



## Terms and Conditions of Use

Grafikedge is a Web Design Company and host of personal and business World Wide Web pages. The goal of Grafikedge is to provide you with the best service possible for an enjoyable Internet experience. These Terms and Conditions are designed to keep Grafikedge and the Internet enjoyable and useful for all of our subscribers. Grafikedge may amend this agreement on an as needed basis by placing an update of this posting at [http://www.grafikedge.com/support/service\\_agreement.html](http://www.grafikedge.com/support/service_agreement.html), and your continued use of Grafikedge's services following each updated posting shall be deemed to be your acceptance of any such modification. Furthermore, it is your responsibility to monitor the "Service Agreement" page of Grafikedge regularly to determine whether the terms and conditions have been modified. If changes to terms and conditions or pricing have been made, these changes will take effect on the date of Client's contract renewal. If you do not agree with the Terms and Conditions of Grafikedge or any modifications or changes to this Agreement, you must immediately stop using Grafikedge's services.

## Terms of Contract

### I. Financial Arrangements

1. Client agrees to the contract for the length specified, beginning upon Grafikedge's receipt by fax, e-mail, or letter. Client agrees to pay Grafikedge for services rendered pursuant to the payment schedule.
2. This agreement will automatically renew for identical successive periods unless canceled in writing or modified by client thirty (30) days prior to the renewal date. Client will receive an invoice for charges and payment is due upon receipt of invoice.
3. Refunds: Please send an email with your reason for cancellation at least 30 days prior to your renewal date. An email will be sent to you asking for confirmation.

For those paying on an annual basis, please keep in mind that if an account has already renewed, you may only be eligible for a pro-rated refund. Grafikedge refunds if the hosting term has more than one month remaining.

4. Initial payment is due with contract. Contract takes effect on the date of receipt of payment, and will be renewed for identical successive periods, starting from the first day of actual service. Any changes made to the Client's package (e.g. extra traffic charges, additional server space, additional e-mail accounts) shall be billed accordingly.

5. Returned checks will be charged a \$20 fee.

6. Unless otherwise specified, invoices for hosting fees and webdesign fees shall be due and payable within 21 days after the date of the invoice. If any invoice is not paid within 31 days after

the date of the invoice, Grafikedge may charge Customer a late fee of \$15 for such invoice. Delinquent accounts may be suspended at Grafikedge's sole discretion. In the event of a suspension of the Services, upon a reactivation request by Customer, Customer shall pay Grafikedge a reactivation fee equivalent to the set-up fee in addition to full payment of the outstanding balance due. Reactivation of services will only be performed during Interland's normal business hours (Monday through Friday, 8:00 am - 6:00 p.m., Eastern Time, excluding holidays.)

7. All orders are subject to acceptance by Grafikedge. An order will be deemed accepted by Grafikedge when confirmation of the order is sent to Customer. Grafikedge may refuse to accept any order, or delay acceptance awaiting completion of conditions Grafikedge may choose to exercise. Such refusal of such conditions may not be unreasonable, however, and Grafikedge agrees to provide Customer with reasonable notice by email or fax of any intent to delay or decline the acceptance of any order.

## II. Material and Products

1. Grafikedge makes no warranties or guarantees of any kind, whether expressed or implied for the service it is providing. Grafikedge also disclaims any warranty of merchantability or fitness for particular purpose and will not be responsible for any damages that may be suffered by the Client, including loss of data resulting from delays, non-deliveries or service interruptions or gaps by any cause or errors or omissions of the Client. Grafikedge is not responsible for any loss, erasure, or corruption of Client's data or files whatsoever.

## III. Service Usage

1. Prohibited Uses. Users may not:

(a) Utilize the Services to send mass unsolicited e-mail to third parties.

(b) Utilize the Services in connection with any illegal activity. Without limiting the general application of this rule, Users may not:

i) Utilize the Services to copy material from third parties (including text, graphics, music, videos or other copyrightable material) without proper authorization;

ii) Utilize the Services to misappropriate or infringe the patents, copyrights, trademarks or other intellectual property rights of any third party;

iii) Utilize the Services to traffic in illegal drugs, illegal gambling, obscene materials or any products or services that are prohibited under applicable law;

iv) Utilize the Services to export encryption software to points outside the United

States in violation of applicable export control laws; or

v) Utilize the Services in any manner that violates applicable law.

(c) Utilize the Services in connection with any tortious or actionable activity. Without limiting the general application of this rule, Users may not:

i) Utilize the Services to publish or disseminate information that (A) constitutes slander, libel or defamation, (B) publicizes the personal information or likeness of a person without that person's consent or (C) otherwise violates the privacy rights of any person.

ii) Utilize the Services to threaten persons with bodily harm, to make harassing or abusive statements or messages, or to solicit the performance of acts or services that are illegal under applicable law.

(d) Utilize the Services in connection with any other disruptive or abusive activity. Without limiting the general application of this rule, Users may not:

i) Utilize the Services to cause denial of service attacks against Grafikedge, our network providers or other network hosts or Internet users or to otherwise degrade or impair the operation of the servers and facilities of Grafikedge, our network providers, or the servers and facilities of other network hosts or Internet users;

ii) Post messages or software programs that consume excessive CPU time or storage space;

iii) Utilize the Services to offer mail services, mail forwarding capabilities, POP accounts or autoresponders other than for the User's own account;

iv) Utilize the Services to resell access to CGI script installed on Grafikedge's servers or the servers of our network providers;

v) Utilize the Services to subvert, or assist others in subverting, the security or integrity of any of Grafikedge's systems, facilities or equipment or those of our network providers;

vi) Utilize the Services to gain unauthorized access to the computer networks of Grafikedge or any other person;

vii) Utilize the Services to provide passwords or access codes to persons not authorized to receive such materials by the operator of the system requiring the password or access code;

viii) Utilize the Services to (A) forge the signature or other identifying mark or code of any other person, (B) impersonate or assume the identity of any other person, or (C) engage in any other activity (including spoofing) to attempt to deceive or mislead other persons regarding the true identity of the User (excluding the use of anonymous remailers or Internet nicknames);

ix) Utilize the Services to distribute or post any virus, worm, Trojan horse, or computer code intended to disrupt services, destroy data, destroy or damage equipment or disrupt the operation of the Services;

x) Utilize the Services to conduct port scans or other invasive procedures against any server (except any server for which the User is an authorized system administrator);

xi) Utilize the Services to distribute, advertise or promote software or services that have the primary purpose of encouraging or facilitating unsolicited commercial e-mail or spam;

xii) Utilize the Services to solicit or collect, or distribute, advertise or promote, email address lists for the purpose of encouraging or facilitating unsolicited commercial e-mail or spam;

xiii) Utilize the Services in any manner that might subject Grafikedge or our network providers to unfavorable regulatory action, subject Grafikedge or our network providers to any liability for any reason, or adversely affect the public image, reputation or goodwill of Grafikedge or our network providers, including, without limitation, sending or distributing sexually explicit, hateful, vulgar, racially, ethnically or otherwise objectionable materials as determined by Grafikedge in its sole discretion; or

xiv) Utilize the Services in any other manner to interrupt or interfere with the Internet usage of other persons.

#### IV. Violations

(a) Disclaimer. Grafikedge expressly disclaims any obligation to monitor its Customers and other Users with respect to violations of this Agreement. Grafikedge has no liability or responsibility for the actions of any of its Customers or other Users or any content any User may post on any website.

(b) Reporting Non-Copyright Violations. Grafikedge encourages Users to report violations of this Agreement to us through such abuse mailbox or address as we may provide, including in any such report the name of the offending domain (for example, xyz.com) and the type of abuse (for example, spam, illegal acts, harassment, etc.) in the subject field of the email.

(c) Reporting Copyright Violations. Grafikedge complies with the Digital Millennium Copyright Act (DMCA). Users may report an alleged copyright infringement involving a user by sending a notice that complies with the DMCA to our registered agent for DMCA notices. You may find the address for our DMCA agent through the U.S. Copyright office at the Library of Congress at:

<http://www.copyright.gov/onlinesp/list/index.html>.

(d) Remedies. If Grafikedge learns of a violation of this Agreement, we will respond to the applicable Customer and may, in our sole discretion, take any of the following actions, in

accordance with the severity and duration of the violation:

- i) Warning the Customer;
- ii) Suspending the offending Customer from the Services;
- iii) Terminating the offending Customer from the Services;
- iv) Imposing fees or charges on the offending Customer account in accordance with the applicable service contract;
- v) Removing the offending content; and
- vi) Taking other action in accordance with this Agreement, the applicable service contract or applicable law.

For purposes of clarification, in connection with any allegation that any Customer may have engaged in or used the Services in connection with any illegal activity, we may rely conclusively on a written statement, on letterhead, of a U.S. law enforcement agency and, in such event, will not be obligated to the Customer to inquire into the factual underpinnings of such statement or the legal reasoning of such law enforcement agency.

V. Reservation of Rights. Grafikedge reserves the right to cooperate with appropriate legal authorities in investigations of claims of illegal activity involving the Services, our Customers and other Users. Our company reserves all other rights to respond to violations of this Agreement to the extent of applicable law and in accordance with any applicable contractual obligations.

VI. Charges for Space and Server Traffic Above and Beyond that which are Allocated in Client's Hosting Plan

1. Client agrees that it will be charged and will remit payment for extra server traffic pursuant to the web site hosting package that Client has selected. Client agrees that it will be charged and will remit payment for extra server storage space and extra e-mail accounts pursuant to the web site hosting package that Client has selected. Said charges will be prorated and appear on the following invoice. Charges for extra server storage space and extra e-mail accounts are posted in <http://www.grafikedge.com/hosting.html>.

VI. Termination

1. This Agreement may be terminated by Grafikedge, without cause, by giving the other party 30 days notice via e-mail or fax. In such event, Grafikedge will be required to pay to the other party an amount equal to the unused and prorated portion of service excluding any setup charges. Notwithstanding the above, Grafikedge may terminate the service under this Agreement at any time, without penalty, if the Client fails to comply with the terms of this Agreement. It is the client's

responsibility to point his/her domain to another service provider upon termination, cancellation or discontinuation of service.

## VII. Limited Liability

1. Client expressly agrees that use of Grafikedge's Server is at Client's sole risk. Neither Grafikedge, its employees, agents, resellers, third party information providers, merchants licensers or the like, warrant that Grafikedge's Server service will not be interrupted or be error free; nor do they make any warranty as to the results that might be obtained from the use of the Server service or as to the accuracy, or reliability of any information service or merchandise contained in or provided through the Grafikedge Server service, unless otherwise expressly stated in this Agreement.

2. Under no circumstances, including negligence, shall Grafikedge, its offices, agents or any one else involved in creating, or distributing Grafikedge's Server service be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use the Grafikedge Server service; or that results from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, or transmission or any failure of performance, whether or not limited to acts of God, communication failure, theft, destruction or unauthorized access to Grafikedge's records, programs or services. Client hereby acknowledges that this paragraph shall apply to all content on Grafikedge's Server service.

## VIII. Indemnification

Client agrees that it shall defend, indemnify, save and hold Grafikedge harmless from any demands, liabilities, losses, costs and claims, including reasonable attorneys' fees, ("Liabilities") asserted against Grafikedge, its agents, its customers, servants officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by Client, its agents, employees or assigns. Client agrees to defend, indemnify and hold harmless Grafikedge against Liabilities arising out of

(i) any injury to person or property caused by any products sold or otherwise distributed in connection with Grafikedge's Server;

(ii) any material supplied by Client infringing or allegedly infringing on the proprietary rights of a third party;

(iii) copyright infringement and

(iv) any defective product which Client sold on Grafikedge Server.

## IX. Partial Invalidity

If any provision of this agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect. Grafikedge and Customer agree to renegotiate in good faith any term held invalid and to be bound by mutually agreed substitute provision.

X. Confidentiality

Customer acknowledges that by reason of its relationship with Grafikedge, it may have access to certain products, information and materials relating to Grafikedge's business, plans, customers, software technology, and marketing plans that are confidential and of substantial value to Grafikedge, which value would be impaired if such information were disclosed to third parties. Customer agrees that it will not use in any way for its own account or for the account of any third party, nor disclose to any third party, any such information revealed to it by Grafikedge. Customer further agrees that it will take every appropriate precaution to protect the confidentiality of such information. In the event of termination of this Agreement, there shall be no use or disclosure by the Customer of any such confidential information in its possession, and all confidential documents shall be returned to Grafikedge or destroyed. The provisions of this section shall survive the termination of the agreement for any reason. Upon any breach or threatened breach of this section, Grafikedge shall be entitled to injunctive relief, which relief will not be contested by Customer.

XI. Notices

Except with respect to service of process as set forth in paragraph, all notices may be sent by email, fax, or express mail to the email address, fax number, or address most recently provided and will be effective upon transmission. Evidence of successful transmission shall be retained.

XII. Disputes

The parties shall try to resolve all disputes that might arise out of this agreement in a spirit of cooperation without formal procedures. Any controversy or claim arising out of or relating to this contract or the breach thereof shall be settled by arbitration in accordance with the Uniform Rules for Binding Arbitration of the Better Business Bureau of the Southland (published at <http://www.labbb.org>) in effect at the time of initiation of arbitration, and the judgement upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Further information about BBB arbitration may be obtained by calling the Better Business Bureau in Colton, California at (909) 825-0490.

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Signature of Customer    Company or Organization    Date

\_\_\_\_\_  
Mary Ann Wilson, Owner    Date    Grafikedge    \_\_\_\_\_