



## Terms and conditions – Manufactured services



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## 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
"Client"	means the person, firm or Company whose application is accepted 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.
"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.
"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.

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.

All quotations and contracts for the sale of goods forming part of any contract made by the seller with any buyer shall be deemed to incorporate these terms and conditions which shall prevail over and take the place of any other terms and/or conditions contained in any purchase order invoice or any other document of or communication with the buyer.

No other agreement representation or promise of any kind shall form part of alter vary supersede or operate as a waiver of these terms and conditions or any of them unless expressly made or accepted as such by the seller in writing.

### 2.2 CREATION OF CONTRACT

A contract of sale shall be made when the seller sends its written acceptance in the form of acknowledgement or confirmation of the buyers order.

### 2.3 QUOTATIONS

Quotations do not constitute an offer by the seller to supply the goods or perform the services referred to therein. The seller may change or withdraw a quotation at any time before it has sent a acknowledgement of order to the buyer. Clerical errors and omissions are subject to correction.

### 2.4 TERMS

The contract price shall be paid within 1 month following date of invoice or either delivery of the goods or notification in writing by the seller to the buyer that the Order is available for delivery but that delivery is not possible due to circumstances beyond the sellers control.

Should payment become overdue in whole or in part for any goods supplied by the Company, The Company may (without prejudice to any of its other rights) recover or recall the goods or any part of them and may enter upon the customer's premises for that purpose. These conditions constitute authority for any third party authorised by the Company to enter upon any other premises where so ever the goods are situated for the purpose of recovering the goods or any part of them.

Approved accounts are to be paid within 28 (twenty-eight) days of invoice date whereupon they are considered overdue.

In the even that payment shall not have been made by the due date in accordance with these Conditions then the Company shall be entitled to charge and recover from the customer interest on any outstanding balance at the rate of four per cent above the base rate of Barclays Bank Plc for the time for the time being in force for the period from the due date of payment.

## **2.5 DELIVERY**

Whilst every effort will be made to effect delivery in accordance with the time specified, the time for delivery shall not be of the essence of the contract and the seller will not accept responsibility or be liable for any loss or damage occasioned by delay in delivery howsoever caused. Delivery upon the buyer the buyer's servants or agents or any person or to any place upon the instruction or at the request of the buyer or the buyer's servants or agents shall constitute good and sufficient delivery by the seller for the purpose of the sale contract.

Delivery of work shall be accepted when tendered and thereupon or on notification that the work has been completed the ownership shall pass and payment shall become due.

Should expedited delivery be agreed and necessitate overtime or other additional costs, an extra charge may be made.

Should work be suspended at the request of or delayed through any default of the customer for a period of 30 days the Company shall then be entitled to payment for work already carried out and materials specially ordered.

## **2.6 QUANTITY VARIATIONS**

Every endeavour will be made to deliver the correct quantity ordered, but quotations are conditional upon margins of 5 per cent for work in one colour only and 10 per cent for other work being allowed for over or shortage, the same to be charged or deducted.

## **2.7 DEFECTS IN GOODS**

Any claim for non-delivery of any goods must be notified in writing by the buyer to the seller within 14 days from the date on which the goods were to be delivered.

Claims arising from damage, delay, or partial loss of goods in transit must be made in writing to the Company and to the carrier so as to reach them within three days of delivery. All other claims must be made to the Company within 10 days of delivery.

An alleged defect(s) must be notified by the buyer to the seller within 14 days of delivery of the goods. If it is alleged that the defect was not reasonably apparent on inspection the seller must be notified within 7 days from the time the defects were reasonably apparent or came to the buyer's attention.

Any claim(s) must be in writing and must contain full details of the claim including a full description of the alleged defective goods.

(The buyer must afford the seller reasonable opportunity and facilities to investigate any claim(s) made by the buyer and if requested in writing by the seller must promptly return any goods which are the subject of any claim and any packing, securely packed and carriage paid to the seller for examination.

The seller will not be liable for any defects unless a claim is made in accordance with sub-paragraphs (a) to (e) of this clause.

Faulty goods must be returned or a request made to the Company for them to be collected within three days of receipt whereupon the goods will be exchanged or a credit note raised against them.

Goods which are not faulty in anyway cannot be returned unless agreed by the Company in writing whereupon a handling charge may be made.

Goods which are damaged by being used for tasks for which they were not intended, or misused, will not be exchanged.

Shortages or non-delivery of invoiced goods must be notified within three days of the date of the delivery note or invoice.

Goods must be signed for on collection or delivery and failure to do so will not be proof that you have not received them.

Goods are not tested or sold as fit for any particular purpose and any term warranty or condition expressed or implied or statutory to the contract is excluded. In no circumstances whatsoever shall the Company's liability (in contract tort or otherwise) to the customer arising out of this or in connection with these Conditions or the goods supplied hereunder exceed the invoice price of the particular goods or prices thereof. This provision shall not apply to consumer transactions to the extent to which it would, by virtue of the Unfair Contract Terms Act 1977, be void.

## **2.8 THE SCOPE OF THE CONTRACT**

Under no circumstances will the seller be liable for:

- (i) Defects or damage resulting from fair wear and tear or improper use by the buyer or failure by the buyer to comply with the instructions or advice from the seller or neglect of any other party other description.
- (ii) Goods which have been adjusted altered adapted or repaired by any party other than the seller.
- (iii) The suitability of any goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the seller.
- (iv) Substitution by the seller of any materials or components which were not part of the specification or quotation for the goods agreed in writing by the seller.
- (v) Descriptions illustrations specifications figures as to performance drawings and particulars of weight and dimensions submitted by the seller contained in the seller's quotations price lists or elsewhere which do not form part of the Contract.
- (vi) Technical information recommendations statements or advice furnished by the seller its servants or agents or given in writing to the buyer before the contract is made, or
- (vii) Variations in the quantities or dimensions of any goods or changes in specifications or substitution of any material or components if the variation or substitution does not materially affect the characteristics of the goods and the substituted materials or components are of a quality equal or superior to those originally specified.

The seller will not be liable to the buyer (other than liability for death or personal injury resulting from the seller's negligence) for any loss or damage of any nature.

- (i) arising from any breach of any express implied warranty or condition of the contract, or
- (ii) arising from any negligence, breach of statutory or other duty on the part of the seller, or
- (iii) arising in any other way

out of or in connection with the performance or purported performance of or failure to perform the contract except in accordance with this condition.

If the buyer establishes that any goods have not been delivered have been delivered damaged or are not of the correct except quality or do not comply with their description or do not correspond with sample the seller will at its option replace with similar goods any goods which are missing lost or damaged or do not comply with their description or correspond with sample or allow the buyer credit for their invoice value or repair damaged goods.

If the buyer establishes that any goods are defective the seller may at its option replace with other goods or repair any defective goods or allow the buyer credit for their invoice value.

Delivery of any repaired or replacement goods will be at the seller's premises or in pursuance of clause 5 of these Terms and Conditions.

If the seller is liable in accordance with the terms and/or conditions of this contract for some or part of the goods the contract will remain in full force in relation to the other or other parts of the goods and no set-off or other counterclaim will be made by the buyer or in respect of such other parts of the goods.

No claim may be made by the buyer for any defect arising from any design or specification provided or made by the buyer or if any adjustments alterations adaptations or other work has been done to the goods by any person other than the seller.

The contract is between the seller and the buyer as principles and may not be assigned by the buyer without the express written consent of the seller.

## **2.9 LIABILITY IN RESPECT OF THIRD PARTIES, ETC.**

Except as otherwise expressly provided by these Terms and Conditions, in no event shall the seller be liable to grant indemnity or make contribution to the buyer in relation to any claims against the buyer by any other parties for loss or damage howsoever caused even if foreseeable by the seller.

## **2.10 COST VARIATION**

Prices are subject to revision in the event of an increase in costs or materials incurred by the seller prior to delivery to the buyer.

The Company shall be entitled to charge the amount of any VAT payable whether or not included on the quotation or invoice.

A charge may be made to cover any additional work involved where a copy supplied by the customer is not clear and legible.

## **2.11 MANUFACTURE AND MATERIAL**

Goods will be manufactured in accordance with the agreed specification.

While every endeavour will be made to supply materials in accordance with the quality of samples submitted or quoted for, materials of not less strength than those quoted may be submitted for those quoted.

## **2.12 PROOFS, SAMPLES, MATERIALS ETC.**

Unless otherwise agreed all proofs sketches samples etc. and work produced at the buyer's request either experimentally or otherwise will be charged. All charges on and after first proof including alterations in style will be charged extra. No responsibility will be accepted for any errors in proofs sketches samples etc. and work which has been approved by the buyer.

Work carried out, whether experimental or otherwise, at a customer's request will be charged.

Author's corrections, including alterations in style, and the cost of additional proofs necessitated by such corrections will be charged extra. Proofs of all work may be submitted for a customer's approval, and in that event no responsibility will be accepted for any errors in them not corrected by the Customer

Standing Matter. Materials used by the Company in the production of type, plates, moulds, film-setting, positives, computer data etc. required for the supply of goods or services and the like shall remain the exclusive property of the company.

Customer's property and all property supplied to the Company by or on behalf of the customer will be held, worked on, and carried out at customer's risk.

## **2.13 WAIVER**

Any concession latitude or waiver allowed by the seller or the buyer at any time shall not prevent the seller or the buyer subsequently exercising its full rights under this contract in other respects.

## **2.14 WARRANTIES**

Without prejudice to the generality of the seller's terms and conditions of sale, subject to which any order is undertaken, the seller cannot accept any liability whatsoever in respect of the use to which the goods, subject to this document, are put. The buyer and the user shall accordingly take all such steps to satisfy themselves of the suitability of the goods, they shall not rely on any representations whether written or oral made by the seller its agents or employees.

Without prejudice to other remedies, the Company shall in respect to all unpaid debts due from the customer have a general lien on all and property in its possession (whether worked on or not) and shall be entitled on the expiration of 14 days notice to dispose of such goods or property as Company thinks fit and to apply any proceeds towards such debts.

## **2.15 RETENTION OF TITLE**

All artwork or digital origination produced for the means of producing the goods will remain the property of the seller.

Until the seller has been paid in full for the goods, produced from this origination, the following will comprise the contract between both the seller and the buyer.

(i) All or any goods delivered by the seller in performance or purported performance or part performance of the sale contract remain the property of the seller, although the risk therein passes to the buyer when the goods are delivered to the buyer or otherwise delivered by the seller in pursuance of clause 5 of these Terms and Conditions.

(ii) The seller may recover those goods at any time from the buyer if in his possession if the amount outstanding from the buyer to the seller in respect of goods supplied shall remain unpaid after the due date for payment has passed and for that purpose the seller his servants and agents may enter upon any land or building upon which the goods are situated.

(iii) The buyer has the right to re-sell the goods in the course of his business for the account of the seller (but any warranties, conditions or representations given or made by the buyer to any third party shall not be binding on the seller who shall be indemnified by the buyer with respect thereto) and to pass good title to the goods to his customer being a bona fide purchaser for value without notice of the seller's rights.

(iv) In the event of such re-sale the buyer has the figural duty to the seller to account to the seller for the proceeds but may retain there from any excess of such proceeds over the amount outstanding under this or any other sale contract between them and the seller has the additional right to recover the buyer's price directly from the buyer's customer to the extent unpaid: if the seller avails himself of such right the seller will account to the buyer for any such excess as aforesaid less any expenses incurred by the seller in respect of such recovery.

(v) Nothing in this condition shall confer any right upon the buyer to return the goods sold hereunder or to refuse or delay payment therefore unless otherwise agreed.

## **2.16 COPYRIGHT AND OTHER INDUSTRIAL PROPERTY RIGHTS**

The seller shall be indemnified by the buyer, against the seller incurring any liability whatsoever out of any goods supplied or work done for the buyer including any infringement of copyrights, patent, trademark or registered design.

## **2.17 ILLEGAL MATTER**

The Company shall not be required to print any matter, which in its opinion is or may be of an illegal nature.

The Company shall not be indemnified by the customer in respect of any claims, costs and expenses arising out of any libellous matter printed for the customer or any infringement of copyright, patent or design.

## **2.18 FORCE MAJEURE**

The agreement to supply is subject to variation or cancellation by the seller owing to any act of God, war, strikes, lock-outs, fire, flood, drought, tempest, civil commotion, shortage of labour or any other cause beyond the control of the seller or owing to any inability by the seller to procure materials or articles required for the performance of the contract of the seller shall not be liable for any inability to deliver caused thereby.

## **2.19 JURISDICTION**

These terms and conditions, the contract or any agreement are subject to English Law and the buyer consents to the exclusive jurisdiction of the English courts in all matters regarding the goods.

## **2.20 SEVERANCE**

These Terms and Conditions shall apply so long as they shall be held to be lawful and enforceable. If any term or condition or any part thereof is held to be unlawful or unenforceable then these terms and conditions shall be read and construed as if such term or condition or part thereof were omitted.

## **2.21 DEFINITION OF GOODS**

In the context of these conditions of sale the expression "Goods" means the articles or things or any of them described in the acknowledgement or confirmation of the buyer's order and shall include any materials supplied in the course of the transaction. Where because of factors beyond the reasonable control of the seller it becomes unduly difficult or expensive for the seller to supply the goods as originally ordered or specified the seller reserves the right to re-negotiate the contract notwithstanding any order for the goods has been acknowledged, accepted or confirmed by the seller and in such circumstances the seller shall not incur any obligations to supply the goods or any items comprised therein as originally ordered or specified or to supply any such item which has become obsolescent or unduly difficult to obtain.

Valid from 1 May 2008

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

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