



DOMAINVAULT

Standard Terms and Conditions

6 May 2014

Domain Vault Limited

Domain Vault Standard Terms and Conditions

These are the standard terms and conditions for the supply of domain names, hosting services, and any other products and services that may be offered from time to time ("the Services") by Domain Vault Limited ("Domain Vault"). These terms and conditions apply to you as a user of the Services ("you" or the "Customer"). Please read these terms and conditions carefully.

1. Terms and Amendment Procedure

- 1.1. These are the terms upon which we agree to provide the Services to you. In addition to these terms, you must also comply with:
 - 1.1.1. Any specific Policies for domain names you acquire (refer to Dot Kiwi ("Registry") policies at www.hello.kiwi/policies);
 - 1.1.2. Terms and Conditions which apply to Services you acquire; and
 - 1.1.3. Our Privacy Policy.
- 1.2. Domain Vault may vary any of the policies or terms referred to above, the amount charged for any Service (excluding Services supplied under a fixed contract period), or the terms of the operation of any Services at any time by general notice on a page of the Internet referred to on the home page of the Domain Vault website. The changes will become effective upon publication of the notice. Where Domain Vault varies the prices for Services the Customer is receiving (excluding Services supplied under a fixed contract period), at least 30-days notice of the change will be provided by the same means, and the new prices will apply at the end of that period. If the Customer uses the Services after publication of any changes, use will constitute an acceptance of the amended terms and prices.
- 1.3. These terms constitute the agreement in its entirety and supersede prior agreements ("Agreement"). To the extent any inconsistency occurs between a term of this Agreement and any Terms and Conditions or Policies referred to in clause 1.1, those Terms and Conditions or Policies shall have priority.

2. Services

- 2.1. The Customer must ensure that all details and information provided to Domain Vault are accurate, complete and current at all times. Domain Vault will use those details to notify you of anything which affects the Services, and does not take any responsibility for any loss, damages or expenses incurred if unable to contact the Customer because of inaccurate or incomplete details, or if these details have not been kept up-to-date.
- 2.2. You shall at all times keep secure any passwords and log-in details used with the Services. You agree that Domain Vault cannot, and does not, know whether you have given access (whether knowingly or not) to your Domain Vault account, or to the Services, to any other

person. You therefore accept responsibility for when, how and by whom the account and the Services are used.

- 2.3. You are solely responsible for any data and content (whether supplied by the Customer or third parties) and for any other files (including, without limitation, email files) residing on the Services. You are responsible for dealing with persons who access the data and content and must not refer complaints or inquiries in relation to such data to Domain Vault.
- 2.4. The Customer accepts responsibility for the back-up of content and any other files (including, without limitation, email files) unless otherwise agreed with Domain Vault.
- 2.5. Domain Vault or its suppliers may be required to perform maintenance from time to time, including but not limited to hosting servers. Domain Vault will attempt to perform all scheduled maintenance at times which are believed to affect the fewest customers. Notice of any maintenance downtime will be provided, except when circumstances beyond the control of Domain Vault or its suppliers prevent either Domain Vault or its supplier from doing so.

3. Warranties and Indemnities of the Customer

3.1. You warrant that:

- 3.1.1. You are an identifiable individual over the age of 18 years of age, or, a legally constituted organization;
- 3.1.2. 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 us for any breach of this agreement by the Customer;
- 3.1.3. you will conduct such tests and computer virus scanning as may be necessary to ensure that any data uploaded by you to the Services does not contain any computer virus and will not in any way, corrupt the data or systems of any person;
- 3.1.4. you have not entered into this Agreement or obtained any Services on the basis of, or in reliance on, any statement or representation (whether made orally or in writing and regardless of the medium used) made by Domain Vault or its suppliers which has not been stated expressly in this Agreement, or in any descriptions or specifications contained in any other document, including any catalogues or publicity material which Domain Vault has produced.

3.2. You indemnify Domain Vault against all costs, expenses, loss or liability that which may be suffered resulting from:

- 3.2.1. your breach of these terms (including those listed in 1.1);
- 3.2.2. your use or misuse of the Service;
- 3.2.3. the use or misuse of the Service by any person using your account; and
- 3.2.4. publication of defamatory, offensive or otherwise unlawful material on any web site forming part of your service.

4. Domain Vault's Obligations

- 4.1. Domain Vault will endeavour to provide the Services with due care and skill, however will not guarantee or represent any Services provided will:
 - 4.1.1. be uninterrupted or error free;
 - 4.1.2. meet your requirements, other than as expressly set out in this Agreement;
 - 4.1.3. 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 Domain Vault.
- 4.2. Domain Vault does not investigate whether or not any Customer is entitled to register or hold any rights in a domain name or request any other Services. By registering a domain name, Domain Vault is not acknowledging that any person has any rights in the name or words comprised in the domain name and does not authorise any person to use the domain name in the course of trade.
- 4.3. All conditions and warranties, which may be implied by law into this agreement, are excluded except to the extent that it would be unlawful to do so. The above limitations and exclusions do not limit any rights a consumer may have under the Consumer Guarantees Act, except where goods or services are required for the purposes of a business, in which case the guarantees under the Consumer Guarantees Act 1993 shall not apply.
- 4.4. Except as expressly provided to the contrary in this Agreement, Domain Vault shall exclude all liability for indirect and consequential loss or damage of any kind, loss or corruption of data, loss of revenue, loss of profit, failure to realize 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.
- 4.5. Other than liability under the Consumer Guarantees Act 1993, Domain Vault's total liability for loss or damage of any kind not excluded by 4.4, however caused, is limited to the amount of the fees paid by you to Domain Vault for the Service in the month immediately prior to the event of liability.

5. Invoicing and Payments

- 5.1. You must pay for the Services as notified to you by Domain Vault in accordance with Domain Vault's prices for Services as set out on www.domainvault.co.nz ("Domain Vault Website").
- 5.2. Domain Vault has no obligation to record the registration of any domain name, or begin provisioning any Services, if Domain Vault has not received the applicable fees for that domain name or Services.

- 5.3. You must pay all Service charges, and other amounts incurred by you or any designated users or incurred as a result of any use of your account (whether authorized or not), in accordance with the billing option selected and in advance. Customers on monthly billings are required to make payments by way of a direct debit from their bank account, or direct credit from a credit card. Customers will be provided with notice of the impending automatic debit or credit deduction. Excess traffic and/or storage charges will be invoiced monthly in arrears.
- 5.4. You authorise Domain Vault to obtain from, and give to, credit reporting agencies and other credit providers certain information about you so that we may manage your account. This information may include personal details such as your name, address, date of birth, company details and address, credit history and creditworthiness, credit standing with us and credit capacity. Domain Vault reserves the right to refuse your application for, monitor ongoing usage of, or restrict your access to the Services on the basis of an assessment of credit information relating to you. You are entitled to see and correct any credit information Domain Vault holds about you. You also authorise Domain Vault to exchange information about you and your account with to Domain Vault suppliers, agents and contractors, and use that information for account management and business planning
- 5.5. All fees are non-refundable.

6. Hosting and Email Services

- 6.1. This clause 6 applies if Domain Vault is providing you with any hosting service (including any web and email service).
- 6.2. If Domain Vault provides you with hosting services for a domain name, you may obtain any web and email service from Domain Vault in connection with the domain name, when available.
- 6.3. Domain Vault may modify, enhance or withdraw any hosting service (including web and email service) by posting notice on the Domain Vault Website 30-days before the change is to take effect.
- 6.4. Domain Vault does not provide website maintenance services in respect of any hosted website.

Without limiting this exclusion, you also agree that Domain Vault accepts no responsibility for any deficiency or inaccuracy in any hosted website that is attributable to defects in that website.

7. Suspension and Termination

- 7.1. Domain Vault may cancel a domain name, or suspend or terminate a Service if you fail to comply with any provision of this Agreement (including failure to pay fees due), or do, or allow to be done, anything which, in Domain Vault's reasonable opinion, may have the effect of jeopardising the operation of the Service.

- 7.2. You may cancel a domain name or terminate a Service by providing written notice to Domain Vault, however, you acknowledge that:
- 7.2.1. you will not be entitled to a refund of any fees paid in advance; and
 - 7.2.2. if you have a fixed contract period Service with monthly billings, you will be liable to Domain Vault for any unpaid portion of that Service.
- 7.3. You agree that the cancellation of a domain name under clause 7.2 or deletion of a domain name under clause 7.5.2 will not result in the cancellation of any other Services you are receiving which are reliant upon and applicable to the domain name. You will continue to be billed for these Services.
- 7.4. Domain Vault may terminate this Agreement with you and cease providing Services (other than Services for a fixed contract period) for any reason, on one month's written notice. With respect to Services for a fixed contract period, the notice will not expire before the end of the fixed contract period.
- 7.5. In relation to domain names, this Agreement will automatically terminate if:
- 7.5.1. a registrant transfers its domain name from Domain Vault to another Registrar in accordance with the applicable policy for the domain name; or
 - 7.5.2. a registrant's domain name licence expires and is not renewed by the registrant prior to the deletion of the domain name.

Termination of this Agreement in respect of domain names will not affect this Agreement in relation to other Services you are receiving from Domain Vault.

- 7.6. Domain Vault reserves the right to refuse to supply Services to a Customer who has previously had an account with Domain Vault which was either terminated for breach, or has any unpaid fees remaining on it. In this clause, "Potential Customer" includes:
- 7.6.1. if the Potential Customer is a corporation, its Related Company (as that phrase is defined in the Companies Act 1993); and
 - 7.6.2. if the Potential Customer is an individual, any corporation in which the potential customer was at the relevant time an officer or shareholder, or a Relative of a shareholder (as that phrase is defined in the Companies Act 1993).
- 7.7. If Domain Vault becomes aware that you have failed to comply with any provision of this Agreement in relation to any Services, or have done, or allowed to be done, anything which may have the effect of jeopardising the operation of the Services, in addition to any other rights of Domain Vault under this Agreement, Domain Vault may immediately take corrective action, including suspension of any and all Services or termination of this Agreement and your Services, immediately, by written notice to you. In the event that any such corrective action due to a violation of this Agreement occurs, you will not be entitled to a refund of any pre-paid fees.

8. General

- 8.1. Unless otherwise agreed in writing, these Standard Terms and Conditions contain all the terms of the relationship between Domain Vault and the Customer (other than those applicable Terms and Conditions or Policies referenced in clause 1.1) and continue to apply no matter where you are located or where you reside at the time any of the Services are provided, and shall continue to apply until these Standard Terms and Conditions are either cancelled or terminated, except as otherwise stated in these Standard Terms and Conditions.
- 8.2. Domain Vault may transfer its rights and obligations under these Standard Terms and Conditions to any third party upon prior written notice to you.
- 8.3. If any provision of these Standard Terms and Conditions is held to be unenforceable in whole or in part all other provisions contained herein shall continue to be valid and enforceable.
- 8.4. If a provision of these terms is illegal, void or unenforceable in any relevant jurisdiction, the legality, validity or enforceability of the remainder of these terms will not be affected and these terms will be read as if the relevant part had been deleted in that jurisdiction only.
- 8.5. These Standard Terms and Conditions shall be governed by New Zealand law and the courts of New Zealand shall have exclusive jurisdiction to hear and determine any dispute arising in relation to these Standard Terms and Conditions.
- 8.6. To the extent permitted, the parties agree that:
 - 8.6.1. all the Services are provided under New Zealand law;
 - 8.6.2. where you or any party for whom you are acting as agent supplies incorrect information regarding a domain name or Service, and Domain Vault incurs costs in any matter concerning that domain name or Service, Domain Vault may recover those costs from you.
- 8.7. You agree that any dispute or claim you may have, arising out of or in connection with these Standard Terms and Conditions, must be brought within 60-days from the date on which the event giving rise to the dispute or claim occurred.
- 8.8. The cancellation or termination of these Standard Terms and Conditions will not affect any rights or obligations that have arisen prior to such cancellation or termination of these Standard Terms and Conditions, and which by their nature survive (or should survive) the cancellation or termination, including, without limitation, any warranties, indemnities and limitations of liability provisions.