

## **TERMS AND CONDITIONS**

### **1. General**

- a. In these conditions the term "Contractor" shall signify K J Roger, and the term "Employer" shall signify a customer employing the Contractor or, where applicable, the main Contractor where the Contractor is employed or engaged as a sub contractor, or both, or any combination of same. The expression "materials" shall cover all items supplied by the Contractor in implement of the contract including hardware, software and other items installed by the Contractor in the computer equipment of on the website, web space or web server of or in the premises of the Employer or those stored in preparation for installation in said equipment or in the premises of the Employer or elsewhere by the Contractor.
- b. The entire contract between the Contractor and the Employer shall consist of the Contractor's Offer of Tender or Offer of Sale to which this Schedule is attached, any other Schedules, including plans and specifications annexed to or otherwise referred to in said Offer of Tender or Offer of Sale, and the acceptance by the Employer of the said Offer of Sale or Offer of Tender. In these conditions the Offer of Sale or Offer of Tender is hereinafter referred to as "the Offer", the Employer's acceptance is hereinafter referred to as "the Acceptance" and the combination of Offer and Acceptance are hereinafter referred to as "the Contract".

### **2. Domain Registration**

- a. For the purposes of domain registration the Contractor will act as agent for the Employer.
- b. Ownership of the domain will remain with the Employer who shall have full responsibility for its use and renewal.
- c. The Employer shall be bound by all the terms and conditions of the relevant domain registering authority.
- d. The Contractor shall have no liability in respect of the use by the Employer of any domain(s).
- e. The Contractor gives no guarantee or warranty of acceptance of any domain name request until the registering authority provides specific confirmation of registration.

### **3. Website Hosting**

- a. The Employer shall not use his/her or their web space to store adult content, or other illegal software (eg. Warez, etc), illegal MP3 sites or IRC bots.
- b. The Employer shall not store more data in his/her or their account than his/her or their allotted space.
- c. The Employer's account (including any FTP or Telnet access) is for the Employer's own use only. The Employer must not divulge his/her or their password to any other person.
- d. The Contractor shall not guarantee or warrant that all data on the servers is backed up and therefore the Employer should always keep an independent backup of all data held in his/her or their account.
- e. The Employer shall not run server processes (eg. Talkers, IRC bots) from his/her or their account.
- f. The Contractor shall not be held liable for any loss or damages caused by the use, misuse, unavailability or removal of services.
- g. If the Employer closes his/her or their account, the Contractor shall immediately and without further notice or warning ensure that all files are deleted.
- h. The Employer must not participate in any form of unsolicited bulk e-mailing or spam.
- i. The Employer shall be responsible for the content of his/her or their website/web pages. The Employer shall ensure that all necessary legal permissions to use any works covered by copyright are obtained. The Employer shall also ensure that all content does not infringe the law of any applicable legal system and in particular, without prejudice to that generality the Law of Scotland, the Law of England and Wales or any other constituent part of the United Kingdom of Great Britain and Northern Ireland. The Employer will be held responsible for any defamatory, abusive, confidential or proprietary material available via his/her or their web pages.
- j. The Contractor reserves the right to remove any material deemed inappropriate from the Employer's web pages without notice.
- k. If the Employer's website exceeds its monthly bandwidth allowance, the Contractor may temporarily suspend the Employer's service.
- l. The Contractor reserves the right to cancel the Employer's account at any time upon giving one month's prior written notice and without notice in event of breach of these conditions by the Employer.
- m. The Contractor reserves the right to amend and update these Terms and Conditions at any time without notice.
- n. The Employer shall be exclusively responsible for obtaining registration under and compliance with the Data Protection Act 1998, or any subsequent or amending legislation in that regard as shall be necessary in terms of these conditions. No liability in this regard shall attach to the Contractor in any circumstances.
- o. The Employer accepts that due to the nature of the Internet, the Contractor cannot warrant or guarantee the level of service available to the Employer and his/her or their website. The Contractor shall not be held liable for any interruptions of service to the Employer and his/her or their website.

### **4. Privacy**

- a. To protect the Employer's privacy the Contractor shall not distribute his/her or their name, details or e-mail address to any third parties.
- b. Any personal information collected will be held purely for the Contractor's own use.

### **5. Prices and Quotations**

- a. All prices and quotations given in the Offer are at current prices but subject to alteration in accordance with prices ruling at the time of supply or installation. Any quotation or Offer by the Contractor is valid for thirty days from its date, after which period it shall be held to have been withdrawn. Acceptances must be in writing and signed by the Employer or a Director, Partner or authorised officer having power to bind the firm, company or other body concerned.
- b. All prices are subject to the addition of Value Added Tax where applicable at the appropriate rate and any price list of the Contractor, whether published or not, shall not affect the right of the Contractor to quote or charge in accordance with this clause.
- c. In event that no quotation is given by the Contractor, and it has received an order from the Employer, all works shall be carried out subject to these conditions of sale, which shall be held to constitute conditions of contract between the Employer and the Contractor.

### **6. Terms of Payment**

- a. All Invoices rendered by the Contractor are payable within thirty days of the date of the Invoice unless otherwise specified in the Offer. In event that a shorter period for payment of an Invoice is so specified in the Offer that Invoice shall be payable within said period.
- b. The Contractor reserves the right to charge interest on overdue Invoices at the rate of five per centum per annum over Bank of Scotland minimum lending rate. This right may be exercised in addition to any other remedies the Contractor may have with regard to recovery of materials in respect of non-payment.
- c. Where the contract may be fulfilled in stages, sections or in separate installments or parts, each stage, section, installment or part shall constitute a separate Contract to be separately invoiced.
- d. Any objection relating to the accuracy of any Invoice rendered, any details of works therein or any sums demanded thereby, must be raised in writing with the Contractor within seven days of the date of Invoice, failing which the Employer will be held to have accepted the terms of the Invoice in full and this term shall be of the essence of the Contract between the Contractor and the Employer.
- e. All costs, including legal expenses incurred by the Contractor in recovering overdue monies (whether pre or post court expenses), shall be payable by the Employer.
- f. The Contractor reserves the right to withhold completion of any works specified in the Contract in event that any Invoice properly rendered is overdue for payment or in event of any breach of these conditions by the Employer.
- g. Notwithstanding the terms of any standard form of contract incorporated into the Contract to the contrary no retention of payment by the Employer will be permitted except as authorised in the Offer, Acceptance or otherwise by prior written agreement between the Contractor and the Employer.

7. **Credit Worthiness**  
If called upon to do so by the Contractor the Employer shall satisfy the Contractor as to his/her or their credit worthiness and, without prejudice to the foregoing generality, the Contractor may, in its absolute discretion, having informed the Employer that it is in a position to commence the works required in relation to the completion of the Contract or that the materials in that regard are ready for supply or installation, refrain from supplying or installing the materials or carrying out any works until such time as the Employer tenders the price to the Contractor in satisfactory form.
8. **Timescales**  
Any dates for the commencement of works or the supply and installation of materials, or for completion of the Contract or any part, stage, section or installment thereof, may be given in good faith by the Contractor to indicate an estimated time scale for the contract but shall not amount to a contractual obligation to complete the Contract in the time stated and no liability for direct or consequential loss or damages arising from delay in the commencement of works or from the supply, installation or completion of the Contract or any stage, section, installment or part thereof, will be accepted or fall upon the Contractor.
9. **Warranty**  
Works carried out in terms of the Contract are guaranteed by the Contractor for one year from the date of completion of the Contract unless otherwise specified in the Offer or Contract. Any guarantee given in terms of these presents will be vitiated in event that the defect is not promptly reported to the Contractor in writing. Where necessary, within the guarantee period and subject to these conditions, the Contractor will repair or replace faulty or defective works at no cost to the Employer. In the case of materials where applicable the Contractor shall use his best endeavours to pass on to the Employer the benefits of any guarantees or warranties made available to the Contractor by any manufacturer or supplier of the materials concerned.
10. **Descriptive Matter and Illustrations**  
All descriptive materials, specifications, drawings and particulars or dimensions issued by the Contractor are approximate only and are intended only to provide a general idea of the materials or services to which they refer and shall not form part of the Contract unless specifically incorporated therein or otherwise stated to form part thereof by the Contractor in writing.
11. **Limits of Contract**  
Any quotation includes only such materials, accessories and works as are specified therein.
12. **Copyright**  
All drawings and descriptions and other information submitted by the Contractor to the Employer shall remain the property of the Contractor together with the copyright therein. All drawings and descriptions and other information submitted by the Employer to the Contractor shall remain the property of the Employer together with the copyright therein.
13. **Bankruptcy**  
In event of the Employer committing any breach of Contract with the Contractor, or if the Employer or any third party offers to make any arrangements with, or for the benefit of his creditors, or if a sole trader or partnership becomes apparently insolvent, or if a company has a receiver appointed to manage its assets, or is subject to a Petition for Liquidation, excluding Petitions for the purpose of a reconstruction or amalgamation of the company, the Contractor shall thereupon be entitled, without prejudice to its other rights, forthwith to suspend all further supplies, installations and works in relation to the completion of the Contract and to determine the Contract or any unfulfilled part thereof.
14. **Legal Construction**  
Unless otherwise agreed by the Contractor in writing these conditions, and the Contract to which they relate, shall, in all respects, be construed in accordance with Scots Law.
15. **Title to Materials**
- Without prejudice to any of the Contractor's other rights under the Contract between the Contractor and the Employer, and notwithstanding the delivery, supply or installation of materials in implement of that Contract, the ownership of such materials shall remain with the Contractor until the Employer has paid the price therefore and until all debts owing to the Contractor by the Employer, including any outstanding balances or installments of payments due and existing at any relevant time and on any legal grounds, are settled. If the Contract price is payable by installments, and part only of that price has been paid to the Contractor, the Contractor may, at its sole option, appropriate the payment made to any part of the materials which have been so delivered, supplied or installed. Ownership of such part of the materials shall thereupon pass.
  - If payment of the Contract price is overdue, in whole or in part, the Contractor may (without prejudice to any of its other rights) recover or re-sell the materials, or any part of them, and may enter upon any premises or site of the Employer or any third party for that purpose.
  - The Employer agrees that all materials supplied by the Contractor in implement of the Contract which have not been paid for shall be stored in such a way as they are readily identifiable as being owned by the Contractor.
  - In event of the Employer entering into a state of insolvency as defined by Condition 13 above the Contractor shall be entitled to resume immediate possession of the materials, for which purpose the Employer grants the Contractor an unrestricted right of access to, and entry upon, any site or premises on or in which the said materials may, from time to time, be situated.
  - It is a material term of the Contract that the Employer shall only handle materials supplied by the Contractor in implement of the Contract prior to the price payable for such materials having been paid in full to the satisfaction of the Contractor, as agents for the Contractor, who shall remain owner of the materials involved. It is further specified that if the Employer disposes of the materials before title passes to him, her or them, he, she or they shall be deemed to do so as agent for the Contractor and shall hold any proceeds in trust for the Contractor and the Employer hereby assigns to the Contractor all his, her or their rights and claims against any purchaser.
  - In event of any disposal of materials supplied by the Contractor in implement of the Contract by the Employer, the Employer shall have a fiduciary duty to the Contractor to account to the Contractor for the proceeds of any such disposals but may retain therefrom any excess of such proceeds over the amount outstanding and due to the Contractor in respect of all sums owed by the Employer to the Contractor and the Contractor shall have an additional right to recover the Employer's price from the Employer's customer to the extent unpaid in order to obtain payment of any sum owed by the Employer to the Contractor but if the Contractor avails himself of this right it will account to the Employer for the excess less any expenses incurred by effecting recovery.
16. **Variation of Terms**  
Any variation of these terms will only be accepted where agreed by the Contractor and confirmed in writing. Furthermore, where these terms and conditions conflict with any terms and conditions imposed in any Acceptance of any Offer made by the Contractor, or in any invitation to Tender, specification of works or Schedule provided by the Employer or any Agent, on his/her or their behalf these terms and conditions shall prevail.