



Terms of Service V2.1

1. Definitions

1.1. "Fusion" means Fusion Hosting Australia of Hansen Group (S.A.) PTY LTD (73 167 994 185).

1.2. "Customer" means the person or entity who ordered our services.

1.3. "Service", "Service(s)" or "Services" means any product(s) or service(s) the Customer has signed up to use. This can include, but is not limited to, the provisioning of space on one of our servers and a connection to and from the internet for web, email and FTP services to function at the level specified in the chosen service level, domain name registration or transfer or renewal, SSL, VPS and SMS services. These product(s) and service(s) are identified in full within the "sign up" and "service provision" emails Fusion has sent after you request for service. The specific details of the Services can be found by logging in to MyFusion or on our website.

1.4. "MyFusion" refers to Fusion's customer account, billing and management portal, available online at <http://fusionhosting.com.au>

2. Acceptance

2.1. The Customer signified acceptance of these Terms of Service, as well as our Privacy Policy, Acceptable Use Policy, Customer Service Policy and any applicable Registrant Agreement, when they submitted their order to Fusion for Services, and that order was accepted.

3. Term

3.1. The Customer agrees to a month to month contract term for Services unless otherwise stated in the product or service offering (eg. domain names, SSL certificates, special services with an agreed term) or otherwise agreed in writing. The month to month contract for services is automatically renewed each month in perpetuity subject to cancellation by the Customer.

3.2. Monthly services are established as part, thereof, signifying the beginning of a new month demotes commitment till the end of that monthly period.

4. Service, Marketing and Promotional Emails

4.1. The Customer agrees to receive emails directly relating to the Service(s) provided, as well as marketing and promotional emails from Fusion to the email address registered to their account. The Customer can unsubscribe from marketing and promotional emails only by disabling them in MyFusion at any time.

4.2. The Customer may choose to opt-in to receive email notifications from our Service Status system in relation to their Service(s). This can be controlled by the Customer in MyFusion and are disabled unless otherwise enabled by the Customer.

4.3. Fusion warrants that they will never sell or trade any email address to any third party, in accordance with the Privacy Policy.

4.4. If the Customer does not want to receive mandatory service-specific emails, and/or SMS messages (where applicable), they are required to close their account and any Service associated with the account, in accordance with Section 14 of this policy. The Customer may, however, opt-out from receiving marketing and promotional emails and/or SMS messages at any time through their MyFusion.

5. Availability of Services

5.1. While Fusion will endeavour to provide continuous availability of all Services to the Customer, Fusion will not be liable for any service interruptions or down time.

5.2. Scheduled maintenance will be performed at times which is deemed suitable by Fusion which has the least noticeable impact on the Customer, and should it require the Services to be offline for greater than thirty (30) minutes Fusion will post details of the scheduled maintenance at least two (2) days prior.

5.3. Unscheduled maintenance will be performed as required by Fusion, and should the Services be offline for greater than thirty (30) minutes Fusion will post details of the maintenance and any updates until it has been completed. Details of these events can be found at <http://fusionhosting.com.au>.

6. Domain Name Registration and Renewal

6.1. The Customer acknowledges that Fusion is an authorised reseller for VentrailP Wholesale for all domain names.

6.2. The Customer acknowledges that they have read and agree to any applicable Registrant Agreement before purchasing any domain name Service(s) from Fusion.

6.3. The Customer acknowledges that all domain name Service(s) are non-refundable once the order for the domain name Service(s) has been processed and accepted by Fusion.

6.4. Fusion does not warrant or guarantee that a domain name application will be approved. The Customer should take no action in respect of the requested domain name(s) until they have been notified by Fusion that the domain name(s) has been approved and is in the Customers name.

6.5. The registration of the domain name and the ongoing use of the domain name are subject to the relevant naming authority's terms of service and the Customer is responsible for ensuring awareness of these terms and that they are adhered to. The Customer waives any right to make claim against Fusion in respect to a decision made by a naming authority to refuse registration or renewal of a domain name.

6.6. The Customer acknowledges that Fusion is not obligated to renew a domain name for the Customer, if the Customer has not confirmed to Fusion that the domain name is to be renewed, or the invoice for renewal has not been paid in full, or it is determined that the Customer does not satisfy the eligibility criteria to continue holding the domain name license. In these circumstances, Fusion will not be held liable by the Customer for any loss or damages. All renewal requests must be submitted via MyFusion.

6.7. Domain name registration or renewal may be declined by Fusion if the Customer is in breach of these Terms of Service, Acceptable Use Policy, Customer Service Policy or any applicable Registrant Agreement, or the customer has other unpaid or unresolved fees.

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

6.9. Should the Customer choose to terminate all services with Fusion, but does not transfer a domain name to another registrar, the Customer agrees that Fusion may contact the Customer after the account closure to advise of any domain name renewal or transfer.

7. Limitation of Liability

7.1. Fusion shall not be liable to the Customer for harm caused by or related to Customer's Service or inability to utilise the Service unless caused by gross negligence or wilful misconduct.

7.2. Neither Party shall be liable to the other for lost profits, direct or indirect, special or incidental, consequential or punitive, or damages of any kind whether or not they were known or should have been known.

7.3. Notwithstanding anything else in this agreement, the maximum aggregate liability of Fusion, any of its employees, agents or affiliates, under any theory of law shall not exceed a payment in excess of the amount paid by the Customer for the Service in question for the six months prior to the occurrence of the event(s) giving rise to the claim.

8. Customer General Warranties and Undertakings

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

8.2. The Customer warrants that they will keep any passwords or sensitive information used with the Service in a secure location and the information is not to be shared with any other party.

8.3. The Customer warrants that they hold and will continue to hold the copyright for data stored on Fusion's servers, or that they are licensed and will continue to be licensed to use that data.

8.4. The Customer warrants that at the time of entering into this agreement they are not relying on any representation made by Fusion which has not been expressly stated in this agreement, or on any descriptions or specifications contained in any other document produced by Fusion.

8.5. The Customer warrants that all due care has been taken to ensure data integrity on Fusion's servers. This includes an undertaking that the Customer will conduct computer virus scanning and other tests as necessary to ensure that the data uploaded by the Customer on to or downloaded by the Customer from the server does not contain any computer virus and will not in any way corrupt the data or systems of any person.

8.6. The Customer agrees that they are solely responsible for dealing with anyone who accesses their data, and that you will not refer complaints or inquiries in relation to such access to Fusion. Such matters should be referred to the Australian Federal Police for investigation as soon as possible.

9. Fusion General Warranties and Undertakings

9.1. Fusion accepts liability for the supply of the Service to the Customer to the extent provided in this agreement.

9.2. Fusion does not warrant that:

- a) The Services provided within this agreement will be uninterrupted or error free;
- b) The Services will meet your requirements, other than as expressly set out in this agreement;
- c) The Services will not be subjected to external hacking attempts, viruses, worms, denial of service attacks, or other persons gaining unauthorised access to the Service or internal Fusion systems.

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

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

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

9.6. Third party services engaged by the client through cPanel including but not limited to SEO and web design tools are done so at the Customers own undertaking. Fusion does not provide any express or implied warranty on the quality of their product(s) nor the outcome expected and is under no obligation to extend support for externally managed or purchased products.

10. Fees and Credit Management

10.1. In relation to fees for Services:

- a) Fees for Services ordered by the Customer shall begin on the date of the initial order and shall include service coverage for the chosen billing cycle in advance. This may be monthly, quarterly, semi-annually, annually, biennially or triennially.
- b) The anniversary or renewal date for the Service will be determined by the billing period selected by the Customer during their order and displayed to the Customer within MyFusion. The exception applies to services which only allow annual, biennially or other multiple year billing cycles such as domain name registrations, SSL Certificates, etc.
- c) Fees are due in advance of the billing cycle and will be invoiced to the Customer ten (10) days prior to the due date. If a credit card is stored on file, it will be charged three (3) days prior to the due date, to allow sufficient time for any potential issues (such as insufficient funds, expired cards, etc) to be rectified before the due date.

10.2. In relation to fees for upgrades to Services:

- a) Upgrades ordered by the Customer on the billing anniversary date will be billed for a full cycle and will continue each cycle on the anniversary date, unless the Services only allows annual or biennially billing cycles (eg. domain name registrations, etc).
- b) Upgrades ordered by the Customer after the billing anniversary date will be pro-rated to the next anniversary date at the full monthly costs. Future fees will appear as the new plan from your existing anniversary billing date.
- c) Fees for upgrades will be payable within seven (7) days of the upgrade taking place. If a credit card is stored on file, it will be charged three (3) days prior to the due date, to allow sufficient time for any potential issues (such as insufficient funds, expired cards, etc) to be rectified before the due date.
- d) Additional fees may be payable for upgrades where manual work is required by Fusion to process the request.

10.3. In relation to fees for downgrades to Services:

- a) Downgrades will be processed when the request is received by Fusion from the Customer, unless otherwise specified in the request.
- b) When a downgrade is completed all pre-paid amounts remaining on the original Service will be forfeited for change of mind on the Service.
- c) A \$15.00 administration fee may be charged for a downgrade request at Fusion's sole discretion. Additional fees may be payable for downgrades where manual work is required by Fusion to process the downgrade request (eg. Multi Hosting to Hosting, inter-server transfers, etc).

10.4. Any fees paid for the setup or establishment of any Services will be automatically deemed as nonrefundable.

10.5. Fees for one-off Services including, but not limited to, dedicated IP addresses, SSL certificates, SMS credits, instant data blocks and instant disk blocks, are due within seven (7) of the invoice being issued and are non-refundable.

10.6. All published prices are inclusive of any government taxes and charges, unless otherwise noted.

10.7. The speed of provisioning new Services is reliant upon the Customer having paid any and all outstanding fees in full.

10.8. Failure to pay any fees may result in the account being referred to an external collection agency, which may include interest (calculated daily) and collection costs.

10.9. Invoices which are more than seven (7) days past their due date will automatically attract an overdue fee of 20% of invoice total which will be payable on top of the invoice amount.

10.10. Services with unpaid invoices that are more than fourteen (14) days past the due date will be automatically suspended, and a reconnection fee of \$10.00 in addition to any outstanding fees may apply to have the service restored.

10.11. Services with unpaid invoices that are not paid in full within sixty (60) days of the due date may be terminated without notice to the client at the discretion of Fusion Hosting Australia.

11. Payment Method Management

11.1. In the event a new Service is ordered by a new or existing Customer and payment is made during the order process using credit card, this credit card information may be stored against the Customers MyFusion account. Furthermore the default payment method for that particular Service will be set as Credit Card.

11.2. Where a credit card number is recorded on file and the default payment of the Customers Service(s) is credit card, this may be used for the automated payment of due invoices. In such cases, payments will typically be taken three (3) days prior to the due date of the invoice.

11.3. Management of default payment methods can be conducted by the Customer within their MyFusion account. This includes modifying or removing stored credit card information, as well as adjustment of the default payment method.

12. Refunds

12.1. The following Services are not eligible for a refund if the Service has been successfully provisioned by one of Fusion's suppliers:

- a. Domain names;
- b. SSL certificates;
- c. SMS credits;
- d. Software licenses.

This also extends to the renewal of the aforementioned Services.

12.2. All refunds will be processed at the sole discretion of the Fusion Billing and Management teams' inline with the Australian Competition & Consumer Commission's published policies and guidelines. Customers are not eligible for refund where a problem has occurred which is outside the control of Fusion nor in the event the Customer:

- a. has had a change of mind;
- b. has insisted on having the Service provided in a particular way which is against Fusion's capacity or advice;
- c. has not explained their requirements clearly to Fusion prior to purchase. More information can be found at <http://www.accc.gov.au/consumers/consumer-rights-guarantees>

12.3. The Customer will not be entitled to a refund if any of Fusion's Terms, Policies and Agreements have been breached by the Customer.

13. Suspension and Termination of Services

13.1. Fusion may suspend or terminate Services if:

- a. The Customer is found to be in breach of any formal policy including but not limited to these Terms of Services, Acceptable Use Policy, Customer Service Policy or any applicable Registrant Agreement;
- b. The Customer has become insolvent or bankrupt;

c. The Customer has unpaid invoices as per Section 10 of this agreement.

13.2. Fusion may decide at its sole discretion to advise a Customer that their service will be terminated by giving thirty (30) days written notice. In this circumstance, Fusion will refund any amounts in accordance with Section 12 of this agreement.

13.3. If a Customer's account is closed for any reason, the Customer must pay all outstanding charges by the due dates.

13.4. Fusion Hosting Australia will not terminate any services held by the customer while an amount is owed on their account, and billing cycles will continue until such time as the outstanding amount is settled.

13.5. If a web hosting or VPS Service is suspended or terminated for any reason, Fusion is under no obligation to provide the Customer with a copy of any data associated with the Service. Fusion may provide the customer with a backup of the data, if it is available, for a fee of \$199.95.

14. Cancellation

14.1. The Customer can request cancellation of any Service with us for any reason by logging in to MyFusion and submitting a secure cancellation request. For account security reasons, we will not accept cancellation requests by any other method.

14.2. Any refunds are bound by the conditions of Section 12 of this agreement.

14.3. The Customer agrees to pay any and all outstanding fees upon cancellation of their Services.

14.4. Cancellation requests must be received by Fusion four (4) days before the Service renewal date. If cancellation is not received before this time, package renewal costs generated for the next period of time will remain outstanding or an administration fee of \$9.95 may apply (whichever is the lesser value).

15. Data Management

15.1. It is the Customer's sole responsibility to maintain regular off-site backups of their data. The Customer will not hold Fusion liable for incomplete, out of date, corrupt or otherwise incomplete data recovered from backups and archives.

15.2. With regards to shared cPanel web hosting Services, Fusion makes every reasonable effort to backup and archive the Customer's data on a regular basis for the purpose of disaster recovery; except in the instance of the Customer exceeding 5GB of stored data as per Section 7 of the Fusion Acceptable Use Policy (AUP).

15.3. In the event of hard disk failure or data corruption of a shared cPanel web hosting server, Fusion will restore data from the last known verified archive. If all backup and archived data appears to be corrupt or no backup is available, the Customer should be prepared to upload all of their data to their Service from their own copy or an off-site backup, and re-create all mailboxes, databases, FTP accounts, etc.

15.4. Fusion takes automatic system backups of all shared cPanel web hosting Services seven (7) times a week, at any one time storing no more than two (2) backup archives.

15.5. If the Customer requires Fusion to supply a backup of their data for an active shared cPanel web hosting Service, for any reason or purpose that is not the direct fault of Fusion, a fee of \$49.95 per Service will be payable by the Customer before the data will be made available. Services in a suspended or terminated state within MyFusion are not considered an active Service.

15.6. Fusion is under no obligation to maintain a backup of the Customer's data following the cancellation of the Service by the Customer nor by the result of Service termination.

15.7. Fusion does not take automated system backups of Virtual Private Server (VPS) Services.

15.8. Fusion holds no responsibility for any issues which arise during the use of third party services bundled within cPanel; this includes but is not limited to Softaculous, Installatron and RVSiteBuilder. Issues which occur as a result of failed upgrade attempts by the Customer are outside the control of Fusion.

16. Changes

16.1. Fusion may amend our Terms of Service at any time. At all times Fusion will make available the current terms for client review and download via our website. Changes to this agreement other than price changes will become effective upon their publication to our website, and furthermore, continued use of the Service(s) constitutes acceptance of the amended terms. If you do not wish to accept the amended terms, you may request cancellation of your Service(s) in-line with our Cancellation Policy as per Section 14 of this agreement.

16.2. All Fusion Terms, Policies and Agreements are available for download from our website at any time.

17. Use of Identity

17.1. The Customer agrees to use the Fusion logo, company information and related services in accordance with approved marketing guidelines.

17.2. Fusion agrees not to use a Customer name, logos or information without prior written consent of the Customer.

18. Entire Agreement

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

19. Governing Law

19.1. The Customer agrees to abide by all local, state and federal laws pursuant to the Services delivered by Fusion.

19.2. The Customer agrees that these terms and conditions are governed by the laws of Victoria, Australia, and agrees to the exclusive jurisdiction of the Courts of that state.

If you have any questions about this agreement, please contact our Customer Care team at support@fusionhosting.com.au

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