

## Yodel™ Australia Terms and Conditions of Service

### 1. The Service

These Terms & Conditions govern your use of Yodel™ Australia (the "Service"), an Internet subscription service operated by FulfilNET Australia Pty Limited, ("FulfilNET") that provides users with access to a Website creation and hosting service ("Yodel Australia") and/or Search Engine Marketing services for Google AdWords. Yodel™ Australia is provided to you by FulfilNET on an "AS IS", "AS AVAILABLE" basis subject to the provisions contained herein for your personal or business use only. Any other use or attempt to use Yodel™ Australia for other purposes, directly or indirectly, by you or by a third party is prohibited.

Unless explicitly stated otherwise, any new features that augment or enhance the current service shall be subject to these Terms and Conditions of Service. The Service consists of website building services and software and/or search engine marketing services. Your participation in the Service is conditional upon your acceptance of these stated terms and conditions. Please read the following terms and conditions. Your acceptance of these terms and conditions is indicated by your payment for the services.

FulfilNET reserves the right, at its discretion, to change or modify all or any part of these Terms and Conditions at any time. Such changes or modifications shall be effective immediately upon notice published on the [www.yodelaustralia.com.au](http://www.yodelaustralia.com.au) your continued use of the Service constitutes your binding acceptance of these terms and conditions, including any changes or modifications made by FulfilNET as permitted above. If at any time these Terms and Conditions are no longer acceptable to you, you should immediately terminate your subscription to the Service.

### 2. Delegation

You understand that FulfilNET requires the registry key for your domain name in order to publish your website to the Internet if you have Yodel Australia build or makeover your existing website is the Yodel Australia tool. It is your responsibility to provide your registry key to FulfilNET with the information you return in your Welcome Pack. You understand that any delay in providing your registry key to FulfilNET will delay the publication of your website. You also understand that you will be billed for the construction of your website, even if you do not provide your registry key to FulfilNET. You also understand that even if your registry key is provided in a timely manner, there may be a delay in the publication of your website due to latencies in the propagation of domain name information across the Internet. You understand that these propagation latencies are outside of FulfilNET's control and FulfilNET cannot be held accountable for such delays.

### 3. Registration

You must provide accurate, complete, and current registration information and you agree to provide FulfilNET with an update of that information promptly should changes occur. Subscriptions to the Service are available only to individuals who are at least 18 years of age or to incorporated businesses or sole traders or partnerships or trusts or associations owned or operated by individuals who are at least 18 years of age. Your right to use the Service cannot be transferred to any other person or any other entity. You are responsible for all use of your account under any password by any person whether or not authorized by you and for ensuring that all use of your account complies with these terms. Without in any way limiting your obligations under Section 4 below, FulfilNET reserves the right to delete any Web page or Website uploaded, posted or displayed by you or any other user, at any time, without prior notice, for any reason or no reason. FulfilNET may change at any time Key-Words used in a Search Engine Marketing campaign at any time without giving you notice. FulfilNET may terminate, at its own discretion, any registration, including without limitation any or all related information, communications, postings, Web pages or Websites, at any time, without notice, for any reason or no reason, including without limitation for conduct that violates local, state or federal laws or regulations or these Terms of Service, or material that FulfilNET, in its sole discretion believes is harmful to others, the business of FulfilNET or other third party information or service providers. You acknowledge that the Service contains information, software, photographs, graphics, and other material (collectively, the "Content") that is protected by copyright, trademark or other proprietary rights of FulfilNET or third parties. All Content on the Service is copyrighted as a collective work of FulfilNET pursuant to applicable copyright law. You agree to comply with any additional copyright notices, information, or restrictions contained in any Content available on or accessed through the Service. The Content is intended for the use of the registered subscribers of the Service. You may not modify, publish, transmit, transfer or sell, reproduce, create derivative works from, distribute, perform, display, or in any way exploit, any of the Content, in whole or in part, except as otherwise expressly permitted in this Agreement. Content consisting of downloadable software may not be reverse engineered unless specifically authorised by the owner of the software's patent and/or copyright. Except as expressly permitted by the copyright laws, no copying, storage, redistribution or publication of any Content is permitted without the express permission of FulfilNET or the owners of such Content or their authorised persons. You assume all risk and responsibility for determining whether any Content is in the public domain, regardless of any notices which may be posted on such Content. You grant to FulfilNET the right to edit, copy, publish, distribute, translate and otherwise use any Content that you place on the Service, in any medium. You represent and warrant that you are authorised to grant all rights set forth in the preceding sentence. Any information supplied by you upon registration for the Service and certain other information which Yodel™ Australia may collect is subject to FulfilNET's privacy policy. For more information, you can review FulfilNET's privacy policy at [www.yodelaustralia.com.au](http://www.yodelaustralia.com.au)

### 4. User Conduct

You, as a user of the Service, understand that all information, data, text, files, links, software, content, photographs, graphics, images, or other materials and terms of expression (collectively "Information"), whether publicly posted or privately transmitted, are the sole responsibility of the user generating the same. This means that you are responsible and may be held legally liable for all Information that you upload, post or otherwise transmit via Yodel™ Australia. For example, you shall not: (a) transmit upload or post via Yodel™ Australia any Information that is offensive, vulgar, sexually explicit, racial, hateful, discriminatory, unlawful, invasive of another's privacy, exploitative of a minor, identifiable information pertaining to a minor, information or instructions concerning illegal activities, information that is harmful, threatening, abusive, harassing, defamatory, libelous, obscene, or otherwise objectionable; (b) harass, threaten, abuse, defame, embarrass or cause distress or discomfort to another; (c) transmit upload or post via Yodel™ Australia any Information that you are prohibited from transmitting by any law, including without limitation Information that infringes any patent, trademark, trade secret, copyright or other proprietary right; (d) transmit, upload or post any Information that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (e) disrupt the normal flow of Information available on or through Yodel™ Australia or otherwise act in a manner that negatively affects other participants or users, transmit, upload or post hidden pages or images, interfere with or disrupt the functionality of Yodel™ Australia or the Yodel™ Australia servers or networks, or violate any requirements, procedures, policies or regulations of networks connected to Yodel™ Australia, the FulfilNET network, servers, directories, databases and listings; (f) transmit, upload or post any unsolicited advertising, promotional materials, or any other forms of solicitation; (g) intentionally or unintentionally violate any applicable local, state, national or international law or regulation; (h) translate, decompile, reverse engineer, disassemble, modify, copy, alter, merge into other software, exploit, reproduce, duplicate, rent, lease, sell, resell, lend, distribute, remarket or otherwise dispose of Yodel™ Australia, use of Yodel™ Australia, or access to Yodel™ Australia or any part thereof; (i) impersonate in any way, including without limitation by way of forging headers or otherwise manipulating identifiers, any person, entity, leader, FulfilNET or Yodel™ Australia official, operator or host; (j) collect or store personal data about other users in any way or form or solicit or harvest passwords or screen names in an illegal manner or without due regard to privacy laws in force; (k) use your allocated storagespace on Yodel™ Australia as storage for remote loading of Information, or rent, sub-lease or transfer your allocated space on Yodel™ Australia to any third party; or (l) link your Website on Yodel™ Australia to Information not allowed on Yodel™ Australia under these Terms and Conditions of Service. FulfilNET does not control, actively monitor or review the Information uploaded, posted, transmitted or made available on or through Yodel™ Australia and shall not be responsible for any Information and does not guarantee the accuracy, integrity or quality of such Information. You understand that by using Yodel™ Australia, you may be exposed to Information that is offensive, indecent or objectionable.

### 5. Acceptable Use

[www.yodelaustralia.com.au](http://www.yodelaustralia.com.au)



As a user of the Yodel™ Australia Service, you agree to abide by Yodel™ Australia's Acceptable Use Policy, and to be liable for any charges incurred for excess usage of the service, whether caused by yourself, or by others visiting your website, or sending email to your email account(s). Acceptable Use, as defined by Yodel™ Australia is as follows: (a) Up to 1 (one) gigabyte of total data transfer to and from your website, per calendar month. (b) Up to 50 (fifty) megabytes of data stored on the Yodel Australia website server at any one time, whether accessible through your website or not. (c) Up to 250 (two hundred and fifty) megabytes of total data transfer to or from any of your email accounts per calendar month. (d) Up to 20 (twenty) megabytes of data stored on the Yodel™ Australia mail server, for any of your email accounts. Excess usage may be charged, at FulfilNET's discretion, at 14 (fourteen) cents per megabyte transferred, and 1 (one) dollar per megabyte or part thereof, per month stored, over the prescribed limit.

## 6. Information Posted on Yodel™ Australia

By transmitting, uploading, posting or submitting any Information to Yodel™ Australia you (a) declare such Information is not confidential, secret or proprietary information; (b) warrant that no other party has rights to the Information and that your transmission, posting, uploading or submission of the Information to Yodel™ Australia does not violate any copyright or other laws; and (c) irrevocably grant FulfilNET, a worldwide, royalty free, non-exclusive perpetual, worldwide license to use, display, perform, distribute, modify, reproduce and publish the Information in any form anywhere. You must evaluate, and bear the risk associated with, the accuracy, completeness or usefulness of any information available on or through Yodel™ Australia. FulfilNET shall not be obligated to actively monitor, review, or otherwise control in any manner, the Information users post, upload or transmit through Yodel™ Australia. However, FulfilNET reserves the right but not the obligation, in its sole discretion, to refuse or remove any Information available on or through Yodel™ Australia. Without limiting the foregoing, FulfilNET shall have the right to remove any Information that violates these Terms and Conditions of Service or is otherwise objectionable in FulfilNET's sole opinion. The information on Yodel™ Australia may include inappropriate material. By entering or using Yodel™ Australia you undertake full responsibility to: (a) determine whether the information complies with your needs (b) determine whether you have adequate legal rights to store, reproduce or otherwise use the information in any manner contemplated by you and (c) comply with any legal obligations, including without limitation obligations imposed by copyright, trade secret, defamation, indecency, online conduct and acceptable content, privacy and export laws. If you do not agree to these Terms and Conditions, do not enter or use Yodel™ Australia.

## 7. Third Party Links

Some portions of the Yodel™ Australia or users' Websites available on or through Yodel™ Australia may include links to third party sites. These links allow you to exit these Websites and enter third party or other users Websites. These links are provided only as a convenience. The linked Websites are not reviewed, controlled or examined by FulfilNET and FulfilNET is not responsible for the Information, advertising, products, resources or other material, of any linked site or any link contained in a linked site. The inclusion of any link does not imply endorsement of the linked site by FulfilNET. In no event shall FulfilNET be liable, directly or indirectly, to anyone for any damage or loss arising from or occasioned by the creation, use or reliance, on the third parties' Websites or the Information, advertising, products, resources or material accessed through these Websites. FulfilNET reserves the exclusive right in its sole discretion to add, decline or remove, without warning, any icon or link to a Website, from Yodel™ Australia and Yodel™ Australia user amended Websites.

## 8. Fees and Payments

You agree to pay all fees and charges incurred by you or any third party using your Service account (whether or not authorised by you) at the rates in effect for the billing period in which such fees and charges are incurred, including, but not limited to applicable taxes, and charges for any products or services offered for sale through the Service by FulfilNET or by any third party. Your right to use the Service is subject to any limits established by your credit card company if billing is through a credit card. You shall be responsible for obtaining all telephone, telephone access lines, computer equipment and other products or services necessary to access and use the Service. You shall be responsible for all charges associated with accessing and maintaining a connection to the Service (e.g. charges imposed by an Internet access provider, or your local telephone company). Ongoing hosting and Search Engine Marketing fees (including costs associated with FulfilNET maintaining your Google AdWords account) will continue automatically, at the end of your subscription until such time as we receive a cancellation in accordance with our Cancellations Policy. FulfilNET "Yodel Australia" shall provide you with a Google AdWords Pay Per Click (PPC) service, notifying you when tasks are completed via phone and/or email correspondence. The services guarantee to maximise your website's performance in Google Search PPC AdWords for your subscription amount (less GST and account maintenance fees). The subscription amount is the amount agreed to on the order form at the time of sale. You understand that your subscription amount (less GST and account maintenance fees) is divided into equal daily budgets for the term of your subscription. FulfilNET works closely with you to identify realistic goals and timelines and employ the appropriate mix of tactics to maximize your Google AdWords account for your daily budget. If objectives are not met, we will offer to make it right within 30 days or more, based on the factors that relate to the objectives, or offer to terminate our agreement and refund the remaining months of the subscription amount. FulfilNET will not provide you with the login details of your Google AdWords account as FulfilNET will manage this account on your behalf as part of your package. The invoicing schedule for PPC direct search engine fees (including GST) for Google AdWords are equivalent to the agreed upon package as per the Order Form shall be invoiced in advance i.e. at the beginning of the start of subscription term. The payment term is upfront at the start of the subscription term. FulfilNET shall provide PPC reporting to The Client on a permanent monthly basis for the Term of the subscription. All notices will be served in writing and shall be sent by mail, facsimile or electronic mail to the Client hereto at their respective addresses as specified on the order forms. Subscription services and the set up operations required for the same will commence only on the payment of the fee.

## 9. Cancellations

You need to notify FulfilNET that you do not wish to renew your membership before the end of the initial 12 months contract. FulfilNET will automatically renew your subscription at the end of each 12 month term and bill the then-current renewal fee to the same credit card or credit line your original subscription fee was billed to, or to the current credit card we have on our files. You may cancel your FirstSite website account at any time by notifying FulfilNET in writing. If your account is cancelled prior to the end of each annual term, but after your website is built you will not be entitled to a refund of any monies. You are responsible for all charges incurred up to the time the account is terminated, including all annual charges for the year in which termination became effective. FulfilNET reserves the right to change the amount of any fee or charge for the Service or to institute new fees or charges, effective on at least 30 days prior notice. FulfilNET reserves the right, in its sole discretion, to restrict, suspend or terminate your access to all or any part of the Service at any time for any reason without prior notice or liability. FulfilNET may change, suspend or discontinue all or any aspect of the Service at any time, including the availability of any Service feature, database, or content, without prior notice or liability. Websites that have been on hold for over one year and have failed to reply to FulfilNET's notices are not entitled to any refund. This will cover administration and customer service fee provided during the period of website content collection.

## 10. Disclaimer of Warranties

You expressly agree that entering or using of Yodel™ Australia is at your own risk. No warranty, representation, condition, undertaking or term - express or implied, statutory or otherwise - including but not limited to the condition, quality, durability, performance, accuracy, reliability, non-infringement, merchantability, or fitness for a particular purpose or use of Yodel™ Australia is given or assumed by all such warranties, representations, conditions, undertakings and terms are hereby excluded. FulfilNET makes no warranty that Yodel™ Australia will meet your requirements, or that Yodel™ Australia will be uninterrupted, timely, secure, or error free; FulfilNET makes no representations as to the suitability of the information available on or through Yodel™ Australia, including but not limited to user amended sites, for any purpose nor about its legitimacy, legality, validity, accuracy, correctness, reliability, quality, stability, completeness or currency. FulfilNET makes no warranty that a Search Engine

[www.yodelaustralia.com.au](http://www.yodelaustralia.com.au)

Marketing campaign will generate any increase in sales, business activity, profits or any other form of improvement for your business or any other purpose, FulfilNET makes no warranty that a Search Engine Marketing campaign will lead to any clicks to your business or other information. FulfilNET makes no warranty that a Search Engine Marketing campaign will lead to consistent exposure of your business or your key words during your subscription period (including but not limited to, the position your advertisement is placed on a search result page or the frequency and time of day that your advertisement is displayed). All such information on the user-amended sites is provided by the users. The information available on or through Yodel™ Australia user amended

sites is not reviewed, controlled or examined by FulfilNET in any way before it appears on Yodel™ Australia. FulfilNET does not endorse, verify or otherwise certify the contents of any such information. Users are solely responsible for the contents of their websites and their AdWords advertisement content and may be held legally liable or accountable for the contents of their websites (including without limitation in connection with infringement of intellectual property rights of any other party). FulfilNET abides by the guidelines of Google AdWords, key terms or adverts requested by the customer must also abide by these guidelines. The packages are sold on the terms of key terms being a key term and location, hence key terms on their own without a location may require a higher subscription or an increase in the customers current package. FulfilNET is not responsible for the increase of any key terms cost per click, hence if your subscription amount can no longer cater for the key terms, they will be removed from your list of key terms. FulfilNET does not warrant or guarantee: (a) that any information available on or through Yodel™ Australia will be free of infection by viruses, worms, trojan horses or anything else manifesting contaminating or destructive properties; (b) that the information available on or through Yodel™ Australia will not contain adult-oriented material, or material which some individuals may deem objectionable; or (c) that the functions or services performed by FulfilNET will be uninterrupted or error-free or that defects in Yodel™ Australia will be corrected. It is the sole responsibility of the user to isolate software and information, execute anti-contamination software and otherwise take steps to ensure that software or information, if contaminated or infected, will not damage user's information or system.

## 11. Limitation of Liability

In no event shall FulfilNET be liable to any party for any damages, including without limitation any direct, indirect, special, punitive, incidental or consequential damages (including, but not limited to, damages for loss of business profits, business interruption, loss of programs or information, loss of profits or goodwill or loss of use of facilities or equipment), or any other damages arising - in any way, shape or form - out of the availability, use, reliance on, inability to utilise or improper use of Yodel™ Australia even if FulfilNET shall have been advised of the possibility of such damages or is negligent, and regardless of the form of action, whether in contract, tort, or otherwise. Because some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, the above exclusions of incidental and consequential damages may not apply to you. In no event shall FulfilNET be liable to any party for any delays, inaccuracies, errors or omissions with respect to Yodel™ Australia or the information or the transmission or delivery of all or any part thereof, for any damage arising there from or occasioned thereby, or for the results obtained from the use of information available on or through Yodel™ Australia. You expressly agree that FulfilNET shall not be responsible or liable for any loss of data, nor shall FulfilNET be required to return any lost data, resulting from the suspension or deletion of user websites or websites, network or system outages, file corruption or any other reasons. FulfilNET urges you to maintain backup versions of your website's content to guard against losses of any kind. You expressly agree that FulfilNET shall not be liable for any conduct by users of Yodel™ Australia and shall not be responsible or liable for the accuracy, usefulness or availability of any information transmitted, uploaded, posted or made available on or through Yodel Australia. You expressly agree to indemnify and hold harmless FulfilNET, its subsidiaries, affiliates, officers, agents, co-branders and other partners, and its and their respective employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) arising from or in connection with your Information, your use of or connection to Yodel™ Australia, your violation of these Terms and Conditions of Service or your violation of any rights of any third party.

## 12. Debtor Policy

1. Default & Consequences Of Default
  - a. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
  - b. If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all costs of collection.
  - c. Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
  - d. If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount of \$50.00 shall be levied for administration fees which sum shall become immediately due and payable.
  - e. In the event that:
    - I. any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
    - II. the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
    - III. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; then
      1. the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
    - IV. all amounts owing to the Seller shall, whether or not due the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
    - V. The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.
2. Privacy Act 1988
  - a. The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
  - b. The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
    - I. To assess an application by Buyer;
    - II. To notify other credit providers of a default by the Buyer;
    - III. To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
    - IV. To assess the credit worthiness of Buyer and/or Guarantor/s.
  - c. The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
  - d. The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
    - I. provision of Services & Goods;
    - II. marketing of Services and or Goods by the Seller, its agents or distributors in relation to the Services and Goods;
    - III. analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Services/Goods;
    - IV. processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and



- V. enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Services and Goods.
- e. The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:
  - I. to obtain a consumer credit report about the Buyer; and or
  - II. allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

### 13. Miscellaneous

FulfilNET reserves the right in its sole discretion to (a) make improvements, corrections, adaptations, conversions and/or any other change in Yodel™ Australia and to any part thereof and/or to revise or modify these Terms and Conditions of Service; (b) change, limit, terminate, remove or cease to provide at any time, temporarily or permanently, Yodel™ Australia or any part thereof, to all users or any number thereof including without limitation the use of or access to Yodel™ Australia, granted to you or to any other user, at any time, without notice, for any reason or no reason; (c) refrain from publishing on this site and delete or remove from Yodel™ Australia, at its sole discretion, any Web page or Information or material provided for display, posted, uploaded or transmitted by any user or any part thereof; (d) establish a new operating and usage policy for Yodel™ Australia and change it at any time for any reason or no reason; and (e) cancel, change, hold, de-list, introduce different options and features to different users or refrain from publishing FulfilNET numbers or any other details of the users using Yodel™ Australia, at any time. These Terms and Conditions of Service do not grant to you or any other user any license or right in or to any patent, copyright, trademark, trade secret or other proprietary rights of FulfilNET. FulfilNET may revise or replace these Terms and Conditions of Service from time to time. You agree that your use of Yodel™ Australia, beyond a period of 15 days after a notice of such change has been provided on the Yodel™ Australia network or Website for the first time, shall constitute your consent to the new or revised Yodel™ Australia Terms and Conditions of Service. Any reference made in this document to FulfilNET or Yodel™ Australia shall be deemed to have been made to FulfilNET, its suppliers, co-branders and licensors and each of their subsidiaries, successors, assignees, affiliates as well as any company that controls Yodel™ Australia, directly or indirectly, and any other subsidiary of that controlling company.