



SHOW PONY GRAPHICS TERMS OF SERVICE

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SHOW PONY GRAPHICS SUBSCRIBER TERMS OF SERVICE

“Show Pony Graphics” is a website at <https://www.spgraphics.com.au> (**Website**), which is owned and operated by Show Pony Graphics Pty Ltd (ACN 624 453 916) (“**Show Pony Graphics**”, “**us**”, “**our**” or “**we**”) which provides the design services, domain name services, webhosting services and related services (**Service**).

As a condition of using the Service, users (hereinafter referred to as a “**you**” or “**your**”) accept and comply with these terms and conditions (**Terms**) which govern your use of the Service.

1. DEFINITIONS & INTERPRETATION

1.1 In these Terms, unless the context otherwise requires or permits:

Confidential Information means information of a party (the **Discloser**) in any form or media, and whether given or acquired directly or indirectly by the other party (the **Recipient**), but excludes the Excluded Information. Confidential Information includes information concerning:

- (a) the Discloser's, or any Related Bodies Corporate's past, present or future structure, business activities, strategies, and assets; products and their methods of production and distribution; trade secrets and know how; financial affairs; network, communications, and technology; and clients, customers, suppliers, distributors and their financial affairs; and
- (b) the terms of these Terms.

It also includes any other information of the Discloser that is by its nature confidential, which the Recipient knows or ought to reasonably know is confidential, or that is marked or designated or confirmed as being confidential or proprietary at the time of its disclosure.

Content means any material, including videos, cinematograph films, broadcasts, sound recordings, streamed content, images, photographs, artistic works, reviews, statements, opinions, views, advice, ratings, discussions, comments, messages, data, information and any and all other kinds of content in any form whatsoever;

Content Provider means the providers, producers, creators or authors, including their associates or affiliates, of any Content, excluding Your Content, that is accessible or available, whether directly or indirectly, through or in connection with the Service (other than you);

Excluded Information means information that:

- (a) is in or enters the public domain through no wrongful act; or
- (b) is or was made available on a non confidential basis to the Recipient, through no wrongful act; or
- (c) is or was developed by the Recipient, independently of the Discloser without using any Confidential Information.

Intellectual Property Rights includes, without limitation, all copyright, trade mark, design, patent, trade, business or company names, confidential information and other proprietary rights, and any rights to registration of such rights, whether created in Australia or elsewhere;

Force Majeure Event means strikes, lock-outs, or other labour disputes, riots, civil or political disturbance, actions or inaction of governmental authorities or suppliers, epidemics, wars, embargoes (including any other similar sanction), storms, floods, fires, earthquakes, acts of God (including natural disasters), terrorism or any associated activities, computer downtime, nuclear disasters, changes to laws, default or failure of a utilities supplier or common carrier or communications or data network, grounding of air traffic, interruption to transport routes or networks (including shipping routes) or any other circumstances that are outside the immediate control of Show Pony Graphics;

Privacy Policy means Show Pony Graphics Privacy Policy available on the Website (see Privacy Policy);

Our Content means all Content made available via the Service, whether directly or indirectly, excluding Your Content;

Our Policies means the policies issued by Show Pony Graphics from time to time that can be found via the Service and Website which contain various additional rules regarding the use of, and/or participation in, the Service;

Show Pony Graphics means Show Pony Graphics Pty Ltd (ACN 624 453 916) of PO Box 250, Wallan, Victoria 3756, Australia;

Service means design services, domain name services, webhosting services and related services which is operated by Show Pony Graphic and made available via the Website;

Service Agreement means these Terms, the Subscriber Fee Terms, the Privacy Policy, any other Service Agreement between you and Show Pony Graphics and Our Policies (if any);

Subscribers Generally means the subscribers to the Service from time to time;

Subscription means a subscription to use the Service by you complying with the applicable Subscription Fee Terms;

Subscription Fee means the fee payable by you to us, from time to time, as set out in the pricing and related terms and conditions on the Website and as set out in the invoices issued by Show Pony Graphics to you;

Subscription Fee Terms means the terms and conditions issued by Show Pony Graphics to Subscribers Generally from time to time as set out the pricing and related terms and conditions on the Website and as set out in the invoices issued by Show Pony Graphics to you;

Subscription Period means the period for which you have paid the applicable Subscription Fees in respect of a particular Subscription;

Usage Information means any information or data relating to the use of the Service by you, including meta-data or other usage data;

Website means Show Pony Graphics website at <https://www.spgraphics.com.au>;

Your Data means any Content, including data, provided by you, whether directly or indirectly, through or in connection with your use of and/or participation in the Service or in communications with us.

- 1.2 In these Terms, unless the context otherwise requires or permits:
- (a) a reference to a word in its singular form shall be taken to include its plural form, and vice versa;
 - (b) the words “include”, “including” and “includes” are not words of limitation;
 - (c) a reference to “law” or “laws” shall be taken to be a reference to those laws and regulations which are applicable from time to time;
 - (d) a reference to a party or person in these Terms includes a reference to any agent of such party or person, including any person declared to be an agent under these Terms or in respect of a purchase of a Coupon; and
 - (e) a reference to these “Terms”, the “Privacy Policy”, “Our Policies” or any section or provision of these Terms shall be taken to be reference to the most recent revision of the applicable document.
- 1.3 In the event of any conflict or inconsistency between two matters, the order in which one matter shall prevail over another matter, from highest to lowest priority, shall be: these Terms, then Our Policies and then our Privacy Policy.
- 1.4 For the avoidance of doubt, information made available via the Service, other than the Subscription Fee Terms or a notification provided by us in accordance with section 2.5 below, shall not form part of the Service Agreement.

2. NATURE OF THE SERVICE

- 2.1 The Service is an online service provided by Show Pony Graphics to provide design services, domain name services, webhosting services and related services. The Service may be accessible through such digital devices as may satisfy the technical requirements for doing so.
- 2.2 Show Pony Graphics will be entitled to change the Service, including its features available to Subscribers, from time to time, without notice to you, as a result of any number of reasons, including as a result of:
- (a) developments, modifications or upgrades to the Service;
 - (b) repairs and maintenance in respect of the Service;
 - (c) timing, location or any other technical factors;
 - (d) general issues of accessibility or availability;
 - (e) commercial or legal reasons;
 - (f) the matters in section 2.3 below; and/or
 - (g) the effect or application of any laws,
- and we do not have to disclose to you those reasons.
- 2.3 Certain parts of the Service, including certain features, may only be accessible or available (whether temporarily or permanently) subject to certain conditions or when specific requirements are met, including:
- (a) access to a feature requires you to comply with certain prior instructions;

- (b) the number of Subscribers Generally may be restricted; and/or
 - (c) failure to comply with Our Policies.
- 2.4 For the avoidance of doubt, and notwithstanding any other matters in these Terms, we may need to remove, modify or suspend the availability of any features of the Service.
- 2.5 We may from time to time change the terms and conditions of the Service Agreement (except that changes to the Subscription Fee Terms are dealt with in section 4 below), either by sending you an updated link to the revised Service Agreement and/or by a notification made via the Website. Such changes will take effect on the date specified by Show Pony Graphics. By continuing to use the Service after the date of change of the Service Agreement, you will be deemed to have accepted the revised Service Agreement.
- 2.6 In order to use the Service you will need to have a suitable digital device and Internet access. The availability and quality of the Service, and your ability to use the Service, will depend on various factors which are outside our control, including the quality of the service provided by your Internet service provider, as well as your location, the bandwidth available, the speed of your Internet connection and the type of digital device you are using to access the Service. You are responsible for paying for any fees or charges imposed by your Internet service provider for the use of data or bandwidth to access the Service.

3. ACCOUNTS & SUBSCRIPTION

- 3.1 In relation to your Account for Subscribers Generally, you acknowledge, warrant and agree (as the context permits or requires) as follows:
- (a) you are at least 18 years old (or such higher age as is required in your legal jurisdiction to enable you to enter directly into binding legal agreements);
 - (b) you have read and understood the Service Agreement prior to using the Service and agreeing to any Subscription Fee Terms;
 - (c) that using the Service comprises your irrevocable and unconditional consent and agreement to be bound by the Service Agreement;
 - (d) you have full authority and power to enter into and perform the terms and conditions of the Service Agreement;
 - (e) it is your responsibility to regularly review the Service Agreement in case we update or change any matters in the Service Agreement;
 - (f) you remain absolutely and unconditionally liable to Show Pony Graphics in respect of the use of the Service, even if another person or entity uses the Service via your Account;
 - (g) you will provide us with all the required information for the establishment of your Account, and you must ensure that such information is at all times accurate, true and up-to-date;
 - (h) you must use your actual, legal name and other personal details for your Account, and you must not use any false name or pseudonym, or other false personal details;
 - (i) you will comply with any billing and/or other validation procedures required by us to ensure that you are who you identify to be, including the provision of valid credit or debit card details to us;
 - (j) you are responsible for maintaining the confidentiality and safeguarding the security of any details

relating to your Account, including any login details and passwords, that you use to access the Website and Service;

- (k) you will not cause, permit or allow your Account to be used by, or leased, sold or transferred to another person or entity; and
- (l) you will not subscribe for a new Account if you have had a previous Account which was terminated or suspended by us for any reason.

3.2 We cannot, and will not, be liable for any loss or damage arising from your failure to comply with the requirements outlined in section 3.1 above.

3.3 You acknowledge that your entitlement to access, and to maintain access to the Service is subject to you complying with the applicable Subscription Fee Terms from time to time and to Our Policies generally.

3.4 You acknowledge and agree that if you choose to or permit (whether intentionally or otherwise) the use of your Account and the Service by a third-party, you shall at all times remain liable for any loss or damage suffered by you, Show Pony Graphics or any third party (including any Subscribers Generally or Content Providers) as a result of any act or omission undertaken by that third-party which would, if it had been undertaken by you, amount to a breach of the Service Agreement.

4. SUBSCRIPTION FEES & BILLING

4.1 Unless otherwise specified in the applicable Subscription Fee Terms, the Subscription Fee is billed monthly and billing will commence in accordance with the applicable Subscription Fee Terms. Subscription Fees are non-refundable for any reason and there are no partial refunds for partially used subscription terms. We will automatically debit the credit card or other account on file for you on the renewal date specified in the applicable Subscription Fee Terms, unless you elect to terminate in advance of the applicable expiry date for the relevant subscription.

4.2 To the extent that we are unable to process a payment overdue by more than thirty (30) days or more in accordance with the applicable Subscription Fee Terms, we reserve the right to immediately cancel, suspend or terminate your Account and/or access to the Service (whether temporarily or permanently), and we may seek the payment of any part of the Subscription Fees due and owing to us by you in respect of any period which you had access to the Service during a subscription term. In the event we do cancel, suspend or terminate your Account and/or access to the Service under this section 4.2 or otherwise, we are not liable for any loss or damage, howsoever arising, that you suffer as a result.

4.3 We will notify you of any changes to the Subscription Fee Terms provided that such changes will not take effect until the end of the applicable Subscription Period (even if the applicable Subscription Fees are lower than the amount paid by you).

4.4 If you do not agree with a change to the applicable Subscription Fee Terms, you may opt to terminate your subscription to the Service at the end of the applicable Subscription Period by notifying Show Pony Graphics to that effect prior to the end of such Subscription Period.

4.5 You may not terminate your Subscription prior to the end of the applicable Subscription Period.

4.6 If you cancel your Account, your Account will be deactivated and you will not be entitled to continue using the Service. However, we will not provide refunds or partial refunds of any Subscription Fees that represent any part of a Subscription Period for which you cannot use the Service as a result of the cancellation of your Account.

4.7 If we allow you to change your Subscription (**Permitted Change**) and new Subscription Fee Terms

apply in respect of the Permitted Change, we will:

- (a) if the new Subscription Fee is greater than your existing Subscription Fee – the Permitted Change will take effect as soon as it is processed by us and we will commence billing you in accordance with the Subscription Fee Terms applicable to the new Subscription; or
- (b) if the new Subscription Fee is less than your existing Subscription Fee – the Permitted Change will not take effect until expiration of the applicable Subscription Period and we will then commence billing you in accordance with the Subscription Fee Terms applicable to the new Subscription.

4.8 If we cease providing the Service before the end of the applicable Subscription Period, we will refund you any Subscription Fees paid by you in advance for any period of the Subscription Period for which the Service is not available, such refund to be calculated on a pro rata basis.

4.9 In addition to the above, we will not provide refunds or partial refunds of the Subscription Fee in the event we cancel or suspend your Account for any reason permitted under the Service Agreement.

4.10 The Subscription Fee must be paid to us by a form of payment that is approved by us, and it must be paid in fully cleared funds, without setoff or counterclaim.

4.11 You acknowledge that the Subscription Fee Terms may vary between those offered to you and to Subscribers Generally.

5. YOUR RESPONSIBILITIES

5.1 In relation to your use of the Service, you acknowledge and agree that:

- (a) you will not use or rely on the Service as the case may be:
 - (i) in any manner or for any purpose that is contrary to the Service Agreement; or
 - (ii) in circumstances where a reasonable person in your position would not have so used or relied on the Service; or
 - (iii) in any manner that is unreasonable or excessive given the intended purpose, attributes and capabilities of the Service as disclosed in the Service Agreement; or
 - (iv) in any manner that adversely affects the normal performance, operation of the Service, or adversely affects the reputation of Show Pony Graphics and/or the Service itself, or any person associated with the Service;
- (b) you must comply with Our Policies at all times;
- (c) you must ensure that all usernames and passwords required to access the Service are kept secure and confidential. You must immediately notify Show Pony Graphics of any unauthorised use of your password or any other breach of security and Show Pony Graphics will reset your password and you must take all other actions that Show Pony Graphics reasonably deems necessary to maintain and enhance the security of the Service and your access to the Service.
- (d) you will not violate or attempt to violate any security features of the Service, including (without limitation) as follows:
 - (i) accessing content or data not intended for you or logging onto a server or account without our authority; or

- (ii) attempting to probe, scan or test the vulnerability of the Service or any associated system or network, or to breach security or authentication measures; or
 - (iii) interfering or attempting to interfere with service to any network, including, without limitation, by means of submitting a virus, overloading, “flooding,” “spamming,” “mail bombing,” “hacking,” “hijack” or “crashing”; or
 - (iv) forging any TCP/IP packet header or any part of the header information in any email or in any posting in connection with the Service; or
 - (v) attempting to modify, reverse-engineer, decompile, disassemble or otherwise reduce or attempt to reduce to a human-perceivable form any part or component of the Service; or
 - (vi) attempting to monitor, track or extract any Internet traffic or other data exchanged via the Service; and
- (e) you will comply with all laws that are applicable to your use of the Service.

6. INTELLECTUAL PROPERTY

- 6.1 Title to, and all Intellectual Property Rights in the Service, the Website and any documentation relating to the Services remain the property of Show Pony Graphics.
- 6.2 Title to, and all Intellectual Property Rights in, Your Data remain your property. However, your access to Your Data is contingent on full payment of the Subscription Fees when due. You grant Show Pony Graphics a licence to use, copy, transmit, store, and back-up your information and Your Data for the purposes of enabling you to access and use the Service and for any other purpose related to provision of services to you.
- 6.3 You must maintain copies of all Your Data inputted into the Service. Show Pony Graphics adheres to its best practice policies and procedures to prevent data loss, including a continuous system data back-up regime, however does not make any guarantees that there will be no loss of Your Data. Show Pony Graphics expressly excludes liability for any loss of Your Data no matter how caused.
- 6.4 If you enable third-party applications for use in conjunction with the Service, you acknowledge that Show Pony Graphics may allow the providers of those third-party applications to access Your Data as required for the interoperation of such third-party applications with the Service. Show Pony Graphics shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by third-party application providers.

7. DISCLAIMERS AND INDEMNITIES

- 7.1 Show Pony Graphics provides the Service on a purely ‘as is’ basis without warranty of any kind and, to the maximum extent permitted by law, we expressly disclaim any and all liability and any warranties or guarantees, express or implied, regarding the Service, including, but not limited to, any implied warranties or guarantees of acceptable quality, fitness for a particular purpose or non-infringement of third-party rights not otherwise disclosed in the Service Agreement.
- 7.2 In using or attempting to use the Service, you unconditionally acknowledge and agree that we are not liable to you for any loss or damage of any kind that you suffer, howsoever suffered, in relation to any of the following matters:
- (a) the lawful exercise of any rights that we may have under the Service Agreement or otherwise;

- (b) your breach of the Service Agreement, including your use or reliance on the Service in breach of the Service Agreement;
 - (c) the results or consequences arising from your use of the Service;
 - (d) the lawful cancellation or suspension of your Account by us;
 - (e) the actions or omissions of a Content Provider;
 - (f) performance issues, interruptions or technical errors in the Service;
 - (g) the non-availability of and/or disruption to the Service caused by any third party; and/or
 - (h) the occurrence of a Force Majeure Event.
- 7.3 To the maximum extent permitted by law, our maximum liability to you for any loss or damage suffered by you arising out of, in connection with or relating to the Service, regardless of the type of action you may bring against us for such loss or damage, is limited to the Subscription Fees we have received from you. However, in no circumstance shall we be liable to you for any indirect or consequential loss or damage suffered by you, such as a loss of profits, a loss of business opportunities, a loss of reputation, a loss of anticipated savings, a loss of revenue, a loss of goodwill and a loss of contracts.
- 7.4 For the avoidance of doubt, nothing in the Service Agreement excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy that we cannot lawfully exclude, restrict or modify (**Required Matter**). Where a Required Matter applies to us but we are able to limit our liability for a breach of that Required Matter, our liability for a breach of the Required Matter is limited to the extent permitted by law, including the supply of the services again or the payment of the cost of having the services supplied again.
- 7.5 To the maximum extent permitted by law, you must indemnify and keep us indemnified in full from and against any and all loss or damage (including legal costs on an indemnity basis) suffered by us arising out of, in connection with or relating to your use of the Service in breach of the Service Agreement including without limitation in respect of any loss or damage claimed against Show Pony Graphics or any related entity by any third party (including any Subscribers Generally or Content Providers). The kinds of loss and damage that you must indemnify us from and against include losses suffered or incurred in defending or settling any dispute, legal action or other claim or demand (such as the payment of any fees, charges, taxes, levies, penalties or legal expenses).

8. CANCELLATION & SUSPENSION

- 8.1 You may cancel and close your Account at any time. If you do cancel and close your Account, the matters in section 4.8 above will apply in respect of your billing arrangements with us.
- 8.2 In addition to any other rights that we may have, we may, without notice to you, cancel and close or suspend your Account, and prevent you from using the Service, for any of the following reasons:
- (a) a breach of the Service Agreement by you;
 - (b) to investigate a suspected breach of the Service Agreement by you;
 - (c) to prevent any immediate risks of harm or injury to any person or property;
 - (d) for any other purpose deemed necessary by us to maintain the integrity of the Service or our business or our reputation;

- (e) as a result of a Force Majeure Event;
 - (f) to comply with a requirement at law, to assist any law enforcement agency or regulatory body or to otherwise deal with or pursue any litigious claims, demands or legal actions; or
 - (g) in response to any actual or threatened litigious claims, demands or legal actions against us.
- 8.3 You acknowledge and agree that Show Pony Graphics may alter or suspend the Service from time to time for any reason or may cease providing the Service at any time without notice to you; in any such circumstances, we will have no liability to you.
- 8.4 If we sell the business operating the Service, these Terms will continue to bind you unless and until your Account is cancelled.

9. MISCELLANEOUS MATTERS

- 9.1 If you have a complaint or a dispute in relation to the Service or these Terms (**Service Dispute**), you must notify us of the Service Dispute and you must allow us a reasonable opportunity to address the Service Dispute and/or to respond to you in that regard prior to taking any further actions, including commencing or threatening to commence any litigious claims, demands or legal actions, in relation to the Service Dispute.
- 9.2 If in using the Service you receive any information which is not intended for you or otherwise relates to, as one may reasonably infer, the business or internal affairs of Show Pony Graphics of a confidential nature, you must not disclose that information to a third-party and must immediately notify us regarding the receipt of such information; further, upon request by us, you must forward the information to us and/or delete or remove such information that is in your possession or control.
- 9.3 Unless expressly stated by us, we are not affiliated or associated with, or sponsor or receive sponsorship from, any third-party service or service provider merely because the Service links or refers to the third-party service or service provider; further we shall not be taken to be endorsing, approving or supporting any statements or representations regarding the third-party service or service provider.
- 9.4 Notwithstanding any other matter in these Terms, we may issue notices in relation to matters relating to the Service by any means we deem appropriate, including via the Service and/or Website, or by sending you emails to the email address that is associated with your Account.
- 9.5 You may not assign or transfer any rights or obligations under these Terms, but we may, unless prohibited by law, freely assign or transfer our rights and obligations under these Terms.
- 9.6 We are not to be deemed to have waived any rights that we may have under these Terms which have accrued unless we have expressly agreed to waive those rights in writing and signed by us. Any waiver is only effective in the specific instance and for the purpose it is given.
- 9.7 These Terms constitute the full and complete agreement between us and you relating to the subject matter contained in these Terms and supersedes any and all previous agreements, understandings, negotiations and representations between the parties in respect of all matters dealt with in these terms.
- 9.8 If any term or condition in these Terms is held to be illegal or unenforceable, in whole or in part, by a court, such term or provision shall be severed and deemed not to form part of these Terms, and the validity of the remainder terms and conditions shall not be affected.
- 9.9 These Terms shall be construed in accordance with and governed by the laws of the New South Wales,

Australia, the courts of which shall have jurisdiction in respect of any matters arising out of or in connection with the Service and these Terms.