



Terms of Service

Table of Contents

1. Definitions	3
2. Acceptance	3
3. Communication	4
4. Account Ownership	4
5. Availability of Services	6
6. Domain Registrations, Transfers and Renewals	6
7. Payments & invoicing	7
8. Cancellations, Refunds & Terminations	9
9. Limitation of Liability	12
10. Customer General Warranties and Undertakings	12
11. General Assurances and Undertakings	13
12. Entire Agreement	14
13. Governing Law	15
14. Changes	15

By purchasing any Service(s) from xHost Solutions Pty Ltd, you (Customer) are entering into an agreement with xHost Solutions Pty Ltd that is bound by the Terms of Service outlined in this document. This Agreement shall be construed in all respects in accordance with the laws of the state of NSW, Australia applicable to contracts enforceable in that state. By completing the ordering process, you agree to have read, understood, and be bound by these Terms of Service.

Last updated 09 July 2018.

1. Definitions

- 1.1 “Provider” or “xHost Solutions” refers to xHost Solutions Proprietary Limited, with ABN 68 136 049 280 and ACN 136 049 280
- 1.2 “Service” or “Services” refers to the products or services ordered from xHost Solutions.
- 1.3 “Customer” refers to the person or organisation purchasing or receiving a product or service from xHost Solutions.
- 1.4 “Customer Service” means the relationship between xHost Solutions staff and the Customer, with the purpose of assisting the Customer with a question they have asked.
- 1.5 “MyAccount” refers to the billing account supplied to the Customer upon registration, accessible at <https://myaccount.xhostsolutions.com.au/clientarea.php>.

2. Acceptance

- 2.1 The Customer signified acceptance of our Terms of Service, as well as our Acceptable Use Policy, Privacy Policy, and Customer Service Policy when they submitted their order to xHost Solutions for Services, and that order was accepted.
- 2.2 The Customer acknowledges that they are solely responsible for ensuring that all Service(s) are in full compliance with this policy, and that they are solely responsible for the files and applications that have been uploaded and executed.

3. Communication

- 3.1 The Customer agrees to receive emails directly relating to the Service(s) provided, as well as marketing and promotional emails from xHost Solutions to the email address registered to their account. The Customer can unsubscribe from marketing and promotional emails only.
- 3.2 If the Customer does not want to receive these mandatory service-specific emails, they are required to cancel all active Services and close their Account, in accordance with our Cancellation policy. The Customer may, however, opt-out from receiving marketing and promotional emails at any time by disabling them in MyAccount.

4. Account Ownership

4.1 Account Owner.

The highest authority of a single Members Portal Account is considered the Account Owner. Individual hosting or additional services that are associated with an account, are controlled by the Account Owner and modifications and updates to an account's information can only be actioned by the Account Owner or their Authorised Additional Contact. The Account Owner is established at the time the account is created. The details of an Account Owner must be that of a real person. It is not permitted to use fictitious or "fake" names for the details of an Account Owner. Accounts containing fictitious or "fake" names, and contact details that do not reflect the details of a real person may be suspended or terminated without notice.

4.2 Account Information.

The Customer warrants that all information provided to xHost Solutions is truthful and correct and accurate and up to date and that the person designated as the Account Owner is of or above 18 years of age and is legally empowered to act and enter into this contract as The Customer or on behalf of The Customer as indicated on the relevant application form.

4.2.1 Maintaining Account Information.

The Customer is responsible for maintaining the contact information stored within their account and failure to maintain up to date contact information does not warrant the waiving of any fees, overdue fees, or warnings issued by xHost Solutions.

4.3 Authorised Additional Contact.

The Account Owner may add and authorise an additional contact person or persons to act on their behalf. The Account Owner is limited to adding one additional billing contact and a maximum of three additional technical contacts. Accounts found to have more than the allowed maximum additional contacts will be requested to remove the excess to ensure adherence to the limits.

For any additional contact added to an account, to be able to request account modifications, the Authorised Additional Contact must be configured as a sub-contact with their own login information and have appropriate permissions set. If the Authorised Additional Contact is not activated as a sub-account, the contact will only have limited permissions to support for a service and will not be able to request configuration changes to the hosting Services.

4.4 Account Transfer.

The Account Owner's role can be transferred to another Authorised Additional Contact or xHost Solutions Customer by contacting our billing support team to obtain the appropriate steps.

4.5 Account Closure.

An account will be automatically deactivated when no active hosting or additional services are being operated under the account.

5. Availability of Services

- 5.1 While xHost Solutions will endeavour to provide continuous availability of all Service(s) to the Customer, xHost Solutions will not be liable for any Service interruptions or downtime that is not covered by a Service Level Agreement (where applicable).
- 5.2 Scheduled maintenance will be performed at a time which is deemed suitable by xHost Solutions, and should it require any Services to be offline for greater than ten (10) minutes, xHost Solutions will post details of the scheduled maintenance at least two (2) days prior.
- 5.3 Unscheduled maintenance will be performed as required by xHost Solutions, and should any Service(s) be offline for greater than ten (10) minutes, xHost Solutions will post details of the maintenance and any updates until it has been completed. Details of these events can be found at <http://status.xhostsolutions.com.au>. If you wish to receive notices by email, please subscribe to service status notifications at <http://status.xhostsolutions.com.au>.

6. Domain Registrations, Transfers and Renewals

- 6.1 Domain Registrations.
Domain registrations that have completed the registration process and are considered active by the Domain Registrar are final and cannot be cancelled or refunded. Some domain extensions may require additional information to complete the registration and xHost Solutions provides no guarantees that an ordered domain registration will be successful. It is The Customer's sole responsibility to ascertain what information is required to register a particular domain prior to placing any domain registration orders.
- 6.2 Domain Transfers.

Domain transfers typically take 5-7 days to complete once final authorisation has been received by the Domain Registrar, with the exception of .au domains which take 48 hours once final authorisation has been actioned. xHost Solutions has no authority to speed up a domain transfer and cannot place any guarantees on how long a transfer will take to complete. The Customer must ensure all contact information is updated with current Domain Registrar and the appropriated transfer codes have been obtained prior to placing a domain transfer order with xHost Solutions.

6.3 Domain Renewal.

Domains must be renewed prior to their expiration date to avoid the domain becoming inactive. Multiple notifications are sent to The Customer advising them of upcoming domain renewals starting from 60 days prior to the listed expiry date. xHost Solutions has no control over keeping the domain active once it has reached its expiry and does not take responsibility for a website becoming inaccessible due to The Customer not renewing their domain.

6.4 It is the Customer's responsibility to ensure that the Registrant, Technical and Administrative contact information is kept up to date on every domain name. As per registry-registrar policy and agreements, xHost Solutions will use the Registrant contact information to advise the Customer of any pending expiry, renewal or transfer requests relating to the domain name.

7. Payments & invoicing

7.1 The Client must pay for the supply of goods and services under this agreement as per the invoice(s) provided to the Client by xHost Solutions and in accordance with published prices or prices provided in a customised quotation to the Client.

7.2 The Client shall make payment according to the Tax Invoice rendered. Should a time frame not be stipulated on the Tax Invoice, the Client must make payment within seven (7) days of the date of the Tax Invoice.

- 7.3 xHost Solutions will issue invoices up to 14 days prior to the due date.
- 7.4 Charges to the account will begin on the day the order is processed, regardless of the account billing date. If the Client has ordered the service between 1st of the month and 25th of the month, the first bill is pro rata to the end of the month. If the Client has ordered the service after the 25th of the month, the first bill will include the first month's charges (prorata) and the second month's charges.
- 7.5 If the Client fails to make payment in accordance with Clause 7, xHost Solutions shall be entitled to:
- Require the payment immediately;
 - Charge default interest at the rate of 10% per annum on all overdue amounts calculated on a day to day basis on any monies due but unpaid, such interest to be computed from the due date for payment and the parties agree that such default is not a penalty but is a true measure of damages incurred by xHost Solutions. Payments received from the Client will be credited first against any default interest and all such charges shall be payable upon demand;
 - Claim from the Client all costs relating to any action taken by xHost Solutions to recover monies or goods due from the Client including, but not limited to, any legal costs and disbursements;
 - Suspend, disconnect and/or deny access to any service, support and/or management;
or
 - Terminate any agreement in relation to services rendered.
- 7.6 The Customer agrees that any and all invoices must be paid prior to the provision of new or additional services by the Provider.

- 7.7 The Customer agrees to contact the Accounts Department of xHost Solutions should a payment be delayed or otherwise impacted.
- 7.8 The Client shall not be entitled to set off against, or deduct from the contract sum, any sums owed or claimed to be owed to the Client by xHost Solutions nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.9 xHost Solutions reserves the right to cancel/decline any order/request/quote that is suspected to be fraudulent activity.
- 7.10 It is solely the Clients' responsibility to ensure all the details and payment method of their billing accounts are correct and up-to-date and to ensure their invoices with xHost Solutions are paid on time.
- 7.11 Any reference to prices is in Australian currency, unless stated otherwise.

8. Cancellations, Refunds & Terminations

8.1 The Customer can request cancellation of their Account or any Service(s) for any reason by logging in to MyAccount and submitting a cancellation request. For security reasons, we will not accept cancellation requests by any other method.

8.2 The Customer agrees to provide the following minimum notice of their cancellation for services NOT under any contract:

- Dedicated servers, Colocation and Managed Service(s):

Cancellation of account in a given month requires at least thirty (30) days' notice prior to that month's billing due date, otherwise account cancellation will not take effect until the subsequent month's billing due date.

- All other services unless otherwise contractually specified – Seven (7) days before the next invoice due date.

- Services under contract will abide by the agreed contractual terms.
- 8.3 Should insufficient notice of cancellation be provided, either the following billing cycle shall be charged, or one additional month of service shall be charged, whichever is smaller.
- 8.4 The Customer agrees to pay any outstanding invoices upon cancellation of their Service(s).
- 8.5 The following Service(s) are not eligible for a refund if the Service has been successfully provisioned by xHost Solutions:
- Domain names
 - SSL certificates
 - Dedicated Servers
 - Software licences
- 8.6 The 30-Day Guarantee is subject to all of the following limitations:
- You are entitled to a maximum of one (1) 30-Day Guarantee.
 - If you do not cancel your account within thirty (30) days of the beginning of your service, your right to the 30-Day Guarantee shall expire forever and may not be revived under any circumstances, without the prior express written approval of xHost Solutions.
 - You may not transfer or assign the 30-Day Guarantee to any third party.
 - You agree that you will not circumvent the restrictions on the 30-Day Guarantee described in this document, or attempt to circumvent those restrictions by any means, including, but not limited to, the following actions:
 - a. Creating multiple accounts, using the same customer name or different customer names;
 - b. Cancelling your account for the sole purpose of obtaining a refund and then registering for a new account;
 - c. Organizing multiple business entities or using assumed business names for the purpose of circumventing these restrictions;

- d. Knowingly providing false or misleading information when you register for your account; or
- e. Requesting a refund under the 30-Day Guarantee at any time after you have already received a refund under that guarantee.

8.7 If you violate any provision of any of the following policies of xHost Solutions, you will not be eligible for the 30-Day Guarantee:

- a. Terms of Service
- b. Acceptable Use Policy

Changes to your service, including, but not limited to, adding new services, removing services, or changing the type of service you have do not make you eligible for an additional 30-Day Guarantee. The 30-Day Guarantee applies to your first order of Service(s) from xHost Solutions and does not apply to any changes to your service at any time.

8.8 A full refund will be provided to either account credit or returned to the original payment method, if the order was placed within thirty (30) days of the date that the refund was requested for any of the following Service(s):

- a. Any shared cPanel/Windows web hosting Service;
- b. Any cPanel/WHM or Windows Reseller web hosting Service;
- c. Any Unmanaged VPS hosting Service

8.9 The Customer will not be entitled to a refund if any of xHost Solutions Terms, Policies and Agreements have been breached by the Customer.

8.10 Termination of accounts due to overdue payment.

If the account is not paid within 30 days of the invoice date, the account will be terminated and all information within the account will be permanently deleted and no backup will be made available to the Client. You will become liable for the overdue amount, late payment fee and the cost of collection.

This will include interest on any overdue amount, calculated at the daily rate of 10% per annum, from the due date of the payment.

- 8.11 With the exception of clients who have entered into a written contractual agreement with xHost Solutions, we may end our agreement with you for any reason provided that 30 days written notice is given to you.
- 8.12 In the event of a suspension or termination, the Customer will still be held accountable for any due or overdue invoices.

9. Limitation of Liability

- 9.1 xHost Solutions shall not be liable to the Customer for harm caused by or related to Customer's Service or inability to utilise the Service unless caused by gross negligence or wilful misconduct.
- 9.2 Neither Party shall be liable to the other for lost profits, direct or indirect, special or incidental, consequential or punitive, or damages of any kind whether or not they were known or should have been known.
- 9.3 Notwithstanding anything else in this agreement, the maximum aggregate liability of xHost Solutions, any of its employees, agents or affiliates, under any theory of law shall not exceed a payment in excess of the amount paid by the Customer for the Service in question for the one (1) month prior to the occurrence of the event(s) giving rise to the claim.

10. Customer General Warranties and Undertakings

- 10.1 The Customer warrants that any information supplied for the purpose of creating an account with xHost Solutions, including but not limited to, first name, last name, address, telephone number and email address is true and correct, and will be kept up to date in xHost Solutions.

- 10.2 The Customer warrants that they will keep any passwords or sensitive information used with the Service in a secure location.
- 10.3 The Customer warrants that they hold and will continue to hold the copyright for data stored on xHost Solutions servers, or that they are licensed and will continue to be licensed to use that data.
- 10.4 The Customer warrants that at the time of entering into this agreement they are not relying on any representation made by xHost Solutions which has not been expressly stated in this agreement, or on any descriptions or specifications contained in any other document produced by xHost Solutions.
- 10.5 The Customer warrants that all due care has been taken to ensure data integrity on xHost Solutions servers. This includes an undertaking that the Customer will conduct computer virus scanning and other tests as necessary to ensure that the data uploaded by the Customer on to or downloaded by the Customer from the server does not contain any computer virus and will not in any way corrupt the data or systems of any person.
- 10.6 The Customer agrees that they are solely responsible for dealing with anyone who accesses their data, and that you will not refer complaints or inquiries in relation to such access to xHost Solutions.

11. General Assurances and Undertakings

- 11.1 xHost Solutions accepts liability for the supply of the Service to the Customer to the extent provided in this agreement.
- 11.2 xHost Solutions does not warrant that
- The Services provided within this agreement will be uninterrupted or error free;

- The Services will meet your requirements, other than as expressly set out in this agreement;
- The Services will not be subjected to external hacking attempts, viruses, worms, denial of service attacks, or other persons gaining unauthorised access to the Service or internal xHost Solutions systems.

11.3 xHost Solutions does not make or give any express or implied warranties including, without limitation, the warranties of merchantability or fitness for a particular purpose, or arising from a course of dealing, usage or trade practice, with respect to any goods or services provided under or incidental to this agreement.

11.4 No oral or written information or advice given by xHost Solutions or its resellers, agents, representatives or employees, to the Customer, shall create a warranty or in any way increase the scope of the express warranties hereby given, and the Customer should not rely on any such information or advice.

11.5 In no event will xHost Solutions be liable to the Customer for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

12. Entire Agreement

12.1. These terms and conditions constitute the entire agreement between xHost Solutions and the Customer, and it supersedes all prior oral or written agreements, understandings and representations.

13. Governing Law

- 13.1 The Customer agrees to abide by all local, state and federal laws pursuant to the Service(s) delivered by xHost Solutions.
- 13.2 The Customer agrees that these terms and conditions are governed by the laws of New South Wales, Australia, and agrees to the exclusive jurisdiction of the Courts of that state.

14. Changes

- 14.1 xHost Solutions may amend our Terms of Service at any time. Changes to this agreement will become effective upon their publication to our website.
- 14.2 Continued use of the Service(s) constitutes acceptance of the amended terms. If you do not wish to accept the amended terms, you may request cancellation of your Services) in-line with our cancellation policy found within our Terms of Service.