

TERMS AND CONDITIONS OF USE

All services provided by SOFITECH MEDIA PTY LTD (“SOFITECH MEDIA”) are subject to the terms and conditions of this Agreement.

1. Quotations and Invoices

- 1.1 Currency for all quotations and invoices is in Australian dollars unless otherwise stated.
- 1.2 Quotations and pricing are subject to availability, do not constitute an offer and are subject to change without notice. SOFITECH MEDIA reserves the right to amend quotations and pricing of its works.
- 1.3 A duly completed and executed order submitted by you constitutes an offer by you to SOFITECH MEDIA to purchase its services on these Terms and Conditions and is subject to SOFITECH MEDIA’s subsequent acceptance.
- 1.4 SOFITECH MEDIA’s acceptance of your order takes effect when written confirmation by SOFITECH MEDIA is sent to you by email, post or facsimile or when SOFITECH MEDIA accepts your payment by credit card or other payment forms.
- 1.5 This Agreement comes into effect on acceptance and shall continue until terminated by either party or until the expiry of the original term. Upon expiry of the original term, the agreement shall be automatically renewed for a further period of the original term, on the same terms and conditions contained herein.
- 1.6 While descriptions of the Services provided by SOFITECH MEDIA directly or indirectly on its website or in any brochures are as accurate as possible, SOFITECH MEDIA reserves the right to supply the Services with minor necessary modifications and specification at SOFITECH MEDIA’s discretion.

2. Your Representations

- 2.1 You must provide to SOFITECH MEDIA at all times as requested, complete and accurate information about yourself and continue to maintain and update such information. SOFITECH MEDIA reserves the right to terminate your account and your right to use its services if information provided by you is untrue, inaccurate, not current or incomplete.

3. Price and Terms of Payment

- 3.1 All charges payable by you to SOFITECH MEDIA are those in effect at the time the order is received and shall be in accordance with the relevant scale of charges published from time to time by SOFITECH MEDIA.
- 3.2 Charges from SOFITECH MEDIA are payable in Australian dollars immediately upon demand or at the discretion of SOFITECH MEDIA, within fourteen (14) days from the date of receiving the relevant invoice.
- 3.3 The services provided by SOFITECH MEDIA are contingent upon its having received payment in full from you in respect of the relevant services. In the event that any of the amounts due under this Agreement or any part thereof is unpaid for a period of 14 days after it becomes due, SOFITECH MEDIA reserves the right to charge interest on that amount at the penalty interest rate pursuant to the Penalty Interest Rates Act 1983 (Vic) from the date such amount was due, until payment is received in full.

- 3.4 Without prejudice to the other rights and remedies of SOFITECH MEDIA under this Agreement, if any sum payable is not paid on or before the due date, SOFITECH MEDIA reserves the right to suspend the provision of any or all its services to you.
- 3.5 You must pay any Goods and Services Tax, imposition, duty or levy whatsoever, which may be from time to time imposed or levied by any governmental, statutory or tax authority in Australia on or calculated by reference to the amount of any sum received by SOFITECH MEDIA in relation to this agreement.

4. Termination

- 4.1 Either party may terminate this agreement, without cause, by giving the other party thirty (30) days notice.
- 4.2 Where termination results in termination of a fixed term under this Agreement, you must pay the remaining sum as they fall due until the expiration of the fixed term.
- 4.3 SOFITECH MEDIA may immediately terminate this agreement if you fail to pay any sums due to SOFITECH MEDIA as they fall due or if you fail to comply with the terms of this agreement.

5. Exclusion and Limitation of Liability

- 5.1 To the full extent permitted by law, SOFITECH MEDIA hereby excludes all conditions and warranties not expressly set out herein, except as specifically set forth elsewhere in this Agreement. No oral or written information or advice given by SOFITECH MEDIA, or its agents, representatives or employees shall create a warranty or in any way increase scope of the express warranties hereby given.
- 5.2 Total liability of SOFITECH MEDIA to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of its services shall be limited to the charges by you in respect of those services, which are the subject of any such claim.
- 5.3 In no event shall SOFITECH MEDIA be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect consequential economic loss whatsoever.
- 5.4 Nothing in these conditions shall or be construed as limiting or excluding the liability of SOFITECH MEDIA where under Victorian or Federal legislation, such liability cannot be excluded.

6. Warranty

- 6.1 Whilst SOFITECH MEDIA shall use all reasonable endeavours to ensure the integrity and security of the Server, SOFITECH MEDIA does not guarantee that the Server will be free from unauthorised users or hackers.
- 6.2 SOFITECH MEDIA excludes any warranty as to the accuracy or quality of information received by any person via the Server and in no event will be liable for any loss or damage to any data stored on the Server.
- 6.3 You must notify SOFITECH MEDIA in writing within seven (7) days of discovering any defects in the services and SOFITECH MEDIA shall repair any accepted defects in the services without cost to you.
- 6.4 The warranty provided by SOFITECH MEDIA is void for services subjected to abuse, unintended use unlawful use or prohibited use.

7. No Unlawful or Prohibited Use

7.1 You warrant to us that you will only use the services of SOFITECH MEDIA for lawful purposes. In particular, you further warrant and undertake that:

- (a) you will not, nor will you authorise or permit any other person or entity to use the services of SOFITECH MEDIA in violation of any law or regulation;
- (b) you will not knowingly or recklessly pose, link or transmit any material that:
 - i. is unlawful, threatening, abusive, harmful, malicious, defamatory, violent or teaching violence, obscene, pornographic, profane or otherwise objectionable in any way;
 - ii. contains a virus or other hostile computer program; and
 - iii. constitutes or encourages a criminal offence, gives 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;
- (c) you will conform to the standards made available by SOFITECH MEDIA from time to time;
- (d) you will keep secure any identification, password and other confidential information relating to your account and you will notify SOFITECH MEDIA immediately of any known or suspected unauthorised use of your account or breach of security including loss, theft or unauthorised disclosure of your private information. Notwithstanding such notification you will be liable for any and all uses of your account and website.

7.2 You are responsible for sending mail in accordance with any relevant legislation (including data protection legislation) and for sending the same in a secure manner. SOFITECH MEDIA will take all reasonable steps to ensure accurate and prompt routing of messages but will not accept any liability for non-receipt or misrouting or any other failure.

8. Service Availability

8.1 SOFITECH MEDIA shall use reasonable endeavours to provide continuing availability of the service but shall not, in any event, be liable for service interruptions.

8.2 SOFITECH MEDIA shall be entitled, at any time and at its discretion without prior notice to you, to temporarily suspend the operations of your website or part thereof for updating, maintenance, upgrading purposes or any other purpose whatsoever that SOFITECH MEDIA deems appropriate and denies responsibility for any loss, liability or damages arising thereof.

9. Intellectual Property Rights

9.1 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 other consents in respect of your proposed domain name and merchant services agreements between you and the relevant financial institutions.

9.2 You acknowledge that all trademarks, patents, copyright and other intellectual property rights embodied in or in connection with the services of SOFITECH MEDIA and any related documentation, parts or software are the sole property of SOFITECH MEDIA.

9.3 All intellectual property of SOFITECH MEDIA is used by you with the consent of SOFITECH MEDIA pursuant to this Agreement. During and after the term of the Agreement, you must not reproduce, adapt, alter or reverse engineer the intellectual property of SOFITECH MEDIA without its consent.

9.4 Upon termination of this Agreement, you must not continue to use the intellectual property of SOFITECH MEDIA without its written consent.

10. Third Parties

10.1 You agree to indemnify, keep indemnified and hold SOFITECH MEDIA harmless from and against any claim brought against SOFITECH MEDIA by a third party resulting from the provision of Services by SOFITECH MEDIA to you, 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 SOFITECH MEDIA in consequence of your breach or infringement of this Agreement.

11. General

11.1 Except where expressly provided otherwise, any notice to be given by either party to the other party may be sent by either e-mail, fax, post or courier to the address of the other party and if sent by e-mail, shall unless the contrary is provided 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 (2) days following the date of posting.

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

11.3 The benefit of this Agreement may be assigned by SOFITECH MEDIA to another party without your consent. SOFITECH MEDIA may not assign its obligations to you.

11.4 You may assign this Agreement to another party with the consent of SOFITECH MEDIA at its absolute discretion.

11.5 These terms and conditions constitute the entire Agreement between SOFITECH MEDIA and you, and supersedes 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 SOFITECH MEDIA.

11.6 This Agreement shall be governed by the laws in force in the State of Victoria. Both parties hereby submit to the exclusive jurisdiction of the Courts of that State.