

Terms and Conditions

These are the terms and conditions subject to which we allow you to use Our Website. By visiting or using Our Website, or signing up for our services, you agree to be bound by them. You may not use Our Website if you are under the age of 18 years.

If you violate these terms we may terminate your use of Our Website, bar you from future use of Our Website, cancel your order, and/or take appropriate legal action against you.

We are Foxley Software Pty Ltd (trading as Foxley Marketplace), a company registered in Australia, ACN 600 688 702.

Our address is L4, 405 Collins Street, Melbourne Victoria, 3000, Australia.

You are: Anyone who uses Our Website or buys from us.

Please read this agreement and “Product Licence Terms” carefully and save it. If you do not agree with it, you should leave Our Website and stop using the site or the Services immediately.

It is now agreed as follows:

1. Definitions

In this agreement, the following words shall have the following meanings, unless the context requires otherwise:

- | | |
|-------------------------|--|
| “Content” | means the textual, visual or aural content that is encountered as part of your experience on Our Website. It may include, among other things: text, images, sounds, videos and animations. It includes content Posted by you. |
| “Intellectual Property” | means intellectual property owned by us or by any third party, of every sort, whether or not registered or registrable in any country, including intellectual property of all kinds coming into existence after today; and including, among others, patents, trade marks, unregistered marks, designs, copyrights, |

domain names, discoveries, creations and inventions, together with all rights which are derived from those rights or for which application for registration has been made in any country.

“Our Website”	means the entire computing hardware and software installation that is or supports our website including any communication or peripheral system. It includes any website of ours, and all web pages controlled by us.
“Post”	means place on or into Our Website any Content or material of any sort by any means.
“Licence”	means a licence granted by us to you in the terms of this agreement for use of a Licensed Product.
“Licensed Product”	means any product, material or thing offered for Licence by us on Our Website, whether or not bought by you. A reference to “Product” shall be a reference to all or part of a Product or to a Product changed by you in any way.
“Service”	means any service we sell from time to time, whether or not connected to a Licensed Product.

2. Interpretation

In this agreement the following meanings apply unless the context otherwise requires:

- 2.1. a reference to a person includes a human individual, a corporate entity and any organisation which is managed or controlled as a unit.
- 2.2. a reference to a person includes reference to that person’s successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as a result of a merger, division, reconstruction or other re-organisation involving that person.
- 2.3. the headings to the paragraphs and schedules (if any) to this agreement are inserted for convenience only and do not affect the interpretation.

- 2.4. any agreement by either party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing.
- 2.5. a reference to an act or regulation includes new law of substantially the same intent as the act or regulation referred to.
- 2.6. these terms and conditions apply to all supplies of Licensed Products by us. They prevail over any terms proposed by you.
- 2.7. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

3. Basis of Contract

- 3.1. If you use Our Website in any way on behalf of another person you warrant that you have full authority to do so and you accept personal responsibility for every act or omission by you.
- 3.2. When you buy a Licensed Product, you are in fact buying a licence to use that Licensed Product. The terms of use vary from one Licensed Product to another and are contained in our "Product Licence Terms". That Licence is supplemental to this agreement and to be read with this agreement to provide the full agreement between us.
- 3.3. In entering into this contract you have not relied on any representation or information from any source except Our Website.
- 3.4. There is no contract between us for any free service or product, you do not become a client by using any free service or product and we are not liable to you in any way resulting from your use of any free service or product.
- 3.5. The price of any Licensed Product or Service may be changed by us at any time. We will never change a price so as to affect the price charged to you at the time when you buy that Licensed Product or Service.
- 3.6. You agree that you are bound by these terms (or the latest version of them) for all future contracts with us, whether ordered through Our Website or in some other way.

- 3.7. You now agree that you commit a breach of this contract if you seek repayment of money paid to us by asking your credit card provider to credit back a payment made to us, without attempting to seek repayment from us first. In that event, you agree that you will owe us first the sum charged to us by our payment service provider and secondly a sum based on time spent at \$ 100 per hour in dealing with your breach. You also agree that this provision is reasonable.
- 3.8. The Contract between us comes into existence at the earlier of:
- 3.8.1 when we write to you to confirm that your order has been delivered; or
 - 3.8.2 when you download the Licensed Product you have bought.
- 3.9. We may change this agreement and / or the way we provide a Product, at any time. If we do:
- 3.9.1 the change will take effect when we Post it on Our Website. You are advised to check this page from time to time.
 - 3.9.2 if you make any payment for Licensed Products or Services in the future, you will do so under the terms posted on Our Website at that time.

4. The price

The prices payable for the Licensed Product and Services are clearly set out on Our Website.

The price charged for any Licensed Product or Service may differ from one country to another. You may not be entitled to the lowest price unless you reside in the qualifying country.

Prices are not inclusive of any applicable goods and services tax or other sales tax and will be added to the final cost at checkout where applicable

Security of your credit card

We take care to make Our Website safe for you to use via the use of externally recognised global payment processing gateways.

Card payments are not processed through pages controlled by us. We use one or more online payment service providers who will encrypt your card or bank account details in a secure environment.

If you have asked us to remember your credit card details in readiness for your next purchase or subscription this will be carried out via the payment service providers' functionality. These details will be fully encrypted and only used to process your automatic monthly payments or other transactions which you have initiated.

5. Content you Post to Our Website

You agree that you will not use or allow anyone else to use Our Website to Post any Content which is or may:

- 5.1. be information which could promote or assist any unlawful purpose;
- 5.2. consist in commercial audio, video or music files;
- 5.3. be illegal, obscene, offensive, threatening or violent;
- 5.4. be sexually explicit or pornographic;
- 5.5. be likely to deceive any person or be used to impersonate any person, or to misrepresent your identity, age or affiliation with any person;
- 5.6. solicit passwords or personal information from anyone;
- 5.7. be used to sell any goods or services or for any other commercial use;
- 5.8. include anything other than words (i.e. you will not include any symbols or photographs) except for a photograph of yourself in your profile in such place as we designate;
- 5.9. be incomplete or inaccurate or submitted otherwise than as requested by Our Website;
- 5.10. link to any of the material specified above, in this paragraph.

6. Your Posting: restricted content

In connection with the restrictions set out below, we may refuse or edit or remove Content which does not comply with these terms.

In addition to the restrictions set out above, Content must not contain:

- 6.1. hyperlinks, other than those specifically authorised by us;
- 6.2. keywords or words repeated, which are irrelevant to the Content Posted.
- 6.3. the name, logo or trademark of any organisation other than yours.
- 6.4. inaccurate, false, or misleading information.

7. How we handle your Content

- 7.1. Our privacy policy is strong and precise. It complies fully with current law.
- 7.2. If you Post Content to any public area of Our Website it becomes available in the public domain. We have no control who sees it or what anyone does with it.
- 7.3. Even if access to your text is behind a user registration it remains effectively in the public domain because someone has only to register and log in, to access it. You should therefore avoid Posting unnecessary confidential information.
- 7.4. We need the freedom to be able to publicise our services and your own use of them. You therefore now irrevocably grant us the right and licence to edit, copy, publish, distribute, translate and otherwise use any Content that you place on Our Website, in public domains and in any medium. You represent and warrant that you are authorised to grant all such rights.
- 7.5. We will use that licence only for commercial purposes of the business of Our Website and will stop using it after a commercially reasonable period of time.
- 7.6. You agree to waive your right to be identified as the author and your

right to object to derogatory treatment of your work as provided in the Copyright Act 1968.

- 7.7. You now irrevocably authorise us to publish feedback, comments and ratings about your activity through Our Website, even though it may be defamatory or critical.
- 7.8. Posting content of any sort does not change your ownership of the copyright in it. We have no claim over it and we will not protect your rights for you.
- 7.9. You understand that you are personally responsible for your breach of someone else's intellectual property rights, defamation, or any law, which may occur as a result of any Content having been Posted by you.
- 7.10. You accept all risk and responsibility for determining whether any Content is in the public domain and not confidential.
- 7.11. Please notify us of any security breach or unauthorised use of your account.
- 7.12. We do not solicit ideas or text for improvement of our Service, but if you do send to us material of any sort, you are deemed to have granted us a licence to use it.

8. Removal of offensive Content

- 8.1. For the avoidance of doubt, this paragraph is addressed to any person who comes on Our Website for any purpose.
- 8.2. We are under no obligation to monitor or record the activity of any customer for any purpose, nor do we assume any responsibility to monitor or police Internet-related activities. However, we may do so without notice to you and without giving you a reason.
- 8.3. If you are offended by any Content, the following procedure applies:
 - 8.3.1 your claim or complaint must be forwarded to our support area by post or email;
 - 8.3.2 we shall remove the offending Content as soon as we are reasonably able;

- 8.3.3 after we receive notice of a claim or complaint, we shall investigate so far as we alone decide;
- 8.3.4 we may re-instate the Content about which you have complained or not.
- 8.4. In respect of any complaint made by you or any person on your behalf, whether using our form of complaint or not, you now irrevocably grant to us a licence to publish the complaint and all ensuing correspondence and communication, without limit.
- 8.5. You now agree that if any complaint is made by you frivolously or vexatiously you will repay us the cost of our investigation including legal fees, if any.

9. Security of Our Website

If you violate Our Website we shall take legal action against you.

You now agree that you will not, and will not allow any other person to:

- 9.1. modify, copy, or cause damage or unintended effect to any portion of Our Website, or any software used within it.
- 9.2. link to our site in any way that would cause the appearance or presentation of Our Website to be different from what would be seen by a user who accessed Our Website by typing the URL into a standard browser;
- 9.3. download any part of Our Website, without our express written consent;
- 9.4. collect or use any product listings, descriptions, or prices;
- 9.5. collect or use any information obtained from or about Our Website or the Content except as intended by this agreement;
- 9.6. aggregate, copy or duplicate in any manner any of the Content or information available from Our Website, other than as permitted by this agreement or as is reasonably necessary for your use of the Services;
- 9.7. share with a third party any login credentials to Our Website.
- 9.8. Despite the above terms, we now grant a licence to you to:

- 9.8.1 create a hyperlink to Our Website for the purpose of promoting an interest common to both of us. You can do this without specific permission. This licence is conditional upon your not portraying us or any Product or Service in a false, misleading, derogatory, or otherwise offensive manner. You may not use any logo or other proprietary graphic or trademark of ours as part of the link without our express written consent.
- 9.8.2 you may copy the text of any page for your personal use in connection with the purpose of Our Website or a Service we provide.

10. Interruption to Foxley Marketplace service

- 10.1. If it is necessary for us to interrupt our service, we will give you reasonable notice where this is possible and when we think the down time is such as to justify telling you.
- 10.2. You acknowledge that Foxley Marketplace service may also be interrupted for many reasons beyond our control.
- 10.3. You agree that we are not liable to you for any loss, foreseeable or not, arising from any interruption to our service.

11. Intellectual Property

- 11.1. We will defend our Intellectual Property rights in all countries.
- 11.2. Except as provided in our Product Licence Terms, you may not copy, modify, publish, transmit, or sell, create derivative works from, distribute, perform, display, or in any way exploit any of our Intellectual Property or that owned by any third party and accessible to you via Our Website.
- 11.3. You may not use our name or logos or trademarks or any other content on any website of yours or that of any other person.
- 11.4. You agree that at all times you will:
 - 11.4.1 not to cause or permit anything which may damage or endanger our title to any of our Intellectual Property;

- 11.4.2 notify us of any suspected infringement of the Intellectual Property;
- 11.4.3 indemnify us for any loss or expense arising from your misuse of the Intellectual Property;
- 11.4.4 not use any name or mark similar to or capable of being confused with any name or mark of ours.

12. Disclaimers and limitation of liability

- 12.1. The law differs from one country to another. This paragraph applies so far as the applicable law allows.
- 12.2. All implied conditions, warranties and terms are excluded from this agreement.
- 12.3. Our Website includes Content Posted by third parties. We are not responsible for any such Posting. If you come across any Content which offends against this document, please contact us via the "Contact us" page on Our Website.
- 12.4. You are advised that Content may include technical inaccuracies or typographical errors. This is inevitable in any large website. We would be grateful if you bring to our immediate attention, any that you find.
- 12.5. We sell Licensed Products and Services in good faith. But we make no representation or warranty that any Licensed Product or Service will be:
 - 12.5.1 useful to you;
 - 12.5.2 of satisfactory quality;
 - 12.5.3 fit for a particular purpose;
 - 12.5.4 available or accessible, without interruption, or without error.
- 12.6. Our Website contains links to other Internet websites. We have neither power nor control over any such website. You acknowledge and agree that we shall not be liable in any way for the content of any such linked website, nor for any loss or damage arising from your use of any such website.

- 12.7. We claim no expert knowledge in any subject. We disclaim any obligation or liability to you arising directly or indirectly from information you take from Our Website.
- 12.8. You agree that in any circumstances when we may become liable to you, the limit of our liability is the amount you have paid us in the immediately preceding 12 month period for the Licensed Products concerned.
- 12.9. We shall not be liable to you for any loss or expense which is:
- 12.9.1 indirect or consequential loss; or
 - 12.9.2 economic loss or other loss of turnover, profits, business or goodwill even if such loss was reasonably foreseeable or we knew you might incur it.
- 12.10. This paragraph (and any other paragraph which excludes or restricts our liability) applies to our directors, officers, employees, subcontractors, agents and affiliated companies as well as to us.
- 12.11. If you become aware of any breach of any term of this agreement by any person, please tell us by forwarding all *relevant* details through to our support area. We welcome your input but do not guarantee to agree with your judgement.

13. You Indemnify Us

You agree to indemnify us against all costs, claims and expense arising directly or indirectly from:

- 13.1. your failure to comply with the law of any country;
- 13.2. your breach of this agreement;
- 13.3. any Content you Post to Our Website;
- 13.4. any data you send or upload to Our Website for storage or any other purpose;
- 13.5. a breach of the intellectual property rights of any person;
- 13.6. your failure to conform to any relevant Internet protocol;

- 13.7. any use of your site for a purpose forbidden by this agreement;
- 13.8. any act, neglect or default by any agent, employee, licensee or customer of yours;
- 13.9. a contractual claim arising from your use of the Licensed Products;
- 13.10. and for the purpose of this paragraph you agree that the cost of our management and technical time is properly recoverable and can reasonably be valued at \$100.00 per hour without further proof.

14. Miscellaneous matters

- 14.1. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.
- 14.2. You undertake to provide to us your current land address, e-mail address, telephone number as often as they are changed together with all information that we may require to enable us to fulfil our obligations under this contract.
- 14.3. If you are in breach of any term of this agreement, we may:
 - 14.3.1 publish all text and Content relating to the claimed breach, including your name and email address and all correspondence between us and our respective advisers; and you now irrevocably give your consent to such publication.
 - 14.3.2 terminate your account and refuse access to Our Website;
 - 14.3.3 issue a claim in any court.
- 14.4. Any obligation in this agreement intended to continue to have effect after termination or completion shall so continue.
- 14.5. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.

- 14.6. For the purposes of the Privacy Act 1988 and any comparable law of any other country having jurisdiction and relating to the location of data processing, you consent to the processing of your personal data (in manual, electronic or any other form) relevant to this agreement, by us and/or any agent or third party nominated by us and bound by a duty of confidentiality. Processing includes but is not limited to obtaining, recording, using and holding data in any country.
- 14.7. You agree that we may disclose your information including assigned IP numbers, account history, account use, etc. to any judicial or proper legal authority who makes a written request without further consent or notification to you.
- 14.8. Any communication to be served on either of the Parties by the other shall be delivered by hand or sent by first class post or recorded delivery or by e-mail.

It shall be deemed to have been delivered:

if delivered by hand: on the day of delivery;

if sent by post to the correct address: within 72 hours of posting;

if sent by e-mail to the address from which the receiving party has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender.

- 14.9. In the event of a dispute between the parties to this agreement, then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.
- 14.10. This agreement does not give any right to any third party.
- 14.11. The validity, construction and performance of this agreement shall be governed by the laws of the State of Victoria, Australia.