

Terms & Conditions

Website Services Terms and Conditions

These Terms and Conditions ("Agreement") are a legal agreement that govern your use of the services provided by Vitilit including Web hosting, email hosting, search engine optimisation, Website construction and domain name registration ("Services").

By using or continuing to use the Services, you indicate your assent to this Agreement and will be bound by it. Please read this Agreement carefully before using the Services.

Provision of Services

On and from the date of payment by you of the initial fees for the Services (as set by Vitilit and posted on the Vitilit Website from time to time), Vitilit will provide the Services to you for the period to which those fees apply subject to the terms of this Agreement. The Term of this Agreement may be extended by agreement between the parties by the payment of the renewal fees that Vitilit sets from time to time.

Payment and accounts

- 1.1 All Datanova accounts are strictly 14 day terms unless otherwise stated.
- 1.2 Payment for all accounts is to be made before accounts become outstanding.
- 1.3 Accounts past due date will be sent a reminder statement requesting payment.
- 1.4 Accounts that become past 7 days over due will incur a \$5 administration fee
- 1.5 Accounts not paid by next invoice date may be suspended, and will remain suspended until payment in full is made including and additional charges.

Customer Obligations

2.1 The customer, if a natural person, warrants to Vitilit that it is at least eighteen (18) years of age. Vitilit may terminate this Agreement immediately, without providing a refund, if Vitilit becomes aware that the customer is under eighteen (18) years of age at the time of entering into this Agreement.

2.2 The customer undertakes to Vitilit not at any time to publish using the Services any material that infringes any third party's intellectual property rights or any other rights. The customer must comply strictly with all relevant laws, legislation,

regulations and ordinances as amended from time to time.

2.3 The customer shall not permit any other person to use its username in order to gain access to the Services, nor shall it divulge to any other person any password that the customer may from time to time use in gaining access to the Services. If your password becomes known, you must immediately inform the Vitilit help desk which may require you to change your password where it considers necessary.

2.4 The customer indemnifies Vitilit for any expenses, costs, damages, penalties, imposts and any other liabilities including legal costs, Vitilit incurs from time to time, whether directly or indirectly, as a result of the customer transmitting or receiving or in any other manner using any information, which transmission, receipt or use is facilitated by or connected with Vitilit providing you with the Services including, without limitation, liability for breach of copyright or any other intellectual property rights.

Use and Content

3.1 The customer must only use Vitilit products and services for lawful purposes. Vitilit does not permit pornographic sites. The customer will not publish or display any pornographic material using the Services. The customer will not host material that infringes copyright, trade marks or other intellectual property rights or material Vitilit determines, in its absolute discretion to be threatening, defamatory, offensive, abusive, menacing, obscene and/or pornography. The customer will not publish any material (including viruses) that is likely to cause harm to Vitilit or any other computer systems. Examples of unacceptable material are:

Illegal sites, content or software

Pirated Software

Sites inciting racial vilification or discrimination

Hate sites or sites containing defamatory material

Gambling sites

Pornographic sites

Hack programs and archives

Spamming related sites

Extremists's sites

Running processes that cause the server to crash or become non-responsive

Proxy servers or other servers

IRC Bots

Warez Sites

Phising sites

Sites about which multiple complaints are received.

3.2 The customer acknowledges that the provisions of clause 3.1 extend to and include use of the Services in connection with the use or distribution of any software infringing any copyright or other intellectual property rights.

3.3 The customer will not enter another computer using the Services with malicious intent, nor will it disturb or disrupt any computer, system or network ("malicious hacking").

3.4 Electronic fora such as mailing lists and newsgroups have expectations regarding subject area and appropriate etiquette for posting. Users of these forums should be considerate of the expectations and sensitivities of others on the network when posting material for electronic distribution and must comply with the rules of any such forum.

3.5 The customer must indemnify and hold harmless Vitilit from any claims resulting from the use of Vitilit Services.

Zero Tolerance Spam Policy

The customer will not engage in the sending of bulk, unsolicited commercial or political advertising via email or Usenet posting ("spamming"). Vitilit has a zero tolerance policy against sending of unsolicited e-mail, bulk emailing, and spam. "Safe lists" and "double option" will be treated as spam.

Vitilit may, at its sole discretion:

- (a) require changes or disable as necessary any website, account, database or other component that does not comply with this policy;
- (b) make any such modifications that are urgent;
- (c) charge the holder of the account used to send any unsolicited e-mail a clean up fee.

Backup

The customer will only perform backups of its site, databases, web space, using the backup function in its hosting control panel between the off peak hours of 11.30pm Australian Eastern Standard Time and 7am Australian Eastern Standard Time. Using the backup function outside of these times may result in your account being suspended, as detailed below. The backup function in your control panel uses high server resources and may cause the server to become less responsive, affecting the website performance for other users.

Domain names

If the customer registers or transfers a domain name with Vitilit, the customer is bound by the Vitilit domain name agreement.

Account Establishment

Vitilit will establish your customer account after payment has been received & cleared and the customer has been screened in case of fraud. The customer must provide Vitilit with an email address that is not at the domain under which its account is established. Only the authorised person listed on the account will have access to the account. Vitilit will verify your identity by asking security questions, as required by Australian privacy laws in. The customer will provide this information before assistance can be provided to them.

Payment Information

8.1 The customer will pay for the services received from Vitilit, in advance of the time period during which such services are provided. Until and unless the customer notifies Vitilit of its desire to cancel any or all services received, those services will be billed on a recurring basis.

8.2 Vitilit may change the monthly advertised price and any other charges at anytime. Current customers will be notified prior to any change in their billing cycle charges.

8.3 If you have selected to pay by electronic invoice, it is your responsibility to ensure your email address listed in the Vitilit billing system is functional and working, so you can receive notifications, payment reminders. Payment must be made to Vitilit within seven (7) days of the due date to avoid account suspension. All goods and services purchased for which payment has not been received in cleared funds, remain the property of Vitilit.

8.4 Vitilit is a prepaid service. Your account will not be created until payment has been received in cleared funds. It is your responsibility to ensure Vitilit has received payment by the due date to avoid suspension and/or termination of Vitilit Services. If you have made payment and would like to cancel your account before it is activated, you will receive a refund, minus a \$10.00 administration charge, to cover our bank fees, postage charges, fraud screening and company administration.

8.5 Vitilit is entitled to recover (on a full indemnity basis) any costs, fees and charges (including legal costs) incurred in recovering any amounts owing by the customer to Vitilit. Without limitation to the above, Vitilit may charge an administration fee of \$30.00 for any dishonoured cheques or credit card reversals.

PayPal payments

If you have registered with Vitilit using PayPal subscription, you authorise Vitilit to directly charge your paypal account and your paypal account will be rebilled on the due date of future invoices. Vitilit system generates and emails you an electronic invoice, seven (7) days before your service is due for renewal. This allows time for the customer to make funds available or query the invoice if required. The due date and amount your paypal account will be billed is also listed on the invoice.

Credit Card payments

If you have registered with Vitilit using credit card, you authorise Vitilit to directly debit payments using the credit card account details provided by you upon registration and your credit card will be rebilled on the due date of future invoices. Vitilit system generates and emails you an electronic invoice, seven (7) days before your service is due for renewal. This allows time for the customer to make funds available or query their invoice if required. The due date and amount your credit card will be billed is also listed on the invoice.

Please ensure sufficient funds are available on the due date. If rebilling fails due to insufficient funds in credit card account, Vitilit may add a \$2.00 failed transaction charge to your account, to cover the Vitilit transaction fees. Vitilit may change your billing method from automatic credit card payments to manual payments, where the customer is required to login and make payment.

Account Suspension and Deletion of Material

11.1 Vitilit may suspend your account if you have an outstanding invoice for more than twenty-one (21) days. If your invoice remains unpaid for a further fourteen (14) days, Vitilit may cancel your account. The customer's information may be passed onto a collections agency for debt recovery, if your account remains unpaid for a further sixty (60) days.

11.2 Vitilit may suspend your account at any time for:

- (a) breaching the Vitilit terms and conditions;
- (b) initiating activities which may reduce the security of other websites on the Vitilit servers; or
- (c) where Vitilit has been given misleading or false information regarding the type of website to be hosted; or
- (d) the customer information provided is false or inaccurate.

If your customer account has been suspended due to non-payment, Vitilit will not provide support to you until the account has been paid in full.

11.3 Vitilit will provide you a reason why your account was suspended and allow you an opportunity to clarify and resolve the reason for your account suspension with 12 hours of notifying you of the problem. If your account is suspended for the same/similar reason in future, a \$50.00 account reactivation fee per incident, will apply to cover the administration time involved.

11.4 The customer acknowledges that if it does not access its email account for a period of one month or longer without prior arrangement, Vitilit may terminate the email account, delete all information stored on it and delete Web content from the account without notice to the Customer.

11.5 Vitilit may delete email or Web content from the customer's account that is in excess of the usage quotas that Vitilit may determine and notify from the customer time to time.

11.6 The customer should not retain information of value, which can only be accessed using the Services, or rely on the Services for transmitting information of value.

Cancellation

12.1 Vitilit may cancel an account at any time. If your account has been terminated for breaching the Vitilit terms and conditions, no refunds are payable. Vitilit may terminate the Services immediately:

if it has reason to believe that you are not using the services in accordance with these terms; or

if a competent regulatory authority requires Vitilit to do so.

12.2 Any proof that the customer has provided misleading or false information to Vitilit or its employees, or has engaged in extortion, harassment, abuse or other unlawful activities will result in cancellation of your account without refund. This can be email, live chat, telephone or in any form or where staff are threatened or abused.

12.3 The customer may cancel hosting at any time by filling out a cancellation form. You must fill out the form to cancel your account. Other requests to cancel your account are not accepted and you will be redirected to the cancellation form to finalise your cancellation request. The cancellation form must be received and processed before your package renewal date, otherwise you will be charged for the next billing cycle. Cancellation requests received after the package renewal date will be processed, however you will not receive a refund for the current billing cycle.

12.4 No refunds or credit will be given if you cancel your account or downgrade to a lower package. Domain names, SSL certificates, website development and account add-ons are non-refundable.

Dedicated servers

13.1 On dedicated servers and collocation, no full refund is permitted. Payment must be made by the due date on the invoice to avoid account suspension/termination.

13.2 Dedicated servers are on a month to month contract and must be cancelled a minimum of fourteen (14) days prior

to the end of the current billing cycle. It is the customer's responsibility to ensure Vitilit has received and confirmed any cancellation request. Dedicated servers users understand, agree and accept the Vitilit data centre's acceptable use policy and terms and conditions available upon request.

13.3 If the customer does not have Server Management from Vitilit, the customer will be solely responsible for software upgrades, optimisation, configuration and resolving technical issues.

Any variation to your dedicated server, including upgrades require seven (7) days notice in advance. The Vitilit data centre may charge the customer a fee for upgrading servers. This cost will be outlined before upgrading your server. From time to time, depending on the data centre workload, there may be delays in machine upgrades and maintenance.

Resource Usage

14.1 Customers may not initiate the following:

- (a) Use 25% or more of system resources for longer than 90 seconds. There are numerous activities that could cause such problems; these include but are not limited to: CGI scripts, scripts, FTP, PHP, HTTP.
- (b) Run any type of interactive real-time chat applications that require server resources. Remotely-hosted services are permitted.
- (c) Run stand-alone, unattended server-side processes at any point in time on the server. This includes any and all daemons, such as IRCD.
- (d) Run any software that interfaces with an IRC (Internet Relay Chat) network.
- (e) Run any gaming servers such as counter-strike, half-life, battlefield 1492.

14.2 It is your responsibility to upgrade your account and monitor your usage.

14.3 The customer is allocated a monthly bandwidth allowance. This allowance varies depending on the hosting package purchased. Should your account pass the allocated amount, you must upgrade to the next level plan of bandwidth usage and/or disk space.

14.4 The Vitilit system will automatically suspend your account if you exceed all of your allocated resources. Vitilit may suspend the account until the start of the next allocation or until you upgrade to a higher level of package, terminate the account and/or charge you an additional fee for the overages.

14.5 Unused capacity in one month cannot be carried over to the next month.

Backups, Data Loss and Security

15.1 Use of Vitilit products and services is at the sole risk of the customer. Vitilit is not responsible for files and data residing on your account. The customer must take full responsibility for files and data transferred and maintain all appropriate backup of files and data stored on Vitilit servers.

15.2 If you require Vitilit to retrieve any data from its backups or restore your account from a backup, there will be a \$50.00 non-refundable charge. Vitilit provides backup tools in the control panel that allow you to perform backups of your account when required. The customer can download website files from the Vitilit server for off-site storage.

15.3 No data transmission over the Internet can be guaranteed as totally secure. Whilst Vitilit strives to protect such information, it does not warrant and cannot ensure the security of any information that is transmitted. Accordingly, any information transmitted by the customer is transmitted at its own risk and any information that Vitilit transmits is transmitted without warranty as to its security. Vitilit will take reasonable steps to preserve the security of information sent or received using the Service to the extent that such security is within its control.

Support and Placement

16.1 The email hosting, starter and budget packages include online support only. Support will be provided via live chat, tutorial movies and Vitilit knowledge base only. No telephone support will be provided. If you require telephone support, you must upgrade to a higher package.

16.2 The customer acknowledges Vitilit does not have direct control over search engine placement and although Vitilit will use its reasonable endeavours to maintain a high position for your Website, no ongoing guarantee of placement position is made.

Price Change

Vitilit may change prices listed on Vitilit website and the right to increase the amount of resources given to plans. Customers will be notified by email before any price changes are implemented to their account. It is the customer's responsibility to ensure email addresses listed in the Vitilit billing system are functional and working and can accept email from Vitilit.

Changes to the Terms and Conditions

Vitilit may amend these Terms and Conditions and revise its policies from time to time. It is your responsibility to review the Vitilit Website periodically to ascertain whether these Terms and Conditions have changed. The amended Terms and Conditions will become effective as soon as they are posted on the Vitilit Website. By continued use of Vitilit Services, the customer agrees to and is bound by the updated terms and conditions, which can be accessed on the Vitilit website at any time.

Indemnification

The customer shall defend, indemnify, save and hold Vitilit harmless from any and all demands, liabilities, losses, costs and claims, (including reasonable legal fees) made against Vitilit, its agents, its customers, officers and employees, that may arise or result from any Services provided or performed or agreed to be performed or any product sold by customer, its agents, employees or assigns. The customer shall defend, indemnify and hold harmless Vitilit against liabilities arising out of:

- (1) any injury to person or property caused by any products sold or otherwise distributed in connection with Vitilit;
- (2) any material supplied by the customer infringing or allegedly infringing on the proprietary rights of a third party;
- (3) copyright, trade mark or other intellectual property infringement; and
- (4) any defective products sold to customers from Vitilit's server.

Disclaimer and Limitation of Liability

20.1 This clause does not exclude or limit the application of any provision of any statute (including the Trade Practices Act 1974 (Cth)) where to do so would contravene that statute or cause any part of this Agreement to be void ("Non-excludable Condition"). Vitilit excludes all implied conditions and warranties.

20.2 Vitilit is not responsible for any damages the customer's business may suffer. Vitilit gives no warranties of any kind, express or implied for services provided. Where it is possible to do so, Vitilit disclaims any warranty or merchantability or fitness for a particular purpose, except any Non-excludable Condition. This includes loss of data resulting from delays, no deliveries, wrong delivery and any and all service interruptions caused by Vitilit and its employees and contractors.

20.3 The liability of Vitilit to the customer for breach of any express provision of this Agreement or any Non-excludable

Condition is limited, at the option of Vitilit, to refunding the price of the services in respect of which the breach occurred or to providing those services again (except for services of a kind ordinarily acquired for personal domestic or household use or consumption, in respect of which the liability of Vitilit is not limited under this Agreement).

20.4 Vitilit is not liable for any failure to perform, or delay in performing, its obligations under this Agreement due to anything beyond its reasonable control. If that failure or delay exceeds forty-eight (48) hours, the customer may terminate this Agreement with immediate effect by written notice to Vitilit.

20.5 Vitilit is not liable for any loss of privacy, provision of inaccurate information of advice, or damage to the customer's computer systems or files, which may at any time result from use of the Services. The customer acknowledges email can be read in transit.

20.6 The customer absolves Vitilit and accepts sole legal responsibility for any messages, file, data or other form of communication that the customer may from time to time add to or transmit via the Services or receive in any manner whatsoever.

20.7 The customer acknowledges that opinions, advice, services and all other information expressed on the Internet are those of the provider and not of Vitilit. Vitilit exercises no control whatsoever over the content of the information passing through the Services.

21. Governing Law

These Terms and Conditions shall be deemed to have been made and entered into at Melbourne in the State of Victoria, Australia, and shall be governed by and construed in accordance with the laws of Victoria. Each party submits to the exclusive jurisdiction of the courts of Victoria to decide any issue that may arise in relation to these Terms.

22. Entire Agreement

These Terms and Conditions constitute the entire agreement and understanding between the customer and Vitilit and supersede any and all prior communications, representations, agreements or understandings between the customer and Vitilit with respect to the subject matter of these Terms and Conditions. The information and statements contained elsewhere in the Vitilit website do not form part of these Terms and Conditions and have not been relied upon by the customer.