



Terms and Conditions (including Acceptable Usage Policy - AUP)

Current as at 6 December 2005

This version supersedes all previously dated versions

The invidia.com.au website ("invidia.com.au") and the trade name "INVIDIA" is owned and operated by INVIDIA Corporation ABN 72 071 316 517

The INVIDIA ACCEPTABLE USAGE POLICY (AUP), see below, makes up part of these Terms & Conditions. In these terms where you see "we", "us", "our", "invidia.com.au" or "INVIDIA" you must take this to mean the invidia.com.au website and all INVIDIA products and services.

Your access to and use of invidia.com.au is subject to these terms, the invidia.com.au Privacy Statement, Copyright Statement and any other terms contained on invidia.com.au that may be presented to you from time to time ("Terms and Conditions"), whether or not you become a customer of INVIDIA.

When you purchase anything from invidia.com.au via the online secure ordering pages, via a PDF form download or over the telephone, these terms are automatically extended to those products or services and you are bound by these terms for those products and services. If you do not agree to any of these terms then you must not purchase any products or services from INVIDIA and you must leave the invidia.com.au website immediately.

1 What you must do

1.1 You must use invidia.com.au in a responsible manner.

1.2 If you are under 18 years of age, you must obtain a parent/guardian's consent prior to using invidia.com.au.

2 What you must not do

2.1 You must not:

(a) use invidia.com.au for any activities or post or transmit to or via invidia.com.au any information or materials which breach any laws or regulations, infringe a third party's rights, or are contrary to any relevant standards or codes;

- (b) use invidia.com.au in a way or post to or transmit to or via invidia.com.au any material which interferes with other users or defames, harasses, threatens, menaces, offends or restricts any person or which inhibits any other user from using or enjoying invidia.com.au;
- (c) use invidia.com.au to send unsolicited electronic mail messages to anyone (also known as SPAM);
- (d) to make any fraudulent or speculative enquiries, bookings, reservations or requests using invidia.com.au;
- (e) use another's name, username or password without permission;
- (f) post, or transmit via invidia.com.au, any obscene, indecent, inflammatory or pornographic material or material that could give rise to civil or criminal proceedings;
- (g) tamper with, hinder the operation of or make unauthorised modifications to invidia.com.au;
- (h) knowingly transmit any virus or other disabling feature to or via invidia.com.au; and
- (i) attempt any of the above acts or permit another person to do any of the above acts.

3 Third Party Content

3.1 Some of the products and services offered for sale or advertised and some of the information provided on invidia.com.au are the products, services and information of third parties.

3.2 The third party products, services and information may not be endorsed by us and your legal relationship may be with the third party supplier. If this is the case we will advise you of this should you make a relevant enquiry about such a product, service or information.

3.3 We may not have checked the accuracy or completeness of the information or the suitability or quality of the products, services and information of the third parties. You must make your own enquiries with the relevant third party supplier direct before relying on the third party information or entering into a transaction in relation to the third party products and services supplied via invidia.com.au. You should check with the third party supplier whether there are additional charges and terms which may apply.

3.4 Some of the products and services to which we provide hyperlinks from invidia.com.au are to third parties outside Australia. You must make sure before purchasing any product or service that you arrived from an invidia.com.au hyperlink that the currency you are being charged in is the currency you wish to pay in. Most third party links are to third parties in the United States and products and service purchased from such third parties are generally

charged in \$US.

3.5 We may receive fees and/or commissions from third parties for goods and services of such third parties displayed or made available on invidia.com.au or accessible through a hyperlink on invidia.com.au. You acknowledge and consent to us receiving the fees.

4 Prices and products and services are subject to change

4.1 All prices displayed and products and services offered to be supplied on invidia.com.au are subject to change without notice. Also see section 10 - Changes.

5 Security

5.1 For security reasons we may require you to re-authenticate yourself from time to time, for example after a period of inactivity on the connection between your system and the invidia.com.au servers. We are not responsible for any information you may lose if the invidia.com.au servers terminate your system connection due to prolonged periods of inactivity or timeout.

6 Indemnity

6.1 You indemnify us and our officers, employees, agents and related bodies corporate from and against all actions, claims, suits, demands, damages, liabilities, costs or expenses arising out of or in any way connected to the use of invidia.com.au by you or someone using your name and password.

7 Disclaimer and limitation of liability

7.1 TO THE EXTENT PERMITTED BY LAW, NEITHER WE NOR ANY OF OUR OFFICERS, EMPLOYEES, AGENTS OR RELATED BODIES CORPORATE WILL BE LIABLE IN ANY WAY (INCLUDING FOR NEGLIGENCE) FOR ANY LOSS, DAMAGE, COSTS OR EXPENSES SUFFERED BY YOU OR CLAIMS MADE AGAINST YOU THROUGH THE USE OF invidia.com.au, ANY FAILURE TO PROVIDE invidia.com.au, INCLUDING A MESSAGING SERVICE, OR IN CONNECTION WITH ANY PRODUCTS, SERVICES OR INFORMATION SUPPLIED, OFFERED TO BE SUPPLIED OR ADVERTISED VIA invidia.com.au.

7.2 To the extent permitted by law, all warranties, conditions and representations about invidia.com.au, the availability of invidia.com.au for access and use, the products and services advertised, offered to be supplied or supplied via invidia.com.au and the information provided on invidia.com.au are excluded. If a term is implied by law into these Terms and Conditions and the law prohibits provisions in a contract excluding or modifying liability under that term, then it will be included in these Terms and Conditions. However, our liability for breach of such term will be limited, at our option, to one or more of the following (a) in relation to INVIDIA goods: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of such goods; (iii) the payment of the cost of replacing the goods or acquiring equivalent goods; or (iv) payment of the cost of having the goods repaired; (b) in relation to

INVIDIA services: (i) the supply of the services again; (ii) the payment of the cost of having the services supplied again.

8 Use of your information and material

8.1 When you send us any support tickets, feedback, suggestions, ideas or other materials in relation to or via invidia.com.au, you agree that we can use, reproduce, publish, modify, adapt and transmit them to others free of charge and without restriction, subject to our obligations in our Privacy Statement. In an event that we sell the product or service that you may be using to another entity your information (including billing information, contact history and support history) and legal relationship will be transferred to such entity.

9 Goods and Services Tax

9.1 If GST is imposed on any supply made by us through invidia.com.au, you must pay to us, in addition to any consideration payable or to be provided by you for this supply, an additional amount for the supply calculated by multiplying the prevailing GST rate by the consideration for the relevant supply payable or to be provided (without any deduction or set off) by you under any other clause in these Terms and Conditions. Any amount payable by you is payable on demand by us, whether such demand is made by an invoice or otherwise.

10 Changes

10.1 We may vary any of these Terms and Conditions at any time. We will give 5 business days notice of any variations to customers by email (if provided at sign-up) to the email address notified to us by the customer. Your continued use of invidia.com.au or any product or service after such notice period will constitute acceptance of the variation. We will give notice of any variations to users of invidia.com.au who are not customers by posting via a hyperlink the revised Terms and Conditions at www.invidia.com.au/legal. Your continued use after such notice will constitute acceptance of the variation.

11 Termination

11.1 If, in our reasonable opinion, you breach any of these Terms and Conditions, including the Acceptable Usage Policy, we may suspend, terminate or limit your access to invidia.com.au and/or any related sites, products or services and terminate your use effective immediately.

12 General Matters

12.1 This agreement is governed by the law in force in the Australian Capital Territory (ACT), Australia, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of the ACT, Australia and courts of appeal from them for determining any dispute concerning this agreement.

12.2 If any of these Terms and Conditions are invalid or unenforceable, they will be struck out and the remaining terms will remain in force.

12.3 If we do not act in relation to a breach by you of these Terms and Conditions, this does not waive our right to act with respect to subsequent or similar breaches.

12.4 When you nominate to pay by credit card for your products and services, you are responsible for;

a) ensuring that sufficient cleared funds are in your nominated debit/credit account on the date payments are to be drawn;

b) to advise us if your nominated debit/credit account is altered, transferred or closed. This includes you advising us a minimum of 14 days in advance of any credit card expiry date being reached and providing us with the new credit card expiry date at least 14 days before the next payment is due to be drawn.

12.5 If the due date for payment falls on a non-working day or public holiday, the payment may be processed on the previous working day. If you are in doubt, please contact us for further clarification.

12.6 For returned unpaid drawings, including where a credit card expiry date has passed, we will treat the payment as if it had never been made. You will be notified of any non-payment and of the alternate payment method that may be available to you. A service fee of \$25.00 will be applied for each drawing that is returned unpaid.

12.7 We reserve the right to cancel the credit card debit arrangement at any time if drawings are returned unpaid by your nominated financial institution, and at our discretion we may completely cancel your account and render your email, web site, etc, non viewable to the Internet public at large.

12.8 We reserve the right, subject to standard consumer credit code protections, to apply for a bad debit listing against your public credit file if after 30 days past your billing due date we or our debt recovery agents were unable to recover any and all outstanding amounts owed to us by you.

12.9 Fees and Charges

a) all of our standard fees and charges for our complete range of products and services are published on invidia.com.au;

13 Cancelling Products and Services

13.1 To cancel any product or service with us the authorised person for the account must notify us in writing – notification must include the domain name for the account, the password for the account and the date of birth of the registered contact, if any of this information is missing the account will not be closed and billing charges will continue;

13.2 You must notify us of the cancellation of your product or service at least 5 business days before your next billing date. Failure to do so will result in us billing you at your next scheduled billing date and cancelling your account thereafter;

13.3 If you notify us to cancel your product or service at least 5 business days before your next billing date we will not refund you any prepaid or pro-rata amount for the remaining unused portion of that month's plan fee if you have used over 25MB of traffic in the month you advise us of cancellation. If you notify us of the cancellation less than 5 business days before your next billing date we will not refund you any billed amount that is billed at your next billing date even if you have used less than 25MB of traffic in that month;

13.4 At time of cancellation all email, web space, and any other service resources will be deleted and you will no longer be able to access any of these resources. Recovery of any of these resources will not be possible once an account is cancelled;

ACCEPTABLE USAGE POLICY (AUP)

INVIDIA is an Internet Presence Provider (IPP). We host web pages and web applications and provide e-mail services. We have certain legal and ethical responsibilities regarding the use of our and our carrier partner's computer networks and equipment. Our goal is to be unbiased in providing hosting services for the Internet; however, we reserves the right to cancel or interrupt any customer's access to our services if we believe those services are being abused. You are solely and fully responsible for any Internet traffic you upload/download, content in the space provided for your web page and for the e-mail you produce. For these reasons, you violate our policy and this agreement when you, your staff, your customers, affiliates, or subsidiaries engage in the following prohibited activities:

Spamming

Sending any unsolicited bulk and/or commercial e-mail is considered spamming and is prohibited under Australian anti-spam legislation. Spamming not only affects the industry's attitude toward us but also disrupts the service of our other customers. We may, at our discretion, suspend or cancel your account for spamming. If required by law, we will also report any spamming activities to relevant law enforcement agencies.

Intellectual Property Violations

Infringing or misappropriating the intellectual property rights of others, including copyrights, trademarks, service marks, trade secrets, software piracy, and patents held by individuals, corporations, or other entities. Also, violating privacy, publicity, or other personal rights of others. We are required by law to limit, remove or block access to customer content upon receipt of a proper notice of copyright infringement. It is also our policy to terminate the privileges of customers who commit violations of copyright laws, including uploading and downloading of copyright material via peer-to-peer (P2P) methods such as "bit-torrent" exchanges and others. These methods are not permitted to be hosted anywhere on our network.

Obscene Material

Using our network to advertise, transmit, store, post, display, or otherwise make available child pornography or obscene speech or material. We are required by law to notify law enforcement agencies when we become aware of the presence of child pornography on or being transmitted through our network.

Defamatory or Abusive Language

Using our network as a means to transmit or post defamatory, harassing, abusive, or threatening language.

Forging of Headers

Forging or misrepresenting message headers, whether in whole or in part, to mask the originator of the message.

Illegal or Unauthorized Access to Other Computers or Networks

Accessing illegally or without authorization computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (often known as "cracking"). Also, any activity that might be used as a precursor to an attempted system penetration (i.e. port scan, stealth scan, or other information gathering activity).

Distribution of Internet Viruses, Worms, Trojan Horses, or Other Destructive Activities

Distributing information regarding the creation of and sending Internet viruses, worms, Trojan horses, ping, flooding, mail bombing, or denial of service attacks. Also, activities that disrupt the use of or interfere with the ability of others to effectively use the network or any connected network, system, service, or equipment.

Facilitating a Violation of this Acceptable Use Policy

Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP, which includes the facilitation of the means to spam, initiation of ping, flooding, mail bombing, denial of service attacks, and piracy of software.

Export Control Violations

Exporting encryption software over the Internet or otherwise, to points outside the United States and Australia.

Other Illegal Activities

Engaging in activities that are determined to be illegal, including advertising, transmitting, or otherwise making available ponzi schemes, pyramid schemes, fraudulently charging credit cards, and pirating software.

Other Activities

Engaging in activities, whether lawful or unlawful, that INVIDIA determines to be harmful to its subscribers, operations, reputation, goodwill, or customer relations.

Reporting Network Abuse

Any party seeking to report any violation of the INVIDIA Terms and Conditions or AUP may e-mail details to: abuse@nvidia.com.au
All reports will be treated seriously and confidentially.

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