

# **tDodo Internet Web Hosting Terms and Conditions**

## **Things you should know:**

- A. The total amount payable by you for web hosting services depends on the plan that you have selected and your usage of the service.
- B. Depending on the plan you purchase, this agreement runs on a monthly, quarterly or yearly basis, and then renews automatically. If you give us 14 days written or emailed notice in advance, you can cancel this agreement at the end of each month or year. You also have the right to cancel this agreement if we change the terms and conditions or the Acceptable Use Policy in a way that adversely affects your rights or obligations.
- C. The supplier of this service is Dodo Internet Pty Ltd, Level 9, 432 St Kilda Rd, Melbourne. You can call Dodo Internet on 1300 666 330.

## **1. About this document**

- 1.1 This document contains the general terms and conditions on which Dodo Internet Pty Ltd (**we**) provide:
  - (a) domain name hosting services;
  - (b) associated email hosting and forwarding services;
  - (c) web hosting services (such as the provision of personal Web space); and
  - (d) associated services or software (such as account management software, helpdesk support, or content filtering).(the **Services**).
- 1.2 When you purchase Dodo's Services (**sign up**), you select a specific web hosting plan. This plan will have additional conditions which apply, such as:
  - (a) The periodic charges payable (**Fixed Charge**);
  - (b) Any limits on the amount of time you can stay connected or on the amount of data you can store on our servers or that users can download from your web site;
  - (c) Any additional charges payable (on a per-megabyte basis) if you exceed those limits, or if you access additional services that Dodo offers now or in the future (**Usage Charges**).

## **2. When does this document apply?**

- 2.1 This document came into force on 1 May 2004. If you sign up on or after this date, this document forms part of the contract between you and Dodo Internet.
- 2.2 If you were a Dodo web hosting customer with a pre-paid web hosting period as at 30 April 2004, this document will apply at the end of that access period or after 30 days (whichever date is later).

## **3. Who is the customer?**

- 3.1 The customer (in this document referred to as **you**) is the person who provides their personal details when purchasing a web hosting plan by telephone, in writing or by using Dodo's on-line sign up page.

3.2 By signing up on-line, over the phone, or by signing a written application, you promise that you are over 18 years of age. If not, then you are not authorised to sign up to our Service. You may, however, arrange for a parent or guardian to sign up instead of you.

#### **4. Use of Services**

4.1 When you sign up, you are requested to select a user name and password. You will need this user name and password to upload data to our servers (**access**) and to manage the services.

4.2 You must take reasonable steps to keep your password secret.

4.3 You are responsible for all use of the Services (including all Usage Charges) whether or not you have supervised the specific use.

4.4 Data may be uploaded to our servers:

(a) by you, your employees and contractors in connection with the normal set-up, operation and maintenance of your website;

(b) by a visitor to your website in connection with the normal operation of your website (for example, filling in a form).

4.5 You must make sure that any person uploading data to our servers complies with any obligations relating to content imposed on you under these terms and conditions or our Acceptable Use Policy.

#### **5. How are Service charges calculated?**

5.1 The Fixed Charge is set out when you sign up, and is usually stated for a specific period (for example, one month or one year). You may agree to change the Fixed Charge in the future if you purchase additional services from us that are charged on a periodic basis.

5.2 We will not increase the Fixed Charge during any period for which you have already paid and we will give you at least 30 days notice of any increase. However, this does not apply to any promotional offers (such as a reduced fee for the first month of your use of the Services).

**Note: the remainder of this section 5 applies to Usage Charges. As at 1 May 2004, no Web Hosting plans contain Usage Charges.**

5.3 The Usage Charge is calculated based on your excess data usage, or any additional services purchased, during a connection period.

5.4 Where we calculate a Usage Charge based on data downloaded and/or uploaded, we calculate 1 megabyte (or 1 MB) as 1,000,000 bytes (a byte is a unit of digital information, equivalent to 8 binary digits).

5.5 You agree that you are liable for all Usage Charges, even though some Usage Charges may be unexpected because of:

(a) Software installed on your computer (such as "peer to peer" software) that downloads or uploads data without your knowledge;

(b) Unsolicited email and other electronic communications sent to your computer by third parties; and

- (c) Use of the Services by others without your knowledge or supervision.

## **6. How are payments to be made?**

6.1 All of our plans permit payment by credit card. Some of our plans must be paid by credit card.

6.2 If you make payment by credit card:

- (a) You must provide valid credit card details and ensure that those details remain current (for example, it is your responsibility to make sure that the credit card details held by us are updated if the credit card is replaced or renewed);
- (b) If the credit card is not in your name, you must ensure that the credit card holder has authorised the use of the credit card to pay for Services provided by Dodo to you.
- (c) We debit a Fixed Charge to your credit card in advance at the beginning of the period to which that Fixed Charge relates;
- (d) We debit a Usage Charge to your credit card in arrears after we have calculated the Usage Charge for a period; and
- (e) If we are unable to debit a charge to your credit card, we may suspend the provision of Services, try to process your payment again, or both. We do not have to adjust a Fixed Charge or Usage Charge to take account of any period of suspension, unless we were unable to debit your credit card because of a fault in our credit card processing systems and facilities.

6.3 If you make payment by cheque (this only applies where cheque payments are permitted):

- (a) You must ensure that you provide to us a cheque for a Fixed Charge at the beginning of the period to which that Fixed Charge relates;
- (b) You must provide to us a cheque for a Usage Charge for a period within 14 days of us sending an invoice to you by email; and
- (c) We may choose to suspend the provision of Services if you do not make payment within the times set out above until we have received your cheque and it has been accepted as cleared funds by our bank.

## **7. Quality of Service**

7.1 We will make all reasonable efforts to provide the Services to you on a continuous basis. However, the provision of Services may be slowed or interrupted completely for a number of reasons, including the following:

- (a) Scheduled or unscheduled maintenance of any equipment or facilities used to provide the Services;
- (b) A hardware or software failure in any equipment or facilities used to provide the Services; and
- (c) Although we try to ensure that our systems cope with expected demand, a Service may be temporarily unavailable to you because of peak demand and network congestion.

- 7.2 To the extent permitted by law, we do not promise that the Services will always work, or that you will always be able to connect to them. For this reason, we do not recommend that you use the Services for mission-critical applications, or for websites where large volumes of data are downloaded.
- 7.3 The speed of your website depends on a number of factors, many outside of our control (including network congestion and failure in other parts of the Internet). For this reason, we do not promise that your content:
- (a) Will always be available to visitors to your website; or
  - (b) Will be available at a particular speed.
- 7.4 Federal and state legislation may give you additional rights beyond those set out in these terms and conditions. Also, such legislation may imply additional terms or warranties in these terms and conditions which cannot be varied. Nothing in these terms and conditions is intended to be inconsistent with, or vary, such rights, terms or warranties.
- 7.5 We do not include archiving or back-up services in the services that we provide. For example, if your website data and content as stored on our server becomes corrupted for any reason, we are not responsible for restoring a correct version of that data or content. You are responsible for ensuring that you maintain one or more secure and reliable copies of all data and content stored on our server.

## **8. Responsibility for use of Services**

- 8.1 You are responsible for all use of the Services using your account details and for all content placed on your website.
- 8.2 We are under no obligation to filter the content available through your website. However, you must ensure that any information, data or software available from your website:
- (a) is accurate;
  - (b) is free of viruses, Trojans, worms, unsolicited communications ("spam") or other malicious code; and
  - (c) Complies with criminal or civil laws and regulations (including censorship and intellectual property laws).
- 8.3 You must ensure that the use of the Services using your account details, and any of your content placed on or through our World Wide Web, ftp, news or email servers, does not infringe any applicable laws, including laws relating to:
- (a) censorship;
  - (b) gambling;
  - (c) spam;
  - (d) trade practices and fair trading;
  - (e) copyright and other intellectual property rights; and
  - (f) defamation.

- 8.4 You must defend and indemnify us if a claim is made against us, or we incur any losses or expenses, because you have breached your obligations under paragraph 8.2 or 8.3.
- 8.5 Although we are under no obligation to you to monitor or edit your use of the Services or any content you place on our servers, we may remove or modify any content that we believe on reasonable grounds infringes your obligations under paragraph 8.3.
- 8.6 You are responsible for Internet and telephone call charges that apply when you use our Services.

## **9. Additional rules**

- 9.1 We have an Acceptable Use Policy that contains additional rules about the way that you use the Services;
- 9.2 The Acceptable Use Policy forms part of the contract between you and us as if it were set out here in full;
- 9.3 The Acceptable Use Policy may be changed from time to time by a new version being posted on our website.
- 9.4 If there is any inconsistency between the Acceptable Use Policy and these terms and conditions these terms and conditions prevail.
- 9.5 We also have a Privacy Policy that states the way that we may collect, store, use and disclose personal information that we receive from you. We will comply with the Privacy Policy, as amended from time to time.

## **10. Ending this agreement and suspension**

- 10.1 You can end the contract between you and Dodo Internet by notifying us in writing or by email no less than 14 days before the end of any period for which you have paid a Fixed Charge. If you fail to do this, then the contract will be automatically renewed at the end of that period for an additional period of the same length.
- 10.2 We can end our provision of the Services to you:
- (a) at the end of any period for which you have paid a Fixed Charge by giving you 14 days advance notice in writing or by email;
  - (b) at any time by written or email notice if you breach your obligations under these terms and conditions.
- 10.3 If we believe on reasonable grounds that you have breached your obligations under these terms and conditions, we may suspend your access immediately while we investigate whether a breach has occurred. We are under no obligation to refund any part of the fees paid for Services during any period of suspension.
- 10.4 We may suspend your access to the Services at any time, and without warning, if you fail to make a payment when due (including where this is caused by a credit card transaction being declined).

## **11. General provisions**

- 11.1 If we need to send you a notice concerning this agreement, we can do so by email to the primary email account you receive as part of the Services.

- 11.2 The laws of Victoria, Australia govern the interpretation of this agreement.
- 11.3 You may not assign or otherwise transfer your rights and obligations under this agreement and any attempted assignment or transfer is void.
- 11.4 You must not re-sell our Services.
- 11.5 Dodo Internet may change these terms and conditions or the Acceptable Use Policy at any time by giving you 30 days notice. If the change adversely affects your rights or obligations under this agreement, you may cancel this agreement by notice to Dodo Internet without penalty (including without paying any Minimum Period Termination Charge that would otherwise apply). For your notice of cancellation to be effective, Dodo Internet must receive the notice before the change in the terms and conditions or Acceptable Use Policy takes effect.
- 11.6 If you validly cancel this agreement under clause 11.5 because of a change to the terms and conditions or Acceptable Use Policy made by us, we will refund to you any unused part of any Fixed Charge that you have pre-paid, on a pro-rated basis.