

Terms of Doing Business

The terms of this document are to be agreed to by new and existing clients of PositionMEonline, by confirming their acceptance in writing (reply email is sufficient), or any payment towards services.

The terms of this document are agreed to by confirming their acceptance in writing (email is deemed to be sufficient), or by any payment towards services or products rendered or due to be rendered.

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1. Payment & Refunds

1.1 Payment Terms

We have agreed to provide services to you, and you have agreed to pay us for those services. If you do not pay in accordance with agreed terms we reserve the right to take appropriate steps as a result of your non-payment. These steps may include:

- Ceasing work on your project until we receive payment; and
- Postponement of re-commencing work on your project to the end of the queue of projects we are working on until we have resources available to work on your project.
- Disabling websites.

These steps may cause significant delay in completion of your project.

You are still liable to pay us even if project milestones may not have been achieved.

Hosting Pre-Payments

Prepaid Adobe Business Catalyst (MySuperWeb) hosting/licence fees are non-refundable. We require 30 days notice in writing should you wish to terminate the hosting service.

1.2 Payment Methods

We accept payment by VISA, Mastercard, and direct debit from bank accounts. Direct debit from credit cards is available where the customer pays the associated credit card fees.

1.3 Refund Policy

PMO will provide a refund to customers where a refund is due by law. To assist with interpretation of the law, the following guide is extracted from a Department of Commerce website and is provided to ensure customers understand their legal obligations under contract.

Where an item is defective -

“Consumer Protection believes that, if it is possible to have the item repaired to your customer's satisfaction, then you should be given the opportunity to do that, providing the time to do it is not excessive.”

Where a customer cancels all or part of their order -

“Your customers have no legal right to a remedy if they have simply changed their mind, or the item is an unwanted gift, or the wrong size etc. However, under such circumstances, if the salesperson agreed at the point of sale to give a refund if the item proved not suitable, this may become a ‘condition of sale’ and they may insist on a refund.”

Can I get a refund when I change my mind about a service?

“A business does not have to give a refund if you simply change your mind about a service, unless they have a policy to offer a refund, replacement or credit note when this happens.”

2. Technical Support

2.1 Email Accounts

PMO assists many clients with the setup of new email accounts when their new websites and hosting accounts are activated. If your email account(s) have problems after we have confirmed your email accounts are working, additional charges will apply should you require technical support for these email addresses.

3. Hosting Cancellations & Transfers

Website hosting can be cancelled by you requesting and completing the 'Hosting Cancellation Form' and faxing to (08) 6210 1134 or by emailing to compliance@positionmeonline.com.

Cancellation will take affect at the conclusion of the 30 days from the time we received notice of your request. In the case of transfer to another hosting partner, if you request an expedited transfer of your hosting in a time less than 30 days, we reserve the right to charge a \$110 administrative fee for priority processing of the request.

In order to transfer your website, all monies owing must be paid for in full prior to the transfer being initiated with the hosting provider.

We may need to confirm approval with the hosting company before any websites are transferred, and to do so we may reasonably require confirmation from your new hosting partner that they agree to, or have offered you, to transfer your website to their partner account.

Note: When your hosting account is cancelled your website and emails will no longer be active unless you have arranged to transfer your website to another web hosting company.

4. Approval Process

4.1 New Website Design

As your new website is being developed, the PMO staff member responsible for liaising with you will formally request a number of 'sign-offs' at various stages of the design process. This may include:

- Approval of the website header
- Approval of the overall website template
- Approval of specific pages or design elements
- Approval to make the website live

Approval will be requested by email. If changes are requested to elements of the design after your approval has been given, this may incur additional charges.

Following discussions with your PMO team member regarding the design of your new website, the team member assigned to your project may ask that you email your requests or approval, or he/she may email you to confirm your discussion. If you are not happy with a design aspect of your new website, we ask that you detail the areas requiring improvement in an email to us.

Website design changes that are requested after approval will be quoted separately.

You are solely responsible for ensuring that you have the right to use any material included in copy, illustrations, photographs, video or other media included on your website. This includes, but not limited to, the right to use any copyright material, logos, registered trademarks or other intellectual property. PMO accepts no liability for the consequences of any breach by you. If PMO is found to be wholly or partly liable for any breach you will indemnify PMO for any such liability.

If PMO becomes aware that any claim is made by a third party in relation to the use by you of any copy, illustrations, photographs, video or other media included on your website PMO reserves the right to disable your website and to require you to remove any allegedly offending material before lifting that disablement.

Note: Whilst we endeavour to produce websites and email templates in a browser-compliant format, not all browsers render in the same way and therefore websites and email templates may not display correctly across all browsers. Websites produced by PMO are tested in the latest versions of Internet Explorer and Mozilla Firefox. Email templates are tested in Microsoft Outlook 2010. Display issues that occur within these browser versions will be corrected by PMO at no charge. Display issues that occur in alternative browsers can be fixed at a charge.

4.2 Keyword Recommendations

PMO will email you a Keyword Recommendation containing a recommendation of the best keywords to target for optimisation. If you are satisfied with the Keyword Recommendation, we require email confirmation stating that we can begin optimisation using the chosen keywords.

If you request changes to the Keyword Recommendation after emailing your Account Manager with approval for the Keyword Shortlist, additional charges may apply for re-writing optimized pages.

4.3 Optimisation & Content Writing

Your Account Manager will email you access to the optimised pages or content writing done for your website. You may request changes to the content by emailing, faxing or verbally describing the changes to your Account Manager. After the changes are complete the revised page(s) will be sent to you for a final review. You may request one further set of changes, after which further changes will incur a small fee.

Your Account Manager will seek approval for the optimisation or content writing by email. If you request changes to your optimisation or content after emailing your Account Manager with the requested changes additional charges will apply.

5. Disabling Accounts

5.1 Right to disable websites

PMO reserves the right to disable websites where:

- Payment is 14 days or more overdue.
- We have access to your web hosting account;

- At least 48 hours notice requesting payment has been provided to the client by email or by phone; and
- Payment for a particular service has not been received.

5.2 Right to disable optimized pages

PMO reserves the right to disable the optimisation performed on websites (i.e. return them to their previously un-optimised format) where:

- PMO installed the optimisation, regardless of whether the website is hosted by PMO;
- Payment is 14 days or more overdue;
- At least 48 hours notice has been provided by email or phone; and
- Payment for a particular service has not been received.

6. Debt Collections

If payment is 14 days or more overdue, PMO reserves the right to use the services of a debt collection agency for the purposes of collecting any outstanding payments. Fees associated with collecting payments from clients will be passed on to the client for payment within 7 days. Failure to pay the fees will result in further action from a debt collector for the outstanding amounts.

7. Search Engine Optimisation Disclaimers

Our Search Engine Optimisation services aim to get pages to rank in the top 20 results of the major search engines. However, as search engines can and do change their algorithms (rules and weighting factors) at any time, we cannot offer a guarantee that a specific ranking will be obtained or maintained. Our track record has been excellent as testified by our many clients nationally and internationally.

Where a ranking guarantee is provided for “relevant keywords” the guarantee refers to having your business positioned in a top ranking position for a keyword that a potential customer is likely to use in a keyword search when looking to engage your services. Examples include:

- Dentist north of the river perth
- Car yard north Melbourne 3051
- Best lawyer for speeding fines

These keywords will be obtained by reviewing your Google Analytics information and searching for phrases that have previously delivered traffic to your website within the period that PMO’s services have been engaged for.

Note: Ranking guarantees are not provided for a set of specific keywords as this is not in the client’s best interest given long tail keywords often convert at a higher rate, and to focus on specific keywords may be to the detriment of other more relevant/higher converting keywords.

8. Advertising Campaigns & Recurring Subscriptions

8.1 Owner Responsibilities and Limitation of Liability

Google AdWords, Yahoo! Search Marketing and Social Media advertising campaigns are set up either in your business name in which case all click charges are payable directly to the search engines of social media website by you, or by PMO on your behalf in which case the media fee is payable by you to PMO.

PMO is responsible for managing the campaigns on your behalf. Whilst we take the utmost care in managing your campaigns and budget, it is important that you review your campaigns regularly to ensure the changes made by our team are to your satisfaction. PMO will not be liable in any way for any loss or damage suffered by you through the use of this service. We encourage you to take an active interest in your campaigns as our clients have found them to be an integral part of their business.

8.2 Cancellation of Recurring Subscriptions

Recurring subscription fees are payable for the minimum contract period regardless of the status of the project and cannot be reduced or cancelled without written approval. Account downgrades are available within the minimum contract period however the payment amounts remain unchanged.

Cancellation of any recurring subscription service requires at least 30 days notice in writing by you. Upon receiving cancellation notification the subscription may be terminated within this 30 day period at the discretion of the service provider (PMO).

8.3 Media Spend Policy

Whilst processes exist to ensure actual client media spend is in line with the amount contracted, no guarantee is provided that the actual and budgeted amounts will be identical. In the instance that the amounts are unequal the Campaign Manager will adjust the budget for the following period to help bring the budgeted spend in line with the actual spend. Whilst the outcome of this adjustment is intended to enable the budgeted spend to match the actual spend, the actual outcome may differ.

Unused click budget is non-refundable. Following the cancellation of a campaign whereby click budget is paid to PMO, unused click budget is exhausted by being spent on the campaign. Client may opt to not have the budget spent on the campaign in which case the unused budget is forfeited.

8.4 Pausing Subscription Services (e.g. Google AdWords)

Should you want to temporarily pause your campaign for two or less months, this does not constitute grounds for your monthly management fee to be paused. Pausing, re-activating, communication and reporting all constitute management and are therefore billable. Media spend can be paused during this period and unused budget is rolled over into following months. If campaign pause requests are received within the initial contract period the payments continue until the minimum contract term is paid in full.

9. Adobe Business Catalyst (MySuperWeb) End-User Agreement

Additional terms and conditions for the use of Adobe Business Catalyst are located at http://www.adobe.com/products/eulas/tou_businesscatalyst.html

PAYMENT OR PART-PAYMENT OF A PMO INVOICE FOR OR RELATING TO ADOBE BUSINESS CATALYST CONFIRMS AGREEMENT TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF PMO'S ONLINE SERVICE (THE "SERVICE"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT PROCEED AND MAY NOT USE THE SERVICE.

As part of the Service, PMO will provide you with use of the Service, including a browser interface, plug-in into some 3rd party products, web services access and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the PMO website incorporated by reference herein, including but not limited to PMO's privacy and security policies. For reference, a Definitions section is included at the end of this Agreement.

Disclaimer of Warranties

EXCEPT FOR WHAT IS STATED IN SECTION 14 PMO AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT EXCEPT FOR WHAT IS STATED. PMO AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY PMO AND ITS LICENSORS.

Internet Delays

EXCEPT FOR WHAT IS STATED **IN SECTION 14** PMO'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. PMO IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

Limitation of Liability

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Domain name registration terms of contracts

1. If you request us to, we will assist you in registering a domain name selected by you. We do not warrant or guarantee that the domain name applied for will be registered in your name or is capable of being registered by you. Accordingly, you should take no action in respect of your requested domain name(s) until you have been notified that your requested domain name has been registered.
2. Both the registration of the domain name and its ongoing use are subject to the relevant naming authority's terms and conditions of use and you are responsible for ensuring that you are aware of those terms and conditions and can and do comply with them. You irrevocably waive any claims you may have against us in respect of the decision of a naming authority to refuse to register a domain name and, without limitation, agree that the administration charge paid by you to us shall be nonrefundable in any event.
3. You are solely responsible for maintaining the domain name. That responsibility includes paying all fees in relation to that domain name and taking timely steps to ensure that it is renewed when required.
4. We accept no responsibility in respect of the use of a domain name by you and any dispute between you and any other individual or organisation regarding a domain name. It must be resolved between the parties concerned and we will take no part in any such dispute. We reserve the right, on our becoming aware of such a dispute, at our sole discretion and without giving any reason, to either suspend or cancel the domain name, and/or to make appropriate representations to the relevant naming authority.

10. Exclusion and limitation of liability

FOR ALL SERVICES PROVIDED BY PMO AND TO THE FULL EXTENT PERMITTED BY LAW WE HEREBY EXCLUDE ALL CONDITIONS AND WARRANTIES NOT EXPRESSLY SET OUT HEREIN. EXCEPT AS SPECIFICALLY SET FORTH ELSEWHERE IN THIS AGREEMENT, WE MAKE OR GIVE NO EXPRESS OR IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, WITH RESPECT TO ANY GOODS OR SERVICES PROVIDED UNDER OR INCIDENTAL TO THIS AGREEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY US, OUR RESELLERS, AGENTS, REPRESENTATIVES OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE EXPRESS WARRANTIES HEREBY GIVEN, AND YOU MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services which are the subject of any such claim and provided that you notify us of any such claim within one year of it arising.

In no event shall we be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

Important note:

In the event that this agreement constitutes a supply of goods or services to a consumer as defined in the Competition and Consumer Law (Cth) or any other national, State or Territory legislation (the Acts) nothing contained in this agreement excludes, restricts or modifies any condition, warranty or other obligation in relation to this agreement and the goods and where to do so would be unlawful. To the full extent permitted by law, where the benefit of any such condition, warranty or other obligation is conferred upon you pursuant to any of the Acts, our sole liability for breach of any such condition, warranty or other obligation, including any consequential loss which you may sustain or incur, shall be limited (except as otherwise specifically set forth herein) to:

- a. in relation to goods
 - i. the replacement of the goods or the supply of equivalent goods or payment of the cost of replacing the goods or acquiring equivalent goods; or ii. the repair of the goods or payment of the cost of having the goods repaired.
- b. in relation to services
 - i. the supplying of the services again; or ii. The payment of the cost of having the services supplied again as in each case we may elect.

Except where expressly provided otherwise, any notice to be given by either party to the other may be sent by either email, fax, post or courier to the address of the other party as appearing in this agreement or ancillary application forms or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall, unless the contrary is proved, be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by post or courier shall be deemed to be served two days following the date of posting.

11. Modification to Terms

PMO reserves the right to modify the terms and conditions of this Agreement or its policies at any time. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes. PMO may, but is not required to, give you notice of any such changes.

12. Severability

If any clause of these terms and conditions is held to be invalid or unenforceable in whole or in part, the invalid or unenforceable wording shall be deemed to be omitted.

13. Assignment

The benefit of this agreement may be assigned by us, but not our obligations to you - to do that, you agree that we may give notice to you in writing, and your failure to respond will be deemed acceptance. You may transfer this agreement provided that you give us notice in the form we require (setting out the details of the assignee) accompanied by payment of any transfer fee specified by us. No other method of transfer by you is permitted. We reserve the right to refuse consent to any transfer by you for any reason and are not obliged to provide reasons to you for any refusal.

14. Entire agreement

These terms and conditions constitute the entire agreement between PMO and you, and supersede all prior agreements, understandings and representations whether oral or written. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. Except as provided above, no variation may be made to the contract unless it is in writing and signed by authorised representatives of you and PMO.

15. Governing law

This agreement shall be governed by the laws in force in the state of Western Australia. Both parties hereby submit to the exclusive jurisdiction of the Courts of that State.

16. Notifications & communications

In addition to general Account, Billing and Service communications, PMO will, from time to time, issue email notifications relating to our services, including, but not limited to Newsletters, Announcements, Promotional and Seasonal offers, and Surveys. By entering into agreement with

these terms and conditions, you agree to receive email communications by until such time as you decide to opt-out of such communications. You may opt out of our mailing list at any time by following 'unsubscribe' instructions contained within the communications.

You will not be able to opt-out of Critical Service Notifications, Renewal, Billing and Account Notifications, Scheduled Downtime Notifications or any other communications deemed to be an essential part of our service to you.