

BY CLICKING ON I AGREE BELOW, OR BY DOWNLOADING, INSTALLING OR MAKING ANY USE OF THE SYSTEM DESCRIBED BELOW, YOU AGREE TO THE FOLLOWING TERMS OF THIS AGREEMENT BETWEEN YOU AND {Reseller Business Name} ({Reseller Business Number}) (“{Reseller Business Name}”)

1. DEFINITIONS

Licence means the licence granted pursuant to clause 2.1.

Location means the place at which You first install the System.

Licence Fee means the fees calculated as set out on the Website or such other fee as is agreed between You and the Supplier from time to time.

Supplier means (“{Reseller Business Name}” for {Reseller Domain Name})

System means {Reseller Business Name}' shopping cart and website creation software you are seeking to download and/or access from this web page, together with access to the Website's admin area, website processing pages and online documentation.

Website means the website from which you are accessing this Agreement.

2. GRANT OF LICENCE

2.1 Subject to Your compliance with this Agreement, {Reseller Business Name} grants, and you agree to accept, a licence to use any or all of the System at the Location.

2.2 You undertake to, during the term of this Agreement:

- (a) pay to the Supplier the Licence Fee, subject to clause 10.1;
- (b) sign all such documents and do all such things as are reasonably necessary in order to give full effect to this Agreement;
- (c) only use the System completely in accordance with all written instructions supplied and the instructions contained within the System or as otherwise instructed by {Reseller Business Name} or its representatives;
- (d) refrain from decompiling, disassembling, reverse engineering, dissecting, copying (save as expressly permitted by this Agreement) or making any alteration to any part of the System; and
- (e) take all reasonable steps to prevent any other person from engaging in any of the activities referred to in the above sub-clause.

2.3 The Supplier will supply a Tax Invoice for the Licence Fee only upon request by You in writing.

2.4 You may neither transfer the Licence nor this Agreement without express written permission from {Reseller Business Name}, which {Reseller Business Name} may within its sole discretion grant upon payment to the Supplier of the Supplier's then current transfer fee.

3. UPGRADES AND ENHANCEMENTS

3.1 {Reseller Business Name} may during the term of this Agreement provide to You from time to time standard or progressive upgrades, changes or amendments as {Reseller Business Name} sees fit to ensure proper operation of the System and any general enhancements that may be introduced.

3.2 Your installation and use of the said upgrades, changes or amendments is included in the Licence Fee.

3.3 The Licence Fee does not cover any specific requests for changes or customisation of the System nor any new products that may be released in the future nor significant System re-development as a result of industry or legislative changes.

4. INDEMNITY

You indemnify {Reseller Business Name}, its related bodies corporate, their officers and employees from and against all:

- (a) liability for or in respect of any physical injury (including death) to persons;
- (b) damage to property; and
- (c) other liability, damage or loss,

insofar as the injury, damage, liability or loss is attributable to your negligence, breach of these terms and conditions, or unlawful or wilful action in connection with these terms and conditions, their performance, or the failure to perform them.

5. TERM OF LICENCE AND TERMINATION

5.1 The Licence is effective from the date you click "I Agree" below until the Licence or this Agreement is terminated by either party in accordance with the terms of this Agreement.

5.2 {Reseller Business Name} may terminate the Licence automatically without notice if You fail to comply with any of the provisions of this Agreement.

5.3 Either party may terminate this Agreement (and thus the Licence) by written notice of one (1) week to the other party, that period commencing on actual receipt of the notice by the other party.

5.4 Upon termination of the Licence, You will remove and/or destroy all copies of any part of the System (including all upgrades, changes or amendments) and associated documentation in Your possession or control. You agree to allow {Reseller Business Name} to enter and inspect the Location to confirm removal and/or destruction of all such copies of the System and associated documentation.

5.5 If {Reseller Business Name} terminates the Licence due to Your non-compliance with any of the provisions of this Agreement, You must still pay the Supplier any amounts remaining due under this Agreement, including (without limitation) the whole of the sums due for the month of the termination without any pro-rated reduction, subject to clause 10.1.

6. PRIVACY

6.1 This clause 6 only applies if you are contracting on behalf of an "agency" of the Commonwealth government as defined in the Privacy Act 1988 (Cth) ("Privacy Act").

6.2 In this clause, "Personal information", "Information Privacy Principle" and "National Privacy Principle" each have the same meaning as in the Privacy Act.

6.3 {RESELLER BUSINESS NAME} agrees, in relation to Personal Information which your agency discloses to {Reseller Business Name} pursuant to these terms and conditions:

(a) not to do an act, or engage in a practice, that would breach an Information Privacy Principle if that act or practice were done or engaged in by your agency; and

(b) not to authorise any subcontractor to do an act, or engage in a practice, that would breach an Information Privacy Principle if that act or practice were done or engaged in by your agency.

6.4 You agree that an act done or a practice engaged in by {Reseller Business Name}, or by a subcontractor, for the purposes of meeting (directly or indirectly) an obligation under these terms and conditions is authorised by this clause for the purposes of sub-sections 6A(2) and 6B(2) of the Privacy Act, even if the act or practice is inconsistent with a National Privacy Principle or an approved privacy code that applies to {Reseller Business Name} or a subcontractor.

6.5 You warrant that all Personal Information which you disclose to {Reseller Business Name} is up-to-date, complete and relevant to the purpose for which it was disclosed to {Reseller Business Name}.

7. REVIEW

7.1 All applicable fees and charges may be changed by the Supplier from time to time and will be set out on the Website.

7.2 You agree to be bound by those charges as set out from time to time on the Website.

8. WITHDRAWAL OF SERVICE

Continuity of use of the System may be withdrawn and/or not be provided if Your accounts are not within terms.

9. INTELLECTUAL PROPERTY

9.1 You may print and reproduce material from the System for use within your office but only during the term of the Licence.

9.2 The programs, text files, data structures, manipulated data, written material and all computer software that make up the System are owned by {Reseller Business Name} and are protected by national and international copyright laws. {Reseller Business Name} reserves all such rights and all other associated intellectual property rights.

9.3 Copies of all or part of the System and associated documentation may only be copied or reproduced for use within the Location and only then during the term of the Licence.

9.4 You agree not to disclose to any third parties whatsoever at any time during or after the term of the Licence any details of any of the proposals made to you by the Supplier, any of the System or associated documentation nor allow any third party to use any part of the System without first obtaining written permission from the Supplier or {Reseller Business Name}.

9.5 You retain the copyright and ownership of all your own material that you have uploaded on the website including images, texts and code developed or commissioned by you. {Reseller Business Name} does not acquire any ownership rights on these material at any time.

10. LIMITED WARRANTY

10.1 A 30-day money back warranty applies whereby no Licence Fee is payable if You terminate this Agreement within 30 days. However, this only applies the first time You seek access to the System and the Supplier reserves the right to insist upon full payment of the Licence Fee if this is not the first occasion upon which You have sought to exercise the 30 day money back warranty.

10.2 {Reseller Business Name} supplies access to the System "AS IS" and does not warrant that the System will be free from error, virus or other defect, nor that it will be suitable to any of Your requirements.

10.3 {Reseller Business Name} does not warrant that any of the information contained on the Website is complete, current or accurate. You agree that any reliance by You upon any of the content of the Website is at Your own risk.

10.4 Under no circumstances shall {Reseller Business Name} or the Supplier be liable for any loss, damage (or consequential loss or damage) arising from the supply and/or installation and/or operation and/or use of any of its products and/or programs or any part of the System. To the fullest extent permitted by law, all other warranties, statutory or implied, are excluded.

10.5 If despite the foregoing {Reseller Business Name} or the Supplier is proven to be liable to you for damages for any cause whatsoever, that liability will be limited, at the option of the liable party, to any one or more of the following:

- (a) if the liability relates to goods supplied by {Reseller Business Name} or the Supplier:
 - (i) the replacement or repair of the goods or the supply of equivalent goods; or
 - (ii) the payment of the cost of replacing or repairing the goods or of acquiring equivalent goods;or
- (b) if the liability relates to services supplied by {Reseller Business Name} or the Supplier:
 - (i) the supplying of the services again; or
 - (ii) the payment of the reasonable cost of having the services supplied again.

10.6 {Reseller Business Name} provides a Service Level Agreement of 99.5% Uptime Guarantee.

(a) In the event of Qualified Downtime as defined in 10.6(c), {Reseller Business Name} will at Your request, credit Your account for the failed service as described below.

If the total Qualified Downtime in any one period of a calendar month is:

1. Greater than 3.64 hours but not exceeding 7.28 hours 1. 20% of the Monthly Fee for Monthly Accounts or 20% of the Annual Fee divided by 12 to obtain a month's fee

2. Greater than 7.28 hours but not exceeding 14.56 hours 2. 40% of the Monthly recurring fee for Monthly Accounts or 40% of the Annual Fee divided by 12 to obtain a month's fee

3. Greater than 14.56 hours but not exceeding 29.12 hours 3. 60% of the Monthly recurring fee for Monthly Accounts or 60% of the Annual Fee divided by 12 to obtain a month's fee

4. Greater than 29.12 hours 4. 80% of the Monthly recurring fee for Monthly Accounts or 80% of the Annual Fee divided by 12 to obtain a month's fee

(b) Downtime. For the purposes of this Section, Downtime shall mean any interruption of ninety (90) seconds or more in the availability to users of any application, directly or indirectly made available through the Services, only if such interruption is due to either:

(i) failure by {Reseller Business Name} to manage a situation so as to cause interruption in Network availability, or

(ii) a disruption in the connection between any such website and the Internet. For purposes of this Section, the Internet is deemed to consist of services that commence where {Reseller Business Name} transmits Your content to {Reseller Business Name}' carrier(s) at the {Reseller Business Name} border router port(s). Such carriers provide {Reseller Business Name} with private and dedicated bandwidth. {Reseller Business Name} undertakes no obligation for the circuit or link between {Reseller Business Name}' facilities and such carrier's services. If router packet loss is in excess of fifty percent (50%) and is sustained for one hundred and twenty (120) seconds or more, {Reseller Business Name} will classify this as an "outage." If an "outage" continues for a time period of more than four (4) minutes, then such outage will be deemed Downtime. If the latency across the {Reseller Business Name} IP network exceeds one hundred twenty (120) milliseconds, {Reseller Business Name} will classify this as Downtime; or

(iii) A fault in server hardware by which the Services are provided. If time between Your formal indication of service fault and {Reseller Business Name}'s acknowledgement and response to begin resolution of the hardware fault exceeds four (4) hours, {Reseller Business Name} will classify this as Downtime.

(c) A Qualified Website Downtime Event shall start upon Your submission of a written trouble ticket in Admin Area or phone call to {Reseller Business Name} specifying that a Qualified Website Downtime Event has occurred and the details associated with such Qualified Website Downtime Event. All such trouble tickets and phone calls must be submitted by You through {Reseller Business Name}'s Request Support area within your website Admin Area or through {Reseller Business Name} technical support department phone number on the Contact us page of the website. Upon a Qualified Website Downtime Event, the Service Credit shall equal, the monthly fees or annual fees divided by 12 to reach a monthly pro-rata fee, payable by You in respect of such Products and Services for the month in which such Qualified Network Downtime Event occurred and thereafter during the pendency of such unavailability, the Service Credit shall increase for the duration of a Qualified Network Downtime Event up to a maximum of one hundred percent (100%) of monthly fees payable by You in respect of such Products and Services for the month in which such Qualified Network Downtime Event occurred.

(d) {Reseller Business Name} must perform scheduled maintenance to servers from time to time. We will attempt to perform all scheduled maintenance at times which will affect the fewest customers. If scheduled maintenance requires the service to be offline for more than 30 consecutive minutes we will send details of the scheduled maintenance to the email account of Your account:

(i) at least 24 hours in advance of the maintenance in case of security, performance or service stability; and

(ii) at least 14 days in advance of the maintenance in case of Planned outages.

(e) {Reseller Business Name} will make its best endeavours to schedule all maintenance but may need to perform unscheduled maintenance such as a required restart of a server following the installation of a security update from a third party software or hardware provider to {Reseller Business Name}. {Reseller Business Name} will make its best endeavours to perform any such unscheduled maintenance outside of Australian Business Hours between AEST +10 GMT 6.00 am to 10.00 pm. If unscheduled maintenance is less than 30 consecutive minutes then any period which Your website services are inaccessible, then this period will not qualify as a Qualified Downtime Event or Downtime Event. If unscheduled maintenance is greater than 30 consecutive minutes then any period during which Your website services are inaccessible will be a Qualified Downtime Event unless caused by a Software Update provided by a third party software or hardware provider.

(f) {Reseller Business Name} will archive Your data onto backup mechanisms on a regular basis for the purposes of disaster recovery. In the event of equipment failure or data corruption, we will restore from the last known good archive. In the event of corruption of all of our archives, or in the event that an old archive is used to restore data, You should be prepared to upload your data to Your web site. You must maintain a recent copy of Your data at Your premises at all times. We will not be liable for incomplete, out-of-date, corrupt or otherwise deficient customer data recovered from our backups and the same will not qualify as a Qualified Downtime Event or Downtime Event.

11. GENERAL

11.1 You acknowledge that you are over the age of 18 years and have authority to enter into this Agreement.

11.2 This Agreement is governed by and is to be construed in accordance with the laws of AUSTRALIA. You irrevocably agree to submit to the non-exclusive jurisdiction of the Courts of that State in respect of any matters arising out of this Agreement.

11.3 You acknowledge that this Agreement sets out the entire agreement between You and {Reseller Business Name} in respect of the System, and all other arrangements and understandings are superseded by the terms of this Agreement.

If you do not agree with these terms, you must not TICK the "I Agree" below and you must not download, install or use any of the System.