



bitstream

TERMS & CONDITIONS

Terms and Conditions

By using Bitstream's Internet services, you agree that you have read, understood and are bound by

1. Bitstream's General terms and conditions
2. Your use of the Internet services indicates your acceptance of the terms and conditions which constitutes a valid and binding agreement between yourself (hereinafter referred to as the Customer) and Bitstream.

1. Definitions and Interpretations

Unless the context clearly indicates the contrary, the following words bear the meaning ascribed to them below:

- 1.1 Agreement shall mean the application form to the services, as well as the terms and conditions referred to above.
- 1.2 Application form shall mean the document in terms of which you apply for the service and provide personal and other Information to us.
- 1.3 Suspension means the disconnection, by electronic or other means, of the service, thereby preventing the unauthorized use thereof.
- 1.4 Internet services shall mean the following, (but not limited to):
 - 1.4.1 Business Premium offer shall mean unlimited internet access, CPE with Wi-Fi Router.
 - 1.4.2 Home Premium offer shall mean unlimited internet access, CPE with Wi-Fi Router.
 - 1.4.3 Dedicated offer shall mean high speed unlimited internet access only, with included CPE. 1.4.4 and any other Internet Service that will be made available to Bitstream's customers
- 1.5 Customer shall mean the applicant to this Service.
- 1.6 Customer Premises Equipment (CPE) means the hardware which is required to access the service.
- 1.7 Effective date shall mean the date on which the application for the service is approved.
- 1.8 Initial period shall mean the 12-month subscription period, this will commence on the effective date.
- 1.9 Subscription charges mean the monthly subscription fee paid by you to Bitstream in consideration for your use of the service.
- 1.10 Bitstream shall mean Bitstream Internet Solutions Pty Ltd

2. Duration and Termination

- 2.1 The provisioning of the Service to the Customer is subject to approval by Bitstream.
- 2.2 This Agreement shall endure for the following initial subscription periods as per application form the effective date and shall remain in force for the duration of the Initial Period, where after it shall automatically renew for the exact duration as the initial period (indicated above) unless the Customer gives three months prior notice or Bitstream gives 6 (six) months written notice.
- 2.3 If the Customer terminates the Agreement at any time before the end of the initial period, for whatsoever reason, Bitstream shall charge the Customer the remainder of the contractual period's subscription, which shall become immediately due and payable on the date of termination as a liquidated claim. Payment of such liquidated claim shall be arranged against the Customers bank account via a debit adjustment.
- 2.4 If the Customer upgrades his/her service it shall not be liable for the payment of any termination fee. The Agreement effective date for the agreement upgrades will be the same as the initial date of the initial agreement, which means that upgrades fall under the same conditions as the initial agreement when it comes to agreement termination and price changes. The upgraded services will be billed from the day these services become effective.

3. Price and Payment

- 3.1 Payments are due for the relevant part of the month during which the service started, the payments due for the next full month, plus the set-up fees. Each subsequent invoice will include the payment due for the month succeeding the immediately following month. The Customer undertakes to pay to Bitstream the prescribed rental charge monthly in advance from the date the service is activated, which charge shall be subject to adjustments from time to time. The account rendered by Bitstream to the Customer is prima facie proof of the amount due to Bitstream by the Customer.
- 3.2 In the event of any interruptions to the service for whatsoever reason, such interruption will not relieve the Customer from paying any amount overdue and payable under this clause.
- 3.3 Bitstream shall have the right without prejudice to any other right it may have in law, at any time and without notice to the Customer, to suspend the Services or part thereof in the event of a non-payment of any amount due by the Customer to Bitstream. Bitstream shall not be liable to the Customer for any losses and/or damages incurred by the Customer, as a result of such suspension. Should Bitstream interrupt the service to the Customer in terms of this provision, Bitstream shall be obliged to re-establish the service as soon as the Customer pays the outstanding amount.
- 3.4 Bitstream's subscription fees are subject to change from time to time in Bitstream's sole discretion. In the event of a change in subscription fees, Bitstream customers will be notified through the various communication media.
- 3.5 If the Customer request to downgrade the service, the Customer shall pay the prescribed charges for the migration of the service. Notwithstanding the aforementioned, the Customer shall in addition be liable for a termination fee equal to the remaining months' subscription of the subscription period.
- 3.6 Should the Customer change location, for example as a result of moving from one premises to another, the Customer shall remain liable for all charges in respect of the service at the old premises until such time as the Customer has formally, and in writing, terminated with Bitstream the services at the old location. In the event that the Service is not available at the location where the Customer has relocated, the Customer shall continue to be liable under the provisions of this Agreement. Notwithstanding the aforementioned, in the event that the Customer terminates the Agreement as a result of relocation, the provisions of clause 2 above shall apply.

4. Bitstream's Obligations

- 4.1 Bitstream will deliver and install the required Equipment to the Customer. The Customer shall choose the domicilium citandi ex executandi the address as given in the application form, or any other address of which the Customer shall notify Bitstream in writing, provided that such address is a recognized physical address.
- 4.2 Shall provide to the Customer the internet connectivity for the applicable Internet service selected by the Customer in the application form.
- 4.3 Make the Bitstream customer centre available to the Customer at all times.
- 4.4 Collect the subscription charges from the Customer.

5. Customer's Obligations

The Customer is required to ensure that the Equipment that the Customer intends to use in order to receive the service is compatible with Bitstream's equipment specifications. Notwithstanding the aforementioned, Bitstream shall not be liable to the Customer for whatsoever reasons, in the event that the Customer utilises the Service and the Equipment does not conform to Bitstream's specifications.

6. Usage Policy

6.1 The Customer shall ensure that it will only use the Internet Services for purposes:

- 6.1.1 That is lawful
- 6.1.2 For which it was designed

6.2 The Customer shall ensure that it does not use the Internet Service, in a way that is:

- 6.2.1 Harmful, obscene, discriminatory, fraudulent or illegal
- 6.2.2 Constitutes hate speech, incitement to commit criminal acts, an invasion of privacy or infringes copyright or other intellectual property
- 6.2.3 Spreads viruses or other computer or communication software, programs, code or files which impede or destroy the functionality of any computer or communications software or equipment
- 6.2.4 Interferes with any third party's use of the Internet services
- 6.2.5 Transmits unsolicited bulk messages (spam)
- 6.2.6 In any way, which in the opinion of Bitstream, is or is likely to be detrimental to the provisioning of the Service, the Customer or any other Bitstream Customer.
- 6.2.7 Otherwise breaches the terms and conditions of this Agreement or Bitstream's general terms and conditions.
- 6.2.8 In any unlawful manner, in contravention of any legislation, laws, license or third party rights.

6.3 Notwithstanding the aforementioned, the Customer shall not use the service in any manner that interferes with Bitstream's ability to provide the service to other customers or interferes with the quality and/or availability of the network.

Bitstream reserves the right to apply network traffic engineering policies on any designated service to manage fair and high-quality access for all our customers.

Bitstream standard shaping policy:

The standard shaping takes place during business hours from 08h00 to 18h00 weekdays (Mon-Fri) only. This only applies to specific packages/products. Bitstream shape Peer to Peer Traffic and Bulk Transfer Traffic types. Peer-to-peer computing or networking is a distributed application architecture that partitions tasks or workloads between peers, such as the most commonly, "bittorrent downloads". Bulk transfer is a method for transferring huge amounts of data from one device to another, or to multiple devices, at the same time on different networks. Windows updates and application file downloads are some of the traffic types concerned with Bulk transfer.

7. Equipment

7.1 Upon the delivery and/or installation of the Equipment, the risk or responsibility of connecting with the Equipment shall pass to the Customer. Bitstream shall not be responsible to replace and/or repair the Equipment in the event of general damages such as theft, loss destruction to the Equipment whether by Customer's negligence or otherwise. In the event of the above-mentioned occurring the Customer will remain liable to Bitstream under its obligations for the remainder of the subscription period. In the event of general damages such as theft, destruction or loss to the Equipment the Customer may be released from its obligations under this Agreement by paying the full price of the Equipment. The Customer shall ensure that it has the requisite insurance to cover at his or her own cost.

7.2 In the event that the equipment is damaged as a result of forced majeure limited to lightning and floods, Bitstream will replace such Equipment and Customer will be billed.

7.3 It is the Customers responsibility to ensure that it inspects all Equipment upon deliver and endorse the delivery note in the event of any missing or damaged Equipment.

7.4 It is the Customers responsibility to ensure that it has the requisite insurance to cover such Equipment at its own premises and at its cost.

7.5 Notwithstanding and in addition to the aforementioned, all rights of ownership in CPE or Equipment that is leased from Bitstream in respect of the Service shall vest exclusively in Bitstream.

7.6 Bitstream reserves the right to impose abortive maintenance charges in respect of any callout made by a technician and where such a fault is caused by either the Customer's telecommunication- or computer equipment connected to Bitstream's line.

7.7 In the event that Customer purchases their own modem and not supplied by Bitstream, Bitstream's technician will not be requested to attend to any configurations on such a modem.

8. Disclaimers

It is an express condition of this Agreement that Bitstream does not guarantee that the Service is:

- 8.1 Free of errors or interruptions
- 8.2 Will conform to the Customers service level requirements
- 8.3 Is always secure and reliable
- 8.4 The provision of Bitstream Internet service is subject to network availability, distance, line of sight and mounting area.
- 8.5 No guarantees are provided on the availability of throughput.

9. Limitation and Liability

9.1 The Customer subscribes to and uses the Service at its own risk
9.2 Bitstream shall not be liable to the Customer or any third party, and the Customer shall hold Bitstream harmless against, any damages suffered by the Customer or the third party howsoever arising from the Customers subscription to or the use of the Internet Service, including (without any limitation) any damages suffered by the Customer due to:

- 9.2.1 Any interruption or error in the Internet Service, or
- 9.2.2 Adverse weather conditions, civil war, strike, civil commotion, riot, blockade, sanctions, act of government or any authority, or other compliance with governmental orders, demands or regulations
- 9.2.3 The unauthorized use of the Service by any third party as a result of the access of the Customers password and/or web portal.

10. Assignment

The Customer shall not cede, assign, transfer, encumber or delegate any of its rights or obligations in terms of this Agreement to any third party without Bitstream's prior written consent.

11. Notices and Domicilium

11.1 For all intents and purposes herein, the parties do hereby choose their domicilium citandi ex executandi as follows:

P.O Box 2699
Walvis Bay
Namibia

ii) Customer - The address given in under address in the application form.

12. Remedies available to Customer

In the event of incorrect billing, or other disputes or the provision of services by Bitstream, customers are entitled to register a dispute over the affected portion of the account by reporting it to accounts@bitstream.com.na.

13. Jurisdiction of the Magistrate's Court & Legal Costs

Notwithstanding any amount in dispute, the customer hereby consents to the jurisdiction of the Magistrate's Court to determine any action or proceeding in terms of section 45 of the Magistrate's Court Act No.32 of 1944. The customer further agrees that should it become necessary for Bitstream to institute action against the customer, the customer agrees to pay all legal costs on a scale as between attorney and own client

14. Whole agreement

The parties agree that this agreement constitutes the whole agreement between the parties in relation to the subject matter thereof and no party shall accordingly be bound by any undertaking, representation or warranty not recorded therein.