



Terms and conditions – Ecommerce internet services



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I. Contents

| | | |
|-----------|---|----------|
| I. | Contents | 2 |
| 2. | Terms and conditions | 3 |
| 2.1 | DEFINITIONS | 3 |
| 2.2 | USER CONDUCT | 3 |
| 2.3 | INDEMNIFICATION | 4 |
| 2.4 | REFUSAL OR DISCONTINUANCE OF SERVICE | 4 |
| 2.5 | NO WARRANTIES | 5 |
| 2.6 | ECPA NOTICE | 5 |
| 2.7 | IDENTIFICATION INFORMATION | 5 |
| 2.8 | NO INTERFERENCE WITH OPERATION OF SYSTEM | 5 |
| 2.9 | SECURITY | 6 |
| 2.10 | BACKUP OF DATA | 6 |
| 2.11 | TRANSMITTAL OF MATERIALS | 6 |
| 2.12 | PAYMENT | 6 |
| 2.13 | PRIOR AGREEMENTS | 6 |
| 2.14 | SEVERABILITY | 6 |
| 2.15 | TERMINATION OF AGREEMENT | 6 |
| 2.16 | APPLICABLE LAW, JURISDICTION, AND SERVICE | 7 |
| 2.17 | ACKNOWLEDGEMENT | 7 |

2. Terms and conditions

These are the terms on which customers can obtain services from the

Elsmore Creative Marketing (ECM), 12 Rammel Mews Frythe Way Cranbrook, Kent TN17 3BQ.

2.1 DEFINITIONS

Any agreement between ECM and the client for the provision of services (an "Agreement") shall be entered into on the basis of these terms and conditions and also any other terms and conditions set out or referred to in any document or other communication used by ECM in concluding such an agreement.

| | |
|------------------------|---|
| "Acceptance of terms" | means the policy specified as supplied in writing. |
| "Application" | means an application for the provision of service submitted by the Client to ECM. |
| "ECM" | means a trading name of Elsmore Creative Marketing Limited. |
| "Client" | means the person, firm or Company whose application is accepted by ECM. |
| "Domain Name" | means the domain name requested by the Client on the Application or any alternative domain name offered by ECM. |
| "Services" | means the services to be provided by ECM to the Client |
| "Terms and Conditions" | means these terms and conditions including any schedules hereto. |
| "Domain names" | means Internet addresses, which have been registered with the central registration authorities on the Internet on the clients behalf by ECM; |
| "Commencement Date" | means the date of ECM's acceptance of the client's order specified by the order date on our invoice |
| "Contract" | means the contract between the customer and ECM incorporating these terms and conditions; |
| "Quotation" | means the costs which detail the prices of the services provided by ECM and as may updated from time to time in accordance with Clause 1.5 above. |
| "Renewal Date" | means the date 12 months after the Commencement Date or any anniversary thereof. |
| "Hosting" | means making the client's domain name accessible via the Internet; |
| "Illegal" | means any act or acts, which are capable of breaching the civil or criminal law of England and Wales. |
| "Megabyte" | means 1,048,576 bytes of information; |
| "Gigabyte" | means 1,073,741,824 bytes or characters of information; |
| "Upload" | means the transfer of computer files to the appropriate server computer system for publication on the Internet, WWW; |
| "Website" | means the area on the appropriate server computer system allocated to the client for the purpose of Hosting; |
| "WWW" | means World Wide Web service available on the Internet; |

Any words in the singular include the plural and vice versa. All definitions, notes, terms and conditions referred to in this contract form part of the contract as if they were expressly set out in it.

ECM provide shopping cart functionality for websites engaging in e-commerce. All user shopping cart accounts are subject to compliance with the terms and conditions set forth below. Under the terms of this agreement, your creation and usage of any account that is provided is an acknowledgement that you have read and understood this agreement, and that you agree to be bound by the terms and conditions below. If you do not wish to be bound by these terms and conditions, you should not proceed to accept any ECM ecommerce account or to use our services in any way. By proceeding to create or reconfigure an account you agree to the terms and conditions below.

2.2 USER CONDUCT

ECM shopping cart service accounts may only be used for lawful purposes. Any use of these services which violates any local, state, federal, or international laws which may apply to ECM, your local jurisdiction, or any jurisdiction that you, your site, or your sales area may be subject to is strictly prohibited.

While using the service, you may not:

Restrict or inhibit any other user from using and enjoying the Internet;

Post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, federal or international law, including without limitation export control laws and regulations, and laws protecting intellectual property including copyright, trademark, trade secret, misappropriation and anti-dilution laws;

Post, publish, transmit, reproduce or distribute any information or software which contains a virus or other harmful component;

Post, publish, transmit, reproduce, distribute or in any way exploit any information, software, or other material obtained through the service for commercial purposes (other than as expressly permitted by the provider of such information, software, or other material);

Use your ECM account to facilitate the sale of any information, software, hardware, product, or other material which violates any local, state, federal, or international laws which may apply to ECM, your local jurisdiction, the jurisdiction of the consumer purchasing from you, or any jurisdiction that you or your site may be subject to;

Use your ECM account to gather sensitive payment information from any internet consumer including but not limited to credit card information for any purpose other than the ethical use of such information to obtain payment in exchange for goods and service provided to said consumers;

Post, publish, transmit, reproduce or distribute internet consumer credit card information in such a manner as to readily expose such information to those who would use such information for criminal purpose;

Use your ECM account in conjunction with any promotion or sale of goods by or for the purpose of Unsolicited Commercial E-Mail (UCE) or Spam. This includes the sale of lists of E-mail addresses or software to be used for the purpose of sending UCE or Spam;

While using the ECM service, you agree to the following minimum standards for internet "e-commerce":

Resolve your customer order fulfillment complaints against you in a reasonable and timely manner such that ECM does not receive a significant number of complaints against you;

Provide your customers reasonable access to contact information on your website including your name, address and email address so that they can contact you if they need to;

2.3 INDEMNIFICATION

You agree to indemnify, defend, and hold harmless ECM from any and all liability, penalties, losses, damages, costs, expenses, attorneys' fees, causes of action or claims caused by or resulting indirectly from your use of the service which damages either you, ECM, or any other party or parties without limitation or exception. This indemnification and hold harmless agreement extends to all issues associated with your account.

2.4 REFUSAL OR DISCONTINUANCE OF SERVICE

ECM reserves the right to refuse or discontinue service to anyone at ECM's sole discretion. ECM may deny you access to all or part of the service without notice if you engage in any conduct or activities that ECM in its sole discretion believes violates any of the terms and conditions in this agreement. ECM shall have no responsibility to notify any third-party providers of services, merchandise, or information, nor any responsibility for any consequences resulting from such discontinuance or lack of notification. You agree that ECM has the right to monitor the service electronically from time to time and to disclose any information as necessary to satisfy the law, or to protect itself, its subscribers, or consumers of products or services sold via the shopping cart service. ECM reserves the right to refuse to facilitate sales of any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, undesirable, or in violation of this agreement.

2.5 NO WARRANTIES

ECM makes no warranties or representations of any kind for the services being offered. The service is provided on an "as is" and "as available" basis without warranties of any kind, either express or implied, including but not limited to warranties of title, noninfringement, or implied warranties of merchantability or fitness for a particular purpose. No advice or information given by ECM or its agents or employees shall create a warranty. ECM provides no warranty that the service will be uninterrupted or error free or that any information, software or other material accessible on or via the service is free from viruses or other harmful components. Under no circumstances shall ECM be liable for any direct, indirect, special, punitive, or consequential damages that result in any way from your use of or inability to use the service, or for third parties' use of the service to access your Web space, Shopping Cart Service, any other service we supply or are associated with, to access the Internet or any part thereof, or your or any third parties' reliance on or use of information, services, or merchandise provided on or through the service, or that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation or transmission, or any failure of performance. If you are dissatisfied with ECM service or any of its terms, conditions, rules, policies, guidelines, or practices, your sole and exclusive remedy is to discontinue using the service.

You understand that by placing information on ECM servers, including but not limited to uploads done by you to facilitate usage of the ECM 's Mall, that such information becomes available to all Internet users and that ECM has no way of limiting or restricting access to such information or protecting such information from copyright infringement. You assume total responsibility and risk for your use of ECM servers and the Internet. It is solely your responsibility to evaluate the accuracy, completeness, and usefulness of all opinions, advice, services and other information, and the quality and merchantability of all merchandise provided through ECM or on the Internet generally.

ECM will provide you a reasonable amount of technical support to assist you in integration of ECM shopping cart service into your website. You understand that the level, duration, and hours of availability of the support provided is determined at the sole discretion of ECM, and that providing any support does not constitute a warranty of any sort, nor does it warrant that you will successfully complete the integration of the ECM shopping cart service into your website.

2.6 ECPA NOTICE

ECM reserves the right to monitor any and all communications through or with our facilities. You agree that ECM is not considered a "secure communications medium" for the purposes of the ECPA, and that no expectation of privacy is afforded.

2.7 IDENTIFICATION INFORMATION

You agree that you as the person legally responsible for use of this account are at least 18 years of age. You agree to supply ECM with a current and truthful name, postal address, email address and telephone number for our records, and you have a continued obligation to keep this information current. You also agree that you are an authorized user of any checks or credit card account that you supply to us and agree that we have an obligation to fully investigate any possible fraudulent payment acts.

You agree to inform ECM in advance of any substantive changes in the nature of the commerce facilitated via your ECM, and understand that implementing such changes may cause ECM at its sole discretion to discontinue your service if such changes would cause violation of this agreement.

2.8 NO INTERFERENCE WITH OPERATION OF SYSTEM

You agree not to maliciously or intentionally interfere with the proper operation of the system, including but not limited to defeating identification procedures, obtaining access beyond that which you are authorized for, and impairing the availability, reliability, or quality of service for other customers. You further agree not to interfere with the proper operation of other systems reachable through the Internet, including any attempt at unauthorized access. You agree to follow the Acceptable Use Policy of any network or service you connect to.

You agree to adhere to system policies as published online by ECM, including restrictions on account usage, services available with your account, restrictions on certain features, and all other policies designed to protect and enhance the quality and reliability of service at ECM. You agree to abide by any and all future ECM policy decisions.

2.9 SECURITY

You agree that the security of your account password is solely your own responsibility. You further agree that if you believe that your account password has been compromised in any way, you will notify ECM immediately via email to support@elsmore.co.uk and in writing by registered mail, return receipted, to our address. You shall be held fully responsible for any misuse or compromise to your account for which ECM is not properly notified. You agree that if any security violations are believed to have occurred in association with your account, ECM has the right to suspend all access to the account pending an investigation and resolution. You also agree that ECM has the right to cooperate in any government or legal investigation regarding any aspect of our services, including services sold to you. Any use of our system to facilitate sales of pirated software, illegal products or information, or other violations of law will result in account suspension and be immediately reported to the appropriate authorities.

2.10 BACKUP OF DATA

Your use of the service is at your sole risk. ECM is not responsible for order data or account configuration data residing on our servers. Any storage of such is strictly for your convenience, and you recognize your obligation to maintain your sales and order data on your own computer systems. You agree to securely retrieve via SSL encryption the final portion of order credit card numbers promptly after receiving emailed notification of orders, and to make daily checks of the ECM webpage for retrieving secure data. If any orders are indicated on that page and you do not have all pertinent information stored on your own system, you agree to promptly take action to download or re-mail such data. You specifically agree that ECM is not responsible for storage of order or sales data of any type whatsoever for any amount of time.

You further agree that ECM has the right at its sole discretion to purge any and all order or sales data stored on ECM servers without notice and to whatever degree deemed necessary by ECM to free up space on our servers.

2.11 TRANSMITTAL OF MATERIALS

You agree not to transmit unsolicited or prohibited advertising or other harassing or illegal materials through electronic mail, Usenet postings, or other Internet media. The use of ECM or any other service with reference to services obtained through ECM, for unsolicited mass mailings, postings, or other activities considered an annoyance to others, commonly referred to as "spamming" is strictly prohibited and may cause your services to be terminated immediately and without warning and you will be held fully responsible for any damages to you, ECM, or any other party or parties resulting from any such conduct.

2.12 PAYMENT

You agree to supply appropriate payment in advance for the paid services received from ECM. You understand that failure to supply such payment in accordance with the instructions contained in the invoice will result in account suspension. You understand that ECM at its sole discretion has the right to refuse to reinstate a suspended account regardless of subsequent payment attempts by you. Further, you understand that there may be fees associated with reinstatement of a suspended account.

You understand that invoices for ECM service are sent out via email only, and that it is your responsibility to maintain working email addresses in your account configuration. You understand that your failure to receive these invoices for any reason does not alleviate your responsibility to keep your account current.

You agree that all subscription fees are non-refundable and understand the need to choose the subscription period carefully to meet your needs.

2.13 PRIOR AGREEMENTS

This agreement supersedes any written, electronic, or oral communication you may have had with ECM or any agent or representative thereof, and constitutes the complete and total agreement between the parties.

2.14 SEVERABILITY

If any provision of this agreement is determined to be invalid or unenforceable, all other provisions shall remain in full force and effect and said provision shall be reformed only to the extent necessary to make it enforceable.

2.15 TERMINATION OF AGREEMENT

The provisions of Section 2 (INDEMNIFICATION) and Section 4 (NO WARRANTIES) shall survive any termination of this agreement.

2.16 APPLICABLE LAW, JURISDICTION, AND SERVICE

This agreement shall be governed by the applicable laws of the United Kingdom. Customer agrees to accept service of process related to this agreement by ordinary mail, postage prepaid, to the most recent address provided by Customer.

2.17 ACKNOWLEDGEMENT

By creation of an account, or continuing to maintain an account with ECM you are stating and acknowledging that you have read the aforementioned terms and conditions and that you understand such terms and conditions and agree to be bound by them.

Valid from December 2008

Nothing herein shall affect the statutory rights of a customer dealing as a consumer

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