



General Website Terms & Conditions



Table of Contents

Website and conditions services to consumers, payment online	4
Trading terms and conditions of Cubatica Pty Ltd	4
These terms and conditions regulate the business relationship between you and us. When you buy from us, you agree to be bound by them.	4
No person under the age of 18 years may purchase Services. If you are under 18, please ask an adult for help with your purchase.	5
We are: Cubatica Pty Ltd	5
Our address: 2/5 Bardsley Gardens North Sydney NSW 2060	5
The Terms and Conditions	5
Definitions	5
Our contract with you	6
Your account with us	6
Price, payment and service provision	7
Cancellation of order	8
Foreign taxes, duties and import restrictions	8
Intellectual Property and Confidential Material	9
Disclaimers	9
Your Material	10
System Security	11
Acceptable use Policy	11



Confidential Information and Intellectual Property Rights	13
Your email address	13
Indemnity	13
Miscellaneous provisions	13

CUBATICA GENERAL WEBSITE TERMS & CONDITIONS	2
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Website and conditions services to consumers, payment online

Trading terms and conditions of Cubatica Pty Ltd

These terms and conditions regulate the business relationship between you and us. When you buy from us, you agree to be bound by them.

No person under the age of 18 years may purchase Services. If you are under 18, please ask an adult for help with your purchase.

We are: **Cubatica Pty Ltd**

Our address: **1082 Boree Creek Road, Boree Creek, NSW, 2652, Australia**

The Terms and Conditions

1. Definitions

In this agreement:



“Consumer” means any natural person who, in connection with this agreement, is acting for purposes which are outside his business;

“Our Website” means the entire computing hardware and software installation that is or supports Our Website.

“Services” means any of the services we offer for sale on our Website and include generally available updates and support services so far as specified for each service.

“Content” means any material in any form published on Our Website by us or any third party with our consent.

“Material” means Content of any sort posted by you on Our Website

2. **Our contract with you**

These terms and conditions apply:

- 2.1. So far as the context allows, to you as a visitor to Our Website; and
- 2.2. In any event to you as a buyer or prospective buyer of our Services.
- 2.3. We shall accept your order by e-mail confirmation. That is when our contract is made. Our message will also confirm details of your purchase receipt.
- 2.4. We cannot guarantee that every Service advertised on our website is available. If at any time a Service for which you have paid becomes unavailable, we will immediately refund any money you have paid. Our refund will cover the period of unavailability and not any period for which Services have been available.
- 2.5. We may change these terms from time to time. The terms that apply to you are those posted here on Our Website on the day you order Services.



- 2.6. If in future, you buy Services from us under any arrangement which does not involve your payment via Our Website, these terms still apply so far as they can be applied.
- 2.7. If we owe you money (for this or any other reason), we will credit your credit or debit card as soon as reasonably practicable but in any event no later than 7 days from the date of your order.

3. **Your account with us**

- 3.1. You agree that you have provided, and will continue to provide accurate, up to date, and complete information about yourself. We need this information to provide you with the Services.
- 3.2. If you use the website, you are responsible for maintaining the confidentiality of your account and password and for preventing any unauthorised person from using your computer.
- 3.3. You agree to accept responsibility for all activities that occur under your account or password. You should tell us immediately if you believe some person has accessed your account without your authority and also log in to your account and change your password.

4. **Price, payment and service provision**

- 4.1. It is possible that the price may have increased from that posted on our Website. If that happens, we will not provide the Services until you have confirmed that you wish to order at the new price.



- 4.2. You agree to pay the monthly charge for the Services, from the PayPal account or credit card, information for which you have or will have supplied to us. You authorise us to arrange withdrawal of funds on this card each month without further reference to you.
- 4.3. Payments are billed in advance on the same day as your initial order each month.
- 4.4. Our Services may be provided by email / made available for you to download / in the way we have explained in our Website.
- 4.5. If we are not able to provide your Services within [10] days of the date of your order, we shall notify you by e-mail to tell you the likely provision date.
- 4.6. Once Service provision has started, you may cancel the Services at any time on giving us 21 clear days notice. Payment will be due until the expiry of the notice period.
- 4.7. We may change the nature or provision of the Services at any time. We may tell you about any such change by email or by posting details on Our Website.
- 4.8. If we change the nature or provision of the Services, you may terminate this contract.
- 4.9. If a change we make in the provision of the Services, involves action on your part, and you do not take that action, we are entitled to terminate the Services to you without notice.
- 4.10. You may not share or allow others to use the Services in your name.
- 4.11. We will do our best to maintain Our Website so that you have constant use, but there will be times when your use may be interrupted. Interruption to the Services for reasonable periods for maintenance or causes beyond our control is not a ground for repayment of money you have paid. When we are aware of the likelihood of down time, we will tell you in advance.



5. Cancellation of Order

- 5.1. You may not cancel your initial order for the Services at any time.
- 5.2. We do not offer refunds under any circumstances.
- 5.3. This paragraph does not affect your rights in the event that you have a genuine and valid complaint about the way we have provided the Services to you.

6. Foreign Taxes, Duties and Import Restrictions

- 6.1. If you are not in Australia, we have no knowledge of, and no responsibility for, the laws in your country.
- 6.2. You are responsible for purchasing Services which you are lawfully able to import or use and for the payment of import duties and taxes of any kind levied in your country.

7. Intellectual Property and Confidential Material

- 7.1. If for any reason you are not completely happy with your purchase, contact us immediately and tell us:
 - 7.1.1. exactly why you think we have failed;
 - 7.1.2. the date, if relevant, of the failure;
 - 7.1.3. when and how you discovered the failure;
 - 7.1.4. the result of the failure;
 - 7.1.5. your suggestion as to action we should take to resolve the situation and restore your faith in us.



7.2. To do this, it is essential that you contact us by email at the Contact Point on Our Website.

8. Disclaimers

8.1. We or our Content suppliers may make improvements or changes to Our Website, the Content, or to any of the Services, at any time and without advance notice.

8.2. You are advised that Content may include technical inaccuracies or typographical errors. This is inevitable in any large web based business. We would be grateful if you bring to our immediate attention, any that you find.

8.3. We give no warranty and make no representation, express or implied, as to:

8.3.1. the adequacy or appropriateness of the Services for your purpose;

8.3.2. the truth of any Content on Our Website published by someone other than us;

8.3.3. any implied warranty or condition as to merchantability or fitness of the Services for a purpose other than that for which the Services are commonly used;

8.3.4. compatibility of Our Website with your equipment, software or telecommunications connection.

8.4. Our Website contains links to other Internet websites outside our power and control. 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.

8.5. We are not liable in any circumstances for special, indirect or consequential loss or any damages whatsoever resulting from loss of use, loss of data or loss of revenues or profits, whether in an action of contract, negligence or otherwise, arising out of or in connection with your use of Our Website or the purchase of Services.



- 8.6. In any event, including the event that any term or condition or obligation on our part (“Implied Term”) is implied into these conditions by law, then our liability is limited to the maximum extent permitted by law, to the value of the goods or services you have purchased.
- 8.7. The above two sub paragraphs do not apply to a claim for personal injury.

9. Your Material

- 9.1. If you post any Material in Our Website, you warrant that you own the copyright in it and you accept all risk and responsibility for it. You grant to us the right to edit, copy, publish, distribute, translate and otherwise use it in any medium and for any purpose.
- 9.2. You agree that if you do post any Material on Our Website, in doing so, you grant to us a non-exclusive, irrevocable, royalty-free, right in perpetuity to use that Material in any way whatever, throughout the World in any medium. You agree to waive your right to be identified as the author and your right to object to derogatory treatment of your Material.
- 9.3. You agree to perform all further acts necessary to perfect any of the above rights granted by you to us, including the execution of deeds and documents, at our request.
- 9.4. You represent and warrant that:
- 9.5. You own the rights to all of the Material that you post;
- 9.6. Any fact stated in your Material is accurate;



10. System Security

- 10.1. You agree that you will not, and will not allow any other person to violate or attempt to violate any aspect of the security of Our Website.
- 10.2. You may not use any software tool for the purpose of extracting data from our website.
- 10.3. You understand that any such violation is unlawful in many jurisdictions and that any contravention of law may result in criminal prosecution.

11. Acceptable Use Policy

As a condition of your use of Our Website, you agree to comply with these provisions:

- 11.1. You will not use or allow anyone else to use the Web Site to post or otherwise publish:
 - i. copyright works;
 - ii. commercial audio, video or music files;
 - iii. any Material which violates the law of any established jurisdiction; 11.1.4 unlicensed software;
 - iv. software which assists in or promotes: emulators, phishing, hacking,
 - v. links to any of the material specified in this paragraph;
 - vi. pornographic Material;
 - vii. any Material promoting discrimination or animosity to any person on grounds of gender, race or colour.
- 11.2. You will not use the Services for spamming. Spamming includes, but is not limited to:



- i. The bulk sending of unsolicited messages, or the sending of unsolicited emails which provoke complaints from recipients;
- ii. The sending of junk mail;
- iii. The use of distribution lists that include people who have not given specific permission to be included in such distribution process;
- iv. Excessive and repeated posting off-topic messages to newsgroups;
- v. Excessive and repeated cross-posting;
- vi. Email harassment of another Internet user, including but not limited to, transmitting any threatening, libellous or obscene Material, or Material of any nature which could be deemed to be offensive;
- vii. The emailing of age inappropriate communications or content to anyone under the age of 18.

12. Confidential Information and Intellectual Property Rights

- 12.1. You agree to keep safe the Confidential Information and not to disclose or make available for disclosure to any person, any part of it.
- 12.2. We will defend the intellectual property rights in connection with our Product and Our Website, including copyright in the Content whether provided by us or by any other content provider (including copyright in: text, graphics, logos, icons, images, audio clips, digital downloads, data, and software).
- 12.3. We also claim copyright in the designs and compilation of all Content of Our Website. Title, ownership rights, and shall remain the sole property of us and / or the other content provider. We will strongly protect those rights in all countries.



- 12.4. Except as set out below, you may not copy, modify, publish, transmit, transfer or sell, reproduce, create derivative works from, distribute, perform, display, or in any way exploit any of the Content, in whole or in part.
- 12.5. You may not use our name or logos or trade marks or any other Content on any website of yours or that of any other person.
- 12.6. Subject to the other terms of this agreement, you may download or copy Content only for your own personal use, provided that you maintain all copyright and other notices contained in it. You may not store electronically any significant portion of any Content.

13. **Your Email Address**

- 13.1. You represent that any username or email address selected by you, when used alone or combined with a second or third level domain name, does not interfere with the rights of any third party and has not been selected for any unlawful purpose.
- 13.2. You acknowledge and agree that if we believe such selection does interfere with the rights of any third party or is being selected for any unlawful purpose, we may immediately suspend the use of such name or email address, and you will indemnify us for any claim or demand that arises out of your selection.
- 13.3. You acknowledge and agree that we shall not be liable to you in the event that we are ordered or required by a court or judicial authority, to desist from using or permitting the use of a particular domain name as part of a name or email address.



14. Indemnity

You agree to indemnify us against any claim or demand, including reasonable lawyers' fees, made by any third party due to or arising in any way out of your use of Our Web Site, your posting any Material, or the infringement by you, or by any other person using your computer, of any intellectual property or other right of any person.

15. Miscellaneous provisions

- 15.1. When we communicate with you we do so by email. You agree that email communications are contractually binding in the same way as properly signed and dated paper sent by post.
- 15.2. Where we provide goods or services without specific charge to you, then it (or they) is deemed to be provided free of charge, and not to be associated with any other goods or service for which a charge is made. Accordingly, there is no contractual nor other obligation upon us in respect of those goods or service.
- 15.3. Nothing in this agreement or on Our Website shall confer on any third party any benefit or obligation.
- 15.4. If any of these terms 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.
- 15.5. No waiver by us, in exercising any right, power or provision in this agreement shall operate as a waiver of any other right or of that same right at a future time; nor shall any delay in exercise of any power or right be interpreted as a waiver.



- 15.6. In the event of a dispute arising out of or in connection with these terms or any contract between you and us, then you agree to attempt to settle the dispute by engaging in good faith with us in a process of mediation before commencing arbitration or litigation.
- 15.7. We are not liable for any breach of our obligations resulting from causes beyond our reasonable control including strikes of our own employees.
- 15.8. This Agreement shall be governed by and construed in accordance with the law of Australia. This agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.

I have read and understood Cubatica's terms and conditions, and I agree that they form part of the contract between us. If I am under the age of 18 years, I confirm that I have brought the terms and a condition to the notice of my parent or guardian, and that person has agreed that I may buy your Services.