

# Clockwork Internet Terms of Service

Clockwork Internet, as a supplier of website hosting and other services related to the internet, offers you - its clients and users the resources to distribute information to the public. We recognize that there is a lot of information being distributed on the web; nevertheless when opposing and/or other conflicting matters arise, we reserve the right to take whatever necessary action we may see fit. To protect your rights and help guard against such matters we have provided our "Terms of Service" which serve as a guide to your responsibilities while using Clockwork Internet's services.

Clockwork Internet does not accept any responsibility for the information that our clients may generate and/or display on their website. We are not obligated to and we do not evaluate, amend, or censor the information that our clients' websites may contain. In case of copyright intrusions, denigration and detrimental speech and any other unacceptable content, the author is to be held liable for the information presented.

Under our Terms of Service the following activities are prohibited:

## **1. Abusive language**

The relaying or posting of offensive, harassing, hostile, or abusive language through Clockwork Internet's networks is prohibited.

## **2. Adult material**

Paedophilic and some pornographic material is not permitted on our servers. Adult content may be permitted at our sole discretion. Clients are required to check with ourselves before publishing such material.

## **3. Background programs**

Background programs including but not limited to IRC bots, eggdrops, BitchX, Xircon, and others which interfere with server operations are prohibited.

## **4. CGI & PHP abuse**

Although Clockwork Internet permits the use of CGI and PHP on all virtual accounts, we must control CPU usage on individual accounts on a shared server. Since our servers are shared by many of our clients' accounts we cannot allow a few clients to utilize all of the resources on that server - which leads to others suffering from lack of resources. When CPU usage is excessive by a few clients this leads to slowdowns of FTP, site actions and much more - all of which may result in errors and failure in accessing the sites on that server. Accounts found in violation of this term will be warned once. The email warning will notify you that too much CGI and/or PHP is running and invite you to reduce the usage or to upgrade the account. Your CGI/PHP Script will be DISABLED if the usage is not reduced within 24 hours of the email warning being sent. Excessive usage is any amount that leads to extensive and considerable degradation and deprivation of server performance. Clockwork Internet is the sole determinant of what constitutes degraded server performance. Clients requiring high resource usage are advised to discuss with ourselves the option of having their own, dedicated server.

All scripts (e.g. UBB, YABB) that make heavy use of flat files are prohibited.

## **5. Client content**

The client agrees NOT to disperse, transmit, or exhibit any material of the following nature through any Clockwork Internet server either themselves or through a third party.

**5.1** Discriminatory material based on age, gender, hate, or race.

**5.2** Defamatory, offensive, or insulting material.

**5.3** Infringement or violation of any intellectual property rights including but not limited to: copyright, patent, trademark, or any other property rights of Clockwork Internet or of any third party.

**5.4** Material containing viruses or programming defects resulting in damage or loss to Clockwork Internet or to any third party.

**5.5** Material of a threatening, hostile or harassing nature.

**5.6** Violation of any local, state, provincial, national, foreign or international laws.

**5.7** Violation of any Clockwork Internet policy.

**5.8** Content or links to any illegal activity or content, hosted on our servers or elsewhere.

## **6. Export control**

Exporting U.S. encryption software on the internet to destinations outside the U.S. is prohibited.

## **7. Illegal and/or unauthorized access to other computers or networks**

Accessing another party's computers or networks without authorization to do so is prohibited. Any activity intended to facilitate system invasion, such as port scan, stealth scan or any other info gathering action, is prohibited. Any access to any part of our servers, files, content or similar is prohibited and if this should happen, immediate cancellation of the offender's account will occur without any refund of any payment made to Clockwork Internet regarding any of our hosting or other services.

## **8. Intellectual property violation**

Clockwork Internet is required to eliminate or block access to a client's site upon receiving proper notification of copyright violations. Inter-alia, the violation of property rights of others may include, but is not limited to:

- Copyrights
- Patents (held by individuals, corporations or others)
- Service marks
- Software piracy
- Trademarks
- Trade secrets
- Violation of privacy and personal rights
- Any breach of our Terms of Service
- Our inability to contact our client
- Lack of client details being maintained and updated
- Non-payment of monies due
- Overdue payment
- Excessive CPU usage

## **9. Software**

A client may only use software from a third party that is properly licensed and is associated with the client's use of service. Clients are not permitted to use, store or distribute any illegal software, music or movies on or from any Clockwork Internet server.

Clockwork Internet's own software including, but not limited to ClockworkPropertyLister, ClockworkHolidayHomeLister, ClockworkEditor etc. is supplied on licence. The end-user buys a licence to use the software and is not granted any rights of ownership of the said software. The licence fee includes all future upgrades and is a 'lifetime' licence as long as the user remains a client of Clockwork Internet and the relevant website remains live and is hosted on Clockwork Internet servers. A 'lifetime' licence automatically terminates upon non-renewal of the linked website's hosting account on Clockwork Internet servers or non-renewal of registration of the linked domain name or when the user ceases to be Clockwork Internet's client.

Clockwork Internet does not allow its software to be installed on non-Clockwork Internet servers.

Clockwork Internet does not accept liability for any special, accidental, indirect or consequential damages resulting from the utilisation of, or inability to utilise its software products. The author/programmer/owner of such software is not liable for any harm in business, loss of revenue or data caused using such programs. Because of the human error factor, threat of wrong maintenance, viruses etc., the author/programmer will not be liable under any circumstances for any harm to any business that used such programs, howsoever caused.

## **10. No mass email marketing or free email businesses allowed**

We do not allow mass email marketing sites on our servers - even if they should be 'opt-in' email marketing systems or run as 'safe lists' or 'free email' systems. All spamming is prohibited. We reserve the right to terminate any site that we consider harmful to the server's performance or in breach of the above. In such event there will be no refund of any fees already paid.

## **11. No unlimited disk space and/or unlimited data transfer allowed**

We do not allow any reseller clients to sell unlimited disk space or unlimited data transfer to any of their clients. All accounts created must state an amount of space and bandwidth allocated. Clockwork Internet reserves the right to refuse service, or discontinue any service to those clients who use their account to promote any type of unlimited disk space and/or unlimited data transfer hosting accounts. Breach of this condition will result in their account being discontinued.

## **12. Overselling policy**

Clockwork Internet does not allow its reseller clients to oversell the resources within their WHM account. It is our WHM clients' responsibility to ensure that their WHM account has enough space for growth. Upgrades are available, but due to server restrictions may not always be possible. If we discover overselling within one of our client WHM accounts, then we retain the right to limit further growth on that account while we consult with the client about an upgrade of their service. This policy is designed to protect all clients and it also prevents the abuse of resources through the use of overselling which may cause harm to others on the same server.

## **13. No free trial accounts or demo accounts allowed**

Due to increased instances of hacking, spamming and abuse, we no longer provide to our clients, nor do we allow reseller clients to provide "free trial accounts" or "demo accounts". Any client found to be offering a free trial account or demo account will have their account suspended until the matter is resolved to our satisfaction.

## **14. Spamming**

We will not tolerate spamming of any kind. Clockwork Internet reserves the right to terminate without notice or warning any account that violates this rule. In such event, no pre-paid fees etc will be refunded. Use of Clockwork Internet's services signifies comprehension and acceptance of this and every other Term of Service. Clockwork Internet at its option may charge a non-refundable US\$150.00 per spam complaint that it receives. Clockwork Internet reserves the right to determine what is considered spam and to conclude from the evidence presented if the e-mail recipients were from an "opt-in" e-mail list. Inter-alia, the following activities are considered to be spamming and therefore are prohibited:

**14.1** Bulk, unsolicited, commercial e-mails, promotional material or any other form of bulk advertising or solicitation sent through e-mail that promotes any IP address belonging to Clockwork Internet or any domain hosted by Clockwork Internet.

**14.2** Misrepresenting, perjuring, or falsifying all or part of message headers to conceal the true source of the message.

**14.3** Transmitting, promoting, offering, or making accessible software of any kind designed to assist in spamming.

**14.4** Unwanted postings to newsgroups promoting or advertising any IP or URL hosted by Clockwork Internet.

**14.5** Use of web pages that permit spamming which directly or indirectly send clients to IP addresses or domains which are hosted by Clockwork Internet.

Please refer to "Basic Mailing List Management - Principles for Preventing Abuse" (below) for acceptable ways of using mailing lists.

## **Proper Use Of Service**

Our Terms of Service become effective on the day when the client applies for Clockwork Internet services. Our services shall continue on a year-to-year, or month-to-month basis unless stated otherwise in a separate agreement between Clockwork Internet and the client. The following is intended as a guide to the proper use of our services:

### **1. Back-up files**

Our full backup service runs thrice weekly. It overwrites any of our previous backups made, and only one week of backups are kept. This service is provided to you as a courtesy. We are able to restore files which are archived routinely by Clockwork Internet but we do not guarantee the existence, accuracy or regularity of this service. When we may restore files at a client's request, a charge of not less than US\$ 75 will be levied as a contribution towards staff time and expenses.

We are not responsible for files and/or data residing on your account. You are solely responsible for creating copies/backups of your own data (files and databases) on a regular basis. We will do our utmost to retrieve any lost data but we will not be held responsible if any client's data is irretrievable. We shall have no liability arising from loss of data, loss of usage or any other loss derived from the client not having created and retained adequate backups or if backups held by the client should be outdated. You agree to take full responsibility for files and data transferred and to maintain all appropriate backups of files and data stored on Clockwork servers.

## **2. Bandwidth and disk space**

The client will inhabit only the amount of disk space on Clockwork Internet servers and use only the bandwidth allowed by Clockwork Internet according to the type of account chosen. Exceeding the disk space and/or bandwidth allowance will result in additional fees and charges. Bandwidth and disk space may be made available on an 'as needed' basis, up to the maximum allowed in the hosting package purchased by the client.

## **3. Basic mailing list management - principles for preventing abuse**

Mailing lists are an excellent means of dispersing information, provided that they are used correctly. The following points are intended as a guide to the correct use of mailing lists. (Please ensure that you read the spamming terms above).

### **3.1 Verification of new subscribers**

Mailing addresses of new subscribers must be verified prior to your emailing. You may do this in several ways, e.g. sending an email out to which the subscriber must reply. You may alternatively send a URL in the email which the subscriber should go to, in order to complete a verification process.

### **3.2 Subscriber termination**

The administrator of the mailing list must provide a clear and simple method along with clear instructions for a subscriber to be able to terminate their subscription at their will. When termination is requested, this must be done immediately.

### **3.3 Offline procedure**

The administrator of the mailing list must have a procedure by which they may be reached (eg. via email) for further communication by those who wish to terminate their subscription but do not or are unable to terminate it through any automated procedures.

### **3.4 Impact of mailing on networks & hosts**

The administrator of the mailing list must ensure that the list is properly managed and has minimized impact on networks and hosts. This may be done by moderating the list and deleting undeliverable and invalid addresses. You must ensure that the mailing list does not overwhelm other hosts and networks.

### **3.5 Email use**

The administrator of the mailing list must ensure that the list is not used for illegal, immoral or abusive purposes.

### **3.6 Address disclosures**

The administrator of the mailing list has a responsibility for the addresses in his/her possession and must take adequate steps to preserve the confidentiality of them. This applies whether or not those addresses would be available for sale - at which time, when bought, they are no longer "opt-in" lists. Further examination is necessary to verify whether or not the subscriber is an "opt-in" subscriber to the individual(s) who bought or traded the list.

### **3.7 Nature of the mailing lists**

The administrator of the mailing list is at all times responsible for the nature, content, subject and frequency of the emails. A subject matter which varies to some degree from that to which the subscriber signed up, or a change in the frequency of the emails constitutes the need for an updated mailing list requiring the "opt-in" approval of the

subscriber. Existing subscribers should never be subscribed to a new mailing list automatically.

#### **4. Changes To Terms of Service**

Proposed changes to the Terms of Service by a client will NOT be binding unless agreed in writing and counter-executed by both parties. Variation in prices is to be confirmed in writing (either by mail or email) by both parties. Clockwork Internet reserves the right to make additions and modifications to the Terms of Service without prior notice at which time there will be a post at <https://clockworkinternet.com> or clients will be sent direct notification by email. The client's continued use of Clockwork Internet services shall signify the client's agreement to the updated Terms of Service.

#### **5. Client liability and indemnification**

Clockwork Internet shall not be liable to any third party, in any manner or degree, for any breach or alleged breach of any term or condition by the client. The client agrees to professionally defend, and indemnify Clockwork Internet for all damages, expenses, liabilities, losses or claims of any third party resulting from the client's breach or alleged breach of any kind.

#### **6. Payment policy and overdue accounts**

To facilitate timely renewal where appropriate and to allow for international time differences, payments for domain registration or renewal, web hosting, design and development, marketing and all other services provided by Clockwork Internet are due not later than one day (24 hours) before the day that services are contracted or provided (as the case may be) and/or the date that renewal of service is due, as appropriate. All hosting plans are provided once the account holder has paid for their plan or package and their payment has cleared to Clockwork Internet's account.

**Clockwork Internet does NOT offer credit facilities.** Hosting and domain name registration fees unpaid by the due date will result in the automatic suspension of the associated hosting account for a period of five days. To renew a suspended account during this period, payment of an administration/reinstatement fee of \$50 will be required in addition to the outstanding hosting and/or domain name registration fee. A suspended account will be reinstated within 24 hours of receipt of all unpaid fees (including any administration and suchlike fees) as cleared funds to the company's nominated account. If a suspended account is not renewed within this period of grace, it will be removed from our servers without further notice. Once an account/website has been removed from our servers, we may be able to reinstate it following receipt of all outstanding monies due, but a reinstatement fee of not less than \$150 will be charged in addition to the outstanding hosting fee. The actual reinstatement fee is variable according to the size of the hosting account and of the site to be reinstated. Once removed from our servers, stored email cannot be recovered.

When reinstating a deleted account we take every care to ensure that the site is restored in its exact state as at the time of removal from our servers, but we offer no guarantees and will accept no responsibility in this respect.

Unless otherwise agreed, payment for website development, website maintenance, website hosting, domain name registrations and renewals and all other services is due within four days of invoicing.

Overdue accounts for all services will be subject to an administration fee of US \$25 per month or part thereof plus interest charges at the rate of 3% (three percent) per month or part thereof,

effective from the date that the payment became due, and to suspension or termination at Clockwork Internet's sole discretion. The client will be responsible also for any penalties applied by any domain name registrar or registration controlling body.

Stage payments may be required for all web development work and ownership of websites developed for clients and/or domain names registered for clients shall remain vested wholly in Clockwork Internet until the final payment for the entire project has been received and cleared to Clockwork Internet's account. Only then will ownership transfer to the client. Clockwork Internet prefers secure credit/debit card payments via PayPal or other intermediary, but we will also accept direct bank transfers, cheques, bank drafts etc. If you have other billing/payment needs please contact us.

For the avoidance of doubt, Clockwork Internet reserves the right to suspend or terminate any account without notice if the client fails to make payments in a timely manner. The client is and shall be held responsible for all outstanding amounts due to Clockwork Internet and in the event of non-payment by the due date of any amount due to Clockwork Internet, then Clockwork Internet shall have the right to take ownership of any and all websites developed and any and all domain names registered for a client, and any other of the client's assets in its care, in lieu of the unpaid amount and also as a contribution towards Clockwork Internet's administration expenses and any consequential losses. Unless stated otherwise in these Terms of Service, Clockwork Internet will make reasonable attempts to notify the account holder via email of upcoming renewals and payments due. However, it remains the account holder's responsibility entirely to ensure that their account payments and their contact details are maintained up-to-date at all times.

#### **7. Termination of account**

Clockwork Internet at its sole discretion reserves the right to terminate its supply of services to any client if they are in violation of these Terms of Service. Clockwork Internet reserves the further right to refuse services to anyone, at its own discretion and without explanation. Termination of an account means that all files, folders and other information will be deleted from our servers.

#### **8. Cancellations**

No refunds will be made in the event of any cancellation of an account by the client. If a client should wish to reinstate a cancelled account they may do so at Clockwork Internet's sole discretion and at current rates. The client may be billed a US\$75 administration and reinstatement fee prior to the reinstatement of their account. Once cleared funds have been received, the client's account will normally be reactivated within 24 hours.

#### **9. Suspension of account**

We reserve the right to suspend an account at any time. Reasons for suspension include, but are not limited to:

- Any breach of our Terms of Service
- Our inability to contact our client
- Lack of client details being maintained and updated
- Non-payment of monies due
- Overdue payment
- Excessive CPU usage

## **10. Seven day money back guarantee**

We wish you to be satisfied with the service that you receive. If for any reason within the first seven days you are not satisfied and wish to terminate your account, you may do so and we will provide you with a full refund (excluding setup costs and fees for any additional features). Prior to cancelling, please remember to retrieve any data that you may need, as your account will be terminated immediately.

## **11. Refunds and disputes**

All payments to Clockwork Internet that have been serviced are non-refundable. We offer no refunds other than our money back guarantee, regardless of the reason for any cancellation, deactivation etc. Overcharges and disputes of billings MUST be reported within seven days of the date of the charge or billing. Refunds will be granted at the sole discretion of Clockwork Internet.

## **12. Responsibility to keep updated**

It is the client's responsibility to ensure that they are up to date with the latest developments in the industry. Clients also are responsible for ensuring that their personal details such as their address, telephone number and email address(es) as provided to Clockwork Internet are kept up-to-date. For emergency contact, email addresses should include at least one address on a non-Clockwork Internet server such as a Google or Yahoo address. These details should be current at all times. Clockwork Internet makes every effort to contact clients when necessary, but in the event that there should be a loss of service, interruption of service or similar, Clockwork Internet will not be held responsible if the client cannot be contacted because their personal details have not been kept up-to-date.

## **13. Domain registration**

Clockwork Internet offers a service to register and administer domain names on behalf of its clients. When a client/registrant accepts our offer, it is agreed that we shall not be held responsible for any infringement of registered trademarks etc. and the client/registrant of any such domain name infringement will indemnify Clockwork Internet against any responsibility for such infringements of trademark etc. When a client/registrant chooses to register a domain name using our service, the client/registrant agrees with all of our terms and conditions as stated within our Terms of Service. The client/registrant also agrees to be bound by the terms and conditions of the registering company. In no circumstances whatsoever are domain name registration fees refundable. Once we have processed a domain name, it is irreversible. In the event of any query, please contact us.

## **14. Website Development & Maintenance**

From time to time Clockwork Internet will provide website design and development services to clients.

All such work is covered by a warranty of fitness for a maximum period of 12 months. The duration of the warranty period could be less than 12 months depending upon the nature of the work. Warranty durations will be included in individual contracts for web development work. Upon expiry of the warranty, all work on a client's website shall be chargeable at Clockwork Internet's billing rates current at that time.

Clockwork Internet may offer website maintenance contracts to its clients as a 'cushion' against unexpectedly high ad hoc repair bills. Unless otherwise agreed, contracts will run for 12 consecutive months and clients will be invited to renew their contract during the final month of the expiring contract. To ensure continuity of service, all renewal fees should be received by Clockwork Internet no later than 24 hours prior to the due date and time of renewal. Any

contracts not so renewed will be terminated automatically and without further notice to the client.

Once a contract has been terminated (for whatever reason) it may be renewed by agreement between the two parties and at rates current at that time. However, the client's site must be functioning perfectly and must have no maintenance, alterations or updates outstanding at the date of renewal. The client may be asked to certify that this is the case and at its discretion, Clockwork Internet may defer the commencement of maintenance under the new agreement for a period of up to two months following the date of receipt of the client's renewal fee.

#### **15. Taxes**

The client is responsible for paying all applicable taxes and the client indemnifies Clockwork Internet in respect of any and all taxes relating to the client's use of our services (including collections and withholding taxes).

#### **16. Charge-backs**

In the event of a client initiating or requesting a charge-back we reserve the right to terminate the account(s) or reseller plan and all its accounts immediately. No back up of sites will be provided unless the client pays a fee of US\$75 (additional to the charged back amount) for each account or reseller plan affected by each individual charge-back. This fee is required to cover administration costs, bank fees, handling charges and other costs incurred by Clockwork Internet.

We reserve the right to deny service to anyone who has previously requested a charge-back from us and also to remove any other accounts held by them on our servers.

#### **17. Support**

Clockwork Internet provides 24 hour email support. Telephone support is available only in true emergencies.

#### **18. Disclaimer of warranty**

Services provided to clients of Clockwork Internet are provided on an "as is" basis. Whilst all reasonable safeguards and precautions are taken, Clockwork Internet disclaims any warranty that services will not be interrupted or be free of error; that defects will be corrected; that there are no viruses or harmful components; and that security methods being used will be adequate.

#### **19. Limitation of liability**

Clockwork Internet shall not be held liable or responsible in any manner for damages resulting from loss of profit or records arising from the use of Clockwork Internet site(s) or products. Nor shall Clockwork Internet be deemed responsible for any incidental, disciplinary or consequential damages associated with this agreement. Clockwork Internet's total liability for any event or any other reason shall be limited to a maximum of three hundred US dollars (US\$300).

#### **20. Governing Law**

These terms and conditions are governed by the laws of New Zealand. You agree to submit to the jurisdiction of the Courts of New Zealand and you further agree that any court proceedings shall take place in New Zealand.