



# Reseller Terms & Conditions

## 1. What is this document?

This document sets out the terms and conditions that apply to our Reseller program. You may only participate in the program if we appoint you as our authorised Reseller.

## 2 Your appointment

We appoint you as our authorised Reseller and you accept the appointment, strictly on the terms and conditions of this agreement.

## 3 What authority do we give you?

We give you an authority limited to:

- a) Promote designated Hugo!Net products (“designated products”);
- b) Collect customer applications for designated products on our behalf; and
- c) Submit the customer applications to us.

## 4 What will we pay you?

We will pay you a Reseller commission in accordance with this agreement.

## 5 Who enters a contract with a customer?

Every contract for supply of designated products is directly between us and the customer. You are not a party to it. You cannot enter a contract on our behalf. You must not let anyone that you deal with believe otherwise. This does not affect any separate contract that you may have with a customer for supply of other goods or services.

## 6 When does your appointment start and end?

Your appointment starts on the date in [the schedule](#). It continues until a termination occurs.

## 7 Who is our Reseller?

We appoint only the person/s or company named in [the schedule](#) (but that person or company may use their staff to provide Reseller services). The appointment is personal and non-transferable and non-exclusive.

## 8 What are designated products?

Our Reseller program does not apply to all our products. We will maintain an up-to date list of the products that it applies to at the web address in [the schedule](#) (but we can change that address later) – the “designated product list”. Reseller Commissions only apply to designated products.

## 9 What else will the designated product list tell you?

The designated product list will tell you the amount of any Reseller commission that applies to a designated product and any special conditions that attach, such as sales targets. The amount may be a one-off payment and/or a series of payments, or may be structured in any other way we decide. The designated product list is part of this agreement, and overrides these printed terms if they are inconsistent.



### **10 Can we change the designated product list?**

We can change the designated product list. A change takes effect at 9 a.m. on the next Monday after we change the list and applies to any customer application we receive from you after that time.

You are responsible for keeping familiar with the list, and must check it at least once a week.

A change will not affect any Reseller Commission that is already payable to you. We can change the designated product list specifically as it applies to you, either by a customised web page or individual notice to you.

### **11. How do our sales targets work?**

Our designated product list can state sales targets that must be satisfied for Reseller commissions to be payable, or we may notify you of sales targets that specifically apply to you. Sales targets will be based on quarters starting on 1 January, April, July and October in each year.

This clause does not limit the kinds of conditions we may include in the designated product list.

### **12 What are “your introductions” and “qualifying supplies” and “introduction procedures”?**

**12.1.** “Your introductions” are current customers of Hugo!Net who first became our customer because of a customer application that you submitted to us, without any direct customer communication with us or our sales staff and in accordance with current introduction procedures.

**12.2.** “Qualifying supplies” are supplies of designated products to your introductions as a result of a customer application that you submitted to us, without any direct customer communication with us or our sales staff, but only if we have already invoiced and been paid in full for the supply.

**12.3.** “Introduction procedures” are any procedures that we notify to you that regulate the introduction of new customers and the establishment of their accounts with us. Among other things, they include the form of application to be used.

### **13 What rules apply to Reseller fees?**

**13.1.** Reseller fees are only payable in respect of qualifying supplies to your introductions.

**13.2.** Reseller fees will be calculated on the first day of the next quarter (“calculation date”) or as soon afterwards as we can practicably do so.

**13.3.** No Reseller fee is payable for a qualifying supply if it was not disclosed to your introduction according to law. In that case, any payment is merely a loan repayable on demand.

**13.4.** Reseller fees will be calculated in accordance with the designated products list in force on the calculation date.

**13.5.** No Reseller fees accrue until sales targets are met for at least one quarter.

**13.6.** If any sales target/s is/are not met for two consecutive quarters:



**13.7.** No Reseller fees are payable for the second quarter; and

**13.8.** Your introductions are reset to zero. If that happens, only subsequent new introductions count as your introductions.

**13.9.** A qualifying supply is disregarded in any quarter where your introduction did not pay all their fees as and when due.

**13.10.** No Reseller fees are payable in respect of a quarter if you have seriously breached this agreement during that quarter.

**13.11.** If you owe us any money, we may deduct it from Reseller fees at our option.

**13.12.** If Reseller fees are calculated as a percentage of proportion of payments received from your introductions, it is a percentage or proportion of the non-GST component of the payments.

**13.13.** We will pay your Reseller fees by cheque within 30 days after we have calculated them.

#### **14 GST**

**14.1.** This clause GST applies to all supplies by you to us of Reseller services.

**14.2.** Your entitlement to payment of Reseller fees is conditional on you being and remaining registered for GST and supplying us with your ABN.

**14.3.** We may issue tax invoices in respect of all supplies of Reseller services.

**14.4.** You will not issue tax invoices in respect of any supplies of Reseller services.

**14.5.** You acknowledge that you are registered for GST when you enter this agreement.

**14.6.** You acknowledge that you must notify us immediately if you cease to be registered for GST.

**14.7.** We acknowledge that we are registered for GST when we enter this agreement.

**14.8.** We acknowledge that we must notify you immediately if we cease to be registered for GST.

**14.9.** If it becomes unlawful for us to create a recipient created tax invoice in respect of supplies of Reseller services, we will notify you by email of the amount of your Reseller fees after we have calculated it. Your entitlement to be paid Channel Partner fees is then conditional on you sending us a valid tax invoice for that amount within a further 30 days.

#### **15 Who collects payments?**

We will invoice your introductions for our services, and payment should be made direct to us. You must not collect or try to collect payment unless we specifically ask you to.



## **16 Suspending or terminating the Reseller program**

We may suspend or terminate our Reseller program by notice to you. If we do that, then this agreement is suspended or terminated likewise. That does not affect your entitlement to or claim on any Reseller fees that have already accrued.

## **17 Automatic termination**

This agreement ends automatically and immediately if you become insolvent or you die or you are convicted of a criminal offence, or if the ownership or effective control of you or your business changes.

## **18 Manual termination**

**18.1.** If you breach this agreement in a manner that exposes us, our network, our business, our customers or our wholesale supplier to imminent and serious harm, we may terminate it by written notice, effective immediately.

**18.2.** If one of us breaches this agreement, the other may serve a notice detailing the breach and requiring it to be remedied.

**18.3.** If the recipient does not remedy the breach within seven days, the sender may serve a further notice terminating this agreement immediately. If we terminate this agreement under this clause If the recipient does not remedy the breach within seven days, the sender may serve a further notice terminating this agreement immediately. If we terminate this agreement under this clause, you lose any right to Reseller fees that have not yet been paid.

**18.4.** Whether or not there has been a breach, either party may terminate this agreement on 30 days' notice to the other. In that case, Reseller fees accrued to the date of termination remain payable to you.

## **19 What else happens after termination?**

After this agreement is terminated, you must immediately stop passing yourself off as being an agent or in any way associated with us.

## **20 Promoting our services**

You must promote us and our designated products honestly and professionally. You must not say or do anything that could be misleading or deceptive about us or our designated products. You must not display or distribute any advertising material about us or our designated products that we have not supplied to you or approved in writing. You must not do anything that brings us or our services into disrepute. You must comply with any rules or directives that we give regarding the way in which you conduct your promotion of us and our designated products. Any such rules form part of this agreement.

## **21 Who sets pricing for designated products?**

We set all pricing, and you must not indicate any pricing other than the pricing we set.

## **22 Customer service and complaints**



**22.1.** We will make our normal help desk facilities available to your introductions. We will also give you access to our help desk facilities. If your introductions seek technical assistance from you regarding designated products, you must use reasonable endeavours to provide it.

**22.2.** If a customer makes a complaint about you, us or designated services, you must notify us in writing without delay, including details of the complaint and its history.

**22.3.** If we make any refund or compensation payment to one of your introductions, we may adjust your next payment of Reseller fee to allow for it.

### **23 No agency, etc.**

**23.1.** Except to the extent of the limited authority, you are not our agent or representative and you must not allow anyone to think otherwise. You are not our partner or employee and you must not allow anyone to think otherwise.

**23.2.** You may describe yourself as an “authorised Hugo!Net Reseller”.

### **24 What are your other duties?**

You must:

**24.1.** Carry out all your obligations under this agreement using your own finances, resources and staff and at no cost to us other than Reseller fees;

**24.2.** Keep and make available to us on reasonable notice true and accurate records that truly reflect all particulars relating to this agreement and your activities under it;

**24.3.** Respect the privacy of all persons you deal with in its capacity as our Reseller and observe all privacy laws and requirements applicable to you;

**24.4.** Comply with all laws that apply to you;

**24.5.** Make good any harm you cause us by breaching this agreement;

**24.6.** Deal with us in good faith and honestly.

### **25 How must confidential information be treated?**

Each party must treat the confidential information of the other party as confidential and commercially valuable.

### **26 Who pays your costs?**

To be clear, the only amounts that we will pay under or in connection with this agreement are the Reseller fees and you indemnify us against all costs, fees, expenses, taxes, duties, charges, and liabilities of any kind at all that may arise in connection with your activities under this agreement.

### **27 Transferring our rights**

We may transfer assign or sublicense any or all of our rights, duties or obligations in this agreement to, or share them with, a third party on notice to you.

### **28 How are documents served?**



A notice under this agreement must be written. This table sets out the permitted methods of service and how they operate.

## 29 How is this agreement interpreted?

In this agreement, unless the context indicates otherwise:

### **The expression: Means:**

Authorised Reseller: A person we appoint as such

Automatic termination: Termination of this agreement under clause

Business day: Any day from Monday to Friday inclusive, excluding any public holidays observed in Victoria

Claim: Any demand, or allegation of liability, and all related costs, claims, demands, liability, damages, losses and expenses of any nature including all legal expenses suffered or incurred

Confidential information: Any information of a party which the other party knows or should know is confidential to the other party, for as long as it remains confidential, or would have remained confidential except for a wrongful disclosure by the first party

Customer applications: Applications for designated products, strictly in the form we Publish.

Designated products: Goods and services that we offer, and which we designate as such for the purposes of this agreement

Designated product list: The list of products and services referred to by clause

Dictionary: This table of defined terms

GST: GST within the meaning of the GST Act

GST Act: A New Tax System (Goods and Services Tax) Act 1999

### **The expression: Means:**

Intellectual property rights All rights in relation to patents, copyright, registered designs, registered and unregistered trade marks, trade secrets, knowhow and confidential information and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967, including any right to register those rights, whether created before or after this agreement, whether existing in Australia or any other country.

Introduction procedures: Has the meaning given by clause 12.3

Limited authority: The agency conferred by clause 3

Manual termination: Termination of this agreement under clause 18

Office hours: Between 9 a.m. and 5:30 p.m. on a business day

Qualifying supplies: Has the meaning given by clause 12.2

Reseller: The person indicated by [the schedule](#).

Reseller fee: A fee calculated and paid in accordance with this agreement and the designated products list

Reseller services: Your promotion of HugoNet and its designated products and referral of service applications for designated products to us in accordance with this agreement

Served: Served in accordance with clause 28

Terminate: Automatic termination or manual termination

Your introductions Has the meaning given by clause 12.1



- 29.1.** If an expression is defined in the dictionary in clause 29 and is used in bold typeface, that is what it means.
- 29.2.** If an expression is defined in the dictionary, grammatical derivatives of that expression have a corresponding meaning. (For instance, if “to colour” means “to paint red”, then “coloured” means “painted red”.)
- 29.3.** “We”, “us”, “our” etc. or “Hugo!Net” refer to Hugo!Net Online Systems Pty Ltd ACN 067 116 269.
- 29.4.** “You”, “yours” etc. or “Reseller” refer to the person named in [the schedule](#).
- 29.5.** Headings are only for convenience. They are to be ignored when interpreting the agreement.
- 29.6.** A reference to the singular includes the plural and vice versa.
- 29.7.** Where one thing is said to include one or more other things, it is not limited to those other things.
- 29.8.** There is no significance in the use of gender-specific language.
- 29.9.** A “person” includes any entity which can sue and be sued, and includes any legal successor to or representative of that person.
- 29.10.** Anything that is unenforceable must be read down, to the point of severance if necessary.
- 29.11.** Anything we can do, we can do through an appropriately authorised representative.
- 29.12.** Any matter in our discretion is in our absolute and unfettered discretion.