



These Terms and Conditions shall apply to the agreement between Empresa Limited and the individual, company or other party applying for the provision of services by Empresa Limited ("the client").

1. Definitions

- we/us/our Empresa Limited
- you/the client The individual, company or other party who is to receive the *services* provided.
- Confidential information Information which is identified as confidential or proprietary by either party or the nature of which is clearly confidential or proprietary.
- Fees The fees due for the provision of the Services
- Inappropriate material *Material* that under the laws of any jurisdiction where the material can be accessed is any of the following :- unlawful, threatening, abusive, harmful, malicious, obscene, pornographic, profane, libellous, defamatory, infringes any *intellectual property rights*, constitutes or encourages a criminal offence or contains a virus, worm, trojan horse or other harmful code.
- Intellectual property rights Copyrights, patents, registered and unregistered design rights, topography rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world.
- Material Text, graphics, images, sound, video or any combination thereof
- Services The services identified on an 'Service Agreement' to be provided to *the client* pursuant to these terms and conditions and any others specified by *Empresa Limited* on such 'Service Agreement'
- Website A website on the world wide web (www)

General

2. Payment and Services

2.1 The price to be charged for the *services* provided will be set out on the 'Service Agreement'.

2.2 *The client* agrees to make payment for the *services* by payment of invoice in Pounds Sterling by the payment due date specified on the invoice to the address as detailed in section 9.8 of this document.

2.3 If *the client* fails to pay any invoice which is due and payable under the terms of this agreement, Empresa Limited shall be entitled to charge interest on a daily basis on the overdue amount and on outstanding interest from the date of such failure until payment, at an annual rate 4% above the base rate for the time being in force of HSBC PLC, without prejudice to any other remedy available to *us*.

2.4 If *the client* fails to pay any invoice which is due and payable under the terms of this agreement, Empresa Limited reserves the right to suspend the *website* or *services* until such time as payment is received in full, without prejudice to any other remedy available to *us*.

2.5 Non-delivery or non-performance of *services* by any third party other than *Empresa Limited* sub-contractors shall not give *the client* any right to delay any payment to *Empresa Limited* or to make any claim whatsoever against *Empresa Limited*.

2.6 *Empresa Limited* will design the *website* for PC based internet viewing using appropriate browsers from Netscape and Microsoft, unless specifically agreed otherwise in writing. *The client* should note that access by other means (E.g. internet TV) may give a different look and feel and different functionality to the *website*. *The client* should also note that as new browser versions are released, they may not be backwardly compatible and in the absence of a specific maintenance agreement any time spent redesigning a site for compatibility due to the introduction of a new browser version will be separately negotiated and in addition to the original quote.

2.7 *The client* agrees to provide to *Empresa Limited* in a timely manner, any documentation, literature or other *material* or requirements as necessary to implement the design and development of the solution. *The client* will make all reasonable efforts to ensure that any information supplied is true and accurate.

2.9 *The client* will retain ownership of copyright, trademarks and other *intellectual property rights* in *materials* provided to *Empresa Limited* for use in the design of the solution. Otherwise any and all copyright, trademarks, patents and other *intellectual property rights* created, developed, subsisting or used in or in connection with the design or development of the solution are and shall remain the sole property of *Empresa Limited* and *the client* is licensed to use

EMPRESA LIMITED TERMS AND CONDITIONS

V2.3/2005

them only in respect of the solution as designed by *Empresa Limited* and made available to *the client* under this agreement. *The client* can purchase such copyright from *Empresa Limited*.

2.9 *The client* warrants to *Empresa Limited* that all *materials* provided by *the client* or approved by *the client* in connection with the solution and its design will contain nothing that is obscene, blasphemous, libellous or otherwise unlawful from wherever the solution may be accessed nor which is in breach of any *intellectual property rights* of any other person.

2.10 *The client* shall be required to sign to confirm acceptance of the *services* provided at appropriate stages of the project, as determined by *Empresa Limited*. *The client* is required not to unreasonably withhold or delay that approval and such approval shall be deemed to have been given, unless *Empresa Limited* hears from *the client* to the contrary, at the end of the 5th working day after delivery of the *services*. If changes are required after acceptance or deemed acceptance of any item, *Empresa Limited* reserves the right to apply additional fees, unless such changes are as a result of negligence on the part of *Empresa Limited*.

3. Indemnity

3.1 *The client* hereby agrees to fully indemnify, keep indemnified and hold harmless *Empresa Limited*, its officers, employees, agents, sub contractors and affiliated companies from and against any and all costs, claims, losses, damages and expenses (including, but not limited to, legal fees) sustained or incurred by *Empresa Limited* or any of its officers, employees, agents, sub contractors or affiliated companies directly or indirectly as a result of :

3.1.1 any breach of any of the warranties given by *the client* in this agreement.

3.1.2 otherwise howsoever arising out of the provision by *Empresa Limited* of any *service* hereunder unless on account of breach of contract or negligence by *Empresa Limited*; and/or

3.1.3 any breach by *the client* of any of its obligations in this agreement.

4. Empresa Limited Warranties and liability

4.1 *Empresa Limited* makes no warranties or representations that any *service* will be uninterrupted or error free. *The client* accepts all *services* provided hereunder "as is" without warranty of any kind.

4.2 *Empresa Limited* shall not be liable for any *services* or products to be supplied by any third party.

4.3 *Empresa Limited* shall have no liability to *the client* nor be deemed to be in breach of this agreement if we are delayed in performing or unable to perform any of *our* obligations due to circumstances beyond *our* reasonable control.

4.4 *Empresa Limited* shall not be liable for any loss or damage whatsoever suffered by *the client* arising out of or in connection with any breach of this agreement by *the client* or any act, misrepresentation, error or omission made by or on behalf of *the client*.

4.5 Subject to clause 4.7 below, no matter how many claims are made and whatever the basis of such claims, *Empresa Limited's* maximum aggregate liability to *the client* under or in connection with the agreement in respect of any direct loss (or any other loss to the extent that such loss is not excluded by Clauses 4.1-4.4 above, or otherwise) whether such claim arises in contract or in tort shall not exceed a sum equal to the *fees* paid by *the client* pursuant hereto.

4.6 None of the clauses herein shall apply so as to restrict liability for death or personal injury resulting from the negligence of *Empresa Limited*, its employees or its sub contractors.

4.7 This does not affect the statutory rights of *the client* as a customer.

5. Termination

5.1 *Empresa Limited* may terminate this agreement by notice in writing to *the client* having immediate effect if :

5.1.1 *the client* is in breach of any of its obligations under this agreement.

5.1.2 *the client* is a company and a resolution is passed for its winding up or a petition for its liquidation is presented; or

5.1.3 *the client* is an individual and a petition for bankruptcy is presented against it; or

5.1.4 a receiver or liquidator (where *the client* is a company) or (where *the client* is an individual) a trustee in bankruptcy is appointed over it or any of its assets; or

5.1.5 *the client* proposes or enters into any arrangement or composition with or for its creditors (including any voluntary arrangement).

5.2 In the event that any of the circumstances identified in Clause 5.1 arises, *Empresa Limited* shall have the option to terminate this agreement as regards all *services* provided or to be provided or only as regards that *service* or those *services* in respect of which the breach is considered by *Empresa Limited* to have been committed.

5.3 In the event that any of the circumstances identified in Clause 5.1 arises, *Empresa Limited* shall be entitled to retain any sums paid to it by *the client* hereunder and recover any sums due to it pursuant hereto whether invoiced or not at the date of termination.

5.4 *The client* may terminate this agreement by notice in writing to *Empresa Limited* having immediate effect if *we* are in breach of this agreement and fail, where the breach is capable of being remedied, to remedy it within 20 working days of notice specifying the breach and requiring it to be remedied. Notice may be delivered personally (when it shall be deemed served on delivery) or by first class post (when it shall be deemed served 48 hours after it is posted).

6. Confidentiality

6.1 Each of the parties agrees (subject to Clauses 6.2 and 6.3) not to :

6.1.1 disclose any *confidential information* received from the other party; or

6.1.2 make any use of any such *confidential information* other than for the purposes of performance of this agreement.

6.2 Each party may disclose *confidential information* received from the other to its responsible employees, consultants, sub contractors or suppliers who need to receive such information in the course of the performance of this agreement.

6.3 The confidentiality obligations under Clause 6.1 shall not apply to any information which :

6.3.1 is, or subsequently becomes, available to the general public other than through a breach by the receiving party; or

6.3.2 is already known to the receiving party before disclosure by the disclosing party; or

6.3.3 is developed through the independent efforts of the receiving party; or

6.3.4 the receiving party rightfully receives from a third party without restriction as to use.

7. Authorisation and obligations

7.1 *The client* hereby appoints *Empresa Limited* to act on its behalf in conjunction with the provision of the *services*.

7.2 *The client* acknowledges and accepts that to enable *Empresa Limited* to properly provide the *services*, it must cooperate with *Empresa Limited* and, in particular :

7.2.1 *the client* must provide *Empresa Limited* with accurate details of its e-mail and physical addresses and promptly notify *Empresa Limited* in writing of any alterations thereto;

7.2.2 obtain the consent of individuals whose personal data is to be held on a domain name register or are otherwise provided to *Empresa Limited*.

8. Force Majeure

8.1 *Empresa Limited* shall not be deemed to be in default of any provision of the agreement or be liable for any delay of performance or interruption of the provision of the *service* to *the client* as a consequence (though not exclusively) of act of God, war, invasion, act of foreign enemy hostilities, civil war, rebellion, revolution, insurrection or military or usurped power or any such event or by any statute rules, regulations, orders or requisitions issued by any governments, council or duly constituted authority or from strikes, lock outs, breakdown of equipment of any other causes (whether or not of a like nature) beyond *Empresa Limited's* control whether in the United Kingdom or elsewhere.

9. General

9.1 Subject to Clause 9.2, this written agreement together with any schedules hereto and any other expressly incorporated documents constitute the entire agreement between the parties hereto relating to the subject matter hereof. Nothing in this Clause 9.1 shall relieve either party of liability for fraudulent misrepresentations and neither party shall be entitled to any remedy for either any negligent or innocent misrepresentation except to the extent (if any) that a court or arbitrator may allow reliance on the same as being fair and reasonable.

9.2 *Empresa Limited* shall give notice to *the client* in writing if any changes, alterations or modifications are made to this agreement.

9.3 If any provision of the agreement or part thereof shall be void for whatever reason, it shall be deemed to have been deleted and the remaining conditions shall continue in full force and effect.



9.4 The rights and obligations under this agreement are personal to *the client* and *you* undertake that *you* shall not, without the prior written consent of *Empresa Limited*, assign, lease, charge, sub-licence, or otherwise transfer such rights or obligations in whole or in part.

9.5 *Empresa Limited* reserves the right to sub-contract any of the work required to fulfil its obligations hereunder.

9.6 Clause headings have been included in this agreement for convenience only and shall not be considered part of, or be used in interpreting, this agreement.

9.7 This agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.

9.8 Address for any post/registered letters :

Empresa Limited,
Wensum Works,
160 Northumberland Street,
Norwich,
Norfolk
NR2 4EE

10. Domain Name Registration

10.1 *Empresa Limited* reserves the right to reject any request by *the client* to register any particular domain name or to discontinue processing such a request if *Empresa Limited* considers such application might expose *us* to legal or other proceedings.

10.2 *The client* acknowledges that the application process, registration and subsequent use of any domain name will be subject to the rules and policies of the relevant registry and *the client* agrees to abide by all such rules and policies.

10.3 *Empresa Limited* makes no warranty or representation of any kind in relation to the likelihood or otherwise of a particular domain name application being successful as domain name registries retain the right at their discretion to register or refuse to register a domain name applied for by *Empresa Limited* on behalf of *the client*.

10.4 *The client's* use of the domain name once registered may be challenged by a third party. In such an event *Empresa Limited* will not be drawn into any such dispute in any circumstances.

10.5 An application for the registration of a domain name cannot be treated as having been successful until *the client* has been notified by *Empresa Limited* in writing to this effect, by email or otherwise.

10.6 *Empresa Limited* will notify *the client* as soon as is reasonably possible after registration of a domain name has been effected.

10.7 *The client* is advised not to take any action in respect of a requested domain name until it is satisfied that such a domain name has been correctly registered.

10.8 *The client* warrants that :

10.8.1 all information provided by *the client* to *Empresa Limited* is true and correct, and that any additions or alterations thereto in the future will also be true and correct.

10.8.2 it has the legal right to apply for and use the domain name(s) as a *website* and/or email addresses; and

10.8.3 the domain name and its use as a *website* and/or email addresses does not and will not infringe the *intellectual property rights* or any other rights of a third party.

10.9 To ensure your domains are not lost *Empresa Limited* operate a positive renewal system on all domains - *you* will be notified in advance that your domain is about to expire and given the option to opt out of the renewal. If for any reason *you* do not contact *us*, then *we* will ensure your registration continues and automatically renew your domain. This is not refundable and it is *your* responsibility to ensure valid contact details are on *your* account at all times.

11. Website Hosting

11.1 *Empresa Limited* will arrange for your *website* to be hosted on an appropriate server so as to be available to persons who access the World Wide Web.



11.2 *Empresa Limited* will use all reasonable endeavours to maintain full time internet presence for *your website*, but cannot guarantee continuous, uninterrupted access. *We* will not be liable for any failure to provide continuous availability.

11.3 *Empresa Limited* will provide *the client* with a username and password to provide access to the *Empresa Support website*. *The client* undertakes to keep secure from third parties any such username and password.

11.4 *Empresa Limited* reserves the right to increase the hosting *fee* on giving *the client* one month's notice in writing. In such an event, the increase will take effect from commencement of the next invoice period.

11.5 *Empresa Limited* reserves the right to, at any time and without notice, remove *the clients website* from *our server* and/or bar access if there is any violation of these terms, or if *we* are authorised and required to do so by a law enforcement agency. See also clause 2.4.

11.6 *The client* acknowledges and accepts that it bears sole responsibility, legal and otherwise, for the content of all *material* appearing on its *website*. For the avoidance of doubt, this clause shall apply to all *material*, whether posted on *the client's website* by, or on behalf of, *the client* (whether by *Empresa Limited* or a third party).

11.7 *The client* has the right to terminate the provision of the *website hosting service* by *Empresa Limited* after the expiry of the first three months by giving one months notice in writing. Notice may be delivered personally (when it shall be deemed served on delivery) or by first class post (when it shall be deemed served 48 hours after it is posted).

12. E-mail Services (including e-mail forwarding)

12.1 *The client* undertakes that it will not (and will ensure that others under its control will not) via email:

- (i) transmit *inappropriate material*;
- (ii) infringe the *intellectual property rights* of any third party;
- (iii) make use of the *hosting server* to an extent or in a manner which in *Empresa Limited's* opinion is excessive, wasteful or otherwise to the detriment of *Empresa Limited*, any of *Empresa Limited's* clients or any other third party, including but not limited to :-
 - (a) the transmission of unsolicited bulk and/or commercial bulk e-mail ("spamming"); or
 - (b) the transmission of insulting criticism or remarks intended to incite anger ("flaming").

12.2 When sending e-mail, *the client* acknowledges that it is responsible for complying with any relevant legislation.

12.3 *The client* acknowledges that *Empresa Limited* is not responsible for the security of the contents of e-mail sent or received by *the client*.

12.4 *Empresa Limited* will use its reasonable endeavours to ensure that messages are routed accurately and promptly but does not accept any liability for non-receipt, non-delivery or misrouting of e-mail or any other failure of the e-mail system.

12.5 *Empresa Limited's* policy is to respect the privacy of e-mail messages sent, received, forwarded or otherwise dealt with by it and *the client* acknowledges that *Empresa Limited* will therefore not monitor, edit or disclose the contents of such messages unless required to do so by law or competent authority or to protect *Empresa Limited's* rights and/or position.

12.6 *The client* should contact *Empresa Limited* if they are unsure about any aspect of unsolicited or permission-based email distribution.

13. Search engine optimisation

13.1 *Empresa Limited* will use reasonable endeavours to achieve a listing for *the clients website* with the search engines of *our* choosing. However, *we* cannot guarantee success and *we* cannot guarantee placement at any particular level with search engines; *we* will use *our* reasonable endeavours to promote the *website* to the search engines but *we* have no control over the policies of the search engine operators so *we* cannot guarantee any results. *Empresa Limited* shall have no liability for any penalisation on any grounds by any search engine or other indexing database. *We* will use *our* reasonable endeavours to promote your web site without prejudicing the search engine's favour. *We* cannot, however, accept responsibility for situations that may arise due to the policies of third parties such as the search engine companies. *We* shall accept no liability either in respect of the positions achieved within search engines.