

Terms and Conditions of Business
For
Echo Digital Media
Trading as
The Glazing Vault

The following Terms and Conditions of Business shall govern all transactions with Echo Digital Media Ltd, (registered in England and Wales with company number 07384798), registered office - Barrington House 41-45 Yarm Lane, Stockton on Tees, TS18 3EA, when providing marketing and related services to our clients. Our trading names include 'The Consultancy and The Glazing Vault. (hereinafter called "the Seller") except as otherwise specifically agreed in writing. Where there is any inconsistency between these Terms and Conditions and any Terms and Conditions which the Buyer seeks to impose, these Terms and Conditions shall prevail.

1.0 Placing and Acceptance of Orders

These terms and conditions are an abridged version of the parent company "The Consultancy" Terms and Conditions specific to the Glazing Vault product – where any doubt arises as to the intention/ interpretation of these Terms and Conditions the Terms and Conditions of "The Consultancy" shall prevail – [see Consultancy Terms & Conditions](#)

The Glazing Vault is an on line company which provides software design and website solutions in a module format to the glazing and door installation markets – each module is provided as a boxed product/ solution where the Buyer is normally responsible for the installation and management of the software upon their own hardware. Where a Buyer requests additional support / assistance his shall be by agreement reached by the Seller and the Buyer and documented separately defining the individual service to be provided by the Seller.

The purpose of these Terms and Conditions is to set out the relationship as it will normally apply to the usage of modules between Buyer and Seller where the Buyer purchases single or multiple modules from the Seller.(for bespoke applications the full Consultancy Terms and Conditions shall be substituted for this document)

The placing of an order with the Seller (though based on the Seller's quotation or estimate) shall not constitute a contract, and the Seller reserves the right to accept or reject any order placed at the Seller's absolute discretion.

For the avoidance of doubt, where a potential customer of either The Glazing Vault divulges any information either as an enquiry for provision of services or in the process of negotiating a contract – such information whether it be "customer data", "potential leads" or any such "commercial material" shall be available only to the "Seller/ Licence holder" (The Glazing Vault") and will be neither shared with or divulged to any other party – see also Clause 11 – Confidentiality.

1.1 These Terms shall:

- (a) Apply to and be incorporated into this or any future Contract; and
- (b) Prevail over any inconsistent terms or conditions contained, or referred to, in any purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.

1.2 Quotations are given by us on the basis that no agreement or Contract shall come into existence except in accordance with clause 1.3.

Any quotation is valid for a period of 30 days.

1.3 The Buyers purchase order, or acceptance of a quotation for sale by the Seller, constitutes an offer by the Buyer to purchase the modules specified in it on these Terms.

No offer placed by the Buyer shall be accepted by the Seller other than:

- (a) by the Sellers written acknowledgement; or
- (b) the Buyer must always “click/ tick “the online “acceptance box” notifying they wish to proceed with the purchase prior to submitting any credit card details.
- (c) the provision by the Seller of the appropriate modules

The Buyers standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern or override these Terms.

2.0 Commencement

2.1 The Glazing Vault Modules supplied under the Contract shall be provided by The Seller after acceptance of the Buyers offer in accordance with clause 1.3

3.0 Obligations

3.1 **Sellers Obligations** – the Seller confirms

3.1.1 -that the software as utilised in each module has thoroughly tested is free from “bugs”, “viruses” or any form of other contamination which could be deleterious to the Buyers hardware. The Seller further confirms that the individual modules/ software web solutions are fit for the purpose designed but gives no guarantee and accepts no liability as to the commercial success or otherwise that the Buyer may achieve by the use of these modules

3.1.2 – that should the Buyer discover any defect within the software of the modules/ software web solutions and notifies the Seller within 48 hours of such discovery the Seller will investigate / report repair any such defect in a timely manner and free of charge to the Buyer provided that no evidence of misuse by the Buyer is discovered during such investigation – if such misuse is discovered the Seller reserves the option to charge the Buyer for any repair works, such repairs will be carried out at the Sellers daily rate see clause 4.2

3.1.3 – that they shall as part of the maintenance of the modules / software web solutions from time to time and in a timely manner issue to the Buyer – upgrades or remedial notifications to ensure that at all times the products are working efficiently and correctly.

3.2. **Buyers Obligations** – the Buyer shall-

3.2.1 – notify the Seller of any defects in the module /software web solutions in a timely manner – and where management / correction of such defects requires access to the Buyers premises provide to the Seller, their agents, sub-contractors and employees, at no charge, such access to the Buyers premises, office accommodation, data and such other facilities as reasonably requested by the Seller

4.0 Charges and Payment

4.1 The prices of all Glazing Vault modules and web solutions are available upon request and can be accessed by ticking the noted box on the Glazing Vault web site. All modules and web solutions are offered in accordance with the following financial terms –

- a) All Modules /web solutions are offered on the basis of an initial twelve months' maintenance contract renewable annually upon the anniversary of the purchase date.
- b) All payments are required in advance of provision of services -both purchase and maintenance-
- c) An initial purchase payment per module / software web solution to be paid to the Glazing Vault prior to any dispatch of product by the Seller
- d) Prior to the annual renewal date the Buyer will be notified and invoiced by the Seller for the annual cost of maintaining the contract for each and every module/ software web solution serviced – all payments due will be required to be paid to the Seller “in advance” of the commencement of the following years use.

All credit accounts are strictly net and payable 28 days from the date of the invoice. Where payment has not been made within the agreed terms of credit, Clause 4.3 shall apply.

4.2 Where repair Services are required in respect of defect remedial work due to misuse of software is provided on a time and materials basis:

- (a) The charges payable for the Services shall be calculated in accordance with the Seller's standard daily fee rates, as per the schedule incorporated into our project Brief or as amended by any subsequent our quotation;
- (b) The Seller's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, generally worked between 8.30 am and 5.30 pm on weekdays (excluding public holidays), although the exact timings may vary;
- (c) an overtime rate of 150% of the normal daily fee rate shall apply on a pro-rata basis for each day or part thereof for any time worked by individuals
- (d) All charges quoted are exclusive of VAT which shall be added to all invoices at the appropriate /current rate;

4.3 Time for payment shall be of the essence of the Contract.

Without prejudice to any other right or remedy that the Seller may have, if the Buyer fails to make payment upon the due date the Seller may:

- (a) Charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of The Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and we may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and/or
- (b) Suspend/ cancel all Services until payment has been made in full.

4.4 All sums payable to the Seller under the Contract shall become due immediately on its termination, despite any other provision. This clause 4.4 is without prejudice to any right to claim for

interest under the law, or any such right under this agreement or the Contract.

4.5 The Seller may, without prejudice to any other rights, set off any of the Buyer's liability to the Seller against any of the Seller's liability to the Buyer.

4.6 Any deposits or initial payments are non-refundable, save as otherwise agreed in writing between the parties.

5.0 Delivery of Product

5.1 Delivery of Modules/software web solutions either by electronic transfer or actual documentation or delivery of product shall be accepted by the Buyer when tendered or dispatched to the Buyer and notification that it has been received given by the Buyer

5.2 Whilst every effort will be made by the Seller to effect delivery in accordance with pre-arranged dates, no guarantees as to dates of delivery by the Seller is to be implied and the Seller will not accept liability for any loss or damage occasioned by delay in delivery however caused.

6.0 Acceptance of Product

7.1 Any failure or defect which may be discovered in any partial delivery of Modules / software web solutions shall not entitle the Buyer to cancel the contract. Any such failure or defect should be noted, and immediately advised to the Seller, (if in writing by recorded delivery) who shall take the appropriate action to remedy the failure or defect in a timely manner.

8.0 Variation

The Seller reserves the right to modify / update the module/ software web solutions software at any time to improve the content/service of the product

9.0. Limitation of Liability -

9.1 This clause 9.0 sets out the Sellers entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of the Contract;

(b) any defect noted in the Modules / software web solutions

(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the use of the Product

9.2 All warranties, clauses and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these Terms limits or excludes the Seller's liability:

(a) for death or personal injury resulting from negligence; or

(b) for any damage or liability incurred by the Buyer as a result of our fraud or fraudulent misrepresentation.

9.4 Subject to clause 9.2 and clause 9.3 the Seller shall not be liable for any damage to any artwork, transparencies or other materials (where the Buyer has requested a bespoke service) supplied by the Buyer as required to complete the services/ deliverables, all such work and materials will be held by the Seller in good faith and upon completion of use returned to the Buyer.

9.5 Subject to clause 9.2 and clause 9.3 the Seller shall not be liable for any damage to the Buyers hardware / software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any special, indirect or consequential loss or damage or for any issues arising in respect of misuse of the Product.

9.6 The Sellers total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of any Contract shall be limited to the price paid or maintenance fee payable in the twelve months immediately preceding any claim

9.7 Save as provided above, all conditions, warranties and other terms whether express, implied or otherwise, relating to the sale or supply of Goods or Services by the Seller, their quality, condition or description, or their fitness for any particular purpose are excluded.

10.0. Termination

10.1 Unless documented in writing and agreed by both parties the, the Contract shall automatically terminate and be renewed on the twelve-month anniversary of the date of sale.

10.2 As this is a rolling contract the onus is on the Buyer to notify the Seller to notify the Seller no less than 30 days before the expiry of the current year of service should they not wish to continue with the service - at which point the Seller will terminate the service on the date of the anniversary for renewal – the Buyer will however be liable for the payment of all monthly maintenance payments that remain within the current year of service.

10.3 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

(a) the other party commits a material breach of any of these Terms or the Contract and

(if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;

(b) An order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party;

(c) An order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);

(d) A receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets;

(e) The other party makes any arrangement or composition with its creditors, or makes an

application to a court of competent jurisdiction for the protection of its creditors in any way;

(f) The other party ceases, or threatens to cease, to trade; or

10.4 On termination of these Terms or the Contract for any reason:

(a) The Buyer shall immediately pay to the Seller all outstanding unpaid invoices and interest and, in respect of Services supplied;

11.0 Confidentiality

11.1 The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by the Seller, their employees, agents or sub-contractors and any other confidential information concerning the Sellers business or products or services which the Buyer may obtain. The Buyer shall restrict disclosure of such confidential material to such of the Buyers employees, agents or sub-contractors as need to know, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind The Buyer.

11.2 This clause 11.0 shall survive termination of this agreement, however arising.

12.0 Intellectual Property and Data Protection

12.1 As an initial condition it is agreed between the Buyer and the Seller that all Intellectual Property Rights and all other rights in the Modules and Software solutions shall be owned by the Seller,

12.2 For the avoidance of doubt, the Seller will retain ownership of the architecture and prototype of any graphic design or Website designed for the Buyer (which the Seller may re-use in the same or similar structure and layout), together with underlying Website Software Solutions (including Back End Code), including, but not limited to our content management system and any interactive animation.

13.0. Notices

13.1 Notice(s) given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Contract (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery.

13.2 A notice(s) is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this clause 13.0 is not within business hours (meaning 9.00 am to 5.00 pm on a Business Day), at 9.00 am on the first Business Day following delivery.

13.3 To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

14.0. Governing Law and Jurisdiction

14.1 These Terms and Conditions and any subsequent Contract and any dispute or claim arising out of or in connection with them or their subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

14.2 Subject to clause 10.0, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms, the Contract or their subject matter.