

# Terms & Conditions

## 1. Information about us

We are:

GS WebHost LTD

39B Westbury Avenue

N22 6BS

Registered in England and Wales company number \*\*\*\*\*.

These terms and conditions cover our web hosting services only. By ordering or using any of our Services, you agree to be bound by these terms and conditions. If you refuse to accept these terms and conditions, you will not be able to order or use any of our Services.

## 2. Your status

2.1 By placing an order through our website, you warrant that:

2.1.1 You are legally capable of entering into binding contracts; and

2.1.2 You are at least 18 years old.

2.2 If you are acting on behalf of a company or other business, you warrant that you personally have the authority to bind that company or business on whose behalf you are placing an order.

## 3. Becoming a customer

3.1 You can only place an order for the Services once you have registered a customer account with us. Information that you provide while registering an account must be complete and accurate.

3.2 You agree that we may block access to your account and the Services we supply if we reasonably believe that the information you have supplied is inaccurate or false.

3.3 You must keep your username and password secret at all times and not allow anyone else to use it. You must contact us immediately if you believe your user name and password has become known to someone else.

3.4 During the process of ordering the Services we will allow you to register a credit or debit card with our payment processing partner, Paypal. This sets up an agreement between Paypal and you to automatically debit your card periodically to pay for the Services.

3.5 After placing an order for the Services we will send you details of the Services you have ordered by email, together with an invoice, to the email address you provided when you registered your account with us.

3.6 You can view the invoices we have sent you and details of what you have purchased from our website by logging into your account and clicking “Invoices”.

## **4. Our contract**

4.1 After placing an order, you will receive an email from us accepting your order and, if appropriate, letting you know that the Service you have purchased has been activated (“Acceptance Confirmation”). Your order constitutes an offer to us to buy our Services and all orders are subject to acceptance by us. The contract between us (“Contract”) will only be formed when we send you the Acceptance Confirmation. We may also decline your order for the Services for any reason, in which case we will refund any monies paid.

4.2 The Contract will relate only to those Services we have confirmed in the Acceptance Confirmation. We will not be obliged to supply any other Services which may have been part of your order until such Services have been confirmed in a separate Acceptance Confirmation.

## **5. Consumer rights**

5.1 If you are buying as a consumer (i.e., not within the course of your business), ordinarily, the Consumer Protection (Distance Selling) Regulations 2000 allow you to cancel the Contract at any time within fourteen (14) working days, beginning on the day after you received the Acceptance Confirmation. However, by placing your order for the Services, you agree to us starting supply of those Services before the end of the seven working day cancellation period. As such, you will not have the right to cancel the Contract under the Consumer Protection (Distance Selling) Regulations 2000.

5.2 This provision does not otherwise affect your statutory rights.

## **6. Cancellation**

6.1 To cancel the Contract you must inform us in writing via email or our contact page.

6.2 The Services which may not be cancelled include (but are not limited to):

6.2.1 Hosting Services where you request a dedicated hosting server;

6.2.2 Domain Registration and Renewal Services; and

6.2.3 Use of SSL certificates, additional email space and other ‘add on’ products.

## **7. Price and payment**

7.1 The price of any Services will be as quoted on our website from time to time, except in cases of obvious error. Prices include VAT except where explicitly stated.

7.2 The total cost of your order of the Services will be shown in your Shopping Basket before you submit your order for the Services.

7.3 Prices are liable to change at any time. If you do not agree to such price changes, please cancel your Services. If you do not cancel you will be deemed to have accepted the new prices, and they will be charged to the credit card, debit card or other payment method registered to your account.

7.4 Despite our best efforts, it is possible that some of the Services listed on our website may be incorrectly priced. Where a Service's correct price is less than our stated price, we will charge the lower amount when accepting your order. If a Service's correct price is higher than the price stated on our website, we will either contact you for instructions before accepting your order, or reject your order and notify you.

7.5 We are under no obligation to provide the Services to you at the incorrect (lower) price, even after we have sent you an Acceptance Confirmation, if the pricing error is obvious and unmistakable and could have reasonably been recognised by you as a mispricing.

7.6 You must register a payment method for the Services you have ordered before submitting your order. You may pay by credit or debit card. We will take payment from the payment method you have registered against your account immediately upon sending you our Acceptance Confirmation or shortly thereafter. If we subsequently reject your order, we will refund the payment you have made to the credit card, debit card or other account you used to make the payment.

7.7 Please note that when purchasing a Service, you are obliged to pay for that Service for the whole of the Minimum Term that applies to it even though you may pay by monthly direct debit payments. Consequently, you must not cancel your direct debit payments without first cancelling your Services under clause 6.

7.8 We reserve the right to seek to recover any outstanding amounts due by you by other means, including referring the debt to an external debt recovery agent and/or by taking appropriate legal action. If your outstanding payment is referred to our external debt recovery agent then you may become liable for additional fees and charges and you agree to pay such charges in addition to the outstanding amount owed to us.

7.9 No payment shall be deemed to have been received until we have received cleared funds. If your chosen method of payment is not authorised by your credit card provider or bank, you hereby authorise us to seek payment from any other credit card, debit card or direct debit registered against your account. Further, if your payment is still not authorised we may, at our discretion, suspend or terminate any Services we provide to you from time to time, even if payment in respect of such Services is not outstanding.

## 8. Quality

8.1 We warrant that (subject to the other provisions of these terms and conditions) any Services purchased from us through our website will be provided with reasonable care and skill.

8.2 We will not be liable for a breach of the warranty in clause 8.1 unless:

8.2.1 you give written notice of the breach to us through our contact page and

8.2.2 we are given a reasonable opportunity after receiving the notice of examining our provision of the Services to you.

8.3 We will not be liable for a breach of the warranty in clause 8.1 if:

8.3.1 the problem arises because you failed to follow our oral or written instructions as to the use of the Services (if there are any); or

8.3.2 you alter the Services without our written consent; or

8.3.3 the problem arises because of misuse.

8.4 Subject to clause 8.2 and clause 8.3, if we are in breach of the warranty in clause 8.1 we will, at our expense, use all reasonable commercial efforts to remedy the breach promptly or refund the price of the Services at the pro rata Contract price. This constitutes your sole and exclusive remedy for any breach of the warranty set out in clause 8.1. Notwithstanding the foregoing, we do not warrant that your use of the Services will be uninterrupted or error-free.

8.5 We reserve the right to modify the Services without notice to you provided such modification does not adversely affect your access to, or use of, the Services or detract from the overall performance of the Services. Any change which may have such adverse effect on you or may detract from the overall performance of the Services will be notified to you at least thirty (30) days prior to the change taking effect.

8.6 You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf which is not set out on our website or otherwise confirmed in writing by us. Nothing in this clause will exclude or limit our liability to you for fraudulent misrepresentation.

## **9. Access to the Hosting Service**

9.1 You are responsible for making all arrangements necessary for you to have access to our Hosting Services. You are also responsible for ensuring that all persons who access our Services through your Internet connection are aware of these terms and conditions (and in particular our acceptable use policy)

## **10. Hosting Service service levels**

10.1 We will use our reasonable endeavours to make our servers available to you as part of the Hosting Service you purchase for ninety-nine per cent of each calendar month. We do not warrant access to our servers will be uninterrupted or error free but we shall use reasonable endeavours to keep downtime to a minimum. We shall make all commercially reasonable efforts to provide you with advanced notification of all scheduled and emergency outages via email.

10.2 Service credits are not given for any form of downtime or service unavailability.

10.3 Back-up of your material and our servers

10.4 It is your responsibility to maintain up-to-date back-up copies of any data, information or other material you upload (or permit to be uploaded) onto our servers ("Material") as part of your use of the Hosting Services. In the event of loss of or damage to your Material, you will not be given access to the server back-up we maintain pursuant to our archiving procedure.

10.5 We will follow our archiving procedures for the data stored on our servers. In the event of any loss or damage to our servers, your sole and exclusive remedy will be for us to use reasonable commercial efforts to restore the data on our servers (including your Material) from the latest back-up we maintained in accordance with our archiving procedure. We will not be responsible for any loss, destruction, alteration or disclosure of your Material caused by you or any third party.

## **11. Hosting Service usage limitations**

11.1 Usage of our Hosting Service is subject to the following conditions:

11.1.1 your Material is linked into web pages;

11.1.2 you may not use the Hosting Service as a backup of, or repository for, your Material;

11.1.3 you comply with our acceptable use policy

11.2 The Hosting Service package you order includes the number of mailboxes applicable to that hosting package as this is set out on our website at the time of your order. However, any mailboxes that have not been accessed for one hundred (100) clear days will be automatically deleted from our system.

11.3 When using the Services, you must comply with our acceptable use policy and these are incorporated into the Contract by reference. Any conflict between our terms of website use and these terms and conditions, will be resolved in favour of these terms and conditions.

11.4 We shall be entitled to terminate the Contract, or suspend or terminate the provision of any individual Services, if you are in breach of our terms of website use acceptable use policy.

## **12. Support**

12.1 If a problem has arisen with regard to the Services or your registered account, you can access support through our contact page.

12.2 Our support team will help resolve any problems you have with the Services you are receiving. We will not provide programming support to you, but, as part of our Hosting Services, our servers are compatible with many programming languages.

12.3 We do not currently offer a support time service level guarantee but we will always use our best efforts to resolve support issues in a timely way.

## **13. Domain names**

13.1 Where the Contract includes our Domain Registration and Renewal Service:

13.1.1 We will endeavour to procure the registration of the domain name you request;

13.1.2 We will not be liable in the event that the relevant domain name registry refuses to register the domain name you request, or subsequently suspends or revokes any registration for that domain name;

13.1.3 We shall not act as your agent or on your behalf in any dealings with domain name registry;

13.1.4 The registration of the domain name you request and its ongoing use is subject to the relevant domain name registry's terms and conditions of use which you should obtain;

13.1.5 You are responsible for ensuring that you are aware of the terms referred to in clause 13.1.4 so that you can comply with them;

13.1.6 The domain name you request will only have been successfully registered when you appear as the registrant on the appropriate "whois" database of the top level domain name registrar;

13.1.7 We shall have the absolute discretion to require you to select a replacement domain name to the one you have requested to be registered, and may suspend or terminate our performance of the Domain Registration and Renewal Service, if, in our opinion, there are reasonable grounds for us to believe that your current choice of name is, may or is likely to be in bad faith, breach of the provisions of these terms and conditions or any legal or regulatory requirement; and

13.1.8 You confirm and warrant that you are the owner of any trade mark in any domain name (or have the authority of the owner of any trade mark to use such name) that you have requested be registered.

13.2 You confirm and warrant that you are the legal owner of any domain name (or have the authority of the legal owner to use such domain name) supplied by you, or otherwise authorised by you, for use as a domain name in connection with any website in relation to which the Hosting Service supplied to you is used.

13.3 Once the domain name has been successfully registered, it will need to be renewed periodically to ensure you retain your registration of it. We will use our best endeavours to send you renewal notices thirty (30) days and seven (7) days before the renewal date of your registered domain name. These notices will be sent to the email address then registered against your account. You must act upon the notices if you wish to renew, otherwise the domain names will not be renewed by us.

13.4 You acknowledge and agree that that it is your responsibility to renew your domain names and we accept no liability in the event of failure to renew a domain name.

13.5 You acknowledge and agree that we may place a number of locks on any domain registered with us either at the time of registration or at any time thereafter and without further notice to you. The locks that we may place on a domain include 'clientDeleteProhibited', 'clientTransferProhibited' and 'clientUpdateProhibited'.

## **14. Intellectual property rights**

14.1 You, or your licensor, retain all intellectual property rights in your Material, and you grant to us a worldwide, non-exclusive, royalty free licence to use, store and maintain your Material on our servers and publish your Material on the Internet for the purpose of providing the Hosting Service to you. You warrant that your Material does not infringe the intellectual property rights of any third party and you have the authority to grant the licence in this clause to us. We may make such copies as may be necessary to perform our obligations, including making back-up copies of your Material.

14.2 You will defend, indemnify and hold us harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your use of the Services or of any claim or action that your Material infringes, or allegedly infringes, the intellectual property rights of a third party.

14.3 If you download software we own from our website, we grant you a non-exclusive, non-transferable royalty free licence to use that software for the purpose set out on our website in relation to that software. Such licence will automatically terminate when we stop providing the Hosting Services to you.

14.4 Any third party software that you download from our website shall be licensed to you on the standard software licence terms of the owner of the intellectual property rights in that third party software as those licence terms are notified to you at the time you download such software.

## **15. Our liability**

15.1 We do not monitor and will not have any liability for your Material or any other communication you transmit, or allow to be transmitted, by virtue of the Hosting Services.

15.2 We shall not be liable for the protection of the privacy of electronic mail or any other information transferred through the Internet or via any network provider and no guarantee or representation is given that the Hosting Services will be free from hackers or unauthorised users. You shall be liable for the content of any emails transmitted by virtue of the Hosting Services, for any material you upload to, or allow to be uploaded to, our servers and for ensuring compliance at all times with all relevant legislation (including, but not limited to the Data Protection Act 1998 and all other privacy laws, regulations and guidance notes made or issued thereunder).

15.3 All conditions, terms, representations and warranties that are not expressly set out in these terms and conditions (or the documents referred to in them) are hereby expressly excluded.

15.4 We do not exclude or limit in any way our liability:

15.4.1 For death or personal injury caused by our negligence;

15.4.2 Under section 2(3) of the Consumer Protection Act 1987;

15.4.3 For fraud or fraudulent misrepresentation; or

15.4.4 For any matter for which it would be illegal for us to exclude, or attempt to exclude, our liability.

15.5 We will not be responsible for the following types of losses (in each case whether direct, indirect or consequential) and whether they are caused by our negligence or otherwise:

15.5.1 Loss of income or revenue;

15.5.2 Loss of business;

15.5.3 Loss of profits or contracts;

15.5.4 Loss of anticipated savings;

15.5.5 Loss of goodwill;

15.5.6 Loss of software or data;

15.5.7 Wasted expenditure (such as pay per click advertising costs); or

15.5.8 Wasted management or office time.

15.6 Subject to clause 15.4 and clause 15.5, our maximum aggregate liability under or in connection with the performance or contemplated performance of the Contract, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed one hundred and ten (110%) per cent of the price you have paid to us for the Services during the twelve (12) months preceding the event giving rise to the liability in question. Accordingly, you are advised to acquire business interruption insurance, or other appropriate insurance, to protect you and your business in the event of interruption of the Services (in particular the Hosting Service).

15.7 Where you buy any product or service from a third party seller through following a link on our website to such third party's website, the seller's individual liability will be set out in the seller's terms and conditions. You should consult such terms and conditions.

## **16. Duration of the Services and cancellation**

16.1 That part of the Contract relating to our Domain Registration and Renewal Service will commence on the date we send you our Acceptance Confirmation. It will continue until:

16.1.1 we have registered the domain name you have requested (the "Domain Name") and you subsequently ask us not to renew the registration of your Domain Name by logging into your domains control panel and setting the Domain Name renewal option to "cancel" before the renewal date; or

16.1.2 we terminate the supply of our Domain Registration and Renewal Service by notice to you because:

16.1.2.1 the Domain Name is no longer available for registration;

16.1.2.2 clause 14.1.7 applies;

16.1.2.3 you are in breach of clause 17.1.8; or

16.1.2.4 or some other reason preventing the registration of the Domain Name.

16.2 If we terminate the Domain Registration and Renewal Service we will refund the price you have paid for the Domain Registration and Renewal Service to the credit card, debit card or other account you used to make the payment.

16.3 That part of the Contract relating to Services other than our Domain Registration and Renewal Service will also commence on the date we send you our Acceptance Confirmation. Unless such Services are terminated, they shall continue for the minimum period of time that applies to the Service you have purchased (as these are set out on our website and subsequently confirmed in the Acceptance Confirmation) ("Minimum Term"). After expiry of the Minimum Term, they will continue on a month to month basis until terminated:

16.3.1 by you, as a Consumer, informing us of your decision to cancel the Contract by a clear statement (e.g. a letter sent by post, fax, e-mail, through our contact page and providing thirty (30) days' notice.

16.3.2 by you, as a Business customer, informing us of your decision to cancel the Contract by contacting our customer support department via our contact page.

16.3.3 by us giving to you at least thirty (30) days advanced notice in written sent to the then current email address registered against your account; or

16.3.4 by exercising your right as a Consumer, to cancel the Contract(s) within the "cooling off period" i.e. within 30 (calendar) days of purchase. To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired. Please note that the Cooling Off period only applies to Consumers, not Business Customers. If you are unsure whether you are a Business Customer or a Consumer, you can view the definitions of these terms in the Definitions section of our Terms and Conditions.

16.3.5 As part of our cancellation process, we will respond to you by email. You cannot cancel any of your Services by telephone. You will not receive any refund of the price you have paid for the Services you have cancelled;

16.3.6 The monthly price for Services we supply under Contracts that continue on a month to month basis shall be charged monthly in advance directly to a credit card, debit card or other payment method registered against your account. Such payment will be taken on the same date of the month as on which the Services had originally commenced ("Payment Date") unless or until you cancel the Services. We will not provide you with a refund for a cancellation that is part-way through a billing period.

16.3.7 Without prejudice to any other right to terminate or suspend the Services we may have under these terms and conditions or our acceptable use policy, we may terminate the Contract at any time by giving you thirty (30) days advance notice by emailing you at the email address registered against your account. If we cancel the Services, we will refund to you the price you have paid for the Services on a pro-rata basis for the unexpired Minimum Term.

16.3.8 Notwithstanding anything to the contrary in these terms and conditions, if you are in breach of an obligation of these terms and conditions we may terminate the Contract by seven (7) days' notice to you and/or, at our absolute discretion, terminate or suspend without notice any individual Services we provide to you from time to time.

16.3.9 Expiry or termination of the Contract shall be without prejudice to any rights and liability of either of us arising in any way under that Contract as at the date of expiry or termination.

## **17. Deletion of your data**

17.1 If you cancel your Services, any data we hold or host in relation to the Services you have cancelled will be immediately and permanently deleted from our system. Accordingly, you are strongly advised to make appropriate copies of such data before you cancel your Services.

17.2 If you have purchased a Hosting Service aimed at resellers, your package will allow multiple accounts to be set up for your customers. If you disable any of these accounts and they remain disabled for fifty (50) clear days, we will immediately and permanently delete those disabled accounts (and all the data hosted in relation to them) from our system.

## **18. Written communications**

18.1 Applicable laws require that some of the information or communications we send to you should be in writing. When using our website, you accept that communication with us will be mainly electronic. We will contact you by e-mail or provide you with information by posting notices on our website. For contractual purposes, you agree to this electronic means of communication and you acknowledge that all contracts, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing. This condition does not affect your statutory rights.

## **19. Notices**

19.1 All notices given by you to us must be given via our contact page. We may give notice to you at either the then current e-mail or postal address registered against your account with us.

19.2 Third party rights and transfer of rights and obligations

19.3 Neither you nor we intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

19.4 The Contract is binding on you and us and on our respective successors and assigns.

19.5 You may not transfer, assign, charge or otherwise dispose of the Contract, or any of your rights or obligations arising under it, without our prior written consent.

19.6 We may transfer, assign, charge, sub-contract or otherwise dispose of the Contract, or any of our rights or obligations arising under it, at any time during the term of the Contract.

## **20. Events outside our control**

20.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by events outside our reasonable control ("Force Majeure Event").

20.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:

20.2.1 misuse, alteration or interference by you or any third party of our servers or systems (including virus and hacker attacks);

20.2.2 strikes, lock-outs or other industrial action;

20.2.3 civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;

20.2.4 fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;

20.2.5 impossibility of the use of public or private telecommunications networks; and

20.2.6 the acts, decrees, legislation, regulations or restrictions of any government.

20.2.7 Our performance under the Contract will be deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Contract may be performed despite the Force Majeure Event.

## **21. Waiver**

21.1 If we fail, at any time during the Contract, to insist upon strict performance of any of your obligations under the Contract or any of these terms and conditions, or if we fail to exercise any of the rights or remedies to which we are entitled under the Contract, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.

21.2 A waiver by us of any default shall not constitute a waiver of any subsequent default.

21.3 No waiver by us of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing in accordance with clause

## **22. Severability**

22.1 If any of these terms and conditions or any provisions of the Contract are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

## **23. Entire agreement**

23.1 These terms and conditions and any document expressly referred to in them represent the entire agreement between us both in relation to the subject matter of any Contract and supersede any prior agreement, understanding or arrangement between us, whether oral or in writing.

23.2 We each acknowledge that, in entering into the Contract, neither of us has relied on any representation, undertaking or promise given by the other or be implied from anything said or written in negotiations between us prior to such Contract except as expressly stated in these terms and conditions.

23.3 Neither of us shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date of any Contract (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in these terms and conditions.

## **24. Our right to vary these terms and conditions**

24.1 We have the right to revise and amend these terms and conditions from time to time to reflect changes in market conditions affecting our business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in our system's capabilities.

24.2 You will be subject to the policies and terms and conditions in force at the time that you order services from us, unless any change to those policies or these terms and conditions is required to be made by law or governmental authority (in which case it will apply to orders previously placed by you), or if we notify you of the change to those policies or these terms and conditions before we send you the Acceptance Confirmation (in which case we have the right to assume that you have accepted the change to the terms and conditions, unless you notify us to the contrary within seven (7) working days of receipt by you of the Acceptance Confirmation).

## **25. Law and jurisdiction**

25.1 Contracts for the purchase of Services through our site will be governed by English law. Any dispute arising from, or related to, such the Contract shall be subject to the exclusive jurisdiction of the courts of England and Wales. English is the language offered for the conclusion of the contract between us both.