

GENERAL

1. Application and Definitions

1.1 These General Terms and Conditions shall be imported in to every contract of any nature made between JACC Creative and a customer.

1.2 Definitions:

In all cases/all terms and conditions of JACC Creative the following words shall have the following meanings:

'JACC Creative'	Neil Barnby T/A the JACC Creative Company
'customer'	any person, firm or company for whom or on whose behalf the JACC Creative undertakes any business or provides any goods or services.
'customer's account'	the Connection, all and any part of the Contract whether awaiting performance or not , any goods or Services provided under the Contract
'connection'	a link between the Customers equipment and the server for the transferral of data and/ or the relay of services by way of an agreed mode and specification of data transfer cable/line/media.
'contract'	the agreement for the provision of services/goods made between the Customer and JACC Creative upon the order being placed with JACC Creative and being accepted by them.
'contract date'	the date upon which JACC Creative accept the Customer's order whether verbally or in writing.
'contract price'	the price payable by the Customer to JACC Creative for the provision of services/goods of any nature by JACC Creative.
'design work'	all design work relating to web site design including by way of example only and not by way of limitation, advising upon design work and specifications for web site or other internet related services, preparation of any art work, design work, logos, devices or other items or wording or descriptive language of any sort including anything constructed with internet/programming language/capabilities or otherwise;
'force majeure'	a situation whereby the Contract becomes impossible to perform or is otherwise frustrated by reason of war, invasion, act of foreign enemy, hostilities, (whether war be declared or not), civil war, rebellion, revolution or civil strife.
'frustrating event'	any event whereby the obligations of JACC Creative are prevented, frustrated or impeded whether by statute, rule, regulation, order or requisition issued by any government department, Council or other duly constituted authority or by strike, lock-out, breakdown of plant, loss of service from another supplier or any other cause (whether or not of a like nature) beyond the control of JACC Creative.
'full server'	a server which, following initial set up by JACC Creative, is the entire responsibility of the Customer and is wholly managed and maintained by the Customer
'goods'	any goods of any nature, hardware, software or otherwise, provided at any time to the Customer
'hosting services'	the provision of a server to the Customer to handle website and/or email and/or other agreed facilities
'initial set up'	the configuration of the server, the setting up of all agreed software packages upon it and the setting up of any other agreed facilities.
'insolvency situations'	any of the following: • if an appointment is made in respect of the Customer or its affairs of any person which the Insolvency Act 1986 requires to be qualified as an Insolvency Practitioner and in whatsoever capacity that appointment is made • if a petition is presented against the Customer for its winding-up • if the Customer compounds or makes any arrangement with its

	creditors or
	if the Customer otherwise suffers any action in consequence of debt or undergoes any analogous act or proceedings under foreign law
'management services'	in relation to the semi managed servers only, the provision of training by JACC Creative to the Customer to enable the Customer to thereafter manage the server itself and, in relation to managed servers and semi managed servers, the actual management of the server by JACC Creative to ensure that the agreed services are operating to the agreed parameters for such period as has been agreed in the Contract.
'notice'/ 'notification'	either :- (1) the giving of written notice by one party to the other at the registered office in the case of JACC Creative or at the last known address of the Customer; or (2) the giving of notice by facsimile provided receipt by the addressee can be shown. (3) actual notification given at a meeting of JACC Creative and the Customer (4) in the event of changes to the terms and conditions the giving of notice may be by email and/or publication upon the net
'resellers'	other companies firms and individuals who are licensed to resell any or all of the services normally provided by JACC Creative.
'semi- managed server'	the provision of a server by JACC Creative with 6 months Management Services commencing on the Contract Date.
'server'	either a virtual server, a full server, a managed server or a semi-managed server.
'services'	any services of any nature agreed to be provided by JACC Creative to the Customer.
'virtual server'	part of a dedicated server allocated to the Customer for its use in relation to the Services provided

2. Making the contract

2.1 These terms and conditions shall be incorporated in to every Contract made between JACC Creative and the Customer and shall not be subject to variation by the Customer.

2.2 Unless otherwise agreed in writing by JACC Creative these terms and conditions shall override any terms or conditions stipulated, incorporated or referred to by the Customer whether in the Contract or in any negotiations

2.3 These terms and conditions are non exhaustive and JACC Creative reserves the right to modify them at any time with changes being effective immediately upon notification to the Customer

2.4 Any quotation given by JACC Creative is open for acceptance for a period of 14 days from the date thereof.

2.5 The Contract will not be made and hence will not be valid until the Agreement is confirmed by the signature of an authorised member of staff of JACC Creative.

2.6 Any prices quoted shall be inclusive of VAT.

3. Additional and/or non-specified Services

3.1 If the Customer requires any assistance with maintenance or repair or any other service of any nature not otherwise specified or included in the Contract the Customer agrees to pay the hourly rate of the JACC Creative member of staff responsible for the provision of the additional service(s) and agrees likewise to be responsible for payment in respect of any additional goods required for the extra service requested. All costs incurred for additional services or goods will be added to and collectible in the same way as the Contract Price.

4. Resellers of JACC Creative services

4.1 The Customer acknowledges that there are resellers of the services of JACC Creative.

4.2 In relation to the services provided by any Reseller it is the entire responsibility of the Customer to ensure that it is satisfied with the Reseller's services and JACC Creative accepts no responsibility for any loss of any nature howsoever caused.

5. Exclusion of Liability/Indemnity

5.1 JACC Creative accepts no responsibility for, and shall have no liability in relation to, any of the following at any time howsoever caused or arising:-

5.1.1 loss of data

5.1.2 corruption of data

5.1.3 loss or corruption of e-mail

5.1.4 hardware or software malfunction, corruption or failure.

5.1.5 non functioning or mis-function of any specific or non specific data or program

5.1.6 any loss resulting from the delay in the transfer to the Customer of any Domain Name, Keyword or web/hosting site

5.2 JACC Creative shall not be liable for any consequential or indirect loss suffered by the Customer whether this loss arises from breach of a duty in contract or tort or in any other way. Non exhaustive illustrations of consequential or indirect loss would be:-

loss of profit;

loss of contracts;

damage to property of the Customer or anyone else;

personal injury to the Customer or anyone else (except so far as such personal injury is attributable to the negligence of JACC Creative).

5.3 For the avoidance of doubt JACC Creative shall have no contractual responsibility for the routine checking of any web/hosting site or Connection and it shall be the entire responsibility of the Customer to verify that its site or Connection is valid/operational and to notify JACC Creative immediately should such site or Connection become in-operational for any reason.

5.4 JACC Creative shall not be responsible for any breach of Contract or loss caused to any person, firm or company by reason of Force Majeure or by any Frustrating Event.

5.5 Without prejudice to the foregoing terms, the total liability of JACC Creative for any one claim or for the total of all claims arising from any one act or default of the Company (whether arising from negligence or otherwise) shall not exceed the Contract Price.

5.6 The Customer shall indemnify JACC Creative against all liabilities, costs, claims and demands of any nature, including, but not limited to, any damage to any person or property, arising as a result of any Goods or Services provided under the Contract and/or resulting from the actions or inactions of the Customer in relation to its web/hosting site whether or not the same shall have been intentional

6 Outstanding Accounts

6.1 Interest shall accrue and be charged on all amounts remaining outstanding or on any unpaid balance at the rate of 3% per annum above the base lending rate from to time to time of Santander UK Plc and such interest shall be calculated on a daily basis from the date upon which payment should have been made until the date of actual payment (both dates inclusive) and interest at the rate aforesaid shall be charged as well after as before any Judgment.

6.2 The Customer shall be liable (in addition to any outstanding sums and interest thereon) to pay to JACC Creative the amount of any reasonable costs or other expenses incurred in recovering payment of any sums due to it from the Customer.

7. Copyright and Ownership

7.1 The Customer acknowledges that all rights, copyright or other intellectual property rights in any object thing, design, drawing, or method shall unless otherwise agreed in writing remain vested in JACC Creative at all times notwithstanding the completion of the Contract.

7.2 Any in-house knowledge used by JACC Creative in conjunction with the provision of any Services remains the copyright and ownership of JACC Creative.

7.3 No website engineered/prepared by JACC Creative may be uploaded on to the UK or worldwide web/internet structure until all work requested in the Contract (including additional work/Services) shall have been paid for in full or, alternatively, until a certificate has been issued by JACC Creative to confirm that the site may be so uploaded notwithstanding that certain payments may still be due and outstanding.

8. Insurance and Risk

8.1 Subject to the provisions of condition 9 any Goods supplied by JACC Creative shall be at risk of the Customer either immediately upon delivery to the Customer or upon being received into custody on the Customer's behalf, whichever is the sooner, and the Customer shall thereafter keep JACC Creative indemnified in respect of any loss or damage to the Goods howsoever arising or caused

8.2 When the contract requires that JACC Creative deliver the Goods to the Customer JACC Creative shall insure the Goods during transit in the United Kingdom until arrival at the Customer's premises.

9 Passing of Property and Retention of Title

9.1 Notwithstanding risk in the goods passing in accordance with clause 8 hereof title in the Goods shall not pass to the Customer until whichever shall be the first to occur of the following:-

- (a) payment being received by JACC Creative for the Goods no other amounts then being outstanding from the Customer to JACC Creative in respect of other goods or services supplied by JACC Creative; or
- (b) the company waiving its rights under this clause 9.1 in respect of specified goods whereupon title to the said goods shall forthwith vest in the Customer

9.2 The Customer is licensed by JACC Creative to use or to agree to sell the Goods delivered to the Customer subject to the express condition that the entire proceeds of any sale are held in trust for JACC Creative and are not mixed with other monies or paid into an overdrawn Bank account and shall at all times be identifiable as JACC Creative's monies

9.3 For the avoidance of doubt any software purchased by the Customer from JACC Creative shall be held on licence only and under the terms of the End User Licence Agreement provided.

9.4 Until title to the Goods passes:

- (a) the Customer will hold the goods as fiduciary agent and bailee for JACC Creative
- (b) the Goods shall subject to clause 9.2 be kept separate and distinct from all other property of the Customer and of third parties and in good substantial repair and condition and be stored in such a way as to be clearly identifiable as belonging to JACC Creative
- (c) JACC Creative may at any time revoke the power of sale and use contained in clause 9.2 by notice to the Customer if the Customer is in default for longer than 7 days in the payment of any sum whatsoever due to JACC Creative (whether in respect of the Goods or any other goods supplied at any time by it to the Customer) (or if JACC Creative has bona fide doubts as to the solvency of the

- Customer);
- (d) the Customer's power of sale and used contained in clause 9.2 shall automatically cease if the Customer is the subject of any of the insolvency situations
 - (e) upon determination of the Customer's power of sale and use pursuant to clause 9.4(c) or clause 9.4(d) the Customer shall place any of the Goods in its possession or under its control and unsold at the disposal of JACC Creative and JACC Creative shall be entitled to enter upon any premises of the Customer for the purpose of removing or immobilising such Goods as JACC Creative may in its absolute discretion see fit.

9.5 JACC Creative shall at any time be entitled to appropriate any payment made by the Customer in respect of any Goods in settlement of such invoices or accounts in respect of such goods or services as JACC Creative may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Customer.

10. Determination/disconnection

10.1 In any of the following circumstances, whether occurring in fact or perceived/reasonably believed by JACC Creative to be occurring, JACC Creative shall have the right, without notice, to forthwith terminate/determine the Contract and/or to suspend or disconnect all or any part of the Customer's account without any further responsibility or liability for loss or damage to/of the Customer of any nature howsoever caused:-

10.1.1 If the Customer shall violate any of the terms and conditions or make any default in or co JACC Creative any breach of any of its obligations to JACC Creative under the Contract;

10.1.2 If anything that the Customer shall do or omit to do or shall cause to be done whether wilful or not shall cause any damage or loss to JACC Creative which is not rectified fully by the Customer at its cost and to the approval of JACC Creative within a period of 24 hours or such other reasonable period of time as may be agreed between it and JACC Creative;

10.1.3 If any site shall, by way of non exhaustive examples, be used for illegal purposes, to publish explicit adult material or to disseminate or host any harmful content such as viruses or harmful programming routines;

10.1.4 If any copyright or intellectual property right of JACC Creative shall be breached or challenged in any way by any act or omission of the Customer;

10.1.5 If any monies shall be due from the Customer to JACC Creative under any part of any Contract and shall remain unpaid for 7 days.

10.1.6 If any attempt shall be made by the Customer or anyone using the Customer's Connection/site or other access points to access any other part of the main network of JACC Creative or to make any non authorised access of any sort;

10.1.7 In the event of the dissemination of any unsolicited emails (Spam)

10.1.8 For the avoidance of doubt any unauthorised use by the Customer of Design Work or of other material provided by JACC Creative whether protected by copyright or not shall, unless agreed in writing to the contrary, be treated as an act giving rise to the right to determine the Contract.

10.2 The determination of the Contract shall entitle JACC Creative immediately to disconnect the Customer from any Connection, server, Services or other connection point of any nature.

10.3 Any determination of a Contract by JACC Creative shall be deemed to have been done without prejudice to any claim or right of JACC Creative of any nature such that JACC Creative shall thereafter be entitled to take such action against the Customer as it shall see fit.

11 Right to Sub-Contract

11.1 JACC Creative shall be entitled to sub-contract the whole or part of the Contract

12. Conflicting Conditions

12.1 In case any stipulation contained in these terms and conditions shall be in conflict with any other stipulation herein contained JACC Creative shall be entitled to the benefit of that stipulation which is most favourable to it any rule of law to the contrary notwithstanding.

13. Construction

13.1 These conditions and the Contract shall in all respects be subject to and construed in accordance with English Law.