

WWWeb.com.au

Terms of Service

Last Updated: 03/12/08

By submitting the online order form, or by using WWWeb.com.au's service, Customer hereby agrees to WWWeb.com.au's Terms of Service (TOS), Acceptable Use Policy (AUP), No Spam Policy (NSP), and Privacy Policy.

Unless otherwise specified, in this TOS, the AUP, the NSP, and the Privacy Policy, the usage of "us", "we", "our", and "ours" shall refer to WWWeb.com.au, and all its parents, subsidiaries, successors, and assigns. The usage of "you", "your", "they", and "them" shall refer to the Customer of WWWeb.com.au.

Moreover, in this TOS, the AUP, the NSP, and the Privacy Policy, "WWWeb.com.au" shall refer to WWWeb.com.au, and all its parents, subsidiaries, successors, and assigns; unless otherwise specified, "WWWeb.com.au" and "WWWeb.com.au" shall have the same meaning and shall be interchangeable.

Customer agrees that it shall comply with this TOS, WWWeb.com.au's Acceptable Use Policy (AUP), and WWWeb.com.au's No-Spam Policy (NSP). Customer further agrees that it has read WWWeb.com.au's Privacy Policy and agrees to all the terms and conditions in the Privacy Policy. In this document, the word "Agreement," with a capital "A," refers to the TOS, the AUP, the NSP, and the Privacy Policy collectively.

1. General Terms.

In consideration of hosting services to be delivered, Customer agrees to be bound by the following terms and conditions:

* 1.1. Customer agrees to pay, in advance of each annual service term, for hosting services to be rendered.

* 1.2. Customer agrees to be bound by the service term selected on the online order form or via applicable promotional codes that may require Customer to order WWWeb.com.au's service for a certain minimum period of time.

* 1.3. Customer agrees to a no-refund policy in advance. Setup fees and annual web hosting service fees are non-refundable.

* 1.4. Non-Payment of services shall result in a 5-day notice of disconnection. All payment failures must be cured within 5 business days from invoice due date or account will be suspended. Account termination will result from invoices overdue for 30 days.

* 1.5. WWWeb.com.au is not and shall not responsible for data integrity for any accounts that are terminated, disconnected, or interrupted because of Customer's failure to pay for WWWeb.com.au's services.

* 1.6. Customers agree to pay all taxes applicable to your account.

2. Agreement for Services.

* 2.1. WWWeb.com.au will provide, and Customer will purchase and pay for, the Web hosting services (the "Services"), according to the service fees specified in the Order for the applicable Service Description. Customer acknowledges that the service, and service fees have been communicated to the Customer, and that Customer is aware of all applicable charges as per the Agreement. Customer also understands that no promotional offers will apply to their individual service unless said promotional offers are specified in this Agreement.

3. Payment.

* 3.1. Establishment and provision of service is contingent upon receipt of payment from Customer to WWWeb.com.au.

* 3.1.1. Customer must pay in full for the Services before WWWeb.com.au begins to provide the Services to Customer. Invoices are generated 5 days before renewal and customer agree that if paying by credit card, recurring billing will be billed and charged automatically on the date the invoice is generated and that WWWeb.com.au may apply the amount due at any time to the credit card listed on file.

* 3.1.2. Setup fees will be charged and are due at the time of the Customer's initial request of the Services requiring setup.

* 3.2. Payment is due on the defined annually recurring billing date of each year. All returned cheques will be charged a \$50.00 service fee. Service will be interrupted on accounts that reach 5 days past due. Accounts that are not collectable by WWWeb.com.au will be turned over to an outside agency for collection. If your account is turned over for collection, you agree to pay to WWWeb.com.au a "Processing and Collection" Fee of not less than Eighty (\$80.00) Dollars nor more than One Hundred Eighty (\$180.00) Dollars.

4. Delinquent Accounts.

WWWeb.com.au may temporarily deny service or terminate this Agreement upon failure of Customer to pay charges when due. Such termination or denial will not relieve Customer of responsibility for the payment of all accrued service fees, and any collection fees to which WWWeb.com.au may be entitled under this Agreement or under applicable law.

5. Account Cancellation.

Customers may voluntarily cancel their account at any time, for any reason or for no reason, by filling out the "Cancellation Request Form" which is provided on the WWWeb.com.au Web site. You can find the "Cancellation Request Form" at the following Web page:

<http://www.wwweb.com.au/cancellation.html>

Once a Customer has cancelled their account before the renewal date, no more charges will be billed to the account. Cancellations on or after renewal will be charged renewal fees.

Paypal paying customers cancelling their paypal subscription payment does not warrant cancellation of service. All cancellations must go through the cancellation form. Customer can terminate their account for any reason or for no reason. However, Customer understands and agrees that WWWeb.com.au does not provide pro-rated or any other kinds of refunds on cancellations. All fees Customer has paid shall be nonrefundable.

6. Refunds and Disputes.

IMPORTANT NOTICE: EXCEPT AS EXPLICITLY PROVIDED IN THIS SECTION 6, ALL PAYMENTS TO WWWeb.com.au ARE NONREFUNDABLE.

All payments to WWWeb.com.au, Inc. are nonrefundable. This includes any setup fees and annual fees regardless of usage. All billing disputes must be reported within thirty (30) days of the time the dispute occurred. Disputed charges to your credit card issuer, also known as chargebacks, which, in WWWeb.com.au's sole discretion, are invalid under the terms and conditions of this Agreement, will result in service interruption, and reconnection fees to restore the desired service.

Without waiving any of its other rights under this Agreement, WWWeb.com.au offers to its Customers a 28-day money-back guarantee on fees for hosting services only (the "28-Day Guarantee"). If for any reason you cancel your account by filling in the account cancellation form and submitting it to Hosting Zoom, Inc., within twenty-eight (28) days of the beginning of your service, Hosting Zoom, Inc. will refund your money with no questions asked; provided, however, that you have never previously obtained a refund under the 28-Day Guarantee. If you have ever previously obtained a refund under the 28-Day Guarantee, your account will be canceled, but no money will be refunded to you.

Please note that the amount refunded to you will be the amount you paid for hosting services only, and will not include any of the following fees:

- * Setup fees,
- * Fees for domain name registrations,
- * Fees charged for exceeding your allotted disk storage space or bandwidth,
- * SSL certificate fees,
- * Any add-on services, features, software, and
- * Any other fees for services involving a third party.

The 28-Day Guarantee is subject to all of the following limitations:

- * You are entitled to a maximum of one (1) 28-Day Guarantee.
- * If you do not cancel your account within thirty (28) days of the beginning of your service, your right to the 28-Day Guarantee shall expire forever and may not be revived under any circumstances, without the prior express written approval of Hosting Zoom, Inc..
- * You may not transfer or assign the 28-Day Guarantee to any third party.
- * You agree that you will not circumvent the restrictions on the 28-Day Guarantee described in this document, or attempt to circumvent those restrictions by any means, including, but not limited to, the following actions:
 - o Creating multiple accounts, using the same customer name or different customer names;

- o Canceling your account for the sole purpose of obtaining a refund and then registering for a new account;

- o Organizing multiple business entities or using assumed business names for the purpose of circumventing these restrictions;

- o Knowingly providing false or misleading information when you register for your account;

or

- o Requesting a refund under the 28-Day Guarantee at any time after you have already received a refund under that guarantee.

* If you violate any provision of any of the following policies of WWWeb.com.au, you will not be eligible for the 28-Day Guarantee:

- o Terms of Service (TOS);

- o Acceptable Use Policy (AUP); or

- o No-Spam Policy (NSP).

Changes to your service, including, but not limited to, adding new services, removing services, or changing the type of hosting plan you have do NOT make you eligible for an additional 28-Day Guarantee. The 28-Day Guarantee applies to your first order of Web hosting services from Hosting Zoom, Inc. and does not apply to any changes to your service at any time.

7. Customer agrees not to engage in any activity that violates any international, foreign, federal, state, or local laws applicable to the service terms described in this Agreement.

8. WWWeb.com.au reserves the right to discontinue service to any Customer it deems, in its sole discretion, violates any condition of service including, but not limited to, the following:

- * 8.1. the Acceptable Use Policy, or

- * 8.2. the No-Spam Policy.

9. Backups.

- * 9.1. In order to allow us to provide the best service to you, WWWeb.com.au accounts are backed up daily. However, these backups are intended for WWWeb.com.au's administrative purposes only. As part of its commitment to first-rate customer service, WWWeb.com.au always seeks to create complete and accurate backups of customer accounts.

- * 9.2. Even the best and most complete and redundant backup systems can and do fail for a variety of reasons, despite the best efforts of the Web hosting service. **THEREFORE, WWWeb.com.au DOES NOT GUARANTEE THE AVAILABILITY, COMPLETENESS, CURRENCY, OR INTEGRITY OF THESE BACKUPS OR THE DATA THEY CONTAIN.** Consequently, you must not rely upon the availability, completeness, currency, or integrity of these backups.

- * 9.3. Customers are responsible for maintaining their own backups on their own personal computers or other computers.

- * 9.4. WWWeb.com.au does not provide any sort of compensation for lost, inaccurate, incomplete, or outdated data in the event that WWWeb.com.au's backups do not function

properly, regardless of the reason(s) for any such malfunction, even if the malfunction was due to the fault or negligence of WWWeb.com.au or any of its employees or agents, and regardless of whether WWWeb.com.au had been informed of the possibility of such malfunction, or any fault or negligence that might cause it.

* 9.5. In the event that you need to recover data from a backup, WWWeb.com.au will use reasonable efforts to restore data to your account from the appropriate backup. HOWEVER, PLEASE NOTE THAT THIS SERVICE IS INTENDED TO COMPLEMENT YOUR OWN BACKUPS TO YOUR OWN COMPUTER, AND IS NOT A SUBSTITUTE FOR THOSE BACKUPS. AGAIN, WWWeb.com.au DOES NOT GUARANTEE THE AVAILABILITY, COMPLETENESS, CURRENCY, OR INTEGRITY OF ITS BACKUPS.

* 9.6. Any account exceeding 50,000 inodes will be excluded from our backups.

* 9.7. You understand and agree that WWWeb.com.au's backup policy does not create any warranties for whose breach WWWeb.com.au can be held liable.

10. Customer agrees to defend, indemnify, and hold harmless WWWeb.com.au, and the parents, subsidiaries, successors, assigns, employees and agents of WWWeb.com.au against any losses, claims, damages, liabilities, penalties, actions, proceedings or judgments (collectively, "Losses") to which an indemnified party may become subject and which Losses arise out of, or relate to this Agreement or Customer's use of the Services, and to reimburse an indemnified party for all legal and other expenses, including reasonable attorneys' fees incurred by such indemnified party in connection with investigating, defending, or settling any Loss whether or not in connection with pending or threatened litigation in which such indemnified party is a party.

11. WWWeb.com.au SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, OR LOSS OF DATA RESULTING FROM THE USE OF WWWeb.com.au'S SERVICES BY CUSTOMER OR ANY THIRD PARTIES, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY, OR

11.2. ANY LOSS OF DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES OR SERVICE INTERRUPTIONS.

12. WWWeb.com.au PROVIDES THE SERVICES AND PRODUCTS AS IS, WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED. WWWeb.com.au DISCLAIMS ALL WARRANTIES OF NON-INFRINGEMENT OF ANY THIRD-PARTY RIGHTS, AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE, AND SUITABILITY OF THE SERVICES AND WWWeb.com.au SHALL HAVE NO LIABILITY THEREFOR.

13. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WWWeb.com.au DISCLAIMS, ALL WARRANTIES, REPRESENTATIONS OR OTHER ENDORSEMENTS, EXPRESS OR IMPLIED, WITH REGARD TO THE INFORMATION ACCESSED FROM, OR THROUGH, THIS SERVICE, THE SYSTEMS WHICH PROVIDE IT, AND THE INTERNET, INCLUDING ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, OR NON-INFRINGEMENT OF ANY THIRD-PARTY RIGHTS.

14. WWWeb.com.au DOES NOT ASSUME ANY LIABILITY FOR THE COMPLETENESS, ACCURACY, OR USEFULNESS OF ANY INFORMATION DISCLOSED OR MATERIALS ACCESSED THROUGH ITS SERVICES, ITS SYSTEMS, ITS NETWORKS, OR THE INTERNET.

15. No Waiver of Rights by WWWeb.com.au.

Any failure by WWWeb.com.au to enforce this Agreement in every instance in which it might apply does not amount to a waiver of any of WWWeb.com.au's rights.

16. Notices.

* 16.1. From WWWeb.com.au to Customer.

WWWeb.com.au will notify you by e-mail of any notices that WWWeb.com.au is required to provide to you under this Agreement, at the most current e-mail address you have provided to WWWeb.com.au.

By entering this Agreement, you consent to receive notices by e-mail. You are solely responsible for ensuring that WWWeb.com.au has your most current e-mail address, and WWWeb.com.au shall not be responsible for any lost, misdirected, bounced, forwarded, or undeliverable e-mail that WWWeb.com.au sends to the most current e-mail address you have provided to WWWeb.com.au.

* 16.2. From Customer to WWWeb.com.au.

Unless otherwise specified in this Agreement, notices to WWWeb.com.au shall be sent to the following address:

WWWeb.com.au
Attention: Legal Notices
49 Kooyong Road
North Caulfield
Victoria, 3161
Australia

17. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Victoria, Australia without regard to choice of law or conflicts of law provisions that would cause the application of the law of another jurisdiction.

18. Currency.

All monetary amounts to which this Agreement refers shall be in Australian dollars.

19. Entire Agreement.

This Agreement, including all of its component parts, comprises the entire agreement between you (the Customer) and WWWeb.com.au, and supersedes any prior or previous agreements between you and WWWeb.com.au with respect to the subject matter of this Agreement; provided, however, that you agree that you shall be subject to any additional terms and conditions of which WWWeb.com.au notifies you from time to time, pursuant to this Agreement.

20. No Oral Modification of this Agreement.

This Agreement may not be modified orally.

21. Assignment.

* 21.1 Customer shall not assign or attempt to assign its obligations under this Agreement without WWWeb.com.au's prior and express written consent to such assignment.

* 21.2. WWWeb.com.au may assign any or all of its rights and obligations under this Agreement at any time without prior notice to or consent of Customer.

22. Consent to Jurisdiction; Venue.

Jurisdiction and venue for arbitration or litigation of any dispute, controversy, or claim arising out of, in connection with, or in relation to this Agreement, or the breach thereof shall be proper only in a venue determined WWWeb.com.au.

23. Choice of Law.

For all purposes, this Agreement shall be deemed to have been made within the State of Victoria, Australia. This Agreement shall be governed by the laws of Australia and the laws of the State of Victoria, Australia.

24. Force Majeure.

WWWeb.com.au shall not be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of service resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, terrorism, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, magnetic interference, interruptions of electrical power or other utility service, unavailability of any telecommunications or wireless service or connection to any telecommunications or wireless service, or any cause beyond the reasonable control of WWWeb.com.au.

25. Severability of Terms of this Agreement.

In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties hereto, and the remainder of the provisions shall remain in full force and effect.

26. Limitation of Actions Arising Under this Agreement.

Any cause of action you may have with respect to WWWeb.com.au's performance or alleged non-performance of this Agreement must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action is forever barred.

27. Denial of Service

WWWeb.com.au reserves the right to refuse or discontinue service to anyone at our sole discretion.

28. Abuse of WWWeb.com.au Staff or Support Personnel.

* 28.1. At WWWeb.com.au, we take pride in providing excellent service to all of our customers. It is our policy always to treat our customers with the highest level of respect and courtesy. In return, we expect the same respect and courtesy from you.

* 28.2. If our staff feels that you are consistently engaging in abusive content toward them, or addressing them in a demeaning or rude manner, your account(s) may be suspended and you may be asked to take your business elsewhere. In the event that we terminate service for abusive conduct, customers will be given five (5) days' notice. We will issue a refund only for the unused portion of pre-paid service.

* 28.3. Abusive conduct includes, but is not limited to, the following behaviors:

- o Repeatedly addressing members of our staff in a demeaning or rude manner;
- o Using profanity in any oral or written communications with our staff, by any medium of communication, including but not limited to e-mail, instant messages, chat, text messaging, fax,

postal mail, telephone, voice over Internet Protocol (VoIP), or in-person communication;

- o Yelling or shouting at our staff;

- o Deliberately using all capital (uppercase) letters in any written communication to our staff;

- o Insulting our staff because of their personal characteristics, or on the basis of their race, ethnicity, national origin, sex, sexual orientation, religion, or housing or economic status; or

- o Deliberately providing false information to our staff for the purpose of harassing them or wasting their time.

29. No Free Services to Be Offered.

YOU may not use YOUR account or OUR services to offer any of the following kinds of FREE services but are not limited to:

- * Free Web hosting services;

- * Free e-mail services;

- * Free blogging services;

- * Free home pages;

- * Free image hosting;

- * Free trial accounts.

There are several reasons for these prohibitions on free services. The reasons include, but are not necessarily limited to, the following:

First, free services generally do not require any reliable means of identifying the person who registers for them. As such, it can be practically impossible to track down persons who abuse the free services.

Second, OUR customers, are all paying for prompt, reliable service and WE have built a solid reputation for delivering excellent service to them. WE cannot risk having unidentified persons damage OUR reputation.

Third, users of free services are notorious for registering for free accounts and immediately spamming or otherwise consuming very large amounts of system resources and bandwidth before their accounts are shut down. Such abusers often register for successive or multiple accounts and cause many problems for the servers and network.

Fourth, spammers, operators of phishing and pharming scams, distributors of spyware, viruses, Trojan horses, worms, and other malware, operators of illegal Warez sites, operators of illegal or unauthorized file-swapping or archive sites, and hackers frequently abuse free online services. Allowing free services would expose OUR servers to severe abuse and could harm US, all of OUR customers, and all the customers of OUR resellers.

Fifth, free services lead to various forms of abuses that may violate criminal laws or even foster terrorist activities. Because such abuses violate applicable laws as well as OUR policies, WE must prohibit them.

If YOU violate this prohibition on free services, WE may suspend or terminate YOUR account immediately, with or without notice, as WE in our sole discretion deem necessary to address the situation.