

# Terms and Conditions for Bluefish Hosting Pty Ltd (ABN 32 091 977 936)

These are the standard terms and conditions of supply of the Bluefish Hosting web hosting and other services offered from time to time on the Bluefish Hosting web site at <http://www.bluefishhosting.com.au> ("THE SERVICE") These terms apply to you as a user of the Service ("Client" or "you"). Please read these terms and conditions carefully. It is a condition of your use of the Service that you comply with these terms and conditions.

## 1. Terms and Amendment Procedure

1.1 These are the terms upon which we agree to provide the Service to the Client. The agreement made between us with these terms commences on the date when your order for Services was accepted by Bluefish Hosting.

1.2 We may vary these terms, the amount we charge for any Service, or the terms of the operation of the Service, at any time by general notice on a page of the internet referred to on the home page of our web site at <http://www.bluefishhosting.com.au> The changes will become effective upon publication of the notice. Where we vary the prices for Services, we will give at least 14 days notice of the change by the same means, and the new prices will apply at the end of that period.

1.3 If you use the Service after that publication, your use will constitute an acceptance of the amended terms.

1.4 These terms constitute the agreement in its entirety and supersede prior agreements.

1.5 We may from time to time run promotions and make special offers of limited time duration ("Promotions"). All Promotions are offered subject to their terms and may be withdrawn or altered at Bluefish Hosting's discretion. The terms of a promotion will override these terms to the extent of any inconsistency.

## 2. Service

2.2 We will advise the Client of correct operational procedures upon signup and provide support via email and phone.

2.3 Scheduled Maintenance - We must perform scheduled maintenance to servers from time to time. We will attempt to perform all scheduled maintenance at times which will affect the fewest customers. If scheduled maintenance requires the service to be offline for more than 30 minutes we will post details of the scheduled maintenance to the Home Page News at least 48 hours in advance of the maintenance.

2.4 Unscheduled Maintenance - We may need to perform unscheduled maintenance. If unscheduled maintenance requires the Service to be offline for more than 30 minutes, we will post details of the event to the Home Page News after the maintenance has been completed.

2.5 Archiving of Data - We will archive your data onto backup mechanisms on a regular basis for the purposes of disaster recovery. In the event of equipment failure or data corruption, we will restore from the last known good archive. In the event of corruption of all of our archives, or in the event that an old archive is used to restore data, you should be prepared to upload your data to your web site. You must maintain a recent copy of your data at your premises at all times. We will not be liable for incomplete, out-of-date, corrupt or otherwise deficient client data recovered from our backups.

2.6 The Service is provided by Bluefish Hosting from its data centres in Australia. Bluefish Hosting will determine in its absolute discretion from time to time the data centre location from which your Service is provided. Bluefish Hosting reserves the right to migrate your web site to a new operating system platform if our operating system supplier ceases to provide support for the legacy operating system, or if the server from which the service is provided fails or, in Bluefish Hosting's opinion becomes unreliable. Bluefish Hosting will use reasonable endeavours to notify you via the contact details in our database but does not take any responsibility for web site failure if you have failed to keep your contact details up-to-date or if you have not checked the operation of your web site post-migration and notified us of any required changes to the web site configuration.

2.7 In contracting with Bluefish Hosting for the Services, the Client obtains no rights to the hardware and other infrastructure and facilities used by Bluefish Hosting to deliver the Service.

2.8 In the absence of any additional written agreement, these terms and conditions (as varied from time to time) will apply to any further Services you acquire from Bluefish Hosting.

### **3. Payment**

3.1 You must pay for the Service as notified to you by Bluefish Hosting in accordance with the prices in force for Services from time to time.

3.2 You must pay all Service time charges, minimum charges and other amounts incurred by you or any designated users or incurred as a result of any use of your password (whether authorised or not) in accordance with the billing option selected and in advance.

3.3 Prices published on our web site are exclusive of any government taxes or charges unless otherwise noted, and exclusive of any registration or delegation charges imposed by domain name authorities.

3.4 In addition you must provide and pay for:-

- (a) the installation and use of telephone lines and all other equipment needed to access the Service; and
- (b) all government taxes, duties and levies (if any) imposed on either you or us in respect of the Services or any other service or goods supplied.

3.5 You must pay all amounts billed in accordance with your billing option. No credit terms are given to credit card accounts. Upon registration of a credit card account, you give us authorisation to debit your credit card for all charges. Billing period is on a monthly cycle, you will be billed pro-rata until the 1st of the next month.

3.6 You consent to us obtaining a credit reporting agency report containing personal information about you (as well as information concerning commercial creditworthiness and activities) for the purpose of assessment by us of an application for credit (whether commercial or personal) or for the purpose of the collection of payments which are overdue.

3.8 The account keeping fee will be charged per customer account identified with a unique Client Identification number. If a customer has multiple accounts with Bluefish Hosting, the account keeping fee will be charged on each account for which monthly invoices are issued.

#### 4. Warranties and Liabilities

4.1 We do not warrant that:-

- (a) the services provided under this agreement will be uninterrupted or error free;
- (b) the services will meet your requirements, other than as expressly set out in this agreement; or
- (c) the Services will be free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to the services or systems of Bluefish Hosting.

4.2 Except as expressly provided to the contrary in this agreement, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this agreement, are excluded. Where any statute implies any term into this agreement, and that statute avoids or prohibits provisions in a contract excluding or modifying the application of or liability under such a term, then the term will be taken to be included in this agreement. However, our liability for any breach of the term will, if permitted by that statute, be limited, at our option, to the resupply of the services again; or payment of the cost of having the services supplied again.

4.3 Except as provided under clause 4.2, none of Bluefish Hosting, its subsidiaries, officers, directors, employees, partners or suppliers will be liable to you or any third party for:-

- (a) any special, punitive, incidental, indirect or consequential damages of any kind;
- (b) any damages whatsoever, including, without limitation, those resulting from:
  - (i) loss of use, data or profits, on any theory of liability, arising out of or in connection with the use of or the inability to use the Services;
  - (ii) the statements or actions of any employee or agent of Bluefish Hosting;
  - (iii) any unauthorised access to or alteration of your web site, transmissions or data;
  - (iv) any information that is sent or received or not sent or received;
  - (v) any failure to store or loss of data, files or other content;
  - (vi) your fraudulent, negligent or otherwise unlawful behaviour;
  - (vii) information, data or other material provided to Bluefish Hosting by you or on your behalf; or
  - (viii) any Services that are delayed or interrupted.

4.4 You warrant that:-

- (a) at the time of entering into this agreement you are not relying on any representation made by us which has not been stated expressly in this agreement, or on any descriptions or specifications contained in any other document, including any catalogues or publicity material which we have produced;
- (b) you will conduct such tests and computer virus scanning as may be necessary to ensure that data uploaded by you onto or downloaded by you from the Server does not contain any computer virus and will not in any way, corrupt the data or systems of any person;
- (c) you will keep secure any passwords used to upload data to the Server; and,
- (d) you hold and will continue to hold the copyright in the Client Data or that you are licensed and will continue to be licensed to use the Client Data.

4.5 You accept responsibility for all information and material you issue over any Service, and indemnify us and hold us harmless against any liability in relation thereto. In particular you undertake that you shall not publish or issue any information which is illegal or defamatory. You also acknowledge that we do not vet or approve any information or material available through the Service. We do not accept any liability for any loss, claim or damages arising from or relating to information and material available through the Service, to the full extent permitted by law. You access and use such information and material at your own risk.

4.6 You agree to abide by our Acceptable Use Policy which follows these Terms and Conditions and our Privacy Policy which is located at URL <http://www.bluefishhosting.com.au/privacy.aspx> and you agree that the terms of those two policies form part of this agreement between you and Bluefish Hosting.

4.7 You are solely responsible for dealing with persons who access the Client Data, and must not refer complaints or inquiries in relation to such data to us.

4.8 Except as provided in clause 4.2. we are not liable to you or any other person for:-

- (a) cost, loss or liability (including loss of profit or other consequential damage) arising from our supply or failure or delay in supplying the Service;
- (b) the content, context or confidentiality of any communications made using the Service;
- (c) loss or damage caused by third party software applications forming part of the Service.

4.9 You indemnify us against all costs, expenses, loss or liability that we may suffer (directly or indirectly) resulting from:

- (a) your breach of these terms;
- (b) your use or misuse of the Service;
- (c) the use or misuse of the Service by any person using your account; and,
- (d) publication of defamatory, offensive or otherwise unlawful material on any web site forming part of your service.

## **5. Suspension and Termination of Service**

5.1 We may from time to time without notice suspend the Service or disconnect or deny your access to the Service:-

- (a) during any technical failure, modification or maintenance involved in the Service provided that we will use reasonable endeavours to procure the resumption of the Services as soon as reasonably practicable; or
- (b) if you fail to comply with any provision in this agreement (including failure to pay charges due), or do, or allow to be done, anything which in our opinion may have the effect of jeopardising the operation of the Service, until the breach (if capable of remedy) is remedied. Notwithstanding any suspension of any Service under this clause you shall remain liable for all charges due throughout the period of suspension.

5.2 Bluefish Hosting may without notice to you remove, amend or alter your data upon being made aware of:-

- (a) any claim or allegation; or
- (b) any court order, judgment, determination or other finding of a court or other competent body, that the data is illegal, defamatory, offensive or in breach of a third party's rights.

5.3 We may end our agreement with you and cease providing Services for any reason, on 30 days written notice to you. You may close your account with Bluefish Hosting on 30 days written notice to Bluefish Hosting.

5.4 If your account is closed you must pay all outstanding charges immediately and we may delete all Client Data from any storage media.

5.5 We are under no obligation to provide you with a copy of the Client Data if we have suspended or terminated your access to the Service for your breach. If we provide you with a copy of Client Data, we are entitled to charge a fee for service.

## **6. Domain Names**

6.1 If you have requested that Bluefish Hosting register a .com, .net, .org, .biz, .info or .name domain name (TLDs or Top Level Domains) on your behalf, you agree that you have read and accept the TLD Policy applicable to .com, .net, .org, .biz, .info and .name domain names issued by the registrar net registry located at <http://www.netregistry.com.au>.

6.2 You agree that in the event of a dispute about a TLD, you will submit to and are bound by the Uniform Domain Name Dispute Resolution Policy (UDNDRP) located at <http://www.netregistry.com.au> and the Rules for UDNDRP located at <http://www.netregistry.com.au>.

6.3 If you have requested that Bluefish Hosting register a .com.au, .id.au, .net.au or .org.au domain name (2LDs or Second Level Domains) on your behalf, you agree that you have read and accept the published policies applicable to 2LDs issued by the registrar net registry located at <http://www.netregistry.com.au>.

6.4 You agree that in the event of a dispute in registering a 2LD or about a 2LD after registration you will submit to and are bound by the .au Dispute Resolution Policy (auDRP) and any variations to it from time to time bind Bluefish Hosting. The auDRP can be viewed at <http://www.auda.org.au/policy/>.

6.5 In registering or renewing a domain on your behalf, Bluefish Hosting is acting as a reseller of the registrar, Net Registry.

6.6 You agree that by maintaining the registration of a domain name after changes or modifications to the applicable policies become effective, you are confirming your continued acceptance of these changes and modifications.

6.7 You agree that you must pay for any registration or delegation charges in advance at Bluefish Hosting's list price. You understand that you cannot register a domain name without paying for it in advance. Bluefish Hosting is not obliged to provide you with information or assistance in respect of the domain name until we have received payment of our domain name charges.

6.8 Bluefish Hosting makes no representation and gives no warranty about your chosen domain name being available for registration or use by you.

6.9 You expressly authorise and direct Bluefish Hosting to:-

- (a) be nominated as authorised billing contact for your domain name with the domain name registrar;
- (b) renew your domain name registration upon receipt of renewal notification from the domain name registrar and invoice you for the relevant charge in accordance with Bluefish Hosting's list price from time to time.

6.10 In respect of 2LDs, you acknowledge that Bluefish Hosting is not liable for any loss or damage resulting from non-renewal of your domain name if you have failed to provide the appropriate warranty in respect of your continued eligibility to hold the domain name.

6.11 You indemnify Bluefish Hosting against all claims arising out of your registration and use and renewal of registration of your chosen domain name, unless and to the extent that the claim arises out of Bluefish Hosting's breach of this contract, or its negligent act or omission.

## **7. Miscellaneous**

7.1 The Client grants to Bluefish Hosting a license to use and reproduce all Client Data in order to fulfil its obligations under this agreement. In this agreement "Client Data" means all information, data, text, logos, images, audio, movie clips and/or content in any form that forms part of the Client's web sites or emails.

7.2 A provision of, or a right created under this agreement, may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by the parties.

7.3 The law in force in New South Wales governs this agreement and the transactions contemplated by this agreement.

7.4 You may not resell Services or assign your rights and obligations under this agreement without our prior written consent. (c) Bluefish Hosting Pty Ltd

### **Bluefish Hosting Acceptable Use Policy**

This is Bluefish Hosting's Acceptable Use Policy. It applies to you if you are a Bluefish Hosting Customer or User ("you"). It is intended to ensure that your use of Bluefish Hosting's service is trouble free and that you have due regard to the law and the needs of other users. Please read it carefully. It is a condition of your use of our service that you comply with the terms of this Policy. Please look out for any amendments to the Policy that Bluefish Hosting ("we") might make in the future. From time to time we will make amendments to it by giving you notice of the change and you will then be obliged to comply with the policy as amended. In this policy we use the following definitions: Customer means the person or company which has entered into an agreement with Bluefish Hosting for supply of Services whether via Bluefish Hosting's web site or otherwise.

Daily Email Limit means the greater of:

- (a) 1,000 messages per day sent via your own mailing list or email client; or
- (b) One message per mailing list per day, where you have purchased additional mailing lists. Potentially Prohibited Content means that content so defined by the Broadcasting Services Act, 1992 (as amended). Prohibited Content means that content so defined by the Broadcasting Services Act, 1992 (as amended). Service means all products and services offered by Bluefish Hosting from time to time, which you use.

Spam means:

- (a) mass-delivered and/or randomly delivered advertising or other material;
- (b) sent to groups of recipients who are not known to you, who have not requested the material, or who have not granted permission for the mail to be sent to them;
- (c) delivered via email or discussion groups; and
- (d) which does not contain an unsubscribe option.

Users means users of the Service who have not obtained it as a Customer, but via a Customer who is authorised to resell the Services such as a Bluefish Hosting Partner.

Bluefish Hosting means Bluefish Hosting Pty Ltd ACN 105 368 054.

## **1. Some General Principles**

1.1 Bluefish Hosting is not responsible for the content of traffic. We exercise no supervision or control whatsoever over the content of the information passing through our network.

(a) We do not assume any responsibility for information not sent or expressly authorised by us.

(b) The responsibility for traffic that does not conform with this policy and all possible consequences lies with the sender of the traffic.

(c) We accept no responsibility for the consequences of unauthorised breach of our system security such as hacking or denial of service attacks.

1.2 You should familiarise yourself with your legal responsibilities. You can view your legal responsibilities in relation to:

(a) supervising and controlling children's access to internet content;

(b) procedures which parents can implement to control children's access to internet content, including availability, use and appropriate application of internet content filtering software; and

(c) obligations which may exist in relation to your content under the Broadcasting Services Act 1992 (as amended) or other applicable state legislation, at either of the following web sites: <http://www.iaa.net.au>; or <http://www.aba.gov.au>.

1.3 You are responsible for use of your account. If you permit others to use our Service, you are responsible for making users of the Service aware of this policy and obtaining compliance of your users with this policy.

1.4 You are responsible for complying with conditions of use of other networks. If we provide you with access to a network outside our Service you must comply with any acceptable use conditions which apply to that network.

## **2. Acceptable Uses**

2.1 It is your responsibility to ensure that you and others whom you permit or enable to use Bluefish Hosting's Service do so as follows:

(a) use our Service in a manner which does not violate any applicable laws or regulations;

(b) respect the conventions of the newsgroups, lists and networks that you use;

(c) respect the legal protection afforded by copyright, trade marks, license rights and other laws to materials accessible via our Service;

(d) respect the privacy of others and observe the provisions of Bluefish Hosting's Privacy Policy at

<http://www.bluefishhosting.net.au/privacy.php>

(e) use the Service in a manner which does not interfere with or disrupt other network users, services or equipment;

(f) refrain from acts that waste resources or prevent other users from receiving the full benefit of our services; and

(g) comply with Bluefish Hosting's terms and conditions of supply.

2.2 Your use of our Services should be ethical and in accordance with accepted community standards.

## **3. Unacceptable Uses**

3.1 You must comply with the law. It is not acceptable to use our service for any purpose which violates local, state, federal or international laws. You should obtain independent legal advice about your potential liability for the consequences of the publication of material on a web site or content database.

3.2 Specific kinds of use are not allowed. It is not acceptable to use our Service to do any of the following ("Unacceptable Conduct"):

(a) send Spam;

(b) provide a capability on a Bluefish Hosting-hosted site which permits third parties to send Spam from a Bluefish Hosting server;

(c) intentionally omit, forge, delete or misrepresent transmission information including headers, return mailing addresses, internet protocol addresses;

- (d) engage in any activity intended to withhold or mask Customer's, or if you are an authorised reseller, its User's corporate identity or contact information;
- (e) send electronic chain letters;
- (f) distribute messages to inappropriate or unrelated forums, newsgroups or mailing lists;
- (g) send email to a recipient after the recipient has unsubscribed from your mailing list or has advised you by other means that they do not wish to be on the mailing list;
- (h) send more emails than the Daily Email Limit
- (i) undertake activities which cause or may cause third party service providers to place Bluefish Hosting's internet protocol (IP) addresses on a blacklist and/or block those IP addresses;
- (j) undertake any activity which impedes Bluefish Hosting's ability to provide its Service;
- (k) make transmissions of any type or quantity which adversely affect our operation or jeopardise the use of our service, or its performance for other subscribers;
- (l) violate copyright or other intellectual property rights;
- (m) illegally store, use or distribute software in order to transmit threatening, libellous, obscene or offensive materials;
- (n) engage in electronic 'stalking' or any other form of harassment such as using abusive or aggressive language;
- (o) misrepresent or defame others;
- (p) harass or impersonate Bluefish Hosting or other users;
- (q) commit fraud, gain unauthorised access to any computing, information, or communications devices or resources, including but not limited to any machines accessible via the internet;
- (r) damage, modify or destroy the files, data, passwords, devices or resources of Bluefish Hosting, other users or third parties;
- (s) engage in misleading or deceptive online marketing practices;
- (t) conduct any business or activity or solicit the performance of any activity that is prohibited by law;
- (u) make an unauthorised transmission of confidential information or material protected by trade secrets;
- (v) place on the internet, obtain through the internet or transmit using the internet, Prohibited Content or Potentially Prohibited Content;
- (w) place on the internet, obtain through the internet or transmit using the internet any of the following:
  - (i) Content which is (or would be) as illegal. Such content includes:
    - material containing detailed instruction in crime, violence or drug use;
    - child pornography;
  - (x) Use the internet with intent to:
    - (i) procure a child under 16, or a person whom you believe to be a child under 16 to engage in a sexual act; or
    - (ii) expose without legitimate reason, a child under 16 or a person whom you believe to be a child under 16, to any indecent matter.
  - (y) propagate computer worms, viruses and other types of malicious programs;
  - (z) use the service to interfere or disrupt other network users, services or equipment;
  - (aa) attempt to do any of the things set out in (a) to (z) above.

3.3 It is not acceptable to use our Service to solicit subscribers to become subscribers of other competitive services.

3.4 Resale of our Services to others is strictly forbidden under all circumstances unless expressly approved by Bluefish Hosting in writing. The Partner program provides for the resale of services.

#### **4. Third Party Complaint Process**

4.1 From time to time, Bluefish Hosting receives complaints from third parties ("Complaints") regarding Unacceptable Conduct, allegedly being conducted by Customers or their Users. Bluefish Hosting will make reasonable endeavours to resolve such complaints by working with Customers. The complaint process set out here does not apply to complaints the subject of court order or proceedings, or where Bluefish Hosting reasonably believes that it must take urgent action without reference to the Customer.

4.2 Bluefish Hosting's policy is to put the complaining party in direct contact with the party best able to answer the complaint. Accordingly, Bluefish Hosting's Customers authorise and direct Bluefish Hosting to provide to third party complainants the relevant Customer's email contact details.



4.3 You have a right to complain to the ABA about content. If you become aware that a web site hosted by Bluefish Hosting contains Prohibited Content or Potentially Prohibited Content, you can make a formal complaint to the Australian Broadcasting Authority by contacting them at: ABA, Head Office, Level 15 Darling Park, 201 Sussex Street, Sydney NSW 2000, or through their web site at URL <http://www.aba.gov.au>.

## **5. What We May Do to Ensure That This Policy is Being Followed**

5.1 We may monitor your account but will respect your privacy. We may monitor the conduct of your account to determine whether this policy is being followed.

5.2 If we monitor the conduct of your account we will safeguard your privacy subject to the terms of our Privacy Policy.

5.3 We may suspend or terminate your account and/or notify the authorities. If we believe that your use of the Service may break the law or that you have not complied with this policy we may:

- (a) warn you by email (but we are not obliged to do so);
- (b) suspend your access to the Service;
- (c) terminate your account without notice; and/or
- (d) notify and provide relevant information to the authorities, as appears appropriate in the circumstances.

5.4 In the event of taking action under 5.3 we reserve the right to delete any or all of your information, material, software or other content stored on our system in our sole discretion.

5.5 We may, in our absolute discretion and without notice to you, suspend or terminate your access to the Service:

- (a) where we are made aware that a court order, judgment, decree, determination or otherwise has been made to the effect that the Customer data is illegal, offensive, objectionable or in breach of a third party's rights; and
- (b) if we are directed to do so by the ABA under a takedown notice in accordance with its obligations under the Broadcasting Services Amendment (Online Services) Act 1999 (as amended).
- (c) in respect of Customer managed server products, where after giving you notice (by email or logged job), you fail to act on our reasonable request to implement urgent server patching or other security measures designed to limit the impact of identified exploits or other vulnerabilities.

5.6 You agree that you will have no claim against Bluefish Hosting in respect of any action reasonably taken by Bluefish Hosting in its implementation of the terms of this Acceptable Use Policy, and you indemnify Bluefish Hosting against any claim by a User arising out of the same.