



Hostcake webhosting terms and conditions

Hostcake (operated by Tecnet Solutions) provides a variety of online hosting services, including website hosting, mail hosting, database services and URL forwarding. Since these services use resources that are shared by many users, the benefits of using the service must be balanced with certain obligations and responsibilities to ensure that all users can have a productive experience.

The following terms and conditions apply to the provision of all Services. By utilising Hostcakes' services you are deemed to have accepted these terms and conditions and are bound by them.

Last updated: 22 October, 2017

1. Hostcake General Terms & Conditions

1.1 Service availability

1.1.1 Hostcake shall take reasonable steps 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 the Server.

1.1.2 In no event will Hostcake be liable to you for loss of data, or the inability to retrieve data, resulting from or incidental to the use of a Service.

1.2 Indemnity

1.2.1 You agree it is your obligation and responsibility to ensure your website is regularly maintained and updated in accordance with your website system requirements.

1.2.2 Hostcake shall take no responsibility for the maintenance and updates of your website.

1.2.3 You agree that any technical service or assistance performed by Hostcake in association with the restoration of your service will be at your expense (\$150/hr inc GST).

1.2.4 You agree to indemnify and keep indemnified 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 legal costs and expenses), or liabilities, suffered and incurred by us in consequence of your breach or non-observance of these terms.

1.3 Termination

1.3.1 Hostcake may terminate this agreement if you fail to pay any sums due to us as they fall due. Hostcake may suspend all services within an account prior to termination should any invoice in the account be outside of our trading terms.

1.3.2 Hostcake 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.

1.3.3 On termination of this agreement (in relation to Website hosting) Hostcake shall be entitled immediately to block your Web Site and to remove all data located on it. Hostcake will hold such data for a period of 14 days and allow you to collect it, at your expense (\$150/hr inc GST), failing which we shall be entitled to delete all such data. Hostcake shall further be entitled to post such notice in respect of the non-availability of your Web Site as we think fit.

1.3.4 On termination of this agreement Hostcake shall also be entitled to immediately cease any of our other Services to you (apart from Web Site hosting) without holding any backup data for retrieval by you.

1.3.5 Without limiting the section below on our Exclusion and limitation of liability, Hostcake will not be liable to you for any cost, expense, damage or loss whatsoever for terminating this agreement.

1.3.6 Hostcake shall not be liable for any delay or failure to perform its obligations pursuant to this agreement if such

delay or failure is due to termination of access to the Hosted Application or to Software by a Supplier or a change by a Supplier to the conditions of supply thereof.

1.3.7 If you wish to terminate your account with Hostcake, you must do so by submitting a request for cancellation, 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, Hostcake will not accept verbal instructions to terminate an account. To submit the cancellation please email support@hostcake.com.au OR submit your cancellation by mail to PO BOX 161, Samford, QLD, 4520.

1.3.8 In the event of customer requested cancellation of a renewed service, Hostcake will complete the cancellation request to your service at the first available opportunity, however we acknowledge the date of lodgement of the cancellation request (where we have provided acknowledgement of receipt) as the date of cancellation. Services are required to be cancelled prior to renewal, for cancellations submitted after the scheduled date of renewal there are no credits and no refunds.

1.4 Payment

1.4.1 All charges payable by you to Hostcake 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 explicitly on the invoice and shall be due and payable within seven (7) days of receipt of our invoice.

1.4.2 The provision by us of the Services is contingent upon Hostcake 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, Hostcake reserves the right, at our sole discretion, to suspend the provision of Services to you.

1.5 Exclusion and limitation of liability

1.5.1 To the full extent permitted by law we hereby exclude all conditions and warranties not expressly set out herein. Except as specifically set out in elsewhere in this agreement, Hostcake make or give no express or implied warranties or representations 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.

1.5.2 Hostcake total aggregate liability to you for any claim in contract, tort, negligence, equity 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 in writing and provided that you notify us of any such claim within one year of it arising.

1.5.3 In no event shall Hostcake 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, even if advised us to the possibility thereof. Nor will Hostcake be liable in any event for any damages including, without limitation, indirect, special, incidental, consequential or exemplary damages, arising out of or in connection to this agreement or the Services.

1.6 Important note

1.6.1 Except as otherwise specified herein, Hostcake is not liable for default or failure in performance of its obligations pursuant to these terms and conditions resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortage of suitable parts, components, materials, labour or transportation or any other cause beyond the reasonable control of Hostcake.

1.7 Notices

1.7.1 Except where expressly provided otherwise, any notice to be given by either party to the other may be sent by either email, 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 post or courier shall be deemed to be served two days following the date of posting.

1.8 Severability

1.8.1 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.

1.9 Assignment

1.9.1 The benefit of this agreement may be assigned by Hostcake, 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 Hostcake notice in the form we require (setting out the details of the assignee). No other method of transfer by you is permitted.

1.10 Change to terms on renewal

1.10.1 Hostcake may change the terms and conditions of this Agreement at any time. Details of our current terms are available on our website. Any renewal of a Service will be in accordance with the terms and conditions in place as at that time.

1.11 Entire agreement, governing law

1.11.1 These terms and conditions, plus the Hostcake terms and conditions of supply (if any), for each specific type of service supplied by Hostcake constitute the entire agreement between Hostcake and you (“the Contract”), 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 Hostcake.

1.11.2 The Contract is to be interpreted in accordance with the laws of the State of Queensland. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that State, the Federal Court of Australia (Brisbane Registry) and appeal courts therefrom in relation to any dispute arising hereunder.

1.12 Joint liability

1.12.1 If you (the customer) consist of more than one person then the liability of those persons in all respects under the Agreement shall be a joint liability of all of those persons and a liability of each of those persons severally.

1.13 Consent to communications

1.13.1 In addition to general Account, Billing and Service communications, Hostcake will, from time to time, issue email notifications relating to our services, including, but not limited to Newsletters, Announcements, Promotional and Seasonal offers, and Surveys. By entering into agreement with these terms and conditions, you agree to receive email communications by inferred consent until such time as you decide to opt-out of such communications. You may opt out of our mailing list at any by following the ‘unsubscribe’ instructions contained within the communications.

1.13.2 You will not be able to opt-out of Critical Service Notifications, Renewal, Billing and Account Notifications, Scheduled Downtime Notifications or any other communications deemed to be an essential part of our service to you.

2. Web Hosting/Email/Secure Webpage/Virus Protection

2.1 Hostcake specifically excludes any warranty as to the accuracy or quality of information received by any person via the Server and in no event will Hostcake 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 Hostcake that you will only use your Web Site for lawful purposes. In particular, you further warrant and undertake to Hostcake that:

2.1.1 you will not, nor will you authorise or permit any other person to, use the Server in violation of any law or regulation;

2.1.2 you will not knowingly or recklessly post, link to or transmit any material:

2.1.2.a. that is unlawful, threatening, abusive, harmful, malicious, defamatory, violent or teaching violence, obscene, pornographic, profane or otherwise objectionable in any way; or

2.1.2.b. containing a virus or other hostile computer program 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

2.1.3 You will conform to the standards made available by Hostcake 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 Hostcake’s detriment or that of our other customers. Hostcake reserves the right to suspend your service at the time of service abuse without prior notification, and to terminate following 3 events of suspension of the service as a result of ongoing lack of resolution of the issue associated.

2.2 You are responsible for sending mail in accordance with any relevant legislation, including but not limited to the Commonwealth Spam Act (2003) and for sending the same in a secure manner. Hostcake will take all reasonable steps to ensure accurate and prompt routing of messages but we will not accept any liability for non-receipt or mis-routing or any other failure of email. In the event of deliberate transmission of unsolicited commercial email (UCE), Hostcake reserves the right to terminate services without prior notification.

2.3 You warrant, undertake and agree that:

2.3.1 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;

2.3.2 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;

2.3.3 you will keep secure any identification, password and other confidential information relating to your account and you will notify Hostcake immediately in writing 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.

2.4 Whilst Hostcake shall use reasonable endeavours to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers.

2.5 Hostcake does not warrant that our virus protection services will stop every virus from reaching your computer network. Hostcake makes no warranty that the service will be error free or free from interruption of failure, and the company expressly disclaims any express or implied warranty regarding system and/or service availability, accessibility, or performance.

2.6 The hosting service plans disk space pertains only to files required for the normal operation of your website, and which are linked to in that website. Our website hosting plans are expressly prohibited from use as an online file repository.

2.7 Furthermore, you warrant to Hostcake that any content published to your file space either directly, or user uploaded via your website, that you hold all rights to publish and distribute such material and that specifically you do not violate the rights of any third party. Any site hosting material such as music, video or pictures that does violate the rights of any third party, may be suspended or terminated at the sole discretion of Hostcake.

2.8 Any action or process that unreasonably consumes resources degrading the shared environment for other users is subject to review. This includes but is not limited to execution of scripts (PHP,ASP.NET,CGI/PERL, FTP, HTTP, database connections and the like).