



Terms and Conditions

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1. Introductions

These are standard terms and conditions for the supply of a service from Hypernex (referred as "we" "our" or "us" throughout this document). These terms and conditions will apply to the customer (the person or entity who has ordered the service) once a service has been agreed.

In addition to these terms and conditions, the following must also be complied with:

- Hypernex Acceptable Use Policy
- Hypernex Privacy Policy

2. Definitions

- **We/Our/Us**
 - This refers to the business Hypernex (ABN: 94 314 337 578)
- **You/Your/Customer/Customers/Client**
 - This refers to the person or entity who has ordered a service from us.
- **Parties**
 - This refers to both you and us.
- **Supplier**
 - This refers to any of our various suppliers whom which provide the parties with goods and services which can be used directly or indirectly by the parties.
- **Portal**
 - This refers to where our invoicing system is located for customers to access their relevant information.
- **Network**
 - This refers to a connection that we may supply or is supplied to us.
- **Personal Information**
 - This refers to any and all information that you have provided to us that can be deemed identifiable to you.
- **Contract Term**
 - This refers to the period of time (days, weeks, months, years) that a service has been agreed upon between the customer and us and has been outlined on the initial estimate and/or invoice.
- **Supplier Equipment**
 - This refers to equipment that has been purchased and is owned by a supplier.
- **Our Equipment**
 - This refers to equipment that has been purchased and is owned by Hypernex.
- **Your Equipment**
 - This refers to equipment that has been purchased by you and is owned by you.

3. Commencement of this Agreement

This agreement will commence on the date that the invoice for a service was created (shown as day/month/year). The commencement date can be altered based on when the service has been completed by us and/or our system.

4. Governing Laws

- a. You agree to abide by all local, state, and federal laws of the country where the service is being delivered to.
- b. This agreement is governed by the laws of the Commonwealth of Australia and the laws of New South Wales.

5. Making an Application

- a. Making an application for a service with us can be completed using our existing online forms, email, in person, or over the phone.
- b. For services that require a contract, the completion of paperwork will be required. This paperwork must be signed by the person/entity that is applying for the service. This paperwork must be delivered by mail, fax, e-mail, or in-person and received by us within 7 working days.

6. Accepting an Application

An application can be accepted by us based on:

- a. We find you eligible for the service;
- b. The service is available and/or we have stock available;
- c. Personal information that you have supplied to us during the application process is correct;
- d. Any previous service(s) that you may have held with us was accepted and has no outstanding invoices;
- e. Proof of identification matching the information that has been provided to us upon request;
- f. You are of the age of 18 years old or older.

Should any of this information be found to be incorrect, we reserve the right to reject your application for any service that has been requested.

7. Providing a Service

- a. We will commence supplying the requested service to you on the agreed upon date and time provided that the invoice for the service has been paid in full.
- b. We can under our own discretion provide a service before an invoice has been paid in full.
- c. We can under our own discretion provide a service free of charge without the need for an invoice.
- d. If required and agreed by the parties, we will provide all the information to access the requested service(s) once the service has been setup.
- e. If required and agreed by the parties, we will ensure the service remains active for the period outlined on the initial estimate and/or invoice.
- f. Quotations are valid for a period of 30 days. We reserve the right to alter or decline the quotes service after 30 days.
- g. Where consultations are required, charges may apply.
- h. In the case that the provided service involves the creation of online content, the customer will be provided various opportunities throughout the project to review on the appearance, layout, and content of the project. If the review process becomes one that is considered excessive (greater than 5 modifications), we may choose to not amend the website without further cost to the customer.
- i. In the case that the provided service involves the creation of online content, and the customer wishes to include additional content and/or extras outside the scope of their original quotation, the customer will be quoted a separate and additional amount for what is requested.
- j. The customer agrees to allow Hypernex to place a small 'Hypernex' logo or text in the footer section of their website on completion of the project.
- k. The customer retains the copyright of all data, files, and graphical images provided to Hypernex, and grant us the rights to publish and use such material for Hypernex related marketing and promotional purposes.
- l. Any functions, coding, programming or other systems remains the property and copyright of Hypernex unless otherwise written within a provided licence.
- m. We cannot be held responsible for any alterations that may occur after the completion of the project. This includes but is not limited to any additions, modifications or deletions.
- n. If a backup retrieval is requested, charges may apply.

8. Hypernex Obligations

- a. Hypernex agrees to provide the service(s) outlined in the invoice so long as the payment schedule is being followed.
- b. Hypernex warrants that all personnel are appropriately qualified, competent, and experienced to provide any of the services outlined.
- c. Depending on the nature of the service(s) required, Hypernex may provide the service(s) using their own employees, or through independent contractors.

9. Customer Obligations

- a. The customer will make available to Hypernex all relevant instructions, information, documentation, data, or any other material as required for the performance of the service(s).
- b. The customer will ensure that Hypernex has a proper and safe environment to work in and will provide Hypernex with access to all files, staff, locations, and equipment where necessary to provide the service(s).
- c. The customer will be responsible for all third party expenses needed to ensure that Hypernex is able to provide the service(s). This includes any cost that includes but is not limited to repair, maintenance, shipping, software updates, themes, SSL certificates, and domain registrations/renewal.
- d. Where it is not a part of the service(s) provided by Hypernex to the customer, it is the customer's responsibility to ensure that they implement, maintain, and manage a data backup and recovery program/plan/program that is adequate for the customer's circumstances. The customer must additionally take into account the nature of the data and the applications for which the data is used.

10. Confidentiality

- a. In the course of providing a service, Hypernex may at times come into access to information about the customer that is confidential.
- b. Hypernex agrees that it will safeguard and not disclose any confidential information obtained in the course of providing a service to any person except to the extent that the information is required to be provided as part of the service, is already within public knowledge, or is required under law.
- c. Hypernex agrees that at the completion or termination of service(s) provided to the customer, any confidential information obtained within the duration will be destroyed after an initial two month backed up grace period.

11. Independent Contractor

- a. The parties agree that Hypernex is providing the service(s) as an independent contractor and is not an employee or partner of the customer.
- b. Hypernex will provide a Tax Invoice for the service(s) provided in accordance with the agreed fee.
- c. Hypernex will ensure that it has all necessary insurance.

12. Conflict of Interest

- a. Hypernex warrants that it has no conflict of interest in the performance of the service(s) at the customer's commencement of this agreement.
- b. Hypernex, upon becoming aware of the existence, or possibility of a conflict of interest will notify the customer immediately.

13. Supplier Equipment

In order for us to provide a service to you, equipment may need to be provided by on behalf of our suppliers for the service to be setup and/or remain active.

Where our suppliers provide equipment:

- a. The ownership of the equipment will always remain with the supplier unless specified in the contract and has been agreed between all entities; supplier, us, you;
- b. The supplier will ensure that the equipment is in working condition;
- c. All procedures must be followed in accordance with the manufacturers specification guidelines that can be obtained from their website or technical support;
- d. The supplier reserves the right to inspect, test, service, repair, modify, remove or replace any part of their equipment when a fault is reported;
- e. The supplier reserves the right to recover any equipment after the service has been cancelled by you, us, or the supplier.
- f. The sale of any equipment is finalised on the 7th day from the purchase date. Any equipment that has been sold to the parties cannot be returned after the 7th day.

14. Our Equipment

In order for us to provide a service to you, equipment may need to be provided on our behalf for the service to be setup and/or remain active.

Where we provide our equipment:

- a. The ownership of the equipment will always remain with us unless specified in the contract and has been agreed to by both parties in writing;
- b. We will ensure that the equipment is in working condition;
- c. All procedures must be followed in accordance with the manufacturers specification guidelines that can be obtained from their website or technical support;
- d. We reserve the right to inspect, test, service, repair, modify, remove or replace any part of our equipment when a fault is reported;
- e. You must ensure that any equipment provided by us is not altered, serviced, or repaired without authorisation from us;
- f. We reserve the right to recover our equipment after the service has been cancelled by you or us;
- g. Purchasing equipment from us may be exchanged if it has been returned to us undamaged and in the same condition. Any equipment that is returned to us damaged or not in the same condition will be non-refundable. A re-stocking fee may apply if the equipment is accepted.
- h. The sale of any equipment is finalised on the 7th day from the purchase date. Any equipment that has been sold to you cannot be returned after the 7th day.

15. Your Equipment

Your equipment will belong to you and to be used in connection with the service we deliver to you.

- a. Your equipment must comply with all local, state, and federal laws;
- b. Your equipment must comply with all technical standards in accordance with the Regulatory Authority (the Australian Communications and Media Authority, the Australian Competition and Consumer Commission (ACCC), the Telecommunications Industry Ombudsman (TIO) and any other government, body or authority that may fall under Australian Technology & Communication standards & guidance;
- c. Direction may be provided by us at any given time and must be followed at all times to avoid any danger or interference that it may cause to our or the suppliers infrastructure, network, or connected service(s).
- d. If your equipment is collocated with us and/or a supplier:
 - a. Access may attract an administration fee which will be disclosed and paid in full prior to accessing your equipment.
 - b. Access requires 48 hours notice by submitting a request via e-mail.
 - c. Emergency Access may attract an emergency access fee. This fee must be paid in full within 5 working days.
- e. We and/or if used; the supplier reserve the right to disconnect your equipment from your service and hold it until all outstanding invoices are paid in full. A reasonable notice period may be given however, immediate disconnection may occur in the instance of an emergency;

16. Standard of Service

- a. We are committed to delivering a service with no interruptions however; we do not guarantee that the service will be free from any faults or interruptions.

17. Charges and Fees

A charge will be applied for any service that is held or actioned by us unless otherwise specified.

- a. A charge will be applied on the agreed anniversary date (weekly / fortnightly / monthly / yearly / 2-yearly / etc.) of the service with us.
- b. Where manual work is required by an administrator, technician, or staff member to complete any work, an administration fee may be applied before completing the service.
- c. Should we find a billing error, we reserve the right to rectify the error and bill for the service in accordance to recoup any amount back.
- d. A request for a chargeback to the bank will attract an administration fee and will be charged to the account and must be paid in full.
- e. Refunds are provided at the discretion of Hypernex. It is at the discretion of Hypernex to refund the amount back to the nominated bank account or as credit for future services.
- f. Fees, payments, expenses and/or costs such as setup/installation fees, domain name registration costs, SSL certificate costs, and costs incurred to Hypernex by our suppliers are non-refundable.
- g. Should a service be found to be in breach of these terms and conditions, or our acceptable usage policy, a re-connection fee may be applied before reconnecting the service.
- h. An hourly fee will be applied to an account should remote hands be requested. This fee must be paid in full within 5 working days from the date the remote hands job has been completed.
- i. Should a request be made for a copy of any existing backed up data to be supplied to you from any of our or the suppliers infrastructure, an administration fee will be applied and must be paid in full before any data is provided to you.
- j. All prices that are advertised on our website and any advertisements that are produced by Hypernex will include any government charges and taxed unless otherwise stated.
- k. If payment is not received in accordance with these terms and conditions, you will be held liable for the collection of cost.
- l. Where we become liable for any cost incurred from our suppliers that relate to your service, you become liable for the total cost.

18. Invoices and Payments

- a. Payment is accepted by using Cash, Direct Bank Transfer, and Paypal.
- b. All payments that are accepted will pay for the service in advance.
- c. Automatic Invoices are generated and sent 14 days before the due date.

19. Late and Dishonoured Payments

- a. An outstanding invoice will be classed as late on the first day after the invoice due date.
- b. A late invoice may attract a late fee of \$15.00 on the 7th day after the invoice due date.
- c. If an invoice is not paid in full within 14 days of the invoice due, we may suspend and/or terminate any service provided by us and additionally refer the account to a debt collection agency without notice to you.
- d. The customer must pay any expenses incurred by Hypernex as a result of an invoice not being paid. These costs include the debt collection fees and legal cost on an indemnity basis.

20. Special Offers

- a. We may run a special or promotion from time to time through any medium. These special offers may include their own terms and conditions and will be classed as additional to this document.
- b. Pricing for any special offer will cease as described in the additional terms and conditions.
- c. Should a special offer state that the offer is for the life of the account; we can offer you the option to upgrade to a new plan that may have different pricing, however we cannot force you to change to the new plan.
- d. Once the special offer and the contract is broken, the remainder of the contract must be paid in full within 5 days of the day the cancellation request submitted.
- e. Special offers are subject to new clients only unless otherwise specified in the terms and conditions of the special offer.
- f. Special offers may not be used multiple times.

21. Billing Disputes

- a. A billing dispute may be raised with Hypernex either by mouth, phone call, or e-mail.
- b. All billing disputes must be raised within 3 months from the date the invoice was due.
- c. If a billing dispute is raised, we will within a reasonable timeframe investigate the dispute.
- d. If we find that there is an error in the bill, we reserve the right to modify the invoice and re-issue the invoice to the email address registered in the portal.
- e. Should an invoice be overpaid, a credit will be applied to your account.
- f. At any time credit can be requested to be refunded.
- g. Should an invoice be found to have no errors, the invoice must be paid in full and the outcome is final.

22. Availability of a Service

- a. We will endeavour to deliver as close to 100% uptime availability for all of our services.
- b. We will endeavour to schedule any maintenance work that may need to be carried out on our or the suppliers servers if downtime insists of 30 minutes or more.
- c. We will endeavour to forward any maintenance work that our suppliers are planning to you.
- d. We will ensure to provide a minimum of 12 hours' notice for any scheduled maintenance work by either us or our suppliers.
- e. A notice for any scheduled maintenance work will be provided by an email notification.

23. Suspension of a Service

- a. We reserve the right to suspend a service if found to be in breach of these terms and conditions or our acceptable usage policy.
- b. We reserve the right to suspend your service if:
 - a. The service has been reported to us or found to be carrying out illegal activities
 - i. Downloading, uploading, or storing copyright material;
 - ii. Hosting any pornographic content;
 - iii. Scripts that can be found to be attacking another network(s) and/or server(s);
 - iv. Storing content/data such as credit card and/or bank account information that is not related to your business;
 - v. Websites that are classed as 'Malware' and/or 'phishing';
 - vi. Found to be used to violate local, state, and/or federal laws;
 - vii. Found to be used to commit fraudulent activities;
 - viii. Running any IRC, Proxy, and/or Gaming Server / Service / Application.
 - b. We believe your service to be a threat or a risk to our infrastructure.
 - c. There is an emergency that your service is required to be shut down and suspended.
 - d. If you have become insolvent or been declared bankrupt
 - e. If we find that you are not of the age 18 or older.
- c. Should your service be suspended, you will receive a phone call from Hypernex within 2 hours from the time the service was suspended.
- d. We may suspend a service at your request up to and no more than a period of 2 months.
- e. If a service has been suspended or terminated, we are under no obligation to provide a copy of any existing data from our or the supplier's infrastructure.
- f. If a request for a copy of any data is approved by us, a fee for retrieval will be applied and must be paid in full before data is provided.
- g. While a service is suspended, we take no liability in any loss to your business.

24. Cancellation of a Service

- a. A cancellation request for a service must be requested in person, over the phone, or by e-mail.
- b. Additional information may be requested to authenticate your identification upon a cancellation request.
- c. A notice period of 14 days before the new invoice due date must be given for a cancellation request.
- d. If a cancellation request is submitted with less than 14 days notice, any due invoice(s) must be paid in full.
- e. If a service has been suspended due to violation, a cancellation request cannot be submitted.
- f. If a cancellation request is made during a contract period, the remainder of the contract must be paid in full.
- g. If a cancellation form has not been submitted for a service, the service will not be cancelled.

25. Termination of a Service

- a. We may terminate a service within 24 hours if we have found you to be in violation of this document or our acceptable use policy.
- b. We may terminate a service if we find that you have provided false and misleading information.
- c. A notice of termination will be sent to the registered email address with notice of termination.
- d. A phone call will be made to the representative contact of the customer to inform about the notice of termination.
- e. Should a service be terminated, any unused portion of the payment will not be refunded.
- f. We may terminate a service if abuse is found in any form of communication towards us.
- g. If a service has been terminated, we are under no obligation to provide a copy of any existing data from our or our supplier's infrastructure.
- h. If a request for a copy of any data is approved by us, a fee for retrieval will be applied and must be paid in full before data is provided.

26. Interception of a Service

You agree that we may intercept any form of communication of a service with us and may monitor your usage of the service to ensure that you are complying with this document and in compliance with local, state, and federal laws.

27. Personal Information

- a. Information about you is collected when requesting a service with us. This information will be in accordance with our Privacy Policy.
- b. Information can be collected from sources such as application forms, telephone, emails, public available sources, and service providers.
- c. Any information you provide to us is kept confidential however, we may release your information to:
 - a. Our employees and contractors;
 - b. A related entity that is linked to Hypernex;
 - c. Suppliers who may need access to your information to provide a service on our behalf;
 - d. Our professional advisors such as accountants, debt collection, lawyers and/or auditors.
- d. We reserve the right to request any form of identification to use to verify the details that have been submitted to us.
- e. If we find that you provide part of or not all of the information correctly as we request, we may not be able to provide a service to you or we may refuse to provide a service until the correct information has been supplied and verified.

28. Customer Support

- a. We agree to provide customer support via the ticketing system within the Portal. Requests can be sent via email, phone, or in person during business hours.
- b. Abuse of any kind will not be tolerated and we therefore reserve the right to suspend and/or terminate a service.

29. Communications & Notifications

- a. All forms of communication will be sent to your registered email address within Portal.
- b. If you require your email to be updated, you must e-mail us to make the change.
- c. You agree that you will receive promotional and marketing information from us from time to time while you hold an active service with us.
- d. You will not be able to opt out of any critical notifications, invoices, renewal notices, billing and account notifications and scheduled outage notifications while you hold an active account with us.

30. Changes to these Terms and Conditions

- a. We reserve the right to modify/update/change these terms and conditions at any time.
- b. Should we make any changes to these terms and conditions, we will notify all customers by email 5 days prior to the change taking effect.