



Terms & conditions

These are the terms and conditions for an Internet domain name registration service (the "Service", as more fully set out below) between TheWebSmiths Limited and the Customer (as indicated on the Order Form), whereby the Customer agrees to pay for, and TheWebSmiths Limited agrees to provide, the Service on the terms and conditions set out below (the "Terms").

1. Definitions

Agreement - the Agreement of which these Terms form part.

Cancellation Charge - as set out in the Order Form.

Fees - as published by TheWebSmiths Limited from time to time.

Intellectual Property - all patents, registered and unregistered trade marks, trade and business names, copyright and rights in the nature of copyright including property rights in relation to compilations or databases, design rights and registered designs and all applications for patents and registered trade marks and registered designs (including in each case, all extensions and renewals thereof).

Interest Rate - the base rate charged by National Westminster Bank from time to time plus four per cent.

Local Administration Costs - any registration and other costs charged to TheWebSmiths Limited for the registration or attempted registration of domain names.

Request - a request for registration of one or more domains.

Service - the service provided by TheWebSmiths Limited under this Agreement, as further defined in Clause 2.

2. The service

2.1. Subject to payment of the Fees, the Local Administration Costs, and the terms of this Agreement. TheWebSmiths Limited shall provide the following (the "Service"):

2.1.1. on the Customer's behalf, the processing of Requests with relevant domain authorities; and

2.1.2. such Additional Services as are agreed between the parties.

3. Obligations

3.1. TheWebSmiths Limited warrants that the Service will be provided with reasonable care and skill and in a professional and timely manner. Notwithstanding the foregoing, the Customer acknowledges and agrees that:

3.1.1. the success or failure of domain registration depends on many factors outside TheWebSmiths Limited's control, that TheWebSmiths Limited does not guarantee that success of any Request, and that TheWebSmiths Limited only obligation in relation to each Request shall be to use its reasonable endeavours to obtain registration of the domain names requested. The fees and local administrative costs are payable notwithstanding the fact that your application/Request maybe unsuccessful.

3.1.2. TheWebSmiths Limited shall be entitled to refuse to process Requests submitted by the Customer and also to refuse to continue processing with any Requests previously accepted by TheWebSmiths Limited, where such processing may (in TheWebSmiths Limited's opinion) expose TheWebSmiths Limited to the risk of legal or other proceedings,

3.1.3. TheWebSmiths Limited does not guarantee that any domain names registered will be free and clear of intellectual property rights and/or claims by third parties (including, without limitation, rights and/or claims in relation to registered and unregistered trade marks),

3.1.4. any domain names registered by TheWebSmiths Limited on the customers' behalf may subsequently be challenged and/or cancelled by persons other than TheWebSmiths Limited.

3.1.5. that TheWebSmiths Limited will be registered as the Administrative Contact for any domain name registered, or held on behalf of, the Customer.

3.2. TheWebSmiths Limited shall endeavour to meet any dates agreed for the obtaining of the names and domains requested by the Customer, but such date shall be an estimate only and TheWebSmiths Limited accepts no liability for failure to meet such date or dates.

3.3. Except as set out expressly in these Terms, TheWebSmiths Limited makes no warranties or representations either express or implied in relation to whole or part of the Service, including but not limited to implied warranties or conditions of completeness, accuracy, satisfactory quality and fitness for a particular purpose and that all such conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the provision or non-provision of the Service and any other services supplied hereunder are hereby expressly excluded.

4. Customer's obligations

4.1. The Customer shall not:

4.1.1. submit to TheWebSmiths Limited any Requests in relation to a domain name or names which it knows, or should (after reasonable inquiry) have known, infringes or might reasonably be considered to infringe the trade marks (whether registered or unregistered) or other rights of any third party,

4.1.2. in using the Additional Services, use any domain name or other descriptor which is, or might reasonably be considered to be, in breach of any trade marks (whether registered or unregistered) or other rights of any third party,

4.1.3. use the Additional Services to store, reproduce, transmit, communicate or knowingly receive any material which is offensive, abusive, indecent, defamatory, obscene or menacing, or in breach of confidence, copyright, privacy, trade marks (whether registered or unregistered) or any other rights of any third party.

4.2. The Customer hereby acknowledges that the Customer agrees to, and will fully comply with, the Terms and Conditions of the Registrar company with regard to the processing of any Requests.

<http://www.nominet.org.uk/ref/terms.html> (Nominet)

<http://www.inwww.com/policies/gtldtermcond.php3> (Melbourne IT)

<http://www.centralnic.com/page.php?cid=59> (CentralNic)

http://www.networksolutions.com/en_US/legal/service-agreement.jhtml (Network Solutions)

<http://www.tv/en-def-77ce618e3291/en/policies/tos.shtml> (.TV)

<http://www.nic.at/english/agbs.html> (Nic.at)

<http://www.netregistry.com/legal/terms.html> (Net Registry)

<http://www.tonic.to> (Tonic)

<http://www.ascio.com/Home/Legal/Legal+Notice> (Ascio)

5. Fees

5.1. The Customer shall pay in pounds sterling to TheWebSmiths Limited the Fees, inclusive of the Local Administrative Costs incurred by TheWebSmiths Limited in processing a Request or Requests.

5.2. Subject to Clauses 5.7 and 6.2 the Fees and Local Administrative Costs shall be paid by the Customer as set out on the Order Form without set off or counterclaim.

5.3. The Customer acknowledges that the Local Administration Costs may differ from the amount or amounts (if any) previously indicated by TheWebSmiths Limited as a result of changes in pricing by the relevant domain authority and/or of changes in the exchange rates, and agrees that:

5.3.1. TheWebSmiths Limited shall, in relation to each Request, charge the Customer the Local Administration Costs as published by TheWebSmiths Limited from time to time or a sum in pounds sterling equal to the actual Local Administrative Costs charged to TheWebSmiths Limited, whichever is the higher.

5.4. The Customer recognises that the Local Administrative Costs represent only the initial costs for the registration of a domain name, and that continued use of a domain name by the Customer is likely to expose the customer to additional charges payable to the local domain name registry.

5.5. The Customer acknowledges that occasionally unforeseen charges are incurred in processing Requests. TheWebSmiths Limited shall obtain the Customer's written consent before incurring such charges.

5.6. If the Customer fails to make payment on the due date then without prejudice without any other right or remedy TheWebSmiths Limited may have, it shall be entitled to charge interest (both before and after any judgment) on the amount unpaid from day to day at the rate of 4% above the base rate from time to time of NatWest.

5.7. If any cheque, paid to TheWebSmiths Limited by the Customer in payment of the Request and/or Services, is returned by the bank as unpaid for any reason, registration and/or the

service will be suspended pending payment of the outstanding account in full together with a "returned cheque" charge of Twenty Five GBP (£25) excl. VAT

5.8. Subject to Clause 6 the Customer shall pay the Fees, Local Administration Costs and any other charges referred to in Clause 5.5 above notwithstanding that the Request is unsuccessful or discontinued unless the lack of domain name registration is wholly attributable to TheWebSmiths Limited's negligence or willful default.

5.9. Where Customers wish to transfer the TAG in relation to their .uk domain away from TheWebSmiths Limited the Customer shall pay in pounds sterling to TheWebSmiths Limited the Transfer Fees as published by TheWebSmiths Limited from time to time.

5.10.1. The Customer acknowledges that with regard to the purchase of virtual hosting services, whether purchased annually or multi-year, from TheWebSmiths Limited Eighty Per Cent (80%) of the Fees relate to administration charges and are non-refundable. Twenty Per Cent (20%) of the Fees relate to the ongoing cost for the virtual hosting service. Any cancellation of annual or multi-year virtual hosting services will be calculated on a pro rata basis of the Twenty Per Cent (20%). Renewals of any annual or multi-year virtual hosting services will be on the same Eighty Per Cent (80%) Twenty Per Cent (20%) basis.

5.10.2 The customer acknowledges that in regard to the cancellation of virtual hosting purchased on a monthly basis, from TheWebSmiths Limited, no refund will be payable on a pro-rata basis or otherwise.

5.11. The Customer will be responsible for the payment of any Fees set by Nominet UK in the retrieval of the domain name(s) and any Fees and Local Administration Costs due to TheWebSmiths Limited for the renewal of the domain name(s) as published from time to time.

5.12. If a Customer wishes to renew a domain name(s), registered through Melbourne IT Ltd, that has been set to Registrar status, 'Registrar Lock', due to non-payment of the renewal on the due date, then the Customer agrees to pay TheWebSmiths Limited a Registrar Lock Administration Fee together with the Fees and Local Administration Costs for the renewal of the domain name(s) as published from time to time by TheWebSmiths Limited. Definition of Registrar Lock is 15 (fifteen) days from the expiry date the domain is deactivated and set to Registrar status, Registrar Lock, for a period of twenty five (25) days.

5.13. If a Customer wishes to renew a domain name(s) registered through Melbourne IT Ltd, as referred to in clause 5.12, that has been set to Registrar status, Redemption Period, due to non-payment of the renewal on the due date, then the Customer agrees to pay TheWebSmiths Limited a Redemption Period Administration Fee together with the Fees and Local Administration Costs for the renewal of the domain name(s) as published from time to time by TheWebSmiths Limited together with any Fee set by ICAAN as published from time to time by TheWebSmiths Limited. Definition of Redemption Period is on the fortieth (40th) day after expiry the domain is set to Registry status, Redemption Period, for thirty (30) days. If the domain is not restored within thirty (30) days then domain is set by the Registry to Registry Hold pending deletion for five (5) days when the domain is then made available for re-registration. The Customer accepts that if the domain enters Registry Hold there is no action TheWebSmiths Limited can take to restore this domain.

6. Cancellation charges

6.1. The Customer shall be entitled to cancel a Request subject to the following terms:

6.2. if TheWebSmiths Limited has not started processing the Request, the Request will be cancelled subject to the Customer paying a cancellation charge of Twenty Five GBP (£25) excl. VAT;

6.3. If TheWebSmiths Limited has started processing the Request then (irrespective of whether or not the cancellation request is received within 4 hours) the Request will be cancelled subject to the Customer paying TheWebSmiths Limited full fees (including the Local Administration Costs, but only if these have been incurred and the cancellation fee referred to in Clause 6.2 above).

6.4. Refund requests are generally dealt with and processed on Friday's. Where a credit/debit card has been used by the customer in the purchase of the service from TheWebSmiths Limited, TheWebSmiths Limited will endeavour to issue the refund to the credit/debit card used. In cases where this is not possible, a cheque will be raised to the company name in the first instance on the customers' account. If no company name is stored, the cheque will be made payable to the customer's name held on the account.

6.5. In regard to domain names where specific requirements apply, the specific requirements are displayed for each domain name on the domain name search results page. Where a customer continues to process an order for a domain name that has Specific requirements, but

the customer does not meet these requirements, TheWebSmiths Limited will only refund Eighty Per Cent (80%) of the transaction cost. The Twenty Per Cent (20%) held back is to cover Administration/Credit/Debit/Banking costs.

7. Customer's indemnity

7.1. The Customer shall indemnify and keep TheWebSmiths Limited fully and effectually indemnified from and against all liability, claims, losses, costs, expenses, loss of profits, business interruption, and other pecuniary or consequential loss (including reasonable legal costs and expenses) suffered or incurred by TheWebSmiths Limited as a result of any breach of this Agreement by the Customer, the Customer's employees (if any), any person authorised by or under the control of the Customer.

8. Exclusions & limitations

8.1. The Customer agrees that TheWebSmiths Limited shall not be liable either in contract, tort, negligence, statutory duty or otherwise, for any loss of profits, revenue or goodwill or any type of indirect or special loss or damage whatever arising from or in any way connected with this Agreement.

8.2. The Customer agrees that TheWebSmiths Limited shall not be liable either in contract, tort, negligence, statutory duty or otherwise, for any direct loss or damage (including loss or damage which is reasonably foreseeable or occurs naturally in the course of things) including, without limitation, damage for loss of business, loss of sales, loss of profits, loss of reputation, or any other financial loss or damage, resulting from or in relation to:

8.2.1. any acts, omissions, failures or delays occurring on or without any negligence on TheWebSmiths Limited's part, or occurring on or in relation to those aspects of the Service not under TheWebSmiths Limited's direct control,

8.2.2. the consequences of any unsuccessful or failed registration, or renewal

8.2.3. any claims by such third parties that the domain names registered (or attempted to be registered) by TheWebSmiths Limited on the Customer's behalf infringe the trade marks (whether registered or unregistered) or other rights of such third parties.

8.3. The Customer also agrees that (except in relation to such liability as has been expressly excluded in Clauses 8.1 and 8.2 above) the maximum aggregate liability of TheWebSmiths Limited in contract, tort, negligence, statutory duty or otherwise, for any loss or damage whatever arising from or in anyway connected with:

8.3.1. any negligent or reckless failure to provide the Service within a reasonable time and any negligent or reckless failure by TheWebSmiths Limited to process Requests correctly or in a timely manner,

8.3.2. any failure to provide the Service with reasonable care and skill, and

8.3.3. any liability not excluded by this Agreement,

shall, in respect of any one or more events or series of events (whether connected or unconnected) taking place within any twelve month period be limited to £1 million. This limit shall also apply in the event that any exclusion or other provision contained in this Agreement is held to be invalid for any reason and TheWebSmiths Limited becomes liable for loss or damage that could otherwise have been limited.

8.4. Nothing in this Agreement shall exclude:

8.4.1. TheWebSmiths Limited's liability for death or personal injury arising from the negligence of TheWebSmiths Limited, its servants or agents; or

8.4.2. any other liability which it is prohibited from excluding by law.

9. Suspension & termination

9.1. Without prejudice to any of its other rights, TheWebSmiths Limited shall have the right to immediately terminate this Agreement and/or suspend or restrict the Service and/or the Additional Services to the Customer, if:

9.1.1. the Customer does not pay to TheWebSmiths Limited by its due date any sum due;

9.1.2. the Customer breaches Clause 4 of these Terms;

9.1.3. the supply of the Service and/or Additional Services to the Customer may (in the reasonable opinion of TheWebSmiths Limited) expose TheWebSmiths Limited to the risk of litigation or other civil proceedings;

9.1.4. the Customer commits any other material or repeated breach of this Agreement and, if it is capable of being remedied, fails to remedy such breach within 15 days from the date of the first notice specifying the nature of the breach and requesting its remedy;

9.1.5. the Customer becomes insolvent, ceases to trade (or in the reasonable opinion of

TheWebSmiths Limited is likely to cease to trade) or has a liquidator, receiver, administrator or administrative receiver appointed or enters into any arrangement with its creditors or is wound up otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of its obligations, or is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986, or is made bankrupt, or undergoes a similar or analogous event in any jurisdiction; and TheWebSmiths Limited shall not be liable for any losses incurred by the Customer as a result of such suspension, termination, or restriction.

10. Termination by customer

Without prejudice to any of its other rights, the Customer shall have the right to immediately terminate this Agreement, if:

10.1. TheWebSmiths Limited commits any material or repeated breach of this Agreement and, if it is capable of being remedied, fails to remedy such breach within 15 days from the date of the first notice specifying the nature of the breach and requesting its remedy;

10.2. TheWebSmiths Limited becomes insolvent, ceases to trade (or in the reasonable opinion of the Customer is likely to cease to trade) or has a liquidator, receiver, administrator or administrative receiver appointed or enters into any arrangement with its creditors or is wound up otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of its obligations, or is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986, or is made bankrupt or undergoes a similar or analogous event in any jurisdiction; and the Customer shall not be liable for any losses incurred by TheWebSmiths Limited as a result of such termination.

11. Force majeure

11.1. Neither party shall be liable for any breach of its obligations hereunder (other than any obligation to pay money) where the breach results from causes beyond its control ("force majeure") and the party concerned has acted reasonably and prudently to prevent and to minimise the effect of such causes.

11.2. Where an event of force majeure last for a period in excess of two months either party shall be entitled to terminate this Agreement.

11.3 For the purposes of this Clause 11, force majeure shall mean without limitation any of the following:

1. Act of God
2. War, insurrection, riot, civil disturbance, acts of terrorism.
3. Fire, explosion and flood.
4. Theft, malicious damage, strike, lock-out, third party injunction.
5. National defence requirement, acts or regulations of national or local governments.
6. Inability to obtain essential fuel, power, raw materials, labour, containers or transportation, accident, mal-function or machinery or apparatus, denial of export or import licences.
7. Any other cause beyond reasonable control of the parties which is reasonably notified in writing to the other party within 7 days of its occurrence.

12. Confidentiality

12.1. Each party will at all times keep confidential and will not disclose without the prior written consent of the other any business or other confidential information of the other party or use any such information other than for the purposes contemplated by this Agreement (except that each party may disclose such information to those of its employees, agents and sub-contractors who need to know the same for such purpose and under conditions of confidentiality non-disclosure and non-use equivalent to those imposed on the parties by this Clause). These obligations of confidentiality, non-disclosure and non-use do not apply to any information which is publicly available through no fault of the party disclosing or using the information, or which was known to that party before receipt from the other party, or received from another source without obligation as to confidentiality, or which is required to be disclosed by law or by a regulating authority.

13. Miscellaneous

13.1. PERSONAL. This Agreement is personal to the Customer and the Customer's rights may not be assigned, sub-licensed or transferred in any way

13.2. ENTIRE AGREEMENT. Save where otherwise agreed in writing this Agreement constitutes the entire understanding between the parties concerning the provision of the Service, and replaces, supersedes, and cancels all previous arrangements, understandings, representations

or agreements relating thereto, to the extent allowed by applicable law, or warranties, expressed or implied, including without limitation the implied warranties of satisfactory quality and fitness for a particular purpose are excluded. Nothing in the Terms shall affect the statutory rights of a consumer. This Agreement shall apply and prevail over any terms and conditions (whether conflicting or not) contained or referred to in any documentation submitted or provided by the Customer.

13.3. SEVERABILITY. Each provision of this Agreement excluding or limiting liability shall be construed separately, applying and surviving even if for any reason one or other of those provisions is held inapplicable or unenforceable in any circumstances and shall remain in force notwithstanding the termination of this Agreement howsoever occasioned.

13.4. NO WAIVER. No waiver by TheWebSmiths Limited shall be construed as a waiver of any preceding or succeeding breach of any provision.

13.5. NOTICES. Any notices required to be given under this Agreement shall be in writing and shall be sent by first class registered post, recorded airmail, fax or by hand, to the address specified in this Agreement.

13.6. GOVERNING LAW. This Agreement shall be governed by the laws of England and Wales and this Agreement shall be subjected to the non-exclusive jurisdiction of the English courts.

13.7 No transfer of domain name(s), to or away from TheWebSmiths Limited, is permitted where the expiry date of the domain name is due in less than thirty (30) days.

13.8. No transfer of domain name(s), to or away from TheWebSmiths Limited, is permitted sixty (60) days from date of registration.

14. Acceptable use

14.1. Goals.

TheWebSmiths Limited's goals are to protect network resources, preserve the privacy and security of TheWebSmiths Limited and our customers, and maximize the utility of TheWebSmiths Limited and the Internet, while recognizing TheWebSmiths Limited's position in the Internet community as a whole.

14.2. Interpretation.

The provisions of this Policy are intended as guidelines and are not meant to be exhaustive. Generally, conduct that violates law, regulation or the accepted norms of the Internet community, whether or not expressly mentioned in this Policy, is prohibited. TheWebSmiths Limited reserves the right at all times to prohibit activities that damage its commercial reputation and goodwill.

14.3 Bandwidth Usage

If your bandwidth reaches the point where it has an adverse effect on other customers we reserve the right to:

- (a) disable your site, without prior notice, until you can reduce your bandwidth usage; or
- (b) charge you for excess bandwidth usage, over and above your package allowance, as published by TheWebSmiths Limited from time to time

14.4. Security.

Any "denial of service" attack, any attempt to breach authentication or security measures, or any unauthorized attempt to gain access to any other account, host or network is prohibited, and will result in immediate services termination, which may be without notice.

14.5. E-mail Redirection.

Using any TheWebSmiths Limited server to send duplicative, unsolicited e-mail messages (commercial or otherwise), or to collect the responses from unsolicited e-mail, or to promote any website whose Domain Name Service is provided by TheWebSmiths Limited is prohibited. Similarly, using any TheWebSmiths Limited server to post advertisements or messages that violate the charter of any newsgroup or mailing list is prohibited.

Sending duplicative, unsolicited e-mail messages (commercial or otherwise) to promote any website whose Domain Name Service is provided by TheWebSmiths Limited is prohibited.

TheWebSmiths Limited reserves the right to make the determination whether a given message violates the newsgroup or mailing list charter. In most cases TheWebSmiths Limited will defer to the judgment of the newsgroup or mailing list moderator or administrator.

Commercial messages that are appropriate under the charter of a newsgroup or mailing list, or that are expressly solicited by the recipients are permitted.

Conduct in connection with e-mail or Usenet news that is an obvious nuisance (such as "mail bombing") or that would be unlawful in other contexts (for example but not limited to, threats, harassment, defamation, obscenity, or software piracy) is prohibited.

14.6. Forgery of Identity.

Falsifying addressing information or otherwise modifying headers to conceal the sender's or recipient's identity, for the purpose of circumventing this Policy, is prohibited. This provision is not intended to disallow the use of aliases or anonymous remailers for any legitimate purpose.

14.7. Copyright, Privacy, and Intellectual Property.

Using a TheWebSmiths Limited hosted Domain Name to commit, aid or abet any violation of copyright or intellectual property law is prohibited.

This prohibition includes publishing a private e-mail message or third parties, by any means, without the express prior consent of the author.

The e-mail addresses of TheWebSmiths Limited customers are not for sale or commercial distribution to third parties without the express prior consent of the subscriber.

14.8. Cooperation with Other Providers.

Using TheWebSmiths Limited's facilities to engage in activities that violate the Terms of Services of any other Internet Services Provider is prohibited. For example, sending unsolicited commercial e-mail through TheWebSmiths Limited's facilities to the subscribers of any Internet or online service provider that disallows unsolicited commercial e-mail is prohibited.

14.9. Consequences of Violation.

Violation of this Policy by a TheWebSmiths Limited customer may result in temporary suspension or permanent termination of one or more service at TheWebSmiths Limited's sole discretion.

TheWebSmiths Limited does not issue services credits for any outages incurred though service disablement resulting from Policy violations.

14.10. Modification.

TheWebSmiths Limited reserves the right to add, delete or modify any provision of this Policy at any time without notice.