

STANDARD TERMS AND CONDITIONS OF: Citrus-Lime Limited

Version 1.4: Issued 12/07/2011

Our terms and conditions for webhosting are available at <http://www.citruslime.com/TermsConditions-WebHosting.pdf>

1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "Acceptance Period" means in respect of each element of the Services individually identified in the Proposal a period of 10 Working Days from the completion of such Service as notified to the Customer from time to time;
- 1.2 "Agreement" means these Terms and Conditions together with the terms of any applicable Proposal;
- 1.3 "Customer" means the organisation or person who purchases services from the Supplier;
- 1.4 "Deliverables" means all products and materials developed by the Supplier under an Agreement in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts);
- 1.5 "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;
- 1.6 "Pre-existing Materials" means materials which existed before the date of the Proposal;
- 1.7 "Proposal" means a written statement of work, quotation or other similar document describing the services to be provided by the Supplier;
- 1.8 "Services" means the services to be provided by the Supplier as described in a Proposal;
- 1.9 "Supplier" means Citrus-Lime Limited of Barclays Bank Chambers, County Square, Ulverston, Cumbria, LA12 7AL;
- 1.10 "Warranty Period" means the period of 90 days commencing on completion of the Services; and
- 1.11 "Working Day" means Monday to Friday excluding bank and public holidays in England and Wales.

2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of services by the Supplier to the Customer and prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing..
- 2.2 Before the commencement of the Services the Supplier shall submit to the Customer a Proposal which shall specify the Services to be performed and the fees payable. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Proposal. All Proposals shall be subject to these Terms and Conditions.
- 2.3 The Supplier 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 Proposal. The Supplier shall invoice the Customer for the Services and for reasonable out-of-pocket expenses incurred in providing those Services.
- 3.2 Any extra work required outside of the scope of the Proposal will be charged at the Supplier's then current standard rate.
- 3.3 The costs outlined in the Proposal are an estimate, which may deviate by the greater of the Supplier's day rate or 10% of the total project cost without the written agreement of the client.
- 3.4 Invoiced amounts shall be due and payable within 30 days of the date of the Supplier's invoice. Time for payment shall be of the essence in relation to these Terms and Conditions. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 8% per annum above the base rate of the Bank of England. The Supplier may

claim interest and costs under the Late Payment of Commercial Debts (Interest) Act 1998. In the event that the Customer's procedures require that an invoice be submitted against a purchase order to allow payment, the Customer shall be responsible for issuing such purchase order before the Services are rendered and no payment terms shall be extended as a result of the Customer's failure to supply such purchase order.

- 3.5 If an invoice is overdue and the item has not been queried or otherwise disputed within 30 days of issue, the Supplier will write to inform the Customer that their account is in arrears. The Supplier will charge a £40.00 late payment compensation charge on production of this letter.
- 3.6 Any queries or disputes about payment must be made within 30 days of receiving the invoice, otherwise the work shall be deemed complete and payment for the work shall be made in full.
- 3.7 The Supplier reserves the right to review all fees and/or charges payable under these Terms and Conditions in the event of:
- 3.7.1 any changes to the Proposal; or
 - 3.7.2 delays on the project resulting from the Supplier withholding Services due to the Customer's failure to make payments when due; or
 - 3.7.3 the Customer's failure to carry out its responsibilities or obligations set out in this Agreement or to provide assistance or facilities as required under this Agreement; or
 - 3.7.4 the Customer requesting that the Supplier delay work for any reason.
- 3.8 If paying by direct debit, please note that Citrus-Lime Ltd have appointed the BACS Approved Direct Debit Bureau, Eazy Collect Services Limited (www.eazycollect.co.uk), to collect your payments and Eazy Collect will be shown on your bank statement.

4 CUSTOMER'S OBLIGATIONS

- 4.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:
- 4.1.1 co-operate with the Supplier;
 - 4.1.2 provide the Supplier with any information reasonably required by the Supplier;
 - 4.1.3 guarantee that information provided to the Supplier by the Client or third parties acting on behalf of the Client will be accurate;
 - 4.1.4 obtain all necessary permissions and consents which may be required before the commencement of the Services; and
 - 4.1.5 comply with such other requirements as may be set out in the Proposal or otherwise agreed between the parties.
- 4.2 If the Supplier's performance of its obligations under these Terms and Conditions is prevented or delayed by any act or omission of the Customer (including but not limited to a failure to comply with clause 4.1) or the Customer's agents, sub-contractors or employees, then:
- 4.2.1 the Customer shall be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it, subject to the Supplier confirming such costs, charges and losses to the Customer in writing;
 - 4.2.2 the Supplier shall have no liability in respect of any delay to the completion of any project; and
 - 4.2.3 if applicable, the timetable for the project will be modified accordingly.
- 4.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the Services agreed to in the Proposal, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the following costs and expenses:
- 4.3.1 the full amount of any third party costs to which the Supplier has committed; and
 - 4.3.2 the full amount, on a time and materials basis at the Supplier's then standard daily rate, of all time expended in providing the Services up to and including the date of termination and/or cancellation (as applicable); and

4.3.3 in respect of unlawful termination and/or cancellations on less than five Working Days' written notice the full amount of the Services contracted for as set out in the Proposal,

and in each case the Customer agrees that the above sums are a genuine pre-estimate of the Supplier's losses.

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.

5 ACCEPTANCE

5.1 During the Acceptance Period in respect of the Services, the Customer may give written notice to the Supplier in the event that the Customer demonstrates to the Supplier that the Services fail to comply with the Proposal in any material respect. The Customer acknowledges that it shall not be entitled to issue any notice under this clause 5.1 in respect of any failure that is minor, cosmetic, trivial and/or which relates to the look and feel of any deliverables (unless such look and feel has been detailed in the Proposal). Upon receipt of such notice the Supplier shall re-perform the Services within 30 days of written notice from the Customer specifying such failure. Unless such notice is received by the Supplier during the Acceptance Period in respect of such Services the Services shall be deemed to have been accepted by the Customer at the end of such Acceptance Period.

5.2 Notwithstanding the foregoing, each part of the Services will be deemed to be accepted as soon as such part of the Services is used in a "live" environment and the sole remedy of the Customer in respect of any failure in such Services(s) shall (subject to payment by the Customer of the applicable fees) be to require the Supplier to provide correction services in accordance with clause 6.

6 WARRANTY

6.1 During the Warranty Period, the Supplier 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 the Supplier.

6.3 In the event of breach of the warranty in clause 6.1, the Customer shall notify the Supplier and the Supplier shall reperform the Services so as to comply with the warranties above, within 30 days of notification from the Customer. The re-performance of Services shall, if correctly undertaken, be the Customer's sole remedy in respect of breach of the relevant warranty.

7 INDEMNIFICATION

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

8.4 The parties acknowledge that:

8.4.1 the Agreement has been open to negotiation and represents the outcome of such negotiation (whether or not any change has been made to these Terms and Conditions during the course of such negotiation);

- 8.4.2 the specification of the Services and duties of the Supplier as contained in this Agreement accord with their expectations and are fair and reasonable;
- 8.4.3 some limitation of liability is to be expected; and
- 8.4.4 the limitation of liability for breach of the warranties set out in this Agreement and duties so specified is fair and reasonable in the light of:
 - 8.4.4.1 the price and/or charges to be paid;
 - 8.4.4.2 the nature of the Services; and
 - 8.4.4.3 the special provisions for remedying any defects in the Services inherent in this commercial context.

9 TERMINATION

- 9.1 Either party may terminate this Agreement forthwith by notice in writing to the other if:
 - 9.1.1 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;
 - 9.1.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
 - 9.1.3 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;
 - 9.1.4 the other party ceases to carry on its business or substantially the whole of its business; or
 - 9.1.5 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

- 10.1 All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Supplier, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.
- 10.2 The Supplier hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If the Supplier terminates this Agreement under clause 9.1 this licence will automatically terminate.
- 10.3 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

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

The Supplier 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. The Supplier 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 the Supplier 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 the Supplier.

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 Proposal 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 DISPUTE RESOLUTION

17.1 Any dispute between the parties arising out of or in connection with these Terms and Conditions (other than in relation to the payment of any money) shall in the first instance be referred to a project manager of each party for resolution. The parties agree to work together in good faith to reach an agreed settlement of any such dispute.

17.2 If within 14 days of the meeting of the project managers pursuant to Clause 17.1 the dispute has not been resolved, the parties agree to submit the dispute to a director of each of the Supplier and the Customer each of which shall have authority to settle such dispute on behalf of the Customer. The parties shall meet within 7 days of the reference to them of any dispute and shall work together in good faith to resolve the dispute. The dispute resolution meeting will occur at the supplier's offices.

17.3 If within 14 days after a reference under Clause 17.2 the dispute has not been resolved, the dispute may be referred, by either party, to an expert to be agreed in writing between the parties or in default of such agreement to such expert as shall be nominated at the request of either party by the President of the British Computer Society at the time of the application in accordance with and subject to the provisions of the Arbitration Act 1950. The costs, charges and expenses incurred in respect of such arbitration including the legal costs of each of the parties will be at the discretion of the arbitrator.

18 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.

19 NO THIRD PARTIES

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

20 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.