

Fincomp Services Limited Domains and Hosting Terms and Conditions

1. DEFINITIONS

In these Terms and Conditions the following words and phrases shall have the following meanings;

"Agreement" means these Terms and Conditions, the Customer Price List and the Customer Order, taken together with the Company's Privacy Policy (which is available at <http://www.domainswithhosting.co.uk>), constitute the agreement between the Company and the Customer for the supply of the Services;

"Company" means Fincomp Services Limited trading as domainswithhosting.co.uk (Company Registration Number 4755344) – registered address Avaland House, 110 London Road, Apsley, Hemel Hempstead, Hertfordshire, HP3 9SD;

"Customer" means the person, group of persons or other entity to whom the Company may agree to provide Services to in accordance with the terms of this Agreement.

"Customer Order" means the Customer's request for the supply or renewal by the Company of Services or the Customer's acceptance of a quotation supplied by the Company;

"Customer Price List" means the Company's price list relating to the charges payable by the Customer for the Services provided to them by the Company in accordance with the terms of this Agreement.

"Domain Name" means the provision of a unique name used to identify one or more Internet Protocol addresses.

"End User" means the person or entity receiving the benefit of the Service. End User and Customer are interchangeable terms when the Customer is the person or entity being billed by the Company.

"Insolvency" means in relation to the Customer any of the following (as relevant): the appointment of any nominee, trustee, supervisor, administrator, administrative receiver, receiver or liquidator pursuant to the Insolvency Act 1986 (as modified, amended or replaced from time to time); or the entry into any compromise or arrangement with its creditors or if it commits any act of bankruptcy; or if an order is made or effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction of a solvent company); or the occurrence or surffrance of anything equivalent under any jurisdiction other than England or Wales and "Insolvent" shall be construed accordingly.

"Intellectual property rights" means all copyrights, patents (registered and unregistered), design rights, topography rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world.

"Service Period" means the Service Period as set out in Clauses 4.2 and 4.3;

"Service" refers to the Domain Name and/or Web Hosting services to be provided by the Company to the Customer. All references to "Services" shall be construed accordingly;

"Spam" means sending unsolicited and/or bulk emails.

"Third Party Software" means all software owned or licensed to the Customer from any third party owner (weather or not supplied by the Company) and which comprises part of the Services.

"us" or **"we"** means the Company, and references to "our" shall be construed accordingly;

"Web Hosting" means the provision of space on Internet servers for the storage of Customer's data which can be accessed through the Internet together with the provision of mailboxes (directories for the storage of email communications).

"you" means the Customer, and references to "your" shall be construed accordingly.

2. PRODUCT AND SERVICE PROVISIONING

2.1 We shall provide you with Services subject to the terms of this Agreement, which, unless otherwise agreed in writing, shall prevail over any conditions stipulated by you.

2.2 You can place an order for Services by sending us a Customer Order through our website (<http://www.domainswithhosting.co.uk>).

2.3 All Customer Orders received by us shall constitute an offer to us, under the terms of this Agreement, subject to availability and subject to our acceptance of the Customer Order.

2.4 If we make software available to you that enables you to use the Services, this software must not be copied or modified by you or anyone else unless allowed by Law. Where such software is owned by or licensed to us, we will, where possible, grant you a revocable, non-transferable, non-assignable, non-exclusive license to use it for the duration of this Agreement (or, if shorter the duration of any licence of the software to us). Where the use of such software by you requires you to enter a separate licence you agree to do so.

2.5 We will endeavour to ensure that the Services are of a high quality. In order to maintain the quality and safety of the Services, we may from time to time suspend, close down or restrict the whole or any part of a Service in order to carry out essential repairs, maintenance and/or improvements (although we will give you as much notice as is reasonably practicable before doing so).

3. CANCELLATION AND RESCHEDULING

3.1 Unless otherwise agreed in writing, any request by you for cancellation or rescheduling of any Customer Order will be subject to acceptance by us at our sole discretion, and subject to a reasonable administration charge. You hereby agree to indemnify us against all losses, costs (including the cost of all labour and materials used and overheads incurred), damages, charges, and expenses arising out of the order and its cancellation or rescheduling.

4. SERVICE PERIODS

4.1 We will activate a Service as soon as possible following our acceptance of your Customer Order.

4.2 Except where terminated or suspended in accordance with this Agreement, all Web Hosting Services will be provided for a Service Period of 12 months from the date of activation or renewal.

4.3 Except where terminated or suspended in accordance with this Agreement, all Domain Name Services will be provided for a Service Period equal to that of the registration period stated on the Customer Order from the date of activation or renewal.

4.4 Upon expiry of the periods referred to in Clauses 4.2 or 4.3 (as appropriate) the Services will, unless renewed before the date of such expiry, be terminated pursuant to this Agreement.

5. CHANGES

5.1 We aim to provide the Services for the relevant Service Period. However, we may have to modify, suspend, vary or discontinue the whole or any part of the Services (including, without limitation, any codes or access details or technical specifications associated with the Services) and will endeavour to give you as much notice as is reasonably practicable if we need to do so.

5.2 We reserve the right to alter and re-publish the terms and conditions of this Agreement from time-to-time, as required.

5.3 We will endeavour to let you know about any change referred to in Clause 5.2 at least one month before it happens. However, if we need to make changes, as soon as possible, for regulatory or legal reasons, we may be unable to meet that timescale. In those circumstances, we will let you know about any changes as soon as we can.

5.4 If we have made a change early to your significant disadvantage and you decide to terminate this Agreement early, you will not have to pay charges in relation to the Services, for the remainder of the Service Period.

6. PRICES

6.1 Price lists and other advertising literature or materials used by us are intended only as an indication as to the price and range of the Services offered and no prices, descriptions or other particulars therein shall be binding to us.

6.2 All quoted or listed prices for Services are based on the cost to us of supplying the Service. If before delivery or provision of the Service, there is an increase in any way of such costs and/or where the price quoted or listed is a mistake in respect of Services that have not yet been delivered or provided, the price payable may be subject to amendment without prior notice at our discretion.

6.3 All prices are exclusive of Value Added Tax and any similar taxes. All such taxes are payable by you and will be levied in accordance with UK legislation in force at the tax-point date.

7. PAYMENT TERMS

7.1 Unless otherwise specifically requested and agreed, where we have provided credit facilities to you, invoices will be payable by you (without any set off or deduction of any kind) within 30 days from the date of the invoice. The time of payment shall be the essence of the contract. Payments which are not received in full by the due date, will be considered overdue and remain payable by you together with interest for late payment which we are entitled to charge. The interest payment will be at a rate equivalent to that set for the purposes of s6 of the Late Payment of Commercial Debts (Interest) Act 1998, calculated on a daily basis from the date of the invoice until payment; such interest to be compounded on the first day of each calendar month and payable both before and after any judgement (unless the court orders otherwise).

7.2 We reserve the right to take legal proceedings to recover the cost of Services should you not make full payment by the invoice due date.

8. PROPRIETARY RIGHTS IN SOFTWARE PRODUCTS

8.1 You hereby acknowledge that any proprietary rights in any Third Party Software supplied hereunder including, but not limited to any title or ownership rights, patent rights, copyrights and trade secret rights, shall at all times and for all purposes vest and remain vested in the Third Party Software owner.

8.2 You hereby acknowledge that it is your sole responsibility to comply with any terms and conditions of license attaching to Third Party Software supplied and delivered by us (including if so required the execution and return of a Third Party Software license). You are hereby notified that a failure to comply with such terms and conditions could result in you being refused a software license or having the same revoked by the proprietary owner. You further agree to indemnify us in respect of any costs, charges or expenses incurred by us as the result of any breach of you of such terms and conditions.

8.3 No title or ownership of software products or any Third Party Software licensed to you under this contract is transferred to you under any circumstances.

9. CONDITIONS OF USE

9.1 You agree that you will be responsible for providing all suitable computer hardware, software and/or services (including, without limitation, a telephone line, if required), and for obtaining any permits and/or licences which are necessary for connecting to, and accessing, our Services.

9.2 You agree that you will, at all times and for whatever purpose, use the Services in compliance with all Laws.

9.3 In addition to Clause 9.2, you agree that you will not use, and will take all necessary precautions to ensure that nobody else uses the Services:

- fraudulently or in connection with any criminal offence;
- to send, knowingly receive, upload, download, or use any material which is offensive, abusive, indecent, defamatory, obscene or menacing, or in breach of copyright, confidence, privacy or any other rights;
- to cause annoyance, inconvenience or anxiety;
- to Spam or to send or provide unsolicited advertising or promotional material or, knowingly to receive responses to any Spam, unsolicited advertising or promotional material sent or provided by any Third Party;
- in any way which, in our opinion, is or is likely to be detrimental to the provision of Services to you or any of our Customers, or to our business and/or reputation;
- in contravention of any licences or Third Party rights.

9.4 You agree that you will not perform or allow anyone else to perform any unauthorised IP or Port multicasting, spoofing, broadcasting, vectoring, filtering translation or routing.

9.5 You agree to keep any records of your User Name(s) and/or Password(s) in separate places and take all necessary steps to ensure their security and to keep your User Name(s) and/or Password(s) private and confidential and ensure, at all times, that it (or they) do not become known to anyone else.

9.6 You agree that you will notify us immediately if you become aware of any change in circumstances which may lead you to believe that your User Name(s) and/or Password(s) have become known to anyone else.

9.7 You agree that we may, from time to time, and, where possible, on giving you reasonable notice, suspend and/or change your User Name(s) and/or Password(s). You also agree that you will not change or attempt to change your User Name at any time.

10. SUSPENSION AND TERMINATION

10.1 You agree that we may suspend or terminate the Services and/or terminate this Agreement at any time, without prior notice or refund to you, and without affecting any of our accrued rights or claims, either:

- where we reasonably believe that the Services are being used in breach of our conditions of use, outlined in Clause 9;
- for non-payment of overdue invoices;
- for any other material breach of this Agreement by you;
- where you have breached this Agreement in any other way on three or more occasions; or
- if you become or are deemed to have become Insolvent.

10.2 Where we decide, acting reasonably, that you are using the Services in a reckless or wasteful manner that may affect the Services provided to our other Customers, we may suspend or terminate your access to the Services in issue.

10.3 You agree that, notwithstanding the provisions of Clauses 4 and 10.1 (but without affecting our other rights to terminate under this Agreement), we may terminate all or any of the Services at any time, on 14 days notice, and on repayment to you of a proportion of the charges which reflects the period agreed for provision of the Service which has yet to expire at the point of termination. Any refund that is due to you, will be made by us following the cancellation of the Service, and will be made direct to your bank account (notified to us for this purpose) by BACS transfer. Should you fail to provide suitable bank details to allow a refund to be made, you will lose the right to such refund.

10.4 Any suspension of the Services by us in accordance with this Agreement will not constitute a termination of this Agreement and we may require you to pay a reconnection fee to recommence the Service together with the relevant charges.

10.5 You may terminate all or any of the Services, at any time. Should you wish to terminate a Service in accordance with this Clause, you must give written notice to us in accordance with Clause 17. Where you terminate in accordance with this Clause you will be liable to pay the charges due in respect of the remainder of that Service Period.

10.6 We will not issue pro-rata refunds for Services that are terminated before the end of their Service Period.

10.7 Any data relating to a Service terminated pursuant to this Agreement will be deleted upon such termination.

11. DOMAIN NAMES

11.1 In the event that we provide you with Domain Name Services, the following provisions will apply:

- You confirm that you are the owner of, and/or that you have full rights to use, any trade (or other) name or mark, or any Domain Name, requested by or allocated to you.
- We cannot guarantee that any Domain Name requested by you will be available or approved for use.
- If we have reasonable grounds to believe that the use by you of any Domain Name is or would be in breach of Clause 11.1 above, we may refuse to allocate or cease to provide you with the Domain Name, and ask you to choose a replacement.
- Internet Domain Names are registered and/or provided to you in accordance with all terms and conditions issued by the regulatory body responsible for the maintenance of such domain names including, but not limited to, Nominet, Network Solutions and OpenSRS.

11.2 You agree that all static IP addresses are allocated to you on a rental only basis and will remain our property at all times.

11.3 Domain Names are not deemed to be successfully registered until they appear in the relevant WHOIS database of the top level Domain Name registrar. In the event that a Domain Name is unavailable when we attempt to register it we will provide a full refund for that Domain Name.

12. WEB HOSTING

12.1 Web Hosting accounts are prohibited from hosting file distribution websites (including but not limited to music, video and software), adult content oriented websites, hosting banners, graphics or cgi scripts for other websites, storing pages, files or data as a repository for other websites or personal computers, giving away web space under a domain, sub domain or directory.

12.2 Should your Web Hosting account use more than 5% of the web servers processing power and as a result have a detrimental effect on other Customers, we will discuss with you alternative solutions for your hosting requirements.

12.3 Unlimited web space is available for genuine web site content, content must be linked into web pages. You are prohibited from using the web server as a file/backup repository. You are expected to employ good house keeping when maintaining your Web Hosting account.

12.4 Mail boxes not accessed for 100 days or more will be deleted.

12.5 All alterations and updates to your website shall be made by you using the online account management facility, FTP access or SSH access where available. You will be issued with a User Name and Password in order to access your Web Hosting account.

12.6 You have full responsibility for all Content (text, graphics, logos, photographs, images, moving images, sound, illustrations and other material and related documentation) featured, displayed or used in or in relation to your website and we will have no obligation to check this Content.

12.7 We are not responsible for Customer programming issues other than ensuring that programming languages such as Perl, PHP, Python, Miva and ASP are installed and functioning on the web hosting system.

13. WARRANTY

13.1 All Services are supplied on an "as is" basis without any warranty of any kind. Therefore, whilst we will endeavour to ensure that the Services are of a high quality and available to you 100% of the time, we do not give any guarantee that the Services will be uninterrupted or free from error as they are provided by means of computer and telecommunications systems.

13.2 You warrant and represent to us that any software you use in accordance with this Agreement will not infringe the intellectual property rights of any Third Party.

14. LIABILITY

14.1 You agree that, in view of their nature, your use of the Services is at your sole risk and that, where a network or service provider suspends or terminates its connection to the Services, or where the Services suspends or terminates their connection to another network or service provider, for necessary commercial, technical or other reasons, this will not constitute a breach by us of this Agreement and that we will not be held liable for any costs, expenses, losses, damages or other liabilities (howsoever arising) which you may incur as a result of any such suspension or termination.

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14.2 You agree that the configuration of your internal network remains your responsibility. Any interruption to the Services resulting from such configuration shall not be regarded as an interruption in or suspension of the provision by us of the Services.

14.3 You acknowledge that we may exercise editorial control over the content of our servers but that we have neither the resources, nor the capability, of ensuring and checking the full content of our servers at all times. Neither are we able to control the content of the Internet. You therefore agree that we shall not be held responsible for the publication, transmission or reception of any defamatory material or information of any kind, other than information which is inserted by us. You specifically acknowledge that we have given no warranties as to the quality, content or accuracy of information received through, or as a result of the use of, the Services.

14.4 You agree and acknowledge:

- that you are in a better position than us to foresee and evaluate any potential damage or loss which you may suffer in connection with the Services provided to you under this Agreement;
- that we cannot adequately insure our potential liability to you; and
- that the sums payable by you under this Agreement have been calculated on the basis that we shall exclude liability in accordance with this Agreement.

14.5 We do not provide data restoration facilities for customers but we do make every effort to ensure that data is backed up correctly for use in the event of a systems failure. Nevertheless, it is your responsibility to ensure that adequate backups of your data are taken and in no circumstances whatsoever will we be liable to you (whether in contract, or for breach of duty, or negligence or otherwise) for any indirect, incidental or special loss or damage or any loss of business or of contracts, profit, opportunity, goodwill, reputation, or anticipated savings, or for any loss or corruption of data which arises out of or in connection with any use of, or inability to use, the Services;

14.6 In any event our aggregate liability to you of any sort (including for breach of contract and negligence) in connection with this Agreement shall not exceed the amount of charges paid by you to us in accordance with this Agreement.

14.7 You agree that you will be responsible for and hold us harmless from and against any and all losses, claims, damages, costs, demands, expenses and other liabilities which we suffer as a result of any breach by you of the terms of this Agreement, and from and against any claim brought by a third party alleging that the use of the Services by you has infringed any Intellectual property or other right of any kind, or any applicable legislation or regulation (whether international or domestic) but excluding any liability which we face as a result of criminal prosecution.

14.8 Neither we nor you shall be liable in any way for non-provision, part provision, ineffective provision or delay in provision of any of the Services provided by us, directly or indirectly caused by the result of force majeure including any acts of God, outbreak of hostilities, insurrection, riot, civil disturbance, acts of terrorism, or regulations of any government or authority or any other cause beyond the reasonable control of party in default.

14.9 Nothing in this Agreement will limit our liability under Part I of the Consumer Protection Act 1987 or for death or personal injury caused by our negligence.

15. ASSIGNMENT

15.1 We may transfer, assign or sub-contract the whole or any part of our rights and obligations under this Agreement.

15.2 You agree that you will not assign, sub-contract, sell, transfer, lease, licence or charge by way of security any of your rights or obligations under this Agreement. Breach of this restriction in any way (whether successful or not), will result in the termination of all Services being provided to you.

16. PERSONAL DATA

16.1 You agree that we may hold all names and other information in the Customer Order, in a computerised database. You agree that such data may be processed and may, in certain circumstances, be supplied to and processed by our suppliers, to enable the provision and maintenance of the Services.

16.2 Neither we nor you can disclose confidential information made available to them from either party. For the purposes of this paragraph confidential information does not include information which is or becomes public knowledge or is or becomes known from other sources without restriction on disclosure.

17. NOTICES

17.1 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 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 2 days following the date of posting.

18. WHOLESALE CUSTOMERS

18.1 If you are acting as a wholesale Customer, you shall be responsible for billing the End User and will be liable for all debts incurred as part of the Services supplied to the End User.

18.2 Furthermore, as a wholesale Customer, all liability and assets remain distinct between you and us.

19. GENERAL

19.1 This Agreement represents the entire agreement and understanding between you and us with regard to the supply of the Services, to the exclusion of all prior agreements, arrangements and understandings. This Agreement contains express promises and obligations on our part. You agree that any other term which might be implied or incorporated into this Agreement, by statute, at common law or otherwise, is excluded, to the fullest extent permitted by Law.

19.2 You acknowledge and agree that in entering into this Agreement you have not relied upon any oral or written representation, statement or understanding (whether negligently or innocently) made by us other than as expressly set out in this Agreement.

19.3 The only remedy available to you for a breach by us of this Agreement shall be for breach of contract under the terms of this Agreement.

19.4 Nothing in this Agreement shall exclude or limit our liability for fraudulent misrepresentation.

19.5 This Agreement shall be governed by and construed in accordance with the Laws of England and Wales and you agree to submit to the exclusive jurisdiction of the Courts of England and Wales.

19.6 If any provision, clause or sub-clause of this Agreement is held by any competent authority to be void, voidable, illegal, invalid or otherwise unenforceable, but would be valid and/or enforceable if any part of such provision, clause or sub-clause were deleted or modified, then that provision, clause or sub-clause shall apply with such deletion or modification as may be necessary to make it valid and/or enforceable.

19.7 If any part of this Agreement or the application of it to any person shall, for any reason, be adjudged by a competent authority to be invalid, void, voidable, illegal or unenforceable such judgement shall not affect the remainder of this Agreement which shall continue in full force and effect.

19.8 References to the singular include the plural and vice versa. References to one gender include all other genders and vice versa.

19.9 The headings in this Agreement are for ease of reference only and shall not affect its interpretation or construction.