

Terms & Conditions

In these Conditions:

"Agreement" means any agreement made subject to these Conditions which shall incorporate these Conditions.

"Company" means Manx Computer Bureau Limited, M&G House, Head Road, Douglas, Isle of Man, IM1 5BF.

"Internet" means the global data network comprising interconnected networks using TCP/IP to which the company is connected and provides access to its Customers.

"Internal Address" means such sequence of alpha numeric or numeric only characters as are used from time to time by the Customer to identify himself and or his computer or computers to other users of other computers to which the Company is from time to time connecting or otherwise forwarding data to and from the Customer.

"Password" means the alpha numeric characters chosen and used exclusively by the Customer at his own risk for the purpose of securing and maintaining the exclusivity of his access to the Company's service.

"PDN" means the Public Data Network operated by a PTO as defined by the Telecommunications Act 1984 of Tynwald.

"PSTN" means the Public Switched Telephone Network operated by a PTO as defined by the Telecommunications Act 1984 of Tynwald.

"PTO" means a Public Telecommunications Operator as defined by the Telecommunications Act 1984 of Tynwald.

"Customer" means any person or organisation with whom the Company enters into an Agreement subject to these conditions.

"Service" means the services described in the current Company literature together with such Value Added Services to be provided by the Company to the Customer but in any event the provision of data network services using TCP/IP. Representations made by the Company's distributor will not form part of this agreement unless confirmed in writing prior to purchase of the service.

"Service Commencement Date" means the date identified as the delivery date on the company invoice to the Customer.

"Value Added Service" means the provision of a service other than simple connectivity that may be detailed in the current Company brochure.

"A Call" is defined as the connection of one or more parties via the networks or the PSTN where the ability to transmit or receive digital data or other information is made possible. This applies to one and two way traffic and includes any recorded and or automated transmissions and or the reception of data.

"Upgrade Usage Charges" means such charge for such predetermined unit of time and or volume of data together with any charges related to Value Added Services from time to time provided by the Company in each case at the rates set out or referred to in the Company's published tariffs and or such as may be agreed in writing with between the Customer and the Company.

"User name" means such sequence of alpha numeric characters as are used from time to time by the Customer to identify himself to other users of other computers to which

the Company is from time to time connecting or otherwise forwarding data to and from the Customer.

"TCP/IP" is the abbreviation for Transmission Control protocol/Internet Protocol.

"Dial-Up Usage" means use of the Service over a dial-up telephone line.

"ADSL" means Asymmetric Digital Subscriber Line and describes a high speed connection with different upstream and downstream transfer rates.

"SDSL" means Symmetric Digital Subscriber Line and describes a high speed connection with the same upstream and downstream transfer rates.

"Network Operator" means the legal entity or entities responsible for operation of a communications network.

"The Company's Network" means the network owned and operated by The Company for the purpose of connecting The Customer to The Internet by means of fixed or dial-up connections.

"MT" Manx Telecom

"Call" A transmission path between an Network Termination Point and the Customers System (to a Number) passing through the Company's System over which two-way simultaneous communication may occur by means of the sending of messages.

"POTO" is the pence per minute "payment to OLO" rate payable by MT to the Company's Telecommunication provider (PTO) from time to time for the termination of a Call originated on the MT System to a Number as set out in MT's carrier price list from time to time.

"Business Utilisation" means bandwidth for normal business use (less than 50% of full utilisation) in any 24 hour period.

"ISP" is an Internet Service Provider.

1. ACCEPTANCE OF APPLICATION

1.1 The Company reserves the right to refuse any application for subscription or service.

2. THE SERVICE

Subject to these Conditions the Company will:

- 2.1 Connect the Customer to the Company's network Internet points and service.
- 2.2 Register and host domains using the Company's infrastructure.
- 2.3 Host Customer Web Sites using the Company's infrastructure.
- 2.4 Provide fire and special perils cover for the Customer's machine if such machine is co-located in the Company's computer room. Such cover is by means of an extension to the Company's insurance policy, subject to the terms and conditions of that policy.
- 2.5 Provide technical support during normal office hours either by telephone, fax or e-mail as required by the Customer to assist the Customer in utilising the application to its fullest potential and to resolve problems.

- 2.6 Allow access to the premises of the Company in exceptional circumstances out of office hours due to hardware or catastrophic software failure subject to the right of the Company to recover overtime payments if necessary.
- 2.7 Provision of Connectivity to the Customer shall be made as soon as reasonably possible. Any date indicated by the Company as a date for connection is an estimate only and may be liable to change without prior notification to the Customer. Accordingly the Company will not be responsible for any delay in connection beyond such a date.

3. RIGHT TO CHANGE USERNAME, INTERNET ADDRESS AND PASSWORD

- 3.1 The Company shall have the right from time to time to change the Customers User name, internal Address and or Password allocated by the Company for the purpose of essential network maintenance, enhancement, modernisation or other work deemed necessary to the operation of the Internet.

4. PAYMENTS

- 4.1 Charges for the Service shall be paid by the Customer to the Company in advance annually or quarterly unless any other payment method has been agreed in writing between the Company and the Customer or as detailed on the contract order form.
- 4.2 The Company reserves the right to vary from time to time all charges with one months notice to the Customer except the Internet access supply rental which will only be varied at the end of the minimum period as defined on the order form.
- 4.3 Any upgrade Usage Charges detailed in any published tariff and that of its appointed distributor currently in operation shall be paid by the Customer to the Company in advance covering the period to the next payment date of the original data rate supply rate and thereafter simultaneously with the original data rate supply payment.
- 4.4 Itemised details of excess usage and any other relevant charges may be made available to the Customer if ordered in advance and the Company reserves the right to make an additional charge for this service.
- 4.5 All payments shall be due to the Company net of tax on presentation of invoice unless otherwise specified on the invoice at the Company's main office or at such other address as may from time to time be specified by the Company in writing. Invoices will be presented to the Customer at least 30 before their due date, with the exception of domain registrations that are due immediately according to our registration terms. The Company may by written notice at any time require the Customer to pay all charges by Direct Debit or BACS on the 7th day after posting of the invoice. All usage charges shall be payable in full in respect of the month in which the notice to terminate the Agreement expires.
- 4.6 Interest payable on demand whether before or after judgement shall accrue from day to day on overdue amounts at the rate of 2% above base rate + VAT if applicable.

5. USAGE

The Customer hereby agrees to:

- 5.1 Refrain from transferring any illegal material to or from other users of the service or the PDN and the other privately owned and operated services to which the Company may from time to time provide access.
- 5.2 Refrain from sending menacing, offensive, abusive or annoying messages whilst using the service via the Company or any other ISP.
- 5.3 Refrain from using peer to peer or other technologies that are used to access or share illegally obtained software or music, films and other such copyrighted material that is prohibited from sharing.

- 5.4 Not divulge their password to any third party and use all reasonable endeavours to keep the same confidential and inaccessible to third parties.
- 5.5 Keep the Company informed of any change to the Customer's address as set out overleaf and other such information as may effect the payment of charges due.
- 5.6 Immediately cease to use and return any Internet Addresses allocated by the Company to the Customer on termination of this Agreement.
- 5.7 Not to announce by any means any and all Internet addresses allocated to or by the Customer as part of an Autonomous System. Customers hosting with the Company who submit their site to such autonomous systems (eg.webperf.net) agree to pay a fee of £295 inc. vat per month, or be responsible for any direct costs that are incurred by the Company as a result, which ever is the greater.
- 5.8 Not to use or permit the usage of the service in an unlawful manner or in contradiction of published legislation and regulations governing the Internet.
- 5.9 To include the above restrictions in all the Customer's on selling conditions using the Company's service and not to resell a bandwidth greater than that purchased and contracted from the Company unless linked to the Internet through another provider in addition the bandwidth provided by the Company (dual homed) when the restriction will apply at the aggregated data rate.

6. EQUIPMENT

- 6.1 Colocated Equipment shall at all times be at the Customers risk, except where covered by the Company insurance policy. Customers may provide a suitable machine with all necessary peripherals and software to connect to the Company's network. If required a suitable machine can be leased or purchased from the Company.
- 6.2 Customers arrange and pay for the maintenance of the machine specified in 6.1 during office hours.
- 6.3 Customer is responsible for backing up data on collocated machine unless a suitable service has been purchased from the Company.
- 6.4 Leased Equipment from the Company shall at all times remain the property of the Company.
- 6.5 The Customer agrees to maintain, at Customer's expense, during the entire time this Agreement is in effect Comprehensive General Liability Insurance for any Leased Equipment supplied by the Company.

7. TELECOMMUNICATION.

- 7.1 The Customer warrants to the Company on the date of this Agreement, on an ongoing basis throughout this Agreement, that it has independently verified the Retail Rates, POLOs, Transit Charges and any other applicable charges by reference to MT's retail and carrier price list from time to time.
- 7.2 The Company shall be entitled to invoice the Customer, at such intervals as the company sees fit, for:
 - 7.2.1 Private Wire Services provided under this Agreement
 - 7.2.2 All invoices shall become due on receipt by The Customer of the POLO Statement following such invoice or on termination of this Agreement.
- 7.3 Additional Numbers or Private Wire Services

- 7.3.1 The Company requires 21 days notice of any additional private wire services or switch ports the Customer may require.
- 7.3.2 The Company shall notify the Customer within a reasonable time of its prices and time-scales for providing such additional numbers, private wire services or switch ports.

8. LIABILITY

The Company shall not be liable for any loss or damage howsoever caused:

- 8.1 Economic loss, including loss of profits, business revenue and goodwill.
- 8.2 Any claim made against the Customer by another third party.
- 8.3 Any loss or damage to the Customer caused by or arising from any act or omission of the Customer, the Company, any PTO or Value Added Service supplier.
- 8.4 Any act caused as a result of force majeure or beyond the Company's control.

9. CHANGES TO THE SERVICE

If any Network Operator shall discontinue the provision of telecommunications services to the Company or shall alter by modification, expansion, improvement, maintenance or repair of the telecommunications services or any part thereof provided to the Company or shall disconnect the Customer's apparatus from the PSTN, PDN or Internet the Company shall be entitled to discontinue, alter, modify, expand, improve, maintain, repair, suspend, disconnect or otherwise change the Services as necessary.

10. SUSPENSION

The Service may be suspended or suspended during peak times by the Company without notice and without prejudice to the company's Rights of Termination under Clause 11 in the event.

- 10.1 Failure by the Customer to make any payment to be made to the Company on its due date for payment.
- 10.2 If the Customer does or suffers anything to be done which jeopardises the service or any network to which it is from time to time connected.
- 10.3 If the Customer's credit limit has been exceeded or if the Customer is otherwise in breach of these Terms and Conditions.
- 10.4 No such suspension shall affect the liability of the Customer to pay charges and other amounts to the Company, and without limitation, the Annual Subscription Charge will continue to accrue. During suspension the Company reserves the right to refuse to release the User's Internet Address as issued by the company.

11. TERMINATION

This Agreement shall remain in force for a minimum period of 12 months from acceptance of Customer's application being the date on which the company's order form was signed by the Customer. Termination can be effected as follows:

- 11.1 By the Customer, The Customer may terminate this Agreement by giving 2 month's written notice, which may expire at any time after 12 months from the initial date of commencement of service.

Email notification will not be accepted as notice of termination of Agreement.

- 11.2 By the Company. The Company may terminate this Agreement at any time and without notice if
- (a) if the Customer commits any breach of this Agreement including but without limitation non-payment of the Subscription Payments.
 - (b) by at least 1 months written notice to the Customer.
- 11.3 The Company reserves the right to invalidate any Customer's User name and Internet Address issued to the Customer following termination of this Agreement.
- 11.4 Domain name hosting and transfer request for DNS records must be in writing with the authorised signature of the domain owner. There is no charge for the transfer, but a small charge may be made for administration. Domain name transfers will not be made until all outstanding amounts have been paid by the customer until this time domain names remain the property of the Company.
- 11.5 No refund of Subscription Payments will be made to the Customer upon termination of the Agreement by either the Company or the Customer
- 11.6 The Customer shall at his own cost return to the Company all equipment cables and literature belonging to the Company within 5 days of final completion of the agreement and ensure that it arrives in good working order.
- 11.7 Without prejudice to its rights of termination at any time under Clause 12.2 the Company has the right to terminate this Agreement: The Company may suspend the provision of any services under this Agreement; and may suspend payment to the Customer

12. RIGHTS ON TERMINATION

- 12.1 Termination of the Agreement shall not affect any pre-existing liability of the Customer or affect any right of the Company to recover damages or pursue any other remedy in respect of any breach by the Customer of the Agreement.
- 12.2 On termination of the Agreement the right to the use of the Internet IP Address allocated by the company shall revert to the Company under RIPE terms or agreement except where specific agreement has been reached in writing between the RIPE and the Customer for the transfer of the Internet Address and the fee or other payment required by the Company in connection with such transfer has been paid for by the Customer.
- 12.3 In the event of termination of the Agreement by the Company on account of any breach of the terms and conditions thereof by the Customer the Company shall be entitled to the balance of all Annual Subscription Payments and Call Charges which would but for such termination have accrued due up to the earliest date on which the Agreement could have been terminated by the Customer in accordance with the terms hereof.

13. USERNAME AND INTERNET ADDRESS

The Company shall not be requested or required to release the User name Domain Name or Internet Address and may refuse to do so until this Agreement has been lawfully brought to an end and all sums due hereunder have been received by the Company, and the Customer has complied with all its obligations hereunder. Domain Names remain the property on the Company until all sums due have been received.

14. NOTICES

- 14.1 Any notices under or in connection with this Agreement shall be in writing and shall be delivered by Manx mail post to the relevant address given in the Agreement or to such address as the recipient may have notified to the other party via E-mail for that purpose.

- 14.2 Suspension notices for non-payment of Charges will be deemed as delivered by facsimile to the relevant facsimile number given in the Application or to such facsimile number as the Customer may have notified.
- 14.3 Any notice shall be duly given, if given by pre-paid first class mail, at the expiration of 48 hours after the envelope containing the same shall have been posted. In proving such service it shall be sufficient to prove that delivery was made or that the envelope containing such communication was properly addressed and posted as a pre-paid first class letter.

15. EXPENSES OF THE COMPANY

The Customer shall pay to the Company all costs and expenses (so that any legal fees shall be based on an indemnity basis) incurred by the Company in enforcing any of these Conditions, or exercising any of its other rights and remedies under the Agreement, including (without prejudice to the generality) all costs incurred in tracing the Customer in the event that legal processes cannot be enforced at the address last notified to the Company.

16. NON-WAIVER

The allowance of time to pay or any other indulgence by the Company in respect of payments due to it shall in no manner affect or prejudice his right to payment together with interest provided under these Conditions.

17. INVALIDITY

If this Agreement or any part thereof shall be adjudged for any reason to be void, unenforceable or ineffective but would be adjudged to be valid effective and enforceable if part of the wording were deleted or a provision were reduced in scope this Agreement shall continue with such modifications as may be necessary to make its provisions (or if such be the case its remaining provisions) valid effective and enforceable.

18. CONFIDENTIALITY

Each party hereto undertakes to the other that it shall keep, and shall procure that its directors and employees shall keep secret and confidential and shall not use or disclose to any other person any information or material of a technical or business nature relating in any manner to the business, products or services of the other party which the first party may receive or obtain in connection with or incidental to performance of this Agreement, provided that:

- 18.1 first party shall not be prevented from using any general knowledge, experience and skills not treated by the other party as confidential or which do not properly belong to the other party and which the first party may have acquired or developed at any time during this Agreement
- 18.2 The first party shall not be prevented from using the information or material referred to above to the extent such information or material comes into the public domain otherwise than through the default or negligence of the first party;
- 18.3 notwithstanding the above, either party shall have the right to communicate any information concerning the other party to any Government department or body or other authority established by statute or under subordinate legislation, where such information is required by law or is otherwise properly required under the PTO Licence, OFT regulation, or a Code of Practice or otherwise

19. ASSIGNMENT

Neither party shall assign or transfer any of its rights or obligations under this Agreement save that the Company may assign to an Associated Company on notice.

20. CLAUSE HEADINGS

Clause headings are for ease of reference and are not part of this Agreement and accordingly shall not affect its Conditions.

21. OTHER PRINTED OR STANDARD CONDITIONS

All services are provided on the foregoing conditions which constitute the entirety of the Agreement to the exclusion of any other terms and conditions and no agreement terms and conditions contained in any document sent by the Customer to the Company shall be of any effect with respect to the Agreement unless expressly accepted by a duly authorised officer of the Company in writing. The Customer acknowledges that the Customer has not relied on and shall not be entitled to rescind the Agreement or to claim damages or any other remedy on the basis of any representation, warranty, undertaking or statement which is not set out in these Conditions including any representation made by or on behalf of the Company in relation to the Service which has induced the Customer to enter into this Agreement with the Company.

22. VARIATION

The Company reserves the right to vary these terms and conditions as a result of changes required by its insurers, operation or administration problems, new legislation, statutory instruments, Government regulations or licences. These Conditions may not otherwise be varied or waived except by express written agreement between both parties.

23. SERVICE LEVEL GUARANTEE

The Company warrants that its supply of access to the Internet shall be available at a level 99.7% per year. This warranty excludes:

- a) Failures of local circuits between The Company's network and the Customers network.
- b) Failures of network / equipment not operated the Company.
- c) Failures of network / equipment operated by the customer.

In the event of suspension of service due to a technical fault in the network or act of God, the Company will use all possible endeavours to resume service with minimum delay but will not be responsible for loss suffered by the Customer. The Company may suspend the service from time to time for necessary technical reasons and network upgrades outside the 99.7% warranty as above provided that 12 hours notice via our network status page or email has been given to the Subscriber, that the period of suspension is not more than one hour. The time a suspension may occur is usually chosen to be between 0000 hours and 0600 hours local time.

24. LAW AND ARBITRATION

This agreement is subject to the laws of the Isle of Man under the jurisdiction of the Courts of the Isle of Man and any alteration to part of the agreement shall not invalidate the remainder. This agreement incorporates the provisions for arbitration if any are available under any Code of Practice issued by the Network operator under the provision of its licence.