



WEBSITE TERMS OF USE

Business Terms - February 2012



WEBSITE TERMS OF USE

Business Terms

Version February 2012

Website Terms Of Use Feb12.Docx

From time to time, Nobleheart Pty Limited atf Nobleheart Trust ABN 39 831 754 543 ("Nobleheart"), may make services available via the www.nobleheart.com.au website, such as messaging services and online services ("Nobleheart Website Services"). These Nobleheart Website Services, and the Nobleheart Website, will be collectively referred to as "Nobleheart Website" in these terms.

Your access to and use of Nobleheart Website is subject to these terms and Nobleheart's Privacy Statement ("Terms of Use"). Please read and understand the Terms of Use prior to using the Nobleheart Website.

Unless expressly stated otherwise in these terms, Nobleheart Website is for residents of Australia only.

What you must do

- 1.1 You must use Nobleheart Website in accordance with the Terms of Use.
- 1.2 You may use a security credential ("Customer ID") to access Nobleheart Website. The Customer ID could take the form of a username and password, a digital certificate or another security-related technology. Nobleheart may require you to use a different type of Customer ID to access different parts of Nobleheart Website. The Customer ID may be used only for the purposes of accessing Nobleheart Website and for authorising instructions or requests using the Nobleheart Website services made available from Nobleheart Website. Any other use of your Customer ID is prohibited.
- 1.3 If you are under 18 years of age, and do not have a Nobleheart account, you must obtain a parent/guardian's consent prior to using Nobleheart Website.
- 1.4 If you are using Nobleheart Website on behalf of another person ("Authorising Person"); for example, your employer, or the person you share a house with and in whose name the house's telephone service is registered), you must be authorised to: use Nobleheart Website; and enter into the Terms of Use, on behalf of the Authorising Person.

What you must not do

- 2.1 You must not:
 - use Nobleheart Website for any activities, or post or transmit to or via Nobleheart Website any information or materials, which breach any laws or regulations, infringe a third party's rights or privacy, or are contrary to any relevant standards or codes;
 - use Nobleheart Website in a way, or post to or transmit to or via Nobleheart Website any material, which interferes with other users or defames, harasses, threatens, menaces or offends any person or which inhibits any other user from using or enjoying Nobleheart Website;
 - use Nobleheart Website to send unsolicited commercial or bulk electronic mail messages to anyone;
 - make any fraudulent or speculative enquiries, bookings, reservations or requests using Nobleheart Website;
 - use another's Customer ID or name without permission;
 - provide false information when registering or changing your Nobleheart Website registration details;
 - impersonate another person when using Nobleheart Website;
 - post to or transmit to or via Nobleheart Website any obscene, indecent, inflammatory or pornographic material or material that could give rise to civil or criminal proceedings;

- tamper with, hinder the operation of or make unauthorised modifications to Nobleheart Website;
- knowingly transmit any virus or other disabling feature to or via Nobleheart Website; and
- attempt any of the above acts or permit another person to do any of the above acts.

Third party content

- 3.1 Many of the products and services offered for sale or advertised and much of the information provided via Nobleheart Website are the products, services and information of third parties.
- 3.2 The third party products, services and information are not provided or endorsed by us. Where it is apparent that products, services and information are not provided by us, your legal relationship in respect of those products, services and that information is with the third party supplier.
- 3.3 Nobleheart has not checked the accuracy or completeness of the information or the suitability or quality of the products and services 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 Nobleheart Website. You should check with the third party supplier whether there are additional charges and terms which may apply.
- 3.4 Nobleheart may receive fees and/or commissions from third parties for goods and services of such third parties displayed or made available on Nobleheart Website or accessible through a hyperlink on Nobleheart Website. You acknowledge and consent to us receiving the fees.

Prices and products and services are subject to change

- 4.1 All prices displayed and products and services offered for supply on Nobleheart Website are subject to change without notice. You should check the price of a product or service before placing an order for it.

Security

- 5.1 For security reasons Nobleheart may require you to re-authenticate yourself from time to time, for example after a period of inactivity on the connection between your browser and the Nobleheart Website servers. In addition to the types of loss set out in clauses 8.4 and 8.5 for which Nobleheart is not responsible, Nobleheart is not responsible for any information you may lose if the Nobleheart Website servers terminate your browser session due to prolonged periods of inactivity between your browser and the Nobleheart Website servers.
- 5.2 You must comply with all directions issued by Nobleheart relating to use of your Customer ID and access to Nobleheart Website. Nobleheart is not responsible for providing the computer, hardware, software or any other equipment necessary to access the Internet. You must not send or disclose any part of your Customer ID that is meant to be confidential ("Confidential Component of your Customer ID") (for example, the password component of your Customer ID) to any other person or store it in a manner that would reasonably allow another person or entity to obtain access to it, except as specified in clause 5.3 below. If you choose to use a workplace email address to access Nobleheart Website, you are responsible for ensuring that such use complies with any rules, policies or protocols which apply to the use of the Internet in your workplace.

- 5.3 You must not keep the Confidential Component of your Customer ID in a location where it is capable of being copied or used by any other person or disclose the Confidential Component of your Customer ID to any other person, other than:
- another person authorised by you to access and use Nobleheart Website on your behalf; or
 - another person authorised by the Authorising Person (for example, another employee) to access and use Nobleheart Website on their behalf, in each case provided that the other person ("Authorised Person") agrees to be bound by the Terms of Use.
- 5.4 Nobleheart is entitled to rely on your Customer ID as evidence of your identity and authority for the purposes of Nobleheart Website (including, for example, for the purpose of making payments to Nobleheart using your credit card details, and for the purpose of nominating email addresses or phone numbers to which Nobleheart may send billing and payment information relating to your Nobleheart accounts). You are responsible for all use of Nobleheart Website and your Customer ID where you have not complied with the Terms of Use. Other than by reference to a person's Customer ID, Nobleheart cannot and does not verify that each person who accesses Nobleheart Website is in fact the person they say they are, or acts with the authority of the person whose Customer ID they use.
- 5.5 You must immediately notify Nobleheart if you become aware:
- that the Confidential Component of your Customer ID has been compromised or is known by a third party (other than by an Authorised Person); or
 - of any unauthorised use of your Customer ID.
- In the event that you notify us of either of these things, Nobleheart will take reasonable steps to deactivate the Customer ID and issue you with a new Customer ID within a reasonable time of being so notified. Notice provided by you under this clause does not release you from your responsibilities under the Terms of Use.
- 5.6 Nobleheart will take reasonable steps to secure Nobleheart Website and the systems in our control that are used to access Nobleheart Website. However, the internet is sometimes unreliable and is a difficult medium to secure. Nobleheart does not guarantee the security of Nobleheart Website or the systems (including the internet and your hardware and software) used to access Nobleheart Website, or any information that passes through such systems.

Privacy

- 6.1 Nobleheart may use and provide personal information about you that is collected by Nobleheart on Nobleheart Website. The collection and provision of this information is subject to privacy laws. Nobleheart will comply with the Nobleheart Privacy Statement in dealing with any personal information provided by you via Nobleheart Website.
- 6.2 Nobleheart offer you the ability to access personal information under the Terms of Use, on the strict condition that you only do so for the sole purpose of accessing your own personal information or accessing personal information of the Authorising Person, as authorised by the Authorising Person.
- 6.3 To avoid doubt:
- by authorising a person to use your Customer ID under clause 5.3, you authorise Nobleheart to disclose to that person your personal information; and
 - by requesting via Nobleheart Website that Nobleheart send billing and payment information to a person's email address or phone number, you authorise Nobleheart to disclose to that person your personal information, in each case including information related to your Nobleheart billings and payments.

Online Bills

- 7.1 It is your responsibility to regularly check the Nobleheart Website for your delivered Nobleheart online bills, which will generally be sent in accordance with normal billing cycles.
- 7.2 Nobleheart is not obliged to notify you when a new bill is made available on the Nobleheart Website. As a courtesy, however, Nobleheart will attempt to give you notice that your bill is available for viewing online (for example, by SMS or email). It is your responsibility to contact Nobleheart if you do not receive bill notices.
- 7.2 Once your bill is delivered to the Nobleheart Website, your bill is payable by you by the due date specified in the bill, whether or not you receive, open or read any emails from Nobleheart regarding online billing and whether or not you access or view your bill on the Nobleheart Website.
- 7.4 If you request via Nobleheart Website that Nobleheart send billing and payment information to a person's email address or phone number, you nominate that person as your agent for the purpose of receiving Nobleheart billing and payment information.
- 7.5 The presentation of an online bill may be affected by the settings or quality of the computer equipment and including software you use to view the online bill. Nobleheart cannot control this, and Nobleheart do not guarantee that the presentation of the online bill you view will not be distorted.

Our liability to you

- 8.1 Given the nature of telecommunication systems, particularly the internet, Nobleheart cannot guarantee that Nobleheart Website will always be available or fault or virus free.
- 8.2 The terms that apply to the supply of Nobleheart Website are those that are expressly set out in this document and those implied by consumer protection laws to the supply of this service that are unable to be excluded. No other terms apply.
- 8.3 Subject to clauses 8.4 to 8.7, Nobleheart accept our liability to you for breach of contract or negligence under principles applied by the courts.
- 8.4 Nobleheart is not responsible for: loss caused by factors which could reasonably be considered to be outside our control, such as faults in third party equipment; loss of data; or loss of profits or revenue; and any loss to the extent that it is caused by you, for example, through your negligence or breach of contract.
- 8.5 The messaging services available via Nobleheart Website are provided to you for the sole purpose of personal, domestic or household use, and not business or commercial use. Nobleheart do not accept liability for losses that result from the use of the messaging services in connection with the conduct of a business. However, Nobleheart will accept that liability if it cannot be excluded under legislation.
- 8.6 You must take reasonable steps to minimise the extent of the loss you may suffer as a result of Nobleheart Website.
- 8.7 You must notify us in writing of your loss as soon as is reasonably possible.

Your liability to us

- 9.1 Subject to clause 9.2, you are liable to us for breach of contract or negligence under the principles applied by the courts.
- 9.2 You are not liable for any loss to the extent that it is caused by us, for example, through our negligence or breach of contract.

Change of the Terms of Use

- 10.1 Nobleheart may change the Terms of Use by obtaining your consent or giving notice to you in accordance with this clause 10 and clause 12.2. The period of notice Nobleheart will give you depends on the type of change.
- 10.2 If the change will benefit you, Nobleheart can make the change immediately and are not required to notify you prior to the change.
- 10.3 If the change has a detrimental impact on you but is: required by law; necessary for security reasons; to prevent fraud; or for technical or infrastructure reasons, Nobleheart will try to give you 3 days prior notice of the change. Sometimes, due to the nature of the change, Nobleheart may not be able to give you three days prior notice but Nobleheart will give you as much notice as Nobleheart reasonably can. Notice may be provided to you in the manner set out in clause 12.2.
- 10.4 If Nobleheart reasonably considers that the change will have a significant detrimental impact on the majority of our customers using Nobleheart Website or on a specific class of customers who use Nobleheart Website in a particular way (and you are one of this class), and the change is not of a type described under clause 10.3, Nobleheart will give you at least 30 days' prior notice of the change.
- 10.5 If the change is not of a type described in clause 10.2, 10.3 or 10.4, Nobleheart will give you at least 10 days' prior notice of the change.
- 10.6 If Nobleheart changes the Terms of Use under this clause 10, you may choose to stop using Nobleheart Website. Any use of Nobleheart Website after a change of the Terms of Use takes effect will be governed by the varied Terms of Use.
- 10.7 Nobleheart does not have to notify you if Nobleheart make changes to the Nobleheart Website.

Termination

- 11.1 You may stop using Nobleheart Website at any time, for any reason.
- 11.2 Nobleheart may stop making Nobleheart Website, or a part of Nobleheart Website, available with 30 days' prior notice. Notice may be given in the manner set out in clause 12.2.
- 11.3 Nobleheart may immediately suspend, terminate or limit your access to Nobleheart Website if:
 - you are in breach of the Terms of Use and:
 - (i) the breach is something which cannot be remedied; or
 - (ii) you fail to remedy the breach within 30 days' of our written notice to you of that breach;or
 - there is an emergency.
- 11.4 If you enter a contract for the supply of goods and/or services via Nobleheart Website, that contract will not be affected if Nobleheart stops making Nobleheart Website or part of Nobleheart Website available to you, unless the goods and/or services are supplied via Nobleheart Website.

Communication with you

- 12.1 As part of some Nobleheart Website services available via Nobleheart Website, Nobleheart may communicate with you via email, or an SMS, or both, to an email address or a mobile phone number nominated by you. When Nobleheart do this (except as set out in clause 12.2), the following will apply:
 - you are responsible for ensuring that your contact details for the online service/s are current, your email service or mobile phone account is operational and that you check your emails or mobile phone regularly for messages; and

- you must notify Nobleheart as soon as possible of any changes to your contact details for the online services using the online method provided by Nobleheart.
- 12.2 Despite clause 12.1, for the purposes of clauses 10 and 11.2, Nobleheart will give you notice by posting the content of the notice to Nobleheart Website.
- 12.3 From time to time, in addition to giving you notice in the way required of us by clause 12.1 or 12.2, Nobleheart may choose to also give you notice by another method. If Nobleheart give you such additional notice, you should not presume that Nobleheart will do this every time.

Use of your information and material

- 13.1 When you send us any feedback, suggestions, ideas or other materials in relation to or via Nobleheart Website, you agree that Nobleheart 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.

Goods and Services Tax

- 14.1 If GST is imposed on any supply made by us through Nobleheart Website, 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 the Terms of Use. Any amount payable by you is payable on demand by us, whether such demand is made by an invoice or otherwise.

General matters

- 15.1 This agreement is governed by the law in force in the State of New South Wales, Australia, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia and courts of appeal from them for determining any dispute concerning this agreement.
- 15.2 If any of the Terms of Use are invalid or unenforceable, it will be struck out and the remaining terms will remain in force.
- 15.3 If Nobleheart do not act in relation to a breach by you of the Terms of Use, this does not waive our right to act with respect to subsequent or similar breaches. If you do not act in relation to a breach by us of the Terms of Use, this does not waive your right to act with respect to subsequent or similar breaches.
- 15.4 You may not assign or transfer your rights or benefits under the Terms of Use to any other person or entity without our prior consent, which Nobleheart will not unreasonably withhold.

Copyright

- 16.1 All copyright and other intellectual property rights subsisting in the Nobleheart Website and content on it are owned or licensed by us and protected by the laws of Australia. You are authorised to view the Nobleheart Website and its contents using your web browser. You must not otherwise reproduce, transmit, communicate, adapt, distribute, sell, modify or publish or otherwise use any of the material on the Nobleheart Website except as permitted by statute or with our prior written consent.

Trade mark

17.1 The Nobleheart Website includes registered trade marks and trade marks which are the subject of pending applications or which are otherwise protected by law including, but not limited to the word NOBLEHEART and the Nobleheart logo. You may not use our trade marks or the names 'Nobleheart Pty Limited', 'Nobleheart Trust' or the name of any of our related entities without our prior written consent.

Links to third party sites

18.1 The Nobleheart Website may contain links to third party websites. The links are provided solely for your convenience and do not indicate, expressly or impliedly, any endorsement by us of the sites or the information, products or services provided at those sites. You access those sites and use the information, products and services made available at those sites solely at your own risk.

Linking to Nobleheart Website

19.1 Nobleheart welcomes links to the Nobleheart Website in accordance with the following terms and conditions:

- You may only create a link to the front page of the Nobleheart Website, for example, www.nobleheart.com.au. You must not create any links to a specific webpage within the Nobleheart Website, a practice often known as "deep linking".
- You must not create the link or use it in any way to represent or imply falsely, deceptively or confusingly that Nobleheart sponsor, endorse or are affiliated with or related to any third party (including you) or product; or that you are providing, or are the source of, any goods or services provided by us.
- You use the link to the Nobleheart Website at your own risk. Except to the extent that any law imposes liability on us which cannot be excluded, Nobleheart will not be liable for any loss or damage from any cause (including negligence) to your website and system, or to people linking to us from your website(s), caused by or in connection with a link to the Nobleheart Website. Any such loss or damage will be your responsibility.
- Your website, and any material on it, must conform to accepted standards of public decency and good taste. It must not expose us to any risk of liability under any criminal or civil law, or liability arising from the infringement of a third party's rights. Neither you nor the material on your website may disparage us or our goods or services.
- You agree to indemnify us and keep us indemnified against all actions, claims, costs, demands, damages or liability arising in any manner from a breach by you of these terms and conditions.
- Your website must not frame a webpage of the Nobleheart Website, and when a link to the Nobleheart Website created in accordance with terms of this Notice is clicked by a user: the front page of the Nobleheart Website must be shown in full without distortion; and the URL of the front page of the Nobleheart Website (e.g. www.nobleheart.com.au) must be displayed in the address bar of the user's web browser.