

BLUE MARBLES LIMITED

TERMS AND CONDITIONS FOR CUSTOMERS

- These terms and conditions shall apply in respect of the goods and services specified overleaf ("the Quote Form") or as otherwise supplied to you from time to time ("the Services"). These terms and conditions together with (where applicable) the Quote Form, the Service Level Agreement ("the SLA") and the Job Sheet shall constitute the entire agreement between us except to the extent that they are varied by mutual consent in writing and shall prevail over your own terms and conditions. You agree that in entering into this agreement, you shall not rely on any representation or understanding, whether oral or in writing, which is not included or referred to in the terms and conditions, Quote Form, SLA or Job Sheet.
 - We shall have no liability to you for any loss, damage, costs, expenses or other claims arising from information supplied by you to us.
 - Details of our charges shall be as set out in our SLA. Where our charges are not specified or additional work is undertaken at your request following the issue of a quote our hourly rate of £40 shall apply. This rate shall also apply to any works required over and above that which has been contractually obtained as a result of activities conducted in relation to the computer network without our prior notice and agreement.
 - All our fees are subject to the addition of Value Added Tax or any other tax required by law at the prevailing rate.
 - In addition to the fees set out in Clause 4 above and the SLA, notwithstanding any other provision in this Agreement or the SLA, we reserve the right to charge you for any out of pocket expenses which are reasonably incurred in the provision of the Services. We agree at your request to provide reasonable evidence of the payment of such expenses.
 - We reserve the right to increase the price where information supplied by you is subsequently found to be incorrect, misleading or not complete.
 - Our prices shall be as set out in the SLA as amended from time to time. When we increase our prices set out in the SLA supplied to you, we will provide you with 30 days written notice. The increase will take effect upon expiry of the 30 days. No price increase shall apply to quotes accepted by you in accordance with these Terms and Conditions.
 - You shall provide us with such access to your site where work is required and access to your computer network and to your information and records as is necessary to allow us to properly carry out the Service.
 - If for whatever reason we are unable to gain access to your site where work is required or we cannot continue with the work due to reasons beyond our control or the unreasonable behaviour of members of your firm we reserve the right to charge you our hourly rate and/or the price quoted.
 - We will not accept abusive or unreasonable behaviour from any members of your firm. In this event, we reserve the right to withdraw our employee's from the site and are entitled to recover the costs due to us under the contract.
 - This Agreement may be terminated by us forthwith without prejudice to any other remedies which we may have against you if any of the following events occur:
 - if you default in the payment of any sum due under this Agreement;
 - if you do not remedy any material breach of the terms of this Agreement within one calendar month of being notified in writing of the same;
 - if you shall become bankrupt or be wound-up or make any arrangement or composition with your creditors or have a receiver appointed over any of your assets or become subject to an administration order;
 - if you repeatedly fail to implement the advice given in respect of the computer network or interfere with the computer network, whether or not such interference is performed by a third party under your instruction, unless prior approval has been obtained from us;
 - where both parties are in agreement that relations between the parties are such that no tenable working relationship is possible.In such circumstances we retain the right to recover the costs due to us under the contract. You will not be entitled under the Agreement to any indemnity or compensation.
 - All equipment, software and data supplied by us shall remain our property. On termination of this Agreement you will return all such equipment and software to us within 30 days. You agree to bear the reasonable costs of the return of the equipment and software.
 - You shall ensure that you have adequate public liability insurance in place before we enter the site where work is required. This insurance must cover any injury suffered by our employees whilst on the site.
 - Where the Service is provided to you in instalments each individual instalment of the Service shall constitute a separate contract and our failure to provide any one or more of the instalments in accordance with the terms and conditions or any claim by you in respect of any one or more of the instalment shall not entitle you to terminate the Service as a whole.
 - Details of our service commitment are contained in our SLA.
 - In the event of any conflict between any documents constituting the agreement between us the following order of precedence shall apply:
 - These terms and conditions
 - Service Level Agreement
 - Quote Form
 - Job Sheet
 - Where goods are sold by us to you as part of the Service, delivery shall take place at your primary place of business unless otherwise stated. If we are unable to deliver the goods they shall be placed in storage at your expense until collected by you. We shall not be liable for any damage to goods while they are in storage.
 - Time of delivery of the Service shall not be of the essence.
 - Risk in the goods will pass to you on delivery. Title in any goods supplied by us to you shall not pass to you until we have received all sums due to us. Until all sums owing to us have been paid in cleared funds you shall hold the goods as bailee and store them separately from your property or the property of anyone else and in such a way that they can be identified as our property. We reserve the right to enter your premises to recover any goods supplied by us to you if payment is not made on the due date.
 - Delivery of the Service shall be confirmed by your signature of the relevant Job Sheet and/or delivery note. In the event that the goods are faulty you should notify us not less than 3 days from the delivery date. Your failure to notify us within the prescribed period shall imply your acceptance of the goods. In the event that you do not accept the goods within the prescribed period we will store them at your expense until they are resold.
 - Unless otherwise agreed payment is due 30 days after the relevant invoice date and is of the essence. Payment is not made until represented by cleared funds. We have the right to charge interest on any outstanding sums due to us, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. This rate shall apply both before and after the issue of any legal proceedings we may take against you to recover any unpaid amount.
 - Payment shall be made in full without any set off, deduction, abatement or discount. We reserve the right to appropriate any payment made by you to us and apply it in total or partial satisfaction of any debt due from you to us.
 - If payment is overdue and/or you are in breach of your obligations set out in this Agreement, we reserve the right (without prejudice to any other right or remedy available to us) to stop or postpone delivery or performance under the agreement between us and we will not be liable for any loss you may suffer as a result of the application of this clause. We shall have a general lien or right of retention on goods supplied to you by us until payment has been made.
 - We warrant that the Services provided under this Agreement will be supplied with reasonable skill and care and to the best of our ability. No other warranty or guarantee whether implied by law or otherwise is given. Where the Services extend beyond advice relating to the specification and functionality of the provision of computer network services such advice is given only on the basis of our experience in respect of services similar to those covered by this Agreement and we claim no specialist or technical expertise.
 - No warranty, guarantee or other term relating to quality or fitness for purpose is given in respect of the goods supplied by us but we shall, where possible, assign to you the benefit of any warranty, guarantee or indemnity given to us by the manufacturer.
 - We will at all times act in accordance with the UK Data Protection Act 1998. We will ensure that all necessary security measures are taken by us in order to protect against the unlawful and unauthorised processing of your personal data. We will never release your personal data to any companies, organisations or individuals without your prior consent, except as required by law, or similar circumstances.
 - Except in respect of death or personal injury or as set out in the SLA our entire liability in respect of this Agreement between us shall not exceed the amount of the price payable by you in respect of the Service we supply to you under the terms of this agreement between us.
 - Except in respect of death or personal injury caused by our negligence we shall not be liable to you by reason of any representation (unless fraudulent) or any implied warranty, condition or other term or any duty at common law or under the express terms of this agreement between us for any loss of profit or any indirect or consequential loss, loss of goodwill, any destruction of data, damage, costs or expenses whether or not such losses were in the contemplation of the parties and at the date of this agreement between us, which arise out of or in connection with the provision of the Service by us to you.
 - You agree to indemnify and hold us harmless for all liabilities, loss, claims and expenses that may arise from any breach of these terms and conditions by you, including any third party liabilities incurred by us.
 - We reserve the right to defer the date of delivery of the Service if we are prevented from or delayed in the carrying on business due to circumstances beyond our reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic and strikes or other labour disputes.
 - The provisions of the Third Party (Rights) Act 1999 shall not apply to the agreement between us.
 - If any provision in these terms and conditions is held by any competent authority to be invalid or unenforceable, in whole or in part, the validity of the other provisions, and the remainder of the provision in question, shall not be affected.
 - This agreement between us shall be construed in accordance with English Law
- ### Extra Web Hosting Terms and Conditions
- Hosting**
 - The contractual term for any Agreement between yourselves and Blue Marbles Ltd for any hosting services shall be as specified in the relevant Quote Form. The term shall automatically renew upon expiry unless written notice to the contrary is received from you.
 - Hosting accounts are personal to you and shall not be assigned, transferred or otherwise disposed of to a third party without our written consent. This restriction includes, but is not limited to, allowing any third party to host content on your web site, save where content is within the primary site (egg banner ads, hit counters, news feeds etc).
 - Specific Acceptable Use Policies**
 - Abuse or unauthorized use of the system**

Where Blue Marbles determines (in its absolute discretion) that a user's conduct or use of the system constitutes conduct or use that is prejudicial to the integrity of the system, is in breach of these terms, or such user has breached or is likely to breach the security of the system, it shall at its option take one of the following steps:

 - Issue a warning
 - Suspend the relevant account
 - Terminate this contract with immediate effect
 - Commence court proceedings
 - Password Confidentiality**

It is the responsibility of Blue Marbles Ltd customers to keep all username(s) and password(s) used in relation to the computer system confidential. If any password or username is disclosed to a third party, the subsequent actions of the third party will be deemed to be those of the account holder. Blue Marbles Ltd reserves the right to terminate the account with immediate effect, without refund if, as a result of any such actions, there is a breach of any operative terms and conditions.
 - Abuse General**

Each customer shall be permitted to use such bandwidth as shall be specified in the Quote Form. Where Blue Marbles discover that this bandwidth level has been exceeded it shall issue a notice via email to you requiring remedy within a period of 14 days. An additional fee to cover the period of abuse will be charged. Failure to remedy within 14 days of notification will result in immediate termination of the client hosting services provided.
- Chat Rooms**

Installation or use of chat rooms is not permitted unless prior written approval is given by Blue Marbles Ltd.
 - Email**

In order to avoid unnecessary server traffic and to maximise performance for our mail servers the minimum period for mail collection on a shared Blue Marbles Ltd mail server is 10 minutes. For dedicated servers there is no minimum period although normal bandwidth charges will apply.
 - Bulk Mail shots**

Bulk email transmissions are prohibited unless confirmed in writing by Blue Marbles Ltd. For the purpose of this Agreement 'bulk email' is classed as over 500 emails per week. All lists must provide an 'opt in' option and contain a clear 'remove from list' option. This applies to all virtual and dedicated customers.
 - IRC**

No IRC or IRC bots are to be operated on the servers. Blue Marbles Ltd reserve the right to terminate the Agreement with immediate effect where the host service is being used for the transmission, viewing, storage or production of any material which is, in the opinion of Blue Marbles Ltd of a dubious or immoral nature. Examples include but are not limited to:
 - Any site advocating illegal activities.
 - Any site promoting radical or cult style groups.
 - Any site specifically defaming or slandering another person(s) or organization(s) or another cultural, religious, or ethnic group(s)
 - Posting any WareZ-related material (pirated software, software evaluation cracks, etc.) on your web site.
 - Any other questionable material, as determined by Blue Marbles Ltd
 - Support Area**

Any information contained within the Support Area cannot be verified by Blue Marbles Ltd as being correct so any information and downloads used are entirely at the clients own risk. Blue Marbles Ltd reserve the right to limit access to this resource where deemed necessary.
- ### 3. Payment Policies
- All accounts are set up on a pre-pay basis, unless other terms have been individually negotiated and agreed in writing with Blue Marbles Ltd.
 - All payments due on any account are to be settled within 7 days of written or faxed notice by Blue Marbles Ltd. Failure to pay within this period will result in suspension of the hosting services provided.
 - Blue Marbles Ltd reserve the right to withhold a domain from use until all outstanding amounts are paid. In the event that a transfer is made without prior written authority from Blue Marbles Ltd an administration fee of £250 + VAT will be charged.
 - The customer is responsible for all money owed on the account from the time it was established to the time that the customer notifies Blue Marbles Ltd in writing to request a termination of services.
 - All payment will be made in Sterling.
 - Where payment for services or design is overdue, Blue Marbles Ltd reserves the right to charge interest at the rate of 8% per annum.
 - Where the hosting service has been suspended, any re-connection will require payment to Blue Marbles Ltd of a fee of £65 + VAT. An administration fee of £45 + VAT will be charged in the event that any payment made to Blue Marbles Ltd is not honoured by your bank, building society, credit card company or any office required to honour payment.
 - Where payment under an Agreement is made by credit or debit card the Agreement will be deemed to exist between Blue Marbles Ltd and the cardholder.
- ### 4. Account Vetting
- Blue Marbles Ltd reserves the right to vet all accounts and reject any application. Should an application be rejected a refund of all sums paid will be made.
- ### 5. Cancellation
- Blue Marbles Ltd reserves the right to cancel the service at any time.
 - Where a right to cancel has been exercised by Blue Marbles Ltd no refund will be payable.
 - In the event that a breach of the Agreement results in extra costs being incurred by Blue Marbles Ltd, any additional costs will be billed to the customer.
 - Any notice of cancellation of any product or service by the customer must be made in writing and signed by either the person that originally ordered the service or someone authorised to make such request. Notices will only be accepted if served by first class post or fax.
- ### 6. Domain transfers
- Transferring away**
 - No fees will be charged in the transfer of a domain away from Blue Marbles Ltd provided all information supplied to effect the transfer is correct, the transfer is successfully completed within three attempts and 6.1.3 shall apply. Should transfer of the domain not be successfully completed after three attempts to do so a fee of £10 + VAT will be charged for each additional transfer attempt thereafter.
 - Any notice of transfer must be made in writing and signed by either the domain owner or a director or partner of the company. Notices will only be accepted if served by first class post or fax. All requests must include the correct domain name(s) and all information required to effect the transfer.
 - All transfers will be completed within seven working days of a request being received. If a transfer is required within a shorter timescale the following charges will be charged: weekday £15 per domain, weekend £25 per domain.
 - Transferring to Blue Marbles Ltd**
 - Where Blue Marbles Ltd are asked to transfer a domain away from an existing provider, in the event that all relevant information is sent three times without transfer occurring there will be the option to either stop the process of transfer without incurring any cost or pay a fee of £25 to cover three additional attempts to transfer. Any transfer of an international name space domain will incur an additional fee of £15 + VAT which will include an additional year's renewal of the domain name.
 - Lawful Purpose**
 - Blue Marbles Ltd reserves the right to refuse use of the service where such use is deemed unlawful. Transmission of any material in violation of any UK, EU or International law or regulation is prohibited. This includes, but is not limited to copyright material, material deemed to be threatening or obscene, and material protected by trade secrets.
 - Blue Marbles Ltd expressly forbids anyone from using its servers for the propagation, distribution, housing, processing, storing, or otherwise handling of material which we may deem in any way to be objectionable. The designation of any materials as such described above is left entirely to the discretion of Blue Marbles Ltd.
 - Indemnities**
 - The Customer agrees that it shall defend, indemnify, save and hold Blue Marbles Ltd harmless from any and all demands, liabilities, losses, costs and claims, including reasonable legal fees asserted against Blue Marbles Ltd, its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by customer, its agents, employees or assigns.
 - The Customer agrees to defend, indemnify and hold Blue Marbles Ltd harmless against any liabilities arising out of: (1) any injury to person or property caused by any products sold or otherwise distributed in connection with Blue Marbles Ltd server; (2) any material supplied by the customer infringing or allegedly infringing on the proprietary rights of a third party; (3) copyright infringement and (4) any defective products sold to customer from Blue Marbles Ltd server.
 - Disclaimer**
 - Blue Marbles Ltd will not be responsible for any damages your business may suffer as a consequence of using hosting services provided by Blue Marbles Ltd.
 - We warrant that the Services provided under this Agreement will be supplied with reasonable skill and care and to the best of our ability. No other warranty or guarantee whether implied by law or otherwise is given. Where the Services extend beyond advice relating to the specification and functionality of hosting services such advice is given only on the basis of our experience in respect of services similar to those covered by this Agreement and we claim no specialist or technical expertise.
 - No warranty, guarantee or other term relating to quality or fitness for purpose is given in respect of the goods supplied by us but we shall, where possible, assign to you the benefit of any warranty, guarantee or indemnity given to us by the manufacturer.
 - Excessive CPU/RAM Usage**
 - The Client agrees to take all responsibility for all programs including CGI scripts executed under their account. Programs that consume, in the opinion of Blue Marbles Ltd, an excessive amount of CPU run time or Random Access Memory (RAM) are not permitted.
 - The Client agrees and understands that such excessive use can have an adverse effect on the performance of the web server.
 - The Client agrees to accept responsibility for all programs executed under the account, regardless of who authored the program.
 - The use of cgi or html chat scripts or pages is strictly prohibited.
 - Blue Marbles Ltd reserve the right to suspend accounts without notice or refund to clients who breach the terms of any Agreement operative between the parties. Blue Marbles Ltd has sole discretion over what constitutes excessive usage.
 - Relationship of parties under reseller terms**
 - The relationship between Blue Marbles Ltd and any Reseller is that of vendor and vendee. Nothing under any Agreement entered into by Blue Marbles Ltd shall be construed as being a joint venture, partnership, franchise arrangement, or employer/employee arrangement.
 - This Agreement is a commercial agreement between businesses and should not be regarded as being an Agreement between business and consumer.
 - Any Reseller has no authority, apparent or otherwise, to contract for or on behalf of Blue Marbles Ltd, or in any other way legally bind Blue Marbles Ltd in any fashion, nor shall Reseller be authorised to make any representations about the company or its services other than to set forth Blue Marbles Ltd's responsibilities as outlined in this Agreement.
 - Web sites must be accessed by the domain names supplied to Blue Marbles Ltd as the header addresses only. The practice of adding sub-directories for sites that are not directly linked to the default web sites business with domain pointing to these is strictly prohibited unless this has been agreed by Blue Marbles Ltd in writing.
 - No liability will be accepted by Blue Marbles Limited for any delay or failure to meet any obligations under this Agreement as a direct or indirect result of events beyond their reasonable control. This includes but is not limited to any events that are within the control of third parties such as suppliers, contractors and service suppliers.
 - All Sub-Networks, resellers and dedicated servers of Blue Marbles Ltd must adhere to the above policies.
 - All offers and prices quoted on our website are subject to confirmation.