

WEB HOSTING/EMAIL HOSTING

TERMS AND CONDITIONS

The following document contains Daniel Mullins Computer Services Terms and Conditions for the provision of services as offered on its sites

<http://www.dmcs.com.au>, <http://www.webemail.com.au>,

<http://www.smsreminder.com.au> and <http://www.hostingserver.com.au>, . These services are provided to clients who in turn agree to accept these services and their associated costs in accordance to the following Terms and Conditions and associated documents herein.

1. General:

1.1 The Web Hosting Service is provided on an "AS IS, AS AVAILABLE" basis. Daniel Mullins Computer Services gives no warranty, express or implied, for the Web Hosting Services provided. This 'no warranty' clause expressly includes any reimbursement for losses of income due to disruption of services by Daniel Mullins Computer Services or its providers beyond the fees paid by the Client to Daniel Mullins Computer Services for its products and services.

1.2 The Client will use the Web Hosting Services in a manner consistent with any and all applicable policies of Daniel Mullins Computer Services as well as all laws including but not limited to that of the State of Queensland, Australian Federal Government and International Law. Violation of this provision can result in the termination of service and product provision immediately or with 30 days notice depending on the severity of the violation. Daniel Mullins Computer Services shall retain the unfettered discretion in determining the severity of such a breach and the most appropriate course of action in ensuring service quality is not compromised for its other clients and/or its duties to the community as a whole as a web hosting provider.

1.3 Use of any information obtained by way of Daniel Mullins Computer Services is at the Client's own risk, while all reasonable care is used in the provision of Services, Daniel Mullins Computer Services shall not have any liability whatsoever in contract, tort or otherwise to any party in respect of any loss or damage (including but not limited to direct or consequential loss, economic loss or loss of other contracts) arising out of the provision of Services, any inaccuracy or error or omission from any part of the Services or the Users inability to use the Site or Services and Information contained therein.

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1.4 While Daniel Mullins Computer Services shall make every reasonable effort to protect data stored on Client's Server(s), Daniel Mullins Computer Services is not responsible for Client's data, files, or directories residing on Daniel Mullins Computer Services equipment. The Client is solely responsible for maintaining data, file, and directory structure backups as well as adequate security measures to ensure data integrity and security. Daniel Mullins Computer Services reserves the right to charge clients for their use of backup facilities.

1.5 The Client is required to provide Daniel Mullins Computer Services with correct and up to date contact details for billing and technical notification purposes. Daniel Mullins Computer Services takes no responsibility for disruption to services due to inability to contact the Client.

1.6 Daniel Mullins Computer Services in line with its specified Privacy Policy may use the Client's information.

1.7 In the event of any partnership break-up, divorce or other legal problems affecting the Client, Client understands that Daniel Mullins Computer Services will remain neutral and may put the Service on hold until the situation has been resolved. Under no circumstances will Daniel Mullins Computer Services be liable for any losses incurred by Client during any time of determination of ownership, or otherwise.

1.8 Daniel Mullins Computer Services reserves the right to modify these Terms and Conditions, including any of its policies, product offering and pricing in any way as required. Notice of such changes will be delivered to users via postings on Daniel Mullins Computer Services Web Site only. Continued usage of Web Hosting Services indicates the client's acceptance of any changes to Daniel Mullins Computer Services policies and/or product offering in their amended form.

2. Payment:

2.1 The Client agrees to a once off set up fee and ongoing service fees for provision of Web Hosting Services. If Client elects to take advantage of any discounts offered for pre-payment of Services and this Agreement is terminated for any reason then any unused prepaid amounts will not be refunded by Daniel Mullins Computer Services.

In addition setup fees may be charged for additional services.

2.2 Payment can be made by Cheque, Direct Deposit or Cash and in accordance with the payment terms indicated on the Daniel Mullins Computer Services invoice.

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2.3 Failure to make payment:

- Where an invoice becomes more than 14 days overdue, the Client's service will be automatically deactivated pending payment. A reactivation fee will be applied to the Client's account in addition to any outstanding amounts. Reactivation of service will only occur where the full amount, including reactivation fee(s), is paid.
- Where an invoice becomes more than 30 days overdue, Daniel Mullins Computer Services reserves the right to pursue further action in order to retrieve monies owed. The Client is responsible for any legal fees and expenses incurred during the collection of any unpaid amounts.

2.4 Daniel Mullins Computer Services reserves the right, in its sole discretion, to deactivate the Client's Web Hosting account(s) upon any indication of credit problems including, but not limited to, delinquent payments.

3. Domain Names:

3.1 Daniel Mullins Computer Services provides no warranty or guarantee that the domain name applied for will be available for registration by you, the Client.

3.2 Registration and ongoing use of a domain name are bound by the relevant naming authority's policies and procedures.

You can view these policies through the links below:

<<http://www.icann.org/registrars/wdrp.htm>> - for GTLD domains.

<<http://auda.org.au/policy/policy/>> - for Australian domains.

3.3 You, the Client, agree to irrevocably waive any claims against Daniel Mullins Computer Services that may arise resulting from the decision of a naming authority to refuse to register a domain name.

3.4 In the circumstances that Daniel Mullins Computer Services did not register your domain name, you accept that it is your responsibility to ensure that your Domain Name License is renewed. Daniel Mullins Computer Services will accept no responsibility or liability for the renewal of your domain name under these circumstances.

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3.5 Payment for registration or renewal of a domain name must be made prior to any action being taken by Daniel Mullins Computer Services to submit the registration or renewal application to the appropriate registrar.

3.6 Should Daniel Mullins Computer Services undertake the renewal of a domain name on your behalf where the original registrar for the domain is different to Daniel Mullins Computer Services registrar of choice, the successful renewal of the domain by Daniel Mullins Computer Services will be dependant on your agreement to transfer the domain to Daniel Mullins Computer Services registrar of choice.

3.7 Domain registration applications will only be processed upon payment for this service and Daniel Mullins Computer Services accepts no responsibility for delays in domain registration where the delay results from a delay in the client making payment or administrative delays by a third party.

3.8 Domain renewal requests will only be processed upon payment for this service and Daniel Mullins Computer Services accepts no responsibility for delays in domain renewal where the delay results from a third party or any automated system failures.

3.9 Domain registration applications and renewal requests will be processed within 7 business days of receipt of payment and/or other required information from you, the client. In the case where the client's current registrar is not Daniel Mullins Computer Services registrar of choice, processing is dependent on the client's approval of transferring registrars and may take up to 14 business days to process.

3.10 Requests for cancellation of domain registration are subject to the appropriate registrar's Terms and Conditions. Cancellation requests may not be available and charges will apply.

3.11 Requests to transfer ownership of a domain name to a different entity will be accepted by Daniel Mullins Computer Services however, Daniel Mullins Computer Services is bound by the relevant policies of the appropriate naming authority. Fees apply.

4. Trademarks and Copyrights:

4.1 The Client warrants that it has the right to use the trademarks it features on the Service. The Client hereby agrees that any material submitted for publication on Daniel Mullins Computer Services network through Web Hosting Services received by the Client will not violate or infringe any copyright, trademark, patent, statutory, common law or proprietary rights of others, or contain anything libelous or harmful.

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5. Hardware, Equipment, and Software:

5.1 The client is responsible for and must provide all telephone, computer, hardware and software equipment, services and technical support necessary to access the Web Hosting Services. Daniel Mullins Computer Services makes no representations, warranties, or assurances that the client's equipment will be compatible with Daniel Mullins Computer Services services.

6. Additional Services:

6.1 Daniel Mullins Computer Services offers a variety of additional hosting and e-commerce facilities. These services are available as an addition to standard hosting packages for additional fees. These additional services may be subject to additional regulations and Acceptable Use policies designed to ensure service quality for all Daniel Mullins Computer Services clients. It is the client's responsibility to ensure that they comply to these regulations.

7. Internet Etiquette:

7.1 Users of the Internet and electronic forums should be considerate of the expectation and sensitivities of others on the network and the online community as a whole when posting material for electronic distribution. The network resources may not be used to impersonate another person or misrepresent authorization to act on behalf of others or Daniel Mullins Computer Services. All messages transmitted via Daniel Mullins Computer Services service should correctly identify the sender furthermore; users may not alter the attribution of origin in electronic mail messages or postings.

7.2 Users must not attempt to undermine the security or integrity of computing systems or networks and must not attempt to gain unauthorized access to said systems, networks or services.

7.3 Due to the public nature of the Internet, all information should be considered publicly accessible, and important or private information should be treated carefully. Daniel Mullins Computer Services is not liable for protection or privacy of electronic mail or other information transferred throughout the Internet or any other network Daniel Mullins Computer Services or the Client may utilize.

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7.4 Use of distribution lists via unsolicited electronic mail or other electronic mailings is strictly prohibited. Daniel Mullins Computer Services reserves the right to deactivate the Client's Web Hosting account(s) upon an indication of such activity. The Client hereby agrees to indemnify and hold harmless Daniel Mullins Computer Services from any claim resulting from the Client's or another party's use of electronic mail service(s) on the Client's Web Hosting account(s).

7.5 Obscene Speech or Materials -- Using Daniel Mullins Computer Services network to advertise, transmit, store, post, display, or otherwise make available child pornography or obscene speech or material is strictly prohibited.

7.6 Defamatory or Abusive Language -- Using the Daniel Mullins Computer Services network as a means to transmit or post defamatory, harassing, abusive, or threatening language is strictly prohibited.

7.7 Other Illegal Activities -- Engaging in activities that are determined to be illegal, including advertising, unauthorized online gambling, transmitting, or otherwise making available pyramid schemes, fraudulently charging credit cards, and pirating software is strictly prohibited.

7.8 Other Activities -- Engaging in activities, whether lawful or unlawful, that Daniel Mullins Computer Services determines to be harmful to its subscribers, operations, reputation, goodwill, security or customer relations is strictly prohibited.

7.9 Daniel Mullins Computer Services reserves the right, in its sole discretion, to suspend the Client's services provided by Daniel Mullins Computer Services - including but not limited to web hosting services, email accounts or others - without notice upon proof of breach of the clauses outlined in Section 7.0 of this agreement.

8. Termination:

8.1 The client may cancel the Web Hosting Services provided by Daniel Mullins Computer Services upon the conditions that requests for cancellation are made in writing and sent to Daniel Mullins Computer Services via post. Cancellation of any services will not take effect until such notice is received. A refund is only available if Daniel Mullins Computer Services receives the cancellation request within 30 days of purchase date for the services you are wishing to cancel. Setup fees, domain registration fees, custom technical assistance fees including any third party application fees incurred by Daniel Mullins Computer Services in the provision of third party products and/or services are non-refundable.

8.2 Within 7 business days of receipt of cancellation request, the service will be deactivated. The service (including any files, hosting space, databases or other related items) will be deleted from Daniel Mullins Computer Services servers immediately after account/service deactivation. It is the responsibility of the client to ensure that all required data is backed up by the client prior to deletion.

8.3 Refunds will only be granted if cancellation occurs within the first 30 days of service provision. Setup fees, domain registration or any application fees incurred by Daniel Mullins Computer Services in the provision of third party products and or services are non-refundable.

8.4 Daniel Mullins Computer Services reserves the right to suspend Web Hosting Services and any other services provided without notice for any unpaid or partially paid balances. The Client is responsible for any legal fees incurred during the collection of any unpaid amounts.

8.5 Spamming (the practice of sending unsolicited, unwelcome mass mailings to people, whether or not they contain commercial content) is strictly prohibited. Any client found to be Spamming will have their Web Hosting and any other services immediately terminated. Any unpaid balances as well as commercial damages that occur as a result of will be payable by that client.

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9. Satisfaction Guarantee:

9.1 The Client may terminate any services solicited by them from Daniel Mullins Computer Services within the first thirty days from activation of the hosting account and receive a full refund. A request for termination of services must be received in writing as per outlined in Section 8.0, Termination.

9.2 Setup fees, domain registration or any application fees incurred by Daniel Mullins Computer Services in the provision of third party products and or services are non-refundable. If the Client elects to take advantage of any discounts offered for prepayment of Services, then Daniel Mullins Computer Services will not refund any unused prepaid amounts.

10. Warranty and Indemnity:

Disclaimer of Warranties . While Daniel Mullins Computer Services uses all reasonable care in providing the Service, Daniel Mullins Computer Services shall not have any liability whatsoever in contract, tort or otherwise to any party in respect of any loss or damage (including without limitation direct or consequential loss, economic loss or loss of other contracts) arising out of the provision of the Service, any inaccuracy or error or omission from any part of the Service or the Client's inability to use the Service and information contained therein and in the event that this Agreement constitutes a supply of services to a consumer as defined in the Trade Practices Act 1974 or relevant State or Territory legislation, nothing contained in this Agreement excludes restricts or modifies any condition, warranty or other obligation where to do so would be unlawful and in such event Daniel Mullins Computer Services sole liability for breach of any such condition, warranty or other obligation, including any consequential loss which the Client may sustain or incur shall be limited to in relation to services the supplying of the Service again or the payment of the cost of having the Service supplied again as Daniel Mullins Computer Services may elect.

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Indemnity. The Client agrees to defend, indemnify and hold Daniel Mullins Computer Services harmless from and against any and all claims, losses, liabilities and expenses (including solicitors' fees) related to or arising out of the Services provided by Daniel Mullins Computer Services to the Client under this Agreement, including without limitation claims made by third parties (including the customers of Client) related to any false advertising claims, liability claims for products or services sold by the Client, claims for patent, copyright or trademark infringement, claims due to disruption or malfunction of services provided hereunder, or for any content published by the Client using the Services.

12. Agreement:

The Client acknowledges and agrees that this Agreement is the entire Agreement between the parties and excludes all oral or implied representations and terms unless such terms are agreed between the parties in writing. The Client agrees that the above mentioned terms and conditions constitute the full and complete understanding between Daniel Mullins Computer Services and the Client of the obligations and responsibilities of both parties to the other.

I AGREE TO THE TERMS AND CONDITIONS

NAME (print) _____

POSITION _____

COMPANY _____

DATE DD/MM/YYYY _____

SIGANTURE _____