



Terms & Conditions

Omega Internet Standard Terms and Conditions (Effective 1 January 2005)
Omega Internet (ABN 75 088 929 284) a division of Germana Pty Ltd (ACN 088 929 284)

These are the standard terms and conditions of supply of the Omega Internet web hosting and other products and services offered from time to time on the Omega Internet web site at <http://www.internetprovider.com.au> ("the Service"). These terms apply to you as a user of the Service ("Customer" or "you"). Please read these terms and conditions carefully.

1. Terms and Amendment Procedure

1.1 These are the terms upon which we agree to provide the Service to the Customer. In addition to these terms, you must also comply with:

- (a) Any conditions contained in the notes to the product description for products or services you acquire;
- (b) Any additional terms which apply to the products or services you acquire (which follow these Terms and Conditions);
- (c) Our Acceptable Use Policy (which follows these Terms and Conditions);
- (d) Our operational procedures for use of the Service which may from time to time will become available;
- (e) Our Privacy Policy which is located at <http://www.internetprovider.com.au/privacy>

1.2 The agreement made between us on these terms commences on the date listed in the "Services Confirmation Letter" when your order for Services was accepted by Omega Internet.

1.3 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 notice via the Omega Internet website, by email or in writing. 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. 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 All Promotions are offered subject to their terms and may be withdrawn or altered at Omega Internet's discretion. The terms of a promotion will override these terms to the extent of any inconsistency.

2. Service

2.1 We will assign the Customer a logon name and password which will provide you with access to the the various features of your website/email service). We will provide the Customer with Web and Email Services as per the hosting level or product(s) you have selected in the Omega Internet Services Order Form or our interactive order form for services located at our website.

2.2 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 Omega Internet website located at <http://www.internetprovider.com.au> at least 48 hours in advance of the maintenance.

2.3 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 Omega Internet website located at <http://www.internetprovider.com.au> after the maintenance has been completed.

2.4 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 Customer data recovered from our backups.

2.5 You agree to Omega Internet's use of spam and virus filters which may require us to use third party equipment or services to monitor and filter email traffic between our equipment and the Internet. You agree that we will not be liable for any loss or damage resulting from the use of spam or virus filters.

2.6 The Service is provided by Omega Internet from its data centre in Sydney, Australia. Omega Internet owns and operates its Internet network and is not a virtual ISP or reseller of Internet services for another ISP. Omega Internet will determine in its absolute discretion from time to time the data centre location

from which your Service is provided in the event data centres are, in the future, constructed by Omega Internet in other capital cities in the Commonwealth of Australia. Omega Internet 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 Omega Internet's opinion becomes unreliable. Omega Internet 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 Omega Internet for the Services, the Customer obtains no rights to the hardware and other infrastructure and facilities used and owned by Omega Internet to deliver the Service.

3. Payment

3.1 You must pay for the Service as notified to you by Omega Internet in accordance with Omega Internet's published prices for Services from time to time. If you have chosen a yearly contract for your Service, your account will be automatically rolled over for a further yearly contract at the end of the term. You must give us notice before the end of the term if you wish to cancel or alter your Service. If you elect to pay your fees on a yearly basis, and fail to make payment within 30 days of invoice, you will not be entitled to receive the yearly fee discount.

3.2 You must pay all Service charges, excess traffic and/or excess storage 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. Where a billing option does not specify otherwise, all Service charges are payable within 14 days of the date of invoice (whether online or paper invoice).

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

3.4 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 beginning when you register. If you register after the 28th of each month, your billing date becomes the first of the next month.

3.5 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.

3.6 No refunds will be given for unused portions of payments in advance (including payment of yearly contracts) unless the account has been terminated due to Omega Internet's breach of these terms and conditions. Yearly contracts which have been automatically rolled over in accordance with clause 3.1 will only be refundable if notice of cancellation is given during the 2 week cooling off period at the beginning of the rollover term.

4. Customer Warranties and Indemnities

4.1 You warrant that:

- (a) if you are not the Customer, you have the power and authority to enter into this agreement on behalf of the Customer and will indemnify Omega Internet for any breach of this agreement by the Customer;
- (b) 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;
- (c) 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;
- (d) you will keep secure any passwords used with the Service; and,
- (e) you hold and will continue to hold the copyright in the Customer Data or that you are licensed and will continue to be licensed to use the Customer Data.

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

4.3 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. Omega Internet's Warranties and Liabilities

5.1 We accept liability for the supply of the Services but only to the extent provided in this clause 5.

5.2 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 Omega Internet.

5.3 Where the Customer is a Consumer (as that word is defined by the Trade Practices Act), we accept liability where: the Service is not supplied with due care and skill; any material supplied in connection with the Service is not reasonably fit for the purpose for which it was supplied; and we are otherwise required to do so by the Trade Practices Act.

5.4 To the extent that the Service is not of a kind ordinarily acquired for personal, domestic or household use, our liability is limited to, at our option, to the resupply of the services again; or payment of the cost of having the services supplied again.

5.5 Except as expressly provided to the contrary in this agreement, we exclude all liability for indirect and consequential loss or damage of any kind, loss or corruption of data, loss of revenue, loss of profits, failure to realise expected profits or savings and any other commercial or economic loss of any kind, in contract, tort (including negligence), under any statute or otherwise arising from or relating in any way to this agreement and/or its subject matter.

5.6 Other than liability accepted by us in clause 5.3, our total liability for loss or damage of any kind not excluded by clause 5.5, however caused, in contract, tort (including negligence), under any statute or otherwise arising from or relating in any way to this agreement is limited in aggregate for any and all claims to \$10.

6. Suspension and Termination of Service

6.1 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.

6.2 If your account has been suspended or terminated due to your breach, reactivation of your account will be completely at our discretion. If we agree to reactivate your account, we will require:

- (a) payment in full of all outstanding amounts; and
- (b) payment of a reactivation fee.

6.3 Omega Internet reserves the right to refuse to supply services to a potential customer who has previously had its account with Omega Internet terminated for breach. In this clause, "potential customer" includes:

- (a) (if the potential customer is a corporation) its Related Entity or Related Party (as those phrases are defined in the Corporations Law); and
- (b) (if the potential customer is an individual) any corporation in which the potential customer was at the relevant time an officer or shareholder, or a Related Party of a shareholder.

6.4 Omega Internet 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.

6.5 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 Omega Internet on 30 days written notice to Omega Internet.

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

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

7. Miscellaneous

7.1 The Customer grants to Omega Internet a license to use and reproduce all Customer Data in order to fulfill its obligations under this agreement. In this agreement "Customer Data" means all information, data, text, logos, images, audio, movie clips and/or content in any form that forms part of the Customer'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 Queensland 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.

If you request Omega Internet to register a domain name on your behalf, these additional terms will apply.

Domain Names

1 If you have requested that Omega Internet register a .com, .net, .org, .biz, or .info 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 and .info domain names issued by the registrar MelbourneIT Limited located at <http://www.melbourneit.com.au/policies/gtldtermcond.php3>.

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.melbourneit.com.au/policies/gtlddispute.php3> and the Rules for UDNDRP located at <http://www.melbourneit.com.au/policies/gtldrules.php3>.

3 If you have requested that Omega Internet 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 MelbourneIT located at <http://www.melbourneit.com.au/policies/aupolicy.php>.

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 Omega Internet. The auDRP can be viewed at <http://www.auda.org.au/policy/>.

5 In registering or renewing a domain on your behalf, Omega Internet is acting as a reseller of the registrar, MelbourneIT.

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.

7 You agree that you must pay for any registration or delegation charges in advance at Omega Internet's list price. You understand that you cannot register a domain name without paying for it in advance. Omega Internet 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.

8 Omega Internet makes no representation and gives no warranty about your chosen domain name being available for registration or use by you.

9 You expressly authorise and direct Omega Internet 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 Omega Internet's list price from time to time.

10 In respect of 2LDs, you acknowledge that Omega Internet 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.

11 You indemnify Omega Internet 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 Omega Internet's breach of this contract, or its negligent act or omission.

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Omega Internet Acceptable Use Policy (Effective 1 January 2005)
Omega Internet (ABN 75 088 929 284)

This is Omega Internet's Acceptable Use Policy. It applies to you if you are a

Omega Internet Customer or User ("you"). It is intended to ensure that your use of Omega Internet's service is trouble free and that you have due regard to the law and the needs of other users.

Please look out for any amendments to the Policy that Omega Internet ("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:

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).

Spam means:

- (a) commercial messages (including any offers, advertisements, promotions to supply goods, services, business or investment opportunities, or if purpose of the message is to assist or enable a person to dishonestly obtain a gain from another person);
- (b) sent to 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; and
- (c) delivered via electronic means including email, discussion groups, fax, SMS, MMS and ICQ messages.

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 Omega Internet Partner.

1. Some General Principles

1.1 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.ija.net.au>; or

<http://www.aba.gov.au>

1.2 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. Unacceptable Uses

2.1 You must not use our Services, attempt to use our Services or allow the Services to be used in any way:

Breach of Law

- (a) Which results in you or Omega Internet breaching, or being involved in a breach of a law, order or regulation (including a foreign law, order or regulation), a mandatory code of conduct, or a voluntary code of conduct that you have agreed to comply with.

Damage to property or people

- (b) Which results, or could result, in damage to property or injury to any person;
(c) To harass, menace or stalk people.

Prohibited Content or Potentially Prohibited Content

- (d) To place on the internet, obtain through the internet or transmit using the internet any of the following:
- (i) Content which is (or would be) classified RC or X by the Classification Board. Such content includes:
- material containing detailed instruction in crime, violence or drug use;
 - child pornography;
 - bestiality;
 - excessively violent or sexually violent material;
 - real depictions of actual sexual activity; or
- (ii) Content hosted in Australia which is classified R and not subject to a restricted access system which complies with criteria determined by the ABA. Content classified R is not considered suitable for minors and includes:
- material containing excessive and/or strong violence or sexual violence;
 - material containing implied or simulated sexual activity;
 - material which deals with issues or contains depictions which require an adult perspective;

Protection of minors

- (e) Which enables a minor to access material inappropriate for a minor or to establish (or try to establish) contact with a minor not otherwise known to you;

Discrimination

- (f) Which incites discrimination, hate or violence towards one person or group because of their race, religion, gender or nationality;

Obscene, defamatory, offensive, abusive

- (g) To send, display or be otherwise involved in material which is obscene or defamatory;
- (h) Which is, or which would be considered by a reasonable person to be, offensive or abusive;

Illegal business practices and gambling

- (i) To engage in any misleading or deceptive business or marketing practice;
- (j) That involves providing or promoting illegal pyramid selling schemes or unlawful gambling or gaming activities;

The rights of others

- (k) Which infringes Omega Internet's or any other person's rights (including intellectual property rights and moral rights);
- (l) Which constitutes a misuse of Omega Internet's or any other person's confidential information; or
- (m) Which results in a breach by you of any obligation that you owe to any person.

Omega Internet's Service

- (n) undertake any activity which impedes Omega Internet's ability to provide its Service;
- (o) make or receive transmissions of any type or quantity which adversely affect our operation or jeopardise the use of our service, or its performance for other subscribers;
- (p) undertake acts that waste resources or prevent other users from receiving the full benefit of our services;
- (q) to solicit subscribers to become subscribers of other competitive services.

2.2 Resale of our Services to others is strictly forbidden under all circumstances unless expressly approved by Omega Internet in writing.

3. Spamming

3.1 You must not use our Services, attempt to use our Services or allow our Services to be used:

- (a) To send, cause the sending of or otherwise be involved in the sending of Spam;
- (b) provide a capability on a Omega Internet-hosted site which permits third parties to send Spam from a Omega Internet server;
- (c) In connection with any program (including a virus, Trojan horse, worm, cancelbot, timebomb) or activity (including a denial of service attack), that is designed to provide or allow any form of unauthorised control of, or result in an adverse effect on, a computer, a network or data (whether the computer, network or data belongs to Omega Internet or anyone else);
- (d) To access or use Omega Internet's or any one else's systems, networks or data (including through open relay, port probing and the use of packet sniffers) without consent, regardless of whether or not such access or use has any adverse effect on the system, network or data;
- (e) To create, send or alter in any way and by any means (including spoofing and use of third party mail servers), the contents of an electronic message for the purpose of hiding, obscuring or deleting the source of the message or making the message appear to come from someone other than you;
- (f) send electronic chain letters;
- (g) to manipulate or bypass Omega Internet's content usage limits;
- (h) 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;
- (i) undertake activities which cause or may cause third party service providers to place Omega Internet's internet protocol (IP) addresses on a blacklist and/or block those IP addresses;
- (j) distribute messages to inappropriate or unrelated forums, newsgroups or mailing lists.

3.2 We support increasing awareness of our Customers about Spam and how it can be managed. Omega Internet uses spam and virus filters and encourages our customers to use spam and virus filters. You agree to Omega Internet's use of spam and virus filters which may require us to use third party equipment or services to monitor and filter email traffic between our equipment and the Internet. You agree that you will not take any steps to disable those filters and that we will not be liable for any loss or damage resulting from the use of spam or virus filters. Further information about these products can be found at the web site of the Internet Industry Association at <http://www.ii.net.au/nospam/>.

4. Third Party Complaint Process

4.1 From time to time, Omega Internet receives complaints from third parties ("Complaints") regarding unacceptable uses, allegedly being conducted by Customers or their Users. Omega Internet 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 Omega Internet reasonably believes that it must take urgent action without reference to the Customer.

4.2 If Omega Internet is unable to resolve the complaint by working with Customers, Omega Internet's policy is to put the complaining party in direct contact with the party best able to answer the complaint. Accordingly, Omega Internet's Customers authorise and direct Omega Internet 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 Omega Internet 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 <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 at

our sole discretion.

5.5 We may, at 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;
- (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); and
- (c) if we are served with a takedown notice in accordance with part 3A of the Copyright Regulations 1969 (as amended).

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

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