

**ONLINE VISIONS WEB & MULTIMEDIA PTY LTD ACN: 129 611 810**  
**EmailMarketer Terms & Conditions of Use**

These Terms and Conditions set forth the entire understanding and agreement between you and Online Visions Web & Multimedia Pty Ltd, supplier of the EmailMarketer service, referred to hereafter as "Online Visions", related to the use of the EmailMarketer software.

**1. Acceptance**

By signing up to an EmailMarketer account, you will be subscribed to the EmailMarketer service, and in doing so, you agree to all the terms and conditions of use as outlined below.

**2. Our service**

EmailMarketer is designed ONLY for permission-based email management practices the functions available to you are as outlined on the EmailMarketer website or as described in the EmailMarketer User-Guide.

**3. Payment Terms**

- 3.1. The first payment for your EmailMarketer account and any relevant set-up costs must be paid upon signing up to your EmailMarketer account, prior to the activation of your account.
- 3.2. Ongoing costs for the EmailMarketer must be paid in advance, and will be invoiced 14 days prior to your renewal date and charged to the your credit card on the day preceding their renewal date each month. The renewal date is on the day of signing up to your EmailMarketer account each month.
- 3.3. Payments will continue to be charged to your credit card each month until such time as you cancel your EmailMarketer account in writing.
- 3.4. Should payment be declined by your financial institution, you acknowledge that you will be provided two working days upon being notified of the failed payment to rectify the problem, after such time your EmailMarketer account will be suspended until such time as payment is received.
- 3.5. If paying by annual invoice you acknowledge that payment must be received before your renewal date, in failure to do so your EmailMarketer account will be suspended until such time as payment is received.
- 3.6. Any EmailMarketer account suspended based on late payment requires a \$55.00 (GST INC) re-activation fee, in addition to payment of outstanding monies.
- 3.7. All costs for EmailMarketer are non-refundable.
- 3.8. If your account is terminated by us because you have breached these terms and conditions, or the EmailMarkter Anti-Spam policy you are not entitled to a refund.

**4. Cancellation**

- 4.1. You must provide written notice of intention to discontinue your EmailMarketer account at least 14 days prior to your renewal date.
- 4.2. After cancellation of your account you are not entitled to continue to use or distribute, through any means, any email newsletter template or any other resource that was supplied as part of the EmailMarketer service.

**5. Usage of the EmailMarketer Service**

- 5.1. You agree that you will not use the EmailMarketer software, in whole or in part, for any purpose that is unlawful or prohibited by these Terms and Conditions or the EmailMarketer Anti-Spam Policy.
- 5.2. You agree that you will not distribute, reproduce or sell any templates or any other resource provided to you as part of the EmailMarketer service. Any such materials are provided under license for usage within EmailMarketer only. Copyright of all materials supplied is retained by its owner(s).
- 5.3. You shall not use the EmailMarketer software in any manner which could damage, disable, overburden, or negatively impact on the EmailMarketer brand or activities, or interfere with any other party's use and enjoyment of the EmailMarketer software.

**6. User Conduct**

- 6.1. As a user of the EmailMarketer software, you are entirely responsible for all content distributed by you through the EmailMarketer software, including and not limited to: information, photographs, data, text, music, sound, software, graphics, streaming video or other materials posted via EmailMarketer.

Online Visions has no involvement or control over the content our customers distribute using EmailMarketer and as such, we do not verify or guarantee the quality, accuracy or integrity of such content. Online Visions does not endorse any organisation that uses the EmailMarketer software, and makes no representation or warranty of their professionalism, integrity, viability or legitimacy as a reputable organisation.

- 6.2. With regard to the content of your email campaigns, you agree not to create, upload, send or otherwise distribute any content:
- a. that is unlawful, harmful, threatening, harassing, abusive, defamatory, obscene, vulgar or libellous;
  - b. that is misleading, deceptive and / or not representative of the truth, and / or impersonates any person or entity or falsely states or otherwise misrepresents your affiliation with any person or entity;
  - c. that relates to inappropriate or offensive subject matters;
  - d. that is hateful, invasive of another's privacy, or racially, ethnically or otherwise objectionable;
  - e. that is harmful to minors;
  - f. you do not have a right to post and transmit under any law or any contractual relationship/s;
  - g. involves personal or confidential data about any other individual or organisation;
  - h. Infringes of any patent, trademark, proprietary secret, copyright or any other proprietary right/s of any party;
  - i. Contain software viruses or any other invasive computer code, programs, or files designed to interfere with, destroy or impact negatively on the functionality of any computer hardware or software, or any telecommunications equipment;
  - j. Which imposes an unreasonable burden on our infrastructure;
  - k. Intentionally or unintentionally violates any relevant and applicable local, state, national or international law;
  - l. Communicates erroneous, forged or disguised identifiers; or
  - m. Promotes violence, harm or provides instructional or affirmative information about illegal activities or pastimes.

Online Visions reserve the right to terminate the EmailMarketer service immediately without notice to any user who includes any of the above offending content in any email campaign whether it has been distributed or not. In the event of a termination of user account for improper use, there will be no refund issued for remaining time paid on the account.

You agree that Online Visions shall have the right (but not the obligation) in its sole discretion to refuse or remove any content created any users email campaigns.

## 7. System Maintenance and Upgrade

Online Visions reserves the right from time to time to enhance, modify or upgrade EmailMarketer to ensure in the continuing delivery of optimum performance and functionality from EmailMarketer. You acknowledge that such maintenance and/or system upgrade will temporarily interrupt your service (or any part thereof). You agree that Online Visions shall not be liable to you or to any third party for any modification, suspension or discontinuance of the EmailMarketer service.

## 8. Disclaimer

As a user of the EmailMarketer software, you accept and understand that:

- 8.1. Your use of the service is at your sole and exclusive risk.
- 8.2. Online Visions makes no representation or warranty that the EmailMarketer service:
  - a. is suitable to meet your requirements;
  - b. will be timely, uninterrupted, secure or error-free; or
  - c. the quality of any products, services, information or other material purchased or obtained by you through the service will meet your expectations.
  - d. any materials or resources downloaded or otherwise obtained through the use of the service, or any email campaign is undertaken entirely at your own discretion and risk and you will be solely responsible for any damage to your computer system or loss of data that results from the download of any such material. Online Visions cannot be held responsible from any damage, loss or interruption as a result of your involvement with the EmailMarketer software.
- 8.3. In no event shall Online Visions and/or our suppliers or agents be liable for any direct, indirect, punitive, special, incidental or consequential claim, or any damages whatsoever, including, but not limited to, damages for loss of use, data or profits.
- 8.4. If you are dissatisfied with any portion of the EmailMarketer service, or with any of these Terms and Conditions of Use, your immediate and comprehensive solution is to discontinue using the EmailMarketer software.
- 8.5. You agree to indemnify us and hold our suppliers, agents, affiliates, partners, subsidiaries, and employees harmless from any and all claims and demands, (including, but not limited to, legal fees on a full indemnity basis), made by any third party due to or arising out of any information distributed by you, arising from your non observance or breach of any of these terms and conditions or of the EmailMarketer Anti-Spam Policy.

## 9. Governing Law

This Terms and Conditions shall be governed and construed in accordance with the laws in force in the State of Queensland, Australia. Both parties hereby agree to submit to the exclusive jurisdiction of the courts in the State of Queensland, Australia for determining any dispute concerning these Terms and Conditions.

## 10. Amendments

Online Visions reserves the right to revise or change these terms and conditions at any time, at which time a notice will be posted on the EmailMarketer website ([www.emailmarketer.com.au](http://www.emailmarketer.com.au)) advising of date of such changes. The Client accepts that by doing this, Online Visions has provided the Client with sufficient notice of the variation.