

Standard Business Terms and Conditions

These terms are effective from 1st September 2005 until further notice.

1. DEFINITIONS

In this document the following words shall have the following meanings:

- **1.1 "Agreement"** means these Terms and Conditions together with the terms of any applicable **Service Specification**;
- **1.2 "Supplier"** means Ability First Limited, company registered in England and Wales number 5423042
- **1.3 "Customer"** means the organisation or person who purchases goods and/or services from the **Supplier**;
- **1.4 "Intellectual Property Rights"** means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- **1.5 "Service Specification"** means a statement of work, quotation or other similar document describing the goods and/or services to be provided by the **Supplier** to the **Customer**;

2. GENERAL

- **2.1** These Terms and Conditions shall apply to all contracts for the supply of services by the Supplier to the Customer, unless otherwise specified in writing.
- **2.2** Before the commencement of the services the Supplier shall submit to the Customer a Service Specification which shall specify the goods and/or services to be performed and the fees payable. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Service Specification. All Service Specifications shall be subject to these Terms and Conditions.
- **2.3** The Supplier shall use all reasonable endeavours to complete the services within estimated time frames but the Customer accepts that any completion dates that are specified are estimates only and are not guaranteed.

3. FEES AND PAYMENT

- **3.1** The fees for the supply of the goods and/or services are as set out in the Service Specification. The Supplier shall invoice the Customer for the services.
- **3.2** A deposit amounting to 25% of the total fee is required as a deposit prior to the commencement of any work by the Supplier.
- **3.3** The balance of the total fee will be invoiced upon completion of the work and is payable within 30 days of the invoice date. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate up to the limit allowed by legislation.
- **3.4** If the Customer's procedures require that an invoice be submitted against a purchase order to payment, the Customer shall be responsible for issuing such purchase order before the services are rendered.

- **3.5** The Supplier may require the Customer to pay for any work in advance, either in whole or on part, at its sole discretion.

4. CUSTOMER'S OBLIGATIONS

- **4.1** To enable the Supplier to perform its obligations under this Agreement the Customer shall:
 - **4.1.1** Co-operate with the Supplier;
 - **4.1.2** Provide the Supplier with any information reasonably required by the Supplier;
 - **4.1.3** Obtain all necessary permissions and consents which may be required before the commencement of the services; and
 - **4.1.4** Comply with such other requirements as may be set out in the Service Specification or otherwise agreed between the parties.
- **4.2** 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 **4.1**.
- **4.3** Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the services agreed to in the Service Specification, 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 services contracted for as set out in the Service Specification, 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 **4.1** shall be deemed to be a cancellation of the services and subject to the payment of the damages set out in this Clause.
- **4.4** 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:
 - **4.4.1** The Supplier shall have no liability in respect of any delay to the completion of any project;
 - **4.4.2** If applicable, the timetable for the project will be modified accordingly;
 - **4.4.3** The Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.

5. ALTERATIONS TO THE SERVICE SPECIFICATION

- **5.1** The parties may at any time mutually agree upon and execute a new Service Specification. Any alterations in the scope of services to be provided under this Agreement shall be set out in the new Service Specification, which shall reflect the changed services and fees and any other terms agreed between the parties.
- **5.2** The Customer may at any time request alterations to the Service Specification by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall, within 7 working days or such other period as may be agreed between the parties, advise the Customer by notice in writing of the effect of such alterations, if any, on the fees and any other terms already agreed between the parties.
- **5.3** Where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 7 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.

- **5.4** Where the Supplier gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Service Specification shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.

6. WARRANTY

- **6.1** The Supplier warrants that the services performed under the Service Specification shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.
- **6.2** Without prejudice to Clause **6.1**, and except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the services to be provided by the Supplier.

7. INDEMNIFICATION

- **7.1** 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 services provided by the Supplier in accordance with the Service Specification infringes a patent, copyright or trade secret or other similar right of a third party.

8. LIMITATION OF LIABILITY

- **8.1** 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 fees paid by the Customer to which the claim relates.
- **8.2** 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.
- **8.3** 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 subcontractors.

9. TERMINATION

- **9.1** Either party may terminate this Agreement forthwith by notice in writing to the other if:
 - **9.1.1** The other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;
 - **9.1.2** The other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
 - **9.1.3** The other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;

- **9.1.4** The other party ceases to carry on its business or substantially the whole of its business; or
- **9.1.5** the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

10. INTELLECTUAL PROPERTY RIGHTS

- **10.1** All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Supplier, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.

11. FORCE MAJEURE

- **11.1** Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to Acts of God, strikes, lockouts, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

12. INDEPENDENT CONTRACTORS

- **12.1** The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage subcontractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement.

13. ASSIGNMENT

- **13.1** The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.

14. SEVERABILITY

- **14.1** If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

15. WAIVER

- **15.1** The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

16. NOTICES

- **16.1** Any notice to be given by either party to the other may be served by e-mail, fax, personal service or by post to the address of the other party given in the Service Specification or such other address as such party may from time to time have communicated to the other in writing, and if sent by e-mail shall, unless the contrary is proved, be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally, or if sent by post shall be deemed to have been delivered in the ordinary course of post.

17. ADDITIONAL SERVICES / TERMS

- **17.1** In the event of a cancellation before the entire service has been completed no refund shall be given on the initial 25% deposit, however the final 75% charge will be waived. Partially completed work will not be supplied.
- **17.2** Payments are accepted in GBP (Great Britain Pounds) only unless otherwise agreed.
- **17.3** Customers from outside the UK are responsible for any export duties, taxes or country specific regulatory obligations
- **17.4** In the event a service is required which has not been included in the Service Specification, the Supplier will give notice prior to implementation and seek acceptance of the surcharge. The cost will be added to the final invoice unless the amount exceeds £500, in this case an interim 25% invoice shall be issued with payment due before completion, the remaining 75% will be added to the final invoice.
- **17.5** In the event that full payment is made later than required or if only partial payment is made, the Supplier may at its discretion charge for administration costs and interest on any monies owed at up to the maximum rate allowed by legislation. Failure to apply such charges does not constitute a waiver of the option to charge.
- **17.6** The Supplier uses third party organisations for web site hosting. This is to ensure that the client receives the best possible hosting package at a reasonable cost. Bandwidth allowances are included in hosting, any excess charges relating to the amount of traffic generated by clients web sites are fully payable by the Customer. No guarantees of service can be made by the Supplier on behalf of the host. If special requirements or guarantees of service are required then please contact us and the Supplier shall do its best to find a company to match the said requirements. Any guarantees of service are made between the Hosting Company and the Customer, and the Supplier cannot offer or enforce any such agreement.
- **17.7** In the event that any monies are owed and overdue to the Supplier, then the Supplier may withdraw all or part withdraw its services. The Supplier may remove any material stored upon any computer or server and shall retain such material, and shall not be liable for any loss monetary or otherwise and not be under any obligation to return or provide access to, any and all documents, papers, etc. belonging to the Customer until payment is made in full.
- **17.8** The Supplier will not be held responsible for the failure in any of the services provided by a third party to the Supplier for the Customer. This may include but is not restricted to web site hosting, hardware installation and/or maintenance, Internet promotions, third party multimedia provisions, graphic design, printing.
- **17.9** Save for the Intellectual Property Rights, all completed web sites become the property of the Customer, subject to all fees being paid in full, with the following restrictions on use:
 - **17.9.1** Only one instance of a web site can be made available on the World Wide Web or any Intranets / Extranets unless a licensing agreement has been reached that specifies otherwise;
 - **17.9.2** Database Connection strings will not be divulged to the client due to security risks. (These strings would in any event need amending if the site was to be moved to an alternative host / server);

- **17.9.3** No portion of the coding can be copied / duplicated or redistributed in any form electronic or otherwise unless a licensing agreement has been reached; Upon request, the Supplier may provide web site files via electronic mail, or on CDR media (surcharge of £10).
- **17.9.4** Enhancements or other changes made remain the complete property of the Supplier until all fees associated with those enhancements or other changes has been paid in full.
- **17.10** In the event of a problem with the web site, the Supplier will endeavour to solve the discrepancy as quickly as possible upon notification of the problem. The Supplier cannot accept responsibility for any loss, either monetary or otherwise, due to web site failure or misuse. The Supplier may be able to help with insurance services, via a third party, to protect the Customer's interests and web site, however the insurance agreement is made between the Customer and the third party.
- **17.11** All data and information stored in an on-line database remains the property of the Customer along with any rights associated. The Supplier is in no way responsible for the data content or data integrity of any database.
- **17.12** The Supplier reserves the right to include a link to the Supplier's own web site indicating that it is the author of the site, which may be given on any or all pages of the web site at the Supplier's discretion.
- **17.13** All web sites are built to be compatible with Internet Explorer 4 and above. Web sites are also compatible with Netscape, Opera, Mozilla and Firefox, however advanced features may not be supported.
- **17.14** The Supplier reserves the right to decline to develop web sites that:
 - Contain explicit adult material;
 - Have any direct connection with any political, religious, or military group;
 - Are related to the tobacco industry;
 - Involve any form of gambling;
 - Are offensive or defamatory;
 - Are involved in sending unsolicited bulk e-mail (spam);
 - Are misleading or contain statements that are not true;
 - Are connected with any form of fortune-telling or the occult;
 - Involve any illegal activity (including copyright violations);
 - the Supplier decides to refuse for any reason of the Supplier's own.
- **17.15** If the Customer includes any such material in a web site hosted by the Supplier or one of the Supplier's agents or subcontractors, the Supplier reserves the right to edit or delete such material and/or to suspend supply of any services to the Customer, including taking the Customer's web site off-line if we deem it necessary.
- **17.16** It is the Customer's responsibility to ensure that any material that appears on the Customer's web site does not infringe on any copyright laws or trademarks.
- **17.17** The Customer agrees to indemnify us against any legal action that may result from material that appears on the Customer's web site.
- **17.18** The Customer must not send unsolicited bulk e-mail (spam).
- **17.19** The Customer must not knowingly send or execute any form of computer virus.
- **17.20** The Customer must not send chain letters in any form, including e-mail.
- **17.21** The Customer must provide us with their full postal address, telephone number, e-mail address, and the name of the primary and any secondary contacts
- **17.22** The Supplier reserves the right to contact you via post, telephone, or e-mail for matters relating to the work we are undertaking on the Customer's behalf, or relating to these terms and conditions.
- **17.23** The Supplier is not responsible for backing up the Customer's data. If the Supplier does undertake to back up the Customer's data it will normally be for an additional fee, however, the Supplier cannot be held responsible for any loss or damage that results from the provision of this service, and whilst all

reasonable steps will be taken to safeguard your data, the Supplier provides no guarantees as to the reliability, accessibility, or security of backed-up data. The Customer must ensure adequate provision for backing up the Customer's own data.

- **17.24** The Customer must ensure that the web site and all of the Customer's activities in relation to it, comply with all relevant data protection and other legislation.
- **17.25** The Customer must take reasonable precautions to protect any user names and passwords that are used in connection with any products or services supplied, and to prevent unauthorised persons from obtaining or using them.
- **17.26** The Customer agrees to supply to the Supplier in a timely manner any text, images, or other material that may be required for the creation of your the Customer's web site, as requested by us, and in the formats agreed between us.
- **17.27** Any further work undertaken after the design of the web site has commenced will also be bound by these terms and conditions.
- **17.28** Any estimates relating to the time of delivery of any product or service to are subject to change. The Supplier cannot be held liable for the consequences of any delay that might occur in delivering products or services to you.
- **17.29** All source code that is used in the creation of your web site remains the property of the Supplier and may not be used (except in its original intended context) without our consent. This includes but is not limited to code written using: HTML, CSS, PHP, JavaScript, ASP, and ASP.Net. This clause does not apply if the material is already freely available in the public domain.
- **17.30** The Customer retains the copyright to any text, images, or other material that is supplied by the Customer.
- **17.31** The Supplier retains the copyright to any text, images, or other material that is supplied by the Supplier, and grants the Customer license to use them only in their original intended context as defined by the Supplier.
- **17.32** The Supplier will not be held responsible for any loss or damage however caused, that results from the provision or use of the products or services supplied, including but not limited to any printed or digital materials that may come into the Supplier's possession.
- **17.33** If the Customer contravenes any of these clauses, the Supplier reserves the right to cease supplying all services, and to remove any connection between the Supplier and the Customer that may appear on your site immediately. Contravention of any of these clauses implies that the Customer wishes to terminate this agreement, and any outstanding fees would become due immediately.
- **17.34** The Supplier reserves the right to include a link to our web site on every page of the Customer's web site that we design.
- **17.35** The Supplier reserves the right to amend these terms and conditions at any time without notice, although we will endeavour to notify you of any changes in advance.
- **17.36** The Supplier reserves the right to cancel any of our agreements with the Customer at any time by providing 30 day's notice to the Customer in writing. The Customer has a similar right to terminate any agreements held between the Supplier by providing 30 day's notice in writing, however on so doing the Customer becomes immediately liable for all outstanding charges, including the full cost of any web design or other work that the Supplier or any of its agents or subcontractors have started.
- **17.37** Upon termination of any agreement, the Customer is liable for all outstanding fees, which will become payable immediately.
- **17.38** No contract of any kind may be construed by anything that appears on the Supplier's web site. However, these terms and conditions are applicable from the moment the Customer instructs us to begin work on the Customer's behalf and that instruction is formally accepted by the Supplier.

- **17.39** The Supplier reserves the right to deactivate the Customer's web site and/or cease providing any goods or services to the Customer at any time and to charge interest and recover the Supplier's credit-control costs from the Customer if any payments that are due from the Customer are late.
- **17.40** In the event that the Customer is not satisfied that the agreed work has been successfully completed, the Customer must inform the Supplier immediately, and state the full reasons for your dissatisfaction. Upon resolution of the items raised, the work will be deemed to be complete, and payment will become due.
- **17.41** The Supplier cannot be held responsible for any products, services, or facilities provided by a third party, including but not limited to web hosting and associated features.
- **17.42** In any case, the Supplier's liability shall be entirely limited to the sum paid to the Supplier by the Customer.

18. ENTIRE AGREEMENT

- **18.1** This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

19. NO THIRD PARTIES

- **19.1** Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

20. GOVERNING LAW AND JURISDICTION

- **20.1** This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.