

## Katsgraphics/Uponline Ltd Hosting Terms & Conditions

Your attention is in particular drawn to the following conditions which are of special importance:

- [2.7 Estimated dates](#)
- [3 Contract Period and Renewal](#)
- [4.2 Your responsibility to back-up data](#)
- [6 Our liability to you and the Right to Cancel](#)
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### 1. DEFINITIONS

- 1.1 References to "we", "us" and "our" are references to Katsgraphics/Uponline Ltd).
- 1.2 The terms "you" and "your" refer to any individual, company or business to whom we provide our Services as specified in the online customer order form or via direct representation/a person reasonably appearing to us to act with your authority.
- 1.3 In these conditions the following words and expressions shall have the following meanings:
  - **Commencement Date** means the date of our acceptance of your order as notified to you under our account activation notice;
  - **Contract** means any contract between us and you for the supply of Services incorporating these conditions;
  - **Domain Names** means Internet addresses which have been registered with the central registration authorities on the Internet on your behalf;
  - **Gigabyte** means 1,073,741,824 bytes or characters of information;
  - **hosting** means the making available of your Domain Name on the Internet;
  - **Internet** means the network of interconnected e-communications and computer systems connected by internet protocol numbers;
  - **Megabyte** means 1,048,576 bytes or characters of information;
  - **Renewal Date** means the day following the end of the first billing period specified in the online customer order form and the day following the end of the relevant billing period from time to time;
  - **Services** the internet services to be provided by us to you as specified in the online customer order form together with any other services which we provide, or agree to provide, to you;
  - **Upload** means to transfer computer files to our computer system for publication on the Internet or WWW;
  - **Web Site** means the area on our computer system allocated to you for the purpose of this Contract;
  - **WWW** means World Wide Web service available on the Internet;
- 1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 Condition headings do not affect the interpretation of these conditions.

- **1.6** Any words in the singular include the plural and vice versa.

## **2. APPLICATION OF CONDITIONS**

- 2.1 Subject to any variation under conditions 2.2 or 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which you purport to apply under any order, confirmation of order or other document).
- 2.2 Any variation to these conditions and any representations about the Services shall have no effect unless expressly agreed in writing and signed by our authorised representative on our behalf. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in this Contract. Nothing in this condition shall exclude or limit our liability for fraudulent misrepresentation.
- 2.3 We reserve the right to alter or amend our terms and conditions by giving you fourteen days' prior notice by email and by displaying the notice on the our web site in the Terms and Conditions section. If you do not want to accept any new conditions you must inform us immediately in writing or by emailing us at [katsgraphics@mac.com](mailto:katsgraphics@mac.com) or [info@uponlinemedia.com](mailto:info@uponlinemedia.com) otherwise you will be deemed to have accepted such new conditions.
- 2.4 Your order for Services from us shall be deemed to be an offer by you to buy the Services subject to these conditions.
- 2.5 No order placed by you shall be deemed to be accepted by us until an account activation notice is issued by us.
- 2.6 You shall ensure that the terms of your order are complete and accurate.
- 2.7 Any date proposed either by you or us for the provision of the Services is to be treated as an estimate only and we accepts no liability for any failure to meet it.

## **3. CONTRACT PERIOD**

- 3.1 Subject to termination under conditions 9 and 10 this Contract shall begin on the Commencement Date and shall automatically renew on the relevant Renewal Date for successive periods equal to the billing period set out in the online customer order form/direct representation or for such period as subsequently agreed by us in writing.

## **4. YOUR RESPONSIBILITIES**

- 4.1 You agree that you will keep secure the login name and password specified on your online customer order form/direct representation and not to pass that information to any unauthorised person. In the event of your login name and password being used by any unauthorised person, we accept no responsibility and you will be liable for additional charges arising therefrom.
- 4.2 It is your sole responsibility to make regular back-ups of your data and files used in connection with the Services. Even though we may make our own periodic back-ups for server maintenance purposes we are not responsible whatsoever for your data or files.
- 4.3 You agree that you will not:
  - 4.3.1 perform any action that will reduce performance of our servers to the detriment of other users;

- 4.3.2 upload any virus to the Web Site which could infect our server or other equipment;
- 4.3.3 allow a virus to enter the Internet by allowing Internet users to download files containing viruses or (knowingly or otherwise) from their web space which is on our server;
- 4.3.4 upload any material which infringes the intellectual property rights of any other party. We accept no responsibility for your actions in either uploading material to the Internet or in your transferral of any material to other Web Sites (or vice versa);
- 4.3.5 upload any material which may be considered to be contrary to public decency and morality including (but not limited to) pornographic, barbaric and overtly tasteless material. We reserve the right to randomly inspect the Web Site and in the event that any unauthorised material has been uploaded to that Web Site, we reserve the right to inform the relevant authorities and to terminate this Contact forthwith;
- 4.3.6 cause or permit or in any way assist in any unauthorised publication or any dissemination of defamatory material or any material which could be considered to be in breach of the civil or criminal laws of England and Wales;
- 4.3.7 commit any act whereby access is gained by you to any information or resources of any person, body corporate individual, partnership, government agency, national institution, charity or recognised organisation without first having obtained authority from those persons or institutions;
- 4.3.8 use our servers or network to send unsolicited or spam e-mail to other Internet users regardless of whether we are referred to or not either directly or indirectly in such postings. Failure to meet this obligation would result in the termination of this Contract without refund;
- 4.3.9 not to use our servers or network either directly or indirectly in a way that would have a detrimental effect on network performance;
- 4.3.10 do any act or omission the result of which would have the effect of bringing us into disrepute.

## **5. HIGH RESOURCE USAGE POLICY**

- 5.1 Where we do not operate a bandwidth capping policy we maintain high ratios of bandwidth per Web Site. In the rare circumstances that a user utilizes our server resources to such an extent that it may jeopardize server performance and resources for other users then we reserve the right to implement the following High Resource User Policy at our sole discretion:

Where a service is delivered with bandwidth restrictions and/or limitations we reserve the right at our sole discretion to charge you for excess bandwidth used however caused at the rate of 45 pence per gigabyte or part thereof.

- 5.1.1 Resources are defined as bandwidth, processor utilization or disk space;
- 5.1.2 We reserve the right to suspend or terminate any Web Site immediately in order to prevent the misuse of our servers and to maintain maximum availability for other users. You may be offered alternate hosting options including us hosting the Web Site for an additional fee.

## **6. LIMITATION OF LIABILITY**

- 6.1 The following provisions set out the our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:
  - (a) any breach of these conditions;
  - (b) any use made by you of any of the Services;
  - (c) the content of any information placed by you onto our server;
  - (d) the failure of or any problem experienced by you in the operation of your Web Site;
  - (e) with regard to any application, receipt of, or failure to receive Domain Name registration, the registration, renewal, non-registration, non-renewal, suspension, transfer, failure to transfer, operation, delivery, mis-delivery or any and all combinations or for any errors or omissions or any other actions by the registry administrator arising out of or relating to any application, receipt of, or failure to receive a domain registration; and
  - (f) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 6.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract save that where you are a consumer rather than a business no provision of this clause 6 or these conditions shall affect your rights as a consumer.  
As the Services are normally supplied immediately unless agreed otherwise with us there is not normally an opportunity to cancel under regulation 13 of the Consumer Protection (Distance Selling) regulations 2000.  
(<http://www.opsi.gov.uk/si/si2000/20002334.htm>)
- 6.3 Nothing in these conditions excludes or limits our liability:
  - (a) for death or personal injury caused by our negligence; or
  - (b) for any matter which it would be illegal for us to exclude or attempt to exclude its liability; or
  - (c) for fraud or fraudulent misrepresentation.
- 6.4 Subject to conditions 6.2 and 6.3:
  - (a) our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the initial total amount paid for the Services or Domain Name registration or £250 whichever is the greater; and
  - (b) we shall not be liable to you for any:
    - (i) pure economic loss
    - (ii) loss of profit
    - (iii) loss of business
    - (iv) loss of anticipated savings
    - (v) depletion of goodwill or otherwise

in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

- 6.5 Each provision of this condition 6 is to be construed as a separate limitation applying and surviving even if for any reason one or other of the said provisions is held inapplicable or unreasonable.

## **7. INDEMNITY**

- 7.1 Without prejudice to any other rights or remedies which we may have against you, you agree to indemnify and keep us indemnified against:
  - 7.1.2 all costs, claims, demands, liabilities, expenses, damages or losses or expenses arising out of or in connection with any breach by you of this Contract; and
  - 7.1.3 all costs, claims, demands, liabilities, expenses, damages or losses or expenses arising out of any action brought or threatened against us by a third party which is caused by or arises from any action or omission of ours carried out pursuant to your instructions.

## **8. CHARGES AND PAYMENT**

- 8.1 Charges are payable in advance depending on the Service purchased as set out in the online customer order form and time for payment shall be of the essence. It is a condition of the provision of our Services that a regular credit or debit card payment agreement is in force for the duration of this Contract and you agree to either update your details yourself via the control panel or to inform us of any change to your credit card or contact details, payments via invoice must be made within the agreed period as shown on our invoice.
- 8.2 You shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless you have a valid court order requiring an amount equal to such deduction to be paid by us to you.
- 8.3 All payments payable to us under the Contract shall become due immediately on its termination despite any other provision.
- 8.4 Without prejudice to our other rights we reserve the right to charge daily interest on all outstanding amounts from the due date until payment is received in full at the rate equal to 4% per annum above the HSBC Bank plc base lending rate as current from time to time whether before or after judgement. Interest shall continue to accrue notwithstanding termination of this Contract for any cause whatsoever. We reserve the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.5 Value added Tax where applicable will be added at the appropriate rate to the total of all charges shown on your invoice.
- 8.6 Where payment is by credit card or debit card you expressly authorise us to charge recurring billing by such method until we receive from you a completed account cancellation notice (see condition 10.2) or the Services end.
- 8.7 If you dispute any payment made to us you shall contact us immediately to discuss repayment. In the event that you submit an unjustified chargeback (being a credit card or debit card chargeback or cancellation of a cheque or submission of a cheque that is returned for any reason) then the following shall be due and payable by you within 7 days for each instance of a chargeback:
  - 8.7.1 the charges due and payable by you for the Services used in the period covered by the chargeback; and
  - 8.7.2 such chargeback costs as are levied upon us by your bank or credit card company; and
  - 8.7.3 a chargeback administration fee of £50; and

- 8.7.4 our reasonable costs and losses incurred in recovering the above-mentioned fees including debt recovery costs, legal fees and debt collection costs.
- 8.8 In the event of an unjustified chargeback our right to terminate this Contract as set out in condition 9 shall apply save that the period in clause 9.2 shall be shortened to 14 days and the period in condition 9.3 shall be shortened to 10 days.

## **9. TERMINATION OF THIS CONTRACT BY US**

- 9.1 If you do not pay any charge when due or materially breach this Contract in any other way we can terminate this Contract immediately without the requirement of prior notification.
- 9.2 If any sum payable under this Contract is still outstanding one month after the service of written notice to you requiring you to pay all outstanding sums in full we may in our absolute discretion suspend the Services.
- 9.3 If you have still not paid within 14 days of the written notice referred to in condition 9.2 we may in our absolute discretion disconnect the Services, delete your data and terminate the Contract and, if appropriate charge you a daily rate for storage of any of your equipment. Where any charges or payments are still outstanding from you, you must pay us in full (including any outstanding interest) before we release your equipment to you.
- 9.4 Should we reasonably deem you a threat to the integrity of the our network whether as a result of your actions or threats of such actions or by hostility of your actions or due to any other reason which in our considered opinion would be against our business interest, then we can terminate this Contract immediately without the requirement for prior notification.
- 9.5 If you go into liquidation or (in the case of an individual or firm become bankrupt) make a voluntary arrangement or have a receiver or administrator appointed we can terminate this Contract immediately without the requirement of prior notification.
- 9.6 Termination of this Contract by us will result in the retaining by us of all monies received from you who will not be entitled to a refund of monies paid.
- 9.7 Upon termination of this Contract you shall nevertheless remain liable for all charges due or which would have been payable under this Contract.
- 9.8 On termination of this Contract we will remove all materials held on our systems and remove all your system privileges.
- 9.9 Subject to our sole discretion after termination, if we agree that you may once again be reconnected to the service, any reconnection will be subject to an administration charge of £50 together with any outstanding charges payable prior to the reconnection.
- 9.9.1 Should we feel that your needs would be better served by another provider, we reserve the right, at our sole discretion, to terminate the hosting agreement. Where it is reasonable to do so, we will provide 30 days notice of termination and provide a backup of all website content and email.

## **10. TERMINATION OF THE CONTRACT BY YOU**

- 10.1 You can terminate this Contract:
  - 10.1.1 at any time within the first 30 days of the Commencement Date and receive a full refund, less any Domain Name registration charges or charges

for additional services not included as a part of one of our standard hosting plans

- 10.1.2 at any time after the first 30 days of the Commencement Date however unless notice under condition 10.2 is received prior to the next Renewal Date this Contract shall automatically renew for the period covered by the issued renewal notice and no refund will be payable to you and you will remain liable for all charges to the end of the Contract period as defined in condition 3.;
- 10.2 You must notify us of termination by delivering to our contact address a completed account cancellation notice which can be obtained from us on request or by completing an online cancellation within our online control panels.

## **11. REFUNDS**

- 11.1 On receipt of a valid cancellation notice, we may, at our sole discretion, refund unused time paid.
- 11.2 A cancellation notice must be received prior to the relevant Renewal Date in order for a cancellation to be effective and processed prior to a renewal payment being taken.11.3 Where at our sole discretion we choose to accept a late cancellation notice an administration charge may be applied to any refund issued with the sole exception of refunds issued in line with our 30 day money back guarantee, in which case no fees are payable.

## **12. FORCE MAJEURE**

- 12.1 We are not liable for any breach of this Contract if the breach was caused by an act of God, insurrection or civil disorder, war or military operations, terrorism, national or local emergency, protests, riot, civil commotion, acts of omissions of government, highway authority or other competent authority, our compliance with any statutory obligation, industrial disputes of any kind (whether or not involving our employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, acts of omission of persons whom we are not responsible (including in particular other telecommunication service providers), or any other cause whether similar or dissimilar outside our reasonable control provided that, if the event in question continues for a continuous period in excess of 90 days, you shall be entitled to give notice in writing to us to terminate the Contract.

## **13. PROPER LAW**

- This Contract is to be treated as made in England and Wales according to English and Welsh Law and subject to the jurisdiction of the English and Welsh Courts.

## **14 LIMITATION ON ASSIGNMENT**

- 14.1 You must not assign the benefit of this Contract in whole or in part.
- 14.2 We reserve the right to assign the benefit of this Contract by giving prior written notice of any assignment to you.
- 14.3 Except with our prior written consent the Service shall not be used by or on behalf of any person other than you or a third party specified on the application form

and no condition shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act.

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## **15. FREE HOSTING OFFERS**

- 15.1 Should we feel that your needs would be better served by another provider, we reserve the right, at our sole discretion, to terminate the hosting agreement. Where it is reasonable to do so, we will provide 30 days notice of termination and provide a backup of all website content and email.
- 15.2 As an unpaid for service, we will not accept any liability regardless of nature in connection with any free hosting account on our servers, this includes but is not limited to; emails, website data, viruses, back up, downtime.
- 15.3 We reserve the right to withdraw all free hosting if the website cms is not updated on a regular basis, this includes platform (Wordpress,Joomla,Drupal etc). This includes all core files and plugins. This is to avoid viruses and hacking which could cause server cross contamination. We will provide 30 days notice of termination and provide a backup of all website content and email.
- 15.4 Free hosting is offered on the basis of a goodwill gesture from us the supplier, as an unpaid for service we reserve the right to alter the term of hosting or terminate all free hosting at our discretion. As this service is offered as a goodwill gesture, any threats of litigation regarding hosting or any other service offered by us will instantly remove said goodwill and result of termination of the free hosting offer. In the case of loss of goodwill, we will provide 30 days notice of termination and provide a backup of all website content and email.