

## EMNET STANDARD TERMS & CONDITIONS

### 1 DEFINITIONS

In these conditions, unless the context requires otherwise, the following words shall have the following meanings:

**"Client", "you" or "customer"** means the person, firm or company that has requested any Services;

**"Conditions"** means the standard terms and conditions of sale set out herein;

**"Contract"** means any contract for the provision of the Services;

**"IPRs"** means any and all intellectual property rights including without limit any and all patents, design rights, database rights, copyright, know-how, moral rights, trade secrets, confidential information, trade-marks, service marks, trade names and goodwill;

**"Netiquette"** means generally accepted standards for use of the Internet such as but not limited to sending bulk unsolicited e-mail, mail bombing, misrepresenting that you have third party authorisation and impersonating another person;

**"Server"** means the computer servers used to provide the Service;

**"Services"** means any services supplied or to be supplied by EMNET (which may include without limit Email Forwarding, Email, POP accounts, e-commerce, Web Site Hosting, FTP access, Domain Name Registration) as described in the quote or acknowledgement of order issued by EMNET or as may be agreed from time to time;

**"Site"** means the Internet website at [www.emnet.co.uk](http://www.emnet.co.uk) or any other web site that is operated by EMNET.

### 2 ACCEPTANCE OF TERMS

- 2.1 The Conditions set out the only terms on which EMNET is prepared to provide you with the Services. The Conditions shall apply to all Contracts and by clicking signing below and/or or by using the Services you accept this. All other terms and conditions (other than those which are agreed in writing between us) are excluded to the fullest extent permitted by law. EMNET reserves the right to review and revise the Conditions from time to time without prior notice and, by using the Services subsequent to any revision of these Conditions, you agree to be bound by such changes. Please review the website on a regular basis for changes.

### 3 REGISTRATION

- 3.1 Where appropriate, you agree to provide such information about yourself as prompted by the Service's registration form and ensure that it is at all times true, current, accurate and complete. If it is not or we reasonably suspect it is not true, current, accurate and complete then we shall be entitled to terminate the Contract or suspend the Services until such time as we determine.

### 4 SECURITY

- 4.1 You are responsible for the security and proper use of all Keywords and passwords and must take all necessary steps to ensure that they are kept confidential, used properly and not disclosed to unauthorised people. You must inform us immediately if you have any reason to believe that any password has become known to someone not authorised to use it or if any password is being or is likely to be used in an unauthorised way or of any other breach of security.
- 4.2 We are not liable for any loss of confidentiality or for any damages arising from your failure to comply with these terms. You will be entirely liable for all activities conducted and charges incurred under your passwords whether authorised by you or not. If you forget any passwords you should contact us and subject to you satisfying certain security checks you will be given a new password to enable you to use the Services.

### 5 THE SERVICES

- 5.1 The Services shall be as described in the Site or order form and such other material as EMNET provides to you from time to time. We reserve the right at any time and from time to time to amend, improve, correct, discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice and you agree that EMNET shall not be liable to you or to any third party for any such modification, suspension or discontinuance. We will restore the Service as soon as reasonably practicable after temporary suspension.

- 5.2 Unless otherwise agreed in writing by EMNET, the minimum period for the provision of the Services is 12 months from date on which they are first made available to the Client (the "Initial Term") and shall continue thereafter for further periods of 12 months (each being a "Renewed Term") unless and until the Client serves at least one month's written notice on EMNET prior to the expiry of the Initial Term or a Renewal Term, such notice to expire at the end of such Initial or Renewed Term.
- 5.3 EMNET shall be entitled to restrict bandwidth made available to the Client at any time in order to protect all and any internet solutions provided by EMNET from time to time when necessary
- 5.4 EMNET shall use its reasonable endeavours to ensure that the Servers and the data contained therein are safeguarded from damage, accident, fire, theft and unauthorised use. EMNET shall be entitled to temporarily suspend or disable a Client's services at any time in order to protect all and any Internet solutions provided by EMNET from time to time when necessary.
- 5.5 The use of the following types of software is not permitted:
  - 5.5.1 P2P public file sharing software such as, Napster, Kazaa, and Morpheus;
  - 5.5.2 Internet Relay Chat (IRC) software, such as mIRC.

## 6 REGISTRATION OF DOMAIN NAMES

- 6.1 The following shall apply where the Services include or consist of domain name registration services:
  - 6.1.1 The Client acknowledges that, whilst EMNET shall use its reasonable endeavours to successfully register the requested domain name, EMNET shall not be obliged to accept any request to register or continue to process any registration of a domain name.
  - 6.1.2 The obligations of EMNET in relation to domain name registration shall be limited to forwarding the application to the relevant naming authority, providing reasonable administration services in relation to the application and notifying the result of the application within a reasonable period after communication from the authority. EMNET Internet will use reasonable endeavours to notify you of any renewal dates however EMNET accepts no liability for any use or retention of any domain name which is registered.
  - 6.1.3 EMNET makes no representations or warranties (expressed or implied) of any kind (and they are expressly disclaimed) with respect to availability or likelihood of successful registration of any domain name.
  - 6.1.4 The Client shall check the domain name as reported on any of the Company's documents sent to the Client, such as the invoice, customer information sheet or otherwise, is spelt correctly. In the event of any error, the Client should notify the Company promptly and in any event within 24 hours of receiving such document.
  - 6.1.5 The Client shall at all times comply with the terms and conditions (from time to time subsisting) for the registration of domain names published by the relevant naming authority and generally to the terms and conditions of any such authority having similar force and to which the client may become subject as a result of services provided by EMNET.
  - 6.1.6 EMNET may from time to time change the registrar that a domain is held with. The Client agrees to allow EMNET to do so as it sees fit and without notice.
  - 6.1.7 The Client acknowledges that in the course of maintaining a domain name registration, EMNET may be required to provide relevant and current contact information for registrants.

## 7 OBLIGATIONS OF THE CLIENT

- 7.1 The Client agrees that it shall:
  - 7.1.1 Immediately notify EMNET if it becomes aware of any unauthorised use of all or any of the Services and/or Servers;
  - 7.1.2 not use the Services and/or Servers for any unlawful purpose or for the publication, linking to, issue or display of any unlawful material (which shall include without limit any pirated software or any material which is obscene, pornographic, threatening, malicious, abusive, harmful, defamatory or which breaches the rights (including without limit IPRs) of any third party or which is or encourages criminal acts or contains any virus, worm, trojan horse or other harmful code) whether under English law or regulation, the laws or regulations of the Clients country or any other place where the results of such purpose or such material can be accessed;

- 7.1.3 not use the Services and/or Servers for the publication, linking to, issue or display of any material which in the absolute discretion of EMNET may harm EMNET or any of its clients or bring EMNET into disrepute or may call into question any action taken by EMNET on the Client's behalf;
- 7.1.4 not use the Services and/or Servers in breach of good Netiquette practices;
- 7.1.5 ensure that it has all necessary consents, permissions and licences to make use of the Services including without limit registration under the Data Protection Act 1984 and 1998;
- 7.1.6 not provide any technical or other information obtained from EMNET and/or relating to the Services or the Contract to any person, company, firm or government which the Client knows or ought reasonably be aware may directly or indirectly lead to a breach of any English law or regulation;
- 7.1.7 not, in breach of good Netiquette practices, use any service provided by any third party (including without limit an Internet website and/or e-mail) for the publication, linking to, issue or display of any material which refers to an Internet website hosted by EMNET or any other services offered by EMNET from time to time;
- 7.1.8 ensure that all material or data hosted by EMNET on any website operated by the Client from time to time or communicated through such site or using the Servers is checked for viruses and other harmful code;
- 7.1.9 keep back ups of all data hosted by EMNET on any website operated by the Client from time to time; and
- 7.1.10 promptly notify EMNET of any change to its communication address and the Client acknowledges that EMNET Internet shall not be liable for any costs, damages or loss which the Client may suffer or incur as a result of failure to notify such changes to EMNET.
- 7.1.11 Download and delete all their stored e-mail on EMNET's servers at least once every 60 days.
- 7.1.12 To ensure their usage of stored e-mail does not exceed 30 Megabytes or their purchased quota whichever is higher. EMNET operate a default mail quota of 30MB and e-mail will be returned to sender should this level be exceeded. In addition, in relation to e-mail, unless otherwise agreed with EMNET in writing, the Client must not use the service to:-
- 7.1.13 send emails which, including attachments, exceed 20 Megabytes;
- 7.1.14 send an email to more than 100 single recipients at the one time; or
- 7.1.15 send more than a total of 100 emails per 15 minute period.
- 7.1.16 send e-mails which when multiplied out by the number of recipients exceed 50 Megabytes per 15 minutes
- 7.1.17 send bulk unsolicited email to others;
- 7.1.18 send email that hides or obscures the source of the email you send, that contains invalid or forged headers or domain names or deceptive addressing;
- 7.1.19 receive responses from bulk unsolicited email where the original was distributed by you, even if not via the Service; relay email from a third party's mail server without permission;
- 7.1.20 collect or harvest email addresses and screen names of others for the purpose of sending unsolicited emails or for exchange or sale of this information.
- 7.1.21 send large or numerous emails with the purpose of disrupting another's computer or account;
- 7.1.22 send email that may damage or affect the performance of the email recipient's computer; or persistently send email without reasonable cause or for the purpose of causing annoyance, inconvenience or needless anxiety to any person.
- 7.1.23 regularly download e-mail messages stored in their mailbox to ensure total storage does not exceed 30MB. EMNET reserves the right to reject any messages where the mailbox has exceeded a 30MB threshold.
- 7.2 The Client acknowledges that in order to make proper use of the Services it should have a basic knowledge of how the Internet functions and what types of use are and are not acceptable. The Client acknowledges that EMNET shall have no obligation to:
- 7.3 Manipulate any material which the Client wishes and/or does post on any website it operates or any communication which it issues or sends in connection with any of the Services; or validate or vet such material for usability, legality, content or correctness.

**8 PRICE**

- 8.1 The current price payable for the Services shall be as specified on the order form. EMNET agrees not to increase the prices it charges the Customer at least until the end of the initial term. The price is non-refundable. EMNET shall be entitled to vary its prices from time to time however we shall give you at least one month's notice of such increase and if you are not satisfied with such increase then you will be entitled to terminate the Contract by giving us written notice within one month of the date of the variation notice failing which you shall be deemed to have agreed to the variation.
- 8.2 The price covers permitted bandwidth (monthly transfer limit) as specified on the site. If you exceed this limit then EMNET reserves the right to make additional charges for usage above the limit at the prevailing charge rate as in effect at the time. We will endeavour to let you know if your bandwidth use exceeds the agreed level however it is your responsibility to monitor the bandwidth being used by you from your web statistics page.
- 8.3 All prices quoted to the Client for the provision of services by EMNET are exclusive of any value added tax for which the Client may be additionally liable at the applicable rate. Where the Services are purchased with a monthly payment plan comprising a set up fee, this fee is payable immediately. Where a long term contract is purchased, the set up fee is included within the total payment. If, for any reason, there is contention relating to payment for our services, EMNET reserves the right, in any case, to charge an administration fee of £40+VAT to cover costs.

**9 PAYMENT**

- 9.1 The price and all other amounts due under the Contract shall be paid by the Client by the due date and in the currency as specified in EMNET's invoice. Payment shall only be deemed received by EMNET upon receipt of cleared funds. Payment shall be made in full without any abatement, set off or deduction on any goods. Where you authorise payment to be made by credit or debit card then such authority shall be deemed as authority to EMNET to take all that the Client owes under or in connection with the Contract.
- 9.2 Where the Services include or consist of registration of domain name services, EMNET shall be entitled to raise an invoice for payment to the appropriate naming authority and for the hosting that name specifying the date by which payment by the Client must be made. Failure for any reason by the Client to make payment before the specified date will entitle EMNET to release the Client's domain name without any liability for loss suffered by the Client howsoever arising.
- 9.3 It is of the essence of the Contract that the Contract price and all other amounts due from the Client under the Contract are paid on time. You shall be responsible for any and all expenses incurred by EMNET in recovering overdue amounts and shall pay interest on them (before and after judgment) at annual rate of 5% above the base-lending rate of HSBC Bank plc. calculated daily until payment is made in full. Failure to settle all amounts within 14 days of the due date may result in withholding of further Services and/or suspension of existing Services.

**10 INTELLECTUAL PROPERTY**

- 10.1 All IPRs relating to the Services provided by EMNET are and shall remain the property of EMNET. All rights in the design and arrangement of the Site, text and graphics and all software compilations, underlying source code, and all other material on the Site are reserved by EMNET Limited or its licensors. Except as expressly provided below, nothing contained in these terms of use or on the Site shall be construed as conferring any license or right, by implication, estoppel or otherwise, under copyright or other IPRs.
- 10.2 EMNET and all other names, images, pictures, logos and icons identifying EMNET or its services are trademarks of EMNET Limited in the UK and other countries. Other product and company names mentioned on this Site may be trademarks of their respective owners.

**11 INDEMNITY**

- 11.1 The Client agrees to fully indemnify and keep EMNET, its subsidiaries, affiliates, officers, partners, employees and agents fully indemnified from and against all actions, demands, costs (on a fully indemnity basis), losses, penalties, damages, liability, claims and expenses (including but not limited to legal fees) whatsoever arising from your breach of the Contract, your use or misuse of the Services, any claims by third parties as to ownership or other rights to use a Domain Name where one has been registered by or transferred to EMNET at your request or arising in any way by the Client infringing (whether innocently or knowingly) third party rights (including without limit intellectual property rights).

**12 DISCLAIMER**

12.1 Nothing in the Contract or these Conditions shall exclude or limit the liability of EMNET for death or personal injury resulting from its negligence or fraudulent misrepresentation nor affect the statutory rights of consumers. To the fullest extent permitted by law the Site and its contents is provided by EMNET on an "as is" and "as available" basis and no representations or warranties (expressed or implied) of any kind are made (and they are expressly disclaimed) with respect to the Services, the Site or its contents including, without limit, warranties of merchantability and fitness for a particular purpose. Further, EMNET does not represent or warrant that:

12.1.1 the Services will meet your requirements;

12.1.2 the Services will be uninterrupted, timely, secure, or error-free;

12.1.3 any results obtained from using the Services will be accurate, complete or current.

12.2 You acknowledge that the allocation of risk in this contract reflects the price paid for the Services and that it is not within the control of EMNET how or for what purposes the Services are used. If any exclusion in this license is held to be invalid and EMNET becomes liable for loss or damage that may lawfully be limited then such liability shall be limited to the amount paid by you for the Services. EMNET shall have no liability to the Client for any loss arising from any material, data or instructions supplied whether digitally or otherwise by the Client or on its behalf which is incomplete, inaccurate, illegible, out of sequence or in the wrong form or arising from late arrival or non-arrival or any other fault by the Client or on its behalf.

12.3 EMNET is not responsible for any delay, malfunction, non performance and/or other degradation of performance of any of the Services caused by or resulting from any alteration, modification and/or amendments due to changes and specifications requested or implemented by the Client whether or not beyond the Services already supplied. EMNET reserves the right to raise additional charges for any work so arising.

12.4 If any Services are or become unavailable then EMNET will use reasonable endeavours to repair and reinstate the service within 24 hours of detection depending on the severity of the failure. If failure is caused by the Client or any agent of the Client to whom access to Servers was given then the Client shall pay all costs to reinstate and/or repair the Server. Where such unavailability is due to the negligent failure of EMNET to deal with circumstances within its control and is for more than a total of 24 hours in any 30 day period or for any 6 consecutive hour period then EMNET will at its discretion either pay to you compensation limited to a refund of the fee paid by you for the unavailable Services or provide you with a credit up to the same amount.

12.5 Neither EMNET nor anyone else who has been involved in the creation, production or supply of the Services shall be liable to the Client or any other person for any loss in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof by reason of or in connection with the Contract or the Services for any:

12.5.1 economic loss of any kind whatsoever, or

12.5.2 loss of profit, business contracts, revenues or anticipated savings, or

12.5.3 damage to the Client's reputation or goodwill, or

12.5.4 loss resulting from any claim made by any third party, or

12.5.5 special, indirect or consequential loss or damage of any nature whatsoever, and the Client shall indemnify EMNET from and against any claim which may be made against EMNET in respect thereof. Some jurisdictions do not allow the exclusion or limitation of implied warranties or of liability for consequential or incidental damages and therefore the above may not apply to you.

12.6 If EMNET is prevented or delayed in or from performing any of its obligations under the Conditions or the Contract due to circumstances beyond its control such as but not limited to governmental acts, war, riots, strikes or trade disputes (including by and with our own employees), technical failure, general availability of the Internet, power failure, communications failure, weather, flood, fire or explosion, natural or local emergency EMNET shall not be liable for this.

**13 CONFIDENTIALITY**

- 13.1 All confidential information of either party or of any of its customers disclosed to or discovered by the other as a result of the provision of the Services shall be regarded as disclosed in confidence and shall only be used in connection with the performance of its obligations under the Contract and not be passed on to third party and/or in any way be made use of at any time either during or after the termination of the Contract save with consent of the other or which comes into the public domain (otherwise than through the unauthorised disclosure by the other).
- 13.2 The Client shall promptly notify EMNET if it becomes aware of a breach of confidence in relation to the Services and/or the Contract and shall give EMNET all reasonable assistance in connection with any proceedings EMNET may institute against a third party at EMNET' expense. EMNET may be required, in the course of maintaining domain names to provide registrars with current registrant information.

#### 14 PRIVACY

- 14.1 For quality control purposes your telephone conversations with EMNET staff may be recorded from time to time. The information you provide to us will be stored on computer. We are committed to protecting your privacy. We and any of our associated companies may use the information you provide us to provide a more personalised service and to tell you about changes in our and their service or any new services which we think you will find valuable. If you object to any of these uses at any time, then please inform us by writing to EMNET at the address set out in the "contact us" section at the Site. We may also use such information where and to the extent of any requirement to comply with any applicable law, legal process or to enforce any of these Conditions.
- 14.2 We will not monitor, edit or disclose the content's of any private communications transmitted via the Servers unless required to do so by law or in the good faith belief that such action is necessary to conform or comply with applicable law, to protect and defend the rights and/or property of EMNET or to protect the personal safety of any of our clients or the public.

#### 15 COOKIES

- 15.1 Cookies are bits of electronic information that a web site can transfer to your hard drive to help tailor and keep records of your visit to the Site. Cookies allow us to better customise visits to the Site to your individual preferences, helping us provide you with the best possible service on our Site. Most major web sites use cookies and their use is standard on the Internet. Most Internet browsers automatically accept cookies but you can change your settings so that you are notified whenever you are sent a cookie.

#### 16 TERMINATION

- 16.1 The Contract may be terminated:
- 16.1.1 immediately by EMNET if the Client fails to pay any sums due hereunder within 14 days of their due date;
- 16.1.2 immediately by either party to the other if the other commits any material breach of any these conditions and which (in the case of a breach capable of being remedied) has not been remedied within a reasonable time period as may be specified in a formal request in writing or by electronic email to remedy the same;
- 16.1.3 immediately by written notice from EMNET if the Client commits any material breach of any these conditions which may impact the Services or Servers of EMNET or the ability of EMNET to provide the services;
- 16.1.4 immediately by either party if the other shall convene a meeting with its creditors or if a proposal shall be made for a voluntary arrangement within part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme of arrangement with (or the assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee receiver or administrative receiver or similar officer is appointed in respect of all or any of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or any other steps are taken for the winding up or the making of an administrative order (otherwise than for the purposes of a solvent amalgamation or reconstruction).
- 16.2 In the event that EMNET is entitled to terminate the Contract for any reason then it shall in the alternative at its sole discretion be entitled to suspend the Services for such period as EMNET shall determine.
- 16.3 Upon termination or expiry of the Contract all amounts payable by the Client to EMNET shall become immediately due and EMNET shall be entitled to immediately cease the provision of the Services.

**17 FOREIGN JURISDICTIONS**

17.1 The Site may contain references or cross references to services that are not available in every country. We do not represent that all Services and content, materials and services on the Site are appropriate or available for use in all geographic locations, and accessing such from certain locations may be illegal and prohibited. Your access to the content, materials and services on the Site from such locations is at your own initiative and we are not responsible for your compliance with local laws or other applicable laws. You will not access the foregoing if prohibited by law.

17.2 Any translation of these Conditions into a language other than English is for the convenience of the Client only and it is agreed that the English language version of these Conditions shall be relied on by the parties and shall prevail in the event of any differences.

**18 SERVICE LEVEL**

18.1 The Customer can apply for service credits for service disruptions or failures in accordance with Schedule 1. This shall be the sole remedy available to the Customer for service disruptions or failures.

**19 ASSIGNMENT**

19.1 Subject to Clause 19.1.1, neither party may assign any of its rights under this Agreement without the written consent of the other (which consent shall not be unreasonably withheld or unduly delayed).

19.1.1 EMNET may assign any and all of its rights and obligations hereunder on written notice to the Customer to any EMNET affiliate or any other person or entity that purchases all or substantially all of the assets or business of EMNET.

**20 MISCELLANEOUS**

20.1 Any failure or delay by either party in exercising any rights or remedy will not constitute a waiver. Any notice or other communication to be given by a party under this Agreement must be in writing and must be given by delivery at or sending by first class post or by E-mail or facsimile transmission to the last known postal, E-mail address or relevant telecommunications number of the other party. Notices shall be deemed to have been received when in the ordinary course of the means of transmission it would be received by the addressee. To prove the giving of a notice it shall be sufficient to show it was despatched. A notice shall have effect from the sooner of its actual or deemed receipt by the addressee.

20.2 Any termination of this Agreement shall be without prejudice to any other rights or remedies which a party may be entitled to hereunder or at law and shall not effect any previous rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into continue in force upon or after such termination.

20.3 If any provision of these Conditions is held by any competent authority to be unlawful, invalid or unenforceable in whole or in part then the provision shall be deemed to be severable from the remaining provisions and shall not affect their validity or enforceability.

20.4 Your use of this Site and the Contract will be governed by English Law and will be deemed to have occurred and been made in England. If you have any disputes with us or any other aspect of the Site then these will be exclusively resolved in the English Courts.

20.5 The Client shall not share, re-sell or attempt to share or re-sell the Services, transfer or attempt to transfer this Contract or permit any third party to use and/or access any of the for any purpose without prior consent of EMNET.

**21 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

21.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement and unless specifically herein provided no person other than the parties to this agreement shall have any rights under it nor shall be enforceable by any other person. In particular no rights are conferred on the Customer's end users and the Customer hereby agrees to indemnify EMNET for any claims, losses, costs liabilities which may arise from the same.

**22 SECURITY POLICY**

22.1 All servers hosted by EMNET are subject to EMNET's Security Policy.

**23 DULY AGREED BY THE PARTIES**