

Hosting Terms and Conditions

Effective January 1, 2004

1. Definitions

In this document, unless the context requires otherwise:

Distribute.IT, We, Our or Us refers to Distribute.IT Pty Ltd [ACN 101 292 237]

Customer, You or Your refers to the person or legal entity using the service provided by Distribute.IT

Service or Services refers to the provision of web hosting services by Distribute.IT to the Customer

2. General

- 2.1 The agreement made between us on these Terms commences on the date Distribute.IT accepts Customer's application for the services.
- 2.2 Acceptance of Customer's application for services is deemed to be the date Distribute.IT creates Customer's account on its servers for use by Customer.
- 2.3 The Service is provided on an "as is, as available" basis. Distribute.IT gives no warranty, express or implied, for the Web Hosting Services provided.
- 2.4 Distribute.IT will not be held liable for reimbursement for losses of income due to disruption of services by Distribute.IT or its providers beyond the fees paid by the client to Distribute.IT for services.
- 2.5 We may vary these terms, our pricing for any service, or the terms of the operation of the Service, at any time by updating this document on our website, by email or in writing. All changes will become effective upon publication of the changes.
- 2.6 This agreement is governed by the laws in place in the State of Victoria, Australia.

3. Service

- 3.1 While Distribute.IT shall make every reasonable effort to protect data stored on our Server(s), Distribute.IT is not responsible for Customer's data, files, or directories residing on Distribute.IT's equipment. The Customer is solely responsible for maintaining data, file, and directory structure backups.
- 3.2 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. 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 We will not be liable for incomplete, out-of-date, corrupt or otherwise deficient Customer data recovered from our backups.
- 3.3 The customer is required to provide Distribute.IT with correct and up to date contact details for billing and technical notification purposes. Distribute.IT takes no responsibility for disruption to services due to inability to contact the customer.
- 3.4 The customer is responsible for and must provide all telephone, computer, hardware and software equipment and services necessary to access the Web Hosting Services. Distribute.IT makes no representations, warranties, or assurances that the client's equipment will be compatible with Distribute.IT's services.
- 3.5 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 on our website at least 48 hours before commencement of the maintenance.
- 3.6 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 on our web site after the maintenance has been completed.

3.7 The Service is provided by Distribute.IT from its data centres in Australia. Distribute.IT will determine in its absolute discretion from time to time the data centre location from which your Service is provided. We reserve 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 Distribute.IT's opinion becomes unreliable. Distribute.IT 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.

4. Payment

- 4.1 You must pay for the service as notified to you by Distribute.IT in accordance with Distribute.IT's published prices for Services from time to time.
- 4.2 Monthly accounts can only be paid by credit card
- 4.3 Where customers elect to pay their account on a monthly basis, upon registration of a credit card account, you give us authorization to debit your credit card for all charges. Payments will be processed monthly on the anniversary date of the acceptance by Distribute.IT of your hosting account. Where the anniversary date is on a weekend or public holiday, Distribute.IT will debit your credit card on the business day before the Anniversary date.
- 4.4 Monthly accounts will be automatically rolled over and a new invoice issued after each 12 month period from the Anniversary date. You must give us 30 days notice before the end of the 12 month contract term if you wish to cancel the service.
- 4.5 Yearly accounts can be paid by cheque, money order, direct deposit or credit card and must be received immediately upon acceptance of your hosting service by Distribute.IT.
- 4.6 Where customers elect to pay their account on a yearly basis, invoices will be automatically sent via email no less than 14 days prior to expiration date of the service. Where payment of the invoice is not received by the day of expiry, customers account will automatically be deactivated. Where payments for the invoice have not been received 14 days after deactivation, Distribute.IT will delete the clients account and all files, documents, data and other content from our servers.
- 4.7 Prices published on our website are inclusive of any government taxes or charges unless otherwise noted, and exclude any domain registration charges unless otherwise noted.
- 4.8 Distribute.IT reserves the right, in its sole discretion, to deactivate the customer's service upon indication of credit problems including, but not limited to, delinquent payments.
- 4.9 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 Distribute.IT's breach of these Terms, or you request cancellation, in writing, within 30 days of signing up to Distribute.IT's services in accordance with our Satisfaction Guarantee Policy (Clause 5).

5. Satisfaction Guarantee

You may terminate your hosting service(s) with Distribute.IT within the first thirty (30) days from activation of the hosting service and receive a full refund for the payment already received by Distribute.IT. A request for termination of services must be received in writing or via email. Setup fees for additional services are not refundable under any circumstance.

6. Customer Warranties and Indemnities

- 6.1 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 Distribute.IT 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;
 - c. You will keep secure any passwords used with the service;
 - d. 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; and,
 - e. You will conduct such tests and virus scanning as may be necessary to ensure 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.
 - f. During the term of this agreement you will be bound, and continue to be bound, by Distribute.IT's Acceptable Use Policy as can be viewed on our website.
- 6.2 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 and/or of our Acceptable Use Policy
 - 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 website forming part of your service.

7. Distribute.IT Warranties and Liabilities

7.1 We do not warrant that:

- a. the services provided under this agreement will be uninterrupted or error free;
- b. the services will meet your requirements, other than as expressly stated 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 unauthorized access to the services or systems of Distribute.IT.

7.2 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.

8. Termination

8.1 The customer may terminate the web hosting services provided by Distribute.IT in accordance with our Satisfaction Guarantee or at any time by giving 30 days written notice. Refunds are only available if Distribute.IT receives the cancellation request within 30 days of purchase date for the services you are wishing to cancel. Under no circumstances are setup fees refundable.

8.2 We may end our agreement with you and cease providing services for any reason, on 30 days written notice to you.

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

9. Agreement

You agree that the above terms and conditions constitute the full and complete understanding between Distribute.IT and the customer of the obligations and responsibilities of both parties to the other.