

# xemik.net Terms and Conditions

## 1. Definitions

In this Agreement the following words and expressions shall have the following meanings:

- a. "Xemik Solutions!" shall mean Xemik Solutions! Ltd;
- b. "xemik.net" is the web-hosting brand name of Xemik Solutions! Ltd.
- c. "Customer" shall mean any party whether an individual, partnership or company (incorporated or otherwise) which contracts to use the services provided on xemik.net;
- d. "the Services" means web hosting, domain name registration, email and any other services or facilities provided by Xemik Solutions!;
- e. "downtime" means any service interruption in the availability to visitors of the Website;
- f. "intellectual property rights" means patents, trade marks, design rights, applications for any of the foregoing, copyright, topography rights, database rights, rights in know-how, trade or business names and other similar rights or obligations, whether registrable or not in any country;
- g. "IP address" stands for internet protocol address, which is the numeric address for the server;
- h. "ISP" stands for internet service provider;
- i. "server" means the computer server equipment used in connection with the provision of the Services;
- j. "spam" means sending unsolicited and/or bulk emails;
- k. "virus" means a computer program that copies itself or is copied to other storage media, including without limitation magnetic tape cassettes, memory chips, electronic cartridges, optical discs and magnetic discs, and destroys, alters or corrupts data, causes damage to the user's files or creates a nuisance or annoyance to the user and includes without limitation computer programs commonly referred to as "worms" or "trojan horses";
- l. "visitor" means a third party who has accessed the Website;
- m. Product specifications and details may be found at [www.xemik.net](http://www.xemik.net);
- n. Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

## 2. Introduction

- a. The Customer wishes to provide Xemik Solutions! with data that will be hosted on xemik.net and made accessible via the Internet.
- b. Xemik Solutions! provides web hosting services and has agreed to host the Customer's data upon the following terms and conditions.

## 3. Duties

- a. Xemik Solutions! shall provide to the Customer the Services specified in their order subject to the following terms and conditions.
- b. The Customer shall deliver to Xemik Solutions! the Website and the software used in the Website which is owned by the Customer, or licensed to him by a third party or Xemik Solutions! ("the Customer Software"), in a format specified by Xemik Solutions!.

## 4. Charges, Payment and Terms of Contract

- a. Payment is by Paypal, cheque or bank transfers.
- b. Xemik Solutions! may provide credit facilities with prior agreement.
- c. All charges are exclusive of VAT, which, if payable, shall be paid by the Customer.
- d. Xemik Solutions! shall be entitled to charge interest in respect of late payment of any sum due under this Agreement, which shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 8% per annum above the base rate of the Bank of England from time to time in force.
- e. Where an account remains unpaid for more than 30 days after it becomes due, your account will be deactivated until payment has been received in full and the funds have cleared.

# xemik.net Terms and Conditions

- f. From time to time Xemik Solutions! may make enquiries on the Customer's company, proprietor or directors of the Customer's company with credit reference agencies. These agencies may record that a search has been made and share this information with other businesses.
- g. Xemik Solutions! does not provide 'Money Back Guarantees'.
- h. Pro-rata refunds will not be issued for services that are cancelled before the end of the term of the contract.

## 5. IP Addresses

- a. It should not be assumed that specific IP addresses are allocated to your domain. Xemik Solutions! reserves the right to change or remove any and/or all IP addresses.
- b. Where Xemik Solutions! changes or removes any IP address it shall use all reasonable endeavours to avoid any disruption to the Customer.

## 6. Service Levels and Data Backup

- a. Xemik Solutions! shall use all reasonable endeavours to make the server and the Services available to the Customer 100% of the time, but because the Services are provided by means of computer and telecommunications systems, Xemik Solutions! makes no warranties or representations that the Service will be uninterrupted or error-free, and Xemik Solutions! shall not, in any event, be liable for interruptions of Service or downtime of the server.
- b. Web hosting accounts include a certain amount of data transfer, if you exceed this amount in any one month your account may be deactivated until you have upgraded to an account that has more data transfer included.
- c. Should your account use more than 5% of the servers processing power and as a result have a detrimental effect on other customers we will discuss with you alternative solutions for your hosting requirements.
- d. Web hosting accounts that are prohibited from hosting file distribution websites, adult content orientated websites, hosting banners, graphics or cgi scripts for other websites, storing pages, files or data as a repository for other websites, reselling or giving away web space under a domain, sub-domain or directory.
- e. Xemik Solutions! is not responsible for customer programming issues other than ensuring that programming languages such as Perl, PHP and ASP are installed and functioning on the web hosting system.
- f. Xemik Solutions! does not provide data restoration facilities for individual customers. Although every effort is made to ensure data is backed up correctly Xemik Solutions! accepts no responsibility for data loss or corruption. It is the Customer's sole responsibility to ensure that they have backups of the data that they upload to the webspace.

## 7. Acceptable Use Policy

- a. The Website and use of the Services may be used for lawful purposes only and the Customer may not submit, publish or display any content that breaches any law, statute or regulation. In particular the Customer agrees not to:
  - use the Services or the Website in any way to send unsolicited commercial email or "spam", or any similar abuse of the Services;
  - send email or any type of electronic message with the intention or result of affecting the performance of any computer facilities;
  - publish, post, distribute or disseminate defamatory, obscene, indecent or other unlawful material or information, or any material or information which infringes any intellectual property rights (for the avoidance of doubt this includes licensed software distributed as Warez), via the Services or on the Website;

# xemik.net Terms and Conditions

- threaten, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
  - engage in illegal or unlawful activities through the Services or via the Website;
  - make available or upload files to the Website or to the Services that the Customer knows contain a virus, worm, trojan or corrupt data;
  - obtain or attempt to obtain access, through whatever means, to areas of xemik.net or the Services which are identified as restricted or confidential. This includes leaving your home directory whilst using SSH access to servers.; or
  - operate, or attempt to operate, IRC bots or other permanent server processes.
- b. The Customer has full responsibility for the content of the Website. For the avoidance of doubt, Xemik Solutions! is not obliged to monitor, and will have no liability for, the content of any communications transmitted by virtue of the Services.
- c. If the Customer fails to comply with the Acceptable Use Policy outlined in Clause 7(a), Xemik Solutions! shall be entitled to withdraw the Services and terminate the Customer's account without notice.

## 8. Alterations and Updates

All alterations and updates to the Website shall be made by the Customer using the online account management facility, FTP access or SSH access where available. The Customer will be issued with a user name and password in order to access the account. The Customer must take all reasonable steps to maintain the confidentiality of this user name and password. If the Customer reasonably believes that this information has become known to any unauthorised person, the Customer agrees to immediately inform Xemik Solutions! and the password will be changed.

## 9. Warranties

- a. The Customer warrants and represents to Xemik Solutions! that Xemik Solutions!'s use of the Content or the Customer Software in accordance with this Agreement will not infringe the intellectual property rights of any third party and that the Customer has the authority to license the Content and the Customer Software to Xemik Solutions! as set out in Clause 6(e).
- b. All conditions, terms, representations and warranties that are not expressly stated in this Agreement, whether oral or in writing or whether imposed by statute or operation of law or otherwise, including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded. In particular and without prejudice to that generality, Xemik Solutions! shall not be liable to the Customer as a result of any viruses introduced or passed on to the Customer.

## 10. Indemnity

The Customer agrees to indemnify and hold Xemik Solutions! and its employees and agents harmless from and against all liabilities, legal fees, damages, losses, costs and other expenses in relation to any claims or actions brought against Xemik Solutions! arising out of any breach by the Customer of the terms of this Agreement or other liabilities arising out of or relating to the Website.

## 11. Limitation of Liability

- a. Nothing in these terms and conditions shall exclude or limit Xemik Solutions!'s liability for death or personal injury resulting from Xemik Solutions!'s negligence or that of its employees, agents or sub-contractors.
- b. The entire liability of Xemik Solutions! to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the charges paid for the Services under this Agreement in respect of which the breach has arisen.
- c. In no event shall Xemik Solutions! be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage

# xemik.net Terms and Conditions

whatsoever. This shall apply even where such a loss was reasonably foreseeable or Xemik Solutions! had been made aware of the possibility of the Customer incurring such a loss.

## 12. Term and Termination

- a. This Agreement will become effective on the date the service is ordered and shall continue for a minimum term of 12 months and will be automatically renewed at the end of this and subsequent 12 month periods.
- b. The Customer may terminate this contract at any time prior to renewal by writing to Xemik Solutions! stating their intention to terminate the Agreement. Such notice **must** be received by Xemik Solutions! no less one month prior to the renewal date.
- c. Xemik Solutions! may except termination of the Agreement outside of the above period of notice, but the Customer will be liable for costs incurred as a result of the late notice. These charges include, but are not limited to, domain name renewal charges. Where Xemik Solutions! Ltd accepts such notice, a fee of £25 (+VAT) per hosting package will become payable to facilitate the transfer out of the domain name(s), and is due immediately such notice is accepted by Xemik Solutions! Ltd.
- d. Xemik Solutions! shall have the right to terminate this Agreement with immediate effect by notice in writing to the Customer if the Customer fails to make any payment when it becomes due.
- e. Either party may terminate this Agreement forthwith by notice in writing to the other if:
  - the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or
  - the other party commits a material breach of this Agreement which cannot be remedied under any circumstances; or
  - the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or
  - the other party ceases to carry on its business or substantially the whole of its business; or
  - the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.
- f. Any rights to terminate this Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of this Agreement as at the date of termination.
- g. On termination all data held in the customers account will be deleted.

## 13. Assignment

- a. Xemik Solutions! may assign or otherwise transfer this Agreement at any time.
- b. The Customer may not assign or otherwise transfer this Agreement or any part of it without Xemik Solutions!'s prior written consent.

## 14. Force Majeure

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, the act or omission of any Internet Service Provider, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a

# xemik.net Terms and Conditions

reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

## 15. Severance

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

## 16. Notices

Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the address of the other party as appearing in this Agreement or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served two days following the date of posting.

## 17. Entire Agreement

This Agreement contains the entire Agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. This Agreement may be updated without notice.

## 18. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

## 19. Distance Selling Regulations

All services supplied by Xemik Solutions! are excluded from the Distance Selling Regulations that are outlined in the Distance Selling Act.

## 20. Domain Name Registration

- a. Domain names are not deemed to be successfully registered until they appear in the relevant whois database of the top level domain name registrar. In the event that a domain name is unavailable when we attempt to register it, Xemik Solutions! will provide a full refund for that domain name.
- b. After the initial registration period, Xemik Solutions! is not responsible for any subsequent charges relating to the Customer's domains residing on xemik.net at the time of the charge. These charges include, but are not restricted to, registration renewal. The Customer agrees to reimburse Xemik Solutions! for these charges immediately they occur, and at the rates chargeable by Xemik Solutions! at the time that the charge is incurred.

## 21. Privacy Policy

To protect your [privacy](#) we will not distribute your details to third parties, unless required to do so by law.

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To order your domain and web hosting package goto <http://whois.xemik.net/whois/>.

Alternatively, you may call us on 01377 217603, or email us at [sales@xemik.net](mailto:sales@xemik.net).

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