

## Terms and Conditions

These Terms and Conditions of Business apply to any work which eNorth Limited agrees to carry out for its' customers. When you see the use of the words: 'Us', 'We' or 'Our' then it means eNorth Limited whether trading as eShopfitters or otherwise; 'You' or 'Your' then it means you, our customer.

**IMPORTANT NOTES:** Amongst other things, **these Terms and Conditions limit and exclude our liability**. It is important that you read them and understand what they are saying and arrange any insurance cover you decide you need to protect your interests. If you are in any doubt about what they mean please contact us before we start doing any work for you.

The heading or description we have used for each clause is there just for convenient reference only.

### 1. DEFINITIONS

"Acceptance" means the obligation on you to confirm in writing your acceptance and satisfaction with the Services before we make final delivery of them to you

"Installation" means our uploading and installing software, that somebody else has written, on to your computer or server

"Intellectual Property" means all copyrights, related rights, designs, logos, patents, trade marks, trade names, database rights, and other similar intellectual property rights (whether registered or not) in relation to the Services or Site

"Services" means any work we do for you including any advice we give you (whether or not we charge you for that advice) or software updates, bug fixing, search engine optimisation or any other services

"Site" means an online shop or web site that we create for you on the internet

"Site Information" means any text or graphics (including product information) you supply to us for display as part of your Site

### 2. RESTRICTIONS ON YOU/YOUR SITE

(a) You must be over 18 years of age to apply for and operate your Site

(b) You will not use the Services or the Site to:

- Threaten, insult, criticise or defame anybody or in any way violate anybody's rights to privacy ("anybody" in this Clause 2 includes any organisation as well as any individual)
- Promote racist, sexist, ageist, obscene or what we consider to be "adult content" or "warez" language or graphics
- Infringe any intellectual property rights of anybody
- Breach any statutory provision or regulation
- Sell, promote or engage in any illegal activity, including but not limited to the sale of illegal goods, stolen merchandise or known defective products
- Make false claims about any product or service sold or advertised using the Site
- Forward or cause the forwarding of any email, or other form of communication, containing personal details of anybody without their express consent
- Send unsolicited email, or use any other technique commonly known as "spamming"

(c) We do not accept any liability for any communications of any type you send to anybody using the Site or for errors in Site Information or for errors contained in our website, however such errors have arisen.

(d) We can refuse to accept or delete any Site Information at any time at our sole discretion

(e) You will not sell, distribute or licence our software or Services except for source code specifically covered by the GNU General Public Licence (GPL)

(f) You will be responsible for backing up your data before we start any work for you

### **3. OUR CHARGES**

#### **(A) Creating a Site**

Our charges are split into 2 parts: (a) A set-up fee which covers the cost of design, configuration and email technical support for your Site for 30 calendar days after we activate it on the Internet and (b) (Optional) A hosting fee which covers web site hosting, related services and hosting related technical support

The set-up fee is payable in 2 parts: 50% or £50 whichever is the greater when you accept our quotation and the other 50% on Acceptance

The hosting fee is payable 12 monthly in advance

If, after telling us what you want us to do, you either reject the designs we produce (which meet those requirements) for aesthetic reasons or if you change your original requirements we will make extra charges for redoing the work

#### **(B) Writing Software**

The software writing fee is payable in 2 parts: 50% or £50 whichever is the greater when you accept our quotation and the other 50% (or a greater amount if the original price we gave you has been exceeded, as below) on Acceptance

In some circumstances we may need to revise the original price we gave you as the work progresses and give you the opportunity not to proceed further if you refuse to accept any revised price. If you decide not to proceed further you must tell us in writing and immediately pay us what you owe us up to that date

#### **(C) Installing Pre-written Unmodified Software**

Full payment in advance when you agree to our quote in writing

#### **(D) VAT**

All Prices are exclusive of VAT unless indicated otherwise.

### **4. OVERDUE PAYMENT**

If you do not pay us any money that you owe us on time then:

(a) Seven days after the due date we can suspend your Site if we host it and (b) Fourteen days after the due date we can delete your Site and this will end the contract between us

(b) If we decide to suspend or delete your Site then we do not have to give you any notice that we are going to (or have done so); it will not cancel your obligation to pay us everything you then owe us and neither will it mean that we have to repay you the money you have already paid us

(c) We will charge you interest on any overdue monies at 12.5% per annum calculated daily until the date we receive cleared funds from you

(d) We will charge you £25 for any cheque you give us which is not honoured for any reason and a re-connection fee of £50 when you have paid us everything you owe us

(e) We will charge you for any debt collection charges that we spend on recovering what you owe us whether legal proceedings take place or not

## **5. MAXIMUM PROJECT TIME**

The maximum project time is 6 months from the time we receive your deposit payment, unless agreed otherwise in writing by us before commencement of the project. We reserve the right to terminate your project if you have not paid any outstanding fees in full within this 6 month period.

## **6. TECHNICAL SUPPORT**

(a) We will provide 30 days of email technical support from the date your Site goes live provided you have paid us everything due to us

(b) On request we will provide you with general hosting support after the initial 30 day period provided you have paid us in advance our hosting charges

(c) You are responsible for making sure your equipment is properly configured to use our Services

(d) Our technical support may be limited if an unreasonable demand causes a detrimental effect on the support provided to our other customers

(e) There is no technical support at all for Installation

(f) For software updates any technical support is limited to that element of the software we have updated for you

## **7. HOSTING.**

(a) We reserve the right to sub-contract hosting services and may change the sub-contractor at any time without giving you notice

(b) We may alter the type of hosting account used for your site if it uses an unusually high level of bandwidth or large amount of web space. Additional fees may become payable if we tell you that your Site has a data transfer rate (bandwidth) or a web space usage either of which exceed your account limits

(c) We will not host any Site that causes detriment to the operation of any other sites or systems. It is your responsibility to store independent back up files of your data

(d) We reserve the right to terminate or suspend the hosting of your Site without prior notice if you don't comply with these Terms and Conditions or if we consider it necessary to protect our business. If that happens we will tell you in writing

(e) We can suspend the Services during any technical failure, modification or maintenance from time to time and without giving you notice

(f) We do not promise or guarantee that you will always have uninterrupted, error free Services

(g) If you have ordered hosting on a 12 month subscription we expect you to commit for this period of time. If you wish to cancel your subscription within this service period we will not make any refunds for any unused portion of the subscription period. Whilst we do not offer a refund you have no obligation to continue using our services

(h) You will remain liable for all hosting charges during any period of interruption or suspension

(i) We reserve the right to terminate without notice your hosting account, remove all related Site Information and Site content if you breach these Terms and Conditions

(j) We are not liable for any lost or stolen payment details and personal information. The responsibility for your customer details lies with you

## **8. DOMAIN NAME.**

(a) Your domain name remains your property

(b) If we are to try to register or obtain a domain name for you then that will be a name chosen by you, is subject to both the relevant terms and conditions of the relevant registrar and any third party claims there may be in respect of trademark, copyright, and/or passing off

(c) You acknowledge and warrant that you have made all investigations and considered any competing claim there may be in respect of your chosen domain name by third parties whether in the UK or elsewhere. We reserve the right to suspend your domain name if we are told of any competing claim to it

(d) If you want us to register a .uk domain name you must follow the Nominet 'Terms and Conditions'

(e) We will, free of charge, use our reasonable endeavours to transfer your domain name to another provider within 5 working days after receiving written notice from you to do so.

(f) We do not accept any responsibility for any loss of data (either from your web space or your emails) that happens when we are transferring your domain name to or from us

## **9. PROMOTION**

(a) You agree that a link to your Site, together with extracts from your Site, can be featured on our web sites for promotional purposes without any payment becoming due to you

(b) Where we create a Site for you then you agree to retain in a prominent position a link from your website back to our website

## **10. INTELLECTUAL PROPERTY**

(a) You have sole title and ownership of all Intellectual Property Rights previously held by you and all Intellectual Property Rights created or developed by you

(b) We have sole title and ownership of all Intellectual Property Rights created, developed or supplied by us

(c) We will allow you the non-exclusive right to use the specific designs that we have created for your site but we reserve the right to supply our library designs to our other customers

## **11. LIMITING AND EXCLUDING OUR LIABILITY**

(a) IN NO EVENT SHALL EITHER US OR YOU BE LIABLE TO THE OTHER, REGARDLESS OF THE FORM OF CLAIM OR ACTION, FOR (i) LOST PROFITS, BUSINESS, OPPORTUNITIES, OR REVENUES OF ANY KIND, (ii) LOST SAVINGS; (iii) LOST SOFTWARE OR DATA; (iv) LOSS OF USE OF HARDWARE, SOFTWARE, SYSTEMS OR DATA OR (v) ANY INDIRECT OR CONSEQUENTIAL LOSS HOWEVER CAUSED AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) We are not liable if we either cannot do (or there is a delay in completing) the Services because, either, we are waiting for you to supply us with information we have asked you to provide or because of any circumstances beyond our control. Without limiting the foregoing some examples of those circumstances are illness, Act of God, war or terrorist action or the threat of it, lockout, strike or any other labour dispute, flood, drought, fire, failure or interruption of power supply,

failure of third parties to supply either software, design work or other materials or facilities, court order or legislation

(c) If any circumstances beyond our control happen you can choose to terminate the Services by telling us in writing and pay us for the work we have done for you up to that date but, if you don't, then you agree to accept delivery of the Services when it becomes available

(d) Our liability for the Services is limited to the price we charge you for doing that work. If any work you pay us to do is found to be defective we will repeat that work at our cost

(e) We provide you with services for the design, configuration and hosting of your Site. This does not mean that we guarantee you will sell any or any minimum quantity of your products/services using your Site. That type of commercial risk is yours alone

(f) Nothing in this Clause is intended to try and limit our liability to you for death or personal injury caused by our negligence

## **12. SECURITY**

(a) We provide the means for you to sell products or services online in a secure environment, but any sale or commercial arrangement that takes place using the Site is between you and your customers. We are not liable for any costs, expenses, damages or compensation that may become payable between you and your customers through the use of the Site

(b) You agree to keep secure all the information we give you relating to your account with us (login, password and other identifying information)

(c) Your rights are personal to you and non-transferable

## **13. AMENDMENTS**

(a) We reserve the right to amend or change these Terms and Conditions at any time without notice by putting them on our website or sending you a copy at our discretion

(b) No amendments or additions to these Terms and Conditions that you suggest takes effect unless we accept them in writing.

(c) If you find any new or changed Terms and Conditions unacceptable you can end your subscription at any time by telling us in writing; we will give you a pro rata refund of the un-expired portion of your subscription. You agree that, except for this refund, you will not make any claims for compensation because of the cancellation or withdrawal of your subscription

## **14. CONFIDENTIALITY**

You and we agree to treat all information about the other's business as strictly confidential. As far as is possible, both of us will make sure that all persons who you or we need to disclose any information to agree to be bound by these terms of confidentiality

## **15. GOVERNING LAW**

Any contract between us is governed by the Laws of England and the English Courts shall have the exclusive jurisdiction to resolve any disputes arising out of or under it.

### **Company details:**

eNorth Limited. eShopFitters is a trading name of eNorth Limited

Registered in England and Wales number 5077308

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