

# MYOB Affiliate Program

## Terms and Conditions

### **OVERVIEW**

These terms and conditions (**Terms**) apply to your participation in the MYOB Affiliate Program. When you complete an application to become an Affiliate, you agree to be bound by these Terms.

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Read these Terms carefully as they outline your legal rights and obligations.

Words that are capitalised have defined meanings. You can find a list of defined words and their meanings in the Glossary at the end of this document.

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We may update these Terms from time to time. Section 11 describes how we will notify you about any changes we make to these Terms, and what rights you have if we make changes.

#### **1. Applying to become an Affiliate**

- 1.1 You can apply to become an Affiliate by registering for an account with [Impact.com](https://www.impact.com) (our “**Affiliate Platform**”), following the prompts and providing any information we reasonably request from you.
- 1.2 We will review your application, and carry out any necessary identity and verification checks. We will notify you in writing if you have been accepted as an Affiliate.
- 1.3 You must be at least 18 years of age to join our Affiliate Program.

#### **2. Affiliate Link**

- 2.1 If you are accepted as an Affiliate, we will provide you with a unique Affiliate Link, which you can place on your social media site(s) or promote through other channels. You must copy the HTML code in your Affiliate Link exactly and not alter it in any way.
- 2.2 We may modify the Affiliate Link from time to time and will notify you if we do so.

#### **3. Commission Fee**

- 3.1 As an Affiliate, you may be entitled to a Commission Fee if a New or Returning MYOB Customer clicks on your Affiliate Link and signs up for a:
  - paid subscription; or
  - free trial,for an Eligible MYOB Product via [our website](#) within 20 days of their initial click (subject to section 3.2 below).
- 3.2 You will not be entitled to a Commission Fee:
  - for duplicate transactions;
  - for subsequent purchase(s) made by the same customer;

- where a customer:
    - clicks on an Affiliate Link promoted by another Affiliate;
    - clicks on an advertisement we paid for, such as a Google Ad or Microsoft Ad; or
    - clears tracking cookies;
 before completing their transaction;
  - where you participate in another referral program we operate, and are entitled to receive a commission payment or rebate under that referral program for the same transaction;
  - where the transaction is fraudulent;
  - where the transaction is obtained by misuse of your Affiliate Link, or a breach of section 6.2 or sections 7—10;
  - where the customer fails to provide valid payment details or a failed, dishonoured or invalid payment notification was returned to MYOB;
  - where the transaction is made after your agreement with us is terminated; or
  - where payment to you is prohibited under any Applicable Law.
- 3.3 When you log into the Affiliate Platform, you can access reports that describe any Commissions Fees we owe you.
- 3.4 Any Commission Fees you are entitled to will be paid within 75 days of the end of the relevant month.
- 3.5 Commission Fees will be paid in Australian Dollars into the bank account listed in your profile on the Affiliate Platform. It is your responsibility to ensure that we have your up-to-date bank account details. You must also provide us with any tax information we request from you.
- 3.6 You will be responsible for any bank fees or transaction fees (including any foreign transaction fees). You will bear the risk of any fluctuations in the exchange rate if for any reason your Commission Fees are converted into a foreign currency.
- 3.7 Any amounts you owe to us will be net settled against the Commission Fees we owe you.
- 3.8 If you wish to dispute payment of Commission Fees or any amount shown in a report or tax invoice generated by the Affiliate Platform, you must notify us in writing, setting out reasons for the dispute. Both parties must use reasonable efforts to promptly resolve the dispute.

#### 4. **Taxes**

- 4.1 Any payments made in connection with the Affiliate Program will be exclusive of GST, unless otherwise stated.
- 4.2 MYOB is registered for GST. As an Affiliate, you represent and warrant that, if you are required under Applicable Law to be registered for GST, then you are registered for GST and will promptly notify us if you cease to be registered for GST.
- 4.3 Where any payment is made in connection with the Affiliate Program and that sum is subject to withholding or deduction on the account of taxes, then that payment will be reduced by the amount of the required tax and the tax will be paid to the relevant tax authority.
- 4.4 Each party is responsible for taxes imposed in respect of its income in connection with the Affiliate Program.

## 5. **Special offers**

We will make special offers and discounts available from time to time that you can promote to prospective MYOB customers via your social media site(s) or other channels. Log in to the Affiliate Platform to view our latest offers.

## 6. **Your responsibilities**

6.1 You must refer any customer enquiries to the MYOB Support team. Customers can contact our Support team using the contact information set out on our [website](#). Support is also available via our [Help Centre](#), [Community forum](#) or online chat.

6.2 Without limiting your obligations under section 7, as an Affiliate, you must:

- make any necessary disclosures to prospective customers which are required under Applicable Law about the Commission Fees you are entitled to earn from us;
- not breach any Applicable Law regarding secret commissions or referral selling;
- not purchase MYOB products through your Affiliate Link for your own use;
- not transmit unsolicited emails or engage in "spamming" to promote MYOB products;
- not use pay per click search engine advertising without our prior written approval;
- not bid for advertisements using Prohibited Paid Search Terms;
- not mask your Affiliate Link or use iframes or automatic pop ups to re-direct prospective customers to our website;
- not use robots, spiders, scripts or other artificial means to make it appear like an individual, real live person has completed a transaction;
- not misrepresent or embellish your relationship with us (including by expressing or implying that we support, sponsor or endorse you, or contribute money to any charity or other cause, unless you are permitted to make those claims in accordance with another agreement we have signed with you);
- not tarnish our brand or reputation;
- not make claims about our products that are false or misleading;
- comply with any branding guidelines we publish and provide to you;
- comply with any relevant social media platform paid partnership guidelines (such as [Meta's Branded Content Policies](#) or [Tik Tok's Branded Content Policy](#));
- not infringe our rights or the rights of any third party, including Intellectual Property Rights; and
- keep your username and password for the Affiliate Platform secure and confidential and not share it with any other person.

## 7. **Compliance with Law**

Each party must:

- comply with all Applicable Law in the performance of its obligations in connection with these Terms; and
- not do anything that would cause the other party to breach Applicable Law.

## 8. **Licence to use our Trade Marks**

- 8.1 We grant you, as an Affiliate, a limited, revocable, non-exclusive, non-transferable, royalty-free licence for the term of this agreement to use, display and publish our Trade Marks solely in connection with promoting your Affiliate Link.
- 8.2 Nothing in this agreement gives you any right, title or interest in our Trade Marks or associated goodwill. You acknowledge and agree that, as between us and you, we are the sole owner of our Trade Marks. You will not contest or otherwise challenge, or assist or encourage any third party to contest or challenge, the validity of our MYOB Trade Marks.
- 8.3 You agree that you will not use our Trade Marks in any manner that might tarnish, disparage, or reflect adversely on us or our products.
- 8.4 The look and feel of our website, including all page headers, custom graphics, button icons, and scripts, is our trade dress and may not be copied, imitated or used, in whole or in part, without our prior written approval.
- 8.5 Upon termination or expiry of this agreement, you must immediately cease all use of our Trade Marks.

## 9. **Confidentiality**

- 9.1 Each party must take reasonable steps to secure and keep secure any Confidential Information belonging to the other party which is in its possession, custody or control and must not disclose it to any third party except where permitted under these Terms.
- 9.2 Section 9.1 does not apply to Confidential Information which a party is required to disclose under Applicable Law, pursuant to any order, direction or request made by any court of competent jurisdiction, regulatory body or government agency, or under the rules of a recognised stock exchange.

## 10. **Privacy**

- 10.1 Without limiting its obligations under section 7, each party must:
  - comply with the Privacy Act and the Australian Privacy Principles as if it was bound to do so; and
  - obtain all necessary consents and provide all necessary notices required under Applicable Law in relation to any Personal Information it supplies to the other party in connection with the MYOB Affiliate Program.
- 10.2 We collect, hold, use and disclose Personal Information in accordance with these Terms, our [Privacy Policy](#) and Applicable Law.

## 11. **Changes to Terms**

- 11.1 We may change these Terms by giving you at least 30 days written notice.
- 11.2 If we make changes under section 11.1, you have a right to terminate your participation in the MYOB Affiliate Program before those changes take effect.
- 11.3 If changes are made to Commission Fees, any Commission Fees you earned prior to the effective date of the change will be paid based on the rate that was in effect when those Commission Fees were earned.
- 11.4 We will act reasonably in exercising our right to make changes to these Terms.
- 11.5 You will be asked to accept updated Terms via our Affiliate Platform.

## 12. **Term**

These Terms will apply for as long as you participate in the MYOB Affiliate Program.

## 13. **Termination**

13.1 You may terminate this agreement at any time, for any reason.

13.2 We may terminate this agreement by giving you at least 30 days notice in writing.

13.3 Without limiting any other rights a party has, a party may terminate this agreement immediately if the other party:

- is placed into administration, receivership or liquidation, is unable to pay its debts when they fall due or is declared bankrupt;
- fails to remedy a material breach within 14 days of being put on notice of the breach; or
- commits a material breach that is not capable of remedy.

13.4 Termination of this agreement for whatever cause will be without prejudice to any rights or obligations that have accrued and are owing prior to termination, including payments of money.

13.5 Without limiting section 13.4, the following sections survive termination of this agreement: sections 3—4, section 8.5, section 9 and sections 15—17.

## 14. **Warranties**

Each party represents and warrants that:

- it has the right, power and authority to enter into this agreement, to grant the rights granted herein and to perform its obligations hereunder;
- its execution of this agreement, grant of rights and performance of obligations will not constitute a breach of any other agreement to which it is a party;
- it will comply with all Applicable Law in the performance of its obligations under this agreement; and
- it will not do anything that would cause the other party to breach Applicable Law.

## 15. **Indemnities**

15.1 Subject to sections 15.2—15.3, a party (the “**Indemnifying Party**”) must at all times indemnify the other party (the “**Indemnified Party**”) from and against any Loss or Claim which is incurred by the Indemnified Party arising from a breach of these Terms by the Indemnifying Party or by the unlawful or negligent act or omission or wilful misconduct of the Indemnifying Party in connection with this agreement.

15.2 The Indemnified Party must use reasonable efforts to mitigate the amount of any Loss or Claim for which it is entitled to seek indemnification under clause 15.1 and the Indemnifying Party will not be required to make any payment to the Indemnified Party in respect of such Loss or Claim to the extent that the Indemnified Party fails to comply with its obligations under this section 15.2.

15.3 The amount of any Loss or Claim which the Indemnified Party is entitled to seek indemnification for under clause 15.1 will be reduced proportionally to the extent that such Loss or Claim was caused or contributed to by a breach of these Terms by the Indemnified Party or by the unlawful or negligent act or omission or wilful misconduct of the Indemnified Party in connection with these Terms.

## 16. **Limitation on Liability**

- 16.1 Subject to sections 16.2 and 16.3, the maximum aggregate liability of a party to the other party arising under or in connection with these Terms and the MYOB Affiliate Program, whether in contract (including by way of any indemnity), tort (including negligence), equity or otherwise will be limited to the sum of any Commission Fees paid or payable by MYOB to you (as an Affiliate) in the 12 months preceding the date the claim arose.
- 16.2 The maximum aggregate liability of a party to the other party arising under or in connection with:
- your breach of section 8;
  - either party's breach of section 7 or sections 9 – 10;
- whether in contract, tort (including negligence), equity, breach of statutory duty, pre-contract or other representations (other than fraudulent misrepresentations) or otherwise (including by way of any indemnity) will be limited to 5 times the sum of any Commission Fees paid or payable by MYOB to you (as an Affiliate) in the 12 months preceding the date the claim arose.
- 16.3 Nothing in these Terms will limit or exclude any liability that cannot be excluded under Applicable Law.

## 17. **General**

- 17.1 Any notice must be in writing. We will send you notices via the Affiliate Platform or via email to the email address listed in your Affiliate Platform profile. It is your responsibility to ensure that we have your up-to-date contact details in the Affiliate Platform. You can send notices via email to us at [success@myob.com](mailto:success@myob.com), as long as you copy [legal@myob.com](mailto:legal@myob.com).
- 17.2 This agreement is intended as a commercial contract and is not intended to create any other relationship between us and you (including that of principal and agent, employer and employee, joint venture or partnership).
- 17.3 This agreement is the entire agreement and understanding between the parties in relation to its subject matter and supersedes any prior written agreements between the parties.
- 17.4 If anything in this Agreement is unenforceable, illegal or void, it is severed, and the rest of the Agreement remains in force.
- 17.5 If a party does not insist on strict performance of any part of these Terms, that waiver will not be deemed to be a waiver of a subsequent breach of these Terms.
- 17.6 This agreement is personal to the parties and must not be assigned without the prior written agreement of both parties, provided however that either party may assign this agreement to any related body corporate or in the event of merger, reorganisation, sale of all or substantially all of its assets or change of control.
- 17.7 This agreement is governed by the law in force in the state of Victoria, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of courts of Victoria, Australia, and any courts which have jurisdiction to hear appeals from any of those courts.

## 18. **Glossary**

The following expressions have the following meaning:

- **Affiliate** means any party, accepted by us, to participate in the MYOB Affiliate Program.

- **Affiliate Link** means a unique link which, when clicked, will place a tracking cookie into the user's browser and allow us to keep track of any subscription they purchase or trial for an Eligible MYOB Product.
- **Applicable Law** means all laws, rules and regulations in force from time to time in Australia.
- **Commission Fee** means the relevant commission fee described on our [website](#);
- **Confidential Information** means, in respect of a party, information belonging or relating to that party that is submitted or disclosed by that party to the other party in connection with the MYOB Affiliate Program that is not generally available to the public (other than by reason of a breach of these Terms by the other party) and: (i) at the time of disclosure, is identified by the first party as being confidential; or (ii) which the other party knows, or ought reasonably to be expected to know, is confidential to that first party.
- **Eligible MYOB Products** means:
  - MYOB Business Pro;
  - MYOB Business Lite;
  - MYOB Business Payroll Only;
  - MYOB AccountRight Premier; and
  - MYOB AccountRight Plus.
- **Intellectual Property Rights** means all present and future intellectual property rights, including patents, copyright, designs, Trade Marks, know how and moral rights, anywhere in the world.
- **Loss or Claim** means any loss, liability, claim, action, proceeding, damage, compensation, cost or expense (including all reasonable legal costs and expenses), including liability in tort.
- **New or Returning MYOB Customer** means a business in Australia that has:
  - not previously had, and does not currently have, a paid MYOB subscription; or
  - previously trialled or paid for an MYOB subscription but has not been an MYOB customer for at least 30 days.
- **Personal Information** means that term as defined in the Privacy Act. This includes information about an identifiable individual.
- **Privacy Act** means the *Privacy Act 1988* (Cth) as amended or replaced from time to time.
- **Prohibited Paid Search Terms** means keywords, search terms, or other identifiers that include the word "myob" or "mind your own business", or any Trade Marks owned or controlled by us, or any variations or misspellings of any of those words (such as "moyb" or "m.y.o.b").
- **Trade Marks** means a party's registered and unregistered trade marks, in any jurisdiction.
- **We, us and our** means MYOB Australia Pty Ltd (ABN 12 086 760 198) of Level 3, 168 Cremorne Street, Cremorne, VIC 3121, Australia.

Last updated: April 2024