



Hosting Terms & Conditions

The following terms of business apply to any or all of the Web site hosting, email and Secure Web Page services to be provided by Discount Domain Name Services Proprietary Ltd to you from time to time, as well as any services provided by us under any reseller or ISP agreement (Services and individually Service).

Server means the computer server equipment operated by us in connection with the provision of the Services.

Web Site means the area on the Server allocated by Discount Domain Name Services Proprietary Ltd to you for use by you as a site on the Internet.

Secure Web Page means the Web page operated and located on the Server which allows you to collect credit card details in a means that is difficult for other people to view the page when it is loaded, because the page is encrypted.

SPECIAL TERMS OF CONTRACTS

Web Site Hosting/email/Secure Web Page terms

We specifically exclude any warranty as to the accuracy or quality of information received by any person via the Server and in no event will we be liable for any loss or damage to any data stored on the Server. You are responsible for maintaining insurance cover in respect of any loss or damage to data stored on the Server. You warrant to us that you will only use your assigned Web Site for lawful purposes. In particular, you further warrant and undertake to us that:

- a) You will not, nor will you authorise or permit any other person to, use the Server in violation of any law or regulation; Such as denial of service attacks, email bombing or mass delivery of inbound email it is the account holders responsibility to inform Discount Domain Name Service immediately of any such high volume inbound traffic. Costs incurred in these instances are borne by the account holder.
- b) You will not knowingly or recklessly post, link to or transmit any material:
 - i. that is unlawful, threatening, abusive, harmful, malicious, defamatory, violent or teaching violence, obscene, pornographic, profane or otherwise objectionable in any way; or
 - ii. containing a virus or other hostile computer program;
 - iii. that shall constitute or encourage a criminal offence, give rise to civil liability or that violates or infringes any trade mark, copyright, other intellectual property rights or similar rights of any person under the laws of any jurisdiction; and

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- c) You will conform to the standards made available by us from time to time and will not yourself, and will ensure that none of your end users, make excessive or wasteful use of the Server to our detriment or that of our other customers. You are responsible for sending mail in accordance with any relevant legislation (including data protection legislation) and for sending the same in a secure manner. We will take all reasonable steps to ensure accurate and prompt routing of messages but we will not accept any liability for non-receipt or misrouting or any other failure of email.

You warrant, undertake and agree that:

- a) Any transactions within your Web site which are contracts for the sale of goods or services will be between you as the merchant and your end-user customer and you agree that we may include an exclusion of our liability in respect of such purchases and transactions in such form as we deem appropriate;
- b) The information contained within your Web site will comply with all applicable law, and codes of practice governing the use of Web sites and related services, including, without limitation, those laws and/or codes of practice governing distance selling and data protection from time to time in force;
- c) You will keep secure any identification, password and other confidential information relating to your account and you will notify us immediately of any known or suspected unauthorised use of your account, or any known or suspected breach of security, including loss, theft or unauthorised disclosure of your password information. Notwithstanding such notification you will be liable for any and all uses of your account (and Web site) notwithstanding any fraudulent or improper use of your password or any other access to any of the facilities we offer which is not unauthorised use or access by us.
- d) Whilst we shall use reasonable endeavours to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorized users or hackers.
- e) If you take up our forwarding product it is expressly agreed that: In the event the registrant moves the domain name to another registrar the forwarding arrangement will cease on the day of transfer to the new registrar of record. It is expressly agreed that: It is the responsibility of the registrant to enable this product with their new registrar of record if the service is available.

It is a requirement under our hosting agreement that to resolve 3 domain names free of charge we must manage the domain names we are resolving for free and renewals must be placed through Discount Domain Name Services Pty Ltd for the duration of the hosting agreement.

RESELLER & ISP PARTNER TERMS

If you are or become a reseller of our Services you must ensure that you continue to comply with these terms and conditions by making your customers bound to no less comprehensive and protective terms and conditions than these. You agree that in your capacity as reseller of our services you will not incur

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any liability on our part or in any way pledge or purport to pledge our credit or purport to make any contract binding on us. We do not accept the liability or default of your own customers as affecting or limiting your obligations under this agreement and we suggest that you require your customers to sign a form of this agreement.

As a reseller of our Services, you are responsible for ensuring that any promotional, advertising or other material you distribute to your customers (whether in paper form or electronically):

- a) Does not contain any misrepresentation relating to Discount Domain Name Services Proprietary Ltd or the nature of your relationship with Discount Domain Name Services Proprietary Ltd;
- b) Is in accordance with all applicable advertising standards;
- c) Does not contravene any law of the relevant jurisdiction;
- d) Is appropriate in all the circumstances; and that you otherwise comply with all laws and regulations governing the exercise of your right as reseller under this agreement.
- e) Retain the right to require you to cease distribution of any advertising, promotional and/or other material which in our view is unacceptable by reference to the criteria referred to at paragraph 4 above. You agree to indemnify, keep indemnified and hold us harmless from and against any claim brought against us by a third party resulting from the provision of our Services by you to your customers, and in respect of all losses, costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and expenses) or liabilities whatsoever suffered and howsoever incurred by us as a consequence of your breach or non-observance of the Reseller and ISP Terms.
- f) You agree to be bound by any domain name industry code of conduct and you agree to be bound by any changes to the aforementioned code of conduct.

GENERAL TERMS AND CONDITIONS

All accounts are subject to our fair use policy this means that all accounts are monitored by automated audit software producing a daily, weekly and monthly usage list by both domain name and users under each domain name (email addresses) our obligation to host is subject to fair usage which is solely determined by our employees or contractors. Any account found to be outside of what discount domain name services Pty Ltd deems over fair use will be subject to contact and renegotiation of the users hosting agreement we reserve the right to terminate an account if a new agreement cannot be negotiated (within the time frame stipulated by Discount Domain Name Services Pty Ltd), terminated accounts are not refundable for the unused portion.

Service Availability

We shall use reasonable endeavours to provide continuing availability of the Server and the Services but we shall not, in any event, be liable for Service interruptions or down time of a Server/s.

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Our obligations to DNS hosted clients is to allow a low level mx record back up in the event of server loss at the client's site server. This service is offered for a limited continuous time being 5 business days.

Intellectual Property Rights and other consents

You are solely responsible for obtaining any and all necessary intellectual property rights clearances and/or other consents and authorisations, including without limitation, clearances and/or consents in respect of your proposed domain name and merchant services agreements between you and the relevant financial institutions.

Indemnity

You agree to indemnify and keep indemnified and hold us harmless from and against any claim brought against us by a third party resulting from the provision of Services by us to you and your use of the Server, and in respect of all losses, costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and expenses), or liabilities, whatsoever suffered and howsoever incurred by us in consequence of your breach or non-observance of these terms.

Termination

We may terminate this agreement forthwith if you fail to pay any sums due to us as they fall due.

We may terminate this agreement immediately if you breach any of these terms and conditions, or if you are a company you go into insolvent liquidation, or if you are a person you are declared bankrupt.

On termination of this agreement we shall be entitled immediately to block your Web Site and to remove all data located on it.

We will hold such data for a period of 14 days and allow you to collect it, at your expense, failing which we shall be entitled to delete all such data. We shall further be entitled to post such notice in respect of the non-availability of your Web Site as we think fit.

If you wish to terminate your account with Discount Domain Name Services Proprietary Ltd, you must do so in writing prior to the expiry of your subscription period with Discount Domain Name Services Proprietary Ltd, otherwise your account will be automatically renewed for the same subscription period and you will be liable for, and immediately invoiced upon the commencement of, such additional subscription period. Specifically, Discount Domain Name Services Proprietary Ltd will not accept verbal instructions to terminate an account. On receipt of a written request to cancel services, Discount Domain Name Services Proprietary Ltd will not refund partially used subscription periods, but will only refund entirely unused subscription periods. Hence cancellation of subscription part way through a subscription period, will not entitle you to any refund.

Discount Domain Name Services Pty Ltd reserves the right to charge a services set up fee to any services account where the client cancels.

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The set up fee shall not be more than 50% of the total charged fee. The client agrees without notice to the payment of the set up fee when an account is cancelled.

Payment

All charges payable by you to us for the Services shall be in accordance with the relevant scale of charges and rates published from time to time by us on our Web site and shall be due and payable within fourteen (14) days of receipt of our invoice therefore.

The provision by us of the Services is contingent upon our having received payment in full from you in respect of the relevant Services. Without prejudice to our other rights and remedies under this agreement, if any sum payable is not paid on or before the due date, we reserve the right, forthwith and at our sole discretion, to suspend the provision of Services such as domain names/hosting services to you.

If you fail to make payment within the terms of this agreement, you will become liable for the cost of collection. This will include interest on any overdue amount, calculated at the daily rate of 12% per annum, from the due date of the payment.

Upon provision of a credit card account, you give us authorisation to automatically debit your credit card for all charges on issuance of a valid invoice.

Exclusion and Limitation of Liability

TO THE FULL EXTENT PERMITTED BY LAW WE HEREBY EXCLUDE ALL CONDITIONS AND WARRANTIES NOT EXPRESSLY SET OUT HEREIN. EXCEPT AS SPECIFICALLY SET FORTH IN ELSEWHERE IN THIS AGREEMENT, WE MAKE OR GIVE NO EXPRESS OR IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, WITH RESPECT TO ANY GOODS OR SERVICES PROVIDED UNDER OR INCIDENTAL TO THIS AGREEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY US, OUR RESELLERS, AGENTS, REPRESENTATIVES OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE EXPRESS WARRANTIES HEREBY GIVEN, AND YOU MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services which are the subject of any such claim and provided that you notify us of any such claim within one year of it arising.

In no event shall we be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

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IMPORTANT NOTE:

In the event that this agreement constitutes a supply of goods or services to a consumer as defined in the Trade Practices Act 1974 (Cth) or any other national, State or Territory legislation (the Acts) nothing contained in this agreement excludes, restricts or modifies any condition, warranty or other obligation in relation to this agreement and the goods and you where to do so is unlawful. To the full extent permitted by law, where the benefit of any such condition, warranty or other obligation is conferred upon you pursuant to any of the Acts, our sole liability for breach of any such condition, warranty or other obligation, including any consequential loss which you may sustain or incur, shall be limited (except as otherwise specifically set forth herein) to:

- a) in relation to goods
 - i. The replacement of the goods or the supply of equivalent goods or payment of the cost of replacing the goods or acquiring equivalent goods; or
 - ii. The repair of the goods or payment of the cost of having the goods repaired; b. in relation to services the supplying of the services again; or
 - iii. The payment of the cost of having the services supplied again as in each case we may elect.

Notices

Except where expressly provided otherwise, any notice to be given by either party to the other may be sent by either email, fax, post or courier to the address of the other party as appearing in this agreement or ancillary application forms or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by post or courier shall be deemed to be served two days following the date of posting.

Severability

If any clause of these terms and conditions is held to be invalid or unenforceable in whole or in part, the invalid or unenforceable wording shall be deemed to be omitted.

Assignment

The benefit of this agreement may be assigned by us, but not our obligations to you - to do that, you agree that we may give notice to you in writing, and your failure to respond will be deemed acceptance. You may transfer this agreement provided that you give us notice in the form we require (setting out the details of the assignee) accompanied by payment of any transfer fee specified by us. No other method of transfer by you is permitted.

Change to Terms on Renewal

We may change the terms and conditions of this Agreement at any time.

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Entire Agreement

These terms and conditions constitute the entire agreement between Discount Domain Name Services Proprietary Ltd and you, and supersede all prior agreements, understandings and representations whether oral or written. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. Except as provided above, no variation may be made to the contract unless it is in writing and signed by authorised representatives of you and Discount Domain Name Services Proprietary Ltd. Entire Agreement, Governing Law This agreement shall be governed by the laws in force in the state of Victoria. All parties hereby submit to the exclusive jurisdiction of the Courts of that State.

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