

Web Hosting and Associated Services - Terms and Conditions

1. Introduction

Semantic Ltd offer website hosting services and other associated services, subject to the terms and conditions set out in these terms and conditions, the privacy policy and any other relevant terms and conditions, policies and notices which may be applicable to supply of hosting services.

2. Glossary of Terms

We includes the Website Host - Semantic Ltd - ("Website" or "Website Host" or "we" or "us" or "our") or any party acting on the Website Host's implicit instructions.

You ("you", "your", "Customer") includes the person purchasing the services or any party acting on the customer's instructions.

Server means the computer server equipment operated by us in connection with the provision of the Services. This may include any equipment supplied by you for hosting.

Web Site means the area on the Server allocated by us to you for use by you as a site on the Internet.

"Associated Services" refers to any technical services such as software development, website development, or systems design.

In consideration of the mutual covenants herein, the parties agree to the following, which shall apply during the term of this agreement

3. Web Site Hosting And Email

3.1 We make no representation and give no warranty as to the accuracy or quality of information received by any person via the Server and we shall have no liability for any loss or damage to any data stored on the Server.

3.2 You shall effect and maintain adequate insurance cover in respect of any loss or damage to data stored on the Server.

3.3 You represent, undertake and warrant to us that you will use the Web Site allocated to you only for lawful purposes. In particular, you represent, warrant and undertake to us that.

3.3.1 You will not use the Server in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will you authorise or permit any other person to do so.

3.3.2 You will not post, link to or transmit:

(a) any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, blasphemous, profane or otherwise objectionable in any way.

(b) any material containing a virus or other hostile computer program.

(c) any material which constitutes, or encourages the commission of, a criminal offence or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.

3.3.3 You will not send bulk unsolicited email from our network.

3.3.4 On shared server services, you will not employ programs which consume excessive system resources, including but not limited to processor cycles and memory.

3.4 We reserve the right to remove any material which we deem inappropriate from your web site without notice. We do not host Warez or illegal MP3 content.

3.5 You shall keep secure any identification, password and other confidential information relating to your account and shall notify us immediately of any known or suspected unauthorised use of your account or breach of security, including loss, theft or unauthorised disclosure of your password or other security information.

3.6 You shall observe the procedures which we may from time to time prescribe and shall make no use of the Server which is detrimental to our other customers.

3.7 You shall procure that all mail is sent in accordance with applicable legislation (including data protection legislation) and in a secure manner.

3.8 In the case of an individual User, you warrant that you are at least 16 years of age and if the User is a company, you warrant that the Services will not be used by anyone under the age of 16 years.

3.9 Any access to other networks connected to Semantic Ltd's hosting network, must comply with the rules appropriate for those other networks.

3.10 While we will use every reasonable endeavour to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers and we shall be under no liability for non-receipt or misrouting of email or for any other failure of email.

4. Service Availability

4.1 We shall use our reasonable endeavours to make available to you at all times the Server and the Services but we shall not, in any event, be liable for interruptions of Service or down-time of the Server.

4.2 We shall have the right to suspend the Services at any time and for any reason, generally without notice, but if such suspension lasts or is to last for more than 7 days you will be notified of the reason.

4.3 The Services provided to you hereunder and your account with us cannot be transferred or used by anyone other than you. If your account is found to have been transferred to another party, or shows other activity in breach of this sub clause, we shall have the right to cancel the account and terminate the Services and/or this Agreement immediately.

5. Payment

5.1 All charges payable by you for the Services shall be in accordance with the scale of charges and rates as agreed for any specific service, and shall be due and payable in advance of our service provision. We reserve the right to change pricing at any time.

5.2 Payment is due each anniversary month, quarter or year following the date the Services were established until closure notice is given. If you choose to pay by credit or debit card you authorise Semantic Ltd to debit your account renewal fees from your card.

5.3 All payments must be in NZ Dollars.

5.4 If your cheque is returned by the bank as unpaid for any reason, you will be liable for a "returned cheque" charge of \$50.00.

5.5 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 shall be entitled forthwith to suspend the provision of Services to you.

5.6 If an account goes unpaid for at least seven days, a late payment fee of 2% may be applied.

5.7 If an account goes unpaid for at least ten days, the account and its associated services are suspended. A \$50.00 charge will be

applied upon account reactivation to cover administration costs.

5.8 Once an account has a suspended status, Access to files, databases and other content is explicitly denied. All files, databases and other content including the account itself is permanently deleted after ten days of account suspension.

5.9 Should access to files, databases and other content be required before they are deleted, account reactivation will be required.

5.10 Should an account for hosting or associated services be suspended, and we hold equipment on your behalf, Semantic Ltd will be entitled to sell such equipment, to recover the outstanding fees, and to defray any costs associated with the sale of said equipment.

6. Termination

6.1 If you fail to pay any sums due to us as they fall due, we may suspend the Services and/or terminate this Agreement forthwith without notice to you.

6.2 If you break any of these terms and conditions we may suspend the Services and/or terminate this Agreement forthwith without notice to you.

6.3 If you are a company and you go into insolvent liquidation or suffer the appointment of an administrator or administrative receiver or enter into a voluntary arrangement with your creditors, we shall be entitled to suspend the Services and/or terminate this Agreement forthwith without notice to you.

6.4 No refunds will be made for Services suspended in accordance with 6.1, 6.2 and 6.3.

6.5 We reserve the right to suspend the Services and/or terminate this Agreement at any time.

6.6 You may cancel the Services at any time.

6.7 Where payment has been made by credit or debit card, any refund will only be issued to the same credit or debit card.

6.8 On termination of this Agreement or suspension of the Services we shall be entitled immediately to block your Web Site and to remove all data located on it.

7. Indemnity

7.1 You shall indemnify us and keep us indemnified and hold us harmless from and against any breach by you of these terms of business and any claim brought against us by a third party resulting from the provision of Services by us to you and your use of the Services and the Server including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by us in consequences of your breach or non-observance of this Agreement.

8. Limitation Of Liability

8.1 All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, subject always to subclause 8.2.

8.2 Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.

8.3 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, less the cost of any services and components supplied to you as part of that contract for services.

8.4 In any event no claim shall be brought unless you have notified us of the claim within one year of it arising.

8.5 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

9. Revisions

9.1 Semantic Ltd reserves the right to revise, amend, or modify these Terms and Conditions, and any of our other policies and agreements at any time and in any manner. Notice of any revision, amendment, or modification will be posted in accordance with our Terms and Conditions.

10. Notices

10.1 Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery 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 recorded delivery shall be deemed to be served two days following the date of posting.

11. Applicable Law

11.1 This Agreement shall be governed by and construed in accordance with New Zealand law and you hereby submit to the non-exclusive jurisdiction of the New Zealand courts.

12. Headings

12.1 Headings are included in this Agreement for convenience only and shall not affect the construction or interpretation of this Agreement.

13. Entire Agreement

13.1 These terms and conditions together with any documents expressly referred to in them, contain the entire Agreement between us relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral: between us in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation which has not been made expressly in this Agreement.