

Terms and Conditions of Sale and Services

Please read these Terms and Conditions for the Supply of Services ('Terms and Conditions') carefully, as they form part of the Agreement for the supply of our services.

1. The Agreement

- .1 These Terms and Conditions set out the agreement between MRS Web Solutions Ltd, 8 Ancells Court, Ancells Business Park, Fleet, Hampshire GU51 2UY and registered in England and Wales under Number 3900283 ('the Supplier') and the organisation or individual referred to as 'the Customer' in the attached documentation or who requests and receives any services from the Supplier ('the Customer').
- .2 The Customer agrees that, in placing an order or requesting the services of the Supplier, it does so in accordance with these Terms and Conditions. If the Supplier accepts an order or request, it does so in accordance with these Terms and Conditions and thereby enters into an agreement ('the Agreement').

2. Definitions

Where the following words are used in these Terms and Conditions they shall have the meaning stated:

"Services": All services provided by the Supplier in the normal course of its business including hosting backup facilities, website design, graphics design, database functionality, e-mail marketing and printing.

"E-mailer": E-mailer, newsletters sent out from time to time by the Supplier for the Customer.

"Server": the computer server equipment operated by a third party in connection with e-business services.

"Non-Availability of Service": the non-availability of any Services caused by technical faults, infrastructure failures, power blackouts or any other failures attributable to any of our third party suppliers.

"Website": the area on the server allocated by us to the customer for use by the customer as; a site on the internet, or provision of a secure intranet or extranet.

"Goods": all articles sold to the customer by us, including replacements for defective goods and software products licensed for use by the customer.

"Intellectual Property Rights" means any material of commercial value created by any person whether or not it is protected by any copyright or patent and including patents, trade marks, service marks, design rights (whether registrable or not), applications for any of those rights, copyright, database rights, trade or business names and other similar rights or obligations, whether registrable or not, in any country, including but not limited to, the United Kingdom.

3. Contract Term

- 3.1 The Customer agrees to receive the Services for a minimum 12 month period ('the Minimum Term').
- 3.2 Upon expiry of the Minimum Term, the Agreement will automatically continue unless terminated in accordance with the provisions of clause 16.2.

4. The Customer's Obligations

- .1 The Customer agrees that it will only use the Services for lawful purposes.
- .2 The Customer agrees that it has sole responsibility for:
 - .2.1 The compliance with any applicable national or international law (including any provisions regarding copyright protection and the acquisition of licences) of all the content of any Website or Email (including but not limited to text, images, videos, applications) produced or sent on the Customer's behalf, including any material placed by any third party on the Customer's Website;
 - .2.2 To comply with all laws, rules and regulations or conditions that may apply in respect of information taken from other sources/databases and thereby ensuring that the Customer has an agreement in place from the owner of such information and in any event but without prejudice to the generality of the foregoing to comply with the European Data Protection Legislation.
 - .2.3 Checking content and user functionality before systems go live to the Customer's own satisfaction. The Customer agrees that the Supplier shall not be responsible for any consequences or losses arising out of the failure by the Customer to check the Website prior to uploading.
 - .2.4 Maintaining the security of any password, identification measures and other confidential information relating to the Customer's account. The Customer agrees that it will notify the Supplier immediately of any known or suspected unauthorised use of the Customer's account, or any known or suspected breach of security, including loss, theft or unauthorised disclosure of the Customer's password or other identification measures.

- .3 The Customer agrees that it will not use any of the Services provided by the Supplier:-
 - .3.1 For the purpose of displaying unlawful, obscene, offensive, menacing, discriminatory, defamatory or illegal material;
 - .3.2 For the purposes of sending junk or spam email (and the Customer accepts that failure to observe this agreement may cause the Supplier to suspend or withdraw this service although reasonable endeavours will be used to contact the Customer prior to such suspension or withdrawal);
 - .3.3 For the purpose of displaying or transmitting material in breach of national or international copyright law, or in breach of the rights of any person;
 - .3.4 For any fraudulent or criminal activities.
- .4 The Customer agrees that it will not bring the Supplier's reputation into disrepute.
- .5 The Customer agrees that, upon request by the Supplier, it will provide any documentation reasonably necessary to evidence its compliance with this clause, including written permission for the use of any copyright protected material.
- .6 The Customer agrees not to approach any of the employees, consultants or directors of the Supplier within the minimum term or for a period of twelve months after the termination of this agreement or the termination of the employment of such employees, consultants or directors by the Supplier.

5 **The Supplier's Obligations**

- 5.1 The Supplier agrees that it will:
 - 5.1.1 Provide the Services in accordance with the terms of the Agreement until termination in accordance with these terms and conditions;
 - 5.1.2 Use reasonable care and skill in the provision of the Services
 - 5.1.3 Ensure insofar as it is able to do so that any aspect of the Services provided by a third party is provided to a reasonable standard. However, the Supplier will not be liable for any failure by any third party to provide any aspect of the Services whatsoever.
 - 5.1.4 Provide for the back up of data through a third party:
 - 5.1.4.1 In the case of shared servers hosted on a weekly basis; and
 - 5.1.4.2 In the case of dedicated server for the Customer's own website/software/emailer used on a daily basis.
 - 5.1.5 Provide a reasonable level of server security through a third party;
 - 5.1.6 Provide SMTP and POP3 e-mail accounts for a Customer through a third party;
 - 5.1.7 Purchase any available domain name requested by the Customer from a recognised Internet Services Provider and transfer ownership to the Customer upon request of any domain name purchased upon request from a Customer, but only if the Customer has paid all outstanding sums owed to the Supplier; and the Supplier will remain as the technical contact.
- 5.2 The Supplier will ensure that all code for display of web pages will be designed for compliance with:
 - 5.2.1 IE7+ for windows
 - 5.2.2 Fire fox 2+ Windows/Mac
 - 5.2.3 Safari 2 + Mac
 - 5.2.4 Opera 9 + Mac/Windows
 - 5.2.5 IE6 Windows/Mac

- 5.2.6 Netscape 6 Mac/Windows
- 5.2.7 Opera 7+ Mac/Windows
- 5.2.8 In respect of the software referred to at 5.2.5, 5.2.6 and 5.2.7 layout issues may be caused due to the age of the software in which event the Supplier will accept no liability or responsibility for such issues. Content will be visible (generally formatted) to all other users of earlier version-browsers.
- 5.3 The Supplier reserves the right to change any third party supplier for any reason at its sole discretion;
- 5.4 The Supplier will provide images for use on the web or any printed material or e-mailers. The Supplier reserves the right to make a time charge for the use of such images over a particular period of time and may invoice the Customer during the time that the image is being used by the Customer on its Website.

6 **Non-Availability of Service**

- 6.1 The Supplier does not guarantee that the Services will be provided to the Customer at any particular time or continuously.
- 6.2 The Supplier reserves the right to suspend the Services at any time for any operational reasons whatsoever.
- 6.3 The Supplier does not accept any liability for:
 - 6.3.1 Non-Availability of Service caused by routine maintenance or other operational reasons. The Supplier will use reasonable efforts to ensure that any routine maintenance is conducted with as little disruption as possible to the Customer.
 - 6.3.2 Non-Availability of Service caused by the failure of any third party;
 - 6.3.3 Data which is incorrectly backed up or when backed up cannot be successfully restored.
- 6.4 In the event of any Non-Availability of Service, the Supplier will use reasonable endeavours to restore the Services as quickly as possible.
- 6.5 The Customer undertakes to obtain suitable insurance against any losses caused by Non-Availability of Service at its own expense.

7 **Unauthorised Access**

The Supplier does not accept liability for any unauthorised third party access to the Services howsoever caused.

8 **Data Protection**

The Supplier and Customer are to comply with the Data Protection Act 1998 and any other applicable data protection legislation in relation to the handling of personal data.

9 **Loss of Data**

- 9.1 The Supplier does not accept liability for any loss of Customer data howsoever caused.
- 9.2 The Customer undertakes to obtain suitable insurance against any losses caused by loss of data at its own expense.

10 **Provision of software**

- 10.1 The Supplier retains the Intellectual Property Rights of any software that it creates pursuant to a request by the Customer.
- 10.2 The Supplier agrees to grant a licence in perpetuity for the use of any software to the Customer for the use of the software on final payment.

10.3 The Customer agrees to comply with any obligations regarding third party Intellectual Property Rights in respect of any software provided by the Supplier.

11 Search Engine Optimisation

11.1 Where the Services include search engine optimisation, the Supplier will use reasonable efforts to optimise search results on Google. The Supplier will in all cases adopt a non-binding target of obtaining a search result on the first page of Google.

11.2 The Supplier does not guarantee the provision of any specific outcome, whether on the first page of Google or at all.

12. Email Marketing

.1 Without the Customer's prior express consent, unless required by law.

.2 By using the e-mail systems of the supplier the Customer consents to the processing of any material by the Supplier and the Customer warrants that all data provided by it is accurate and lawful.

.3 The Supplier will not be responsible for the content or images used within the e-mailers of the Customer. Where the Customer's e-mailer content uses links, provided by third party, these links are not the responsibility of the Supplier and the Supplier will accept no responsibility or liability for the same. The Supplier has no control over the availability or content of such other sites or resources and therefore the Supplier accepts no liability or responsibility for them or for any loss or damage that may arise from the use by the Customer of third party sites or materials.

.4 The delivery of e-mails to the recipient cannot be guaranteed and is dependent upon accurate and up to date e-mail address, suitable Internet availability and connectivity, on various anti-spam and junk mail policies adopted by the recipients e-mail service providers as well as restrictions regarding the content, wording and graphics within an e-mailer. Rules for defining spam and junk e-mail constantly changes and the Supplier will assist with the delivery of e-mailers but cannot give any warranties or undertakings in respect of the speed or the proportion of e-mailers which are sent and delivered.

.5 The Customer shall not bring the name of the Supplier into disrepute by the use of junk e-mail, spam e-mail, chain letters or pyramid schemes or any other forms of solicitation to any data subjects or third party. The Customer must not disguise the origin of any content or materials transmitted through the e-mailer systems of the Supplier. The Customer shall not produce e-mails which are unlawful, harmful, threatening, abusive, harassing, tortuous, indecent, obscene, libellous, menacing or invasive of another person's privacy.

.6 The Supplier requires the Customer to comply with its terms and conditions and all legislation, regulations, directions, codes of practice and best practice guides.

.7 The Customer will ensure that its user name and passwords and all other access details are kept secure and restricted to any members of staff who use the system.

.8 The Customer will be granted a licence to use the e-mail systems as long as the whole of these terms and conditions are observed but should the Customer in any way misuse or abuse any systems or services provided by the Supplier, the Supplier reserves the right to terminate in accordance with clause 16 of these terms and conditions.

13. Printing

Where any printing services are requested by the Customer, the Supplier will provide such services upon its Standard Conditions of Contract for Printing, a copy of which is available upon request.

14. Payment

- .1 The Supplier will provide regular invoices to the Customer and will be entitled to invoice the Customer in advance for the Services;
- .2 Payment is due upon receipt of invoice, unless the Customer has a credit facility with the Supplier, in which case payment is subject to the terms of the agreed credit facility;
- .3 The Supplier reserves the right to charge interest on any outstanding sums in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and the parties agree that any such sum constitutes a qualifying debt pursuant to that Act.

15. Suspension of Service

- 15.1 The Supplier, at its sole discretion, reserves the right to suspend the Services provided to the Customer the event of:
 - 15.1.1 Any breach of clause 4 above;
 - 15.1.2 Receipt of any complaint or communication from a third party that the Customer is in breach of clause 4 above;
 - 15.1.3 Any failure to make payment in breach of clause 14 above.
 - 15.1.4 In the event of any suspension of service pursuant to this provision, the Supplier will, at its sole discretion, give as much notice to the Customer as it considers reasonable in all the circumstances.

16. Termination

- 16.1 The Supplier may terminate this Agreement immediately in the event of:
 - 16.1.1 Any breach of clause 4 above;
 - 16.1.2 Receipt of any complaint or communication from a third party that the Customer is in breach of clause 4 above;
 - 16.1.3 Any failure to make payment in breach of clause 14 above.
 - 16.1.4 The Customer becoming insolvent, wound up, or a receiver appointed over any assets;
- 16.2 The Supplier may terminate the Agreement by providing not less than 30 days' written notice such notice to expire on or at any time after the completion of the Minimum Term for any reason whatsoever.
- 16.3 On termination of the Agreement for any reason, the Supplier shall be entitled to block access to any web site and remove all data located on it. The Supplier will hold such data for a period of 14 days and allow the Customer to collect it at its expense, failing which the Supplier shall be entitled to delete all such data without notice to the Customer. The Supplier shall further be entitled to post such notice in respect of the non-availability of the Customer's web site as it sees fit.
- 16.4 The Customer may terminate this Agreement by providing not less than 30 days' written notice. Such notice to expire on or at any time after the completion of the minimum term.
- 16.5 In the event of any termination pursuant to this clause, the Customer agrees that all sums payable (including, if applicable, payment for the Minimum Term) will become payable immediately as a debt.

17. Indemnity

- .1 The Customer shall be liable to the Supplier for any loss, damage, destruction, injury or expense, whether direct or indirect, (and including but not limited to loss or destruction of or damage to the Supplier's property, which includes data) arising from the Customer's breach of contract or duty (whether arising in negligence, tort, statute or otherwise).
- .2 The Customer shall effect with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Customer in respect of the indemnities provided under the Agreement.
- .3 Nothing in these Terms and Conditions nor in any part of the Agreement shall impose any liability on any member of the staff of the Supplier or its representatives in their personal capacity.
- .4 The Customer shall indemnify the Supplier against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used by or on behalf of the Customer for the purpose of the Agreement, providing that any such infringement or alleged infringement is not knowingly caused by, or contributed to, by any act of the Supplier.

18. Exclusions from this Agreement

The Supplier excludes all conditions, terms, representations (other than fraudulent representations) and warranties relating to the Services, whether imposed by statute or operation of law or otherwise, including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose.

19. Limitation of Liability

- .1 The Customer agrees that the Supplier's total aggregate liability to it for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by the Customer in the 12 months prior to the claim.
- .2 The Customer agrees that the Supplier will not be liable for:
 - .2.1 Any loss of business, contracts, profits, goodwill, or revenue;
 - .2.2 Any wasted time; and
 - .2.3 Any loss or corruption of data.
- .3 The Supplier will not be liable for any failure to deliver the Services or for any breach of contract, where the failure or breach is due to a reason outside of its reasonable control.
- .4 The Customer agrees that it will notify any claim within 12 months of it arising.

20. Force Majeure

Neither party shall be liable to the other in circumstances where some or all of the obligations are affected by circumstances outside the reasonable control of the defaulting party. This includes without limitation, Act of God, change in legislation, fire, explosion, flood, accident, strike, lockout or other industrial dispute, war, terrorist act, riot, civil commotion, failure of public power supplies, failure of communication facilities, default of suppliers or sub-Customers, or the inability to secure computer processing facilities (including those of the necessary quality or security), obtain materials or supplies and in all cases the inability to do so except at increased prices (whether or not due to such causes).

21. Entire Agreement

- .1 This Contract constitutes the entire agreement and understanding between the parties and supersedes all prior written and oral representations, agreements or understandings between them relating to the subject matter of the Contract provided that neither party excludes liability for fraudulent misrepresentations upon which the other party has relied.
- .2 Unless otherwise agreed in writing, the terms and conditions of this agreement shall apply to any order placed by the customer. In the event of any inconsistency between these terms and those passing between the parties these terms shall prevail.

.3 No variation of the terms and conditions shall be allowed unless expressly accepted in writing by the Supplier.

22. Waiver

- .1 The failure by either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- .2 No waiver shall be effective unless it is communicated to the other party in writing.
- .3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

23. Third Party Rights

These terms and conditions apply between the Supplier and the Customer and no other person has any right to benefit under them or to enforce them.

24. Revisions to Terms and Conditions

The Customer agrees that the Supplier is entitled to amend these Terms and Conditions from time to time and it agrees to be bound by any such amendment.

25. Governing Law

This Agreement is governed by English law and the parties agree that any dispute will be determined in any Court in the United Kingdom.

February 2010