

THIS TERMS OF USE AGREEMENT (hereinafter referred to as the “Agreement”) is between you (hereinafter referred to as the “Customer”) and Create and Generate. (hereinafter referred to as the “Company”), a marketing company with its registered location of business in Australia. This Agreement governs the Customer’s acquisition and use of any and all services provided by the Company. All services include startup services, branding solutions, e-commerce development, IT support and other types of IT consulting services, software development, web design, web development, marketing services. All services provided by the Company are available only to business entities. All Customers shall abide by, follow, and observe the following terms and policies in this Agreement in order to acquire services provided by the Company. The Company is entitled to a form of relief or remedy in the instance that any Customer breaches any of the terms of this Agreement. Upon any said breach, the Company reserves the right to terminate its services to the Customer. In addition, the Company may terminate this Agreement, or terminate or suspend the Customer’s access to services at any time, with or without cause, with or without notice. Upon such termination or suspension, the Customer’s right to use the services will cease immediately. Upon such actions, the Company does not assume any liability or responsibility to the Customer. The Company reserves the right to amend, change, and modify the terms of this Agreement at any time. The Customer is responsible at all times for reviewing these terms. Continued use of the services by the Customer after the effective date of such changes constitutes the Customer’s acceptance of and agreement to such changes. The following constitutes the entire agreement between the Company and the Customer, and supersedes any and all previous terms of use agreements, written or oral, between the Company and the Customer.

Privacy Policy

Privacy of personal information of our Customers is paramount. The Company’s privacy policy is expressly incorporated into the Agreement.

Domain Names

1. Domain names are subject to availability and are subject to the domain registrar’s conditions which the Customer accepts by registering a domain name. The domain registrar’s conditions are available upon request.
2. Domain registration fees will apply when the domain is due for renewal.
3. Administration work of 15 (fifteen) minutes or more for domain names not registered through the Company will incur a fee of \$150 AUD Ex GST (one hundred twenty Australian dollars) per hour, including, but not limited to, domain password recovery, domain transfers to the Company and domain delegation.

4. Any associated domain registration tasks outside of normal business operating hours, ie Monday to Friday – 8:30am to 5pm will incur an “out of hours” additional charge billed at \$150+gst.

Web Development

1. 1. Websites developed by the Company are written to work with current browser versions at the time of their development. However, as browsers are typically updated by companies such as Google and Microsoft, some sites may need updates which shall be considered as chargeable upgrades to the Customer.

Intellectual Property

1. All trademarks and logos are owned by the Company (or its licensors) and Customers shall not copy or use them in any manner.
2. The Company may make certain software available to the Customer via the services. If the Customer downloads software from the Services, the software (including all files and images contained in or generated by the software, and accompanying data) are deemed to be licensed to the Customer by the Company, for the Customer’s use only. The Company does not transfer either the title or the intellectual property rights to the software, and the Company retains full and complete title to the software as well as all intellectual property rights therein. The Customer shall not redistribute, reproduce, or sell the software, nor shall the Customer decompile, disassemble, reverse-engineer, or otherwise convert the software to a human-perceivable form. All trademarks and logos are owned by the Company or its licensors and the Customer shall not copy or use them in any manner.
3. When using any of the Company’s services, the Customer shall obey the law of their jurisdiction regarding intellectual property rights. The Customer shall abide by laws regarding copyright ownership and use of intellectual property, and shall be solely responsible for any violations of any relevant laws and for any infringements of third party rights caused by any content the Customer provides or transmits, or that is provided or transmitted using the Customer User ID. The burden of proving that any content does not violate any laws or third-party rights rests solely with the Customer.

Prohibited Behavior

Services provided by the Company are for the professional business and commercial use of each Customer. The Customer shall not:

1. Use the Company’s services in any way that is damaging, disabling, or harmful to any entity or individual (including the Company and its affiliates);

2. Use the Company's services in any way that is unlawful in the jurisdiction of the Company nor the jurisdiction of the Customer;
3. Use any of the Company's services to interfere, or attempt to interfere, with the proper working of the services;
4. Disclose or share any password or account information with any third parties or use any password or account information for any unauthorised purpose;
5. Violate or attempt to violate any security features of the services;
6. Access content or data not intended for the Customer or log onto a server/account that the Customer is not authorised to access;
7. Attempt to probe, scan, or test the vulnerability of the services or any associated system or network, or to breach security or authentication measures without proper authorisation;
8. Interfere or attempt to interfere with service to any user, host, or network, including, but not limited to, crashing, flooding, mail-bombing, overloading, spamming, or submitting a virus to the services;
9. Use the services to send unsolicited e-mail, including, but not limited to, advertisements or promotions for products or services;
10. Forge any TCP/IP packet header or any part of the header information in any e-mail or in any posting using the services;
11. Attempt or successfully decompile, disassemble, modify, reverse-engineer, or otherwise reduce to any form any of the source code used by the Company in providing services; or
12. Display, download, perform, transmit, upload, or otherwise distribute any information or content, with regard to the Company, that:
 - 13.a. Violates any copyright, intellectual property, proprietary, or trademark rights;
 - 14.b. Is abusive, defamatory, libelous, obscene, pornographic, or threatening;
 - 15.c. Advocates or encourages conduct that could constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or foreign law or regulation; or
 - 16.d. Advertises or otherwise solicits funds or is a solicitation for goods or services.
17. The Customer agrees to notify the Company immediately upon becoming aware of any breach of prohibited behaviour and give all necessary assistance in connection with any steps which the Company may wish to take to prevent, stop, or obtain compensation for such breach or threatened breach.
18. Any violation of these prohibited behaviours may result in civil and/or criminal liability of the Customer.

Payments

1. All fees for Company services are in Australian Dollars and are ex-GST unless otherwise stated.
2. All fees shall be paid as per the invoice terms
3. Create and Generate offers consulting services from time to time and charges for time worked, due to the nature of work that is required, some issues may need continued actions over multiple time slots as they need to be diagnosed and different fixes tried to make them work, all this time is chargeable.
4. Fees from third parties may be incurred for services, including, but not limited to Google, PayPal, Bill Buddy, EziDebit, Mint Payment Services, and StrataPay.
5. Additional fees may apply for certain items including, but not limited to, content work, e-commerce product entry, graphic/flash work, image scanning, photography, website changes, etc.
6. All payments are non-refundable.
7. All work performed, including but not limited to, updates, upgrades, corrections, and modifications are available for a cost to be determined by the Company.
8. The Customer's website/project may not be made available to the Customer, and may not be visible on the Internet to the public until the Customer's account is paid in full.
9. If an account is overdue for 21 (twenty-one) days or more, the Company may suspend any or all services. Upon suspension, an administration fee will apply of \$50 AUD Ex GST (fifty Australian dollars) for each service to be un-suspended. In addition, the Customer shall pay interest on the overdue account of two and one-half percent (2.5%) per month calculated daily from the day the invoice was due with interest compounding until the account is paid in full.
10. If an overdue account goes into debt recovery, the Customer shall be liable for all costs associated with the recovery, including, but not limited to, all commissions and legal costs. The Customer shall also be liable for all fees associated with any agreements, whether due or not.

Warranty

1. The Company provides services "as is" and without any warranty or condition, express or implied.
2. The Company does not guarantee continuous, secured, or uninterrupted access to the services provided by the Company. The operation of the services may be interfered with by numerous factors outside of the control of the Company, including, but not limited to, telecommunications network disruptions.

3. The Company does not guarantee the accuracy, timeliness, or completeness of any information in the services or the results of the Customer's use of the services.
4. If any part of this warranty is held to be illegal or unenforceable in any jurisdiction, the continuation in full force and effect of the remaining provisions will not be prejudiced.

Liability

1. The Company shall not be liable or responsible to any Customer or its licensors for lost profits or any consequential, incidental, indirect, punitive, or special damages arising out of, or in connection with, this Agreement.
2. The Company assumes no liability or responsibility for any third-party websites or materials linked with the Company's website, including sites that are owned by non-affiliated third parties. The Company does not have control over the content and performance of affiliated sites. Therefore, the Company makes no guarantees with regard to the accuracy, content, or quality of the information provided by such sites, and the Company assumes no responsibility for inaccurate, misleading, objectionable, unintended, or unlawful content that may reside on those sites.
3. The Company shall not be liable or responsible for informing any Customer of the Customer's local laws regarding prohibited behaviour.
4. The Company shall not be liable for any loss or damage as a result of miscommunication, misconfiguration, or malfunction in relation to hosting services, software services, or any other service provided by The Company.
5. The Company shall not be liable for any loss or damage as a result of any suspension of services.
6. The Company shall not be liable for any loss or damage as a result of any hosting downtime.

Indemnity

The Customer hereby agrees to indemnify the Company for certain acts and omissions. The Customer agrees to defend, hold harmless, and indemnify the Company, including, but not limited to, its affiliates, agents, consultants, directors, employees, officers, and representatives from any and all third party claims, costs, damages, liability, and/or losses (including attorney fees and court costs) arising from the Customer's access to or use of the Company's services, violation of this Agreement by the Customer, or infringement by the Customer ([or](#) by any other user of the Customer's account) of any intellectual property or other right of any person or entity.

Governing Law

Any dispute, controversy or claim arising out of, relating to, or in connection with this Agreement, including any question regarding its existence, validity, expiration or termination, shall be governed by the laws of South Australia, Australia. The South Australia Courts shall have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement.

Licensing of Images and Content

- All image licenses purchased through online stock photography resources are acquired by The Company for use on client projects only. Should these licensed images be required for any other alternative other than use on the client project, a separate license agreement should be sought from the vendor.
- The Company is not responsible for any fines or damages as a result of the use of content or images on our products.

General Backup Information

- While all reasonable efforts are made by The Company to backup hosting account information (including database, DNS records, emails, and website files) – The Company does not guarantee the availability of backups of all hosting accounts.
- The Company has internal backup procedures that act as a convenience only. The Company does not guarantee the availability of hosting accounts – nor guarantee the ability to restore hosting accounts (and associated information) in the event of data loss.
- The Company recommends that all customers take periodic backups of their emails, websites, and database files regularly. This can be done through the hosting administration panel under the section called 'Backups'.
- The Company offers additional backup services should they be required. Please contact the team at claire@createandgenerate.com.au to discuss additional backup requirements and offerings.
- If your request for restoration falls outside of our backup periods, Create and Generate may not be able to retrieve your information.

Post-Project Launch

- Issues and bug fixes found after the 30-day launch are billable at The Company's discretion.

Misc

1. Should your website become corrupted or destroyed through any fault external to Create and Generate, a website restoration service fee of \$100+gst is applicable. No guarantee of restoration of website databases, website files, or emails is given.

2. The Company does not guarantee uptime or integration with other third-party web services. Whilst all reasonable efforts will be made by The Company to ensure that integration of said web services remains active and current, if changes are made outside of the control of The Company, a time/labour component may be charged to resolve any integration issues.
3. The Company reserves the right to retain hosting information until such time it deems necessary to release it.
4. By engaging with or subscribing to any products or services delivered by The Company, you agree to be communicated with via phone, SMS text message, instant messaging services, email, and any other communication method at The Company's discretion.
5. These terms and conditions are subject to change without notification to the Customer.