

Please read these Terms and Conditions carefully. These Standard Terms and Conditions are deemed to be included in any agreement you enter into with OPMC Limited for Products and Services you purchase from us ("Agreement").

## Part A – Standard Terms and Conditions

### 1. Definitions

- "We" and "us" means OPMC Limited, and "you" means the customer ("Customer") purchasing Products and/or services ("Products" and "Services" respectively) from OPMC Limited under any agreement.
- OPMC Limited and the Customer may each be referred to herein as a "Party" and collectively as the "Parties".
- "OPMC Limited Web Site" or "Our Site" means the web site located at <http://www.opmc.co.nz>.
- "Information" means any electronic or paper based files containing Customer, or OPMC related knowledge.
- "SLA" stands for Service Level Agreement, and is a separate contract to any other terms, with a monthly fee.
- "Third Party Provider" means any business, individual or otherwise, that is neither OPMC Limited nor the Customer.
- "Shopping Cart" means the monthly charged service provided by OPMC Limited that allows the Customer to sell their products and services via the internet.
- "Informant" means the monthly charged service provided by OPMC Limited that allows the Customer to create and send out e-mail newsletters to their customers.
- "SPAM" means e-mail which is sent by the Customer using the services provided by OPMC Limited, but is sent without the implicit or explicit consent of the person receiving the e-mail.
- "Agreement date" means the date at which the Customer has agreed, verbally, electronically or by some other form of communication, to these Terms and Conditions.

### 2. Entire Agreement

These Terms and Conditions together with any Agreement, SLA, schedule and any registration information supplied by you constitute the entire understanding and agreement between the Parties and supersede any and all prior or contemporaneous oral or written communications with respect to the Products and Services.

If any provision of these Terms and Conditions, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of these Terms and Conditions, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

In the event of any inconsistency between these Terms and Conditions and any SLA in respect of a particular Product or Service, the terms of the SLA shall take precedence.

### 3. Commencement and Termination

These Terms and Conditions will commence on the earlier of:

- i. the date we accept your application or
- ii. the date on which you start to use the Product or Service.

These Terms and Conditions will continue to apply indefinitely unless terminated under one of the following events:

- i. Upon the expiration of the initial or any successive term by you notifying us at least thirty (30) days prior to the expiration of the then current term that you desire to terminate the Agreement.
- ii. By us notifying you with at least thirty (30) days notice that we desire to terminate the Agreement, with or without cause.
- iii. Despite paragraphs (i) and (ii), we may terminate the Agreement, upon giving you **one month's notice**, in relation to any or all Products and Services provided by us to you if:
  - a. in our sole discretion we deem that you are in breach of these Terms and Conditions and/or the Agreement and have not remedied such breach within 10 days of being notified of such breach by us;
  - c. If in our sole discretion you have contravened our Acceptable Use Policy.

- iv. Despite paragraph (iii), we may terminate the Agreement **immediately** if a receiver, provisional liquidator, administrator or other like person is appointed over any of your undertakings or assets or if you enter into arrangement with any of your creditors or any class of your creditors or you become insolvent or otherwise are unable to pay your debts when they fall due.
- v. If you wish to terminate the Agreement following notification of a modification to these Terms and Conditions in accordance with clause 4 below within 7 days of receiving notification.
- vi. If the Agreement is terminated in accordance with clause 9.
- vii. If your account is unpaid and overdue in accordance with clause 9v.
- viii. Where you desire to terminate the agreement prior to the expiration of the initial term, by you notifying us with at least thirty (30) days notice provided that you pay us the Fees which would have been due until the expiration of the initial term, such fees to be calculated according to the formula:
  - $(B \times C) + ((B/A) \times D) = \text{Termination Fees}$
  - Where:
    - A = Total contract term
    - B = Months remaining in contract term
    - C = Monthly Fee
    - D = Waived Setup Fee
- On termination of the Agreement, we will cease providing the Product or Service to you, and all amounts which you owe to us will immediately become due and payable.

#### 4. Modification

We may modify any of these Terms and Conditions at any time and at our sole discretion. You will be notified by email or in writing. Modifications may include, but are not limited to, changes in the scope of available Services, pricing schedules and payment procedures. If any modification is unacceptable to you, you may terminate the Agreement as provided in clause 3; should you so terminate, the changes we have announced shall nevertheless become effective unless we agree, in writing, to the contrary. Your continued use of the Products or Services following our notification of the changes will constitute binding acceptance of the change.

#### 5. No Warranties

Except where you have purchased an SLA specifically overriding the provisions of this clause, we will utilise our best efforts to maintain acceptable performance of the contracted Products or Services, but we make absolutely no warranties whatsoever, express or implied, including warranty of merchantability or fitness for a particular purpose.

We do not guarantee continuous Service, Service at any particular time, or integrity of data stored or transmitted via our systems or via the internet.

#### 6. Indemnity and Limitation of Liability

i. You will indemnify and hold harmless OPMC Limited and its employees, agents and sub-contractors, against any liabilities (this includes any judgement, liability, loss, costs claims or damage; including litigation costs and reasonable legal fees, and excluding indirect or special losses or profits, business revenue, goodwill or anticipated savings, consequential or indirect loss) resulting from or arising out of your use of the Products and Services or any other obligation under these Terms and Conditions or the Agreement, or any breach of your obligations under these Terms and Conditions or the Agreement.

ii. OPMC Limited assumes no liability for any loss, injury, claim, liability or damage of any kind including loss of business, lost profits, lost data, or failure of security resulting in any way from your use of the Services, including without limitation any errors or omissions, any content, any delay or failure of performance, or the unavailability or interruption of Service. Accordingly, OPMC Limited shall not be liable for direct, indirect, special, incidental, consequential, punitive or exemplary damages of any kind whatsoever, whether or not foreseeable (including, without limitation, lawyers' fees) in any way due to, resulting from, or arising in connection with the Services or the failure of a party to perform its obligations, regardless of any party's negligence. Termination of the Agreement shall be your sole and exclusive remedy for any and all damages or injury.

iii. OPMC Limited will not be liable for the inadvertent disclosure of or corruption or erasure of data transmitted or received or stored on our system.

## 7. Software

- i. To the extent that any of our Products or Services contain any software that we supply to you, we licence that software to you on a non-exclusive, non-transferable basis for the term of the Agreement, solely for your use of that Product or Service.
- ii. You must use the software only on such equipment as we may designate for its use. We are not responsible for the installation or support of the software. You must use the software in accordance with any directions we provide to you from time to time.
- iii. We or our suppliers retain ownership of the software at all times, whether in its original form or as modified. You must not, in whole or in part, copy, attempt to reverse-engineer or modify, or attempt to combine or incorporate in any other program or system, the software without our written consent.
- iv. You must protect the software and related documents at all times from unauthorised access, use or damage.

## 8. Confidentiality

- i. You must keep any information we provide to you, which is marked confidential or which you ought reasonably to know is treated by us as confidential, from disclosure to any third party and use that information solely for the purposes of using the Products or Services. You consent to us obtaining urgent interlocutory relief to restrain any breach or anticipated breach by you of these confidentiality obligations.
- ii. You acknowledge that all intellectual property rights obtained or provided by us and used in the provision of the Products and Services are and shall remain our sole property and you shall do all such things as are necessary to perfect our title to these intellectual property rights. You must return or delete from media, all those intellectual property rights at our request.

## 9. Your Obligation to Pay Us

In return for us providing these Products and Services to you, you must pay us the relevant fees, charges and costs notified to you and as may be amended by us from time to time ("Fees"). We will send you notice in writing to notify you of any increase in these Fees 30 days before the new fee takes effect. If you do not agree to pay those increased Fees you must, within 20 days of receiving that notice from us notify us in writing or by email that you do not accept the increase. Upon receiving that notice from you, unless agreed by us, your right to use the subject Products and Services will cease. In the event that no other Products and Services are then the subject of our agreement, the Agreement will immediately terminate. If we do not receive any notices from you in accordance with this clause and you continue to use the Services after 20 days from our initial notification, you agree that you are deemed to have consented to the increase in Fees.

Despite the provisions of this clause:

- i. You are solely responsible for the use of the Products and Services and for all payment of any Fees arising from the use or provision of the Products or Services, whether or not the user had your authority.
- ii. Records held and logging procedures adopted by us in relation to usage by or provision of your Products and Services are prima facie evidence that you have used or ordered that Product and Service as indicated.
- iii. We will endeavour to bill you for your use or our provision (as the case may be) of Products and Services as follows:
  - a. one month in advance for recurring charges;
  - b. one month in advance for variable usage charges;
  - c. where you agree to pay us by credit card, your credit card will be debited the due amount on the due date stated on the invoice;
  - d. where you have arranged a credit account with us, payment will be due on the due date stated on the invoice. If your account is not paid within 10 days of the due date, we reserve the right to charge a late payment fee on any overdue amounts on an invoice at the rate of 15% per annum of the amount overdue, calculated from the due date to the date of actual payment in full. You agree that this late payment fee is a genuine pre-estimate of damage we will suffer as a result of your late payment and is not a penalty. In addition, we may impose a charge on you to cover our reasonable expenses and costs incurred in enforcing any failure or delay in your payment.

- iv. You must pay Goods and Services Tax and any taxes, duties, stamp duties, imposts, levies or government charges relating to the Agreement or the supply or usage of the Services or Products.
- v. If your account is unpaid in part or in whole for a period of one month from the due date, we reserve the right to terminate your access to the Products and/or Services at any time in our discretion and to refer your information to a debt collection agency or credit reference agency without notice to you.
- vi. You are responsible for the cost of any communication expenses you incur to access the Products or Services.
- vii. Despite any of the provisions of this clause 9, in the event that you fail to pay your accounts by the due date and we refer your failure to any debt collection agency or other like body, in the event you seek to reconnect to the Products and Services, you acknowledge and agree that we may require that you initially pay such Fees as represent two months in advance for the Products and Services to be acquired by you. Such Fees are payable at the time of re-connection of your Products and Services.
- viii. If you have a genuine dispute in relation to amounts we have charged you, you must pay the undisputed charges and notify us immediately you become aware of any disputed charges. You must give us full details for the reason of dispute as well as evidence of the grounds of dispute. We will investigate the issue and you agree to comply with our good faith decision on any disputes.
- If payment is made for Services that are not used or developed within 6 months of the Agreement date, OPMC Limited reserves the right to cancel your usage of the Services. Additional charges will apply after this time for clients wishing to reinstate the Agreement.

#### 10. Your Use of the Products or Services

You agree that you will at all times abide by the requirements of OPMC Limited's Acceptable Use Policy as published on Our Site and amended from time to time.

You acknowledge that we may be obliged to provide assistance to law enforcement agencies in respect of your acquisition or use of the Products and Services and that you will not make any claim against us in relation to that assistance.

#### 11. Shopping Cart

OPMC is not liable for any of the following:

- i. Information that is lost when this is *not* due to errors/omissions by OPMC Limited, or information that is lost due to any of the acts described in clause 15 below.
- ii. Loss of ordering information
- iii. Loss of revenue resulting from either (i) or (ii) above
- OPMC Limited does not guarantee service levels unless it has entered into an SLA with the Customer, and that SLA specifically outlines the terms of those service levels.

The Customer understands that these Terms and Conditions relate to the use of Products and Services as at the Agreement date. If any of the products and services are upgraded by OPMC Limited and the Customer wishes to take advantage of these upgrades, additional Terms and Conditions may apply at OPMC Limited's discretion.

#### 12. Informant

Informant is a monthly service provided by OPMC Limited which is subject to monthly service fee. Details of the monthly service fee are available on [www.opmc.co.nz](http://www.opmc.co.nz).

Informant is monitored by OPMC Limited. OPMC Limited in its sole discretion will decide on an estimate of Informant's monthly usage for each Customer.

If the Customer's monthly usage is over OPMC Limited's monthly usage limits, OPMC Limited will consult with the Customer and may accordingly charge a different service fee.

The Customer at its sole discretion may wither accept the new service fee or discontinue using Informant.

Informant is governed by OPMC Limited's Acceptable Use Policy, which is available on [www.opmc.co.nz](http://www.opmc.co.nz)

OPMC Limited does not condone the sending of SPAM through the use of its Products and Services.

If OPMC Limited finds that the Customer's usage constitutes SPAM as defined in clause 1 of the Agreement, OPMC Limited reserves the right to cancel Informant at its sole discretion, as per clause 3 of these Terms and Conditions.

### 13. Assignment and Delegation

We may assign or transfer our rights and responsibilities under these Terms and Conditions and the Agreement to any person. We will give you written notice in advance if we intend to do this. We may subcontract the performance of any of our responsibilities under these Terms and Conditions and the Agreement to any person.

You may not assign or transfer any of your rights or responsibilities under these Terms and Conditions and Agreement to any person without our prior written consent.

### 14. Our Rights under these Terms and Conditions and the Agreement

i. We may, at any time and in our absolute discretion, suspend or disconnect your access to the Products or Services, and monitor or intercept your use of the Products or Services, including without limitation any messages you send or receive or data you store or access using those Products or Services if we have reasonable cause to do so.

ii. We may delete that data stored using the Products or Services, in our absolute discretion, if we consider that data to be inappropriate, illegal, offensive or otherwise in breach of any law, standard, regulation or code of practice.

iii. Without limiting clause 12(i) above, we may at any time, without notice, suspend your use or access to part or all of the Products or Services:

- a. for such time as is necessary for any maintenance determined by us to be necessary from time to time, and where possible, after giving you as much advance notice as is reasonably practicable in the circumstances;
- b. to reduce or prevent interference with our systems or the use of Products or Services by others; or
- c. if required to do so, as a result of a direction from any government, law enforcement or other authorities.

iv. You authorise us to obtain credit information from a credit reporting agency and information about your commercial activities or commercial credit worthiness from a business which provides that information to enable us to apply our credit policy. You also authorise us to obtain from and give to any credit providers information about your credit arrangements. This information may include any information about your credit worthiness, credit standing, credit history, credit capacity or other information that credit providers are allowed to give or receive from each other under the Privacy Act, 1993 (as amended from time to time).

v. We may access and store certain content accessible using some of the Products or Services (known as caching) for faster and easy access by you. That content is updated on a regular basis but there may be delays in that updating and therefore cached content accessed by you through the Products or Services may not be the most up to date version.

### 15. Force Majeure

Neither Party shall be deemed in default of these Terms and Conditions or the Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, war, fire, natural disaster, accident, act of government, strikes, unavailability of material, any failure of a Third Party Provider to supply goods or services associated with or comprising a OPMC Limited Product or Service, shortages of or failure to deliver hardware and/or software not attributable to an act or failure to act of the Party seeking the protection of the force majeure or any other cause beyond the reasonable control of such Party, provided that such Party gives the other Party written notice thereof promptly and, in any event, within fifteen (15) days of discovery thereof. In the event of such a Force Majeure, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure.

### 16. Notices

Notices under these Terms and Conditions and the Agreement shall be in writing and shall be deemed given when delivered (i) personally, (ii) by e-mail (with confirmation of receipt), (iii) by overnight mail or conventional mail (registered or certified, postage prepaid with return receipt requested) or (iv) by facsimile.

Notices shall be addressed to OPMC Limited at:

**OPMC Limited**

PO Box 17116

Karori, Wellington

New Zealand 6147

+64 972 3334

opmc@opmc.co.nz

Notices shall be addressed to the Customer at the Postal or Email addresses currently held by OPMC Limited and as supplied by the Customer. It is the Customer's responsibility to ensure that OPMC Limited has up-to-date records of the Customer's details at all times.

#### 17. Governing Law

These Terms and Conditions and the Agreement shall be governed by, and construed in accordance with, the laws of New Zealand, and the Courts of New Zealand shall have sole jurisdiction to hear and determine any disputes arising under or in connection with these Terms and Conditions and the Agreement.

#### 18. Physical Location of Services

OPMC Limited reserves the right to provide all Products and Services from any physical location it chooses. This includes, but is not limited to, physical locations of servers and hosting facilities. OPMC Limited will provide full details of the physical locations of the Customer's Service(s) on request. While OPMC Limited will aim to provide the highest level of service reliability, and has measure in place to monitor this, it is the full responsibility of the Customer to ensure that the physical location of their particular service will not have a negative impact on the day to day running of the Customer's business.

## Part B –Terms and Conditions relating to Domain Names

These Terms and Conditions relate to your use of OPMC Limited to register domain names and provide domain name Services to you.

We will register domain names with the relevant domain name registries when requested to do so by you, subject to:

- The Standard Terms and Conditions contained in Part A;
- The specific Terms and Conditions contained in Part B; and
- The Terms and Conditions of the relevant Registry's Agreement.

### 1. Fees

As consideration for the domain name registration Services provided by us, you agree to pay our current initial registration, hosting and renewal fees according to the OPMC Limited fee schedule which is incorporated into the Agreement by reference and which is published on Our Site.

We will pay the applicable registries all applicable registration and renewal fees on your behalf subject to your compliance with the terms of these Terms and Conditions and the Agreement unless we specifically state otherwise at the time of application.

You will be notified when renewals are due, and it shall be your responsibility to ensure that such fees are paid.

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 start to cancel that domain name. You agree that OPMC Limited shall have no liability whatsoever with respect to any such cancellation.

If at any time fees or other charges payable to the applicable registry or to any other regulatory body for a domain name registered by us on your behalf, shall increase, or any additional fee, tax or charge shall become due and payable to any third party related to a domain name registered by us on your behalf, fees payable by you to us under the Agreement will increase by such amount. All registration fees, once paid to OPMC Limited, are non-refundable.

### 2. Dispute Policy

Except where a .nz domain name is registered with New Zealand Registry Services, you agree to be bound by the current ICANN Domain Name Dispute Policy ("Dispute Policy") which is incorporated into these Terms and Conditions by reference. Any disputes regarding the right to use your domain name will be subject to the Dispute Policy. Where applicable, ICANN may modify the Dispute Policy in its sole discretion at any time. Your continued registration of your domain name after modification to the Dispute Policy becomes effective constitutes your acceptance of those modifications. If you do not agree to such a modification, you may request that your domain name be deleted.

You agree that you will be subject to the provisions specified in the Dispute Policy in effect at the time your domain name is challenged by a third party. You also agree that in the event a domain name dispute arises with any third party, you will indemnify and hold OPMC Limited harmless pursuant to the terms contained in the Dispute Policy.

### 3. Use of Your Information

As part of the registration process, you are required to provide certain information and to update this information to keep it current, complete and accurate. This information includes:

- i. your full name, postal address, e-mail address, voice telephone number, and fax number if available;
- ii. the name of an authorised person for contact purposes in the case of a registrant that is an organization, association, or corporation;
- iii. the IP addresses of the primary name server and any secondary name servers for the domain name;
- iv. the corresponding names of those name servers;
- v. the full name, postal address, e-mail address, voice telephone number, and fax number if available of the technical contact for the domain name;
- vi. the full name, postal address, e-mail address, voice telephone number, and fax number if available of the administrative contact for the domain name;

- vii. the name, postal address, e-mail address, voice telephone number, and fax number if available of the zone contact for the domain name;
- viii. any remark concerning the registered domain name that should appear in the Who is data.

You acknowledge that wilfully providing inaccurate information or wilfully failing to update information promptly will constitute a material breach of these Terms and Conditions and will be a basis for cancellation of your domain name. If you license use of a domain name to a third party, you are nonetheless the holder of record of the domain name and are responsible for providing your own full contact information and for providing and updating accurate technical, administrative, and zone contact information.

You acknowledge that OPMC Limited will make some of the information that you provide during the registration process publicly available as required the relevant domain name registry. Additionally, you acknowledge that the relevant domain name registry may impose guidelines, limits and/or requirements that relate to the amount and type of information that OPMC Limited may or must make available to the public or to private entities. OPMC Limited will not otherwise disclose your information to any third party unless it is required to maintain your domain name. You may request a copy of your information in OPMC Limited's possession to review, modify or update such information.

#### 4. Agents and Licences

You agree that, if your domain name is registered on your behalf by anyone acting as your agent (e.g., an Internet Service Provider, employee, etc.), you are nonetheless bound as a principal by all Terms and Conditions provided herein, including the Dispute Policy.

You agree that if you license the use of your domain name to a third party, you remain the domain name holder, and remain responsible for all obligations under the Agreement.

#### 5. Limitation of Liability

You agree that we will not be liable to you or any other person for any loss that may occur due to:

- any loss of registration of a domain name;
- the use of your domain name;
- access delays or access interruptions to our registration system;
- the non-delivery or mis-delivery of data between you and us;
- events beyond our reasonable control;
- the processing of this application;
- the processing of any modification to the record associated with your domain name;
- the failure of you or your agent to pay any fees hereunder or
- the application of the dispute policy.

further, we will not be liable for any indirect, special, incidental, or consequential damages of any kind (including lost profits) regardless of the form of action whether in contract, tort (including negligence), or otherwise, even if we have been advised of the possibility of such damages. In no event shall our maximum liability exceed the total amount paid by you to us for registration of your domain name during the prior 3 years under the terms of these terms and conditions and the agreement.

#### 6. Indemnity

You agree to defend, indemnify and hold harmless OPMC Limited and any applicable domain name registry, and the directors, officers, employees and agents of each of them, for any loss, damages or costs, including reasonable lawyers' fees, resulting from any third party claim, action, or demand related to your domain name or the use thereof. This indemnification is in addition to any indemnification required under the Dispute Policy.

#### 7. Representation

You represent and warrant that all information provided by you in connection with your registration is complete and accurate. We make no representation or warranties of any kind in connection with the Agreement. We do not represent or warrant that registration of your domain name will immunize you from challenges to your domain name.