

Terms and conditions of business for Effective Digital Limited

Revised Friday 15th May 2009.

This document sets out the terms and conditions of business for Effective Digital Ltd. By taking out any service or purchasing any product from Effective Digital you hereby agree to the terms of this document.

Our business is continually evolving and as such we reserve the right to change our Terms and Conditions when necessary. It is your responsibility to ensure that you are up to date with all of our Terms and Conditions at all times.

We will, however, make available any prominent changes we feel you need to be pro-actively made aware of.

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1. General terms and conditions

1.1 In these Terms and Conditions:-

“the Company” means Effective Digital Limited, registered in England number 06839101, whose place of business is: Unit 12, The Old Brickworks, Church Road, Harold Wood, Romford Essex Rm3 0HU

“Goods and Services” means the goods sold and/or services rendered by the Company listed in The Proposal

“the Customer” means the person, firm or company with whom the Contract is made.

“the Contract” means the contract or agreement made between the Company and Customer for the acquisition of the Services by the Customer.

“the Host” means the Internet Service Provider specified in The Proposal

“Support” means the support (if any) agreed between the Company and the Customer described in The Proposal

“Website” means the website described in the Proposal

“the Proposal” means the specification and associated cost estimations of projects drawn up and documented prior to the commencement of work.

“the Software” means the software described in the Proposal

1.2 The Customer represents that it enters into the Contract in the course of its business and not as a consumer.

1.3 These Conditions shall apply to the Contract except where expressly excluded by the Company in writing. Any general Conditions of Order or other Terms of Business offered by or on behalf of the Customer shall, if inconsistent with these Conditions, be deemed to have been rejected by the Company unless expressly accepted in writing by a Director of the Company.

1.4 Effective Digital reserves the right to refuse service and/or access to its servers and/or services to anyone at its discretion.

2. Quotations and prices

2.1 Any estimate or proposal given by the Company shall be open for acceptance by the Customer for a period of 30 days and if not accepted within this period shall be withdrawn by the Company.

2.2 The Company reserves the right to charge the Customer such additional amounts as required in the event the Customer requests any alterations and/or additions to the Specification, Software or Website or Services and the Company, if it agrees to make such alterations and/or

additions, shall do so at its convenience and the Customer acknowledges that the Company may not have the time or resources to undertake such changes immediately.

2.3 The Customer agrees it is fully responsible for provision of all textual content to be included in the Software or Website or Services and shall supply the same to the Company in an appropriate virus-free electronic format and further for the avoidance of doubt the Customer acknowledges and agrees that the Company shall not accept or transcribe any hand written content supplied.

2.4 If the Company's costs incurred in respect of the Services increase due to the following circumstances which may occur after the Customer's Order was accepted, the Company may at its option at any time before delivery give notice to the Customer of an increase in the Contract price under this Condition due to:-

- (i) Variation and/or alteration of instructions and/or details and/or a failure by the Customer or its representative to provide the same;
- (ii) Overtime costs incurred if the delivery date does not permit sufficient time for the work to be completed during normal working hours i.e. 9am – 5pm Monday – Friday.

2.5 The Company reserves the right to sub-contract work.

2.6 Any order accepted by the Company may be amended or cancelled only with the Company's prior written consent and any costs incurred by the Company in connection with that order may be charged to the Customer.

2.7 The Customer agrees that if so required by the Company it shall pay for all work carried out at the Customer's request whether experimentally or otherwise.

2.8 Value Added Tax will be charged in accordance with United Kingdom legislation in force at the tax point date whether specified on the estimate or proposal or not.

3. Delivery

3.1 Time of delivery shall not be the essence of any Contract.

3.2 Any delivery date specified is a genuine forecast in the light of current conditions but shall not be binding on the Company and is subject to extension to cover delays caused by events beyond the Company's control.

3.3 Whilst every reasonable precaution will be taken to ensure accuracy of despatch, no claims will be accepted by the Company in the event of damage to or non-delivery or late delivery of Goods or Services by whichever means of transport have been used once the goods have left the Company's premises.

3.4 Any additional work to replace lost or damaged goods where such loss or damage is not due to the Company's negligence will be charged for.

4. Payment policy

4.1 Website Design (for projects).

(i) Unless otherwise agreed in writing and signed by a Director of the Company, fifty per cent (50%) of the total price agreed in the Contract shall be due from the Customer (by way of deposit) before the Company proceeds to provide the Services hereunder and the Company reserves the right to refuse to proceed with supply of the Services hereunder until the same is received in full.

(ii) All projects, unless otherwise stated, will be completed on a fixed price scheme. The company guarantee that there will be no increases in the fees payable, unless the customer requests additions to the work originally specified. In such instances any additional fees will be formally sanctioned by the client as a prelude to undertaking the extra work, and will be charged at the companies standard hourly rate.

(iii) Where a content managed solution is provided, this completion of work relates to the production of the tools allowing the customer to enter their data onto the website. Once the website is completed to a stage where the project is capable of being switched live the final payment will be deemed to be due, regardless of whether the client has had the time to add the content to the website.

4.2 Domain Names.

(i) The customer will be responsible for all charges in relation to their domain name(s) for the period of their registration.

(ii) Domain names will be purchased for a period of two years unless otherwise requested.

(iii) Approximately one month prior to the renewal date of your domain(s) we will send a letter to you giving you the opportunity to cancel your domain name(s) if required. If no cancellation notice has been received one week prior to the renewal date, the company will renew on your behalf the domain name(s) for a further two year period. You will be invoiced at our current domain name charges on the date of the renewal for this service and will be liable to pay these charges in full.

4.3 OTHER PAYMENTS.

(i) The company will send an invoice for any charges, which is payable in the terms set out within the invoice. As standard the company operates a 14 day account. If you wish to discuss alternative account options please contact us.

(ii) Failure to pay any invoices within a reasonable time may result in suspension or termination of service in accordance with our suspension or termination of service policy. The customer is responsible for all money owed on the account from the time it was established to the time that the customer sends a written cancellation request.

(iii) Failure to comply with our payment policy may result in suspension or termination of service in accordance with our suspension or termination of service policy.

(iv) The Company reserves the right to charge and be paid interest on all sums due from the Customer at the rate of 5% above the base lending rate of the Bank of England from the date upon which payment is due until the date upon which it is received as well before as after any court judgement.

(v) Invoices are payable in full and the Customer shall not be entitled, for any reason whatsoever, to withhold or set-off payment or make any counterclaim.

(vi) Dishonoured cheques will be charged at £35.00 per presentation.

4.4 CANCELLATION AND REFUNDS.

(i) The Company reserves the right to cancel any services provided to the customer at any time. In this event the customer will be entitled to a pro rata refund based upon the remaining period of service. If the customer contravenes the Company's terms of service a refund will not be issued in the event of a cancellation. If a customer cancels their service at any time a refund will not be issued. Customers may cancel their account at any time by giving 30 days written notice to the Company.

(ii) Fees charged on a prepay basis are non-refundable. In addition some accounts incur set-up fees, these charges are also non-refundable.

5. Defects in the services

5.1 The following terms will apply to all Goods and Services supplied by the Company whether artwork, logo or design has been created by the Company or the Customer has supplied the artwork files:-

(i) Whilst every care is taken by the Company when designing the Website and processing digital media, it is the responsibility of the Customer to approve and sign for any designs, web pages, digital or other media immediately upon receipt thereof whether proofs have been supplied by the Company or not.

(ii) The Company shall not be liable in any way whatsoever for any defects in Services beyond the Company's reasonable control.

(iii) If the Customer alleges that the Goods and Services or the Website does not conform to the Customer's Specification and order whether as to content or quality it shall notify the Company within ten (10) working days of delivery by post, e-mail or facsimile transmission of such allegation and the failure to make such notification shall be deemed to be conclusive evidence of the conformity of the Services to the Customer's Order in every respect.

(iv) The Company will make every attempt to debug all source code before making its products and services available to the public. However, there may be cases where errors may occur when using these services. The Company strongly suggests that the customer "beta test" new modules with a select group of customers, employees, and/or vendors. This beta testing period will help in the debugging process.

(v) In order to repair errors or bugs, the company must have the following information to analyse and repair the error: Date, time, page, entire error message, action that was taking place at the time of the error. The company will make every reasonable effort to replicate any errors or bugs that are found, and will repair them provided they are able to replicate the error or they receive the appropriate error detail as mentioned above.

(vi) The Company's liability for defects in the Goods and Services caused by the negligence or other breach of the Company shall be limited to the replacement by the Company of the designs, digital or other media at no additional cost to the Customer provided that such defect is notified in accordance with clause 5(iii) above and the software/designs have been returned for scrutiny by the Company as evidence of the alleged defects.

(vii) The Company shall not be liable for any claims for consequential loss of profit or any other loss calculated on a time basis of whatsoever nature.

(viii) Where a complaint or a claim has been made in respect of Services proved or alleged to be defective the Company may suspend further deliveries of any Services under this Contract which may have the same or similar alleged defects until the validity of such complaint or claim has been finally determined and in such event the applicable delivery dates shall be postponed accordingly.

(ix) The Company shall not be liable for indirect loss or third party claims occasioned by delay in completing the work nor for any loss to the Customer in delay of transit.

6. Risk, title and intellectual property rights

6.1 Unless otherwise agreed in writing and signed by both parties the entire copyright, design right and all other intellectual property rights subsisting in or attached to the Software and any other material created by the Company (including but not limited to designs and logos) shall belong to the Company and shall not be licensed or assigned to the Customer other than as provided for herein.

6.2 This Contract shall operate as a license for the Customer to use the Goods and Software and the intellectual property rights therein until the date payment is due and, provided that payment in full is made for the Software to be licensed and the Goods and Services on or before 5pm on the date due for payment, this Contract shall operate as an automatic licence (or an automatic assignment of intellectual property rights if this is agreed in writing and signed by both parties) for the Customer to continue to use the Website, Goods and Services and the intellectual property rights therein as provided for in this Contract subject to the terms herein, but, if payment in accordance with the Contract is not made on or before 5pm on the date due for payment there shall be no assignment of rights and any right or licence that the Customer may have had to use the Website or Goods and Services and/or any intellectual property rights therein contained shall be automatically revoked and the Company reserves the right to take such action as may be necessary and appropriate in both the civil and criminal courts and all intellectual property rights in the

Goods and Services shall remain the property of the Company and the Customer shall have no further right to use the Goods and Services in any way prohibited by the Contract or statute or common law unless otherwise agreed in writing and signed by a Director of the Company.

6.3 All rights and licenses granted to the Customer hereunder by the Company are conditional on the Goods and Services and the intellectual property rights therein being used only for the purposes agreed in the Contract and the Customer hereby undertakes and agrees to promptly notify the Company in order to obtain its approval (which shall not be unreasonably withheld or delayed) to use the Goods and Services and/or any intellectual property rights therein contained for any additional purpose including but not limited to re-use, re-print or duplication and the Customer further warrants and agrees to pay the Company the appropriate fee as listed in the Company's scale for such charges from time to time copies of which are available on request.

6.4 All risk in connection with the Goods and Services or Website shall pass to the Customer upon delivery but, where the Goods and Services are collected by or on behalf of the Customer from the premises of the Company or the Premises of any agent or subcontractor of the Company the risk shall pass to the Customer at the time the Goods and Services are handed over.

7. Libelous/illegal matter

7.1 The Company shall not be required to process any matter which, in its opinion, is or may be of any illegal or libellous nature or of an infringement of the proprietary, intellectual property or any other rights of any third party or constitutes unsolicited advertising or promotional material.

7.2 The Company shall be completely indemnified by the Customer in respect of any claims, costs and expenses arising out of any libellous matter or any infringement of copyright, patent or design or any other proprietary, intellectual property or personal rights contained in any materials processed for the Customer and the indemnity shall extend to any amounts paid on lawyer's advice in settlement of any claim.

7.3 The Company shall be at liberty at any time to discontinue work if in the Company's opinion such work may be libellous or illegal or in breach of any third party rights and in such circumstances the Customer shall be liable to pay the Company for the work carried out prior to the date of discontinuance.

8. Ownership of artwork/magnetic media/print/services

8.1 All digital or electronic material/artwork/films/magnetic media/print/Services produced or originated during the course of production of the Services shall remain the property of the Company who reserve the right to dispose of the same immediately after completion of the Contract.

8.2 At the request of the Customer this period may be extended and a charge may be made for the storage of these materials and whilst every care will be taken to keep the materials in good condition, the Company accepts no liability for damage or loss of any kind.

8.3 The Company may be prepared to negotiate with the Customer for the sale of such materials at any time during the period mentioned in this clause.

8.4 All designs and visuals are submitted by the Company in confidence, and unless otherwise agreed in writing, it owns the Copyright in them and the right to reproduce any such design remains its property.

9. Suspension or Termination of service policy

9.1 The company reserves the right to suspend or terminate the services that it provides to its customers if any of the items in its terms and conditions of business are broken. In the unfortunate event that such action is necessary, the company will contact the customer in advance to warn them of the possible action.

9.2 The Company reserves the right to suspend other services until the outstanding debt is cleared. At the companies discretion the company may levy an administration charge to re-enable any services that have been suspended or terminated.

10. Support

10.1 We will endeavor to provide a continuous high quality service. If you experience problems with your service, you should contact us via email to support@effectivedigital.com

10.2 Many of our services have fully inclusive help and documentation. Where this information is available for you to view the company is not obliged to provide email or telephone support other than in directing you to these online documents.

10.3 Please note that we may require suspension of some of our services for short scheduled periods to carry out maintenance or repair to our services. Information concerning scheduled downtime is available on the support page on our website where applicable.

11. Web Hosting

11.1 The Company does not allow any of the following content to be stored on its servers:

- Adult material - includes all pornography, erotic images, or otherwise lewd or obscene content.
- Excessive download content or non-linked content.

Refusal of service based on content matching either of these two criteria is entirely at the discretion of The Company. The Company reserves the right to remove your data from its servers with no previous notice.

11.2 All accounts are to be used by the primary owner only, and do not allow the holders to resell, store or give away web-hosting services of their website to other parties. Web hosting services are defined as allowing a separate, third party to host content on the owner's web site. Exceptions to this include ad banners, classified ads, and personal ads.

11.3 The Company offers an unlimited use policy by maintaining very large ratios of bandwidth per customer. In rare cases, the Company may find a customer to be using server resources to such an extent that they may jeopardize service performance and resources for other customers. In such instances, and at The Company's discretion, The Company reserves the right to impose the High Resource User Policy(11.4) for the consideration of all customers.

11.4 The Company may implement the following policy to its sole discretion: When the resources utilised by a customer in using a service are abnormally high, The Company reserves the right to suspend that service immediately. This policy will not be taken into effect without first trying to contact the customer. This policy is only implemented in extreme circumstances and is intended to prevent the misuse of our services. Customers may be offered an option whereby the company continues supplying the service under a reduced usage criteria specified by The Company. Failure to comply with such measures may result in your service being terminated in accordance with our suspension or termination of service policy(9).

11.5 We limit uploads made via scripting languages - including PHP, ASP and ASP.NET. Uploads made using PHP are limited to 20MB per file unless otherwise specified in his document.

11.6 The Company will record full log files for all websites that it hosts. The customer will be given access to "Smarterstats", the Effective Digital weblog reporting tool allowing you to analyse your website performance and usage. Access to smarterstats is free of charge provided for any payment for any hosting service is maintained.

11.7 Access to raw log files will be provided upon request. An administration charge may be levied to setup FTP access to your log files or to provide these on DVD. Prices for such services will be quoted on request.

11.8 The company backup the data on its servers on a daily basis in case of server failure or other problems. Such backups are for the use of the company only and are not available to the customer. The company will not be held liable for data that is removed or deleted by the customer. If the customer requires the company to access files from its backup an administration charge will be levied to the customer for the time taken to restore any files.

12. Email Services

12.1 Each mailbox has a storage quota. This is in place to protect your account and others from potentially large volumes of email sent to a single address that could materially affect the email system server. Additional storage can be purchased as required. It is the mailbox owner's responsibility to ensure that his/her mailbox does not reach its allocated level.

12.2 The Company cannot be responsible for email lost due to full mailboxes.

12.3 It is the mailbox owner's responsibility to keep his/her password confidential, and to change the password on a regular basis. The Company is not responsible for any data losses or security issues due to stolen passwords.

12.4 To guarantee optimal performance on the servers, it is necessary for the company to perform routine maintenance. Such maintenance often requires taking servers off-line, typically performed during off-peak hours. The company will give you advance notice of maintenance requiring the servers to be taken off-line whenever possible.

12.5 The Company makes every reasonable effort to ensure mailbox security and integrity of data on our systems at all times. On the rare occasions where there may be a problem with specific mailbox data, it is the mailbox owners responsibility to notify us. The Company cannot guarantee to restore data and accept no liability for the loss of any such data.

12.6 The company installs anti-virus software on its email servers for all mailboxes. This software is configured to check messages coming into the email server. If a virus is detected, the message is deleted. No notification is sent to either recipient or sender of the message.

12.7 The company runs anti-SPAM software on its email servers for all mailboxes. The Customer can determine the levels of spam protection from within your control panel. The company also runs anti-SPAM software on outbound email from all mailboxes, and reserves the right to mark or delete any messages determined to be SPAM.

12.8 All data created or stored by the Customer within the companies applications and servers are your property. The company shall allow access to such data by only authorized Company personnel. The Company makes no claim of ownership of any web server content, email content, or any other type of data contained within the account holder's server space or within applications on The companies servers.

12.9 Customers are responsible for backing up their email before upgrading or removing mailboxes.

12.10 If the company identify a mailbox or domain that is causing problems; we will either remove the offending mailboxes or change their settings to resolve the issue. In extreme cases, we will disable email or suspend all services to the domain as appropriate in accordance with our suspension or termination of service policy(9).

13. Domain Names

13.1 Domain names purchased by the Company will be on behalf of the customer and ownership of the domain name will retain with the customer.

13.2 If the company registers a domain name prior to payment of the registration fee, the company reserves the right to cancel that registration or restrict use of the domain name until payment has been received. All fees are non-refundable, in whole or in part, even if the domain name registration is suspended, cancelled or transferred prior to the end of the registration term.

13.3 This Agreement shall remain in full force during the length of the term of your domain name registration(s) as selected, recorded, and paid for upon registration of the domain name. Should you choose to renew or otherwise lengthen the term of your domain name registration, then the term of this Registration Agreement shall be extended accordingly. Should the domain name be transferred to another Registrar, the terms and conditions of this contract shall cease.

13.4 To ensure your domains are not lost we operate a positive renewal system on all our domains (see 4.2(iii)) - you will be notified in advance that your domain is about to expire and given the option to cancel 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 - failure can lead to suspension.

14. Project sign-off and launch process

14.1 When a project is complete the customer is required to provide written approval which signifies that the project is complete and that no further changes, updates and/or additions are needed. The customer must also state that they have sufficiently tested and approved the relevant products or services and that they are happy for them to be launched. Projects will not be able to be launched without completion of this sign-off process from the customer.

15. Other terms and conditions

15.1 FORCE MAJEURE. The Company shall not be responsible for any failure to provide any service or perform any obligation because of any act of God, strike, work stoppage, governmental acts or directives, war, riot or civil commotion, equipment or facilities shortages which are being experienced by providers of telecommunication services generally, or other similar force beyond its reasonable control.

15.2 NON-WAIVER. The failure of The Company to require your performance provision shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by The Company of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

15.3 SURVIVAL. The provisions, terms, conditions representations, warranties, covenants, and obligations contained in or imposed by this Agreement which by their performance after the termination of this Agreement, shall be and remain enforceable not with standing termination of the Agreement for any reason. However, neither party shall be liable to other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms but each party shall be liable for any damage from any breach by it of this Agreement.

15.4 NOTICE. The Customer agrees that any notice or communications required or permitted to be delivered under this Agreement by The Company to you shall be deemed to have been given if delivered by e-mail, or postal mail in accordance with the contact information you have provided.

15.5 GOVERNING LAW. This Agreement, your rights and obligations and all contemplated by this Agreement shall be governed by the laws of the United Kingdom.

15.6 LEGAL FEES. If any legal action or proceeding, including arbitration, relating to the performance or the enforcement of any provision of this Agreement is brought by any party to this Agreement, the prevailing party shall be entitled to recover reasonable legal fees, expert witness fees, costs and disbursements, in addition to any other relief to which the prevailing party may be entitled.

15.7 ASSIGNMENT. The Customer shall not assign, sub-license or transfer its rights or obligations under this Agreement to any third party without the prior written consent of the Company. However, in the event that the Company consents to such an assignment, sub-license or transfer, then this Agreement shall ensure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

15.8 INDEMNIFICATION. The Customer agrees that it shall defend, indemnify, save and hold The Company harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against The Company, 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 the company, its agents, employees or assigns. The customer agrees to defend, indemnify and hold harmless The Company against liabilities arising out of: (1) any injury to person or property caused by any products sold or otherwise distributed in connection with the Companies server; (2) any material supplied by the customer infringing or allegedly infringing on the proprietary rights of a third party; (3) copyright infringement and (4) any defective products sold to the customer from the Company.

15.9 DISCLAIMER. The Company will not be responsible for any damages your business may suffer. The Company makes no warranties of any kind, expressed or implied for services we provide. The Company disclaims any warranty or merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by The Company and its employees. The Company reserves the right to revise its policies at any time.

15.10 ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the parties and agreements are representations or warranties, express or implied, statutory or otherwise and no agreements collateral here to than as expressly set or referred to here in. This Agreement supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.

15.11 AMENDMENT IN WRITING. This Agreement may not be amended or modified by the Customer except by means of a written document signed by both the Customer and an authorized representative of the Company.

15.12 FURTHER ASSURANCES. The parties shall execute such further and other documents and instruments and take such further and other actions as may be necessary to carry out and give full effect to the transactions contemplated by this Agreement.

15.13 JOINT AND SEVERAL OBLIGATIONS. If any party consists of more than one entity, their obligations here under are joint and several.

15.14 NO THIRD PARTY BENEFICIARIES. This Agreement does not provide and shall not be constructed to provide any third parties, with any remedy, claim, cause of action or privilege.

15.15 SEVERABILITY. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. The company will amend or replace such provision with one that is valid and enforceable and which achieves, to the extent possible, the original objectives and intent of the company as reflected in the original provision.