

Insight Internet Limited Terms & Conditions Of Sale

1. DEFINITIONS

In these conditions the following words and expressions shall have the following meanings:-

"the Website" shall mean the website to be launched by the Company for the Buyer in accordance with the provisions of the Sales Order and these Terms.

"the Company" shall mean Insight Internet Ltd which will be the publisher of your website.

"the Buyer" shall mean the company, firm or person which is the advertiser / owner of the product or service promoted by the website.

"the Sales Order" shall mean the order placed by the Buyer with the Company for the production of the website by the Company for the Buyer.

"Price List" shall mean the Company's price list in effect for the time being and from time to time.

"Terms" shall mean these terms and conditions of sale.

"the Packages" shall refer to the istart, istart plus and the estore packages offered by the Company.

2. CONDITIONS

2.1 These Terms shall apply to the sale or supply of all services by the Company. The Buyer accepts that the Terms will govern all relations between the Company and it to the exclusion of any terms and conditions contained in any of the Buyer's documents even if the same purport to provide that the Buyer's own or some other terms shall prevail and also to the exclusion (except as hereinafter provided) of all terms, conditions, warranties and representations whether written or oral express or implied.

2.2 No employee or other person acting or purporting to act on behalf of the Company is authorised to agree or effect any alterations to the Terms or has power to make any warranties, representations or promises concerning the website or any other matter whatsoever.

2.3 Without prejudice to Clauses 2.1 and 2.2, the Terms may be added to, varied, altered or excluded by the Company but to be effective any such addition, variation, alteration or exclusion must be in writing and signed by a Director of the Company.

2.4 The Terms constitute the entire agreement between the parties in relation to the supply of all services by the Company to the Buyer.

2.5 The Company offers the packages to the Buyer on an introductory basis only. The Company is permitted to make any alterations to, or suspend this offer at any time, without notification written or verbal. The Company may offer/introduce a superior fee paying technical support service to the Buyer if the Buyer's technical support requirements surpass the Company's expected technical support requirements from the Buyer.

2.6 The packages quoted price include domain registration for one year only. The Buyer will be charged an annual domain registration fee thereafter. The packages quoted price include hosting for one year only. The Buyer will be charged an annual hosting fee thereafter.

2.7 The packages do not include a customized design. The website design is based on a template formula only.

2.8 The packages are programmed to use ASP technology (Active Server Pages) with a database back-end connection to allow the website to present 'the Buyers' live dynamic content on the front-end.

2.9 Some pages within the website may have a heavy code base as a result of the ASP database connection and therefore may, from time to time run slower than other 'static content' type websites.

2.10 The Company may use its absolute discretion, with regard to technical issues with relation to the hosting server, and may need to cancel the contract with the Buyer, and therefore "shut down" the website at any time.

2.11 The packages are designed for use with Internet Explorer 4+ browsers, (Internet Explorer 4+ is at present the industry standard web browser and is used by up to 90% of all internet users). The Company does not guarantee the website to be compatible with other 'web browsers less frequently used'(e.g. Netscape Navigator browsers, Internet TV box units, etc.)

2.12 The Company offers the facility to upgrade the website to be compatible with all Netscape Navigator 4+ browsers, this service is charged at an additional fee.

2.13 The Company will not accept liability or responsibility for any product/service misinformation, misquotation of prices, credit card transactions, credit card transaction security, on the website after its launch.

2.14 The Company will not accept liability or responsibility for any estimated loss of earnings to the Buyer, resulting from the website's hosting server being "down" for maintenance, repair or technical failure. The Company will ensure that all faults reported, by the Buyer with reference to the hosting server or website to be scheduled for prompt repaired within twenty four hours of notification from the Buyer.

2.15 The Company does not guarantee the 'generation of sales' from the website, or accept liability for any loss of earnings to the Buyer from the launch of the website.

3. ORDER AND ACCEPTANCE OF ORDERS

3.1 All quotations and estimates by the Company are invitations to treat and will be open for a period of 30 days from the making thereof provided that the Company has not withdrawn the invitation in that period.

3.2 The Sales Order is an offer subject to these Terms which becomes binding upon the Company and the Buyer, upon the Buyer completing and signing the Sales Order and returning the Sales Order to the Company. Any order of the Buyer made orally must be confirmed in writing in the form of a Sales Order.

3.3 Within 7 days of returning the completed and signed Sales Order the Buyer is required to provide all necessary information to the Company for the production of the website to include (without prejudice to the generality of the foregoing) all copy, artwork, photographs and other such materials required in setup. Time shall be of the essence for the purposes of this Clause 3.3.

3.4 Any failure by the Buyer to comply with the provisions of Clause 3.3 shall entitle the Company to invoice the Buyer at the rate of 30% of the full invoice price.

3.5 In the event that for whatever reason the Buyer makes any alteration or amendment to the Sales Order prior to returning it to the Company or in the event that the information produced by the Buyer within the time period referred to in Clause 3.3 is inconsistent with the terms of the Sales Order then the Company may in its ultimate discretion:-

(a) accept the Sales Order as amended and perform its obligations hereunder in accordance with the provisions of that Sales Order (as so amended) and invoice the appropriate lesser or greater price (as the case may be) depending upon the nature of the Buyer's alteration of the Sales Order; or

(b) refuse to accept the amended Sales Order and treat the Sales Order as cancelled without any loss or liability to the Buyer and inform the Buyer of the same.

4. INVOICING AND PAYMENT

4.1 All payments due to the Company by the Buyer shall be made in full by the Buyer to the Company without any deduction or set off forthwith upon the website being launched and will be made within 15 days after the date appearing on the Company's invoice in respect of the website or as otherwise agreed between the parties in writing and shall be made in Euro.

4.2 Where in the quotation submitted by the Company or in the completed Sales Order returned to the Company by the Buyer the price for the website is stated to be payable by instalments (whether before or after the publication thereof), such instalments, together with all other charges in respect of the website shall be paid forthwith upon the dates specified.

4.3 Time for payment shall be of the essence in any contract between the Company and the Buyer. Without prejudice to any other legal rights or remedies available to the Company, if any sums due to the Company are not paid by the time for payment the Company shall be entitled to charge interest at 10% from the time for payment until payment is received, whether before or after any judgment. Payment made otherwise than in cash shall be deemed to be made when cleared funds are available to the Company. Such interest shall become payable immediately upon receipt by the Buyer of an invoice for the amount of interest charged.

4.4 Without prejudice to any other right that the Company may have, the Company shall be entitled to "shut down" the website for such period or periods as the Company shall in its absolute discretion decide if the Buyer shall fail to pay to the Company any sum due from it.

4.5 The Company shall be entitled to cancel the contract with the Buyer forthwith if the Buyer shall fail to pay to the Company any sum due from it (or from any individual, firm or company with which it is associated) by the time for payment whether such sum is due under the present contract or under any previous contract between the Company and the Buyer and the

Company shall incur no liability in respect of such cancellation. Upon such cancellation and without prejudice to any other right that the Company may have, the Buyer shall be liable to pay damages to the Company for breach of contract.

4.6 The Company shall be entitled to invoice the Buyer on the launch of the website pursuant to Clause 6.

5. PRICES

5.1 The price for the website, subject to the provisions of this Clause 5 shall be as quoted by the Company verbally or by written proposal.

5.2 All quotations given by the Company are (unless otherwise stated) exclusive of VAT and all other taxes and duties.

5.3 All quotations issued by the Company include domain registration and hosting for one year only. The Buyer will be subject to annual domain registration and hosting fees thereafter.

5.4 All quotations issued by the Company are subject to fluctuation and the Company reserves the right to charge the prices ruling at the date of website launch to cover any increase in the costs of production to the Company whether due to increased costs of materials, labour, services, currency fluctuations or otherwise.

5.5 Any variation to prices quoted as a result of government taxes and levies will be for the Buyer's account.

5.6 The Company reserves the right to vary any quotation where an unintentional error has been made in the said quotation or estimate.

5.7 The Company also reserves the right to increase contract prices to cover any additional costs or expenses of any kind incurred by the Company in respect of or consequent upon any suspension or delay of or in despatch or work on the website or through the Buyer's instructions or caused by or resulting from lack of instructions and shall include (but not be limited to) those matters referred to in Clause 3.4 and 3.5.

5.8 The Buyer shall not be entitled to make any deduction from the sum due as stated on the invoice in respect of any set-off or counterclaim against the Company. The Company may set off against any sums due to the Buyer whether under the Sales Order or otherwise any sums due from the Buyer to the Company.

6. PRODUCTION AND LAUNCH OF WEBSITE

6.1 On completion by the Company of the construction of the website, the Company shall notify the Buyer by facsimile transmission or email of a website address on the Internet where the Buyer may inspect the website prior to its launch.

6.2 On having inspected and being satisfied with the website the Buyer shall confirm the same to the Company by signing and returning to the Company the facsimile transmission, or by replying to the Company with the email referred to in Clause 6.1 and upon receipt of which by the Company the website shall be launched.

6.3 In the event that the Buyer's confirmation under Clause 6.2 is not received by the Company within 48 hours of the Company having notified the Buyer pursuant to Clause 6.1 then the Company shall be entitled to deem that the Buyer is satisfied that the website is in all respects in accordance with the Sales Order and that it has been accepted as such with the effect that the website will be launched, and the Buyer shall be bound to accept and pay for it accordingly.

6.4 If, for whatever reason, on inspection of the website, the Buyer is not satisfied and does not wish the website to be launched the Company shall be entitled to invoice the Buyer for a sum equal to 50% of the total fee that would have been due to the Company had the Buyer been satisfied and the website had been launched. Payment thereof shall be made by the Buyer to the Company in accordance with the provisions of Clause 4.

6.5 In the event of the website not being satisfactory to the Buyer as a result of the information produced by the Buyer to the Company pursuant to Clause 3.3 not being complete and accurate, the Company shall be entitled to invoice the Buyer for the total fee payable. Payment thereof shall be made by the Buyer to the Company in accordance with the provisions of Clause 4.

7. CANCELLATION OF ORDERS

7.1 An accepted Sales Order may only be cancelled with the Company's written consent provided always that no refund or reimbursement shall be made to the Buyer in the event of such cancellation. An accepted Sales Order may only be varied with the Company's written consent, which consent may be granted on payment of such charge as the Company shall in its sole discretion decide and such consent shall not in any way prejudice the Company's right to recover from the Buyer full compensation for any loss or expense arising from such variation.

7.2 Nothing in this clause shall prejudice any disclaimer of liability by the Company elsewhere in these terms and conditions.

8. BUYER'S WARRANTIES AND OBLIGATIONS

8.1 The Buyer warrants and represents to the Company that

- (a) in relation to the website the Buyer contracts with the Company as a principal notwithstanding that the Buyer may be acting as an advertising agent or media buyer or in some other representative capacity, it is authorised to place the website with the Company and the Buyer shall indemnify the Company against any claim made against the Company by the Buyer's principal arising from the website launch;
- (b) the reproduction and/or launch of the website by the Company will not breach any contract or infringe or violate any copyright, trade mark or any other personal or proprietary right of any person, firm or company or render the Company liable to any third party whatsoever;
- (c) all information supplied by the Buyer to the Company in connection with the website is accurate, complete and true;
- (d) in relation to any website submitted for publication which contains the name or pictorial representation (whether photographic or otherwise) of any living person and/or copy by which any living person is or can be identified the Buyer has obtained the authority of such living person to make use of such name representation or to make use of such name representation or copy in accordance with the Data Protection Act;
- (e) the website complies with the requirements of all relevant legislation (including subordinate legislation), the rules of statutorily recognised regulatory authorities and the laws of the European Union for the time being in force in the Republic of Ireland;
- (f) the website and all its content submitted by the Buyer to the Company is legal, decent, honest, truthful and does not contain material of an adult nature and complies with the Irish Code of Advertising Practice and all other relevant codes under the general supervision of the Advertising Standards Authority.

8.2 It is the responsibility of the Buyer to check the correctness of the website (and of each insertion thereof, if more than one). Any matter of complaint must be raised with the Company in writing in accordance with the provisions of Clause 6.

8.3 The Buyer shall not be entitled to withhold payments by reason of any alleged defect in the website. Under no circumstances shall the Buyer become entitled to a refund or reimbursement.

8.4 The Buyer shall indemnify and keep the Company indemnified against all claims, costs, proceedings, demands, losses, damages, expenses or liability whatsoever arising as a result of any breach of non-performance of any of the provisions of these Terms.

9. ALTERATION OF WEBSITE

9.1 The Company may, without derogation from the warranties contained in Clause 8.1 refuse or require to be amended any artwork, materials and/or copy for or relating to the website so as to:-

- (a) comply with the legal and/or moral obligations placed on the Buyer or the Company; or
- (b) avoid infringing a third party's rights, be in breach of all other codes under the general supervision of the Advertising Standards Authority or the production and quality specifications stipulated or referred to in the Price List.

9.2 In the event of the website not being satisfactory to the Buyer, although it meets with the original Sales Order requirements, and design elements and or website content needs to be altered the Company is entitled to charge the Buyer for work carried out to alter their original requirements, at the Company hourly rate of website maintenance.

10. FORCE MAJEURE AND FRUSTRATION OF CONTRACT

The Company shall not be liable to the Buyer for any loss or damage including consequential loss as a result of the website launch being delayed or prevented by circumstances outside the reasonable control of the Company including but without prejudice to the generality of the above delays by the Company's suppliers, labour shortages, strikes, lockouts or labour disputes of any kind, fires, floods, accidents or breakdowns of machinery or equipment, shipping, dock strikes, railway or transport, accident, war, riot, civil commotion, Government intervention, declaration of national emergency, act of God, inability to obtain raw materials, cancellation or shortage of supplies, breach of contract by their own manufacturers or suppliers, difficulty or impossibility in the Republic of Ireland or any other country of complying with export or import regulations or with licence or currency regulations, or of obtaining

export or import licences. In any such circumstances the Company shall be entitled at any time without prejudice to its other rights to cancel the contract or at its option to effect partial performance without incurring any liability whatsoever to the Buyer.

11. ASSIGNMENTS AND SUB-CONTRACTS

- 11.1 The Company reserves the right to assign or transfer to any other person any of its rights, or to sub-contract all or any part of its obligations under any Sales Order.
11.2 The Buyer shall not assign or transfer to any other person any of its rights under any Sales Order.

12. DETERMINATION OF CONTRACT

If the Buyer shall fail for any reason to make any payment which may be due under any contract with the Company or be in breach or anticipated breach of any of the Buyer's obligations to the Company or if any distress or execution shall be levied upon the property or assets of the Buyer or if the Buyer shall make or offer to make any arrangement or composition with or for the benefit of his creditors or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against the Buyer, being an individual, or if any resolution to wind-up the Buyer being a limited company shall be passed (save for the purposes of reconstruction or amalgamation) or if a petition is presented to wind-up the Buyer or if a receiver of the Buyer's undertaking property or assets or of any part thereto shall be appointed or if the Buyer ceases or threatens to cease trading, the Company shall have the right forthwith to determine the whole or any unfulfilled part of any contract by written notice posted by the Company to the last known address of the Buyer or in the case of a company to its registered office. Such determination shall be without prejudice to any claims or rights the Company may have against the Buyer in respect of any contract. In the event of determination pursuant to this Clause:-

- (i) the Company shall not be under any obligation to provide any further services to the Buyer under any contract;
- (ii) the Buyer shall indemnify the Company against all loss (including loss of profit) costs (including costs of labour and materials) and all expenses suffered by the Company by reason of such determination;

13. ARBITRATION

If at any time any dispute or difference whatsoever shall arise under or in respect of or out of or in connection with this contract either party may give to the other notice in writing of the existence of such dispute or difference and refer the matter to the arbitration in the Republic of Ireland of a person to be mutually agreed or failing agreement within 30 days of receipt of such notice of some person appointed by the President for the time being of the Law Society. The submission shall be deemed to be a submission to arbitration in accordance with the provisions within the meaning of the Arbitration Act or any statutory modification or re-enactment thereof for the time being in force.

14. PROPER LAW

The proper law of these conditions shall be the Law of the Republic of Ireland, and the courts of the Republic of Ireland shall have sole jurisdiction to settle any difference or dispute arising between the Company and the Buyer.

15. NOTICES

Any notices to be served hereunder shall be delivered by hand or sent by registered post or facsimile transmission to the relevant party at its last known address. Notice shall be deemed served upon delivery if delivered by hand, on the second day after posting if posted or 24 hours after despatch by facsimile transmission (weekends and Bank Holidays excepted).

16. GENERAL

- 16.1 Each clause in these Terms shall where the context allows be read separately and if any clause shall be adjudged to be void as going beyond which is reasonable in all the Company but would be valid if part of the wording were deleted the clause shall apply with such modifications as may be necessary to make them valid and effective.
- 16.2 Headings in these terms and conditions have been inserted for convenience only and shall not affect its interpretation or construction in any way.
- 16.3 Waiver by the Company of any of its rights hereunder or any breach of such rights shall not constitute waiver of any other right or of any continued breach and no delay or allowance of time by the Company in enforcing any of its rights shall preclude the subsequent enforcement of those rights or of any other rights.
- 16.4 References to Clauses are references to clauses of these Terms unless otherwise specified.