

# **Terms and Conditions of Use of the Ambient Computer Services (Webhosting & ISP).**

The use of Ambient Computer Services telecommunications network facilities is subject to the following terms, breach of which may result in suspension or termination of the Customers right to use the service:-

1. Our services are offered on an on-going basis with all payments due in advance of any service. All charges are deemed contracted for a 12 month period from registration and thereafter are automatically renewed unless cancelled by either party giving a minimum 3 month notice in writing, irrespective of payment period. Subject to Ambient Computer Service's discretion, charges are not refundable. Ambient Computer Services reserves the right to change or amend their prices without notice.
2. The Ambient Computer Services network may only be used for lawful purposes by the Customer at the sites specified in the Registration Form Transmission. Any material transmitted through the Ambient Computer Services network, or use of any part of it, in violation of any UK law or regulation is prohibited. Such prohibited transmission might include, but is not limited to: copyrighted material, material legally judged to be threatening or obscene, material protected by trade secret, whether or not the Customer was aware of the content of the material or of the relevant law.
3. The Customer shall be issued with a password to access the services and shall take all reasonable steps to keep such password private and confidential and ensure that it does not become known to other persons. If the password becomes known to any other person, the Customer will immediately inform the provider and the password will immediately be changed. The provider or Ambient Computer Services may change the Customers password from time to time at their discretion without prior notice.
4. The Customer shall not use the services: for transmission of computer viruses: for transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character, or which may cause annoyance, inconvenience or needless anxiety, or for the posting of any such material to bulletin boards or news groups: in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including, but not limited to any intellectual property rights).
5. The Customer acknowledges that Ambient Computer Services is unable to exercise control over the content of any information passing over the Ambient Computer Services connection and or Ambient Computer Services network. The Customer further acknowledges that Ambient Computer Services hereby excludes all liability in respect of any transmission or reception of information of whatever nature.
6. The Ambient Computer Services network may be used by the Customer to access other networks world-wide and the Customer agrees to conform to any acceptable use policies of Ambient Computer Services and any such other networks. In addition the Customer undertakes to conform to any published Internet protocols and standards: RFC1009, RFC1122, RFC1123 & RFC1250 and future protocols and standards. In the event that communications by the Customer do not conform to these standards, or if the Customer makes profligate use of the Ambient Computer Services network to the detriment of Ambient Computer Services or any other Ambient Computer

Services Customers, Ambient Computer Services reserves the right to restrict passage of the Customers communications until they give a suitable undertaking as to use.

7. The Customer agrees to indemnify and hold Ambient Computer Services harmless from any claim brought by third parties, alleging the use of Ambient Computer Services by the customer has infringed any right of any kind applicable in the UK or by International legislation and regulation. The Customer shall defend and pay all costs, damages, awards, fees (including reasonable legal fees) and judgements finally awarded against Ambient Computer Services arising from such claims. Furthermore the Customer shall provide Ambient Computer Services with notice of such claims, full authority to defend, compromise or settle such claims and reasonable assistance to defend such claims at the Customers sole expense.
8. Without prejudice to the foregoing, Ambient Computer Services considers that any applications which transmit live video, live audio, or make similar traffic demands across the Ambient Computer Services network by whatever means, constitute making profligate use of the Ambient Computer Services network and as such are not permitted. Use of IP Multicast, other than by means provided and co-ordinated by Ambient Computer Services, is also prohibited.
9. The customer undertakes not to assign, re-sell, sublease or in any other way transfer the Ambient Computer Services connection. Contravention of this restriction successful or not will result in the termination of the service by Ambient Computer Services, in which event the Customer is liable for a termination fee. If the customer is a duly authorised current Channel Partner of Ambient Computer Services then the resell restriction of this clause does not apply.
10. Any condition or warranty that may be implied or incorporated within this contract, by reason of statute or common law, is hereby expressly excluded so far as maybe permitted by law. While Ambient Computer Services will use all reasonable endeavours to provide a prompt and continuing service, it will not be liable for any loss of data resulting from delays, non deliveries, missed deliveries, or service interruptions caused by events beyond the control of Ambient Computer Services or by errors or omissions of the Customer. In no circumstances whatsoever, will Ambient Computer Services be liable for economic or consequential loss. Ambient Computer Services specifically excludes any warranty as to the quality or accuracy of information received through the services, further Ambient Computer Services cannot be held liable for the actions of any 3rd Party using the service.
11. Where Ambient Computer Services provides added value services to its existing services in particular but not exclusivley 'anti virus' products for electronic mail Ambient Computer Services will not be held responsible for any consequential loss or damage for the failure of these services to operate to specification. In the case of failure of these added value services it is expected that the customer will have taken steps to implement contingency plans to protect its business from the effects of these Ambient Computer Services added value services not functioning to specification or not being available.
12. Where Ambient Computer Services provides hosting services the customer agrees that any equipment hosted by Ambient Computer Services shall be treated as security for the payment by the customer for goods and services provided or to be provided under its hosting agreement.
13. Where Ambient Computer Services manages the renewal of a domain with the appropriate domain licensing authority on behalf of the customer Ambient Computer Services will take responsibility for notifying renewal and maintaining connectivity to all other services associated with that domain. Where the customer renews the domain

directly with the appropriate domain licensing authority Ambient Computer Services will not be held responsible for services associated with that domain including the continued availability of the domain. Further domain names in the .uk namespace are also subject to [Nominet's Terms and Conditions](#)

14. Ambient Computer Services shall retain full ownership of and title to all equipment, software, or services (Goods) ordered by the customer and delivered to the customer or any part thereof unless and until the customer has paid all sums owing to Ambient Computer Services. In addition where services are subject to a transfer fee or other fixed charges such as domain names then no transfer or action will occur until the customer has settled in full all outstanding commercial matters with Ambient Computer Services.
15. Ambient Computer Services reserves the right to alter these Terms and Conditions from time to time. The current Terms and Conditions applicable are those published on the Ambient Computer Services web pages. By continuing to accept service from Ambient Computer Services the customer is deemed to be bound by the current Terms and Conditions. Where possible Ambient Computer Services will give advanced notice of changes to Terms and Conditions.
16. By accepting or using the service and or Ambient Computer Services has supplied goods the customer is deemed to have accepted these Terms and Conditions.
17. This contract is governed and construed in accordance with English Law.

## **Ambient Computer Services Terms & Conditions Of Trade**

### **1. DEFINITIONS**

1.1 Company means the customer placing an order for Goods with Ambient Computer Services.

1.2 Ambient Computer Services means **Ambient Computer Services Ltd** , its trading divisions, subsidiary or associated companies.

1.3 Goods means all equipment, software or services which are subject to the Company's order which are to be supplied to the Company by Ambient Computer Services under these Conditions.

### **2. ORDERS**

2.1 There shall be no binding agreement between the Company and Ambient Computer Services until the Company's order has been accepted in writing by Ambient Computer Services. Any prior indications by Ambient Computer Services made verbally shall be provisional only.

2.2 All orders must be placed using the standard format specified by Ambient Computer Services and request delivery up to 90 days of the order issue date. Orders must in any event comply with the prevailing Ambient Computer Services ordering procedures.

2.3 All orders are accepted subject to the availability of Goods and to these Conditions. No terms or conditions put forward by the Company shall be binding on

Ambient Computer Services.

2.4 The Company accepts that these Conditions and any specific details stated on its accepted order constitute the entire understanding between the parties and supersede any prior promise, representation, undertaking or understanding of any kind.

2.5 If the Company requests a change or cancellation of an order Ambient Computer Services reserves the right to reject the change or cancellation or accept it and charge 5% of the order value.

2.6 No cancellation will be accepted in respect of orders for items not normally stocked by Ambient Computer Services. Any such items would be specifically ordered for the Company and will be held by Ambient Computer Services at the Companies risk and the Company shall insure accordingly.

### **3. PRICES**

3.1 Unless otherwise expressly agreed in writing the Goods shall be sold and invoiced at Ambient Computer Services 's current prices at the date of despatch. Catalogues, price lists, videos and other advertising material are provided for illustrative purposes only.

3.2 Unless otherwise agreed in writing prices do not include delivery and taxes (if any) and such costs shall be payable by and invoiced to the Company.

3.3 All quotations are valid only on the date given and all quotations and prices are based on details provided by the Company and do not apply where the company alters the details on which such quotations and prices are based. Ambient Computer Services reserves the right to charge for any omission or additional cost arising from the provision of inaccurate or insufficient information by the Company and to revise prices to take into account increases in any costs of providing the Goods which occurs between the date of quotation and delivery.

### **4. DELIVERY**

4.1 Delivery shall be at the Companys premises or, if different, the place specified in the Companies order.

4.2 Ambient Computer Services will deliver as near as possible to the delivery premises as safe hard road permits and to the ground floor only of such premises. The Company shall provide at its own expense the labour for unloading and the Company shall unload with reasonable despatch. Where such labour is not made available Ambient Computer Services shall be entitled to charge the cost of labour in unloading. Damage caused due to inadequate delivery access or careless unloading shall be at the Companies risk.

4.3 Dates and times quoted by Ambient Computer Services are estimates only and any delay in meeting delivery dates shall not give rise to a right to cancel the order or to claim damages.

4.4 The Company shall note any claim for short delivery and/or damage to components or packaging on the delivery schedule at the time of delivery and shall confirm such claims in writing to Ambient Computer Services within 7 days from the date of delivery. All Goods are deemed delivered and completed if such notice is not received within such period.

4.5 Ambient Computer Services reserves the right to make part deliveries. Any request by the Company for Ambient Computer Services to delay or split delivery may result in a stockholding charge and any additional cost incurred by Ambient Computer Services being payable by and invoiced to the Company. Any Goods so held shall be at the risk of the Company that shall insure accordingly.

4.6 Subject to Clause 4.5 risk in the Goods shall pass on delivery or collection by the Company or its agent, whichever is the earlier.

## 5. PAYMENT

5.1 If the Company is not an account holder approved in writing by Ambient Computer Services all invoices are payable before delivery of the Goods or immediately following submission of a pro forma invoice from Ambient Computer Services, whichever is the earlier.

5.2 If the Company is an approved account customer all invoices are payable net within 28 days of the date of the invoice.

5.3 Time is of the essence with regard to payment of any sums due to Ambient Computer Services.

5.4 The Company shall not be entitled to withhold payment of any amount due to Ambient Computer Services in respect of any claim for damage to Goods or any alleged breach of contract by Ambient Computer Services, nor shall the Company be entitled to any right of set-off.

5.5 Without prejudice to Ambient Computer Services's other rights if the Company fails to pay any amount on the due date;

5.5.1 Ambient Computer Services shall have the right to cancel any contract made with the Company and/or to suspend deliveries;

5.5.2 Ambient Computer Services reserves the right to charge interest on a daily basis on overdue amounts at the rate of 4% above Barclays Bank base rate until payment and or charge £30.00 + VAT per late payment.

5.5.3 the Company shall indemnify Ambient Computer Services and keep it indemnified in respect of all costs (including legal fees) reasonably incurred in attempting to recover such overdue amounts;

5.5.4 the whole of the balance then outstanding to Ambient Computer Services by the Company on any account whatsoever shall become immediately due and payable.

5.6 Ambient Computer Services reserves the right to require the Company to pay for Goods in advance and to recharge or refuse discount if the Company fails to maintain credit account arrangements satisfactory to Ambient Computer Services.

## **6. TITLE**

6.1 Ambient Computer Services shall retain full ownership of and title to all Goods delivered to the Company or any part thereof unless and until the Company has paid all sums owing to Ambient Computer Services. Ambient Computer Services transfers no title to or ownership in Goods comprising software (or any other software) to the Company or any third party.

6.2 While any amount remains outstanding to Ambient Computer Services from the Company;

6.2.1 the Company shall keep the Goods as fiduciary bailee for Ambient Computer Services and shall store the Goods separately from its other chattels and in a manner which clearly shows that they are owned by Ambient Computer Services;

6.2.2 the Company shall not pledge or in any way charge by way of security for any indebtedness any of the Goods that remain the property of Ambient Computer Services;

6.2.3 the Company will deliver up or have delivered up to Ambient Computer Services Goods upon demand and Ambient Computer Services may without limiting any other rights or remedies available to it at law in equity or by statute seize repossess and/or resell Goods at its discretion and in the exercise of such rights Ambient Computer Services may enter any premises in which it reasonably believes from time to time any Goods are located;

6.2.4 the Company may only sell transfer or otherwise dispose of the Goods to its customers in the ordinary course of its business and in accordance with the provisions of these Conditions;

6.2.5 where the Company is paid by or on behalf of any customer or shall receive the proceeds of any insurance claim in respect of any Goods it shall pay such proceeds to Ambient Computer Services as soon as reasonably practicable to do so after receipt until Ambient Computer Services is paid in full and shall hold the same as trustee for Ambient Computer Services and keep a separate account of all such proceeds for such purpose;

6.2.6 the Company shall take all due care (or ensure that all due care is taken) of the Goods and the Company shall bear the sole liability for insurance of the Goods and shall indemnify Ambient Computer Services for any loss whatsoever suffered or incurred by Ambient Computer Services arising out of any failure to insure such Goods.

## **7. WARRANTY**

7.1 The Company acknowledges that Ambient Computer Services is not the

manufacturer of the Goods. Ambient Computer Services will pass on to the Company such unexpired warranties it receives from the manufacturer of the Goods as are capable of transfer and Ambient Computer Services 's liability shall be limited to such guarantee as it may receive from the manufacturer. In particular no warranty is given in respect of the documentation or goods or services not provided by Ambient Computer Services. Ambient Computer Services offers a warranty on Goods assembled by Ambient Computer Services from component parts and details of such warranty will be provided on request.

7.2 The Company acknowledges that software products are by their very nature susceptible to imperfections in operation and subject to Clause 7.1 no warranty is given in respect thereof.

7.3 Ambient Computer Services 's obligations and liabilities in respect of the Goods shall be limited to those set out expressly herein and Ambient Computer Services specifically excludes but without limitation the implied conditions of satisfactory quality and fitness for any particular use or purpose. Ambient Computer Services shall have no liability whatsoever in respect of any advice and/or information which may be given to the Company by Ambient Computer Services relating to Goods, configuration or otherwise.

7.4 The Company shall ensure that any warranty and maintenance service performed on Goods is performed by a qualified representative authorised by the manufacturer to offer warranty and maintenance on those Goods.

7.5 Without prejudice to Clause 7.1 to 7.3 in the event of Ambient Computer Services being shown to have been negligent in the supply of Goods or the provision of services its liability:

7.5.1 for death or personal injury of any person caused by such negligence shall be unlimited;

7.5.2 in respect of any defects in or failure of Goods or for the loss or damage attributable thereto or to the negligence of its employees in connection with the performance of their duties hereunder, shall be limited to the making good by replacement or repair of such Goods which upon inspection by Ambient Computer Services appear to be defective and in any event Ambient Computer Services's maximum aggregate liability arising in respect of the supply of Goods or services shall be limited to the original VAT exclusive price for such Goods or services;

7.6 Ambient Computer Services makes no representation and gives no warranty in respect of the sources of origin of manufacture or production of the Goods or any part thereof.

7.7 The Company is advised to keep in force a maintenance contract in respect of the Goods.

## 8. RETURNS

8.1 All Goods shall be deemed accepted unless rejected by notice in writing to

Ambient Computer Services within 7 days of delivery or collection of the Goods. Any such notice shall give detailed reasons for such rejection.

8.2 Any payment, credit or refund following return of such rejected Goods to the Company shall only be given once the same has been received by Ambient Computer Services from the manufacturer, supplier or insurer as the case may be.

8.3 Before returning any Goods which have been rejected in accordance with Clause 8.1 the Company shall comply with Ambient Computer Services's returns procedure and in particular but without limitation shall obtain from Ambient Computer Services a designated return label which will contain an identification number and which shall be affixed by the Company to the packaging of the Goods to be returned in a prominent position. The issue of a return label is solely for administrative purposes and shall not be taken as an admission of any fault and/or liability whatsoever on the part of Ambient Computer Services in relation to the Goods being returned.

8.4 No goods shall be returned without Ambient Computer Services's prior approval and Ambient Computer Services reserves the right to repair Goods rather than accept their return.

## **9. PRODUCT CHANGES**

9.1 Ambient Computer Services will use its reasonable endeavours to inform the Company of any alterations made by the manufacturer to the specification of Goods.

9.2 Ambient Computer Services shall be entitled to substitute an alternative product of equivalent functionality and at the same price or to cancel any orders for Goods that have been declared end of life by the manufacturer.

## **10. TRADEMARKS, PATENTS AND COPYRIGHTS**

10.1 The Company recognises the manufacturer's ownership of and title to all trademarks, service marks, trade names, patents, copyright and other intellectual property rights.

10.2 The Company will take no action to violate, obliterate, remove, alter, conceal or misuse any such marks, trade name or copyright notice.

10.3 The Company will promptly notify Ambient Computer Services if it becomes aware of any infringement of such intellectual property rights by any third party and shall provide its reasonable assistance to Ambient Computer Services and/or the manufacturer in connection with any resultant proceedings.

## **11. CONFIDENTIAL INFORMATION**

Ambient Computer Services may from time to time impart to the Company certain confidential information of a commercially sensitive or technical nature and the Company hereby agrees that it will use such information solely for the purpose of this Agreement and that it shall not disclose such information whether directly or indirectly to any third party.



## **12. SOFTWARE LICENSING**

Ambient Computer Services shall grant to the Company only such rights in connection with any Goods that are software and the copyright and other intellectual property rights relating thereto as it shall be licensed to grant pursuant to the terms upon which Ambient Computer Services is licensed by the owner thereof. The Company shall only be entitled to sub-licence such software to its end user customers using the standard form license supplied by Ambient Computer Services.

## **13. EXPORT CONTROLS**

The Company acknowledges that the Goods may be subject to US and local government export controls. Where these apply it is the Company's sole responsibility to obtain authorisation from the appropriate authorities before re-exporting the Goods from the country of purchase.

## **14. SEVERABILITY**

14.1 If and to the extent that any provision or any part of these Conditions is deemed to be illegal void or unenforceable for any reason then such provision or part thereof (as the case may be) shall be deemed to be severed from the remaining provisions or parts of the relevant provisions (as the case may be) all of which remaining provisions shall remain full force and effect;

14.2 In particular, should any limitation of Ambient Computer Services's liability contained in these Conditions be held to be illegal void or unenforceable under any applicable statute or rule of law it shall to that extent only be deemed severed here from, but, if Ambient Computer Services thereby becomes liable for any loss or damage, such liability shall be subject to all other relevant limitations contained in these Conditions.

## **15. RECORDS**

15.1 The Company shall maintain complete and accurate records of all Goods sold or returned and the names and addresses of all persons to whom software has been sub-licensed.

15.2 The Company shall provide such activity reports in connection with the sale and sub-licensing of Goods as Ambient Computer Services shall reasonably request from time to time.

## **16. FORCE MAJEURE**

16.1 Ambient Computer Services shall not be liable to the Company on any account whatsoever in the event that Ambient Computer Services is prevented from fulfilling its obligations hereunder due in whole or in part to an event of force majeure which expression shall mean:

16.1.1 act of God, fire, flood, storm, power failure, reduction of power supplies, mechanical failure or lack or shortage of materials or stock or any other circumstance beyond the reasonable control of Ambient Computer Services; and

16.1.2 whether or not with Ambient Computer Services's control, strikes, lock-outs or industrial disputes in relation to Ambient Computer Services or any other party or any action taken by Ambient Computer Services in connection therewith or in consequence or furtherance thereof.

16.2 In such event Ambient Computer Services may at its option either suspend performance or cancel the contract in question or so much of it as remains unperformed without liability for any loss and without prejudice to Ambient Computer Services's rights to receive payment of the price of all Goods previously delivered.

## **17. CONFIGURATION**

17.1 Ambient Computer Services will configure and install Goods to the specification provided by the Company at the time of order at such rates as it notifies to the Company from time to time.

17.2 Ambient Computer Services will use reasonable care and skill in performing such installation/configuration and will perform such services within a reasonable time.

17.3 In the event the Company changes the specification for such installation/configuration Ambient Computer Services reserves the right to require payment for implementing such changes at rates notified to the Company from time to time.

## **18. DISTRIBUTION AGREEMENT**

18.1 Ambient Computer Services agrees with the Company that it will comply with the obligations imposed on it by any agreement with any manufacturer relating to the Goods.

18.2 The Company indemnifies Ambient Computer Services against all costs claims expenses demands and penalties suffered or as but not limited to, sub-licensing of software, copyright and warranty provisions.

## **19. GENERAL**

19.1 All Goods are manufactured for standard commercial uses and are not intended to be sold or licensed for use in critical safety systems or in nuclear facilities, other nuclear applications, mass transportation and aviation applications.

19.2 The Company may not assign or transfer any of its rights, duties and obligations without the written consent of Ambient Computer Services.

## **20. LIABILITY**

20.1 Ambient Computer Services shall not in any circumstances whatsoever be liable for indirect or consequential loss including but not limited to loss of profits loss of data or use and shall have no liability for any claim based upon the combination operation or use of any Goods with equipment data or programming not supplied by Ambient Computer Services or based upon a modification of the Goods.

20.2 Any action against Ambient Computer Services must be brought no later than 12 months after the Company becomes aware that a cause of action has arisen.

## **21. RELATIONSHIP**

The relationship between the Company and Ambient Computer Services shall be as buyer and seller and nothing contained herein shall be deemed to create a partnership or agency.

## **22. LAW**

These Conditions shall be construed according to the laws of England the Company and Ambient Computer Services submit to the non-exclusive jurisdiction of the English Courts in connection with any dispute or proceedings arising out of any contract incorporating these Conditions.

January 2014