

Terms and Conditions

Web Design Domain – web services (ABN 29 928 836 983)

These are the standard terms and conditions of supply of the Web Design Domain web hosting and other services offered from time to time on the Web Design Domain web site at <http://www.webdesigndomain.com.au> ("the Service").

These terms apply to you as a user of the Service ("Client" or "you"). Please read these terms and conditions carefully. It is a condition of your use of the Service that you comply with these terms and conditions.

1. Terms and Amendment Procedure

1.1 These are the terms upon which we agree to provide the Service to the Client. The agreement made between us with these terms commencing on the date your service is activated and accepted by Web Design Domain ..

1.2 We may vary these terms, the amount we charge for any Service, or the terms of the operation of the Service, at any time by general notice on a page of the internet referred to on the home page of our web site at <http://www.webdesigndomain.com.au>. The changes will become effective upon publication of the notice. Where we vary the prices for Services, we will give at least 14 days notice of the change by the same means, and the new prices will apply at the end of that period.

1.3 If you use the Service after that publication, your use will constitute an acceptance of the amended terms.

1.4 These terms constitute the agreement in its entirety and supersede prior agreements.

1.5 We may from time to time run promotions and make special offers of limited time duration ("Promotions"). All Promotions are offered subject to their terms and may be withdrawn or altered at Web Design Domain's discretion. The terms of a promotion will override these terms to the extent of any inconsistency.

2. Service

2.1 We will assign the Client a logon name and password which will provide you with access to the Web Design Domain Site Admin Control panel (which is used by you to configure various features of your web site/email service). We will provide the Client with Web and Email Services as per the Web Host service level you have selected at time of order.

2.2 We will advise the Client of correct operational procedures via the our website at <http://www.webdesigndomain.com.au/>

2.3 Scheduled Maintenance - We must perform scheduled maintenance to servers from time to time. We will attempt to perform all scheduled maintenance at times which will affect the fewest customers. If scheduled maintenance requires the service to be offline for more than 30 minutes we will post details of the scheduled maintenance to our website <http://www.webdesigndomain.com.au> and our forums at least 48 hours in advance of the maintenance.

2.4 Unscheduled Maintenance - We may need to perform unscheduled maintenance. If unscheduled maintenance requires the Service to be offline for more than 30 minutes, we will post details of the event to our website <http://www.webdesigndomain.com.au> and our forums after the maintenance has been completed.

2.5 Archiving of Data - We will archive your data onto backup mechanisms on a regular

basis for the purposes of disaster recovery. In the event of equipment failure or data corruption, we will restore from the last known good archive. In the event of corruption of all of our archives, or in the event that an old archive is used to restore data, you should be prepared to upload your data to your web site. You must maintain a recent copy of your data at your premises at all times. We will not be liable for incomplete, out-of-date, corrupt or otherwise deficient client data recovered from our backups.

2.6 The Service is provided by Web Design Domain from its data centres in Australia. Web Design Domain will determine in its absolute discretion from time to time the data centre location from which your Service is provided.

2.7 In contracting with Web Design Domain for the Services, the Client obtains no rights to the hardware and other infrastructure and facilities used by Web Design Domain to deliver the Service.

2.8 In the absence of any additional written agreement, these terms and conditions (as varied from time to time) will apply to any further Services you acquire from Web Design Domain.

3. Payment

3.1 You must pay for the Service as notified to you by Web Design Domain . in accordance with the prices in force for Services from time to time.

3.2 You must pay all Service time charges, minimum charges and other amounts incurred by you or any designated users or incurred as a result of any use of your password (whether authorised or not) in accordance with the billing option selected and in advance.

3.3 Prices published on our web site are inclusive of any government taxes or charges unless otherwise noted, and exclusive of any registration or delegation charges imposed by domain name authorities.

3.4 In addition you must provide and pay for:-

(a) the installation and use of telephone lines and all other equipment needed to access the Service; and

(b) all government taxes, duties and levies (if any) imposed on either you or us in respect of the Services or any other service or goods supplied.

3.5 You must pay all amounts billed in accordance with your billing option. No credit terms are given to credit card accounts. Upon registration of a credit card account, you give us authorisation to debit your credit card for all charges. Billing period is on a monthly cycle beginning on the first day of the month and 1 month in advance. Orders placed during the month are to pay for the remaining days in that month and the following months fees.

3.6 You consent to us obtaining a credit reporting agency report containing personal information about you (as well as information concerning commercial creditworthiness and activities) for the purpose of assessment by us of an application for credit (whether commercial or personal) or for the purpose of the collection of payments which are overdue.

3.7 No refunds will be given for unused portions of payments in advance unless the account has been terminated due to Web Design Domain breach of these terms and conditions. If you terminate a rolling fixed period contract before the end of its term, you will be charged for the balance of the contract term.

4. Warranties and Liabilities

4.1 We do not warrant that:-

(a) the services provided under this agreement will be uninterrupted or error free;

(b) the services will meet your requirements, other than as expressly set out in this

agreement; or

(c) the Services will be free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to the services or systems of Web Design Domain ..

4.2 Except as expressly provided to the contrary in this agreement, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this agreement, are excluded. Where any statute implies any term into this agreement, and that statute avoids or prohibits provisions in a contract excluding or modifying the application of or liability under such a term, then the term will be taken to be included in this agreement. However, our liability for any breach of the term will, if permitted by that statute, be limited, at our option, to the resupply of the services again; or payment of the cost of having the services supplied again.

4.3 Except as provided under clause 4.2, none of Web Design Domain ., its subsidiaries, officers, directors, employees, partners or suppliers will be liable to you or any third party for:-

(a) any special, punitive, incidental, indirect or consequential damages of any kind;

(b) any damages whatsoever, including, without limitation, those resulting from:

(i) loss of use, data or profits, on any theory of liability, arising out of or in connection with the use of or the inability to use the Services;

(ii) the statements or actions of any employee or agent of Web Design Domain .;

(iii) any unauthorised access to or alteration of your web site, transmissions or data;

(iv) any information that is sent or received or not sent or received;

(v) any failure to store or loss of data, files or other content;

(vi) your fraudulent, negligent or otherwise unlawful behavior;

(vii) information, data or other material provided to Web Design Domain . by you or on your behalf; or

(viii) any Services that are delayed or interrupted.

4.4 You warrant that:-

(a) at the time of entering into this agreement you are not relying on any representation made by us which has not been stated expressly in this agreement, or on any descriptions or specifications contained in any other document, including any catalogues or publicity material which we have produced;

(b) you will conduct such tests and computer virus scanning as may be necessary to ensure that data uploaded by you onto or downloaded by you from the Server does not contain any computer virus and will not in any way, corrupt the data or systems of any person;

(c) you will keep secure any passwords used to upload data to the Server; and,

(d) you hold and will continue to hold the copyright in the Client Data or that you are licensed and will continue to be licensed to use the Client Data.

4.5 You accept responsibility for all information and material you issue over any Service, and indemnify us and hold us harmless against any liability in relation thereto. In particular you undertake that you shall not publish or issue any information which is illegal or defamatory. You also acknowledge that we do not vet or approve any information or material available through the Service. We do not accept any liability for any loss, claim or damages arising from or relating to information and material available through the Service, to the full extent permitted by law. You access and use such information and material at your own risk.

4.6 You are solely responsible for dealing with persons who access the Client Data, and must not refer complaints or inquiries in relation to such data to us.

4.7 Except as provided in clause 4.2. we are not liable to you or any other person for:-

- (a) cost, loss or liability (including loss of profit or other consequential damage) arising from our supply or failure or delay in supplying the Service;
- (b) the content, context or confidentiality of any communications made using the Service;
- (c) loss or damage caused by third party software applications forming part of the Service.

4.9 You indemnify us against all costs, expenses, loss or liability that we may suffer (directly or indirectly) resulting from:

- (a) your breach of these terms;
- (b) your use or misuse of the Service;
- (c) the use or misuse of the Service by any person using your account; and,
- (d) publication of defamatory, offensive or otherwise unlawful material on any web site forming part of your Service.

5. Suspension and Termination of Service

5.1 We may from time to time without notice suspend the Service or disconnect or deny your access to the Service:-

- (a) during any technical failure, modification or maintenance involved in the Service provided that we will use reasonable endeavors to procure the resumption of the Services as soon as reasonably practicable; or
- (b) if you fail to comply with any provision in this agreement (including failure to pay charges due), or do, or allow to be done, anything which in our opinion may have the effect of jeopardising the operation of the Service, until the breach (if capable of remedy) is remedied.

notwithstanding any suspension of any Service under this clause you shall remain liable for all charges due throughout the period of suspension.

5.2 Web Design Domain . may without notice to you remove, amend or alter your data upon being made aware of:-

- (a) any claim or allegation; or
- (b) any court order, judgment, determination or other finding of a court or other competent body, that the data is illegal, defamatory, offensive or in breach of a third party's rights.

5.3 We may end our agreement with you and cease providing Services for any reason, on 24 hours written notice to you. You may close your account with Web Design Domain . on 24 hours written notice to Web Design Domain ..

5.4 If your account is closed you must pay all outstanding charges immediately and we may delete all Client Data from any storage media.

6. Domain Names

6.1 If you have requested that Web Design Domain . register a .com, .net, .org, .biz or .info domain name (TLDs) on your behalf, you agree that you have read and accept the TLD (Top Level Domains) Policy applicable to .com, .net, .org, .biz and .info domain names issued by the relevant registrar. You agree that you are aware of the consents, warranties and indemnity you are required to give to register, maintain, transfer and renew your domain name.

6.2 If you have requested that Web Design Domain . register a .com.au, .id.au, .net.au or .org.au domain name (2LDs) on your behalf, you agree that you have read and accept the published policies applicable to 2LDs administered by .au Domain Administration Limited (auDA), located at <http://www.auda.org.au/policy>. In registering or renewing an .au domain on your behalf, Web Design Domain . is acting as a reseller of the registrar, Tpp Internet.

6.3 You agree that in the event of a dispute in registering a domain name or about a domain name after registration you will submit to and are bound by the .au Dispute

Resolution Policy (auDRP) and any variations to it from time to time bind Web Design Domain . The auDRP can be viewed at <http://www.auda.org.au/policy>.

6.4 You agree that by maintaining the registration of a domain name after changes or modifications to the applicable policies become effective, you are confirming your continued acceptance of these changes and modifications.

6.5 You agree that you must pay for any registration or delegation charges in advance at Web Design Domain .'s list price. You understand that you cannot register a domain name without paying for it in advance.

6.6 Web Design Domain . makes no representation and gives no warranty about your chosen domain name being available for registration or use by you.

6.7 You expressly authorise and direct Web Design Domain . to:-

(a) be nominated as authorised billing contact for your domain name with the domain name registrar;

(b) renew your domain name registration upon receipt of renewal notification from the domain name registrar and invoice you for the relevant charge in accordance with Web Design Domain .'s list price from time to time.

6.8 In respect of 2LDs, you acknowledge that Web Design Domain . is not liable for any loss or damage resulting from non-renewal of your domain name if you have failed to provide the appropriate warranty in respect of your continued eligibility to hold the domain name.

6.9 You indemnify Web Design Domain . against all claims arising out of your registration and use and renewal of registration of your chosen domain name, unless and to the extent that the claim arises out of Web Design Domain .'s breach of this contract, or its negligent act or omission.

7. Miscellaneous

7.1 The Client grants to Web Design Domain . a license to use and reproduce all Client Data in order to fulfill its obligations under this agreement. In this agreement "Client Data" means all information, data, text, logos, images, audio, movie clips and/or content in any form that forms part of the Client's web sites or emails.

7.2 A provision of, or a right created under this agreement, may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by the parties.

7.3 The law in force in New South Wales, Australia governs this agreement and the transactions contemplated by this agreement.

7.4 You may not resell Services or assign your rights and obligations under this agreement without our prior written consent.