

# NetKING Internet Terms & Conditions

## General Terms & Conditions

### 1. Obtaining NetKING Internet services:

1.1 These ('**Terms**') detail your agreement ('**Agreement**') with NetKING Internet for the supply to you of NetKING Products and/or Services.

1.2 You can apply for access to the NetKING Internet service via the NetKING Internet web site.

1.3 If your application to NetKING Internet is accepted, under this agreement NetKING Internet will provide you the required Product and/or Service, although NetKING Internet does not promise that the provided Product and/or Service will be uninterrupted or error free.

1.4 Your use of the Product and/or Service constitutes acceptance of these terms.

1.5 You warrant that you are over 18 years of age.

### 2. Fees and Payment:

2.1 NetKING Internet uses the services of Internet Bill Processing Australia (IBPA) to collect monies on its behalf. Any statements and communications regarding the billing of your account may show the name Internet Bill Processing Australia as an authorized agent to bill for NetKING Internet .

2.2 You agree to pay our account in full when due. We may charge you interest on any overdue account at the rate of 2% per month (24% per annum) calculated on a daily basis. If we refer your overdue account for debt collection then you agree to pay any fees, charges, disbursements and commissions as if your account was a debt for collection which you had given us to collect.

2.3 You must pay:

a. All charges for the Service as notified to you by IBPA; and

b. Any applicable taxes on the charges (including, but not limited to, a Goods and Services Tax) even if a third party incurs the charges using your account.

c. For the entire term of the agreement regardless of whether the account is being used or not.

2.4 All charges will be determined, and must be paid, according to the conditions detailed for your specific

account type, as set out in your account documentation and on the NetKING Internet web site, or as otherwise notified by NetKING Internet. Any such conditions for specific account types form part of this agreement.

2.5 IBPA will notify you of any charges you have incurred (either in terms of money or pre-paid casual hours used) by e-mail, or any other means, at our discretion.

2.6 You agree that NetKING Internet's records constitute conclusive evidence of your use of the service, and that we are entitled to rely on those records when determining what charges you may be liable for, or any other relevant issue.

2.7 NetKING Internet may vary any terms of this Agreement including any fees, rates and charges:

a. Without notice to you if the variation arises due to a change in taxation law or other governmental action; or

b. By providing commercially reasonable notice to you of any other variation. Your continued use of the Service after such notice will constitute acceptance of the variation.

2.8 From time to time NetKING Internet may undertake promotions and make special offers in relation to the Service ('Promotions'). All Promotions are offered subject to their terms and may be withdrawn or altered at NetKING Internet's discretion. The terms of a Promotion will override these Terms to the extent of any inconsistency.

2.9 You agree that if you have paid for the Service in advance and you stop using the Service for any reason, you are not entitled to any refund except to the extent that NetKING Internet is required by law to give a refund. This does not limit NetKING Internet's right to give a refund for any reason at its sole discretion.

2.10 Set-up fees and hardware purchases may be paid by credit card only.

2.11 The fixed monthly Payment relevant to your account style must be paid monthly in advance. The fixed monthly payment is due regardless of whether the Service is being used or not.

2.12 You agree to maintain any credit card or bank account details used for the payment of your account. You must notify NetKING Internet of new details 14

days before the expiry date of your credit card or bank account closure. You are responsible for any bank fees and charges incurred by failure to provide correct and current details.

2.13 You must ensure that there are sufficient funds available in your credit card or bank account to cover each payment as it becomes due. Any fees that your bank may charge you due to insufficient funds are your responsibility.

2.14 All invoices and receipts will be sent by email at no charge.

2.15 NetKING Internet will disable your account if payment can not be processed for any reason including insufficient funds or incorrect or changed card details. NO NOTICE WILL BE GIVEN and your account will continue to attract ongoing charges while disabled.

2.16 Deactivated accounts will be reactivated as soon as possible, once outstanding monies have been paid. There will be a charge of \$15 payable at the time of account reactivation.

2.17 Accounts not paid by the Due Date will attract a \$15 late payment fee.

### 3. Provision of the Service:

3.1 NetKING Internet agrees to provide to you Internet access, and related services, as per the conditions of your specific account type and these Terms (the 'Service').

3.2 NetKING Internet makes no representations about the reliability of the Service or its suitability for a particular purpose.

3.3 NetKING Internet may change, adjust or otherwise alter aspects of the service including but not limited to download allowances, at its sole discretion. Where possible NetKING Internet will give commercially reasonable notice via e-mail, our web site, or any other means, of any such changes to the service, but is not required to give said notice.

3.4 NetKING Internet manages its resources to maintain availability of services to all users and in doing so may disconnect you when lines become congested (unless this is disallowed by your specific account conditions).

3.5 NetKING Internet reserves the right to add features to the Service and make them available to you for an additional fee. Access to the additional features will be contingent upon you agreeing, to pay any additional fee. You will not be charged for access to any additional features unless you have so agreed.

Such additional features will be subject to their own conditions as notified by NetKING Internet and may be withdrawn or altered at NetKING Internet's discretion. The terms under which any additional feature is offered will override these Terms to the extent of any inconsistency.

3.6 Time charged access accounts incur a 2 minute flagfall per connection.

3.7 NetKING Internet reserves the right to restrict or terminate accounts that put an unreasonable load on the network.

**3.8 You may only contact NetKING by calling 1902 215 353. This is a premium rate call. You can check the current rate at [www.netking.com.au](http://www.netking.com.au).**

### 4. Use of the Service:

4.1 You agree that you will use the Service in a responsible manner. In particular, and without limiting this clause, you agree that when using the Service, or providing information to us in relation to the Service, you will not, nor will you allow others to;

a. Distribute, publish, or provide any material that is defamatory, harassing, obscene or illegal under any applicable law, rule, regulation, standard or code of practice; or

b. Distribute, or provide use of material that you have no right to distribute, use, or provide (for example, a third person's intellectual property rights); or

c. Cause a nuisance to any person or incite violence or racial hatred or facilitate prostitution or pedophilia; or

d. Commit a crime or facilitate the committing of a crime; or

e. Engage in any activity which is in breach of, or fails to comply with, any applicable rule, regulation, standard or code of practice; or

f. Perform or facilitate the mass distribution of unsolicited advertising material or any other material (commonly referred to as 'spam'); or

g. Use the Service, or invite or direct persons to use the Service, to access any content which it is illegal to publish; or

h. Fail to clearly identify any material which is advertising or adult only material so that third persons can make an informed decision whether to access that material or not; or

i. Fail to maintain the security and confidentiality of any accounts, identifiers or passwords provided to you relating to the Service, and you must change your account, identifier or password immediately on request to do so from us; or

j. Cause or help to cause the security or integrity of the Service or any other linked computer systems or sites to be compromised whether by way of hacking, virus introduction or in any other way.

4.2 You agree that where contrary to this agreement you have performed or facilitated the mass distribution of unsolicited advertising material or any other material, IBPA will charge you at a rate of \$2 per individual email recipient. You agree that NetKING Internet will make sole determination as to whether the offending mail is deemed to be 'spam' or not.

4.3 You agree that you will comply with any rules imposed by any third party whose content or services you are accessing or using, or any policy adopted by NetKING Internet and that you will not use the Service in a manner which is likely to expose NetKING Internet to any liability.

4.4 You acknowledge that from time to time the Australian Broadcasting Authority (ABA) may direct NetKING Internet to remove from its servers any prohibited Internet content. NetKING Internet may also be directed to prevent users of our network accessing any such content. NetKING Internet may and will take any steps necessary to ensure compliance with any ABA directive or industry code of practice.

4.5 You will not resell the service or in any way assign your rights to use the service to any third party.

**4.6 You are responsible for any and all telecommunications charges associated with your use of the service. It is your responsibility to confirm with your telephone carrier their cost to connect to the service telephone number provided by NetKING Internet. NetKING Internet does not guarantee that it will be a local call cost from all areas.**

**4.7 NetKING will not be liable for any Internet dumping costs incurred. It is up to you to ensure that your computer is dialing the correct number at all times. To minimize the chance of Internet dumping occurring NetKING recommends that you install and maintain suitable Antispyware and Antivirus programs. NetKING also recommends that you bar premium and international dialing from your telephone service. You can obtain a number from your telephone carrier that will allow you to circumvent this barring when you legitimately wish to call a premium or international number.**

## 5. Disclaimers and Liability:

5.1 To the extent allowed by law, NetKING Internet is not liable to you or any third party claiming through you, for any loss, damage or costs sustained by you or any third party in relation to your use of the Service, including but not limited to;

- a. Any delay or failure by us to transmit any data; and
- b. Any difficulty or failure by you in receiving data; and
- c. Any erasure or corruption of any data; and
- d. Any consequential loss including loss of profits or business; and
- e. Any other event or factor occasioning loss or damage to you or a third party.

5.2 Should NetKING Internet be found under any applicable law to be liable to you in any way, such liability will, to the extent allowed by law, be limited to the cost of providing the Service again, or the amount of any pre paid access to the Service not used.

5.3 NetKING Internet does not make any representations or warranties regarding the suitability, reliability or your right to use or distribute, any software provided to you by NetKING Internet. This includes but is not limited to:

- a. "Set up" software and associated applications; and
- b. Any application or driver/firmware upgrades.

5.4 You indemnify NetKING Internet and IBPA against any costs, expenses, loss or liability we may incur resulting, directly or indirectly, from:

- a. Any breach of these Terms by you; or
- b. Any use or misuse of the Service by you or any third party using your account.
- c. Recovering monies owed by you.

## 6. Suspension and Termination:

6.1 NetKING Internet reserves the right to terminate or suspend your account, at our sole discretion, in the event of any breach of these Terms by you or anyone using your account. Such termination or suspension may be without notice to you.

6.2 NetKING Internet may suspend your account for technical reasons and will attempt to provide notice to you if this is necessary. It may not be possible to

provide notice to you of a suspension of your account due to technical reasons.

6.3 NetKING Internet may suspend or terminate your account for any reason on 24 hours notice to you.

6.4 You can only terminate accounts if they are out of any contract period, and/or you pay the agreed termination fee. You must notify NetKING Internet a minimum of 1 calendar month prior to the next billing date if you wish to terminate a contracted account.

6.5 If your account is terminated for whatever reason you must pay any and all outstanding fees and charges immediately.

## **7. Privacy:**

7.1 NetKING Internet may make any disclosure of your personal information that NetKING Internet is required to make by law.

7.2 You are entitled to see and correct any account information NetKING Internet holds about you.

7.3 NetKING Internet may contact you from time to time using electronic and other means, to notify you of;

- a. Critical information relating to your use of services with NetKING Internet.
- b. Specials or promotions that may be relevant to you.
- c. Changes to the services offered by NetKING Internet.

## **8. Support:**

8.1 Purchase of a NetKING Internet account does not include free telephone or e-mail support of that account.

**8.2 Telephone support is only available by calling 1902 215 353. This is a premium rate call. The current rate is available at [www.netking.com.au](http://www.netking.com.au).**

8.3 NetKING Internet support personnel are not able to make outgoing support calls.

8.4 NetKING Internet support personnel are not able to advise you on networking issues.

8.5 Advice provided by support staff is of a general nature only and further assistance from a suitably qualified person may be required at your expense.

8.6 We do not warrant that our support advice will resolve any or all problems encountered. Some issues cannot be fixed over the telephone. Some issues may only be solved by on-site technical service. These may be caused by faulty hardware, faulty software or faulty telecommunication services. Call charges incurred determining that the support required is deemed to be a part of the support process and therefore not be refunded for any reason.

## **9. General:**

9.1 NetKING Internet may amend or change these Terms by giving you reasonable notice, by e-mail, through our Web Site, or by other means. Your continued use of the Service after the implementation of any amended Terms shall constitute acceptance of the new Terms.

9.2 If a provision of these Terms is found to be void, voidable or unenforceable, it may be severed from the Terms without affecting the operation or the remainder of the Terms.

9.3 The laws of South Australia govern these Terms, and each party submits to the jurisdiction of the courts of that state.