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TERMS OF SERVICE - 001

- λ **Site Design**
- λ **Copyright**
- λ **Limitations**
- λ **Indemnity**
- λ **South Australian Law**

[MAIN PAGE](#)

ODLONLINE TERMS AND CONDITIONS OF SERVICE

Definitions

Account means a Logon ID and Password allowing access to the Service. Information includes, but is not limited to, data accessible through an Account, irrespective of the form in which it is finally presented to or recreated by the User.

"Optical Design" means Optical Design(#0305638K) and "OPTICALDESIGN.COM.AU, OPTICALDESIGN.NET.AU, FCUG.NET, ODLWEB.COM, ODLWEB.NET and ODLONLINE.COM" are all services of Optical Design.

User means the person or organisation which obtains Service with Optical Design pursuant to this agreement.

Service means the provision of Internet access to the User.

Usage is defined as the measurement of traffic and or connection time delivered to the customer.

Contact Email Address means an electronic mail address (in the odlonline.com, odlweb.com, odlweb.net or fcug.net domains) of each User who obtains Service with Optical Design. This address will be used for formal correspondence from Optical Design.

Internet access

The conditions under which Optical Design gains access to the Internet and the scope of services available on the Internet may change from time to time and Optical Design reserves the right to pass on any such changes to the User.

Usage Rules

Users must comply with the following Usage Rules:

The Service must not be used for any purpose or activity which is illegal or fraudulent in nature or otherwise in breach of any law, or of any rule, condition or guideline relating the use of the Internet and the networks which make up the Internet, which may apply from time to time.

Without limiting the generality of these rules, Users must not use the Service to perform any activity which is:

- (i) prohibited under the Telecommunications Act 1997;
- or,
- (ii) constitutes a breach of intellectual property.

Users must not use the Service in any other way which in the opinion of Optical Design is an abuse or misuse of the Service or Account.

These rules and conditions are subject to change from time to time at the sole discretion of Optical Design. Changes to these rules will be advised to all Users.

Account

The User will be provided with a Logon ID and Password which will be used to gain access to the Service.

The Account is solely for the User's access. Users will at all times be responsible for any use which is made of their Account.

The Logon ID and Password must not be disclosed to any other person. Optical Design suggests that the Passwords not be written down, stored on or near any computer used to access the Account or in any communications or other program used to access the Account.

If it is suspected at any time that unauthorised access or use of a User's Account is occurring, Optical Design must be informed immediately so that appropriate action may be taken.

It is acknowledged that when a User first commences to use the Service that the terms and conditions outlined in this document are binding on the User.

Charges

The User acknowledges and agrees with Optical Design that:-

Charges are payable monthly in Advance

Charges may, subject to any agreement in writing with Optical Design to the contrary, be varied from time to time;

Notification of variations to charges will be made to the User's E-mail contact address, where possible at least 7 days prior to the variations coming into effect;

If the payments for charges are not made by the due date, Optical Design Reserves the right to withdraw the service without further notice to the User;

If there is no Current Charge Agreement in writing with Optical Design for the supply service, the User agrees to pay the then ordinary current Optical Design charge rate as varied from time to time.

Internet Access and Variations to conditions of supply Contract

The conditions under which Optical Design gains access to the Internet and the scope of services capable of being supplied by Optical Design (whether as a result of circumstances beyond Optical Design's control or otherwise) may change during the course of this supply contract. The User Acknowledges:-

Optical Design's sole and unfettered discretion to change either or both the form and content of those services; and

That it shall raise no objection or claim for compensation in relation to such changes.

Optical Design shall where possible, notify Users of variations to supply Contracts at least 7 days prior to variations coming into effect. Such notifications may be made to the User's e-mail contact address and/or will be published on Optical Design web site. Hardcopy of the variations will be provided on request.

Downtime

Optical Design will endeavour to maintain a continuous and uninterrupted connection with the Internet and a capacity for Users to access the Service. However, the parties acknowledge that access to the Service may be limited or not possible due to system failure beyond the control of Optical Design or for reasons of system maintenance.

Optical Design will endeavour to perform any system maintenance which may affect Access Privileges at times of anticipated minimum system usage. Without assuming any liability for not doing so, Optical Design will attempt to give notice of the time and duration of such maintenance.

Records

Optical Design may maintain such records as it requires to determine appropriate usage charges and compliance with the Usage Rules.

Disclaimer

This section is subject to the section headed Trade Practices Act/Consumer Protection below. Optical Design makes no warranty, representation or promise not expressly set out in this agreement. Optical Design disclaims and excludes any and all implied warranties of merchantability, title and fitness for a particular purpose.

Optical Design does not warrant that the Service or Account will satisfy the User' s requirements or that the Service or Account is free from defect or error or that the operation of the Service or Account will be uninterrupted.

Optical Design is not responsible for the content and range of Information accessible on the Internet through the Service and Account.

Optical Design does not censor, edit, manipulate or otherwise modify any such Information. Optical Design makes no warranty, representation or promise that such Information is accessible, true, error or virus free, merchantable or fit for any purpose.

Optical Design will not be responsible for any loss of profits, loss of business, loss of Information, interruption of business or any other direct, indirect, incidental, special or consequential loss or damage suffered by the User or any third party as a result of the use of the Service or Account or arising under or outside of this agreement.

Optical Design' s aggregate liability arising from or relating to this agreement, the Service or the Account is limited to the payments made by the User for the current month or to the resupply of the Services at the option of Optical Design.

Trade Practices Act/Consumer Protection

The above section headed Disclaimer is subject to any rights the User may have under the Trade Practices Act 1974 or any equivalent state or territory legislation which cannot be excluded or restricted.

To the extent to which any such rights may be restricted then Optical Design' s liability may be limited at the option of Optical Design to supplying the Service again, or the payment of the cost of having the Service supplied again.

Indemnity

The User indemnifies Optical Design from and against all actions, claims, suits, demands, damages, liabilities, losses, costs and expenses arising out of or in any way connected with the User' s use of the Services and Account.

Termination

Optical Design may immediately terminate this agreement by notice to the User if the User has breached any of the other terms of this agreement or Optical Design determines that the User' s access to the Service has been in such a way as to breach the Usage Rules.

Either party may by written notice terminate this agreement at the end of any month for which the User has paid the appropriate charges.

Miscellaneous

Notices: All notices to the User under this agreement may be delivered to the address given by the user in the application form or address given upon application, faxed to the facsimile number (if any) given by the User in the application form or by electronic mail to the User' s Account.

All notices to Optical Design may be delivered to:

Optical Design
PO Box 146
Woodcroft SA 5162

or faxed to Optical Design on: Facsimile: (08) 8325 2996

or by electronic mail to: odl@odlonline.com

A notice will take effect from the time it is received unless a later time is specified. A letter is taken to be received on the third day after it is posted.

Exercise of rights: Optical Design may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by Optical Design does not prevent a further exercise of that or of any other

right, power or remedy.

Failure by Optical Design to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

Waiver and variation: A provision of or a right created under this agreement may not be:

- (a) waived except in writing signed by the party granting the waiver; or
- (b) varied except in writing signed by the parties.

Approvals and consents: A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this agreement expressly provides otherwise.

Remedies cumulative: The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.

Survival of indemnities: Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this agreement.

Enforcement of indemnities: It is not necessary for Optical Design to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

Governing Law: This agreement and the transactions contemplated by this agreement are governed by the law in force in the state of South Australia.

Jurisdiction: Each party irrevocably and unconditionally submits to the jurisdiction of the courts in the state of South Australia and the courts of appeal from them for determining any dispute concerning this agreement or the transactions contemplated by this agreement.

Acceptance: By using the services provided by Optical Design you accept the terms as listed here.

This document supersedes all previous documents.

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[MAIN PAGE](#)

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