



## **BANG! Web Site Design Inc. - Terms and Conditions**

Please read the following Terms and Conditions carefully regarding the use of this Web site and the use of our products & services.

The following are the Terms and Conditions of use for access to our products/services/servers.

By logging into any password protected account with us, sending e-mail through our servers, or by using our services, you indicate that you accept these Terms and Conditions of use. If you do not accept these Terms and Conditions of use, then do not use our products/services/servers.

BANG! Web Site Design Inc. ("BANG!") provides Companies and organizations with a variety of products, services, related tools and resources that include but are not limited to:

- Websites
- Web applications including but not limited to Email Marketing Systems, Online Survey Systems, Discussion Boards, Forums, Blogs, shopping carts and Event Marketing and Registration systems
- Along with the products listed above, BANG! also provides a variety of related support services, including e-mail and Web site hosting services, Internet marketing services, pay-per click advertising, search engine marketing and search engine optimization services

### **Warranties – Limited Liability**

With respect to the service to be provided, the Client acknowledges that BANG! makes absolutely no warranties whatsoever, express or implied other than as outlined on our Web Site Guarantee page. As a result, the Client agrees that BANG! shall not be liable to the Client for any claims or damages which may be suffered by the Client, including, but not limited to, losses or damages resulting from the loss of data as the result of delays, non-deliveries, or service interruptions.

The utilization of any data or information received by the Client from the utilization of the service to be provided by BANG! is at the Client's sole and absolute risk. BANG! specifically disclaims and denies any responsibility for the completeness, accuracy or quality of information obtained through the services to be provided.

The Client expressly agrees that use of BANG!'s products/services/servers is at the Client's sole risk. Neither BANG!, its employees, affiliates, agents, third party information providers, resellers or the like, warrant that BANG!'s service will not be interrupted or error free; nor do they make any warranty as to the results that may be obtained from the use of the service or as to the accuracy, reliability or content of any information service or merchandise contained in or provided through BANG!, unless otherwise expressly stated in this Agreement or on our Web Site Guarantee page.

Under no circumstances, including negligence, shall BANG!, its employees, officers, agents or anyone else involved in creating, producing or distributing BANG!'s service be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use BANG!'s 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 BANG!'s records, programs or services. Client hereby acknowledges that this paragraph shall apply to all content on BANG!'s servers and/or provided services.

In no event shall BANG!'s total liability exceed the amount received pursuant to the providing of products / services / servers.

The Client agrees to be solely and severably liable and to indemnify BANG! for any violation(s) of any law(s) in any jurisdiction(s) pertaining to Client's Content.

Neither party shall be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation, acts of God, acts of war, terrorism, epidemics, power outages, fire, earthquakes and other disasters.

### **Refund Policy**

BANG! does not offer refunds. Due to the custom nature of our work, we require payment in advance, and no refunds will be given.

### **Domain Names**

If BANG! acquires an Internet Domain Name on behalf of the Client, then in such case the Client hereby waives any and all claims which it may have against BANG! for any loss, damage, claim or expense arising out of or in relation to the registration of such Domain Name. If Client fails to pay for their domain name 60 days prior to the domains expiration, Client understands that they may lose their domain name and will hold BANG! harmless. BANG! reserves the right to purchase and take ownership of the domain name if Client chooses to let it expire or fails to pay for it.

### **Pricing & Payments**

BANG! reserves the right to change prices or plans at any time.

BANG! reserves the right, in its sole discretion, to deactivate Client's products/services/servers upon an indication of credit problems including delinquent payments of 30 days or more. Client will be given one (1) phone call and one (1) e-mail prior to deactivating Client's account. BANG! will charge a \$150.00 reactivation fee for each payment-related suspension before reinstating services for the Client and will do so only after Client's account has been paid in full. BANG! charges a \$50.00 fee for checks returned for non-sufficient funds as well as credit card charge backs.

We strongly encourage our client's to establish an eCheck payment method to avoid late payments and service disruptions. Payments by Credit Card are subject to a 2% service fee.

### **Support**

BANG! provides paid support for our websites after the 60 day free support ends.

Additionally we provide paid support for e-mail accounts that we host.

Those client's without a pre-paid block of tech support will be billed for a minimum of 30 minutes per incident at our current rate. Pre-paid blocks of support are available in 10 and 20 hour increments at a 10 and 20% discount respectively. Additionally the minimum per incident is reduced to 15 minutes. Clients with a current pre-paid block of support will be given priority in responding to support tickets.

To receive support, create a support ticket at <https://support.bangwsd.net>.

## **E-mail and Web Site Hosting Policies**

BANG!'s products/services/servers may not be used to send any unwanted email (i.e. "SPAM", "UBE" or "UCE"). Please reference our [Anti-Spam Policy](#) which has been included at the end of these Terms and Conditions.

BANG!'s products / services / servers may not be the source, intermediary, or destination address involved in the transmission of any unsolicited email, email bombs, hate email, or any mass email that violates our Anti-SPAM policy. Your email account may not be referenced as originator, intermediary, or reply-to-address of such email.

Email accounts have limits measured in Megabytes, currently our standard e-mail account has a 100MB limit. Once this limit is reached, incoming mail for the account will be rejected. It is the Client's responsibility to manage their e-mail account and stay within space limitations to avoid rejecting inbound e-mail to the account.

If Client is using a BANG! E-newsletter system or other managed e-mail list system, it is the Clients responsibility to remove or unsubscribe e-mail accounts that are no longer deliverable.

BANG! accepts no responsibility for viruses that may be transmitted to you via email, ftp, http or any other means of electronic transfer. BANG! does provide some virus scanning on its servers. BANG! cannot prevent the transmission of viruses to Client's computer system via the Internet. It is the responsibility of the Client to insure it has Anti-Virus Software and Firewalls in place and that they are updated regularly.

If a Client's computer becomes infected and is contributing to the spread of SPAM, viruses, Trojan horse programs, or other malware, BANG! while having no obligation to do so, may deny the Client access to our network to prevent the spread of the malware.

BANG! sets monthly bandwidth limits on hosting accounts. Most sites never reach these limits, unless they offer software downloads, sound files, videos, images galleries or whose primary purpose is file distribution. BANG! clients are discouraged from storing any files that cause excessive bandwidth to be consumed on the servers. We reserve the right to charge additional fees for sites that exceed their monthly bandwidth limits. Sites that exceed their bandwidth limits may be suspended without liability to BANG! and without prior notification if their bandwidth use is impacting other Clients.

Please contact BANG! for specific information regarding limitations on your account. Again, 99% of the sites we host do not fall in this category and never reach monthly bandwidth limits.

We do not allow the hosting of any adult oriented or pornographic Web sites, sites promoting hate, racial injustice or for the hosting of prohibited or unlawful content including but not limited to the distribution of copyrighted material such as music, video, or software programs that are not copyrighted by the site owner (copyright infringement).

In the event that BANG! believes our services are being utilized for unlawful purposes by the Client in violation of Local, State or Federal law in contravention with the terms and conditions herewith, but not limited to sending of unsolicited email, hacking, or pornography of any kind. BANG! may immediately discontinue service to the Client without warning, liability and without refund. BANG! may additionally contact law enforcement personnel to alert them of the Client's activities.

BANG! reserves the right to refuse service to anyone for any reason not prohibited by law. Also BANG! reserves the right to terminate service to any customer for any reason not prohibited by law. Client agrees to any use of BANG! services and facilities at its own risk. BANG! specifically disclaims all warranties of merchantability and fitness for a particular purpose. In no event shall BANG! be liable for any loss, or loss of

data, or other commercial damage, including, but not limited to, special, incidental, consequential or other damages. Client agrees that it shall defend, indemnify, save and hold BANG! harmless from any and all demands, liabilities, losses, costs, claims, including reasonable attorney's fees asserted against BANG!, its agents, its customers, 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 BANG! against liabilities including, but not limited to, those liabilities arising out of:

- a. Any injury to person or property caused by any products sold or otherwise distributed in connection with BANG!'s products/services/servers;
- b. Any material supplied by Client infringing or allegedly infringing on the proprietary rights of a third party;
- c. Copyright infringement; and
- d. Any defective products sold to Client from BANG!'s products/services/servers.

BANG! shall be the sole arbiter in determining violations of this provision. Client agrees to indemnify and hold harmless BANG! from any claims resulting from the use of the service which damages the Client or any other party.

Client hereby agrees to indemnify and hold harmless BANG! against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or any other action.

Although BANG! has no obligation to monitor the content provided by Client or Client's use of the Services, we may do so and may remove any such content or prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

Regularly, it will be necessary to send out service related messages. For instance, if our service is going to be temporarily suspended for planned maintenance or upgrades we will send clients an email informing them of a likely or possible disruption of service. We recommend our clients not opt-out of receiving these messages and no other advanced warning of service interruption will be provided. In some instances maintenance cannot be scheduled and is a result of a network or server failure. In these instances clients will likely not receive warning of the outage however it will be posted as soon as possible at <https://support.BANGwsd.net>.

## **Privacy**

BANG! makes every effort to preserve our Client's privacy. However, when required by law we may need to disclose personal information wherein we have a belief that such an action is necessary to comply with local or federal law enforcement.

BANG! will do everything they can to make sure your customer lists, email content and data remain private and confidential. BANG! however, reserves the right to monitor customer lists, email content and data stored on our servers. We reserve the right, but are under no obligation to scan the content of your Web site, Web applications, or e-mail to ensure it complies with our Terms of Use to protect against defamatory, abusive, obscene, profane, or threatening material that is racially or ethnically offensive.

BANG! may share all inclusive demographic information with our associates and marketers. The demographic information is not in any way linked to your personal information.

## **General**

Client represents and warrants that they are at least 18 years of age or, as applicable, the age of majority in the state or province in which they reside, and that the Client has the legal right and ability to agree to our Terms & Conditions. If the Client is acting on behalf of a corporation or organization the Client warrants that they have the authority to bind the corporation or organization. The Client agrees to be financially responsible for their use of BANG!'s services (as well as for use of their account by others, including any minors you grant access to) and to comply with your responsibilities and obligations as stated in these Terms & Conditions.

If any of the provisions of these Terms and Conditions shall be invalid, illegal, or unenforceable, the validity, legality or enforceability of the remaining provisions of the Terms and Conditions shall not be affected thereby.

BANG! reserves the right to change this policy at any time. We will notify our clients by updating the policy on the Web site and by emailing and notifying them of changes to the policy.

## **Governing Law**

These Terms and Conditions shall be binding upon the heirs and assigns of the parties and shall be governed by and interpreted according to the laws of the State of Indiana. Any legal action brought with regard to this Agreement shall be brought only in the State or Federal Court of appropriate jurisdiction in St. Joseph County, Indiana.

## **Headings**

Headings used herein are for convenience only and shall not be used to interpret or construe its provisions.

## **BANG! Web Site Design Inc. - Anti-Spam Policy**

If you have received any unsolicited email or suspect someone of exploiting our services please contact us immediately at [abuse@bangwsd.com](mailto:abuse@bangwsd.com), include the header of the email when you forward it, and briefly tell us why you believe the message is Spam. Every complaint received will be investigated and you will receive a reply from us detailing the action we are taking to deal with the issue.

If you have any other questions regarding our policies, please don't hesitate to contact us at [abuse@bangwsd.com](mailto:abuse@bangwsd.com).

We do not tolerate SPAM to any degree! We will not tolerate the sending of spam or unsolicited email, and we prohibit the use of third-party, purchased, rented, or harvested mailing lists. Any Client found to be using our systems, software or servers for sending Spam will have their access to our systems/software/servers terminated. You will not get a refund and we may pursue legal action against you and hold you liable for damages your actions may have caused.

BANG! does not rent, sell, or share their lists or those of their customers, and they do not allow any BANG! Clients to rent, obtain lists or otherwise use third party mailing lists in connection with the preparation or distribution of unwanted e-mail using the BANG! products / services / servers. BANG! will not use their Clients lists for any purpose.

We take several steps to prevent abuse of our systems. We interview new Clients about both the source of their mailing lists and their marketing practices. Any Client found to not meet our benchmark is not allowed to use our services. We will immediately open an investigation if a Client receives an abuse complaint to our [abuse address](#) or through one of the feedback loops we maintain with many Internet and Email Service Providers.

If a Web site visitor or e-mail recipient chooses to refer a BANG! Client's Web site or E-mail marketing message to a friend ("Tell A Friend" functions), BANG! will ask for the friends' name and email address. BANG! will then automatically send the friend a one-time email to invite them to visit the site or forward the E-newsletter to them. We will then store this information for the sole purpose of sending this one-time email and track the success of the referral.

As an email recipient, chances are that you know Spam when you see it. It is also important that you as a sender know what spam is before you send email to others.

\*E-mail spam, known as unsolicited bulk Email (UBE), junk mail, or unsolicited commercial email (UCE), is the practice of sending unwanted e-mail messages, frequently with commercial content, in large quantities to an indiscriminate set of recipients.

The sending of Unsolicited Bulk Email ("UBE") is banned by all Internet Service Providers worldwide.

Keep in mind things that might be Ok to do on a 1-to-1 basis (i.e. send an email about your company to someone who has never heard of you) are not Ok to do in bulk (UBE).

UBE is but one definition of spam. There are still many things that are not UBE, but are still considered spam.

When sending an email to someone using BANG! products / services / servers, the recipient must be a current customer, a constituent or subscriber of your business, association, or someone who has specifically asked to receive your emails by subscribing or signing up in some way, or someone who has purchased a product or service from you in the past 18 months.

Below we have provided a few examples of the things that we will consider spamming. We hope that this will give you a clear picture of what **not** to do.

Things that will not be tolerated by us...

- You cannot send an email to people who meet any of these criteria...
  - Are not existing Clients or Customers
  - Have not been customers in the previous 18 months
  - Have not specifically requested information from you
  - Have not opted-in to receive e-mails from you
- You are not permitted to use email lists that you purchased, rented, leased, or in any way bought from a third party. This includes email addresses that you purchased via co-registration. (broadly speaking, co-registration refers to the practice of referring leads, subscriptions, or memberships concurrent with another registration process.)
- You cannot send any unsolicited email through a third party in order to try to get people to sign up to your e-mail managed lists hosted by us, or to visit a Web site hosted by us.

These are good guides to what Spam is but they are not in any means the only things that we would consider Spam. We will be the sole decision maker as to what is or isn't SPAM. Our rules are stricter than the Federal CAN-SPAM laws!

*Remember if you are not sure if we would consider something that you're thinking of doing to be SPAM – Please, Contact us and find out before you send it!*

Again, if we find that you are spamming, or trying to spam, with your account:

- A. We will terminate your account immediately.
- B. We will not refund your account.
- C. We may pursue legal action against you and hold you liable for damages your actions may have caused including any interruptions in our ability to service other Clients.
- D. If you are spamming, you are violating our service agreement. (See below)

Remember we will investigate all potential spam incidents thoroughly before making a decision. Once we have made a decision, we will immediately take action.

If you have any questions about our Anti-Spam policy, contact us. We'll be more than happy to answer any questions. We would much rather have you ask, than terminate your account.

\*UBE definition from Wikipedia.org

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