



Amrox LTD – <http://www.amroxserivces.com>

Conditions Of Use

Please read these Web Hosting Terms carefully, as they set out our and your legal rights and obligations in relation to our web hosting services.

You should print a copy of these Web Hosting Terms for future reference. We will not file a copy specifically in relation to you, and they may not be accessible on our Website in future.

These Web Hosting Terms are available in the [English language] only.

If you have any questions or complaints about these Web Hosting Terms or our Services, please contact us by writing to [address] or by email to [email address].

Version 1.0

Last Edited: 23/02/2010

1. Definitions and Interpretation

1.1 In the Agreement:

"Agreement" means the agreement between the Company and the Customer incorporating these Web Hosting Terms and [the Registration Form] and any amendments to it from time to time;

"Business Day" means any week day, other than a bank or public holiday in [England];

"Business Hours" means between 09:00 and 17:30 GMT on a Business Day;

"Charges" means the amounts payable by the Customer to the Company under or in relation to the Agreement (as set out);

"Company" means **Amrox Ltd**, a limited company incorporated in England and Wales (registration number 05817062) having its registered office at 65 St Mary Street, Chippenham, Wiltshire, SN15 3JF;

"Confidential Information" means any information supplied (whether supplied in writing, orally or otherwise) by one party to the other party marked as "confidential", described as "confidential" or reasonably understood to be confidential; and

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** will be construed accordingly);

"Customer" means the customer for Services under the Agreement specified in the relevant Registration Form;

"Effective Date" means the date when the Agreement comes into force in accordance with Clause [2.3];

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Hosted Materials" means all websites, web applications, software, information, data, databases and other works and materials stored, transmitted, published or processed using the Services;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, domain names, trade marks, service marks, passing off rights, unfair competition

rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Minimum Term" means the period specified when at registration.

"Personal Data" has the meaning given to it in the Data Protection Act 1998;

"Prohibited Content" means:

- (a) material which breaches any applicable laws, regulations or legally binding codes, or infringes any third party Intellectual Property Rights or other third party rights, or may give rise to any form of legal action against the Company or the Customer or any third party;
- (b) pornographic or lewd material;
- (c) messages or communications which are offensive, abusive, indecent or obscene, are likely to cause annoyance, inconvenience or anxiety to another internet user, or constitute spam or bulk unsolicited mail;

"Registration Form" means the form on the Company's website enabling users to sign up as Customers;

"Resources" means the resources specified on the Registration Form;

"Services" means the services provided under the Agreement, which may include shared hosting, dedicated hosting, co-location services, email services, domain name services and/or SSL services, as specified [on the Registration Form];

"Start Date" means the date specified as such on the Registration Form;

"Term" means the term of the Agreement;

"Year" means a period of 365 days;

"Month" means a period of 30 days;

"Week" means a period of 7 days;

1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of the Agreement.

1.4 The ejusdem generis rule is not intended to be used in the interpretation of the Agreement; it follows that a general concept or category utilised in the Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.

2. The Agreement:

- 2.1 In order to apply to become a Customer, the applicant must complete and submit the Registration Form.
- 2.2 If the applicant makes any input errors during the order process, these may be identified and corrected by the applicant before the Registration Form is submitted by *[insert details]*.
- 2.3 This Agreement will come into force if and when the Company sends to the Customer an acceptance email, following the submission of a completed Registration Form by the Customer.
- 2.4 This Agreement will continue in force indefinitely, unless and until terminated in accordance with Clause [20].

3. Implementation and transition

- 3.1 The Company will make available the Services on or before the Start Date.
- 3.2 At the request of the Customer, the Company will:
 - (a) where the Company holds any Customer website(s) on its development servers, transfer such website(s) from its development servers; or
 - (b) use reasonable endeavours to assist with the transition of any Customer website(s) from any third party host.

4. Shared Hosting:

- 4.1 This Clause [4] applies where the Company agrees to make available to the Customer shared hosting.
- 4.2 The Company will make available to the Customer hosting capacity on a shared server meeting the specification set out on the Registration Form.
- [4.3 The Company [will/may] make available to the Customer the ability to access, update or amend the Hosted Materials [by FTP or similar means].]
- 4.4 For the avoidance of doubt, the Customer will [have / not have] administration rights in relation to any shared server[, and the Company may refuse any request to change the configuration of a shared server at its sole discretion].
- 4.5 Charges payable in respect of shared hosting will be [as specified on the Registration Form / as agreed between the Company and the Customer].

5. Dedicated Hosting

- 5.1 This Clause [5] applies where the Company agrees to make available to the Customer a dedicated server.
- 5.2 The Company will make available for the exclusive use of the Customer a dedicated server meeting the specification set out [on the Registration Form] [in all material respects], and will grant to the Customer administration rights with respect to that server.
- [5.3 [The Customer acknowledges that the Company will not provide support in connection with the administration of any dedicated server, and] the Customer warrants that it has all necessary expertise to configure, manage and keep the dedicated server secure at all times.]
- [5.4 The Customer will not configure, or allow any other person to configure, a dedicated server in any way contrary to [the guidelines published on the Company website from time to time].]
- [5.5 The Company may from time to time require that the Customer apply software and/or hardware upgrades to the dedicated server.]
- 5.6 For the avoidance of doubt, dedicated servers made available under the Agreement will remain the property of the Company at all times.
- 5.7 Charges payable in respect of dedicated servers will be [as specified on the Registration Form / as agreed between the Company and the Customer].

6. Co-located Servers

- 6.1 This Clause [6] applies where the Company agrees to provide to the Customer co-location services.
- 6.2 The Customer will be responsible for the activity and security of any co-located server and for ensuring that co-located servers function properly.
- 6.3 The Customer acknowledges that the Customer is responsible for ensuring that any co-located server does not suffer damage or data loss or corruption in the event of a power failure, power surge or similar electrical fault or phenomenon, and that the Company will not be liable in respect of losses arising out of such a fault or phenomenon.
- 6.4 The Customer may gain access to the co-located server by prior appointment only, must supply reasonably sufficient identification to gain access to the data centre housing the co-located server[, and any such access may at the option of the Company be supervised by the Company or a representative of the Company].
- 6.5 The Customer acknowledges that access to a co-located server will be subject to any terms imposed by the relevant data centre from time to time.
- 6.6 Charges payable in respect of co-located servers will be [as specified on the Registration Form / as agreed between the Company and the Customer].

7. Email Services:

- 7.1 This Clause [7] applies where the Company agrees to provide to the Customer email transmission, storage and/or management services.
- 7.2 The Company will [upon request] provide [POP3/IMAP and webmail] email services to the Customer.
- 7.3 All mailboxes will be protected by [anti-spam and anti-virus software].
- 7.4 If the Customer or a mailbox exceeds the relevant storage limit [set out on the Registration Form / notified by the Company to the Customer from time to time], the Company may delete stored emails to bring the Customer or mailbox within the storage limit.
- [7.5 Charges payable in respect of email services will be [as specified on the Registration Form / as agreed between the Company and the Customer].]

8. Domain name registration:

- 8.1 [Subject to the payment of the applicable Charges [in advance],] the Company will attempt to register domain names that the Customer orders using [the interface on the the Company website], but does not warrant that it will be able to do so. Domain name orders will be subject to the provisions of this Clause [8].
- 8.2 Charges in respect of domain name registrations are non-refundable.
- 8.3 Domain name registrations will be subject to periodic renewal fees and transfer fees [as stated on the the Company website] from time to time.
- 8.4 The Customer warrants that the information submitted for the purposes of a domain name registration is current, accurate and complete, that it has the legal right to apply for and use the domain name, and that its use of the domain name will not infringe any person's Intellectual Property Rights or other legal rights.
- 8.5 The Customer undertakes to keep the information required for the purposes of a domain name registration up-to-date (which changes may be subject to additional Charges).
- 8.6 The Customer acknowledges that certain information submitted for the purposes of a domain name registration will be published on the internet via "WHOIS" services.
- 8.7 The Company may reject in its sole discretion any request to register a particular domain name.
- [8.8 The Company will not offer any advice in relation to any actual or potential domain name dispute, and will have no liability in respect of the suspension or loss of a domain name by the Customer as a result of any domain name arbitration procedure or court proceedings.]
- [8.9 The Company will have no responsibility for the Customer's use or retention of a domain name once registered, and it will be the Customer's responsibility to ensure that domain names are renewed and that applicable renewal charges are paid.]

- 8.10 The Customer acknowledges that domain names will be subject to the rules and policies from time to time of the relevant registry or registration authority, and the Customer agrees to abide by all such rules and policies.
- [8.11 The Customer agrees to the terms of the applicable domain name registration agreement (as amended from time to time): *[insert url]*.]
- [8.12 Charges payable in respect of domain name services will be [as specified on the Registration Form / as agreed between the Company and the Customer].]

9. SSL certificates:

- 9.1 Subject to the payment of the applicable Charges in advance, the Company will attempt to obtain SSL certificates that the Customer orders [using the interface on the Company's website]. SSL certificate orders will be subject to the provisions of this Clause [9].
- 9.2 Charges in respect of SSL certificates are non-refundable.
- 9.3 SSL certificates will be subject to periodic fees as stated [on the Company website from time to time].
- 9.4 The Customer warrants that the information submitted for the purposes of an SSL certificate is current, accurate and complete.
- 9.5 The Customer undertakes to keep the information required for the purposes of an SSL certificate up-to-date.
- 9.6 The Customer agrees to the terms of the applicable SSL subscription agreement (as amended from time to time): *[insert url]*.
- [9.7 Charges payable in respect of SSL certificates will be [as specified on the Registration Form / as agreed between the Company and the Customer].]

10. Support:

- 10.1 [The Company will make available, [on Business Days between the hours of 9.00 am and 5.00 pm (London time)], a telephone helpdesk facility for the purpose of providing support to the Customer (and the Company's other customers). [The Company will [use reasonable endeavours] to respond to requests for support within *[period]*.]
- [10.2 The Company will use reasonable endeavours to ensure that a member of its support staff can be reached by mobile phone outside Business Hours in the case of an emergency.]
- 10.3 The Customer must make all requests for support Services through the helpdesk, and all such requests must include at least the following information: *[insert details]*.

10.4 The Company will use [reasonable endeavours] to resolve issues raised by the Customer [promptly].

[10.5 [Subject to Clause [10.6],] the Company will:

- (a) make back-ups of the Hosted Materials [on a daily basis], and will retain such back-ups for [10 days]; and
- (b) at least once every [4] weeks, the Company will arrange for the off-site storage of a current back-up of the Hosted Materials (which will be overwritten on the following off-site back-up date).]

[10.6 The Company will not make back-ups of email messages that have been downloaded by the Customer.]

[10.7 Charges payable in respect of support services will be [as specified on the Registration Form / as agreed between the Company and the Customer].]

11. Services: General Provisions:

11.1 The Customer's utilisation of Resources must not exceed the limits set out on the Registration Form. [If the Customer's utilisation of Resources exceeds those limits, the parties will endeavour to agree a variation to the Agreement. If the parties cannot agree such a variation within a reasonable period (being not more than [30 days]) following notice from the Company to the Customer requesting such variation, and Resource utilisation continues to exceed those limits, the Customer will be deemed to be in material breach of the Agreement for the purposes of Clause [20].]

11.2 The Company may suspend some or all of the Services in order to carry out scheduled maintenance or repairs. Subject to this, the Company will use [reasonable / its best] endeavours to maintain the Services at the availability level specified [on the Registration Form].

12. Customer Responsibilities:

12.1 The Customer will provide the Company with all co-operation, information and documentation reasonably required for the provision of the Services, and the Customer will be responsible for procuring any third party co-operation reasonably required for the provision of the Services.

12.2 The Services are provided to the Customer only, and the Customer may not resell the Services to any third party.

12.3 The Customer will be responsible for obtaining suitable licences of third party software (such as email client software) which are required for the full use of the Services.

12.4 It is the Customer's responsibility to keep any passwords relating to the Services confidential, and to change such passwords on a regular basis. The Customer will

notify the Company immediately if it becomes aware that a password relating to the Services is or may have been compromised or misused.

13. Acceptable Use:

- 13.1 The Customer must not use any of the Services:
- (a) to host, store, send, relay or process any Prohibited Content;
 - (b) for any purpose which is unlawful, fraudulent, or infringes any third party rights;
 - (c) in any way which may put the Company in breach of a contractual or other obligation owed by the Company to any internet service provider.
- 13.2 The Customer acknowledges that the Company does not purport to monitor the content of Hosted Materials or the use of the Services.
- 13.3 Where the Company reasonably suspects that there has been a breach of the provisions of this Clause [13], the Company may:
- (a) delete or amend the relevant Hosted Materials; and/or
 - (b) suspend any or all of the Services and/or the Customer's access to any or all Services while it investigates the matter.
- 13.4 Any breach by the Customer of this Clause [13] will be deemed to be a material breach of the Agreement for the purposes of Clause [20].

14. Charges and Payment

- 14.1 The Company will issue invoices for the Charges to the Customer
[on or before the relevant dates set out [on the Registration Form]]
[monthly [in advance / arrears] [on the [1st] day of each calendar month] during the Term]
[from time to time [in advance / arrears] during the Term].
- 14.2 The Customer will pay the Charges to the Company
[on or before the dates set out [on the Registration Form].]
[within [30] days of the date of [issue/receipt] of an invoice issued in accordance with Clause [14.1].]
- 14.3 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise.

- 14.4 Charges must be paid by [debit or credit card, direct debit, bank transfer or by cheque (using such payment details as are notified by the Company to the Customer from time to time)].
- 14.5 If the Customer does not pay any amount properly due to the Company under or in connection with the Agreement, the Company may:
- (a) charge the Customer interest on the overdue amount at the rate of [5]% per year above the base rate of [HSBC Bank Plc] from time to time (which interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable on demand); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- [14.6 The Company may vary the Charges by giving to the Customer at least [60 days'] notice of variation [expiring at any time after the end of the Minimum Term] [by an amount not exceeding [the increase during the preceding 12 months in the Retail Prices Index (all items) published by the UK Office of National Statistics]].]

15. Warranties:

- 15.1 The Customer warrants to the Company that it has the legal right and authority to enter into and perform its obligations under the Agreement.
- 15.2 The Company warrants to the Customer:
- (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement; and
 - (b) that it will perform its obligations under the Agreement with reasonable care and skill.
- 15.3 All of the parties' liabilities and obligations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

16. Indemnity

The Customer hereby indemnifies and undertakes to keep indemnified the Company against all liabilities, losses, costs, expenses (including legal expenses and amounts paid upon advice in settlement of any legal action) arising out of or in connection with:

- (a) any breach by the Customer of any term of the Agreement; and
- [(b) any activity upon, or any breach of security of, the Customer's [dedicated or] co-located server, and any malfunction of the Customer's co-located server.]]

17. Limitations and exclusions of liability:

17.1 Nothing in the Agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.

17.2 The limitations and exclusions of liability set out in this Clause [17] [and elsewhere in the Agreement]:

- (a) are subject to Clause [17.1];
- (b) govern all liabilities arising under the Agreement [or any collateral contract] or in relation to the subject matter of the Agreement [or any collateral contract], including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and
- [(c) will [not limit or exclude / limit and exclude] the liability of the parties under the express indemnities set out the Agreement.]

17.3 The Company will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.

17.4 The Company will not be liable for any loss of business, contracts or commercial opportunities.

17.5 The Company will not be liable for any loss of or damage to goodwill or reputation.

17.6 The Company will not be liable in respect of any loss or corruption of any data, database or software.

17.7 The Company will not be liable in respect of any special, indirect or consequential loss or damage.

17.8 The Company will not be liable for any losses arising out of a Force Majeure Event.

17.9 The Company's liability in relation to any event or series of related events will not exceed the greater of:

- (a) [£100]; and

- (b) the total amount paid or (if greater) payable by the Customer to the Company under the Agreement during the [3rd] month period immediately preceding the event or events giving rise to the claim.
- 17.10 The Company's aggregate liability under the Agreement [and any collateral contracts] will not exceed the greater of:
 - (a) [amount]; and
 - (b) the total amount paid or (if greater) payable by the Customer to the Company under the Agreement.

18. Data Protection:

- 18.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Company under the Agreement, and that the processing of that Personal Data by the Company for the purposes of and in accordance with the terms of the Agreement will not breach any applicable laws (including the Data Protection Act 1998).
- 18.2 The Company warrants that:
 - (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Company on behalf of the Customer; and
 - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Company on behalf of the Customer.

19. Confidentiality:

- 19.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause [19].
- 19.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.
- 19.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.
- 19.4 These obligations of confidentiality will not apply to Confidential Information that:
 - (a) has been published or is known to the public (other than as a result of a breach of the Agreement);
 - (b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or

- (c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a competent governmental authority, regulatory body or stock exchange.

20. Termination:

20.1 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:

- (a) commits any material breach of any term of the Agreement, [and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within [30] days of receipt of a written notice requiring it to do so; or]
- (b) fails to pay any amount due under the Agreement in full and on time.

20.2 Either party may terminate the Agreement immediately by giving written notice to the other party if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement);
- (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

21. Effects of termination:

- 21.1 Upon termination all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses [1, 14.5, 16, 17, 19.1 to 19.4, 21 and 22.3 to 22.12].
- 21.2 Termination of the Agreement will not affect either party's accrued rights (including accrued rights to be paid) as at the date of termination.
- 21.3 If the Agreement is terminated under Clause [20.1], or by the Customer under Clause [20.2] or [20.3] [(but not in any other case)]:
- [(a) the Company will promptly provide to the Customer an electronic copy of the Hosted Materials;
 - (b) the Company will provide such assistance as is reasonably requested by the Customer to transfer the hosting of the Hosted Materials to the Customer or another service provider, subject to payment of the Company's reasonable expenses; and
 - (c) the Customer will be entitled to a refund of any Charges paid by the Customer to the Company in respect of any Services which were to be performed after the date of effective termination, and will be released from any obligation to pay such Charges to the Company (such amount to be calculated by the Company using any reasonable methodology).]
- 21.4 Save as provided in Clause [21.3(c)], the Customer will not be entitled to any refund of Charges on termination, and will not be released from any obligation to pay Charges to the Company.

22. General

- 22.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by [pre-paid first class] post, or sent by fax [or email], for the attention of the relevant person, and to the relevant address, fax number or [email address] given below in the case of the Company or specified [on the Registration Form] in the case of the Customer (or as notified by one party to the other in accordance with this Clause).

The Company
[addressee, address, fax, and if necessary email address]

- 22.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
 - (b) where the notice is sent by [first class] post, [48 hours] after posting; and
 - (c) where the notice is sent by fax [or email], at the time of the transmission (providing the sending party retains written evidence of the transmission).

- 22.3 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 22.4 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 22.5 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.