

CATERSOFT LTD

Terms & Conditions – Domain Names, Web Hosting, Project Consultancy

Definitions

In these definitions the following terms shall have the following meanings:

"Customer" means a party entering into a contract for the provision of the Services

"Conditions" means these terms and conditions constituting the contract

"Contractor" means CATERSOFT LTD whose registered office is 6 Gresham Road, Hall Green, Birmingham B28 0HZ

"Delivery Date" means the date by which the Contractor intends to provide the Services

"Domain Name Registration" means the process for registering a domain name offered to the Customer

"Fees" means the fees due to the Contractor in respect of the Services provided under the terms of this contract which will accrue as set out in the Work Programme

"Illegal Material" means copyrighted works, commercial audio, video, or music files, and any material in violation of any international, national or local law or regulation

"Intellectual Property" means all or any intellectual property rights generated in the course of the Project Services including all copyright, rights in computer software, design rights (whether registered or unregistered), know-how and patents or trade marks or any applications for any of the foregoing

"Project Services" means all technical and professional services provided in carrying out the Work Programme

"Services" means any of the Services provided under these Conditions as set out in Clause 3

"Warezes" means pirated software, ROMS, emulators, phreaking, hacking, password cracking, IP spoofing and encrypting of any of the above. Also includes any sites which provide "links to" or "how to" information about such material

"Website Design & Build" means the design and construction of a website by the Contractor

"Website Hosting" means a service provided by the Contractor which provides the Customer with a range of website hosting functions

"Work Programme" means the work programme set out in the quotation provided by the Contractor

2. Conditions Applicable

- 2.1. This contract is to be construed for all purposes as a contract for the supply of the Services between the Contractor and the Customer
- 2.2. These Conditions shall apply to all contracts for the provision of Services by the Contractor to the Customer to the exclusion of all other terms and conditions including any terms or conditions that the Customer may purport to apply under any purchase order confirmation of order or similar document.
- 2.3. All orders for Services shall be deemed to be an offer by the Customer to purchase Services pursuant to these Conditions.
- 2.4. Provision of a purchase order in respect of the Services shall be deemed conclusive evidence of the Customers acceptance of these Conditions
- 2.5. Any variation to these Conditions (including any special terms and conditions) agreed between the parties) shall be inapplicable unless agreed in writing by the Contractor.

3. Fees and Payment

- 3.1. The Fees for the Services shall be the Contractor's quoted price which shall be specified in the Work Programme and/or invoice and shall be binding on the Contractor provided that the Customer shall accept the Contractor's quotation within 30 days.
- 3.2. The Contractor may by giving notice to the Customer at any time up to 7 days before completion of the work specified in the Work Programme increase the Fees for the Services to reflect any increase in the cost to the Contractor which is due to factors occurring after the making of the contract which are beyond the reasonable control of the Contractor including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs).
- 3.3. The Fees is exclusive of VAT which shall be due at the rate ruling on the date of the VAT invoice.
- 3.4. Payment of the Fees and VAT shall either be payable in advance as contained in the Work Programme or shall be paid within 30 days from the date of the invoice submitted by the Contractor as the Contractor in its absolute discretion shall elect.
- 3.5. Time for payment shall be of the essence.
- 3.6. The Customer shall pay the Fee in full without any set-off or counterclaim whatever.
- 3.7. If the Customer fails to pay by the stipulated date in the Work Programme and/or invoice interest shall accrue from the date when payment becomes due day to day until the date of payment at a rate of 4 per cent above HSBC's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment. A re-activation fee of £50 + VAT is applicable in case of domain names, email hosting and web hosting.

4. Description of Services

- 4.1. The Services shall be supplied in accordance with the Work Programme as agreed between the parties from time to time.
- 4.2. Website Design –
 - 4.1.1 The Contractor shall not be obliged to submit each page to the Customer for approval.
 - 4.1.2 Should the Customer require further changes to a page after approval of the design has been given during meetings between the parties, the Customer must inform the Contractor within a reasonable time of that fact.
 - 4.1.3 When the website is completed in accordance with the Work Programme, a copy of the final design will be presented at a meeting with the Customer where the Customer gives approval.
 - 4.1.4 Website content will be provided by the Customer. Any graphic work will either be provided by the Customer in .gif or .jpg format, or designed by the Contractor for a Fee to be specified in the Work Programme.
 - 4.1.5 Websites designed by the Contractor may be submitted to search engines if agreed between the parties as specified in the Work Programme.
 - 4.1.6 The website may be included in the Contractor's portfolio.

4.2 Website & Email Hosting

- 4.2.1 The Contractor reserves the right to suspend or cancel the Customer's access to any or all services provided by the Contractor if the Contractor considers that the account has been inappropriately used or otherwise.
- 4.2.2 The Contractor reserves the right to refuse to allow any of the following content to be stored on its server; Illegal Material, Adult Material or Warez.
- 4.2.3 This Service shall be accessible for 24 hours a day 365 days per annum (366 days during a leap year) but the Customer shall acknowledge that the Contractor may take the Service offline for short periods from time to time to enable the completing of maintenance and that this Service may otherwise, from time to time, not be available due to technical problems in the equipment.

- 4.2.4 The customer must keep all their email accounts within the agreed limits. The customer is allowed up to 250 MB storage space with SMTP & POP3 services. All the 'Deleted Messages' will be purged after 48 hours. All the 'Sent Items' will be archived after every 30 days. *IMAP service is not included by default.

4.3 Domain Name Registration –

- 4.3.1 The Contractor shall consider all requests for domain name registration and accept or reject them in accordance with guidelines set by the relevant naming authorities as shall be notified to the Customer upon request.
- 4.3.2 Upon acceptance of registration requests the Contractor will submit names for registration and make full registration upon receipt of payment or other payment arrangement as arranged between the parties.
- 4.3.3 The Contractor processes domain registration requests on a first come, first served basis. Until the Customer receives confirmation of registration from the Contractor there is no guarantee that the domain name requested has been registered.
- 4.3.4 The Contractor does not accept responsibility for use of registered domain names, especially where there may be conflict over rights to ownership.
- 4.3.5 The Customer shall indemnify the Contractor from any legal proceedings and costs that arise as a result of the registration of a domain name.
- 4.4 If the Customer shall fail to comply with these provisions the Services shall be conclusively presumed to be in accordance with the contract and the Customer shall be deemed to have accepted the Services.
- 4.5 If the Services are not in accordance with the contract for any reason the Customer's sole remedy shall be limited to the Contractor making good any defect by replacing such Services, or if the Contractor shall elect, by refunding a proportionate part of the Fees.

5 Limitation of Liability

- 5.1 The Contractor shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of the breach by the Contractor of these Conditions.
- 5.2 In the event of any breach of these Conditions by the Contractor the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Contractor exceed the Fees of the Services.
- 5.3 All warranties and conditions whether implied by statute or otherwise are excluded from any contract made under these Conditions provided that nothing in these Conditions shall restrict or exclude liability for death or personal injury caused by the negligence of the Contractor.

6 Indemnity

- 6.1 The Customer shall indemnify the Contractor and keep the Contractor indemnified and hold the Contractor harmless against any breach by the Customer of these Conditions and any claim brought against the Contractor by a third party resulting from the provision of the Services by the Contractor to the Customer and the Customer's use of the Services including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses) howsoever suffered or incurred by the Contractor in consequence of the Customer's breach or non-observance of these Conditions except to the extent that nothing in these Conditions shall exclude liability for death or personal injury caused by the negligence of the Contractor.
- 6.2 The Customer warrants that the Services requested do not infringe the intellectual property rights of any third party and the Customer agrees to indemnify the Contractor against any claim, proceedings, costs, loss damage or liability suffered by the Contractor arising out of the Customer's breach of the warranty set out in this clause.

7 Retention of Title

- 7.1 In spite of delivery having been made property in any goods provided in respect of the Services shall not pass from the Customer until:
 - 7.1.1 the Customer shall have paid the Fees plus VAT in full; and
 - 7.1.2 no other sums whatever shall be due from the Customer to the Contractor.
- 7.2 Until property in such goods passes to the Customer in accordance with clause 7.1 the Customer shall hold the goods and each of them on a fiduciary basis as bailee for the Contractor the Customer shall store such goods (at no cost to the Contractor) separately from all other goods in its possession marked in such way that they are clearly identified as the Contractor's property.
- 7.3 Notwithstanding that the goods described in clause 8.1(or any of them) remain the property of the Contractor the Customer may sell or use the goods in the ordinary course of the Customer's business at full market value for the account of the Contractor. Any such provision or dealing shall be a provision or use of the Contractor's property by the Customer on the Customer's own behalf and the Customer shall deal as principal when making such provisions or dealings. Until property in such goods passes to the Customer the entire proceeds of sale or otherwise of such goods shall be held in trust for the Contractor and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Contractor's money.
- 7.4 The Contractor shall be entitled to recover the Fees (plus VAT) notwithstanding that property in any of the goods has not passed from the Contractor.
- 7.5 Until such time as property in such goods passes from the Contractor the Customer shall upon request deliver up such of the goods as have not ceased to be in existence or resold to the Contractor. If the Customer fails to do so the Contractor may enter upon any premises owned occupied or controlled by the Customer where the goods are situated and repossess the goods. On the making of such request the rights of the Customer under clause 8.3 shall cease.
- 7.6 The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the goods provided in connection with Services which are the property of the Contractor. Without prejudice to the other rights of the Contractor, if the Customer does so all sums whatever owing by the Customer to the Contractor shall forthwith become due and payable.

8. Proprietary Rights

- 8.1 The Intellectual Property rights in the Project Service shall be and remain vested in the Contractor except for any Intellectual Property in any material supplied to the Contractor by the Customer. Rights to Intellectual Property in material supplied by the Customer shall be and remain vested in the Customer.
- 8.2 The Customer shall indemnify the Contractor against any breach of Intellectual Property rights in material provided by the Customer

9 Warranties

- 9.1 Subject to the exclusions set out in sub-clauses 9.1.1 to 9.1.3 the Contractor warrants that the Services will be free from defects in material and workmanship for a period of 24 months after completion of the work as contained in the Work Programme:
 - 9.1.1 the defect arises from wilful damage, abnormal working conditions, failure to follow any instructions supplied by the Contractor, misuse, alteration or repair of the Services
 - 9.1.2 the Fees have not been paid in accordance with clause 3.4
 - 9.1.3 parts, materials or equipment have not been manufactured by the Contractor in which case the Customer shall only be entitled to the benefit of any such warranty as has been given by that manufacturer to the Contractor.
- 9.2 All conditions, terms, representations, and warranties relating to the Services, whether imposed by statute or operation of law or otherwise that are not expressly stated in these Conditions are hereby excluded.

10 Force Majeure

Neither party shall be liable for any default due to an act of God, war, strike, lockout, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

11 Contracts (Rights of Third Parties) Act 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed that nothing in these Conditions shall confer on any third party any right to enforce or any benefit of any term in these Conditions.

12 Notices

All notices or other communications under these Conditions shall be in writing and may be delivered or sent by pre-paid first class letter post or facsimile transmission or electronic mail to the party to be served at the address set out in any contract or at such other address or number as that party may from time to time notify in writing to the other party. Any notice or document shall be deemed to be served if delivered at the time of the delivery: and if posted 48 hours after posting: and if sent by facsimile transmission, at the time of the transmission if between the hours of 9.00am and 5.00pm from Monday to Friday (other than on statutory holidays).

13 Applicable Jurisdiction

- 13.1 These Conditions and any contract made under them are subject to the law of England and Wales.
- 13.2 All disputes arising shall be finally settled under the rules of the Conciliation and Arbitration of the International Chamber of Commerce. Arbitration shall be in Birmingham before a single arbitrator.

14 Assignment

- 14.1 The Customer shall not assign contract licence or otherwise dispose of any part of its rights or obligations under these Conditions without the prior written consent of the Contractor.
- 14.2 The Contractor may assign contract licence or otherwise dispose of any part of its rights or obligations under these Conditions and the Customer consents to all such dealings.

15 Termination

- 15.1 If the Customer:
 - 15.1.1 fails to make payment for the Services in accordance with these Conditions or commits any other breach of these Conditions of provision or if any distress or execution shall be levied upon any of the Customer's goods or if the Customer offers to make any arrangement with its creditors or if any petition in bankruptcy is presented against the Customer or the Customer is unable to pay its debts as they fall due or if being a limited Contractor any resolution or petition to wind up the Customer (other than for the purpose of amalgamation or re-construction without insolvency) shall be passed or presented or if a receiver administrative receiver or manager shall be

appointed over the whole or any part of the Customer's business or assets or if any petition for the appointment of an administrator is presented against the Customer or if the Customer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Services shall become payable immediately.

- 15.1.2 If the Customer breaches any of these Conditions and fails to correct the breach within seven (7) days following written notice and/or electronic mail from the Contractor specifying the breach the Contractor may in its absolute discretion and without prejudice to any other rights which it may have:
- 15.1.3 suspend all future deliveries of Services to the Customer and/or
- 15.1.4 terminate the contract without liability on its part; and/or
- 15.1.5 exercise any of its rights pursuant to clause 8.
- 15.2 If the Customer fails to pay any sums due to the Contractor as they fall due, the Consultancy may suspend the services forthwith.
- 15.3 The Contractor and the Customer shall each be entitled to terminate any contract entered into under these Conditions by 14 days written notice.

16 Cancellation

- 16.1 The Client may cancel any contract made pursuant to these Conditions at any time before the Services are completed by giving written notice. On giving such notice the Contractor shall be entitled to render an invoice to the Customer for such fair proportion of the Fees as relates to the work undertaken by the Contractor in respect of the Services. The Contractor shall not be liable for any loss or damage whatever arising from such cancellation.
- 16.2 The Contractor may cancel any contract made pursuant to these conditions at any time before the Services are completed by giving written notice. On giving such notice the Contractor shall promptly repay to the Customer any sums paid in respect of the Fees. The Contractor shall not be liable for any loss or damage whatever arising from such cancellation.

17. General

- 17.1 If any provision of this contract is or becomes illegal, void or unenforceable for any reason, the validity of the remaining provisions shall not be affected.
- 17.2 Failure by the Contractor to enforce strict compliance with the provisions of this contract will not constitute a waiver of any of the provisions of this contract.