if work has commenced on the project.

A further payment of 50% will be due when Netpresence has completed the work required on a project.

If a system is deemed not ready for production by the Client, and Netpresence has completed the work required, the balance is due notwithstanding.

Any additions or updates that are outside the original specifications are to be treated as a new project.

If the project is not complete due to delays in receiving information or material from the client and Netpresence can no longer progress the project, a 40% payment is required after 60 days from the commencement date of the project. The remaining 10% is due when the information and material has been received and actioned.

8. Credit Checks - Privacy Consent

The Customer consents to NETPRESENCE obtaining a credit reporting agency containing personal information (as well as information concerning commercial creditworthiness and activities) for the purpose of assessment by NETPRESENCE of an application for credit (whether commercial or personal) or for the purpose of the collection of payments which are overdue.

9. Publication at Customer's Risk

The Customer accepts responsibility for all information and material issued by the Customer over any Service, and indemnifies NETPRESENCE against any liability in relation thereto. In particular the Customer undertakes that it shall not publish or issue any information which is illegal. The Customer also acknowledges that NETPRESENCE does not vet or approve any information or material available through any service and that NETPRESENCE does not accept any liability. To the full extent permitted by law the Customer accesses and uses such information and material at his or her own risk.

10. Acceptable Use

The Customer agrees to abide by NETPRESENCE's Acceptable Use policy as outlined on a separate document.

11. Provision of Service

The Service provided to the Customer is not fault free and relies on factors outside the control of NETPRESENCE. The Service is provided to the customer at such times and by means as NETPRESENCE decides from time to time.

12. Exclusion of Liability

Except as provided in clause 12. NETPRESENCE is not liable to the Customer or any other person for:-

- a. any cost, loss or liability (including loss of profit, data or other consequential damage) arising from NETPRESENCE's supply or failure or delay in supplying any goods or Services;
- b. the content, context or confidentiality of any communications made using any Service. NETPRESENCE is not able to provide support for software not supplied by NETPRESENCE, this includes software downloaded from the Internet.

13. Limitation of Liability

Except as provided below all terms, warranties, undertakings, inducements and representations relating to the provision of any Service or goods are excluded and NETPRESENCE will not be liable for any loss or damage (including consequential loss or damage) however caused (whether by negligence or otherwise) in respect of any Service or goods. However, NETPRESENCE's liability for any breach of such implied term or warranty will be limited at NETPRESENCE's option in any way permitted by the legislation including where so permitted:-

If the breach relates to goods

- the replacement of the goods; or
- the repair of such goods; or
- the payment of the costs of replacing the goods; or
- the payment of the costs of repairing the goods;

If the breach relates to Services

- the supplying of those Services again; or
- the payment of the costs of having those Services supplied again.

14. Breaches

The Customer shall indemnify NETPRESENCE against any loss (including any loss of profit) incurred by NETPRESENCE as a result of any breach of the terms of any agreement with NETPRESENCE including damages in respect of any period between the date of actual termination (including termination under clause 14.) and the date on which the Customer was entitled to terminate such agreement in accordance with its terms.

15. Termination

NETPRESENCE may immediately terminate any agreement or the provision of any Service if:-

- a. the Customer breaches any term of any agreement (including terms relating to payment or use);
- b. NETPRESENCE forms the opinion in good faith that the Customer is or may be insolvent. All deposits paid to NETPRESENCE will be non-refundable if at any time the order is cancelled by the customer. All outstanding charges become immediately payable on giving of such notice and in no circumstances shall the Customer be entitled to any refund of payments made under this Agreement.
- c. NETPRESENCE services are paid in advance. The Customer may terminate services by advising NETPRESENCE in writing with 30 days notice. Cancellation of the service will end at the end of the pre-paid period.

16. Refunds.

Refunds will be subject to evaluation and may incur an administration fee.

Customers must apply for refunds to NETPRESENCE by completion of the appropriate forms or a written letter to the same effect.

As per ACCC guidelines, NETPRESENCE reserves the right to refuse refunds claims, credit or exchanges if Customers:

- simply change their minds, decide they do not like the goods or services or have no use for them
- have discovered they can buy the goods or services more cheaply elsewhere

17. Suspension of Services

NETPRESENCE may from time to time without notice suspend any Service or disconnect or deny the Customer access to any Service:-

- during any technical failure, modification or maintenance involved in the Service provided that NETPRESENCE will use reasonable endeavours to procure the resumption of the Services as reasonably practicable; or
- if the Customer fails to comply with any agreement (including failure to pay charges due) until the breach (if capable of remedy) is remedied, or does, or allows to be done, anything which in NETPRESENCE's opinion may have the affect of jeopardising the operation of any Service.
- if the Customer fails to make payment in full for accounts in excess of 45 day past the due date, Netpresence reserves the right to suspend all services should payment of any invoice for any service exceed the above period.

Notwithstanding any suspension of any Service under this clause the Customer shall remain liable for all charges due throughout the period of suspension.

18. Information Received

Except as otherwise expressly permitted in writing, no person may reproduce, redistribute, retransmit, publish or otherwise transfer or commercially exploit any information which they receive through the Service in any way which is competitive to the Service.

19. Assignment

The Customer cannot assign its rights under any agreement with NETPRESENCE without the prior written consent of NETPRESENCE (which may not be unreasonably refused).

20. Governing Law

This Agreement is governed by the laws of Australia and the parties submit to the jurisdiction of the Australian Courts.