

## **AKB Web Services: Terms and Conditions**

Last Updated 20<sup>th</sup> March 2007

This Services Agreement (the "Agreement") contains the complete terms and conditions which govern your subscription of Web hosting, e-Commerce and other Internet-related services provided by AKB Web Services (the "Services"). As used in this Agreement, "AKB" means AKB Web Services and "Client", "you", or "your" means you. By clicking on the "Process My Order" button, you acknowledge that you have read the Agreement, and you agree to its terms and conditions and all policies posted on the AKB site. As referred to in this Agreement, "Site" refers to a World Wide Web site and the "AKB Site" refers to the Site located at the URL <http://www.akb.com.au/>, or any other successor Sites owned or maintained by AKB Web Services.

### **1. APPROPRIATE USE OF THE SERVICES.**

AKB provides the Services exclusively and makes no effort to edit, control, monitor or restrict the content of data other than as necessary to provide such Services.

- **Client Content.** Client agrees that it will not distribute, electronically transmit or display any materials supplied by Client - or through Client by a third party - to any AKB server in connection with Client's use of the Services which:
  - violate any state, federal or foreign laws or regulations;
  - infringe on any intellectual property rights (e.g., copyright, trademark, patent or other proprietary rights) of AKB or any third party;
  - are defamatory, slanderous or trade libellous;
  - are threatening or harassing;
  - are discriminatory based on gender, race, age or promotes hate
  - violate any AKB policy posted on the AKB Site including, but not limited to, our Acceptable Use Policy (includes Adult Content Policy), and Privacy Policy.
  - contain viruses or other computer programming defects which result in damage to AKB or any third party.
- **Disk Space/Data Transfer.** The Client may occupy only the amount of disk space on the AKB Server and utilize no more than the network data transfer that is allocated by AKB. Additional fees will be charged for exceeding the disk space and/or network bandwidth allowance of your selected plan.
- **No "SPAM"** Client shall not use the Services for chain letters, junk mail, spamming, or any use of distribution lists to any person who has not given specific permission to be included in such a process. Client also shall not engage in any unsolicited email practices at AKB, or otherwise, that mentions or reference any domain hosted on AKB servers or parked on AKB DNS servers. **NOTE: THIS POLICY APPLIES TO ALL DOMAINS, NAMES SERVERS AND PARKED DOMAINS HOSTED ON OUR SERVERS.**
- **Licensed Software Only.** Client agrees to use only properly licensed third party software in connection with Client's use of the Services.
- **Back-Up Files and Processing.** AKB performs daily backups on all servers which can be restored in the case of a system failure; however, it is the Clients responsibility to use the Backup feature of their preferred control panel and keep their own copy.
- **Termination.** AKB reserves the right to refuse service to anyone. AKB, in its sole discretion, may immediately terminate this Agreement if Client engages in any of the foregoing. To report any unacceptable behaviour by a third party using the Services, please contact support@akb.com.au

### **2. PAYMENT OBLIGATIONS**

- **Service Fees.** AKB shall either (i) debit the Client's credit card (when such information is provided by the Client), or (ii) produce an invoice which will be delivered to the Client by email with additional payment methods. All new accounts must be paid prior to the new account becoming active on our servers. Domain name registration fees must be paid upfront before the domain name will be registered. AKB accepts no responsibility for domain names registered by another party prior to the Client paying the outstanding amount. On-going invoices will be

issued seven (7) days prior to the due date. A reminder will be issued three (3) days after the due date. A suspension notice will be issued seven (7) days after the due date. The account will be suspended fourteen (14) days after the due date, and a final notice will be issued. AKB shall be entitled to immediately terminate this Agreement for Client's failure to make timely payments. If Client terminates this Agreement in accordance with Section 4 hereunder, Client shall be responsible for any outstanding fees owed to AKB and agrees to pay any and all fees incurred by Client. Because the Services are provided on a monthly basis, unless a contract is in place, Client will be responsible for Service fees incurred each month regardless of when Client provides notice of termination. Thus, for example, if Client provides notice to terminate on the 15th of a particular month, Client will still owe fees for the entire month and such fees will not be pro-rated or refunded. If Client has retained the Services for one (1) year and has pre-paid AKB for such Services, refunds will be issued for any unused full month portions less one month of the Services upon Client's request. Therefore, if the Client's account is cancelled at any point during the one (1) year term, the Client will be entitled to a refund for all but one of the full months remaining after notice given by the 25th of the preceding month.

- Late payments. Any payment not received within fourteen (14) days of the invoice date, will incur a late payment fee of \$5.50. Customer also shall pay to AKB all expenses incurred by AKB in exercising any of its rights under this Agreement or applicable law with respect to a Payment Default or other breach by Customer, including, but not limited to, reasonable Solicitors fees and the fees of any collection agency retained by AKB.
- Taxes. Customer will be responsible for and will pay in full, any taxes and similar fees now in force or enacted in the future imposed on the transaction and/or the delivery of Services.
- Domain Names. If Client chooses to register a domain name(s) through AKB, Client acknowledges and agrees that Client will pay a registration fee(s) to register the domain name(s) with the applicable domain name registrar. AKB does not offer refunds for domain name registrations for any reason, including misspelling of the domain name. Domain name registration fees must be paid up front. AKB accepts no responsibility for domain names registered by another party prior to the Client paying any outstanding amount.
- Refunds: Web hosting customers of AKB are eligible for a 90 day full money back guarantee. Should the customer choose to take advantage of the 90 day money back guarantee, all monies the customer paid for their hosting services will be refunded to them. If the customer has paid their fees via money order or cheque, a cheque will be issued and sent to the customer's address on file. If the customer has paid for hosting services using a credit card, all monies will be refunded to their credit card.

Any other refunds will be only given at the discretion of the company management.

### 3. CLIENT LIABILITY AND INDEMNIFICATION

- The parties agree that in no event shall AKB be liable to any third party for Client's breach or alleged breach of any of the terms and conditions set forth in this Agreement. Client agrees to defend, indemnify and hold harmless AKB from any and all expenses, losses, liabilities, damages or third party claims resulting from Client's breach or alleged breach of any Client obligations set forth hereunder.

### 4. TERM, TERMINATION & REINSTATEMENT

- Subject to the terms and conditions hereof, this Agreement shall be effective on the date you register for the Services, and shall continue in effect on a month-to-month basis unless otherwise specified by separate agreement (the "Term") unless terminated earlier pursuant to the provisions of this Section 4. Either party will have the right to terminate this Agreement upon notice to the other party. All cancellation requests must be received by the 25th of the respective month of cancellation. Sections 3 - 8 shall survive termination or expiration of this Agreement.

- If AKB suspends a virtual account for non-payment, Client shall be allowed to re-instate Client's use of the Services within Five (5) business days of cancellation upon approval from AKB and full payment of balances due.
- If a Client terminates their account, AKB will disable the server/account the day the client specifies the account is cancelled. AKB will not maintain an archival copy of the Clients Web site or files. It is the responsibility of the Client to remove any data off the server prior to the date provided in their cancellation notice.

## 5. TAXES

- Client will pay and indemnify and hold AKB harmless from any and all taxes associated with or arising from Client's use of the Services, including any penalties and interest and any costs associated with the collection or withholding thereof.

## 6. DISCLAIMER OF WARRANTY

- THE SERVICES, THE AKB SITE, INCLUDING WITHOUT LIMITATION, ALL PRODUCTS AND SERVICES DISPLAYED OR OFFERED ON THE AKB SITE, AND ALL TEXT, GRAPHICS, LINKS AND APPLICATIONS ARE PROVIDED TO CLIENT ON AN 'AS IS' BASIS AND WITHOUT WARRANTY OF ANY KIND. AKB DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO EACH OF THE FOREGOING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM A COURSE OF DEALING. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AKB SPECIFICALLY DISCLAIMS ANY WARRANTY THAT (1)THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; (2) DEFECTS WILL BE CORRECTED; (3) THERE ARE NO VIRUSES OR OTHER HARMFUL COMPONENTS; AND (4) THE SECURITY METHODS EMPLOYED WILL BE SUFFICIENT.

## 7. LIMITATION OF LIABILITY

- IN NO EVENT SHALL AKB BE LIABLE FOR DAMAGES RESULTING FROM LOSS OF DATA, PROFITS, USE OF THE AKB SITE OR ANY AKB PRODUCTS OR SERVICES, OR FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT OR IN CONNECTION WITH ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER. IN NO EVENT SHALL AKB CUMULATIVE LIABILITY EXCEED AN AMOUNT GREATER THAN FIVE HUNDRED DOLLARS (\$500).

## 8. MISCELLANEOUS

- Notices. Any notices or communication under this Agreement shall be in writing and shall be deemed delivered to the party receiving such communication at the address specified below (1) on the delivery date if delivered personally to the party, or a representative of the party; (2) one business day after deposit with a commercial overnight carrier, with written verification of receipt; (3) five business days after the mailing date, whether or not received, if sent by postal mail, return receipt requested; (4) on the delivery date if transmitted by confirmed facsimile.

If to AKB:

AKB Web Services  
4/36 Mount St  
West Perth  
WA, 6005

If to Client:

Name and address provided for account setup.

If any of the provisions, or portions thereof, of this Agreement are found to be invalid under any applicable statute or rule of law, then, that provision notwithstanding, this Agreement shall remain in full force and effect and such provision or portion thereof shall be deemed omitted. This Agreement (including the Exhibits, attachments and/or addenda, if any,) represents the entire agreement of the parties with respect of the subject matter hereof and supersedes all prior and/or contemporaneous agreements or understandings, written or oral between the parties with respect to the subject matter hereof.

This Agreement and the rights granted and obligations undertaken hereunder may not be transferred, assigned or delegated in any manner by Client, but may be so transferred, assigned or delegated by AKB. Any waiver or any provision of this Agreement, or a delay by any party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver nor create an expectation of non-enforcement of that or any other provision or right. In any legal proceeding between the parties under this Agreement, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees.

This Agreement is made under and shall be governed by the laws of Australia, except with regard to its conflict of law rules. This Agreement and AKB's policies are subject to change by AKB without notice. Continued usage of the Services after a change to this Agreement by AKB or after a new policy is implemented and posted on the AKB Site constitutes your acceptance of such change or policy. We encourage you to regularly check the AKB Site for any changes or additions.