

in2itive Website and Domain Hosting Terms and Conditions

CAMSAR INVESTMENTS PTY LTD and TONKIE INVESTMENTS PTY LTD trading as in2itive

These are the standard terms and conditions of supply of the in2itive website and domain ("the Service"). These terms apply to you as a user of the Service ("Client" or "you"). Please read these terms and conditions carefully. It is a condition of your use of the Service that you comply with these terms and conditions.

1. Terms and Amendment Procedure

- 1.1 These are the terms upon which we agree to provide the Service to the Client. The agreement made between us with these terms and conditions commences on the date provided to you when your order was accepted by in2itive and an invoice issued.
- 1.2 We may vary these terms, the amount we charge for any Service, or the terms of the operation of the Service, at any time by general notice on a page of the internet referred to on the home page of our website at <http://www.in2itive.com.au>. The changes will become effective upon publication of the notice(s). Where we vary the prices for Services, we will give at least 14 days of the change by the same means, and the new prices will apply at the end of that period.
- 1.3 If you use the Service after that publication, your use will constitute an acceptance of the amended terms.
- 1.4 These terms constitute the agreement in its entirety and supersede prior arrangements.
- 1.5 We may from time to time run promotions and make special offers of limited time duration ("Promotions"). All Promotions are offered subject to their terms and may be withdrawn or altered at in2itive discretion. The terms of a promotion will override these terms to the extent of any inconsistency.

2. Service

- 2.1 We will assign the Client a logon name ("Login") and password which will provide you with access to the in2itive control panel. We will provide the Client with Web and Email services commensurate with the expected demand of their website.
- 2.2 Scheduled Maintenance - We 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 services to be offline for more than 15 minutes, we will post details of the scheduled maintenance to the in2itive news page at least 48 hours prior to the maintenance.
- 2.3 Unscheduled Maintenance - We may need to perform Unscheduled Maintenance. If unscheduled maintenance requires the Service to be unavailable for more than 15 minutes, we will post details of the unscheduled maintenance and updates to the in2itive news page.
- 2.4 Archiving of Data - We will archive your data onto backup mechanisms on a regular basis for the purpose 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 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 website. 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 client data recovered from our backups.
- 2.5 The Service is provided by in2itive from its data centre(s) in Australia. in2itive will determine in its absolute discretion from time to time the data centre location from which your Service is provided.

- 2.6 In contracting with in2itive for the Services, the Client obtains no rights to the hardware, software and other infrastructure and facilities used by in2itive to deliver the Service.
- 2.7 In the absence of any addition written agreement, these terms and conditions (as varied from time to time) will apply to any further Services you obtain from in2itive.

3. Payment

- 3.1 You must pay for the Service as notified to you by in2itive in accordance with the prices in force for Services from time to time.
- 3.2 You must pay all Services time charges, minimum charges and other amounts incurred by you or any designated in accordance with the billing option selected and in advance.
- 3.3 Prices published by us are inclusive of any government taxes or charges unless otherwise noted, and exclusive of any registration or delegation charges imposed by domain name authorities.
- 3.4 In addition you must provide and pay for:-
- (a) the installation and use of telephone lines and all other equipment needed to access the Service; and
 - (b) All government taxes, duties and levies (if any) imposed on either you or us in respect of the Services or any other service or goods supplied by us.
- 3.5 You must pay all amounts billed no later than seven (7) days after the issue of the invoice date.
- 3.6 You consent us to obtain a credit reporting agency report containing personal information about you (as well as information concerning commercial creditworthiness and activities) for the purpose of assessment by us of an application for credit (whether commercial or personal) or for the purpose of the collection of payments which are overdue.

4. Warranties and Liabilities

- 4.1 We do not warrant that:-
- (a) the services provided under this agreement will be uninterrupted or error free;
 - (b) the services will meet your requirements, other than as expressly set out in this agreement; or
 - (c) The Services will be free from external intruders ("hackers"), virus or worm attack, denial of service attack, or other persons having unauthorized access to the services or systems of in2itive.
- 4.2 Except as expressly provided to the contrary in this agreement, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this agreement, are excluded. Where any statute implies any term into this agreement and that statute avoids or prohibits provisions in a contract excluding or modifying the application of or liability under such a term, then the term will be taken to be included in this agreement. However, our liability for any breach of the term will, if permitted by that statute, be limited, at our option, to the re-supply of the services again; or payment of the cost of having the services supplied again.
- 4.3 Except as provided under clause 4.2, none of in2itive, its subsidiaries, officers, directors, employees, partners or suppliers will be liable to you or any third party for:-
- (a) Any special, punitive, incidental, indirect or consequential damages of any kind;

- (b) Any damages whatsoever, including, without limitation those resulting from:
- a. Loss of use, data or profits, on any theory of liability, arising out of or in connection with the use of or the inability to use the Service;
 - b. The statements or actions of any employee or agent of in2itive;
 - c. Any unauthorized access to or alteration of your web site, transmissions or data;
 - d. Any information that is sent or received or not send or received;
 - e. Any failure to store or loss of data, files or other content;
 - f. Your fraudulent, negligent, or otherwise unlawful behaviour;
 - g. Information, data or other material provided to in2itive by you or on your behalf; or
 - h. Any Services that are delayed or interrupted.

4.4 You warrant that:-

- (a) at the time of entering into this agreement you are not relying on any representation made by us which has not been stated expressly in this agreement, or on any descriptions or specifications contained in any other document, including any catalogues or publicity material we have produced.;
- (b) you will conduct such tests and computer virus scanning as may be necessary to ensure that data uploaded by you or downloaded by you from the Server does not contain any computer virus, and will not in any way, corrupt the data or systems of any person;
- (c) you will keep secure any passwords used to upload data to the Server; and,
- (d) you hold and will continue to hold the copyright in the Client Data or that you are licensed and will continue to be licensed to use the Client Data.

4.5 You accept responsibility for all information and material you issue over any Service, and indemnify us and hold us harmless against any liability in relation thereto. In particular you undertake that you shall not publish or issue any information that is illegal or defamatory. You also acknowledge that we do not vet or approve any information or material available through the Service. We do not accept any liability for any loss, claim or damages arising from or relating to information a material available through the Service, to the full extent permitted by the law. You access and use such information and material at your own risk.

4.6 You agree to abide by our Acceptable Use Policy, which follows these Terms and Conditions and our Privacy Policy, which is located at http://www.in2itive.com.au/bottom-privacy_policy.html. You agree that the terms of those two policies for part of this agreement between you and in2itive.

4.7 You are solely responsible for dealing with persons who access the Client Data, and must not refer complaints or inquiries in relation to such data to us.

4.8 Except as provided in clause 4.2 we are not liable to you or any other person for:-

- (a) Cost, loss or liability (including loss of profit or other consequential damages) arising from our supply or failure or delay in supplying the Service.
- (b) The content, context or confidentiality of any communications made by using the Service.
- (c) Loss or damage caused by third party software applications forming part of the Service.

- 4.9 You indemnify us against all costs, expenses, loss or liability that we may suffer (directly or indirectly) resulting from :
- (a) your breach of these terms;
 - (b) your use or misuse of the Service;
 - (c) the use or misuse of the Service by any person using your account; and,
 - (d) Publication of defamatory, offensive or otherwise unlawful material on any web site forming part of your Service.

5. Suspension and Termination of Service

- 5.1 We may from time to time without notice suspend the Service or disconnect or deny access to your Service:-
- (a) during any technical failure, modification or maintenance involved in the Service provided that we will use reasonable endeavours to procure the resumption of the Services as soon as reasonably practical; or
 - (b) If you fail to comply with any provision in this agreement (including failure to pay charges due), or do, or allow to be done, anything which in our opinion may have the effect of jeopardizing the operation of the Service, until the breach (if capable of remedy) is remedied; or
 - (c) You fail to comply with any conditions attached to other products or services provided to you by in2itive but not necessarily related to this Service.
- 5.2 in2itive may without notice to you remove, amend or alter your data upon being made aware of:-
- (a) any claim or allegation; and
 - (b) any court order, judgment, determination or other finding of a court or other competent body, that the data is defamatory, illegal, offensive or in breach of a third party's rights.
- 5.3 We may end our agreement with you and cease providing Services for any reason, on 30 days written notice to you. You may close your account with in2itive on 30 days written notice to in2itive.
- 5.4 If your account is closed you must pay all outstanding charges immediately and we may delete all Client Data from any storage media.

6. Domain Names

- 6.1 If you have requested that in2itive register a .com, .net, .org, .biz or .info domain name (TLDs) on your behalf, you agree that you have read and accepted the TLD (Top Level Domains) Policy acceptable to .com, .net, .org, .biz and .info domain names issued by the relevant registrar. You agree that you are aware of the consents warranties and indemnity you are required to give to register, maintain, transfer and renew your domain name.
- 6.2 If you have requested that in2itive register a .com.au, .id.au, .net.au or .org.au domain name (2LDs) on your behalf, you agree that you have read and accept the published policies applicable to 2LD's administered by .au Domain Administration Limited (auDA), located at <http://www.auda.org.au/policy/policy-overview/> In registering or renewing an .au domain on your behalf, in2itive is acting as a reseller of the registrar, Enom Inc.
- 6.3 You agree that in the event of a dispute in registering a domain name or about a domain name after registration you will submit to and are bound by the .au Dispute Resolution Policy (auDRP) and any

variations to it from time to time bind in2itive. The auDRP can be viewed at <http://www.auda.org.au/policy/policy-overview/>

- 6.4 You agree that by maintaining the registration of a domain name after changes or modifications to the applicable policies become effective, you are confirming your continued acceptance of these changes and modifications.
- 6.5 You agree that you must pay for any registration or delegation charges in advance at in2itive list price. You understand that you cannot register a domain without paying for it in advance. You further acknowledge that in the event of a domain being registered or renewed by in2itive on your behalf and your failing to pay the resulting costs that the ownership of the domain reverts to in2itive.
- 6.6 in2itive makes no representation and gives no warranty about your chosen domain name being available for registration or use by you.
- 6.7 You expressly authorise and direct in2itive to:-
- (a) be nominated as authorized billing contact for your domain name with the domain name registrar and where any amount owed to in2itive by you is overdue, be nominated as the domain registrant;
 - (b) renew your domain name registration upon receipt of renewal notification from the domain name registrar and invoice you for the relevant charge in accordance with in2itive list price from time to time.
- 6.8 In respect of 2LD's, you acknowledge that in2itive is not liable for any loss or damage resulting from non-renewal of your domain name if you have failed to provide the appropriate warranty in respect of your continued eligibility to hold the domain name.
- 6.9 You indemnify in2itive against all claims arising out of your registration and use and renewal of registration of your chosen domain name, unless and to the extent that the claim arises out of in2itive breach of this contract, or its negligent act or omission.

7. Miscellaneous

- 7.1 The Client grants to in2itive a license to use and reproduce all Client Data in order to fulfill its obligations under this agreement. In this agreement "Client Data" means all information, data, text, logos, images, audio, movie clips and/or content in any form that forms part of the Clients web sites or emails.
- 7.2 A provision of, or a right created under this agreement, may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by the parties.
- 7.3 The law in force in the Australian Capital Territory governs this agreement and the transactions contemplated by this agreement.
- 7.4 You may not resell Services or assign your rights and obligations under this agreement without our prior written consent.