

TWP Agency Limited

Business Terms & Conditions of Business

1. Introduction

This plain English agreement has been written using as little legal jargon as possible. It explains our obligations to you, your obligations to us and what you should do if things go wrong.

It is a legally binding contract, which applies to all supplies of equipment, software, services and regular services by TWP Agency Limited ("TWP Agency", "TWP", "we", "our", "us") to the customer ("you", "your").

It will be governed and construed in accordance with English Law.

This agreement replaces any other agreement between you and TWP Agency.

What we agree to do

2. Supply

TWP Agency will supply the equipment, software and services specified in the sales schedule. This agreement also applies to all future supplies. These will be charged according to our written quotation or our price list current at the time of purchase.

3. Hosted software

We will grant to you a non-transferable licence to use the software for the number of sites, processors, users and transactions specified in the sales schedule. Title to and intellectual property rights in the software, and any improvements or amendments to it, and copies of it will remain with TWP Agency or its licensor unless otherwise agreed and confirmed in writing.

We will provide a hosted service to enable you to use the software efficiently over the Internet.

We are responsible for providing the equipment, software and network infrastructure at our server site. This includes server PCs, operating software, server software, operating software, network infrastructure and the network connection from our server site to the Internet.

You are responsible for the equipment, software and network infrastructure at your sites. This normally includes client PCs with suitable operating system and browser software, printers and a network connection from your site to the Internet.

4. Installed software

You are responsible for equipment software and network infrastructure for your users accessing the hosted software through a mobile device including mobile telephones.

We will grant to you a non-transferable licence to use the software for the number of sites, processors and users specified in the sales schedule. Title to and intellectual property rights in the software, and any improvements or amendments to it, and copies of it will remain with TWP Agency or its licensor.

5. Web Site Hosting And Email

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 and we shall be under no liability for non-receipt or misrouting of email or for any other failure of email.

We will use every reasonable endeavour to ensure your access to the Server but we will not, in any event, be liable for service interruptions or downtime.

6. Domain Name Registration

We will register domain names on your behalf but cannot guarantee availability of the domain names you require us to register. You should not assume that your requested domain names are available and have been registered until you have been notified that the registration has been made. We are not responsible for any action you take before this notification.

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7. Consulting and Other Services

We will provide other services as required and agreed following acceptance of our quotation.

8. Intellectual Property Rights

Unless otherwise agreed we will retain Intellectual Property Right ownership of all work we create.

9. Support

At your request, we will provide support for the software during normal working hours, i.e. from Monday to Friday between 9:00 am and 5:00 pm, except for UK Public Holidays, at the price set out in our quotation or our price list current at the time. Support is normally carried out remotely; any site visits which are required will be charged for at our prevailing rates.

To enable us to carry out support, you may allow us physical or on-line access to your computer systems. You may allow us to know the passwords for your computer systems, in which case we will keep them in writing in our support office. If we become aware that their security may have been compromised, we will promptly inform you. Any security breaches resulting from these facilities are your responsibility.

10. Dates

Whilst we will make reasonable efforts to meet delivery dates when specified, these dates are not a condition of contract, and we shall not be liable for any loss or damage (including consequential loss) arising from failure to deliver by such dates.

11. Confidentiality

We will take care not to disclose any information received from you that you notify us is confidential.

What you agree to do

12. Prices

You will pay the amount quoted in our sales schedule, written quotation or the price list current at the date of order.

Prices are quoted in UK Pounds Sterling, exclusive of taxes and duties, which will be charged at prevailing rates. Quotations are valid for 30 days.

13. Payment

Payment is due 14 days from the invoice date except for modules where alternative terms have been agreed in writing.

Regular services, such as support and hosted software, must be paid by standing order.

If payment for any equipment, software or service is not received by the due date, we may, in addition to our other remedies, suspend any service, such as support, internet provision, facilities management and renewing software time-expiry. The service will recommence when we receive payment in full.

If we suspend any regular service because of late payment, this agreement will continue and you must pay us until you terminate the service by giving notice in accordance with clause 31. In the event of termination we reserve the right to charge a reconnection fee.

14. Software

You must not sell, assign nor grant sub-licences of the software, nor use the software on processors other than the specified processors and you will retain any copyright or proprietary notices on the software and copies thereof. You will not, without getting our written consent, copy, nor allow the copying of any software except as you reasonably require to use it or

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secure it and you will keep accurate records of the number and locations of all such copies. You will ensure that the software remains under your sole control, and that no third party will have access to it.

15. Equipment

You will take delivery of equipment within 21 days of hearing from us that it is available, unless alternative arrangements are agreed in writing.

16. Property and risk

Title to the equipment will pass to you only when we have received payment in full for all equipment and software that are covered by this agreement. Risk in equipment and software will pass on delivery. Until title passes, you will insure the equipment against all risks noting TWP Agency's interest.

17. Intellectual Property Rights

It is your responsibility to obtain all consents and clearances for any data you provide us with in connection with any work we undertake on your behalf.

18. The Internet

The Internet is a rapidly changing and unmanaged international resource. TWP Agency cannot guarantee its performance. If you choose to connect to the Internet, any security risks are your responsibility. We may suggest various precautions but, like door locks, while they increase security they cannot guarantee it. TWP Agency makes no guarantees about its ability to provide Internet security.

You are responsible for taking legal advice about Internet trading.

You are responsible for data stored on and transmitted via the Server. We shall have no liability for any loss or damage to any data stored on the Server. It is your responsibility to effect and maintain adequate insurance cover in respect of any loss or damage to data stored on the Server.

19. Web Site Hosting And Email

You will use the Web Site allocated to you only for lawful purposes.

You will not use the Server in any manner which infringes any law or regulation. You will not store, post, link to or transmit any material that 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 programme; 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.

20. Recruitment

TWP Agency's staff are our most important investment and asset. You must not employ a former employee of TWP Agency for a period of one year after they cease to be employed by us without our agreement in writing.

If you do employ a former employee of TWP Agency within one year after they cease to be employed by us, whether directly or through a connected company or supplier, you must pay us a recruitment fee. This is a percentage of their first year's taxable gross remuneration, including benefits in kind. The recruitment fee is 30% where such remuneration is up to £20,000 and 40% where it is £20,000 or more.

If things go wrong

21. Problems

We aim to provide a high quality of service. However, computer systems involve complex technology and some problems can be expected to arise.

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In the first instance, you should give your main contact at TWP Agency, or our support desk, a clear description of the problem as soon as possible.

If this does not lead to a satisfactory resolution, you must inform your Project Manager at TWP Agency, or the director in charge of the team. It is important to state clearly, in writing, what you believe the problem to be and what action you are asking for.

22. Complaints

If you are not happy with how your problem has been handled, you must write to the Operations Director of TWP Agency, setting out the details of the problem and what action you are asking for.

23. Matters beyond our reasonable control

If we cannot do what we have promised in this agreement because of something beyond our reasonable control, such as national emergency, power failure, industrial dispute etc., we will not be liable for this and the guarantees set out in paragraphs 23, 24 and 25 will not apply.

24. Guarantee – equipment

We guarantee that equipment we supply is of merchantable quality, is fit for its purpose and will function properly for the period of the manufacturer's guarantee. If equipment is not satisfactory, you must notify us in writing within one month of supply. We will choose whether to repair the equipment, replace it or refund the purchase price.

It is your responsibility to arrange a third party hardware maintenance agreement for your hardware.

25. Guarantee - software

We guarantee that our software is of merchantable quality and fit for the purpose of typical businesses for which it was designed. You are responsible for checking prior to purchase that software packages meet the needs of your specific business.

When each module of the software is available, we will test it to ensure it is functioning correctly. As soon as the module is operating satisfactorily, you will sign an acceptance certificate acknowledging that you accept the module. If, within 30 days, you fail to sign this certificate or deliver to TWP Agency written notification of defects in the module, you will be deemed to have accepted the module at the end of that period. As soon as the defects have been put right, you will be deemed to have accepted the module.

26. Guarantee – regular services

We offer two levels of support, "Standard Support" or "Guaranteed Service".

With Standard Support, there is no Guarantee when a problem will be resolved.

For Guaranteed service levels, we from time to time publish our "Service Level Agreement. If we fail to meet these guarantees, we will pay you compensation of two days' service charge for each day or part day that we fail. You must notify us of the failure on the same day, so that we can take appropriate action, and notify us in writing of your compensation claim within 30 days.

27. Liability

TWP Agency will not be liable for indirect, special or consequential loss or damages.

TWP Agency will not be liable for any loss attributable to:

- a) breach of these conditions by you;
- b) misuse or modification of equipment or software without our prior written approval;
- c) your failure to keep security copies updated at least every 24 hours;
- d) your failure to enter into an equipment maintenance contract with a contractor approved by TWP Agency; or

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- e) use of equipment or software not supplied by TWP Agency; or
- f) unauthorised access to your computer system, including physical access, on-line access, access via our network, access via the Internet, access via a modem or router, or access using a password you have made available to us.

Our liability to you and third parties for loss or damages, whether in tort or for breach of contract, or for misrepresentation, or otherwise shall in no circumstances exceed an amount 25% more than the price paid for modules in respect of which the claim is made. We will not be liable for any delay or failure in performance of our obligations to you resulting from causes beyond our reasonable control. These conditions will not apply so as to restrict our liability for death or personal injury resulting from our negligence. If any limitations on our liability are found to be unenforceable at law, they will be deemed to be omitted, and the remaining limitations will continue to apply.

28. Mediation

If any dispute arises out of this agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

Changing and ending the agreement

29. Changes

No purported variation of the terms of this agreement will be valid unless we confirm them in writing.

30. Transferring the agreement

You may not assign your rights under agreements with TWP Agency without our prior written consent.

31. Termination

Regular services are provided for a minimum period of one year and can then be terminated by either party giving three months' written notice (unless alternative periods have been agreed in writing).

If you commit a breach of these conditions, and fail to remedy this breach within 30 days of written notice requiring the breach to be remedied, or if you go into liquidation (other than for the purposes of reconstruction or amalgamation) or have a receiver appointed over any part of your assets, then we may (without prejudice to its other rights) immediately terminate the software licence by written notice. On termination you will immediately return the software and all copies of it to TWP Agency, together with all other items in your possession, including manuals, which are our property.