

# **WebDosh Terms and Conditions**

## **Disclaimer**

By interacting, browsing or accessing any of the services that are provided by this website or WebDosh, the Client accepts and agrees to be bound by the Terms and Conditions that are set out below, without limitation or qualification. It should be noted that WebDosh retains the right to amend these terms and conditions at any time without notice to the Client.

These Terms and Conditions contain legal obligations; therefore it is advised that the Client read it carefully. All notices or further communications in respect to these terms and conditions must be in writing, and must be delivered by hand; mailed postage pre-paid, either by registered or certified mail, return receipt requested; or by overnight courier; to Legal Counsel at the mailing address detailed on the Contact page of this site.

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## **1. In this document:**

WebDosh refers to WebGate Technologies Pty Ltd ACN 151 377 954 Trading As "WebDosh";

Client includes the directors and relevant associated parties that enlist the use of services provided by WebDosh;

Services refers to any goods and/or services that are supplied by WebDosh to the Client pursuant to the order of the Client and any other goods and/or services supplied by WebDosh incidental to the supply of any or all of the goods and/or services ordered by the Client; and

Terms refers to these terms and conditions.

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## 2. General

- (a) Any order received for Services to be supplied by WebDosh (whether oral or written) is deemed to be an order incorporating these Terms to the exclusion of all other terms and conditions, prior to discussions, representations, understandings or agreements regarding the Services.
- (b) WebDosh reserves the right to amend these Terms at any time.
- (c) No agreement is valid between the Client and WebDosh regarding the supply of the Services, until an order is received and accepted in writing by WebDosh.
- (d) The Client may not cancel an order processed by WebDosh, without written authority by WebDosh. The Client agrees to indemnify WebDosh in full against all loss (including loss of profit), costs (including labour, damages, charges and expenses) that WebDosh may incur as a result of cancellation.

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## 3. Description

Any description of the Services is given by way of identification and will not constitute a contract of sale by description.

WebDosh retains the right to correct any error or omission, in any sales information, quotation, invoice or other document, issued by WebDosh without any liability to WebDosh.

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## 4. Payment

- (a) The Client must pay all invoiced amounts for Services within 14 days of receiving an invoice from WebDosh. The Client agrees to pay all amounts incurred by the

Client or any incurred as a result of the Username and password associated with the Client (whether authorised or not).

- (b) The Client agrees that all payment amounts are non-refundable.
- (c) All amounts owing and outstanding by the Client to WebDosh on any account become immediately due and payable (without notice). WebDosh reserves the right to refuse to supply or re-supply, or to suspend or cease the supply of any Service(s) (as appropriate) until all amounts owed or owing by the Client to WebDosh are paid to WebDosh in full in cleared funds.
- (c) The Client agrees to pay for any collection fees or charges (including legal fees and charges on a solicitor / client basis) WebDosh incurs in attempting to recover payment(s) owed by the Client.

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## **5. Technical Advice**

WebDosh assumes no liability for any technical advice, recommendation, information or assistance given, or the results obtained there from. Any advice given by WebDosh to a Client is given at the sole risk of, and subject to verification by, the Client and the Client hereby indemnifies and keeps indemnified WebDosh from and against any loss, damage cost or other expense of whatsoever nature in respect of the application of such advice by the Client.

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## **6. Warranties**

- (a) Subject to the provisions of the Trade Practices Act 1974 (Cth) and any other relevant and applicable State and/or Commonwealth legislation (Statutory Provisions): WebDosh warrants that reasonable efforts will be made to ensure that

the Services will be: provided with due care and skill; and of merchantable quality.

(b) WebDosh does not warrant that:

the Services will be uninterrupted or error free;

the Services will meet the Client's requirements, other than as set out in this agreement;

the Client's customers are entitled to use the credit card information they submit on the Client's website.

(c) The Client warrants that:

The Client will conduct such tests and computer virus scanning as may be necessary to ensure that data uploaded or downloaded by the Client from or to WebDosh server(s) does not contain any virus and will not corrupt the data or systems of any person in any way;

The Client will keep secure at all times all passwords and cryptographic keys used to access, process and download data from WebDosh server(s);

The Client will follow all cryptographic key management procedures specified by WebDosh;

The Client is solely responsible for persons accessing the Client's website and account and must not refer complaints or inquiries in relation thereto to WebDosh; and

all information and details the Client has supplied to WebDosh are true and correct.

WebDosh does not warrant the quality, accuracy or completeness of any information on this website; such information is provided "as is". This website may include inaccuracies or typographical errors. At no point shall WebDosh be held liable for any damages whatsoever, howsoever caused, arising directly or indirectly in connection with this website or its use including special, indirect or consequential loss or damage, or loss of profit, business, revenue, goodwill or anticipated savings.

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## 7. Security of Cardholder Data

We are responsible for ensuring the security of Card Holder Data (defined as a primary account number, expiry and CVV) in our possession and will maintain all reasonable administrative, technical and physical processes to protect all information regarding you and your customers that is stored in our systems from unauthorized access. We cannot guarantee that unauthorized third parties will never be able to circumvent those measures or use such personal information in this case. You agree that you provide this personal information regarding you and your customers at your own risk.

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## 8. Liability

- (a) All conditions and warranties expressed or implied by the Statutory Provisions, law, trade, custom or usage, are expressly excluded to the maximum extent permitted by law.
- (b) WebDosh is not liable for, and the Client indemnifies WebDosh from and against, any damage or loss (including all direct and indirect damages, losses, costs and expenses) incurred by the Client after the Services have been provided, except to the extent that such damage or loss is a direct result of WebDosh's express instructions.
- (c) WebDosh's liability for a breach of a condition or warranty implied into these Terms by the Statutory Provisions is limited to the full extent permitted by law to either of the following as determined by WebDosh in absolute and sole discretion:

The replacement of the Services or the resupply of equivalent Services;

Repair of the Services or payment of the cost of having the Services repaired;

Webdosh Terms and Conditions- 5/01/18- Page 5

Refunding the payment made by the Client, or part of that payment (where appropriate), for the Services ordered, or offering credit where payment has not been made.

### 8.1 Indemnity

The Client indemnifies WebDosh and keeps WebDosh indemnified against all claims, suits, actions, demands, loss, costs, damage to property, expenses (including legal expenses on a full indemnity basis), judgments and awards made against WebDosh or incurred by WebDosh to the extent that such liability is caused by:

The Client's breach of the Terms;

The Client's (including employees and customers of the Client) acts or omissions (whether negligent or not);

any material or information issued from or to the Client using the Services, and the Client acknowledges that WebDosh does not vet, review or approve any such material or information and that the Services are used at the Client's risk;

The Client indemnifies WebDosh and keeps Webdosh indemnified from and against all claims, tort, liability and expense on account of any injury or damage except for the portion of the damage directly caused by WebDosh's negligence.

This clause 8 constitutes a continuing indemnity and is in addition to any other rights WebDosh may have, and the Client agrees to the burden of proof in respect to any alleged defect in the Services.

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## **9. Suspension**

WebDosh and or its Acquiring Partners may suspend the Service (or any part thereof) or disconnect or deny the Client access to the Service to remedy any defect or failure or to improve the Service, or in any other instance WebDosh deems necessary, or if the Client is in breach of the Terms. The Client will remain liable for all charges and fees throughout any period of suspension.

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## **10. Appointments**

For the purposes of providing the Services, WebDosh may appoint other persons or entities to manage or carry out certain parts of the Services on WebDosh's behalf and may remove any persons or entities such appointed.

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## **11. Merchant Account**

The Client will be required to obtain (if not obtained already) a merchant account from a banking institution in order to receive the Services. The Client agrees to abide by the terms and conditions of such an account at all times.

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## **12. Procedures**

The Client must comply with the directions and procedures that WebDosh provides in regard to the use of the Services.

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## **13. Intellectual Property**

- (a) The Client agrees that nothing in these Terms transfers or assigns any intellectual property rights from WebDosh to the Client.
- (b) Webdosh either owns the intellectual property rights in the underlying HTML, audio clips, text, Java scripts and other content that is made available to the Client on this website, or has obtained the permission of the owner of such intellectual property to be utilized on this website.
- (c) the Client acknowledges and agrees that it does not have any rights in the intellectual property in or associated with WebDosh, the underlying HTML, audio clips, text, Java scripts and other content made available on this website other than pursuant to the Licence under these Terms and Conditions.

Webdosh Terms and Conditions- 5/01/18- Page 7

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## **14. Intellectual Property Notice.**

Copyright © 2011 WebDosh all rights reserved. Any copying, republication or redistribution of such content is expressly prohibited without the prior written consent of the copyright owner.

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## **15. Spam**

WebDosh may refuse, suspend or cancel the Services, or take any other action deemed necessary, immediately if:

The Client, or any user of the Client's website, uses and/or used the Services for the purposes of spamming;

if any other person has used WebDosh server(s) or the Services for the purposes of spamming;

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## **16. Credit Check**

Where necessary the Client consents to, and agrees to provide the necessary assistance for, WebDosh to obtain a credit report from a recognised credit reporting agency containing personal information for business purposes, including the assessment of an order for Services or collection of overdue accounts.

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## **17. Users**

Without prior written consent from WebDosh, the Client will not operate more than one business from a WebDosh account established for the Client.

## **18. Prices and Taxes**

(a) In this clause the terms 'GST', 'supply' and 'taxable supply' have the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

(b) All prices and quotes provided by WebDosh are estimates only and do not constitute an agreement to supply Services in accordance with that price/ quote and are subject to alteration.

(c) Unless expressly stated otherwise all prices are exclusive of GST. The amount to be paid or other consideration to be provided to WebDosh for any taxable supply WebDosh makes that is governed by or connected with these Terms must be increased by an amount equal to any GST which WebDosh become liable to pay in



respect of that supply so that WebDosh retain after the payment of GST the amount which WebDosh would have been entitled to receive but for our obligation to pay GST.

- (d) Unless expressly stated otherwise all fees are billed on a per transaction basis.
  - (e) The Client acknowledges and agrees that WebDosh may apply a retail margin to the merchant service fee declared by the Client's acquirer.
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## **19. Miscellaneous**

- (a) Any right created by the Terms may only be waived in writing and signed by the party granting the waiver.
- (b) The Client may not assign any rights and/ or obligations under this agreement without prior written consent from WebDosh.
- (c) Unless otherwise stated all references to amounts of money are references to Australian currency.
- (d) The Terms are governed by the laws applicable in Queensland, Australia.
- (e) If any part or provision of the Terms or their application to any person or circumstance is illegal or unenforceable the part or provision will be interpreted as may be necessary to ensure it is not illegal or unenforceable and if any part or provision can not be so interpreted then it will be severed from the Terms and the remaining provisions will continue in force.

## **20. Confidentiality**

The Client agrees to keep confidential (and not disclose or use) and take all reasonable steps to ensure that employees, agents etc keep confidential, at all times all information regarding WebDosh including without limitation the affairs, systems, procedures, strategies, customers and pricing ('Confidential Information') related to WebDosh. The obligations of confidentiality do not apply if the Confidential Information is already in the public domain (other than as a result of a breach of this or a similar agreement) or the Client is required to disclose such information by any law or court order.

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## 21. Force Majeure

WebDosh is not liable for any failure to perform or delay in performing its obligations under these Terms if that failure is due to anything beyond reasonable control of WebDosh which includes, without limitation, strikes, lockouts, shortages of raw materials, fuel, power, labour, transport, acts of God, fire, riot, explosion, accident, sabotage, breakdowns or machinery. A force majeure event does not affect either party's obligation to make any payment.

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## 22. Limited License

- (a) Subject to compliance with these Terms and Conditions, WebDosh grants the Client a limited license to display, print, download and use the underlying HTML, text, audio clips and other content on the Client's computer, that is made available to the Client on this website, for non-commercial, personal, or educational purposes only (Licence), provided that:

The Client does not modify, alter or deface any such content; and

The Client includes and displays on each copy of such content, the associated copyright notice and its limited License.

Webdosh Terms and Conditions- 5/01/18- Page 10

No other use is permitted.

- (b) Without limiting the generality of the foregoing, the Client may not:

Make any commercial use of such content;

Include such content in or with any product that the Client creates or distributes; or

Copy such content onto any other website (this includes websites owned by the Client).

- (c) Notwithstanding the above, nothing contained in this License shall be construed as conferring any right under any copyright of WebDosh or any other person who owns the copyright in content provided on this website.

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## **23. Registration, Accounts and Passwords**

(a) WebDosh provides services and related features that may require registration. Should the Client choose to register for such services or related features, the Client agrees to provide accurate and current information as required by the relevant registration process, and to promptly update such information as necessary to ensure that all information is kept accurate and complete. The Client agrees to be responsible for the following:

Maintaining the confidentiality of any passwords or other account identifiers owned by the Client.

Maintaining the confidentiality of all activities that occur under the account that is associated to the Client.

(b) The Client agrees to notify WebDosh of any unauthorized use of the Client's password or account. WebDosh at no point shall be held responsible or liable, directly or indirectly, for any loss or damage of any kind incurred as a result of, or in connection with, the Client's failure to comply with this section.

## **24. Trade-Marks**

"WebDosh" is a trade-mark of WebGate Technologies Pty Ltd. The names of all other products and/or services mentioned on this website are the trademarks of their respective owners. The displays of trade-marks or trade names on this website do not convey or create any license or other rights in these marks or names. Any unauthorized use of these marks or names is strictly prohibited.

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## **25. No Endorsement**

Links or other material and content found on this website is not, and is not intended as, an endorsement of any third party products or services described on this website. Any opinions expressed in such material and content are those of its author(s) and do not necessarily reflect those of WebDosh.

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## **26. Submission of Confidential Information**

(a) All information that is transmitted to WebDosh through this website becomes the exclusive property of WebDosh, which may be used for any purpose without restriction or compensation.

(b) Information transmitted to this website may be intercepted by third parties. You should transmit such information by other means if you are concerned about its confidentiality.

## **27. Privacy**

The details on how Client information is collected, used and disclosed by Webdosh can be found in the Privacy Statement.

As we plan to ensure our privacy policy remains current, this policy statement is subject to changed. We may modify this privacy policy at anytime, in our sole discretion and all modifications will be effective immediately upon our posting of the updated document on the website.

Please make sure to return periodically to our website to review the current Privacy policy statement.

If you have any questions at anytime about our Privacy Policy statement or the use of your personal information, you may contact us at; [assistance@webdosh.com](mailto:assistance@webdosh.com)

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## **28. Commissions**

Webdosh may pay referral payments/commissions to those opportunities where the referred Business is approved by their nominated merchant acquiring/ Banking partner and accepts the conditions outlined in Webdosh's Merchant service Agreement for processing card payments plus Terms and Conditions.

If company is a referred merchant to Webdosh then the merchant agrees for Webdosh to disclose the net margin obtained of the MDR (Merchant discount rate).