

TERMS AND CONDITIONS

The following constitute the terms and conditions under which GemBiz Limited trades and supplies its services and related products. These conditions represent the totality of the agreement and form the Contract between GemBiz Limited and the User.

Any agreed variation or alteration to part of these terms and conditions as annexed to this Contract will not invalidate the remainder or the whole. GemBiz Limited is entitled to suspend services if the User does not adhere to any or several conditions of this Contract.

1 DEFINITIONS

In this Contract unless the context otherwise requires:

"Service" or "Services" means domain name registration, hosting, bandwidth provision, email and any other service or facility provided by us to you.

"Server" means the computer server equipment operated by us or provided by you in connection with the provision of the Services;

"Virtual Server" means the area on the Server allocated by us to you for use by you as a site on the Internet;

"GemBiz" or "The Company" means GemBiz Limited, Thornley House, Carrington Business Park, Carrington, M31 4DD

"Contract" means the agreement between GemBiz and the User incorporating these conditions, the GemBiz Order Form (where completed) and GemBiz's published charges for the provision of its services; References to "Agreement" shall, where the context admits, be read as referring to the Contract

"Charges" means the charges as agreed on the Order Form (where completed) and GemBiz's latest published prices for products and services requested or incurred by you

"bandwidth" means the allocated transmission capacity, measured in bits per second, of the network connection as specified in the Contract;

"data transfer" means all traffic that passes through the Virtual Server including specifically but not exclusively web traffic, email, FTP transfers and any shell session data;

"Site" means the premises or location at which Service is or is to be provided under this Contract;

"Equipment" means equipment which is supplied by or on behalf of GemBiz to the customer or placed at or on a Site for the purpose of providing Service;

"Internet" means the global data network comprising Internet connected networks using TCP/IP (Transmission Control Protocol/Intermit Protocol) Internet Standards means the protocols and standards defined in the following Internet documents: RFC 1009, 1122, 1123

and 1250 and any future such protocols and standards as appropriate;

"User" means you, the Customer, or any person who makes use of the services though you or on your behalf;

2 DOMAIN NAME REGISTRATIONS

- 2.1 We cannot guarantee that the domain name you wish to register is capable of being registered by or for you or that it will be registered in your name. You should therefore not assume registration of any domain name or names until you have been notified that registration is successful. Any action taken by you before such notification is at your risk;
- 2.2 The registration and use of your domain name is subject to the terms and conditions of use applied by the relevant naming authority; You shall have no right to bring any claim against us in respect of refusal to register a domain name or cancellation of the domain name by the relevant naming authority. Any administration charge paid by you to us shall be non-refundable notwithstanding refusal by the naming authority to register your desired name.
- 2.3 You are responsible for the usage of the domain name. GemBiz will have no liability in respect of the use by you of any domain name whether supplied by us or not.
- 2.4 We give no warranty or representation that your domain name is or will continue to be available for your use. We have no control and accept no liability over domain names being registered which conflicts with your domain name or which otherwise affects your use of your domain name.
- 2.5 GemBiz shall be entitled to withhold the release of any domain name to another provider or "tag holder" unless full payment of all amounts due to us has been made and cleared. GemBiz shall not be liable for any charges incurred by any such delay in payment.
- 2.6 If payment is not received for any domain name GemBiz may delete or retain the domain for further sale or may park it for advertising purposes or for resale.
- 2.7 Requests for the deletion or cancellation of a domain must be made in writing and a non-refundable processing fee of £25 per domain is payable. It may be that the registrar may refuse any such deletion request and GemBiz will inform you of any such outcome.

3 VIRTUAL SERVER HOSTING and EMAIL

- 3.1 We make no representation and give no warranty as to the accuracy or quality of information received by any person via the Server and we shall have no liability for any loss of or damage to any data stored on the Server.
- 3.2 You shall effect and maintain adequate insurance cover in respect of any loss of or damage to data stored on the Server.
- 3.3 You must use the Server(s) allocated to you only for lawful purposes. In particular, you represent, warrant and undertake to us that
 - 3.3.1 You will not use the Virtual Server in any manner which infringes any law or regulation, or which infringes the rights of any third party, nor will you authorise or permit any other person to do so.
 - 3.3.2 You will not post, link to or transmit: any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way, any material containing a virus or other hostile computer program, any material which constitutes, or encourages the commission of, a criminal offence or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.
- 3.4 You shall keep secure any usernames, passwords or other information relating to your account. It is your responsibility to notify us of unauthorised use of your account or of a breach of security.
- 3.5 You shall make no use of the Virtual Server which is detrimental to our other customers.
- 3.6 You shall ensure that all email is sent in accordance with existing legislation.
- 3.7 In the case of an individual you warrant must be 18 or more years of age.
- 3.8 Any access to other networks connected to GemBiz must comply with the rules appropriate for those other networks.
- 3.9 While we will use every reasonable endeavour to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers or from corruption by virus and we shall be under no liability for non-receipt or misrouting of email or for any other failure of email or damage to data or operations.

4 CONTENT and MISUSE

- 4.1 You will use all reasonable endeavours to ensure that the GemBiz Service is used or includes content that conforms to the laws of this country and will not knowingly permit any illegal use or such use that will bring GemBiz into disrepute.
- 4.2 You must not, nor must any other person, use the Service: to send or receive any material which is offensive, abusive, indecent, obscene, pornographic or menacing, or in breach of confidence, copyright, privacy or any other rights, to cause annoyance, inconvenience or needless anxiety, or in breach of any provisions as contained within this Contract, or other than in conformance with the acceptable use policies of any connected networks and the Internet standards.
- 4.3 GemBiz may discontinue Service immediately if the User is found to have carried out or permitted any illegal or use that is prohibited by these terms. If GemBiz suspends Service for contravention of the above conditions of this clause, GemBiz can refuse to restore Service until it receives an acceptable assurance from the User that there will be no further contravention.
- 4.4 If a service is discontinued for any reason, it may be re-enabled on payment of a continuation fee of £25.

5 SUPPLY OF WEBSITES, HARDWARE or EQUIPMENT

5.1 Prices

- 5.1.1 Goods and services, together with VAT, are invoiced at the price prevailing at time of order.
- 5.1.2 GemBiz reserves the right to modify the prices from time to time, without prior notice
- 5.1.3 In the event that work is performed on a support basis then any work shall be charged as agreed in the support document. Unsupported work is charged on an hourly (or part) basis at the prevailing standard rate.

5.2 Delivery, Title and Risk - Delivery is deemed to take place when the goods are delivered to the Customer's nominated address, whereupon the risks of loss, breakage and all damage and all other risks shall pass to the Customer.

5.3 In the case of a website, delivery shall be deemed to have occurred upon publication of the website, or the totality of any components of the website identified as a quoted unit of work and agreed in advance.

5.4 Title in the goods does not pass to the Customer until payment is received in full by GemBiz.

5.5 If the Customer cannot accept delivery, GemBiz may at its option: (a) store and insure the goods at the Customer's expense and risk or (b) sell the goods at the best price reasonably obtainable and (after deducting reasonable storage insurance and selling costs) pay to the Customer any excess over the sale price or charge the Customer for any shortfall or (c) re-arrange delivery provided that GemBiz may charge the Customer for the additional delivery costs incurred.

5.6 GemBiz's standard terms of payment are a non-refundable deposit of 20% on commencement of the work. A further payment of 20% will be due on completion of the work or 42 days from commencement, whichever is the earlier. The balance will be due 21 days from the date of completion. These will apply except in the case of transactions where different terms are agreed in writing.

5.7 If payment is not made on the due date GemBiz will be entitled to charge interest daily on the outstanding balance at the equivalent rate of 3% per month on the outstanding balance.

5.8 Product specifications - GemBiz will endeavour to deliver the goods requested by the customer but may substitute goods of equal or superior quality. If the customer declines substituted goods, a levy may be payable to cover expenditure such as restocking fees, carriage, etc.

- 5.9 Warranties and Returns - Unless otherwise stated in the manufacturer's documentation, all goods delivered to a UK mainland address carry a 12-month manufacturer's warranty. Goods are not tested or sold as being fit for any particular application or for use under specific conditions, unless expressly agreed in writing.
- 5.10 GemBiz offers a "no charge" collection, repair and delivery service within a 10 mile radius of its Carrington office provided that the fault is reported within 7 days of delivery otherwise goods can be couriered to us at the customer's expense.
- 5.11 GemBiz cannot accept liability for packages damaged during transit. It is the Customer's responsibility to wrap the product adequately to prevent damage.
- 5.12 This warranty shall not apply if the goods have been worked upon, altered or damaged in any way by the Customer or its employees or agents, or to goods not used in accordance with the manufacturer's instructions.
- 5.13 GemBiz will endeavour to meet targets and delivery dates agreed in writing before the commencement of any work. GemBiz cannot accept responsibility for any failure to meet such deadlines caused by specification or design changes after the work has commenced. If you decide to halt the project before completion, or the work has to be halted for any other reason which will entail significant delay, then you will be liable for payment in proportion to the work completed. Work or items of work which are completed and then removed at your request shall still incur a charge as outlined in the original proposal or quotation.
- 5.14 If changes to designs or specifications entail additional work then you agree that such work shall be billed at a component rate (if such is available) or at an hourly rate that shall not exceed the Company's hourly as published in the current Rate Card. Any variations to the hourly rate must be agreed in writing by GemBiz before the commencement of the project.

6 CHARGES and PAYMENT

- 6.1 All payments must be in UK Pounds Sterling. If your cheque is returned by the bank as unpaid for any reason, you will be liable for a "returned cheque" charge of £25.
- 6.2 All Charges payable by you for the Services shall be in accordance with the scale of charges and rates published from time to time or on a quotation, proposal or other written document supplied by GemBiz. Charges are quoted exclusive of 'Value Added Tax' which shall, if applicable, be paid additionally by you at the rate prescribed by law on submission by us of a proper VAT invoice.
- 6.3 You acknowledge that our Services are provided using facilities provided to us by third parties.
- 6.4 All charges unless otherwise agreed are payable in advance. Unless otherwise specified and agreed, set-up and installation charges are payable on order. GemBiz agrees to be party to this Contract upon GemBiz's acceptance of cleared funds covering first invoice or the first payment if on a payment schedule. If payment is not received on or before the due date GemBiz reserves the right to immediately withdraw, suspend or limit Service and will charge the User interest at the rate of 3% of the amount overdue per month.
- 6.5 Without prejudice to our other rights and remedies under this Agreement, if any sum payable is not paid on or before the due date, we shall be entitled forthwith to suspend the provision of Services to you. If such a suspension is imposed, you will be liable for a "reconnection" charge of £25.
- 6.6 If suspension of service occurs for any reason you will be liable for a "reconnection" charge of £25.
- 6.7 In the event of payments being scheduled, the initial payment shall be due for payment immediately with following payments as dictated by the schedule. Where payments are dependant upon the outcome of user acceptance tests, such testing is limited to 30 days from its commencement unless explicitly stated otherwise in writing.

7 DEFAULT

- 7.1 If you do not pay the charges in accordance with the provisions of this Contract, or break this Contract in any other way, or are subject to bankruptcy or insolvency proceedings GemBiz can (without prejudicing, losing or reducing any other right or remedy) suspend Service, wholly or partially, without notice (but the User remains liable during the suspension to pay charges for Service), or terminate this Contract by immediate notice, without prejudice to GemBiz's pre-existing rights.
- 7.2 Bankruptcy or insolvency proceeding means bankruptcy proceedings or in Scotland sequestration proceedings, becoming insolvent, making any composition or arrangement with creditors or an assignment for their benefit, any execution, distress, diligence or seizure: or if the User is a company, being the subject of proceedings for the appointment of an administrator, going into liquidation whether voluntary or compulsory (except for the purpose of amalgamation or reconstruction) or having a receiver or administrative receiver of any assets appointed.
- 7.3 You continue to be liable to pay all charges which are due for Service during any period in which you do not comply with this Contract.
- 7.4 On termination of this Agreement or suspension of the Services we shall be entitled immediately to block your Virtual Server and to remove all data located on it. We shall be entitled to delete all such data but we may at our discretion hold such data for such period as we may decide, to allow you to collect it at your expense, subject to payment in full of any amounts withstanding and payable to us. We shall further be entitled to post such notice in respect of the non-availability of your Virtual Server as we think fit.
- 7.5 For so long as any sum due to GemBiz hereunder is unpaid or any other amount is due to or properly claimed by GemBiz from you for services or goods supplied or for any other reason, whether pursuant to these terms or otherwise, GemBiz shall be entitled to retain any property owned by you or lawfully in your custody or possession and which is held by GemBiz or by its agents until such time as all amounts due to GemBiz are paid and/or any issue between you and GemBiz is determined.
- 7.6 If GemBiz waives a breach of Contract by you, that waiver is limited to the particular breach. Any delay by GemBiz in acting upon a breach is not to be regarded in itself as a waiver.

8 TERMINATION OF SERVICE

- 8.1 Service may be terminated by either party on giving at least 14 days notice to the other expiring on the last day of the Initial Contract Term or at any time thereafter.
- 8.2 If GemBiz gives notice you shall pay all charges up to the expiry of the notice. If you give notice, you shall pay all outstanding charges.
- 8.3 GemBiz reserves the right during the Initial Contract Term and at any time thereafter to terminate this Contract by giving to you not less than 14 days prior written notice of termination.
- 8.4 After the expiry of the Initial Contract Term you may terminate the Service by giving not less than 14 days prior written notice of termination.
- 8.5 Your notice does not avoid any other liability for Service already provided.

9 NOTICES

Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the address of the other party as appearing in this Agreement or the Order Form or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served two days following the date of posting.

10 MATTERS BEYOND GEMBIZ'S REASONABLE CONTROL

GemBiz is not liable for any breach of this Contract or liable for any delay or failure in performance of any part of these conditions and its commitments when caused as a result of Force Majeure, war, civil disorder, industrial disputes, inclement weather, acts of local or central government or other competent authorities, and failure by other service providers.

11 LIABILITY

- 11.1 You acknowledge that GemBiz has no control over the information transmitted via the Service and that GemBiz does not examine the use to which you put the Service or the nature of the information you are sending or receiving. GemBiz hereby excludes all liability of any kind for the transmission or reception of information of whatever nature.
- 11.2 GemBiz undertakes no liability whatsoever for the acts or omissions of other providers of telecommunication service or for faults in or failures of their apparatus.
- 11.3 GemBiz is not in any way liable in contract or otherwise for loss whether direct or indirect of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or consequential loss whatsoever.
- 11.4 GemBiz makes no warranty as regards to its Services or equipment and will not be responsible for any damage allegedly suffered or claimed by you for any reason including but not limited to loss of data, wrong or non deliveries and Service interruptions.
- 11.5 All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, subject always to subclause 11.6.
- 11.6 Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.
- 11.7 Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services which are the subject of any such claim.
- 11.8 In any event no claim shall be brought unless you have notified us of the claim within one year of it arising.

12 INDEMNITY

You shall indemnify us and keep us indemnified and hold us harmless from and against any breach by you of these terms of business and any claim brought against us by a third party resulting from the provision of Services by us to you and your use of the Services and the Server including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by us in consequences of your breach or non-observance of this Agreement.

13 INTELLECTUAL PROPERTY RIGHTS

GemBiz will assume that you either own, possess or licence the relevant intellectual property rights to any material supplied and that any trademarks, trade logos, membership schemes or other material is used with the consent of the owning body, group or individual. You will indemnify GemBiz against any misuse of such material provided by you or your representatives.

Use of GemBiz's Content Management Systems (CMS) is granted on a licenced basis and GemBiz retains the whole and complete ownership of the CMS. Migration of a CMS assisted website away from a GemBiz controlled server does not result in the migration of the CMS software, components or objects. In the event that the CMS or other software components are migrated to a non-GemBiz server then no marketing or ownership rights are granted to the customer nor any additional licencing rights beyond those initially or explicitly granted. Ownership of the intellectual property and marketing rights shall remain with GemBiz at all times unless explicitly stated otherwise in a separate written agreement which shall be titled "Intellectual Property Licencing Agreements".

Any software developed to meet a particular customer need will result in the customer having a non-exclusive licence to use the software for the purpose for which it was designed and created. Copyright of such material will reside with GemBiz and the customer should be aware that part or all of the software may be reused or resold by GemBiz.

14 ENTIRE AGREEMENT

This Agreement shall be governed by and construed in accordance with English law and the jurisdiction of the English courts.

These terms and conditions together with any documents expressly referred to in them, contain the entire Agreement between us relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral: between us in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation which has not been made expressly in this Agreement.