

## Spitfire Standard Terms and Conditions- Internet Services

### 1. Definitions

“Charges”	means the charges for the Services as specified in the Order Form and as may be varied from time to time in accordance with clause 8.
“Conditions”	means these standard terms and conditions for the Supply of Services detailed in the Order.
“Confidential Information”	means any and all information which relates to the business affairs, products, developments, trade secrets, know-how, personnel, clients and suppliers of either party or information which may reasonably be regarded as the confidential information of the disclosing party.
“Contract”	means the related contract for the supply of the Services detailed in the order.
“Customer”	means the person, firm or company specified in the Order as the Customer.
“Force Majeure”	means any cause affecting the performance by a party of its obligations arising from acts, events, omissions, or happenings beyond its reasonable control. Including (but not limited to) wars, riots, embargoes, strikes, lockouts, acts of god, insurrection, or civil commotion or any other causes or circumstances beyond the parties reasonable control.
“Initial Term”	means the initial time period agreed for provision of the Service set out in the Contract.
“Installation Date”	means the proposed installation date for the Service as defined in the relevant Order/Contract.
“Internet”	means the worldwide TCP/IP (Transmission Control Protocol/Internet Protocol) network formed of an interconnector of companies, organisations and institutions, private and public networks.
“Protocols”	The Protocols and standards defined in the following internet documents: RFC 009,RFC 1122, RFC 1123, RFC 1250 and any existing or future protocols and standards as appropriate.
“Name”	shall mean the name assigned to the Customer in relation to the provision of the Service including but not limited to a mailbox and domain names.
“Order”	means the order placed by the Customer for the supply of the Services in accordance with the Conditions and the Contract
“Order Form”	means the Spitfire standard order form detailing the Service.
“Services”	means the Services detailed in the Order and more particularly set out in the Contract.
“Services Commencement Date”	means the date the Customer can begin to use the Service.
“Site”	means the premises at which the Service is provided to the Customer.
“Spitfire”	means Spitfire Network Services Limited of The Printworks, 139 Clapham Road, London, SW9 0HP. Registered number 2657590.
“Spitfire Equipment”	means any equipment which is supplied by or on behalf of Spitfire to the Customer or installed at the Customers Site for the purpose of providing the Service.

- 1.2 Reference to any statute or statutory provisions shall be deemed to include any statutory modifications or re-enactment's thereof or any rules and regulations made thereunder or any enactment repealing and replacing the act referred to.
- 1.3 Unless the context otherwise requires references to Clauses shall be construed as references to clauses of these Conditions.
- 1.4 Headings are inserted for convenience only and shall not affect the construction or interpretation of these Conditions.

## **2. Standard Terms and Conditions**

- 2.1 These Conditions, together with any applicable Contract, shall apply to all orders for the supply of Services by Spitfire to the Customer to the exclusion of all other terms and conditions, including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document.
- 2.2 Any variations of these Conditions shall have no effect unless expressly agreed in writing and signed on behalf of Spitfire. Spitfire may change these Conditions or the Contract from time to time by giving two weeks written notice.
- 2.3 For the avoidance of doubt any purchase orders placed will be accepted on the basis of Spitfire's Conditions and not the Customer's.

## **3. Provision of the Service**

- 3.1 Spitfire agrees to provide the Customer with the Services in accordance with the standard Conditions and the Contract.
- 3.2 Spitfire shall provide the Services with all due skill, care and diligence in accordance with good industry practice, by utilising appropriately experienced, qualified and trained personnel and in accordance with its own established internal procedures.
- 3.3 Spitfire reserves the right to vary the technical specification of the Service where necessary for operational reasons and without diminishing the quality or speed of the Service, after giving reasonable notice to the Customer. The Customer agrees to follow any instructions and procedures of Spitfire with regard to the use of the Service.
- 3.4 Spitfire may provide guidance or instruction in relation to the Service, which it thinks reasonably necessary, in the interests of safety or the quality of the Service in relation to the Customer and Spitfire's other Customers and end users. Any such instructions, whilst they apply, shall be deemed to form part of these Conditions.
- 3.5 Spitfire reserves the right at any time to make any modification, change, addition to or replacement of any part of Spitfire's computer network or any software or Services where this is required to conform with any applicable safety or any other statutory or legal requirements, or at any other time provided that such modification, change, addition or replacement does not materially detract from, reduce or impair the overall quality or performance of the Service.
- 3.6 The Customer acknowledges that it is technically impractical to provide the Service free of faults and that Spitfire does not give an undertaking to do so. In the event of a fault in the Service the Customer must report it to Spitfire by the methods advised to the Customer at the commencement of the Service.
- 3.7 Spitfire will use its reasonable endeavours to maintain a service in accordance with the Service Level Agreement in the Contract. The Customer acknowledges that Spitfire cannot guarantee continuous uninterrupted use especially where Spitfire must carry out routine maintenance, repairs, reconfigurations or upgrades or in circumstances beyond its control including Force Majeure.

## **4. Installation and Maintenance**

- 4.1 Spitfire offers Customers on-site installation for all of its Services and, Spitfire recommends that Customers have on-site installation to enable Spitfire to fully support the Services provided. Once Spitfire has conducted a site survey at the site an Installation Date will be arranged.
- 4.2 Spitfire will use all reasonable endeavours to install the Service in accordance with the Installation Date but any such date is provisional and maybe subject to alteration.

- 4.3 Where the Customer does not have an on-site installation carried out by Spitfire, the Customer acknowledges that Spitfire will be responsible for provision of the Service ONLY to the applicable network termination point at which Spitfire has absolute control.
- 4.4 Where it is necessary for Spitfire to install or maintain the Service the Customer will provide Spitfire with such access as it is reasonably required and any technical or personnel assistance reasonably necessary for the installation and maintenance of the Service including electricity supply and suitable accommodation and environmental conditions to accommodate the Spitfire Equipment.

## 5. Spitfire Equipment

- 5.1 The Customer shall be responsible for any Spitfire Equipment located at the Site and the Customer will only use the Spitfire Equipment and associated software in accordance with instructions and/or software license as detailed in clause 6, that Spitfire provides to the Customer from time to time. The Customer undertakes not to modify, tamper or in any way interfere with the Spitfire Equipment and Spitfire will not be liable for any repairs to the Spitfire Equipment other than those arising as a result of natural and proper use of it.
- 5.2 The Customer will insure any Spitfire Equipment located at the Site against loss or damage from all risks for an amount equal to the full replacement value of the Spitfire Equipment.
- 5.3 The Spitfire Equipment shall be and remains the property of Spitfire at all times and must be surrendered in resaleable condition, together with all manuals and packaging upon termination. Where the Customer fails to surrender the Spitfire Equipment, Spitfire reserves the right to retrieve the Spitfire Equipment directly from the Site.
- 5.4 The Customer will be liable to Spitfire for any loss or damage to the Spitfire Equipment except in so far as any such loss or damage is attributable to the negligent or willful act or omission of Spitfire.

## 6. Software

- 6.1 Spitfire hereby grants to the Customer and the Customer hereby accepts a non-exclusive and non-transferable license to use any software provided by Spitfire to access the internet, for the sole purpose of enabling the Customer to use the Service. The Customer hereby acknowledges that the title to all software is and shall remain with Spitfire or Spitfire's third party licensors. The Customer hereby undertakes to use its best efforts to protect and keep confidential all Spitfire software used by it, and shall make no attempt to examine, copy, alter, reverse engineer, disassemble or tamper with such software.
- 6.2 The Customer agrees to comply with the terms of Spitfire's end user license agreement and any other agreements reasonably required by the owners of any intellectual property rights in any software supplied to the Customer or its end users for the protection of the software and the owner's rights therein. The Customer shall indemnify Spitfire in respect of any and all claims from third parties relating to infringement of third party licences or terms and conditions applicable to use.
- 6.3 Use of the Service by the Customer is deemed acceptance of any and all licences relating to the Service.

## 7. Domain Names

- 7.1 The Customer warrants that they are the owners of, or that they have been and are duly authorised by the owner to use, any trademark or name requested or allocated as the Customers Name.
- 7.2 The Customer acknowledges that Spitfire cannot guarantee that any Name the Customer requests, will be available or approved for use.
- 7.3 Spitfire has the right to require the Customer to select a replacement Name and may suspend the Service if, in Spitfire's opinion, there are reasonable grounds for Spitfire to believe that the Customer's current choice of Name is, or is likely to be, in breach of the provisions of Clause 7.1.
- 7.4 If the Service includes the registration of an Internet domain name the Customer acknowledges and agrees that:

- 7.4.1. Spitfire does not represent, warrant or guarantee that any domain name applied for by the Customer or on the Customers behalf will be registered in the Customers requested name or is capable of being registered by the Customer or that the use of such domain name by the Customer will not infringe any third party rights. Accordingly, the Customer should take no action in respect of the Customer's requested domain name(s) until the Customer has been notified that the Customer requested domain name has been duly registered and Spitfire will not be liable for any such action taken by the Customer.
- 7.4.2. The registration of the domain name and its ongoing use by the Customer is subject to the relevant naming authority's terms and conditions of use and the Customer undertakes that they will comply with such terms and conditions. The Customer hereby irrevocably waive any claims the Customer may have against Spitfire in respect of any decision of a naming authority to refuse to register a domain name and, without limitation, the Customer acknowledges and agrees that any administration or other charge paid by the Customer in respect of the registration of the domain name is non-refundable in any event.
- 7.4.3. Spitfire accepts no responsibility in respect of the use of a domain name by the Customer and any dispute between the Customer and any other individual or organisation regarding a domain name must be resolved between the parties concerned and Spitfire will take no part in any such dispute. Spitfire reserves the right, on becoming aware of such a dispute concerning a domain name, at our sole discretion and without giving any reason, to either suspend or cancel the relevant service associated with the domain name, and / or to make such representations to the relevant naming authority, as Spitfire deems appropriate.
- 7.4.4. Any Internet Protocol address allocated by Spitfire to the Customer shall at all times remain Spitfire's sole property and the Customer will have a non-transferable license to use such address for the duration of this Agreement. If this Agreement is terminated for whatever reason, the Customers license to use the Internet Protocol address shall automatically terminate and thereafter the Customer will not use such address.

## 8. Charges and Payment

- 8.1 In consideration of Spitfire providing the Services to the Customer, the Customer shall pay the Charges set out in the invoice.
- 8.2 Payment shall be made within fourteen (14) days of the date of a valid invoice from Spitfire or as stated on the order.
- 8.3 All Charges, costs, rates and fees are stated exclusive of Value Added Tax (VAT) and any other taxation that may be applicable. The customer shall pay the VAT and any additional taxes as set out on the Order/Invoice.
- 8.4 Where the Customer disputes any amount due under an invoice, the undisputed sum shall be immediately payable to Spitfire and the parties agree to resolve the disputed sum within 14 days. Spitfire reserves its right to suspend the Service if the dispute is not resolved within the 14 day time period.
- 8.5 If any payment is overdue Spitfire has the right to charge interest at 4% per annum above the base/lending rate of HSBC plc in force from time to time, from the date that payment is due until the date of actual payment. Such interest shall occur on a daily basis. Spitfire reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. Additionally Spitfire reserves the right to terminate the Service where the Customer defaults in payment.
- 8.6 Any and all prices given as quotations are subject to change in accordance with Spitfires current price list in force from time to time. All quotations are based on information supplied to Spitfire by the Customer. In delivering the Service additional and supplemental work may be required and the Customer agrees to pay such additional amounts as specified on the invoice.

## 9. Improper Use

- 9.1 The Service is provided for the Customers use only and the Customer undertakes not to resell, hire, lease or allow use of the Service by any third party without the prior written consent of Spitfire
- 9.2 The Customer shall use the Service for lawful purposes only in compliance with all current and future statutes in force from time to time.
- 9.3 The Customer agrees not use the Service:
- (i) to send or receive materials or data which is in violation of any law or regulation or which is defamatory, offensive, abusive, indecent, obscene or in breach of confidence, privacy, trade secrets or in breach of any third party Intellectual property rights (including copyright) or in breach of any other rights.

- (ii) in a manner which constitutes a violation or infringement of the rights of any person or a violation or infringement of any statutory duty or obligation in contract tort or otherwise, to any third person.
  - (iii) in breach of instructions that Spitfire have provided to the Customer in respect of the use of the Service.
  - (iv) other than in conformance with Spitfire's acceptable use policies and the Internet Protocols as published from time to time.
- 9.4 The Customer acknowledges that Spitfire may be required by current or future law or regulation to access, store and/or take copies of the Customers data stored on or transmitted by the Service. Spitfire reserves the right to terminate the Service with immediate effect and without further obligation or liability to the Customer as required by any law enforcement organisation or by the Courts.
- 9.5 The Customer agrees that they will not use a Name so as to infringe the rights of any other person or company under statute or common law in a corresponding trademark or name. The Customer also agrees to comply with the terms and conditions of any third party through which Spitfire has supplied the Name to the Customer.
- 9.6 Spitfire reserves the right to restrict the passage of communications where the customer makes profligate use of the Spitfire network or the Service to the detriment of Spitfire or Spitfire's other Customers, until the Customer gives an acceptable undertaking to Spitfire to modify its use of the Service.
- 9.7 Any breach of this clause by the Customer will entitle Spitfire to suspend the Service without notice with immediate effect, Spitfire may restore the Service if the Customer gives an acceptable assurance that there will be no further contravention.

## 10. Customer Indemnity

- 10.1 The Customer undertakes to fully and effectively indemnify and to keep Spitfire indemnified at all times against all actions, proceedings, costs, claims, demands, liabilities and expenses whatsoever (including legal and other fees and disbursements) sustained, incurred or paid by Spitfire in respect of:
- (i) access to or use of the Service by the Customer;
  - (ii) any information, data or material produced, transmitted or downloaded;
  - (iii) any breach by the Customer of clause 9 or any of these Conditions, or of any law, code or regulation relating to these Conditions;
- 10.2 The Customer shall provide full notice of such claims and gives Spitfire full authority to defend, compromise or settle such claims and all reasonable assistance necessary to defend such claims.

## 11. Suspension of Service

- 11.1 Spitfire reserves the right to suspend the Services for the following reasons;
- (i) in order to upgrade, repair or maintain the Service (including the telecommunication link, hardware or software).
  - (ii) where the Customer fails to pay the Charges for the Services in accordance with Clause 8
  - (iii) where the Customer makes improper use of the Services in breach of its obligations under these Conditions in particular Clause 9
  - (iv) where 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;
  - (v) where Spitfire is obliged to comply with an order, instruction or request of Government or other competent administrative authority;
  - (vi) where Spitfire has reason to terminate under clause 15;
  - (vii) where the Customers network or equipment is being used or is suspected of being used by a third party for spamming, hacking, denial of service or any other action that is or may be detrimental to the Service or the network.
- 11.2 Where suspension of the Services is necessary for the purposes of repair, maintenance or improvement of any of Spitfire's Service, Spitfire will use all reasonable endeavours to carry out such work between the hours of 00.00 and 05.00 and shall restore the Service as soon as reasonably practical in the circumstances. Spitfire may request the Customers agreement to carry out certain work outside these hours.

- 11.3 If Spitfire exercises its right of suspension under this clause this will not exclude its right to terminate the Service later in respect of that or any other event, nor will it prevent Spitfire claiming damages from the Customer in respect of any breach.

## 12 Exclusion of Warranties /Limitation of Liability

- 12.1 Spitfire does not exclude or limit its liability to the customer for death or personal injury resulting from Spitfire's negligence.
- 12.2 SPITFIRE IS NOT LIABLE AND WILL NOT BE LIABLE IN ANY CIRCUMSTANCES WHETHER IN CONTRACT, TORT OR OTHERWISE (INCLUDING LIABILITY IN NEGLIGENCE), FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE WHICH RESULTS OR MAY RESULT FROM THE CUSTOMERS USE OF THE SERVICE (INCLUDING BUT NOT LIMITED TO DELETION OR LOSS OF FILES, DEFECTS OR DELAYS IN TRANSMISSION OR ANY FAILURE OF THE SERVER OR THE INTERNET) OR THE CUSTOMERS ACCESS TO THE INTERNET OR USE THEREOF FOR ANY PURPOSE WHATSOEVER OR FOR ANY RELIANCE ON OR USE OF INFORMATION SERVICES OR GOODS PURCHASED ON OR THROUGH THE SERVICES OR THE INTERNET.
- 12.3 Spitfire's liability in contract, tort or otherwise arising out of or in connection with the performance of Spitfire's obligations under this Agreement shall be limited to £10,000 for any one incident or series of incidents and £500,000 in aggregate.
- 12.4 SPITFIRE EXCLUDES ANY LIABILITY FOR:
- (i) THE TRANSMISSION OR RECEIPT OF INFRINGING INFORMATION OF WHATEVER NATURE TRANSMITTED VIA THE SERVICE
  - (ii) FOR LOSS OR DAMAGE TO DATA STORED, TRANSMITTED OR USED ON THE SERVICE OR SPITFIRE'S NETWORK
  - (iii) FOR LOSS OR DAMAGE SUFFERED BY THE CUSTOMER AS A RESULT OF ANY VIRUS OR OTHER HOSTILE COMPUTER PROGRAM BEING INTRODUCED, DENIAL OF SERVICE, SPAMMING, OR HACKING AS A RESULT OF USE OF SERVICE
- 12.5 Spitfire will use its reasonable endeavours to provide the Customer with continuous Internet access but Spitfire does not warrant or represent that it can do so since neither Spitfire or any other party has any control over the Internet as a whole as it is a global decentralised network of computer systems.
- 12.6 Except as expressly set out in these Conditions all conditions or warranties whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) are hereby expressly excluded to the extent permitted by law.
- 12.7 The Customer acknowledges that Spitfire is unable to exercise control over the information transmitted via the Service, the connection or the network and that Spitfire do not examine the use to which Customers put the Service or the nature of the information and/or software they are sending or receiving, hence in accordance with clause 12.4 Spitfire excludes all liability of any kind for the transmission or reception of infringing information of whatever nature.
- 12.8 Each provision of this clause 12 excluding or limiting liability shall be construed separately and shall apply and survive even if for any reason one or other of these provisions is held inapplicable or unenforceable.

## 13 Intellectual Property

- 13.1 Any and all intellectual property rights used or embodied in or in connection with the Service shall be and remain the sole property of Spitfire or Spitfire's licensors. No title or intellectual property rights therein or in any modification or extension thereof shall pass to the Customer unless specifically stated under the Contract.
- 13.2 All intellectual property rights used or embodied in the Service or any software or other material supplied by the Customer to Spitfire in connection with the Service shall be and remain the sole property of the Customer or of the Customer's licensors. No title or intellectual property rights therein or in any modification or extension thereof shall pass to Spitfire.

#### 14. Data Protection

- 14.1 The Customer warrants that they will duly observe all their obligations under the relevant Data Protection Acts which arise in connection with these Conditions and the Services provided. The Customer shall indemnify Spitfire against any loss or damage which Spitfire may sustain or incur as a result of any breach of the said undertaking.
- 14.2 The Customer agrees that Spitfire may put their name and other details obtain from the Order Form into a computerised directory for internal use and to enable Spitfire to provide the Service, unless the Customer gives specific written instructions to the contrary.
- 14.3 Rights of subject access will be in accordance with the Data Protection Act 1998 and upon request in writing and payment of the appropriate fee.

#### 15. Term and Termination

- 15.1 Spitfire will provide the Service with effect from the Installation Date and shall continue to provide the Service for the Initial Term and thereafter where the Services are renewed in accordance with the Contract.
- 15.2 Following the Initial Term either party may terminate the Service on giving three months written notice to the other party
- 15.3 Spitfire may suspend the Service temporarily or terminate the Service by immediate notice if the Customer:
- (i) Does not pay any invoice within 14 days of the date the invoice is due for payment.
  - (ii) If control or ownership of the Customer changes unless Spitfire gives its written agreement to reassignment.
- 15.4 Either party may terminate the Service by written notice to the other if:
- (i) That other party is in breach of any material term of these Conditions and has not remedied such breach within thirty [30] days of the date of a written notice requesting it to do so.
  - (ii) The other party has a receiver or manager appointed over the whole or any substantial part of its assets.
  - (iii) The other party becomes insolvent, goes into liquidation, becomes subject to an administration order or makes any composition or arrangement with its creditors (other than for the purposes of amalgamation or reconstruction).
  - (iv) The other party causes or threatens to cease to carry on business.

#### 16. Consequences of Termination

Upon Termination:

- 16.1 The Customer shall pay to Spitfire any and all outstanding Charges and costs relating to the Services.
- 16.2 the Customer shall immediately return the Spitfire Equipment in accordance with clause 5.3.
- 16.3 The exercise of rights of termination under clause 15 will not prejudice any right to damages or other rights or remedies in respect of the default giving rise to such termination or in respect of any rights or obligations already accrued under these Conditions at the date of termination.
- 16.4 The provision of clauses 5, 8, 10 and 18 shall survive termination under these Conditions.

#### 17. Notices

Any notice required under these Conditions or required by statute law or regulation shall be delivered in person, sent by registered mail, properly posted and fully pre-paid in an envelope or sent by facsimile or e-mail to the respective parties at their respective registered offices.

## 18. Confidentiality

18.1 Both the Customer and Spitfire undertake that they will hold in confidence and shall not divulge any of the Confidential information received from the other.

18.2 The provisions of this clause 18 shall not apply to any information which:

- (i) is or becomes public knowledge other than by a breach of this clause;
- (ii) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
- (iii) is recovered from a third party who lawfully acquired or developed it and who is under no obligation restricting its disclosure;
- (iv) is required to be disclosed by a court or administrative body of competent jurisdiction;

18.3 Nothing in this clause shall prevent Spitfire from disclosing any Confidential Information provided by the Customer to any Group Company, consultant or another person engaged by Spitfire provided that Spitfire shall take all reasonable steps to ensure that such information is held in confidence.

## 19. Force Majeure

19.1 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligators hereunder which is due to Force Majeure.

19.2 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

## 20. Assignment

The Customer may not assign or delegate their rights or obligations under these Conditions without the prior written consent of Spitfire. Spitfire reserve the right to assign any of their rights and obligations under these Conditions and will provide notice to the Customer of any such assignment.

## 21. Entire Agreement

These Conditions together with the Contract constitute the entire agreement between the parties and supersedes any previous agreement between the parties relating to the Service.

## 22. Severance

If any provision of these Conditions is found by any Court or administrative body of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall not affect the rest of these Conditions which shall remain in full force and effect.

## 23. Non-waiver

The failure to exercise or delay in exercising a right or remedy provided by these Conditions or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.

## 24. Governing Law

These Conditions are governed by and shall be construed in accordance with the Laws of England and both parties submit to the exclusive jurisdiction of the English Courts.