

Terms and Conditions of Service for Website Packages supplied by The Endless Bookcase Ltd

These Terms and Conditions ('the Terms') set out the terms and conditions under which The Endless Bookcase Ltd supplies Website Packages. The Endless Bookcase Ltd reserves the right to change, add, subtract or in other ways alter these Terms without the prior consent of the Client.

By making a purchase of a website package you are deemed to have accepted these Terms.

1. Definitions

In these Terms, the following expressions will have the following meanings, unless inconsistent with the context:

“EBC”

The Endless Bookcase Ltd registered in England and Wales (Company No. 8443929), whose registered office is 71 Castle Rd St Albans Herts AL1 5DQ

“Client”

The legal entity making the purchase from EBC.

“Website Package”

A product or service sold by EBC for the purpose of supplying the client with all or part of a functioning web site or other internet facility.

“Agreement”

The agreement between EBC and the Client for the provision of Website Packages formed by these Terms and any product specific terms and conditions.

“Business Customer”

You are a business customer if you are a commercial entity or an individual using or planning to use the Website Package as part of a business trade or profession.

“Defect”

Any defect in systems having a material effect on the Client's use or operation of the Website Packages.

“Intellectual Property Rights”

Any and all patents, trademarks, service marks, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not

registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to the same

“Netiquette”

Generally accepted standards and codes of practice for use of the internet including but not limited to a prohibition on sending bulk unsolicited email, mail bombing or impersonating another person, organisation or website

“Software”

Any communications or other software provided to or made available to the Client by EBC in connection with the Agreement, but excluding Third Party Software.

2. Interpretation

2.1 The headings used in the Agreement are inserted for convenience only and are not intended to be part of nor to affect the meaning or interpretation of any of the Agreement.

2.2 In the Agreement the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require.

2.3 The expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.

2.4 The words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context.

2.6 The Agreement (as varied in accordance with its terms) forms the entire understanding of the parties in respect of the matters dealt within it and supersedes all previous agreements, understandings and negotiations between the parties.

2.7 The parties do not intend that any of the terms of the Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not party to it.

2.8 References in these Terms to clauses mean clauses of these Terms. References in these Terms to the provisions of statutes or statutory instruments are deemed to include those provisions as amended or substituted.

3. Website Packages Provision

3.1 The Website Packages are described or referred to in the EBC web site product description. EBC agrees to supply Website Packages to the Client on the following conditions, these conditions are not an offer to provide service but a statement of the terms on which EBC would provide them.

3.2 EBC will use its reasonable endeavours to provide the Website Packages in accordance with any timescale set out on the product description but will not be liable to the Client where, using those endeavours, it fails to meet any timescale.

3.3 EBC will not be liable for any failure to provide the Website Packages resulting from any breach by the Client or its employees, agents or subcontractors of the Agreement.

3.4 EBC will not be obliged to provide any Website Packages not referred to in the description. Furthermore, EBC cannot provide the Website Packages where the Client makes use of what in the sole discretion of EBC can be deemed as incompatible communication systems.

3.5 The terms of the Agreement form the entire agreement between EBC and the Client in relation to the Website Packages and all other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law. The Client may not rely upon any representation made or given by any employee of EBC prior to the Agreement being entered into unless confirmed in the Agreement.

3.6 EBC reserves the right at any time and from time to time to improve, correct or otherwise modify all or any of the Website Packages (including substituting Software). EBC will endeavour to give the Client reasonable notice of any such modification, where this is reasonably practicable.

3.7 Without prejudice to its other rights and remedies, EBC may at its sole discretion suspend the provision of the whole or any part of the Website Packages (temporarily or permanently) and will have no liability to provide the Website Packages on the occurrence of any of the following events:

3.7.1 notified or unscheduled upgrade or maintenance of EBC' IT systems;

3.7.2 issue by any competent authority of an order which is binding on EBC which affects the Website Packages;

3.7.3 if the Client fails to pay any Fees or any other sums owing to EBC by the Client when they fall due;

3.7.4 if an event occurs and EBC deem it to be appropriate to terminate the Agreement;

3.7.5 if the client makes unreasonable use of the Website Package facilities; or

3.7.7 failure or deficiencies in the Client System referring but not limited to hardware, server corruption and security breaches

3.8 The Client will provide to EBC those items of client information and data needed to enable EBC to provide the Website Package.

3.9 The Client warrants that the Client Materials will be accurate in all material respects and will not knowingly include material which is illegal, the accessing holding transmitting or supplying of which would be a criminal offence or which is otherwise unlawful or in breach of any applicable law or code of practice applying to such materials. In particular, the Client warrants that all necessary licences, consents and waivers (including those from rights owners, performers and other contributors) are obtained and paid for by the Client. Without prejudice to the foregoing, EBC may decline to use any Client Materials on any reasonable grounds.

3.10 The Client will supply in a timely manner all information, instructions, review and feedback reasonably required by EBC in connection with the performance of its obligations under the Agreement and will appoint a representative who is fully empowered and authorised to provide the same.

3.11 The Website Packages are supplied on the strict understanding that Client is a Business Customer.

4. Service Delivery

4.1 The Client acknowledges that, given the nature of such Website Packages, EBC cannot guarantee that the Website Packages, when delivered via the internet, will be uninterrupted or error free.

4.2 To the fullest extent permitted by law and save as provided elsewhere in the Agreement, the Website Packages are provided by EBC to the Client on an “as is” and “as available” basis and no warranty or representation (express or implied) of any kind are given in connection with the Agreement including as to satisfactory quality and fitness for a particular purpose. In particular, EBC gives no warranty or representation that:

4.2.1 the Website Packages will meet the Client’s requirements;

4.2.2 the Website Packages will be provided on an uninterrupted, timely, secure or error-free basis;
or

4.2.3 any results obtained from use of the Website Packages will be accurate, complete or current.

4.3 EBC warrants that it will provide the Website Packages with reasonable care and skill. EBC will not be liable for a breach of such warranty unless the Client notifies EBC in writing of such failure within 14 days of the Client becoming aware of the failure.

4.4 If the Client makes a valid claim against EBC based on a failure by EBC to comply with the warranty set out in clause 4.3 EBC may, at its option, take such steps as it deems necessary to remedy such failure or refund such part of the Fees as relates to such Website Packages, provided that the liability of EBC under such warranty will in no event exceed one and a quarter times the amount of the Fees paid to EBC by the Client (excluding VAT and expenses) in the 12 month period prior to the date on which the Client makes the claim. If EBC complies with this clause, it will have no further liability for a breach of the said warranty.

4.5 EBC Customer Website Packages must be contacted via email using support@theendlessbookcase.com. EBC shall respond via the same medium the Client contacted EBC, within a reasonable time.

5. Client’s Obligations

5.1 The Client agrees that it will:

5.1.1 immediately notify EBC on becoming aware of any unauthorised use of all or any of the Website Packages.;

5.1.2 not use the Website Packages or allow them to be used for any unlawful purpose or for the publication, linking to, issue or display of any unlawful material (including any pirated software or any material which is obscene, pornographic, threatening, malicious, harmful, abusive, defamatory or which breaches the rights including Intellectual Property Rights 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 Client’s country or any other place where the results of such purpose or the material in question can be accessed;

5.1.3 not use the Website Packages or allow them to be used for the publication, web forwarding, linking to issue of or display of any material which in the absolute discretion of EBC may harm EBC or any of its Associated Companies or clients or bring EBC into disrepute or which calls into question any action taken by EBC on the Client’s behalf;

5.1.4 not use the Website Packages or allow them to be used in breach of good Netiquette practices;

5.1.5 remove or prevent access to any material hosted on any of the Equipment and/or Client System which causes or is likely to cause the Client to be in breach of the Agreement;

5.1.6 ensure that it has all necessary consents, permissions and licences to make use of the Website Packages including registration and appropriate consents and approvals under the Data Protection Act 1998;

5.1.7 not provide any technical or other information obtained from EBC and/or relating to the Website Packages to any person which the Client is aware or ought reasonably be aware may directly or indirectly lead to a breach of any law or regulation;

5.1.8 not, in breach of good Netiquette practices, use any service provided by any third party (including an internet web site and/or email) for the publication, linking to, issue or display of any material which refers to an internet web site hosted by EBC or any other products or Website Packages offered by EBC from time to time without EBC' prior written consent;

5.1.9 ensure that all material or data hosted by EBC on any web site operated by the Client from time to time or communicated through such site or using the Client System is checked for viruses and other harmful code and has appropriate security patches applied;

5.1.10 comply with any security policy notified to it from time to time by EBC and, in particular, ensure that all passwords and user names provided to it by EBC are at all times kept confidential, used properly and not disclosed to unauthorised people. If the Client has any reason to believe that any password or user name has become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way or of any other breach of security then the Client will inform EBC immediately;

5.1.11 be entirely liable for all activities conducted and charges incurred under its passwords and user names whether authorised by it or not and the Client acknowledges that EBC shall not be liable for any loss of confidentiality or for any damages arising from the Client's inability to comply with these Conditions;

5.1.12 ensure that all communication details which it provides to EBC are at all times true, current, accurate and complete. The Client will promptly notify EBC of any change to such details within 7 days of the change and acknowledges that EBC will not be liable for any loss suffered or incurred by the Client as a result of its failure to notify such changes to EBC; and

5.2 The Client acknowledges that it has appropriate knowledge of how the internet functions, the systems and products provided to it in connection with the Agreement and what types of use and content are and are not acceptable, some of which are referred to in clause 5.1.2. The Client acknowledges that EBC shall have no obligation to:

5.2.1 train the Client or its staff on its use of the Website Package;

5.2.2 manipulate any material which the Client wishes to and/or does post on any web site or other system it operates (including any Client System) or any communication which it issues or sends in connection with any Website Packages; or

5.2.3 validate, vet or edit such material for usability, legality, content or correctness.

The Client also acknowledges that the Website Packages and products provided by EBC are standard

packages which are not tailored to specific requirements of the Client, unless confirmed in writing by EBC to the contrary.

5.3 The Client will promptly provide to EBC and/or its consultants, employees and agents such information and assistance as they may reasonably require in order to be able to carry out the Website Packages and, where relevant, deliver and install any Ancillary Systems.

5.4 The Client will procure all necessary rights from third parties (including intellectual property licences of computer software and website content including but not limited to ringtones, and music and any other relevant media which are from time to time required in order for EBC to be able legally to provide the Website Packages.

5.5 If, in EBC's opinion, the Client is in breach of the provisions of clauses 5.1.2 to 5.1.4 then EBC may without prejudice to its other rights and remedies immediately by written notice to the Client:

5.5.1 suspend provision of the Website Packages;

5.5.2 terminate the Agreement.

EBC may also notify appropriate public authorities (governmental or otherwise including the police or other enforcement authority) of any such breach, where it deems necessary.

5.6 Where as part of the Website Packages the Client is entitled (having obtained EBC's prior written consent) to resell the whole or any part of the Website Packages to a third party then the Client will:

5.6.1 procure such third party's compliance with and acceptance of these Conditions;

5.6.2 be fully responsible for the acts and omissions of any such third party; and

5.6.3 indemnify EBC for any losses it suffers as a result of such acts or omissions.

6. Payment Terms

6.1 The Fees are payable to EBC in advance of the provision of the Website packages.

6.2 Fees payable monthly or yearly will be paid in advance and will not be refundable in whole or part if the Agreement or relevant part is terminated during the period to which the payment relates;

6.3 Any sums payable by the Client to EBC under the Agreement are exclusive of value added tax or any similar taxes, levies or duties, which will be added to such sums and be payable by the Client at the appropriate rate.

6.4 Without prejudice to any other of its rights and remedies, EBC will be entitled to remove the Client's data from its systems if any amount due under the Agreement is not paid within 14 days of its due date for payment. EBC is not required to back up such data or return the same to the Client prior to any such removal or following termination of the Agreement.

7. Confidential Information

7.1 Each party will (unless contrary to law):

7.1.1 keep confidential all information obtained from the other under or in connection with the Agreement ("Information");

7.1.2 not disclose any Information to any third party without the prior written consent of the other except to such persons and to such extent as may be strictly necessary for the performance of the Agreement;

7.1.3 not use any Information otherwise than for the purposes of the Agreement.

7.2 The provisions of clause 7.1 do not apply to Information which:

7.2.1 is or becomes public knowledge (otherwise than by breach of this clause); or

7.2.2 was in the possession of the party concerned without restriction as to its disclosure before receiving it from the disclosing party; or

7.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

and nothing in this clause 7 prevents either party from disclosing any Information for a proper purpose to a public authority or any regulatory body, or to a court of law in the United Kingdom or elsewhere in legal proceedings, or to its senior management, its auditors, bankers, lawyers or other professional advisers.

7.3 The provisions of this clause 7 will continue to apply notwithstanding termination of the Agreement.

7.4 The Client, by entering into the Agreement, consents to EBC sending to the Client by whatever means EBC deems appropriate (whether by email or otherwise) information concerning new products and other Website Packages that EBC and its Associated Companies may from time to time offer. The Client may elect to opt out to this communication by unsubscribing at the bottom of the marketing email or otherwise.

8. Intellectual Property

8.1 The Client acknowledges and agrees that it will not own or acquire ownership of any Intellectual Property Rights in or relating to the Website Packages or created in performing the Website Packages and that it will have no rights in or to the Website Packages other than the rights expressly granted by the Agreement.

8.2 The Client will indemnify and keep EBC indemnified from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, losses, damages, claims, demands, legal costs (on a full indemnity basis) and judgments which EBC incurs or suffers as a consequence of infringement of any Intellectual Property Right of any third party arising directly or indirectly from:

8.2.1 the provision by EBC of Website Packages making use of information or specifications supplied by the Client;

8.2.2 the Client's failure to procure all necessary rights from third parties which are from time to time required in order for EBC to be able legally to provide the Website Packages; or

8.2.3 the use by EBC in connection with the Agreement of the Client System and the Client Materials.

8.3 No Intellectual Property Rights created or acquired by EBC will transfer or be assigned to the Client unless EBC and the Client have signed a written assignment document to that effect.

9. Liability

9.1 The provisions of this clause 9 sets out the entire liability of EBC (including any liability for the acts or omissions of its consultants, employees, agents and authorised representatives) to the Client in respect of:

9.1.1 any breach of the Agreement; and

9.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.

9.2 Nothing in the Agreement excludes or limits the liability of EBC for death or personal injury caused by the negligence of EBC, fraud or a breach of section 12 of the Sale of Goods Act 1979.

9.3 Subject to clauses 9.2 EBC will not be liable to the Client in contract, tort, misrepresentation or otherwise (including negligence), for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever, or for any loss of profit, loss of business, loss of contract, loss of revenue, depletion of goodwill or otherwise (whether direct or indirect), and whether or not caused by the negligence of EBC or its employees, agents or authorised representatives. Any other liability which arises out of or in connection with the Agreement is limited to:

9.3.1 £500 per breach for loss of or damage to tangible property; and

9.3.2 for any other kind of loss, one and a quarter times the amount of sums paid by the Client to EBC pursuant to the Agreement (excluding VAT and expenses) during the preceding 12 month period.

9.4 The Client acknowledges that the allocation of risk in the Agreement reflects the price paid for the Website Packages and that it is not within the control of EBC how or for what purposes they are used.

9.5 Where the Client accesses EBC's Website Packages from locations outside the UK, the Client does so, on the Client's own initiative and is responsible for compliance with all and any applicable local laws.

10. Client Indemnity

The Client will fully indemnify and keep EBC and its Associated Companies, officers, partners, employees and agents fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including legal fees) whatsoever incurred by it and arising from any of the following:

10.1 the Client's breach of the Agreement, negligence or other default;

10.2 the operation or break down of any IT systems owned or used by the Client including the Client System but not the Equipment; or

10.3 the Client's use or misuse of the Website Packages.

11. Force Majeure

Neither party is under any liability to the other party in respect of anything which, apart from this provision, may constitute a breach of the Agreement arising by reason of force majeure which means, in relation to either party, circumstances beyond the reasonable control of that party

including acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, network failure, systems fault, unauthorised use or access to the IT systems of EBC or the Client, explosion, flood, epidemic, lock outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions, to the extent outside of its reasonable control.

12. Term and Termination

Without prejudice to the remaining provisions of this clause 12 and any other rights and remedies available to EBC:

12.1 EBC will provide the Website Packages for the period stated in the Website Package description.

12.2 EBC may immediately terminate the Agreement (or at its option, any part of it) by notice in writing to the Client if the Client fails to pay to EBC any sum due under the Agreement on the due date for payment.

12.3 Either party may terminate the Agreement (or, at its option, any part of it) forthwith by notice in writing serving 30 days to the other if the other party:

12.3.1 is in material breach of the Agreement and fails (where the breach is capable of remedy) to remedy the breach within 30 days of the receipt of a request in writing to remedy the breach, such request setting out the breach and indicating that failure to remedy the breach may result in termination of the Agreement;

12.3.2 becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986;

12.3.3 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

12.3.4 has a receiver, manager, administrator or administrative receiver appointed over all or any parts of its undertaking, assets or income, has passed a resolution for its winding-up, or has a petition presented to any court for its winding-up or for an administration order; or

12.3.5 has ceased or threatened to cease to trade.

13. Consequences of Termination

13.1 Termination of the Agreement is without prejudice to the rights and duties of either party accrued prior to termination.

13.2 The clauses of the Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

13.3 EBC will without notice remove the Client's data from its systems and any Equipment following termination. For the purposes of this clause, the date of termination will be either the date that EBC receives authorisation from the Client instructing cancellation of account or the date of expiry of notice of termination served in accordance with these Conditions.

13.4 Upon termination of the Agreement, the Client will forthwith:

13.4.1 cease to use the Website Packages;

13.4.2 pay all outstanding invoices raised by EBC pursuant to the Agreement and pay for all work in progress not previously paid for on a reasonable pro-rata basis (subject to receipt of an invoice for the same from EBC).

14. Severability

The illegality, invalidity or unenforceability of any provision of the Agreement will not affect the legality, validity or enforceability of the remainder. If any such provision is found by any court or competent authority to be illegal, invalid or unenforceable, the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

15. Waiver

15.1 The failure or delay by either party in exercising any right, power or remedy of that party under the Agreement will not in any circumstance impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party of any right, power or remedy under the Agreement will not in any circumstance preclude any other or further exercise of it or the exercise of any other right, power or remedy.

15.2 Any waiver by either party of a breach of or default under any of the terms of the Agreement by the other party is not deemed a waiver of any subsequent breach or default and in no way affects the other terms of the Agreement.

17. Amendments

No variation or amendment to the Agreement (including any Order Confirmation) is effective unless agreed in writing and signed by an authorised representative of EBC.

18. Notices

Any notice to be given or made by either party under or in connection with the Agreement must be in writing and given or made to the other party at its address. Every notice, if so addressed, is deemed to have been duly given or made, if delivered by hand, upon delivery at the address of the relevant party, if sent by prepaid first class post, two Business Days after the date of posting and if transmitted by facsimile, at the time of transmission (provided a confirmatory letter is sent by prepaid first class post) provided that, where, in accordance with the above provisions, any notice would otherwise be deemed to be given or made on a day which is not a Business Day or after 4.00 p.m. on a Business Day, such notice shall be deemed to be given or made at 9.00 a.m. on the next Business Day. EBC may additionally serve notice on the Client under or in connection with the Agreement by email to the Client by sending an email to the contact email address stated on the Order Confirmation(s), and in such a case the email will be deemed sent once transmitted from EBC's email server.

19. Applicable Law and Jurisdiction

The construction, performance and validity of the Agreement will be governed by English law and the English courts have jurisdiction to settle any disputes which may arise out of or in connection with it.

20.Third Party Software and Website Packages

Any Third Party Software or service is supplied to the Client on the basis of the relevant third party's standard licence and service terms and with which the Client agrees to comply.

26.Provision of Support for Website Packages

26.1 EBC will provide the Support Website Packages to the Client under the provisions of this clause 26.

26.2 EBC will only be obliged to provide the Support Website Packages during normal office hours.

26.3 The obligation of EBC to provide Support Website Packages will not extend to:

26.3.1 rectification of lost or corrupted data;

26.3.2 attendance to faults arising from the Client's failure to comply with EBC's instructions with regard to the use of the Website Packages or any documentation or manuals provided by EBC, or operator error or omission; or

26.3.3 EBC will charge its standard employee charge out rates (as published from time to time by EBC, depended on the level expertise required) in addition to the Fees for the carrying out any remedial work described in clauses 26.3.1.

26.4 EBC will use its reasonable endeavours to provide the Support Website Packages during normal office hours.

26.5 Scope of Support Website Packages

26.6 EBC will at no additional charge to the Client, initially set up and install the website packages.

26.7 EBC will operate a help service to assist the Client and its staff in relation to the Client's use of the Website Packages and the identification and correction of Defects. Assistance via this help service may be requested by the Client and provided by EBC email. Any other method applied or used by the Client or its staff shall not be deemed as a request for assistance and EBC may at its sole discretion choose not to answer such a request.

26.8 If a Defect occurs, the following procedure will be followed:

26.8.1 the Client will notify EBC of the Defect and provide such information and assistance as EBC reasonably requires in connection with such Defect; and

26.8.2 EBC will analyse the Defect and use its reasonable endeavours to rectify the Defect in question or propose a solution in connection with the same.