
INTERMAST STUDIOS

ABN: 55 529 468 155
Nambour, Queensland, Australia

Phone: 0404 059 471
Email: office@intermast.com.au
Web: www.intermast.com.au

Terms and Conditions of Service – Web Hosting

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By having Your web site hosted by Intermast Studios, You agree to the following Terms and Conditions of Service.

1. General

The Terms and Conditions outlined below are designed to protect and benefit all Clients. In particular, they attempt to ensure that the Servers are used only for legal and appropriate purposes, and that no Client uses an "unfair" proportion of the system's shared resources.

Before placing Your web site on the Servers, You must read and accept these Terms and Conditions.

If You do not wish to be bound by these Terms and Conditions, You must not place a web site, or continue to have any part of a web site, on the Servers.

If You breach any of the Terms and Conditions, we reserve the right to deactivate Your hosting account immediately and without notice.

Intermast Studios also reserves the right to alter these Terms and Conditions at any time.

2. Definitions

The following definitions apply to these Terms and Conditions:

- "Claim" means any loss, expense, liability, cost, damage or claim, whether to, or incurred by, You or another person.
- "Client" means any person to whom Intermast Studios provides the Service.
- "Domain Parking" means one or more domain names pointing to Your web site, or any part of it.
- "Force Majeure" means circumstances beyond the control of a party which includes (but is not limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion or civil authority, including acts of local government and parliamentary authority, materials, breakdown of equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer), acts of war (declared or undeclared) or terrorism.
- "Intermast Studios", "we", "our" and "us" means Intermast Studios (registered as a business by the Office of Fair Trading in Queensland, Australia. Business number: BN17591156) and its contractors and associates.
- "person" includes an individual, a body corporate, office, commission, authority, committee, tribunal, board, institute, organisation or other body however described.
- "Servers" means all servers operated by Intermast Studios, and which You may access or use as a result of Intermast Studios providing the Service, subject to these Terms and Conditions.
- "Service" means the hosting of Your web site and related services on Servers operated by Intermast Studios, including access to Your web site by You or any other person.
- "web site" includes all aspects of the Service (web site, mail facilities, FTP access, etc).
- "You" and "Your" means the person who agrees to have a web site hosted on Servers operated by Intermast Studios under these Terms and Conditions.

3. Application Details and Processing

You must have a registered domain name to use Intermast Studios' web hosting service. You acknowledge that Your domain name (the web address of Your site) is fundamental to the set up of Your site. The domain name cannot be changed once a hosting account has been created. If You need to change the domain name for Your web site then You will need to cancel your existing web hosting account and apply for a new account for the new domain and additional charges will apply.

You confirm that the details You have provided to Intermast Studios when applying for Your web hosting account are complete and correct.

We reserve the right to decline Your application. If Your application is declined then we will refund Your associated payment (if any) at your request within seven days.

4. Domain Name Registration and Transfer

Domain name registration fees are not included in our web hosting prices unless we explicitly state otherwise (for example, as part of a special offer).

If You do not have a registered domain name, You can register one through Intermast Studios. Any domain name nominated on a web hosting application as being registered to an applicant is assumed to be under the applicant's control. Where this is not the case, and the applicant is subsequently unable to take control of the domain, the applicant will forfeit their set up fee as the account will need to be closed down and a new account opened.

Depending where You have registered a domain, Intermast Studios may ask You to arrange the change of domain name server. Under these circumstances, Intermast Studios will provide You with the name server information You will require for the transfer. If You arrange a domain name through Intermast Studios, You will not need to do this transfer.

5. Conduct

You must not:

- access the web sites of other Clients, other than in the course of ordinary, legal, business or consumer access;
- hinder the operation of our Servers in any way;
- attempt to access or list any files and/or directories that are not Your own;
- obtain, or attempt to obtain, any system information unless it is required to complete ordinary web site management tasks.

6. Password Security

You must keep confidential, all passwords created or used in relation to the Service.

You must not:

- make any password created or used in connection with the Service, available to the public or to groups of people;
- allow the public or any other groups of people to access any of Your accounts, other than as agreed by Intermast Studios.
- use an insecure password.

We may conduct random audits on passwords being used. If We find that You are using a weak password, We may reset it.

7. Acceptable Content

Your web site must not contain any material, or contain a link to any material or website, which is unlawful, pornographic, sex-industry-related, sexually explicit, gambling-related, threatening, hateful, obscene, racist, libellous, defamatory, highly controversial or which encourages unlawful behaviour. This includes, any web site or web page that contains depictions of nudity, material relating to hacking or any pirated software.

If We determine, at Our sole discretion, that Your site contains any unacceptable content, or a link to any unacceptable content, We may cancel Your Service immediately, and without notice.

If a third party complains to Us that Your website includes claims about that third party that are incorrect, libelous, defamatory or derogatory then We may, at Our discretion, insist that the related website content be removed permanently from Your site, or We may remove such content ourselves without notice.

8. Additional Domains

You may not use any software or service to point additional domain names at Your site. This includes sub-domains (such as **http://subdomain.yourdomain.com.au/**) as well as standard domains (**http://www.yourdomain.com.au/**).

If You require an additional domain name to be pointed at Your site, You may request us to add our Domain Parking facility to Your account. If we agree to allow You to point additional domain names at Your web site, a one-time set-up fee is payable for each additional domain name parked on Your site. The Domain Parking facility cannot be used to effectively host two or more different sites within a single hosting account. The Domain Parking facility can only be used when the additional domain name relates to exactly the same site content as the primary domain.

You must not use any script, software or service to redirect any visitor or significantly alter site content based on which domain name the visitor is accessing. For example, You cannot use a script to show visitors to **domain1.com.au** one set of pages or content, and show visitors to **domain2.com.au** a different set of pages or content.

9. Use of Disk Space

Your disk space is for Your use only. You may not resell or give away disk space to any third party without written permission from Intermast Studios. You must not place "demonstration" versions of third party web pages on Your web site without written permission from Intermast Studios. That is, third party web pages must not be housed within Your site regardless of the reason, unless You have written permission from Intermast Studios.

Intermast Studios reserves the right to decide whether any pages on Your site are in fact hosted for third parties.

You may not consume disk space with copies of pages that are substantially the same. For example, You cannot automatically generate multiple copies of a single page and place all the copies on Your web site.

10. Number of Files

There is a limit to the number of files which can be stored on Your web site. The limit varies depending on which hosting plan You are on. You can have:

- up to 5,000 files on plans EB, ES, and S200
- up to 10,000 files on plan G500, and
- up to 20,000 files on plan P1000.

11. Large Files

Sites containing very large files can consume an unfair proportion of system resources. Each file on Your web site must be less than 50 MB in size.

12. Database Size

If Your web hosting account includes a MySQL database, You must keep the combined total size of Your database files to less than 50 MB. If more than 50 MB of disk space is used for these files, we may, at our sole discretion, either:

- Charge You for the amount of disk space used in excess of 50 MB ;
- Insist that the database size be reduced to less than 50 MB within 24 hours; or
- Decline to host the database and remove it from our servers. Wherever feasible at least 24 hours notice will be provided before the database is removed.

13. Resource Intensive Programs

If You install and run a resource intensive program on our Servers we may, at our sole discretion:

- Charge You an additional monthly amount; or
- Halt and/or prohibit the execution of the program.

We do not allow background processes, cron jobs or daemons to be run.

14. Prohibited Scripts

We reserve the right to disallow installation and/or execution of any script if the script contains at least one security fault, programming fault, or is too resource intensive.

15. Web Cams

Your site must not contain any "Web Cam" content.

16. Streaming Media

Streaming media is permitted on our Servers, however, Intermast Studios does not guarantee the quality of the streams. You acknowledge that the playback of media on Your site visitors' computers may be affected by factors outside the control of Intermast Studios.

Intermast Studios reserves the right to remove any streaming media from its Servers or relocate it to alternative servers for additional fees if Intermast Studios, at its sole discretion, deems such streams to be placing unduly high demand on its Servers.

17. Chat Rooms and IRC

You must not install chat rooms or IRC related software on our Servers.

18. Site Mirroring

You must not use Your web site to mirror any material on any other web site without the written permission of Intermast Studios.

19. Traffic Allowance

Your hosting account has a traffic allowance as specified on Intermast Studios' web site, unless specifically advised otherwise by Intermast Studios.

If, at our sole discretion, we decide that your website has received more than Your pre-determined traffic allowance in any calendar month then we may, at our sole discretion, either:

- Charge You for all traffic in excess of your pre-determined traffic allowance at a rate of AU\$6.60 per 100MB or part thereof; or
- Remove Your website from our Servers immediately without notice.

You acknowledge and agree that Intermast Studios has the sole right to determine when and where these provisions apply. Your site statistics and raw web logs are available for You to analyse Your traffic patterns. Subject to time constraints, Intermast Studios will endeavour to assist You to analyse Your traffic patterns to determine the precise cause of Your high traffic. You acknowledge that Intermast Studios has no obligation to provide You with justification or data analysis to prove that excess traffic charges apply or to prove the size of the charges.

If we decide that Your site is likely to incur excess traffic charges for a given month we may, at our sole discretion, notify You via email of the estimated excess traffic charges for the month and insist that You place a deposit with us within seven days of our email message being sent. The amount of the deposit will be equal to our estimate of the excess traffic charges You will incur for the month. If such deposit is not made within seven days then Your web site may be deactivated without notice.

Please note that, in the interests of other customers using our shared servers, we may decline to host extremely high traffic sites and may immediately disconnect such sites if we see fit.

20. Submitting Site Details To Third Parties

You are welcome to submit Your site details to search engines, directories and other sites subject to the following restrictions:

- You must not submit the URL (web address) of any Free-For-All Link Page (or similar page or script) to automatic Free-For-All Link Page submission engines. If such an engine lists Your script or page and commences submissions to Your script or page, You must remove the script or page from Your site immediately.

- When providing Your site details to third parties You must specify the location of Your site using Your domain name only, and not Your site's IP address. For example, You may tell third parties that the location of Your site is **www.yourdomain.com.au**, or **yourdomain.com.au**, but must not specify the location of Your site using an IP-based format like: **1.2.3.4/accountname/** where 1.2.3.4 is Your site's IP address.

21. Mail Services

All mailboxes are limited in size (nominally this is 20MB). You must set Your mail software to delete each message from the server within three days of downloading it.

Intermast Studios will remove without notice any messages that have been in Your mailbox(es) for more than 120 days.

If You set Your mail software to check or download messages automatically at specified intervals, the interval between checking or downloading messages must be at least 15 minutes.

Intermast Studios reserves the right to limit the size of messages accepted by our Servers. That is, messages that are deemed to be too large may be bounced by our Servers. This size limit is currently set to 10 MB but may be changed by us from time to time at our sole discretion.

22. Virus Scanning

Intermast Studios scans incoming and outgoing messages for viruses. Intermast Studios does not guarantee that every message will be scanned, or that every virus will be detected and removed. Additionally, Intermast Studios reserves the right to remove attachments from incoming and outgoing email messages if there is any indication that the attachment is, or might be, infected with a virus.

Our virus scanning facilities provide a high level of protection against viruses but You acknowledge and agree that You are solely responsible for protecting Your property and email accounts from virus threats.

23. Mailing Lists

If You operate at least one email-based mailing list via the Service, the total number of subscribers to all of Your mailing lists must not exceed 1,000. The total number of messages sent and received via Your mailing lists in any week must not exceed 5,000. Please note that these mailing list limits apply on a per site basis, not a per list basis.

24. Providing Mail Services for Third Parties

You must not provide mail services to Your site visitors (or other third parties) if those mail services use our mail systems to send, receive, store or access email messages on behalf of Your site's visitors (or other third parties).

25. Spam (Unsolicited Bulk Email)

Intermast Studios has a zero tolerance policy in relation to spam mail being sent via its systems.

You must not send unsolicited email messages from the Servers.

You must not use an email address or domain name that is hosted by Intermast Studios to send unsolicited email messages.

You may not send email to a mailing list that You purchased or were given.

Sites advertised via Spam may not be hosted on Our servers. This includes, but is not limited to, Spam sent via fax, email, instant messaging, public forums, usenet / newsgroups.

You may not do anything to cause Our IP space to be blacklisted by any organisation.

If You breach these conditions We may immediately terminate the Service without notice. We reserve the right to charge You a clean up fee, in addition to any 'fines' or other charges imposed by other entities (including but not limited to Our data centre). The clean up fee charge is entirely at Our discretion.

26. Site Statistics

We provide regular statistical reports about traffic to Your web site. You agree that we are entitled to remove historic data from these reports as we see fit. If You want to keep a full history of the traffic to Your site You are advised to save an off-line copy of Your reports at least once every three months.

27. Back-ups

Intermast Studios will back-up Your web site regularly. These back-ups are intended for restoration of the system in the case of any failure with the Service.

If Intermast Studios is not providing Your web development services:

- Our back-up facilities are not intended to enable individual Clients to revert to older versions of files on their sites, but if You require data to be restored from back-up then we can do that for You if we have access to suitable back-up versions of the relevant files, however charges will apply.
- You are advised to keep a back-up of Your site on Your home or office computer.

If Intermast Studios is providing Your web development services:

- Intermast Studios retains back-ups of the files we prepare for Clients. On Your request, Intermast Studios would be able to upload older versions of Your web site files to the Server. A fee would apply for this service.
- In the case of database files that have been updated on-line, if You require data to be restored from back-up, we will do that for You if we have access to suitable back-up versions of the relevant files. A fee would apply for this service

28. Payment

Invoicing will normally be on a quarterly in advance basis. Payment is required as and when specified by Intermast Studios. Where a payment is overdue, Your account may be suspended or deleted without notice at our discretion. If payment is not made as required, we may commence actions to recover these debts, and You may be liable to pay additional fees related to our recovery actions. Such fees may include interest charges as well as other fees reasonably related to our recovery.

29. Set Up Fee

Unless stated otherwise, the set up fee only covers configuring the Servers and establishing billing for Your account. Visits to the Client's premises to configure computers to receive email, etc are subject to additional fees.

30. Prices

Prices are subject to change without notice. Any change in monthly fees will be applied to Your next invoice, and will not be payable for the hosting period for which You have previously been invoiced.

31. Goods and Services Tax

A 10% Goods and Services Tax (GST) is levied on all services supplied to Clients who are residents of Australia. The GST does not apply to overseas customers.

32. Technical Support

We will provide technical support in relation to the Service. Please note that where Intermast Studios has not been involved in the web development associated with a web hosting account, we do not generally provide support for problems with Your coding/programming, though we will provide such support, within reason, at our discretion.

Intermast Studios reserves the right to charge a fee for technical support provided where the problem is not caused by a failure of the Service.

(The email address for technical support is support@intermast.com.au).

33. Change of Contact Details

You agree to notify us promptly of any changes to Your email address or other contact details.

34. Cancellation of Service by You

You may cancel the Service at any time by providing Intermast Studios with written authorisation (via email, facsimile or letter) to close Your web hosting account. Hosting fees will continue to apply until cancellation is confirmed by us.

35. Cancellation of Service by Us

Intermast Studios may, at its sole discretion and with reasonable grounds, deactivate Your web site and revoke Your access to our Servers. For example, Your site may be deactivated for late payment, or Server abuse.

36. Handling of Files on Cancellation of Service

You acknowledge that Intermast Studios has the right to remove all Your web site files from the Servers at the time the Service is cancelled or discontinued.

You acknowledge that if Your site is deactivated and Intermast Studios has not developed the content of your site, then Intermast Studios has no obligation to provide You with a copy of Your site content, or to restore Your server access to enable You to obtain a copy of Your site content.

If Your site is deactivated and Intermast Studios developed the content of your site, then Intermast Studios will provide You with a copy of Your site content, as prepared by us, on receipt of the fee applicable at the time.

37. Modifications to Service

Intermast Studios reserves the right to modify or discontinue the Service (or any part thereof) as we see fit, with or without notice. You agree that Intermast Studios will not be liable to You or any other party for such modifications to the Service.

Intermast Studios reserves the right to update these Terms and Conditions from time to time. The latest version of these Terms and Conditions is available on the Intermast Studios web site.

38. Special Offers

From time to time, special hosting packages will be made available by Intermast Studios. Additional and/or alternative terms and conditions may apply to these packages. We will advise You of such additional and/or alternative terms and conditions in writing and this will form part of this Agreement. If the additional and/or alternative terms and conditions are inconsistent with this document, then the affected clauses in the additional and/or alternative terms and conditions will override the conflicting clauses in this document.

39. Interruption of Service

We do not warrant that the Service will be continuous and/or fault free. We will exercise due care and skill in providing the Service. We are not responsible for any loss, damage, injury or otherwise detriment resulting from our provision of the Service.

40. Refusal of Service

We reserve the right to refuse or cancel the Service at our sole discretion.

41. Right to Outsource

At our sole discretion, Intermast Studios may outsource the Services or the performance of any work, or part thereof, relating to the Services to any party as we see fit.

42. Intellectual Property Rights

You agree to indemnify, hold harmless and defend at your own expense us from and against any and all Claims for infringement of copyright, patents, trade marks, industrial designs or other intellectual property rights issued under the laws of any country where the copyright, patents, trade marks, industrial designs or other intellectual property were provided by you, or where you represented, expressly or impliedly, that the copyright, patents, trade marks, industrial designs or other intellectual property were your intellectual property.

We undertake to give you prompt notice of any Claim described above that is made against us or any of our subsidiaries, dealers or customers and you will forthwith defend any such Claims and make settlements thereof at your own expense.

You acknowledge that any and all of the copyright, patents, trade marks, industrial designs or other intellectual property rights used or subsisting in or in connection with our business, marketing and/or support material relating to our business and all documentation and manuals relating thereto are and will remain our property and you will not, during or at any time after the expiry or termination of this Agreement, in any way question or dispute the ownership by us thereof.

You will not, during or after the expiry or termination of this Agreement, without the prior written consent of us, use or adopt any name, trade name, trading style or commercial designation that

includes or is similar to or may be mistaken for the whole or any part of any trade mark, trade name, trading style or commercial designation used by us.

You acknowledge and agree that the Service and any necessary software used in connection with the Service contain proprietary and confidential information that is protected by applicable intellectual property and other laws. You further agree not to reverse engineer or create derivative works based on the Service, or copy the Service in any way.

43. Capacity

You warrant that You are 18 years of age or older and have the capacity to enter into a legally enforceable agreement. If applying and/or utilising the Service on behalf of any business, You warrant that You have legal authority to do so.

44. Headings

Headings used in these Terms and Conditions are for convenience and ease of reference only, and shall not be relevant to, or affect the meaning or interpretation of the Terms and Conditions.

45. Waiver

Intermast Studios' failure to enforce at any time or for any period of time, any aspects of these Terms and Conditions shall in no way affect our right later to enforce these Terms and Conditions. Waiver by us of any breach of these Terms and Conditions shall not constitute a waiver of any subsequent breach.

46. Governing Law

You irrevocably submit to the exclusive jurisdiction of the courts of Queensland, Australia and the applicable laws of that state.

47. Severability

If any provision of these Terms and Conditions is held to be invalid or unenforceable in whole or in part, the invalidity or unenforceability of such a provision will not affect the validity of the remaining provisions of these Terms and Conditions, which will remain in full force and effect.

48. Force Majeure

Neither party will be liable to the other party in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of Force Majeure.

49. Entirety

This document constitutes the Terms and Conditions for the Service, and supersedes all prior versions of these Terms and Conditions as well as prior agreements, understandings and representations both oral and written.

50. Limitation of Liability

We will not be liable to You or any other person for any claim arising out of or relating to this agreement or any product or service furnished or to be furnished under this agreement or the use thereof (including but not limited to damage, loss or corruption of data, service interruptions or errors, inaccurate advice provided to You and/or Your clients, or loss of profit, business, revenue, goodwill or anticipated savings), even if you have been advised of the possibility of such loss or damage.

The aggregate liability of us for any claims howsoever arising out of or relating to this agreement or any products or services furnished or to be furnished by us under this agreement will, in any event, be absolutely limited to the amount paid by You to us under this agreement for the applicable products and/or services.

You acknowledge that we have set our prices and entered into this agreement in reliance upon the limitation of liability set forth in this agreement, and that the same forms an essential basis of the bargain between the parties. The parties agree that the limitation of liability specified in this agreement will survive and apply even if any limitation of remedies is found to have failed of its essential purpose. Notwithstanding the foregoing, nothing contained herein will limit your liability for its own wilful or wanton conduct.

Notwithstanding any other provisions contained herein, where any Act of the Australian Parliament implies any term into this agreement, and that act avoids or prohibits provisions in a contract excluding or modifying such term, that term will be deemed to be included in this agreement, but our liability for breach of that term will be limited in one or more of the ways (at our option) permitted by Section 68a(1) of the Trade Practices Act 1974 (Cth).

51. Disclaimer

We make no statement, warranty, representation or promise not expressly set out in these Terms and Conditions, or required by law. We expressly disclaim all warranties, representations or promises in relation to the Service.