

BLECKFIELD LIMITED :: Terms & Conditions

1. DEFINITIONS AND EFFECT OF CONDITIONS:

- a) The Supplier means BLECKFIELD LTD.
- b) These conditions shall apply to and be incorporated into every agreement between the Supplier and any person, firm or company ("the Customer") under which the Supplier supplies goods or services at the request of the Customer.
- c) These conditions shall take precedence over any conditions of the Customer and shall not be varied without the written consent of a Director of Bleckfield Limited.
- d) References to "goods" includes the supply of hardware and software to be supplied by the Supplier to the Customer.
- e) References to "services" includes the supply of IT consultancy, broadband/ADSL, web hosting, web design, and web marketing to be supplied by the Supplier to the Customer.
- f) "Agreement" means the agreement between the Supplier and the Customer for the sale of goods and/or the supply of services.
- g) Nothing in these conditions will affect any of the Customers' statutory rights as a consumer under the "Sale of Goods Act 1979" (as amended at any time) or any other applicable legislation and to the extent that the Customer enters into the agreement as a consumer it will be a consumer contract under these conditions.

2. DELIVERY

- a) Any delivery dates quoted whether verbally or otherwise are estimates only and in regard to any such date time shall not be of the essence.
- b) Delivery of the goods to the Customer's address or any other place stipulated by him shall constitute delivery and the risk therein shall pass upon such delivery to the Customer.
- c) The Supplier shall be entitled to make partial deliveries by instalments and these conditions shall apply to each partial delivery.
- d) The Supplier shall not be held responsible for delays caused by data carriers or telephone companies providing local loops, nor for delays caused by the Customer or the management of the Customer's premises, nor for other factors outside of the Supplier's control. Order processing will commence and delivery time will be reckoned from the date of receipt of initial payment from the Customer.

3. FORCE MAJEURE

The Supplier will not be deemed to be in breach of any of its obligations under the agreement or otherwise be liable to the Customer due to any delay in performing or any failure to perform any such obligations by reason of any cause or event beyond the Supplier's control (including without limitation breakdown of plant machinery, strike or industrial dispute, shortage of materials or failure of or delay in receiving supplies, act of war (whether declared or not), Act of God, inclement weather, fire, or any law regulation of any government or any local or municipal authority, any failure or delay in providing any or defect in or fault relating to any telephone line or lease-line or other work supplied or to be supplied by any third party in connection with the agreement. If any such events continues for more than 28 days the Supplier may terminate the agreement forthwith by written notice to the Customer without prejudice to the accrued rights of either party.

4. PRICE

- a) Unless otherwise stated any prices quoted by the Supplier or payable to the Supplier under the agreement are:
 - i. Exclusive of value added tax and any other taxes.
 - ii. Exclusive of carriage, packing and insurance
 - iii. Exclusive of any release certificates and the Supplier shall charge extra in respect of the above items
 - iv. pounds sterling.
- b) Prices are those prevailing at the time the order form was signed or as otherwise provided in the agreement.
- c) Where agreed call offs are not adhered to by the Customer, the Supplier reserves the right to amend the price structure in accordance with the quantities delivered.

5. PAYMENT

- a) All payments will be made in advance of receiving goods or services. If any services are to be paid for monthly or quarterly, the Customer must complete for the duration of the agreement a direct debit or standing order form or credit/debit card authorisation in Bleckfield's favour in respect of those payments.
- b) The Supplier may suspend the provision of any of the services without notice if any sum payable by the Customer in relation to the agreement is not paid on the due date for payment (except to the extent that in the case of a consumer contract that results from the Customer lawfully offsetting against that sum an amount equal to any sum owed by the Supplier to the Customer for any breach of the agreement) or the Customer persists in using the service other than in accordance with the agreement after notice from that Supplier requiring him to comply with acceptable use policies (which are available on www.bleckfield.com) or the Customer fails to perform any of its obligations under the agreement. This will not relieve the Customer of the obligation to pay the agreed amount for the entire period of service or any other obligation to the Supplier.
- c) Where payment of any sum payable under the agreement which is not paid by the Customer by the due date the Customer shall pay interest on any unpaid amounts calculated at 8% per annum above Bank of England's base rate for the time being in force and on a daily basis and a late payment fee of £40.00 will also be applied to the Customer's account.
- d) No cash or other discount is allowed unless agreed in writing.
- e) If the Supplier is able to deliver some of the goods/services subject of the agreement but unable to deliver all the goods/service due to causes beyond its control (including but not limited to the examples referred to in condition 3 hereof) the Customer shall pay for such items/services as delivered.
- f) Payments made by the Customer will be first allocated to outstanding service items regardless of date unless service item is in dispute.

6. TELEPHONED ORDERS

The Customer agrees to send to the Supplier a written order in confirmation of any telephoned orders duly marked with any confirmation reference given by the Supplier otherwise the Supplier cannot accept liability for any duplication of delivery that may occur.

7. TITLE OF GOODS

- a) Immediately upon delivery to the Customer of any goods or services agreed to be sold by the Supplier to the Customer, the Customer shall become the bailee thereof and the legal title thereto shall be retained by the Supplier as bailor. Notwithstanding the delivery and the passing of risk, the legal beneficial ownership of the goods or services will remain with the Supplier until the Supplier has received payment in full of:
 - i. all sums payable to the Supplier in relation to the agreement, and

- ii. all other sums payable by the Customer to the Supplier, when the sums referred to in (i.) are paid, in respect of the supply of any other goods or service.
- b) Notwithstanding the terms of (a) above the Customer shall be entitled before discharging its obligation to the Supplier to resell the goods or any of them. Upon such re-sale and without derogating from the Supplier's other remedies (including its right to trace) the Customer shall hold the proceeds of sale upon trust in a separate account first for the Supplier for an amount equivalent to all sums owed by the Customer to the Supplier in relation to the agreement (and all other monies payable by the Customer to the Supplier, when those sums are paid, for the supply of any other goods or services). The Customer will pay that amount forthwith to the Supplier and will hold any balance in trust for the Customer.
- c) Title of goods supplied under a rental arrangement remains with the Supplier. The Customer must make adequate insurance arrangements to cover such goods for loss or damage howsoever caused. Such goods must be surrendered to the Supplier immediately upon termination of contract.

8. DRAWINGS

All drawings, descriptive weights, dimensions and the descriptions and illustrations contained in the sales literature and price lists are approximate only and do not form part of this Agreement. In addition, drawings or other technical documents issued either before or after the conclusion of the agreement for the use or information of the Customer and such other information of the Customer and as may be supplied to the Customer, including specifications shall not be copied, reproduced or communicated to any third party without the Supplier's prior written consent.

9. LOSS OR DAMAGE IN TRANSIT

a) The Supplier will not be responsible for damage to any of the goods or loss of the goods or part thereof in transit unless the Customer gives written notice of a claim to the Supplier and to the carrier.

- i. in the case of damage within 3 days after having received the goods and
- ii. in the case of loss or shortage within 3 days of the date of delivery of the goods under the relevant consignment.

b) The Customer will be asked to sign a copy of the Supplier's carriers delivery manifest as acknowledgement of receipt of goods. The Customer should inspect the goods carefully, as an unqualified signature shall be deemed to signify the Customer's acceptance that the goods are in good condition.

10. GUARANTEE

a) If within 12 calendar months of there being delivered any defect in the goods is discovered which is directly due to faulty materials or workmanship, or if a valid claim is made by the Customer under Condition 9 (a) (i) hereof, the Supplier will at its option remedy the defect or damage by replacement or repair or give credit to the Customer.

b) The guarantee will be subject to the following conditions:

- i. it will not apply to any defect or damage resulting from any alteration or modification to the goods without the Supplier's prior written consent, incorrect storage, normal wear and tear, overloading, misuse, abnormal conditions of use, incorrect installation by anyone other than the Supplier, maintenance or repair not carried out by the Supplier, use which is not in accordance with the Supplier's or the manufacturer's instructions, any act or omission of the Customer or any third party or any fault in any other goods or equipment.
- ii. the Customer must complete and return the Supplier's Returns Authorisation form in relation to any such defect or damage.
- iii. if the Customer makes any claim in relation to any goods failing outside the terms of the guarantee the Supplier may charge the Customer for inspection and No Fault Found charges in accordance with the charges set out on the Supplier's Returns Authorisation form which is available on request.
- iv. the guarantee will apply to goods replaced or repaired under the guarantee for the balance of the original guarantee period
- v. unless the Supplier otherwise decides, credit will only be given if the Customer notifies the Supplier of the alleged defect or damage within 3 days of the Customer's receipt of the goods.

11. INDEMNIFICATION

The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any goods and/or services provided by the Supplier in accordance with the Specification Document infringes a patent, copyright or trade secret or other similar right of a third party.

12. LIMITATION OF LIABILITY

a) Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Customer to which the claim relates.

b) In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.

c) Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.

d) The Supplier shall not be liable for the loss or damage to software programmes during the repair or upgrade of any goods, whether or not the same are under warranty.

e) Given the nature of the Internet, it is impossible to guarantee the bandwidth available between the Supplier's Customer and another site elsewhere on the Internet. This depends upon the bandwidth at the other site and the bandwidth available on the various circuits over which traffic between the Customer and other site passes.

f) It is impossible to guarantee connectivity to any particular part of the global Internet at any time, but the Supplier will endeavour to increase internal connectivity and continuously improve network resilience and connectivity.

g) The Supplier is not responsible for the security of Customers equipment connected to the Internet, nor for any direct or indirect damage caused by or through connections to the Internet.

h) The Supplier's services may not be used for criminal or other illegal purposes, nor for any purpose, which violates established practice or protocol on the Internet, nor for the purposes, which make unacceptable use of the network resources. All of the following are considered unacceptable: the transmission of computer viruses or pornography, forgery of addresses or other fields in IP packets: unauthorised access to the network management equipment of the Supplier's or other Internet providers: unauthorised transmission of copyrighted material; mail

bombing; mass mailing of unsolicited advertising material; the transmission of video or live audio; and the use of IP multicast (unless authorised by the Supplier)

i) Service begins either when the Customer's premises equipment (CPE) can communicate with equipment over the private circuit provided or when the Supplier's engineers have communicated from the Customer's premises over the private circuit using standard test equipment whichever comes earlier.

13. RETURNED GOODS AND CANCELLATIONS

The Customer shall not return any goods (except in accordance with Condition 10) or cancel any orders without the Supplier's previous written consent. Such consent will not be given where goods have been specifically purchased by the Supplier to meet the Customer's requirements. If the Supplier in its discretion gives consent, it reserves the right to make a cancellation charge of 25% (or such higher percentage as may be notified to the Customer before or when such consent is given by the Supplier) of the contract price of the goods plus VAT.

14. COPYRIGHT, PATENTS, TRADE MARKS & INTELLECTUAL PROPERTY RIGHTS

a) The Customer acknowledges that rights in respect of trademarks, trade names, copyrights, patents and other intellectual property rights connected with the goods and/or services do not pass to the Customer.

b) The Customer agrees to indemnify the Supplier against all liabilities, costs and expenses which the Supplier may incur as a result of work done in accordance with the Customer's specifications which involve infringement of any patent or other proprietary right.

15. SUBCONTRACTING

The Supplier reserves the right to sub-contract any part of any work or supply of any goods or services.

16. CONSTRUCTION AND USE

The Supplier shall not be responsible for adapting or modifying any goods/services to conform to statutory requirements not current at the time when the agreement is entered into.

17. HEADINGS

The headings of these conditions are for convenience only and shall have no effect on the interpretation thereof.

18. TERMINATION

a) The Supplier shall be entitled by notice in writing to terminate the agreement without prejudice to any claim or right the Supplier may otherwise make or exercise where

i. the Customer is in breach of any term, condition or provision of the agreement or required by law.

ii. the Customer shall go into liquidation (except for the purpose of reconstruction) or if any petition or resolution to wind up the Customer shall be presented or if a receiver is appointed of the Customer's undertake property of assets or if a distress shall be levied upon any of the Customer's property, or if the Customer shall commit any act of bankruptcy.

b) The Customer subscribes to the Supplier's service upon signing the Supplier's order form, or where such form is not signed from the date that the Customer places a telephone order or other order for service. These Terms and Conditions are a part of the contract between the Customer and the Supplier. The agreement will continue for a minimum period of one year from the commencement of services and will automatically continue for successive one year periods unless or until the Supplier or the Customer gives not less than three month's written notice of termination to the other expiring at the end of the first year or any point in subsequent years.

19. JURISDICTION

The agreement shall be governed by and construed in accordance with English law and the Courts of England shall have jurisdiction to hear all disputes arising in connection with the agreement.

20. GENERAL

a) This agreement cannot be assigned in whole or in part by the Customer to a third party but the Supplier may assign all or any of its rights or obligations in relation to this agreement. None of these conditions can be varied without the Supplier's written consent. The Supplier order form signed by the Customer and these terms and conditions form the entire agreement between the Supplier and the Customer.

b) The provisions of the agreement are severable, and if any provision or part of it is held to be invalid or unenforceable by any court or other body of competent jurisdiction that will not affect the other provisions or the remainder of the relevant provision.

21. CUSTOMER RESPONSIBILITIES and OBLIGATIONS

The Customer will:

a) provide and maintain the local loop between the Customer premises and the Supplier if this is not in the services subscribed to;

b) notify the Supplier promptly of any failures in the local loop or with the Supplier equipment installed at the Customer premises.

c) provide and maintain any computer hardware and software required to use the Supplier's services.

d) keep the Supplier's Customer's premises equipment which is loaned to the Customer safe from harm, make no attempt to modify or alter in any way, and allow the Supplier's staff to remove that equipment at the termination of service and indemnify the Supplier in respect of any loss or destruction of that equipment until it is redeemed to the Supplier.

e) comply with acceptable use policies on any academic or research networks access via the Supplier.

f) To enable the Supplier to perform its obligations under this Agreement the Customer shall:

i. co-operate with the Supplier;

ii. provide the Supplier with any information reasonably required by the Supplier;

iii. obtain all necessary permissions and consents which may be required before the commencement of the services; and comply with such other requirements as may be set out in the Specification Document or otherwise agreed between the parties.

g) The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause (f)

h) Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the goods and services agreed to in the Specification Document, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed and in respect of cancellations on less than five working days' written notice the full amount of the goods and services contracted for as set out in the Specification Document, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause (f) shall be deemed to be a cancellation of the goods and services and subject to the payment of the damages set out in this Clause.

i) In the event that the Customer or any third party, not being a subcontractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:

j) Supplier shall have no liability in respect of any delay to the completion of any project;

k) if applicable, the timetable for the project will be modified accordingly;

l) the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.

22. SET OFF

The Supplier shall be entitled but not obliged at any time to set off any sum payable by or any liability of the Customer to the Supplier against any sum payable by or liability of the Supplier to the Customer (in either case whether arising under the contract for the supply of the goods or otherwise howsoever and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency or its denomination) and may for such purpose convert or exchange any currency. Any exercise by the Supplier of this right will be without prejudice to its other rights under the contract relating to the supply of the goods.