



ELMBROOK TECHNOLOGIES LIMITED Domain Names Standard Terms & Conditions (for .nz Domain Names)

All domain name registrations, renewals and other domain name maintenance services provided by Elmbrook Technologies Limited are governed by the following terms and conditions.

1. ELMBROOK TECHNOLOGIES LIMITED OBLIGATIONS

We agree that we will:

- 1.1 comply with all .nz policies and accurately represent these to you;
- 1.2 disclose accurately and completely all our terms and conditions associated with your use of our services to register and maintain a domain name sought to be used by you, including price and billing information;
- 1.3 comply with your lawful directions in a diligent and timely manner regarding your .nz domain name, (for example, registration, cancellation, amendment, deletion, and associated technical support and billing);
- 1.4 subject to clause 16, process any new .nz domain name registrations with the registry within 1 hour from the time we receive all the information required to complete a registration if it is within our advertised business hours of 8.30 am - 5 pm Monday-Friday excluding statutory holidays.
- 1.5 notify you of the registration of your domain name(s), including the details of:
the domain name, your contact details, our contact details, the registration period, the unique authentication ID for your domain name and your obligations as a registrant;
- 1.6 where requested:
 - (a) arrange for correction of any error in the information in the register about any domain name registered in your name; and
 - (b) provided that such request is made within 5 days of the registration of a domain name by you, correct any error made by you in the domain name itself or cancel the domain name's registration;
- 1.7 provide to you, or to someone we reasonably believe to be acting on your behalf, the unique authentication ID for your domain name when requested and for no charge;
- 1.8 use your personal information only as authorised by you;
- 1.9 take all reasonable steps to safeguard and protect all information about you stored in our databases and system(s);
- 1.10 comply with any order of any authority having jurisdiction regarding any domain name registered to you; and
- 1.11 use our reasonable endeavours to deal with any complaints you may have about the services we provide for you.

2. YOUR OBLIGATIONS

You agree that you will:

- 2.1 comply with all .nz policies. You agree that you have read and understood the current .nz policies and warrant that your application for a domain name or request for other services pursuant to this agreement does not breach any .nz policy. You acknowledge that we have no control over any requirements that may be imposed by the .nz policies and that the applicable New Zealand policy setting bodies may change the .nz policies from time to time without consulting either of us and that you shall be bound by any such changes;
- 2.2 make sure all information you give us is true, accurate and complete, keep us informed of changes to any information you give us, and that you have the authority to enter into this agreement. You acknowledge that we may decline or be unable to register or renew a domain name, cancel a currently registered domain name or decline to provide you with other services where the information provided by you is incomplete, incorrect or otherwise unacceptable to us. You further acknowledge that:
 - (a) any spelling or other mistakes with a domain name cannot be amended unless brought to our attention within 5 days of the domain names registration;
 - (b) outside this 5 day period changes to the details relating to a domain name may be changed but not the

domain name itself; and

(c) we shall not be liable to refund any fees paid by you in respect of any domain name registered with any spelling or other mistakes;

2.3 keep the unique authentication ID for your domain name and any other security information that we give to you confidential, safe and secure;

2.4 satisfy yourself that your use of a domain name will not infringe anybody's intellectual property rights and protect us, and everybody we are in any business relationship with to provide services to you, from any such claim;

2.5 ensure that you only use our services for a lawful purpose;

2.6 ensure that the use of any domain name registered to you does not interfere with other users of the Internet;

2.7 ensure that any order of any authority having jurisdiction regarding any domain name registered to you is complied with;

2.8 protect us, and everybody we have a business relationship with, against any legal action taken against us because of the receipt or use of our services by you or someone you are responsible for, including reliance by us or anybody we have a business relationship with, on information supplied by you.

2.9 Duties of Other Persons - You agree to make sure everyone you are responsible for or who uses a domain name registered to you also meets the above duties.

3. REGISTRATION OF A DOMAIN NAME

When a domain name in the .nz domain name space is registered to you, or in your name as directed by you, then you agree:

3.1 that the following information becomes available to any member of the public:

(a) your name;

(b) your contact details; and

(c) the domain name, its commencement and expiry dates and addresses/details of the name servers for it, and our name.

3.2 the domain name is registered in your name only because no other person has it according to the records of the register; and

3.3 neither we nor anybody else is representing anything else to anybody regarding that domain name. The entry of a domain name in the "who is" database shall not be taken as evidence of anything other than such registration; and

3.4 that you protect us and everybody we have a business relationship with to provide services to you, from any claim arising out of the domain name being registered in your name or as you direct.

4. REGISTER IS THE RECORD

4.1 For all purposes the details shown in the register shall be treated as correct and the authoritative record.

5. PAYMENT OF FEES

5.1 You agree to pay for the services we provide for you.

5.2 If you transfer a domain name registered to you to another registrant or to be managed by another registrar, all charges owing to us shall become immediately due and payable on the date of that transfer.

5.3 We may alter our fees from time to time or institute new fees at any time, for any reason, at our sole discretion. When we alter them we will send you notice of the alteration 30 days before the new fee takes effect.

5.4 Our usual fees are for domain name registration and renewal. We may also charge for any other services provided to you by us, including any programming or configuration requirements outside of the scope of standard registration, change of name holder etc. We will tell you before any additional charge is incurred.

5.5 Our prices are stated in New Zealand dollars and include GST.

5.6 If you do not pay our charges for a domain name that has been registered or renewed we may refer any such amounts owed by you to a debt collection agency and you shall be responsible for payment of all charges that may be incurred in the recovery of such unpaid amounts; and

5.7 We may at our discretion charge you interest on all overdue amounts at the rate of 18% per annum, compounding daily.

5.8 All fees are non-refundable, in whole or in part, even if your domain name registration is suspended, cancelled or transferred prior to the end of your then current registration term.

5.9 Your domain name application, renewal application, or registrar transfer request will not be submitted to the registry unless we receive actual payment of the registration, renewal, or transfer fee, or reasonable assurance of payment of the registration, renewal, or transfer fee from some other entity (such reasonable assurance as determined by Elmbrook Technologies Limited in its sole discretion). In any case, we may in our sole discretion register or renew a domain name for a period less than that for which you may have applied pending receipt of cleared funds from you for such services. Subsequent to the receipt of cleared funds we will amend the register so that the registration or renewal is for the full term.

5.10 The registrant contact for any domain name you register will be notified (by email) 45 days before a renewal fee is due. Reminders will also be sent (by email) 15 days and 7 days prior to renewal. The renewal notification will contain a link to a payment page where your domain name can be renewed. Failure to renew a domain name you have registered will result in the domain name being cancelled. This will cause any email and website hosting services for that domain name to cease operating.

5.11 Cancelled domain names will be held for a period of 90 days. During this 90 day period you can reinstate the domain name by paying any outstanding renewal fees. If you do not reinstate a cancelled domain name within the 90 period then the domain name will be returned to the pool of available names for public registration.

6. SUSPENSION AND REFUSAL TO SUPPLY SERVICES

6.1 If you do not pay our charges for a domain name registered to you we may:

- (a) cancel registration of that domain name; or
- (b) change the delegation associated with that domain name to prevent it being visible in the DNS; or
- (c) refuse to provide a service you request.

7. CANCELLATION OF A DOMAIN NAME

7.1 If we are going to cancel the registration of a domain name registered to you as a result of you not paying our charges relating to that registration, we will give you fourteen days notice before we initiate action to cancel that domain name.

7.2 If we are going to cancel the registration of a domain name registered to you because the information provided by you is incomplete, incorrect or otherwise unacceptable to us, we will give you fourteen days notice before we initiate action to cancel that domain name, except where doing so would result in Elmbrook Technologies Limited incurring additional charges from third parties, in which case Elmbrook Technologies Limited shall be entitled to cancel the registration of the domain name prior to incurring such charges.

8. EXCLUSION OF LIABILITY

8.1 To the extent permitted by law we exclude all liability, (including without limitation, any liability for direct, indirect or consequential loss or damage that may arise from any breach or failure by Elmbrook Technologies Limited to perform its obligations under this agreement or any negligent acts of Elmbrook Technologies Limited) we may have to you for any claim except where we have acted in bad faith.

8.2 This exclusion also applies for the benefit of:

- (a) InternetNZ, the registry and any other entity we are in any business relationship with;
- (b) every officer, employee, contractor, agent of us or any entity in clause 8.1; and
- (c) anyone else we get to perform our duties under any agreement you have with us.

8.3 None of the persons specified above is liable or has to pay you for anything else in connection with or resulting from anything any of us does or does not do, or delays in doing, whether or not it is contemplated or authorised by any agreement you have with us.

8.4 This exclusion applies whatever you are claiming for and in whatever way liability might arise.

8.5 This exclusion does not prevent you getting a court order requiring us to do anything we have agreed to do for you and, subject to clause 17, does not limit any rights you may have under the Consumer Guarantees Act 1993.

9. LIMITATION OF OUR LIABILITY

9.1 We have excluded all other liability we or any of the persons specified in clause 8 may have to you. If any of those persons is ever liable to you and, for any reason, cannot rely on the exclusion of liability set out in clause 8 then this clause applies.

9.2 Where this clause applies, the maximum combined amount the persons specified above (together) will have to pay you and anyone else who uses the services we provide for you (together) is the total amount of the fees incurred by you during the last calendar month in which fees were incurred by you under this agreement.

10. LAW AND JURISDICTION APPLYING TO THIS AGREEMENT

10.1 Unless we otherwise agree in writing, this agreement contains all the terms of our relationship and continues to apply no matter where you are located at the time any of the services are provided or where you reside. This will be the case until this agreement is cancelled except to the extent clause 14 says otherwise.

10.2 To the extent legally permitted:

- (a) all our services are provided under New Zealand law;
- (b) any claim or dispute arising out of or in connection with this agreement must be instituted within 60 days from the date the relevant service was supplied to you;
- (c) except as otherwise stated, you may take action against us only in a New Zealand court;
- (d) where you or any registrant for whom you act supplies incorrect information regarding a domain name and we incur cost in any matter concerning that name then we may recover the costs incurred by us from you.

11. CANCELLING THE AGREEMENT

11.1 We may cancel or suspend this agreement by giving you one months notice if you do not meet your duties to us.

11.2 We may end the agreement for any other reason by giving you one month's notice.

12. MORE THAN ONE PERSON

12.1 You are responsible for everybody who you permit to act for you as a registrant. We will take reasonable care to satisfy ourselves that you have permitted those persons to act for you.

13. EACH CLAUSE SEPARATELY BINDING

13.1 Each clause of the agreement you have with us is separately binding.

13.2 If for any reason we, you, or any of the persons specified in clause 8 cannot rely on any clause, all other clauses of it are binding.

14. RIGHTS AND RESPONSIBILITIES THAT CONTINUE

14.1 The cancelling of any agreement you have with us does not affect any rights and responsibilities, which are intended to continue or come into force afterwards. These include the rights and duties under 2, 4 - 10, 12 - 13, 21 and this clause 14.

15. IMPLIED TERMS

15.1 Subject to clause 15.2 and clause 17, and only to the extent permitted by law, any term, condition or warranty that would otherwise be implied into this agreement is excluded.

15.2 Where legislation implies in this agreement any term, condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this agreement.

16. FORCE MAJEURE

16.1 We shall not be liable for any delay or failure to perform our obligations under to this agreement if such delay is due to Force Majeure.

16.2 For the avoidance of doubt, we cannot guarantee that due to circumstances beyond our control any particular domain name that you apply for will be assigned to you. In the event that a domain that you apply for registration is not processed successfully, we will refund all fees charged.

17. CONSUMER GUARANTEES ACT 1993

17.1 If you are acquiring our services for the purposes of a business or use our services for such purpose then you agree, to the extent legally permitted, that your rights in respect of the services or this agreement are limited to the rights expressly stated in this agreement. By way of example only, if you are registering a domain name for business purposes you will not have the remedies available under the Consumer Guarantees Act 1993 (New Zealand) for the services we provide under this agreement.

18. NO ASSIGNMENT

18.1 You cannot assign this agreement.

19. RIGHTS, POWERS AND REMEDIES CUMULATIVE

19.1 The rights, powers and remedies provided in this agreement are cumulative with and are not exclusive of any rights, powers or remedies at law or in equity unless specifically stated otherwise.

20. ALTERATIONS TO THIS AGREEMENT

20.1 We may alter or remove existing clauses of this agreement or add new ones. Alterations may be in the nature of completely new clauses. We can do this without the need to obtain your consent or the consent of any person acting on your behalf. Before we make any alterations, we will notify you by e-mail of these and the changes shall come into effect one month later.

21. PRIVACY EXTENDED

21.1 Certain provisions of this agreement, including without limitation the provisions of clauses 8 and 9 of this agreement, are also for the benefit of, and are intended to be enforceable under the Contracts (Privity) Act 1982 by, the parties specified in clause 8.

22. DEFINITIONS

In this agreement except where the context requires otherwise:

“domain name” means an alphanumeric string which resolves to Internet resources as detailed in RFC 1034;

“Force Majeure” means a circumstance beyond the reasonable control of Elmbrook Technologies Limited which results in Elmbrook Technologies Limited being unable to observe or perform on time an obligation under this agreement. Such circumstances shall include but shall not be limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;
- (c) strikes, equipment or systems failure or maintenance; and
- (d) any delay, failure or interruption (whether planned or unplanned) of any services to be provided to or being provided to Elmbrook Technologies Limited by the registry or any other third party.

“the Internet” means a confederation of regional and local networks based on TCP/IP;

“notify” means communicate in writing (including by e-mail);

“.nz domain name” means any domain name which ends in .nz;

“.nz policies” means all standards, policies, procedures, technical specifications, rules and practices issued by InternetNZ for the management of .nz domain name space and published on it's website from time to time;

“person” includes any non-personal legal entity or groups whether incorporated or not;

“register” means the database of information about the nz domain name space and which is the authoritative repository for the creation of the primary zone files for the .nz country code;

“registrant” means a person that is allocated a domain name registered to them within the .nz domain name space;

“registry” means New Zealand Domain Name Registry Limited (trading as .nz Registry Services) its delegates or such other organisation, that holds, operates and manages the register, including the transfer to the zone files;

“services” means anything we do or arrange for you;

“we”, “our” or “us” means Elmbrook Technologies Limited an authorised registrar within the .nz domain name space; and

“you” or “your” means you, a registrant, being the party applying for the registration, renewal or otherwise of a domain name pursuant to this agreement.