



E STRANDS LIMITED: TERMS AND CONDITIONS OF BUSINESS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions:

Company: E Strands Limited, a company registered in England and Wales under company number 06740231 whose registered office is at 15 Beverley Road, Nunthorpe, Middlesbrough, Cleveland, United Kingdom, TS7 0HS. Our VAT registration number is 942 547 412.

Company's Project Manager: the Company's manager for the Project, appointed in accordance with condition 4.5.

Confidential Information: all information, whether technical or commercial (including all specifications, drawing and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is either identified as confidential at the time of disclosure; or ought reasonably to be considered confidential given the nature of the information of the circumstance of the disclosure.

Contract: the Customer's purchase order and the Company's acceptance of it under condition 3.

Customer: the person, firm or company who purchases Services from the Company.

Customer's Project Manager: the Customer's manager for the Project appointed in accordance with condition 5.1(a).

Deliverables: all products and materials developed (or altered from Materials) by the Company in relation to the Project in any media, including, without limitation, web pages, coding instructions, graphical designs, data, diagrams, reports and specifications (including drafts).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Materials: any content provided or derived from content provided to the Company by the Customer from time to time for incorporation in the Site.

Project: the provision by the Supplier of the Services as set out in this agreement.

Project Milestone: a date by which a part of the Project is estimated to be completed, as set out in the Project Plan.

Project Plan: the detailed plan describing the Project and setting out the estimated timetable (including Project Milestones) and responsibilities for the provision of the Services by the Company in accordance with the Contract.

Services: the services to be provided by the Company under the Contract as detailed in the project plan.

Site: the customer's website (whether developed or being developed by the Company) in respect of which the Services are being carried at.

Third Party Products: those third party products set out in the Project Plan.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Headings do not affect the interpretation of these conditions.

2. APPLICATION OF CONDITIONS

2.1 These conditions shall:

- (a) apply to and be incorporated in the Contract; and
- (b) 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 Any variation of the Contract shall be in writing and signed by or on behalf of the parties.

3. EFFECT OF PURCHASE ORDER

The Customer's purchase order constitutes an offer by the Customer to purchase the Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by the Company, or the Company's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

4. COMPANY'S OBLIGATIONS

4.1 The Company shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Project Plan.

4.2 The Company warrants that during the term of the Contract that professional indemnity insurance cover of not less than £250,000 shall remain in force with a reputable insurance company.

4.3 The Company shall use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

- 4.4 The Company shall perform the Services with reasonable care and skill.
- 4.5 The Company shall appoint the Company's Project Manager who shall have authority to contractually bind the Company on all matters relating to the Project. The Company shall use reasonable endeavours to ensure that the same person acts as Company's Project Manager throughout the Project, but may replace him from time to time where reasonably necessary in the interests of the Company's business.

5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
- (a) co-operate with the Company in all matters relating to the Project and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Project;
 - (b) provide the Company with access to, and use of, all information, data and documentation reasonably required by the Company for the performance by the Company of its obligations under this agreement
 - (c) be responsible at all times for the completeness, accuracy and for the appropriateness of the content on the Site.

6. PROPOSED CHANGES TO THE SCOPE OF SERVICES

- 6.1 If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.
- 6.2 If either party requests a change to the scope or execution of the Services, the Company shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
 - (b) any variations to the Company's charges arising from the change;
 - (c) the likely effect of the change on the Project Plan; and
 - (d) any other impact of the change on the terms of the Contract.
- 6.3 If the Company requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 6.4 If the Customer wishes the Company to proceed with the change, the Company will use best endeavours to facilitate this but has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

7. THIRD PARTY PRODUCTS

The Third Party Products shall be supplied in accordance with the relevant licensor's standard terms. Any licence fee for such Third Party Products is included in the charges payable pursuant to condition 8.

8. CHARGES AND PAYMENT

8.1 The total price for the Services shall be the amount set out in the Project Plan. The total price shall be paid to the Company (without deduction or set-off) in full prior the Company commencing work or in instalments as set out in the Project Plan on its achieving the corresponding Project Milestone. On achieving a Project Milestone, the Company shall invoice the Customer for the charges that are then payable, (and VAT, where appropriate).

8.2 The Customer shall pay each invoice submitted to it by the Company in full, and in cleared funds, within 30 days of receipt.

8.3 Without prejudice to any other right or remedy that the Company may have, if the Customer fails to pay the Company on the due date the Company may:

- (a) claim interest and penalties under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002; and
- (b) suspend all Services until payment has been made in full.

8.4 Time for payment shall be of the essence of the Contract.

8.5 All payments payable to the Company under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

8.6 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Company. The Company 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 Company terminates the Contract under condition 12.2, this licence will automatically terminate.

9.2 The Company shall indemnify the Customer against all damages, losses and expenses arising as a result of any action or claims that the Deliverables infringe the Intellectual Property Rights of a third party. This condition 9.2 shall not apply where the infringing element of the Deliverables are Materials.

- 9.3 The Customer shall indemnify the Company against all damages, losses and expenses arising out as a result of any action or claims that the Materials infringe the Intellectual Property Rights of a third party.
- 9.4 Conditions 9.1 to 9.3 shall survive Termination of the agreement in accordance with Condition 12.1 and any Termination by the Customer pursuant to condition 12.2.

10. CONFIDENTIALITY

- 10.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
- 10.2 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.
- 10.3 The obligations set out in this condition 10 shall not apply to Confidential Information which the receiving party can demonstrate:
- (a) is or has become publicly known other than through breach of this condition 10; or
 - (b) was in the possession of the receiving party prior to disclosure by the other party; or
 - (c) was received by the receiving party from an independent third party who has full right of disclosure;
 - (d) was independently developed by the receiving party; or
 - (e) was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose give the other party prompt written notice of the requirement.
- 10.4 This condition 10 shall survive termination of the Contract, however arising.

11. LIMITATION OF LIABILITY

- 11.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of the Contract;
 - (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

- 11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these conditions excludes the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 11.4 Subject to condition 11.2 and condition 11.3:
- (a) the Company shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss or corruption of data or information; or
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
 - (b) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

12. TERM AND TERMINATION

- 12.1 The agreement shall commence on the Effective Date and shall (subject to earlier termination pursuant to condition 12) automatically terminate on the completion of the Project and payment of all outstanding sums.
- 12.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:
- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or

- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) there is a change of control of the other party; or
- (h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

12.3 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

13. FORCE MAJEURE

The Company shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Company's or sub-contractors.

14. WAIVER

14.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

14.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

15. SEVERANCE

- 15.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 15.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

16. STATUS OF PRE-CONTRACTUAL STATEMENTS

Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in the Contract.

17. ASSIGNMENT

- 17.1 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.2 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

18. PUBLICITY

All media releases, public announcements and public disclosures by either party relating to this agreement or its subject matter, including promotional or marketing material, shall be coordinated with the other party and approved jointly by the parties prior to release.

19. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20. THIRD PARTY RIGHTS

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.



21. NOTICES

Any notice under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Contract. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

22. GOVERNING LAW AND JURISDICTION

22.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

22.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract.