

MYSHARE WEB HOSTING TERMS AND CONDITIONS

Last modified: 20 December 2001

Dictionary

In these terms;

'ABA' means the Australian Broadcasting Authority.

'Acceptable Use Policy' means the Myshare Acceptable Use Policy prescribing the rules and guidelines, which you must comply with in using the Services (the Acceptable Use Policy is an attachment to these Terms and the most current version of which is always set out on the Myshare Web site).

'Myshare' means Myshare Internet Pty Limited ACN 091 319 167. (incorporating customers who have email addresses or usernames at Hotlinks.net.au, or Hotexpress.net.au or blast.net.au and or getonboard.com.au)

'Myshare Equipment' means the Myshare Internet Pty Ltd and Service Partner network equipment.

'Myshare Group Company' means any related body corporate (as that term is defined in section 50 of the Corporations Law) of Myshare.

'Myshare Network' means collectively the networks of Myshare and Service Partners through which the Service is provided (including all their constituent parts (both software and hardware)).

'Myshare Website' means the web site with its home page at <http://www.Myshare.net.au>.

'Application Form' means the form attached to these Terms on which you apply for the Service. 'Charges' means the charges applicable to the Service as set out in the Myshare web site, marketing materials and or other means.

'Commercial Account' means an account at the time of registration is registered by a person on the behalf of a Commercial Entity or by a person who is using the account for anything other than personal use.

'Commercial Entity' means any sole trader, firm and corporation.

'Commercial Purposes' means any business transactions, including advertising, referrals, marketing, and solicitation, regardless of gains or losses.

'End User' means you being a person named in the application or registration request.

'GST' has the same meaning as the in the A New Tax System (Goods and Services Tax) Act 1999.

'IIA Codes' means the Internet Industry Codes of Practice registered under the Broadcasting Services Act 1992.

'Minimum Period' means any minimum period, as specified in the Service Application Form, for which you agree to take the Service.

'Minimum System Requirements' means a standard personal computer (PC), a modem and telephone line. We recommend at least a Pentium class processor running Windows 9x, a CD-ROM drive (for the registration CD, where applicable), 16 megabytes of RAM and a 28.8kbps modem.

'On Site' means the location where the end user accesses the Myshare Network.

'Personal Account' means an account at the time of registration is registered by a person and solely for personal non-commercial use.

'Provider' means Myshare, any Myshare Group Company, Distribution Affiliates and Service Partners.

'Service' means the Myshare Service described in clause 2.1.

'Service Partner' means any provider of services to Myshare for the purpose of enabling Myshare to provide Services to End Users.

'Software' means the software referred to in clause 2.1(c).

'Tax' means any tax (excluding GST), withholding tax, charge, rate, duty or impost imposed by any authority, but does not include any income or capital gains tax.

'Terms' means the terms set out in this document, including any modifications of those terms made by Myshare from time to time in accordance with clause 14.3.

'Third Party' means a person or Commercial Entity other than Myshare or the End User.

Agreement

Myshare agrees to provide you with the Service on the following Terms. Please read them carefully, as you need to understand them to know:

1. what Myshare will deliver to you;
2. the computer equipment you need to access the Service;
3. the rules you must obey when using the Service;
4. your rights and responsibilities with regard to your computer, software and the equipment (if any) that Myshare provides to you; and
5. Myshare's responsibilities in relation to the Service.

1 Customer Terms and Acceptable Use Policy

1.1 You have asked Myshare to provide you with the Service. The basis for the provision of the Service by Myshare, and your obligations in using this Service are entirely set out in these Terms and in the Acceptable Use Policy as varied from time to time.

1.2 It is a condition of using the Service that you comply with these Terms and the Acceptable Use Policy, so please read the following carefully.

1.3 You agree that you are over the age of 18 years, or if you are under 18 that you have obtained the written consent of a parent, teacher or other responsible adult to access the Service.

1.4 If the End User is a Commercial Entity, you warrant that the person undertaking registration is an authorised representative/officer of the Commercial Entity and has the authority to act on behalf and request service from Myshare for the Commercial Entity.

2 What Myshare Will Provide as part of the Service

2.1 Myshare agrees:

To provide you with Services in accordance with these Terms and Conditions, and Acceptable Use Policy, which constitutes the only agreement between Myshare and you regarding the provisions of services.

To use its best endeavours to provide you with Internet access but cannot guarantee that the services will be performed entirely uninterrupted or without fault. As soon as is reasonable practicable, Myshare will endeavour to correct reported faults. If a fault occurs you should report the fault by either telephone, email or in writing. That if required, it may provide you with software to access the Service, on the condition that you comply with the terms set out in clause 13.

To provide you with email facilities and except in the case of Commercial Entities, web space for personal web pages as per registration request.

To provide a help desk, by telephone and email, for users of the Service.

3 Your Computer

3.1 In order to access the Service, you must provide a computer, equipped to the Minimum System Requirements and the power required to run it. You (and not Myshare) are solely responsible for your computer and its operation.

3.2 If your computer does not meet the Minimum System Requirements, you will not be able to successfully access, operate or use the Service. In addition, you will not be entitled to receive customer support relating to any issue other than the quality of the Service offered by Myshare.

4 Customer Support

4.1 Myshare does not provide on-site technical support.

4.2 If Myshare supplies software/hardware and or any other material to assist you to access the Myshare Internet service, then Myshare will only provide customer support in relation to accessing Myshare's network. Myshare will not provide support for third party software, including but is not limited to:

Web Browsers

Email programs / clients

IRC programs / clients

FTP programs /clients and or

ICQ and or other instant messaging programs.

5 Use of the Service

5.1 The Service is both a commercial and consumer product for personal non-commercial, residential usage (as determined by Myshare) unless a designated Commercial Account and is designed for and must be used as outlined in the Myshare Acceptable Use Policy. You must comply with the Acceptable Use Policy, the most current version of which is always available on the Myshare web site: <http://www.Myshare.net.au>

5.2 At the time of registration you must define whether your use is commercial or non-commercial usage. Myshare will deem any registration completed in a business name to be a commercial account.

5.3 At the time of registration an account defined as a Personal Account may not be used at anytime for Commercial Purposes, including using email and or web pages for those purposes.

5.4 Any use of the Service at your premises is your responsibility. The rules governing use of the Service which are set out in these Terms (including the Acceptable Use Policy) apply to you and also to anyone else who uses the Service (whether you give them permission to do so or not).

5.5 Minors must be supervised by a parent, teacher or other responsible adult at all times while using

the Service, as Myshare is not responsible for Internet content that may be viewed using the Service.

5.6 Commonwealth legislation allows the ABA to direct Myshare to remove certain prohibited Internet content from its servers or prevent users from accessing certain Internet content. Myshare may take any steps with the aim of ensuring compliance with any relevant industry code of practice, notification or direction from the ABA, including removing any content (including part or all of a web site) from its servers, terminating or suspending the Service, filtering the Internet content made available to you or restricting access to a particular web site. Myshare may take these actions at any time and without notice to you.

5.7 The Service may allow you to create personal web pages with a personal account and create commercial web pages with a commercial account. All information you publish on your personal or commercial pages must comply with the law, these Terms and the Acceptable Use Policy.

5.8 When using the Service, you must not break any laws, contravene any relevant codes (such as the IIA Codes) or infringe the legal rights of any person. You must comply with the Acceptable Use Policy and any additional reasonable instructions that Myshare gives you. You should check the Acceptable Use Policy regularly to ensure that you are complying with it.

5.9 You must not assign or re-sell the Service or attempt to do so. Myshare may assign or novate any of its rights or obligations under these Terms by giving you a notice.

5.10 Myshare may monitor your use of the Service to ensure that you are complying with these Terms and the Acceptable Use Policy. Myshare may investigate any misuse of the Service and may involve police or other law enforcement agencies in doing so. Myshare may recover the cost of investigating your misuse of the Service from you. If your use of the Service causes loss to third parties, Myshare may require you to pay compensation.

6 Risks of the Internet

6.1 There is content on the Internet which may offend you and which may breach Australian laws. For example, it is possible to obtain access to content that is pornographic, obscene or otherwise inappropriate or offensive, particularly for children. Myshare cannot control the content of the Internet and assumes no responsibility for it. You have the right to make complaints to the Australian Broadcasting Authority (ABA) about Internet content which is or would be rated R, X or RC.

6.2 You must take reasonable steps within your power to prevent unauthorised access to the Service. Myshare recommends that when using the Service you do not enable file or printer sharing of any sort, and that if you do make files available for remote access that you protect them with a password or another device to prevent unauthorised access.

6.3 Myshare will endeavour to provide you with a secure network and may notify you of security breaches that may affect you. However, Myshare has no control over the behaviour of Internet users. Myshare has no liability for any loss or damage you may suffer from your use of the Internet or because your connection to the Internet has allowed another person to gain unlawful access to your computer or exposed your computer to a virus or similar.

6.4 If you purchase goods or services using the Internet:
Myshare bears no responsibility for those goods and services; and
you are responsible for any charges you incur.

6.5 If you transmit confidential information over the Internet (such as your credit card number), you bear all risk of loss or damage arising from such transmissions.

6.6 Software and other material downloaded from the Internet may introduce viruses or other harmful features to your computer. If you download material from the Internet, you do so at your own risk. Myshare has no liability for any loss or damage you may suffer.

6.7 You must notify Myshare immediately of any unauthorised or attempted unauthorised use of your Service and any other breach or attempted breach of security.

7 Payment

7.1 You must pay the Charges in accordance with the Application / Registration form and for any Minimum Period specified, by credit card. In instances where Myshare allows payment by other methods (such as monthly invoice) payment may attract an additional nominal monthly charge.

7.2 You must pay the Charges even if you are unable to use the Service or access the Internet.

7.3 You are solely responsible for any Telecommunications charges that you may incur to access the Myshare Network.

7.4 You are solely responsible for any Third Party charges that you incur to access the Myshare Network (including ISDN where applicable).

7.5 You are solely responsible for any costs for hardware, software and installation that you may incur to access the Myshare Network.

7.6 Except as expressly stated, prices quoted are GST inclusive. On your Myshare bill (now called Tax Invoice), Charges will be calculated excluding GST. GST will be calculated on the total amount of taxable supplies during the billing period and shown as a separate entry.

7.7 Except as provided for in clause 7.3, the monthly charge, installation charge and any other fee charged by Myshare ('Fee') does not include any amount on account of Tax. If any Tax is payable by Myshare in relation to this contract, Myshare will increase the Fee on account of the Tax and you must pay the increased Fee. Myshare will adjust the Fee having regard to Part VB of the Trade Practices Act 1974 (Cth).

8 Change of Address

8.1 The Service may not be available from all locations. If you plan to move premises, you must give Myshare notice of your new address at least 30 days before you move.

8.2 The Service may not be in a local call zone and call charges to the Myshare Network may be at a higher charge. It is your responsibility to check with your local telecommunications provider for the correct costs for the call.

8.3 For technical or commercial reasons not all customers can be connected to the Myshare Network. If the Service is not available at your new address:

you must provide proof that you are moving to that address;

the Service will automatically terminate 30 days after you notify Myshare in writing in accordance with clause 8.1; and

clauses 9.3, 9.4 and 9.5 will apply

9 Suspension and Termination

9.1 Myshare may suspend or terminate the Service if you breach these Terms or the Acceptable Use Policy (or Myshare reasonably suspects you have breached these Terms or the Acceptable Use Policy). Myshare will endeavour to give you notice of such suspension or termination. Myshare may, in its absolute discretion, re-connect you to the Service after such a suspension if you undertake to comply with these Terms or the Acceptable Use Policy in the future. Myshare may charge you a re-connection fee in these circumstances.

9.2 Myshare may also suspend the Service, at any time without notice, for any reason including but not limited to, technical reasons, network repairs, or to comply with any law or an order of an emergency service or government authority.

9.3 You may terminate the Service by giving Myshare 30 days written notice. You must pay for the Service up until the end of the notice period. If you have agreed to take the Service for a Minimum Period and you seek to terminate early (including because you move premises) a pro-rated cancellation fee will apply, and you may do so on the condition that you pay the Charges for the duration of the Minimum Period. You authorise Myshare to debit these payments to your credit card or bank account on receipt of a termination notice from you.

9.4 If the Service is terminated:

you must allow Myshare to disconnect the Service (and Myshare may charge you a disconnection fee);

you must immediately return the Myshare Equipment (or allow Myshare to collect it), if applicable, and pay any outstanding Charges; and

you must cease using and delete the Software.

10 Extent of Myshare Responsibility

10.1 Myshare provides the Service on an 'as is' basis and does not warrant that the Service will be uninterrupted or error-free.

10.2 Myshare excludes all implied conditions and warranties from these Terms, except those implied conditions and warranties (such as those implied by the Trade Practices Act) the exclusion of which would be illegal or render this clause void. Except to the extent that the Service is deemed to be a service ordinarily acquired for personal, domestic or household use, Myshare limits its liability for breach of any Non-Excludable Condition (except any warranty as to title) to re-supplying the goods or services which gave rise to the loss or damage or paying the cost of re-supply.

10.3 Subject to clauses 10.2 and 10.4, Myshare limits its liability for breach of these Terms and all loss, damage, costs and expenses suffered or incurred by you in connection with the Service (whether arising in contract, tort (including negligence) or under statute) to re-supplying the goods or services which gave rise to the loss or damage or paying the cost of that re-supply.

10.4 Myshare excludes all liability to you (whether arising in contract, tort (including negligence) or under statute) for any indirect or consequential loss and damage you may suffer or incur in connection with the Service, including, but not limited to, loss of revenue, profits or business opportunities

10.5 You indemnify Myshare for any costs, expenses, loss or liability directly or indirectly suffered or incurred by Myshare arising from your breach of these Terms or Acceptable Use Policy or your use or misuse of the Service.

11 Myshare's Use of your Personal Information

11.1 For the purpose of processing your application and ongoing credit -management of your account, Myshare may need to disclose to a credit reporting agency:

personal identifying details, including your name, current and previous addresses, driver's licence number, date of birth and employer;

the fact that you have applied for the Service, and any credit limit on your account;

the amount of any payments which are overdue for at least 60 days, when steps have been taken by Myshare to recover those overdue payments;

11.2 You authorise Myshare to disclose that information to a credit-reporting agency. You also authorise Myshare to seek from or give to any credit providers nominated by you or named in a credit report or to other telecommunications providers, and Myshare franchisees, agents, contractors and outlets, the same information and any other information in your application and any other information on your creditworthiness, credit history or credit capacity that credit providers are allowed to give under the Privacy Act.

11.3 You authorise Myshare to obtain and use personal credit information (e.g. your existing household loans and personal credit card history) for the purpose of considering an application by you for commercial credit to use the Service as a sole trader. You authorise Myshare to obtain and use commercial information about your commercial creditworthiness or commercial history (your existing credit record as a sole trader) when considering an application for consumer credit (for example, when the Service will be used for domestic purposes).

11.4 Myshare may refuse or cancel the Service on the basis of its credit assessment of you. You have the right to see and to correct any credit information which Myshare holds about you.

11.5 You authorise Myshare to exchange information about you with its Service Partners and any Myshare or Parent Group Company and to use that information for business planning and marketing, research and promotional purposes.

11.6 Myshare may make any disclosure of your personal information which Myshare is required or permitted to make by law

12 How Disputes Will be Handled

12.1 You may complain about the Service in writing or orally by calling one of Myshare's customer service representatives. Myshare will in turn endeavor to resolve your complaint to the best of its abilities. Myshare will ensure that complaints will be escalated to the appropriate departmental head if the matter is not resolved in "reasonable" period, allowing for thorough investigation. If Myshare is not able to resolve your complaint to your satisfaction, you may refer your complaint to the independent Telecommunications Industry Ombudsman.

13 Software

13.1 Myshare grants to you a non-exclusive licence to use the Software and accompanying documentation ("Documentation") subject to the Terms.

13.2 You may:

use the Software on any computer within a single premises that is connected to the Service; and

copy the Software for archival purposes, provided any copy must contain all of the original Software's proprietary notices.

13.3 You must not:

permit other individuals to use the Software except on the computer on which it is installed in accordance with these Terms or the Acceptable Use Policy;

permit concurrent use of the Software;

modify, translate, reverse engineer, de-compile, disassemble (except to the extent applicable laws specifically prohibit such restriction), or create derivative works based on the Software;

copy the Software other than as specified above;

rent, lease, grant a security interest in, or otherwise transfer rights to the Software; or remove any proprietary notices or labels on the Software.

13.4 Title, ownership rights, and intellectual property rights in the Software shall remain in Myshare and its licensors. The Software is protected by copyright laws and treaties. Title and related rights in the content accessed through the Software is the property of the applicable content owner and may be protected by applicable laws. This Licence gives you no rights to such content.

13.5 Your licence to use the Software will terminate automatically if you fail to comply with this clause or if the Service is terminated or expires. On termination of this licence, you must destroy all copies of the Software and Documentation in your possession or control.

13.6 The Software may be subject to export controls of Australia or the United States of America. You must not export the Software outside Australia or use the Software in a manner that is prohibited by any applicable export laws.

13.7 The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Myshare, its licensors and Myshare Group Companies specifically disclaim any express or implied warranty of fitness for High Risk Activities.

13.8 Installation and use of any plug-ins or other third-party software are subject to the terms and conditions of any licenses distributed with or relating to such plug-ins or third-party software.

14 General

14.1 Myshare does not waive its rights under these Terms or the Acceptable Use Policy unless the waiver is in writing and signed by an authorised representative of Myshare.

14.2 Any provision of these Terms that is void, voidable or unenforceable may be severed from these Terms and the remainder of these Terms will continue unaffected.

14.3 Myshare may amend these Terms (including the Charges) by giving you 30 days notice, by mail, email or by notice on the Myshare web site although Myshare may amend the Acceptable Use Policy on shorter notice as and when provided for under the Acceptable Use Policy. Myshare may communicate with you by email in relation to the Service. If you do not wish to be governed by the amended Terms, or the Acceptable Use Policy you may terminate the Service by complying with clause 9.3 and paying any amounts due under that clause.

14.4 Myshare may pay a commission to a person who introduces you to the Service.

14.5 These Terms are governed by the laws of Victoria and you submit to the non-exclusive jurisdiction of the courts of that State. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

To join up call Myshare on 1300 368 862 NOW!