



# SELL YOUR PRODUCTS ONLINE

Sell your Products Online and Web by Numbers are brands of Web by Numbers Ltd (hereinafter referred to as "Web by Numbers")

## **Standard Terms & Conditions for Supply of Software Development Services**

These are the terms and conditions of supply of Web by Numbers Ltd in relation to the provision of Software Development Services. These terms shall be deemed accepted by our customers upon their placing an order with us:

### **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 Development Proposal and Cost Specification Documents;
- 1.2 "Customer" means the organisation or person who purchases services from Web by Numbers Limited;
- 1.3 "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;
- 1.4 "Development Proposal and Cost Specification Documents" means a statement of work, quotation or other similar document describing the services to be provided by Web by Numbers Limited;
- 1.5 "Supplier" means

Web by Numbers Limited  
2 Ivy Garth  
Sedbergh Road  
Kendal  
LA9 6AR

### **2. GENERAL**

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of services by Web by Numbers Limited to the Customer.
- 2.2 Before the commencement of the services Web by Numbers Limited shall submit to the Customer a Development Proposal and Cost Specification Documents which shall specify the services to be performed and the fees payable. The Customer shall notify Web by Numbers Limited immediately if the Customer does not agree with the contents of the Development Proposal and Cost Specification Documents. All Development Proposal and Cost Specification Documents shall be subject to these Terms and Conditions.
- 2.3 Web by Numbers Limited shall use all reasonable endeavours to complete the services within estimated time frames but time shall not be of the essence in the performance of any services.

### **3. FEES AND PAYMENT**

3.1 The fees for the performance of the services are as set out in the Development Proposal and Cost Specification Documents. Web by Numbers Limited shall invoice the Customer for the services as detailed therein.

3.2 Invoiced amounts shall be due and payable as detailed within the invoice. Web by Numbers Limited shall be entitled to charge interest daily on overdue invoices from the date when payment becomes due from until the date of payment at a rate of 2% per annum above the base rate of the Bank of England. In the event that 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.

3.3 Web by Numbers Limited shall not refund any payment unless the amount received exceeds that which is owed to Web by Numbers Limited at the time of payment, in which case the difference shall be refunded as soon as practicably possible.

#### **4. CUSTOMER'S OBLIGATIONS**

4.1 To enable Web by Numbers Limited to perform its obligations under this Agreement the Customer shall:

4.1.1 - co-operate with Web by Numbers Limited;

4.1.2 - provide Web by Numbers Limited with any information reasonably required by Web by Numbers Limited;

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 Development Proposal and Cost Specification Documents or otherwise agreed between the parties.

4.2 The Customer shall be liable to compensate Web by Numbers Limited for any expenses incurred by Web by Numbers Limited as a result of the Customer's failure to comply with Clause 4.1.

4.3 Without prejudice to any other rights to which Web by Numbers Limited may be entitled, in the event that the Customer unlawfully terminates or cancels the services agreed to in the Development Proposal and Cost Specification Documents, the Customer shall be required to pay to Web by Numbers Limited as agreed damages and not as a penalty the full amount as set out in the Development Proposal and Cost Specification Documents, and the Customer agrees this is a genuine pre-estimate of Web by Numbers Limited'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 sub-contractor of Web by Numbers Limited, shall omit or commit anything which prevents or delays Web by Numbers Limited from undertaking or complying with any of its obligations under this Agreement, then Web by Numbers Limited shall notify the Customer as soon as possible and:

4.4.1 - Web by Numbers Limited 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 - Web by Numbers Limited shall notify the Customer at the same time if it intends to make any claim for additional costs.

#### **5. ALTERATIONS TO THE DEVELOPMENT PROPOSAL AND COST SPECIFICATION DOCUMENTS**

5.1 The parties may at any time mutually agree upon and execute new Development Proposal and Cost Specification Documents. Any alterations in the scope of services to be

provided under this Agreement shall be set out in the Development Proposal and Cost Specification Documents, 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 Development Proposal and Cost Specification Documents by notice in writing to Web by Numbers Limited. On receipt of the request for alterations Web by Numbers Limited shall, within 5 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 Web by Numbers Limited 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 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise Web by Numbers Limited by notice in writing whether or not it wishes the alterations to proceed.

5.4 Where Web by Numbers Limited 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 Development Proposal and Cost Specification Documents shall be amended to reflect such alterations and thereafter Web by Numbers Limited shall perform this Agreement upon the basis of such amended terms.

## **6. WARRANTY**

6.1 Web by Numbers Limited warrants that the services performed under this Agreement 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 Web by Numbers Limited.

## **7. INDEMNIFICATION**

The Customer shall indemnify Web by Numbers Limited against all claims, costs and expenses which Web by Numbers Limited 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 Web by Numbers Limited alleging that any services provided by Web by Numbers Limited in accordance with the Development Proposal and Cost Specification Documents 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 Web by Numbers Limited 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 Web by Numbers Limited 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 Web by Numbers Limited 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 Web by Numbers Limited's liability for death or personal injury resulting from Web by Numbers Limited's negligence or that of its employees, agents or sub-contractors.

## **9. TERMINATION**

Either party may terminate this Agreement forthwith by notice in writing to the other if:

9.1 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;

9.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;

9.3 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;

9.4 the other party ceases to carry on its business or substantially the whole of its business; or

9.5 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**

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement will vest in Web by Numbers Limited until all monies specified in the Cost Specification document are received by Web by Numbers Limited. Web by Numbers Limited will then assign all Intellectual Property Rights to the customer, and will execute any appropriate documents required to complete such assignment.

## **11. FORCE MAJEURE**

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, lock outs, 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**

Web by Numbers Limited 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. Web by Numbers Limited may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve Web by Numbers Limited of its obligations under this Agreement.

### **13. ASSIGNMENT**

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 Web by Numbers Limited.

### **14. SEVERABILITY**

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**

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**

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Development Proposal and Cost Specification Documents 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, 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. ENTIRE AGREEMENT**

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.

### **18. NO THIRD PARTIES**

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

### **19. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the law of England and Wales.