

Maytech Communications Limited
Terms and Conditions
for
Business to Business Data Transfer and Related Services

The Contract

1. Who We Are

We are Maytech Communications Limited of Cobbarn House, Eridge Green, Tunbridge Wells TN3 9LA England.

2. Who You Are

You are the individual person, partnership, limited company or other legal entity that has asked us to supply services to you and/or your authorised users.

3. The Services

3.1 The Services available from us include but are not limited to business to business data transfer, storage, archiving and associated peripheral services including encrypted transfers, virus checking and management automations, together with helpdesk services as described on our website (<http://www.maytech.net/>).

3.2 The Services will be provided to you and your authorised users via the Internet and are referred to by us collectively as “the Services” regardless of whether you use one or several of our services.

3.3 The Services are subject to our Acceptable Use Policies (AUP); please see paragraph 13 below.

4. When the Contract Starts

You can sign up for any of the Services either by telephone on 1-800 592-1906 in the USA and Canada or +44 (0)1892 861222 from elsewhere or online at <http://www.maytech.net/>. When you have done this, this contract (as set out in these terms and conditions) starts.

5. Our Commitment to You

When we provide the Services to you we promise to use the reasonable skill and care of a competent provider of such service or services.

Providing The Services

6. Keeping The Services Secure

6.1 When you sign up for the Services you may choose one or more logins and passwords or we may issue you with logins and passwords. These are essential for your secure use of the Services so you must ensure that they are kept confidential, secure and are used in accordance with all relevant instructions.

6.2 If we think there is likely to be a breach of security or misuse of any of the Services we may:

- (a) change any one or more of your passwords and/or
- (b) suspend any one or more username and password access to any of the Services (please also see paragraph 17).

In both cases we will notify you within a reasonable time of the action we have taken.

6.3 If you think that any username or password has become known by someone not authorised to use it, or if any password is being or is likely to be used in an unauthorised way, you must immediately either disable the username and/or password or inform us so that we may take such action as we consider appropriate.

6.4 If any of the information you give to us when you sign up for any and all of the Services changes, including any changes to your payment details, you must inform us at the earliest opportunity.

7. Things We May Have To Do

7.1 We may need to suspend the Services temporarily for operational reasons (e.g. for repairs, planned maintenance or upgrades), but before we do we will give you as much notice as we can. We undertake to restore the Services as soon as possible after any suspension.

7.2 We may have to alter access arrangements or technical specifications associated with the Services for operational reasons; where we need to tell you about this we will give you as much notice as we can. The technical specification will only be changed where this will not adversely affect the performance of the Services.

8. Repairing Faults and Help Desk

Although we attempt to provide you with the best possible quality of service, we cannot guarantee that the Services will never be faulty. However, we will correct all reported faults as soon as we reasonably can. Our normal operating hours for fault repair and help desk service are 08.00 hours to 23.00 hours GMT Mondays to Fridays, excluding bank and public holidays. The email address to use is support@maytech.net and the contact telephone number is 1-800 592-1906 for the USA and Canada or +44 (0)1892 861222 from elsewhere.

Your Obligations

9. Paying Our Charges

9.1 You must pay the charges for the Services. These charges are set out on our website (<http://www.maytech.net>) under the appropriate heading or headings. Except where the price list expressly states otherwise, all prices are shown exclusive of any sales tax, value added tax (VAT) or any other taxes or levies that we may be obliged to charge you. This price list is part of this contract.

9.2 We will begin charging you for each of the Services on the date that the relevant service is made available for you to use.

9.3 You will have to pay the charges within 28 days of the date of our invoice or as otherwise agreed in writing. We may charge daily interest on late payments at a rate of 1.5% per calendar month pro rata.

9.4 You acknowledge that you may be subject to our credit management procedures and that we may, at any time, require you to pay a deposit or provide a guarantee as security for payment of future bills.

10. Users and Volume

10.1 You may set-up as many authorised user accounts for the Services as is permitted by your contract.

10.2 The amount of disk space you may use is as permitted by your contract.

10.3 If you are an FTP-Stream Web Edition user, the volume of data that you may pass through the Services is as permitted by your contract; for all other users there are no specific volume limits.

11. No Mass Distribution

11.1 The Services are not provided for use as a public download service or as a means of mass distribution of files and you must not use the Services or permit them to be used, in this way.

11.2 You must not broadcast or distribute on a website or by any other means any information in respect of logins or passwords, or publish URLs with embedded login and/or password combinations or anything of a similar nature that could facilitate or lead to unauthorised or unlimited access to the Services or access to the Services in contravention of any of our terms and conditions or policies.

11.3 Our file transfer services are highly flexible but you must ensure that your configuration is not open to abuse. For example, you may create public logins that do not require passwords and you may configure your site so that some or all uploaded files are immediately visible for download; combining these facilities could leave your site open to misuse. You must therefore only implement such a configuration or similar within a secure password protected area of your website or intranet.

11.4 You must take all reasonable steps and precautions to prevent anyone else from doing any of the things referred to in paragraphs 11.2 and 11.3 above.

11.5 We reserve the right to suspend without prior notice access to and use of the Services if, in our reasonable opinion, you or any other person are using or attempting to use the Services for purposes other than the distribution of files between authorised users for legitimate commercial purposes.

12 Responsibility

12.1 The data that you and your authorised users send, store or receive through our systems are at all times within your control and remain your responsibility. We do not monitor or control the content of anything that you or others store, send or receive and therefore, to the fullest extent permitted by applicable laws, we disclaim any responsibility for it.

12.2 Should for any reason we be held responsible to any third party or suffer any fine or other penalty in respect of any matter arising from the use of our systems by you or any person permitted by you or any person using access credentials provided to or controlled by you, you will indemnify us for all costs and losses that we may suffer in consequence.

13. Acceptable Use

13.1 You must abide by our Acceptable Use Policy which may be viewed at <http://www.maytech.net/legal.php> and which may be amended from time to time.

13.2 If you do not abide by our Acceptable Use Policy we have the right under paragraphs 16 and 17 to suspend the Services or terminate the contract.

14. Use of The Services

14.1 You must take all reasonable precautions to ensure that no one (including you) uses the Services:

- (a) fraudulently or in connection with a criminal offence;
- (b) to send, knowingly receive, upload, download, store, publish or use any material which is offensive, abusive, indecent, defamatory, obscene or menacing, or in breach of copyright, confidence, privacy or any other rights;
- (c) to cause annoyance, inconvenience or needless anxiety;
- (d) to spam or to send or provide unsolicited advertising or promotional material or, knowingly to receive responses to any spam, unsolicited advertising or promotional material sent or provided by any third party;
- (e) in any way which in our opinion is, or is likely to be, detrimental to the provision of any service to you or any of our customers;
- (f) in an unlawful manner, in contravention of any legislation, laws, licence or third party rights or in contravention of our Acceptable Use Policy which may be found at <http://www.maytech.net/legal.php>; and which may be amended from time to time;
- (g) in a way that does not comply with any instructions that we have given you.

The action we can take if any of the Services is used in any of these ways is explained in paragraphs 16 and 17.

14.2 We may make available to you software, scripts, or HTML or other code that enables you and your authorised users to use the Services. You must not copy or modify this software (unless allowed by law). It is important that you and your authorised users only access the Services through this software or in an alternative way permitted by us, and neither you nor your authorised users are permitted to attempt to circumvent any security measures in any of the Services.

14.3 When we provide you with the Services they, and any associated software, are intended for use only by you and your authorised users. Therefore, you must not re-sell, transfer, assign or sub-license any of the Services or the associated software to anyone else.

15. Your Systems and IP Addresses

15.1 We are not responsible under the contract for providing any technical or other support to your IT systems including your LAN and connection to the Internet.

15.2 Any IP addresses that we allocate to you are for use in connection only with the Services and all rights in those IP addresses belong to us. You must not sell them or agree to transfer them to anyone else or try to do so. If the contract is terminated for any reason the IP addresses will revert to us.

If Things Go Wrong

16. If You or We Break This Contract

16.1 Either you or we can end this contract immediately on notice at any time if the other:

- (a) commits a material breach of this contract which is capable of remedy and fails to remedy the breach within a reasonable time of a written notice to do so; or
- (b) commits a material breach of this contract which cannot be remedied; or
- (c) is repeatedly in breach of this contract; or
- (d) is the subject of bankruptcy or insolvency proceedings or an arrangement with creditors is made or a receiver or administrator is appointed over any of their assets or they go into liquidation.

16.2 We can end this contract with immediate effect if we have previously suspended or terminated your use of any of the Services due to your breach.

16.3 If and when this contract comes to an end for whatever reason or if your account is more than 30 days overdue, we may, without prior notice, withdraw your ability to access the Services and/or quarantine or permanently delete any data remaining in our systems or in systems under our control, arising from your use of the Services.

17. Suspension of the Services

17.1 Instead of terminating any of the Services under paragraph 16 we can choose to suspend any or all of them. If we do this we can still end this contract at a later date. If we decide to suspend any of the Services or password or username (for any reason), we will restore them (if neither you nor we have ended this contract) when you satisfy us that you will only use the Services as we have agreed.

17.2 If we decide to suspend any of the Services under paragraph 16 or under this paragraph, this contract will continue during the period of suspension and you will have to pay all relevant charges.

18. Matters Beyond Your or Our Reasonable Control

If either party to this contract cannot do what it has promised in the contract because of something beyond its reasonable control, it will not be liable for this. If this continues for more than 14 days, the other party can terminate this contract immediately by giving the non-performing party written notice. If the events continue for more than three months, the non-performing party can terminate this contract immediately by giving the other party written notice. The provisions of this paragraph do not apply to your obligations under paragraph 9, Paying Our Charges.

19. Protecting Your Data

19.1 When your data passes through or is stored on our systems we will look after it with the reasonable skill and care of a competent provider of that part of the Services. However, you must not rely upon any of our systems or services as the sole or primary repository for any data and we will not be responsible for any transient or permanent loss, damage, corruption or delay to, or misdirection of or any interference with, data passing through or stored on our systems or the systems of our sub-contractors, business partners or any other entity.

19.2 For your part, you must make all reasonable efforts at all times to protect and verify your data; in particular you must make sufficient, verified, restorable backup copies of your data at such intervals as is prudent having regard to the value and sensitivity of the data, assessed from both objective and your subjective perspectives.

20. Virus Checking, Content Filtering and Similar Supplementary Services

20.1 We may provide virus checking, content filtering (spam control) and other similar supplementary services in connection with, or as part of, the Services. We will use our best endeavours to provide these supplementary services with reasonable skill and care but we give no other warranty in regard to these supplementary services and, in particular, we do not guarantee that they will be totally effective.

20.2 It is essential for the protection of your data and systems that you install and routinely maintain your own virus checking and other security services and that you regard the protection available from us as no more than a first line of defence.

21. Your and Our Liabilities

21.1 Both we and you will be liable for death or personal injury as a result of our respective negligence. Neither we nor you limit that liability or any liability imposed by statute, by paragraphs 21.2 or 21.3 or in any other way.

21.2 Neither we nor you have any liability (whether in negligence or otherwise) for any indirect or consequential loss, nor for any loss of opportunity, goodwill, reputation, business, revenue, profit, or cost-saving, nor for any wasted expenditure or loss or corruption of any data.

21.3 Any liability we or you have of any sort (including liability for negligence) for any event or events in any 12 month period is limited to ten times the cumulative value of our invoices to you for your use of the Services in that same 12 month period.

21.4 Neither we nor you have any liability of any sort (including liability for negligence) for the acts or omissions of other providers of goods or services or for faults in or failures of their networks and equipment or for any event or occurrence outside our or your respective direct and immediate control.

21.5 You acknowledge that the Services are intended for business-to-business purposes and that the mutual exclusions and limitations of liability in this paragraph are fair and reasonable having regard to all relevant circumstances including the respective strengths of your and our bargaining positions, our charges for the Services, the availability of alternatives and your ability to minimise your exposure to loss, damage or other harm in your use of the Services by following best practice in terms of data security and risk management.

21.6 Each provision of this paragraph 21 operates separately in itself and survives independently of the others.

22 Software Warranty and Indemnity

All software that we use is either our own property or properly licensed or otherwise lawfully employed by us and we therefore indemnify you in respect of any claims that may be made against you by a third party in respect of your innocent use of such software in connection with the services provided to you by us and in accordance with the terms, conditions, limitations and exclusions upon which we provide the services to you.

Ending This Contract

23. Before the Services Have Been Made Available

23.1 You may end this contract at any time before the Services are made available to you.

23.2 Once the Services have been made available to you, you can only end this contract as set out in paragraph 24.

24. After the Services Have Been Made Available

24.1 This contract can be ended by:

- (a) either you or we giving 28 days notice to the other; or
- (b) you giving us seven days notice if under paragraph 25 we inform you we are increasing our charges or changing the conditions of this contract to your detriment.

24.2 If you have agreed to a minimum contract period and give us notice that ends, or we end this contract under paragraph 16, before the end of that minimum contract period, counting from the date that the Services are made available to you (other than because we have increased our charges or changed the conditions of this contract to your detriment) you must pay all charges payable for any remaining part of the minimum contract period.

24.3 If you have paid any charges for a period after the end of this contract (and beyond the end of the minimum contract period referred to in paragraph 24.2 if you have agreed to one), we will either repay these charges or put them towards any money you owe us.

Other things we need to tell you

25. How This Contract Can Be Changed

We may change this contract, including our charges, at any time. We will give you at least 28 days notice of any changes before they take effect. As explained in paragraph 24, you can end this contract by giving us seven days notice if we increase our charges or change the conditions of this contract to your detriment.

26. How This Contract Can Be Transferred

Neither you nor we can transfer this contract except that we can transfer all or part of it to a company that is a subsidiary or holding company of ours, or a subsidiary of that holding company.

27. Marketing

We are proud of our extensive range of customers and from time to time like to refer to them, including you, by name on our websites and in our marketing material. If you do not wish to be identified in this way as one of our customers, please notify us accordingly and your name will not be used for marketing purposes.

28. How to Give Notice

28.1 If either you or we give notice to the other under this contract this must be done either by email or in writing and delivered either electronically or by hand or sent by pre-paid post to the addressee at the following address:

(a) To us: at the postal address or email address shown on our website (<http://www.maytech.net>) or an alternative address which we may give you.

(b) To you: if you are a company at your registered address, or at the postal address you specify when registering for the Services or an alternative address which you may give us, or at any fax number or email address at or through which we reasonably believe you will see our message.

28.2 If for any reason we, in our reasonable discretion, consider it necessary to give you notice in any way other than by email (or in addition thereto), we shall be entitled to charge you for the reasonable costs thereby incurred.

29. Waiver

Neither you nor we shall be considered to have waived any right under this contract because of failure or delay in exercising that right.

30. Third Party Rights

A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

31. Disputes and the Law of This Contract

If any dispute arises out of this contract, we will both attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. This contract is governed by English law and we both agree to the exclusive jurisdiction of the English courts.

Maytech Communications Limited
January 2009