

Terms and Conditions

Your agreement to these terms will be indicated to us by sending to us an application, duly completed confirmation (if requested) or commencement of services, whichever occurs first.

The following terms of business apply to any or all of the domain name registration, Web site hosting, email, spam and virus protection, e-mail marketing hosted application, downloadable files back-up software, Search Engine Optimisation and Secure Web Page services to be provided by VoIPex Pty Limited to you from time to time, as well as any goods or services provided by us under any reseller or ISP agreement (Services and individually Service). Server means the computer server equipment operated by us in connection with the provision of the Services. Web Site means the area on the Server allocated by VoIPex Pty Limited to you for use by you as a site on the Internet. Secure Web Page means the Web page operated and located on the Server which allows you to collect credit card details in a means that is difficult for other people to view the page when it is loaded, because the page is encrypted. Search Engine Optimisation means any service which is designed to assist your Web Site gain a higher listing in the Search Engine results.

Special terms of contracts

Domain name registration terms

1. We do not warrant or guarantee that the domain name applied for will be registered in your name or is capable of being registered by you. Accordingly, you should take no action in respect of your requested domain name(s) until you have been notified that your requested domain name has been registered.
2. If your application is deemed fraudulent through a fraud detection and prevention mechanism in the domain registration process, we may require the registering party to supply Photo Identification to verify their identity. Accepted Photo Identification methods are Passport or current Drivers License.
3. Both the registration of the domain name and its ongoing use are subject to the relevant naming authority's terms and conditions of use and you are responsible for ensuring that you are aware of those terms and conditions and can and do comply with them. You irrevocably waive any claims you may have against us in respect of the decision of a naming authority to refuse to register a domain name and, without limitation agree that the administration charge paid by you to us shall be non-refundable in any event.
4. We accept no responsibility in respect of the use of a domain name by you and any dispute between you and any other individual or organisation regarding a domain name must be resolved between the parties concerned and we will take no part in any such dispute. We reserve the right, on our becoming aware of such a dispute, at our sole discretion and without giving any reason, to either suspend or cancel the domain name, and/or to make appropriate representations to the relevant naming authority.

Website hosting/email/secure webpage/virus protection terms

1. We specifically exclude any warranty as to the accuracy or quality of information received by any person via the Server and in no event will we be liable for any loss or damage to any data stored on the Server. You are responsible for maintaining insurance cover in respect of any loss or damage to data stored on the Server. You warrant to us that you will only use your assigned Web Site for lawful purposes. In particular, you further warrant and undertake to us that:
 - a. you will not, nor will you authorise or permit any other person to, use the Server in violation of any law or regulation;
 - b. you will not knowingly or recklessly post, link to or transmit any material:
 - I. that is unlawful, threatening, abusive, harmful, malicious, defamatory, violent or teaching violence, obscene, pornographic, profane or otherwise objectionable in any way; or
 - II. containing a virus or other hostile computer program;
 - III. that shall constitute or encourage a criminal offence, give rise to civil liability or that violates or infringes any trade mark, copyright, other intellectual property rights or similar rights of any person under the laws of any jurisdiction; and
 - c. you will conform to the standards made available by us from time to time and will not yourself, and will ensure that none of your end users, make excessive or wasteful use of the Server to our detriment or that of our other customers. VoIPex Pty Limited reserves the right to suspend your service at the time of service abuse prior notification, and to terminate post 3 events of suspension of the service as a result of ongoing lack of resolution of the issue associated.
2. You are responsible for sending mail in accordance with any relevant legislation, including but not limited to the Commonwealth Spam Act (2003) and for sending the same in a secure manner. We will take all reasonable steps to ensure accurate and prompt routing of messages but we will not accept any liability for non-receipt or misrouting or any other failure of email. In the event of deliberate transmission of unsolicited commercial email (UCE), VoIPex Pty Limited reserves it right to terminate services without prior notification.
3. You warrant, undertake and agree that:
 - a. any transactions within your Web site which are contracts for the sale of goods or services will be between you as the merchant and your end-user customer and you agree that we may include an exclusion of our liability in respect of such purchases and transactions in such form as we deem appropriate;
 - b. the information contained within your Web site will comply with all applicable law, and codes of practice governing the use of Web sites and related services, including, without limitation, those laws and/or codes of practice governing distance selling and data protection from time to time in force;

- c. you will keep secure any identification, password and other confidential information relating to your account and you will notify us immediately of any known or suspected unauthorised use of your account, or any known or suspected breach of security, including loss, theft or unauthorised disclosure of your password information. Notwithstanding such notification you will be liable for any and all uses of your account (and Web site) notwithstanding any fraudulent or improper use of your password or any other access to any of the facilities we offer which is not unauthorised use or access by us.
4. Whilst we shall use reasonable endeavours to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers.
5. We do not warrant whatsoever that our virus protection services will stop every virus from reaching your computer network. We make no warranty that the service will be error free or free from interruption or failure, and the company expressly disclaims any express or implied warranty regarding system and/or service availability, accessibility, or performance.

Service availability

1. We shall use reasonable endeavours to provide continuing availability of the Server and the Services but we shall not, in any event, be liable for Service interruptions or down time of the Server.
2. In no event will we be liable to you for loss of data, or the inability to retrieve data, resulting from or incidental to the use of a Service.

Intellectual property rights and other consents

You are solely responsible for obtaining any and all necessary intellectual property rights clearances and/or other consents and authorisations, including without limitation, clearances and/or consents in respect of your proposed domain name and merchant services agreements between you and the relevant financial institutions.

Indemnity

You agree to indemnify and keep indemnified and hold us harmless from and against any claim brought against us by a third party resulting from the provision of Services by us to you and your use of the Server, and in respect of all losses, costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and expenses), or liabilities, whatsoever suffered and howsoever incurred by us in consequence of your breach or non-observance of these terms.

Termination

1. We may terminate this agreement forthwith if you fail to pay any sums due to us as they fall due. We may suspend all services within an account prior to termination should any invoice in the account be outside of our trading terms.

2. We may terminate this agreement immediately if you breach any of these terms and conditions, or if you are a company you go into insolvent liquidation, or if you are a person you are declared bankrupt.
3. We may also terminate this agreement with immediate effect if you fail to comply with the End User Agreement (EUA) of a third-party supplier (Supplier) of Software or a Hosted Application.
4. On termination of this agreement (in relation to Website hosting) we shall be entitled immediately to block your Web Site and to remove all data located on it. We will hold such data for a period of 14 days and allow you to collect it, at your expense (\$150/hr), failing which we shall be entitled to delete all such data. We shall further be entitled to post such notice in respect of the non-availability of your Web Site as we think fit.
5. On termination of this agreement we shall also be entitled to immediately cease any of our other Services to you (apart from Web Site hosting) without holding any backup data for retrieval by you.
6. Without limiting the section below on our Exclusion and limitation of liability, VoIPex Pty Limited will not be liable to you for any cost, expense, damage or loss whatsoever for terminating this agreement.
7. If the Supplier seeks to terminate your use of a Software or a Hosted Application for reasons other than your non-compliance with an EUA or these terms and conditions, VoIPex Pty Limited will use reasonable endeavours to honour the remaining period of any then current and existing right hereunder for you to use that Service but VoIPex Pty Limited will not otherwise be obligated to continue the Service if this is not possible or viable due to events beyond the reasonable control of VoIPex Pty Limited.
8. VoIPex Pty Limited shall not be liable for any delay or failure to perform its obligations pursuant to this agreement if such delay or failure is due to termination of access to the Hosted Application or to Software by the Supplier or a change by the Supplier to the conditions of supply thereof.
9. If you wish to terminate your account with VoIPex Pty Limited, you must do so by completing the online cancellation form, or downloading completing and faxing or emailing a completed cancellation form available from our website, otherwise your account will be automatically renewed for the same subscription period and you will be liable for, and immediately invoiced upon the commencement of, such additional subscription period. Specifically, VoIPex Pty Limited will not accept verbal instructions to terminate an account.
10. VoIPex Pty Limited does not offer refunds or credits for first purchases in the event of termination or cancellation of these services.
11. In the event of cancellation of a renewed service, on receipt of your cancellation request, VoIPex Pty Limited will cancel your service at the first available opportunity. At this time, you will be liable for a minimum payment of 3 months on your service where an invoice has been generated prior to lodgement of cancellation. In such circumstances as a cancellation being lodged, or services otherwise being terminated, including those beyond 3 months after service renewal, you will be liable for the full amount of the invoice.

Payment

1. All charges payable by you to us for the Services shall be in accordance with the relevant scale of charges and rates published from time to time by us on our Web site and explicitly on the invoice shall be due and payable within fourteen (14) days of receipt of our invoice for yearly subscription services therefore. Monthly subscription services require payment within 7 days of invoice issue.
2. The provision by us of the Services is contingent upon our having received payment in full from you in respect of the relevant Services. Without prejudice to our other rights and remedies under this agreement, if any sum payable is not paid on or before the due date, we reserve the right, forthwith and at our sole discretion, to suspend the provision of Services to you.
3. If you fail to make payment within the terms of this agreement, you will become liable for the cost of collection. This will include interest on any overdue amount, calculated at the daily rate of 12% per annum, from the due date of the payment.
4. Upon provision of a credit card account, you give us authorisation to automatically debit your credit card for all charges on issuance of a valid invoice.

Account fee

If you nominate that the good(s) or service(s) you have purchased to be invoiced, you will be charged a \$4.40 account fee per invoice issued.

Late payment fee

If you exceed our fourteen (14) days credit terms, you will be charged an \$11.00 late payment fee. A revised invoice will be sent to your nominated e-mail address.

Exclusion and limitation of liability

1. TO THE FULL EXTENT PERMITTED BY LAW WE HEREBY EXCLUDE ALL CONDITIONS AND WARRANTIES NOT EXPRESSLY SET OUT HEREIN. EXCEPT AS SPECIFICALLY SET FORTH IN ELSEWHERE IN THIS AGREEMENT, WE MAKE OR GIVE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, WITH RESPECT TO ANY GOODS OR SERVICES PROVIDED UNDER OR INCIDENTAL TO THIS AGREEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY US, OUR RESELLERS, AGENTS, REPRESENTATIVES OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE EXPRESS WARRANTIES HEREBY GIVEN, AND YOU MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.
2. Our total aggregate liability to you for any claim in contract, tort, negligence, equity or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services

which are the subject of any such claim and provided that you notify us of any such claim within one year of it arising.

3. In no event shall we be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever, even if advised us to the possibility thereof. Nor will we be liable in any event for any damages including, without limitation, indirect, special, incidental, consequential or exemplary damages, arising out of or in connection to this agreement or the Services.
4. In no event will we be liable to you for loss of data, or the inability to retrieve data, resulting from or incidental to the use of a Service.

Important note:

In the event that this agreement constitutes a supply of goods or services to a consumer as defined in the Trade Practices Act 1974 (Cth) or any other national, State or Territory legislation (the Acts) nothing contained in this agreement excludes, restricts or modifies any condition, warranty or other obligation in relation to this agreement and the goods and you where to do so is unlawful. To the full extent permitted by law, where the benefit of any such condition, warranty or other obligation is conferred upon you pursuant to any of the Acts, our sole liability for breach of any such condition, warranty or other obligation, including any consequential loss which you may sustain or incur, shall be limited (except as otherwise specifically set forth herein) to:

1. in relation to goods
 1. the replacement of the goods or the supply of equivalent goods or payment of the cost of replacing the goods or acquiring equivalent goods; or
 2. ii. the repair of the goods or payment of the cost of having the goods repaired;
2. in relation to services:
 1. the supplying of the services again; or
 2. The payment of the cost of having the services supplied again as in each case we may elect.

Notices

Except where expressly provided otherwise, any notice to be given by either party to the other may be sent by either email, fax, post or courier to the address of the other party as appearing in this agreement or ancillary application forms or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by post or courier shall be deemed to be served two days following the date of posting.

Severability

If any clause of these terms and conditions is held to be invalid or unenforceable in whole or in part, the invalid or unenforceable wording shall be deemed to be omitted.

Assignment

The benefit of this agreement may be assigned by us, but not our obligations to you - to do that, you agree that we may give notice to you in writing, and your failure to respond will be deemed acceptance. You may transfer this agreement provided that you give us notice in the form we require (setting out the details of the assignee) accompanied by payment of any transfer fee specified by us. No other method of transfer by you is permitted.

Change to terms on renewal

We may change the terms and conditions of this Agreement at any time. Details of our current terms are available here. Any renewal of a Service will be in accordance with the terms and conditions in place as at that time.

Entire agreement

These terms and conditions constitute the entire agreement between VoIPex Pty Limited and you, and supersede all prior agreements, understandings and representations whether oral or written. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. Except as provided above, no variation may be made to the contract unless it is in writing and signed by authorised representatives of you and VoIPex Pty Limited.

Entire agreement, governing law

In addition to general Account, Billing and Service communications, VoIPex Pty Limited will, from time to time, issue email notifications relating to our services, including, but not limited to Newsletters, Announcements, Promotional and Seasonal offers, and Surveys. By entering into agreement with these terms and conditions, you agree to receive email communications by inferred consent until such time as you decide to opt-out of such communications. You may opt out of our mailing list at any time by sending an email to unsubscribe@voipex.com.au or by following 'unsubscribe' instructions contained within the communications.

You will not be able to opt-out of Critical Service Notifications, Renewal, Billing and Account Notifications, Scheduled Downtime Notifications or any other communications deemed to be an essential part of our service to you.