
TERMS AND CONDITIONS

CEX006 -2017

BACKGROUND:

These Terms and Conditions govern the provision of website hosting services provided by Cutec Ltd, a company registered in England under number 0327758 whose registered office is at 19 Darklake Park, Darklake View, Estover, Plymouth, PL6 7FB (“the Host”) to clients wishing to use those website hosting services to host their website(s). Your agreement to comply with and be bound by these Terms and Conditions is deemed to occur on Your indicating Your acceptance and completing your Order for the Service.

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Account”	means Your details that are required and held by Us to facilitate the provision of the Service to You including, but not limited to, identification and location details, username and password, and details of the Service provided to You;
“Business Day”	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England.
“Client Website”	means the website that We shall host for You and refers to all parts of that website including, but not limited to, component files and related services such as e-mail;
“Confidential Information”	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
“Contract”	means the legally binding agreement formed between You and Us upon Your acceptance of these Terms and Conditions and Your completion of Your Order;
“Fee”	means the sum(s) payable by You to Us in order to receive the Service;
“Hosting Hardware”	means any and all computer and networking equipment used by Us in the provision of the Service including, but not limited to, servers and network infrastructure;

“Hosting Package”	means one of the hosting packages described on Our website at www.cutec.co.uk and generally refers to the package selected by You during the sign-up process which shall refer to specific features including, but not limited to, tools, facilities, storage limits and duration of service;
“Hosting Software”	means any and all software used by Us in the provision of the Service including, but not limited, that which may be used by You;
“Intellectual Property Rights”	means copyright (and related rights), designs, patents, trade marks and any and all other intellectual property rights. This includes all such rights, whether they are registered or unregistered, and the rights to apply for renewals or extensions of those rights (where relevant);
“Order”	means Your order for the Service as completed by you.
“Service”	means, collectively, all components of Our website hosting service as provided to You in accordance with Your chosen Hosting Package, as fully described www.cutec.co.uk .

- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 1.2.1 “writing”, and any similar expression, includes a reference to any electronic communication whether sent by e-mail, [text message,] fax or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
 - 1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions;
 - 1.2.5 a "Party" or the "Parties" refer either singularly or jointly to Us and You;
 - 1.2.6 “We/Us/Our” is a reference to Cutec, the Host;
 - 1.2.7 “You/Your” is a reference to you, the Client.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

2. **The Service**

- 2.1 Provision of the Service shall commence on the date specified in Your Order.
- 2.2 If the commencement of the Service is delayed by more than 14 days from the date of Your Order, We shall contact You and shall give You the option of waiting for a further 7 days or receiving a full refund of any and all Fees paid. In the event of further delay, the process set out in this sub-Clause 2.2 shall be repeated.
- 2.3 We are under no obligation to provide any services that do not form a part of Your chosen Hosting Package unless You upgrade Your Hosting Package, where available, or unless both Parties enter into a separate written agreement for the provision of additional services.
- 2.4 We may, at Our sole discretion, alter, improve or otherwise modify the Service provided that any such change will not alter the Service received by You to Your material disadvantage (which would include, but not be limited to, the removal of features from Hosting Packages). You will be notified no later than 30 days Business Days in advance of any planned changes and shall receive full details of any action required on Your part. No alterations to the Service will affect the Fee payable by You.
- 2.5 Notwithstanding the provisions of sub-Clause 2.4 We may take any action necessary to diagnose and/or rectify faults in the Hosting Hardware or Hosting Software without any prior notice to You. If such diagnosis or rectification results in an interruption to the provision of the Service, You will be notified in accordance with the provisions of Clause 3.

3. **Availability of Service**

- 3.1 We will use reasonable endeavours to ensure that the Service is provided to You on a constant, uninterrupted basis throughout the duration of Your chosen Hosting Package.
- 3.2 Notwithstanding sub-Clause 3.1, We shall not be liable for Hosting Hardware downtime or interruptions to the Service where such downtime or interruptions last for no more than 48 hours.
- 3.3 Where the Service is unavailable for more than 48 hours, We will contact You and shall provide details of the interruption including, but not limited to the cause. If this is not possible due to an undiagnosed problem, We will, at a minimum, inform You that the problem is being investigated.
- 3.4 Where Service interruption due to Hosting Hardware failure cannot be remedied within 7 business days, we will transfer Your Client Website to alternative Hosting Hardware in order to restore the provision of the Service or, where this is not possible, notwithstanding sub-Clause 10.1.1, from the end of the initial 48-hour period of Service interruption, keep a record of the number of whole days of Service interruption. Upon restoration of the Service, any partial days shall be rounded up and We will reimburse You for the interrupted period. Such reimbursement shall be calculated on a pro-rata basis and shall be paid to You within 14 days. We acknowledge that this is an appropriate remedy in view of Your legitimate commercial interest in Service interruption due to failure of the Hosting Hardware being avoided or minimised.

- 3.5 Where the provision of the Service is interrupted through the fault of any third party, We shall bear no responsibility or liability.

4. Fees and Payment

- 4.1 Fees for Hosting Packages are detailed at www.cutec.co.uk and the Fees for Your chosen Hosting Package are confirmed in Your Order.
- 4.2 You shall be required to pay all Fees due in advance of the Service for the duration of the Service specified in Your chosen Hosting Package.
- 4.3 For the first period of Service provision (as specified in Your chosen Hosting Package), payment of Fees shall take place on the date that You complete Your Order. For subsequent periods of Service provision, We will send You a renewal notice and invoice via e-mail not less than 14 days Business Days prior to the expiry of the then current period. Payment must be made on receipt of the renewal invoice in order for provision of the Service to continue without interruption.
- 4.4 We are free, at any time, to change the price of Our services (including, but not limited to, the Hosting Package chosen by You). You will not be subject to any additional charges during a period of Service Provision for which You have already paid resulting from a price increase, nor to any refunds resulting from a price decrease. Any changes in Fees due shall be reflected in subsequent renewals only. We reserve the right to continue charging old prices for renewals.
- 4.5 All Fees payable by You to Us must be paid in full, without set off or deduction. We reserve the right to suspend the Service or terminate the Contract if Fees are not paid on or before the due date.
- 4.6 You may change your Hosting Package at any time. If the You choose to do so, We shall refund the original Fee paid by You relative to the number of whole months out of the relevant period of Service provision that remain. Refunds shall be issued within 14 days. You will be invoiced for a new complete period of Service provision as specified in Your newly chosen Hosting Package in accordance with the Fees for that Hosting Package.
- 4.7 All payments for Fees due under these Terms and Conditions must be made via direct debit using our chosen payment partner, GoCardless. Payments made via GoCardless are subject to GoCardless's own terms and conditions of service and We make no representations or warranties with respect to their services.
- 4.8 All Fees shown are exclusive of VAT, unless otherwise indicated. Cutec's VAT number is GB744630142.

5. Money Back Guarantee

- 5.1 From the date of Your payment under Clause 4 We offer a 30 day money back guarantee during which You may cancel Your Order and receive a full refund if You are in any way unhappy with the Service.
- 5.2 If You choose to take advantage of the money back guarantee, You should email Us at accounts@cutec.co.uk using the subject line: "Refund Request", providing full details of Your Account and Order.
- 5.3 Please note that cancelling under this Clause 5 will result in the termination of

the Service and thus the removal of Your Client Website from the Hosting Hardware. Any data You have not backed up Yourself will be lost.

6. Changes to these Terms and Conditions

- 6.1 We reserve the right to change these Terms and Conditions and any and all other terms and conditions and/or policies which may affect You in order to comply with changes in the law.
- 6.2 You will be informed of any changes made under this Clause 6 and shall be deemed to be bound by them 30 days after receipt of the notice.
- 6.3 If You do not agree to be bound by any changes made under this Clause 6, You may cancel the Contract in accordance with sub-Clause 16.5.

7. Your Obligations and Undertakings

- 7.1 You may not use the Service (including, but not limited to, the Hosting Hardware and/or the Hosting Software) for any unlawful or otherwise inappropriate purposes. This includes, but is not limited to:
 - 7.1.1 Distribution of computer viruses, malware, spyware or any other form of code designed to cause harm or nuisance to hardware or software or to obtain data without consent;
 - 7.1.2 Distribution of pirated material including, but not limited to, software, videos, music and written works; and
 - 7.1.3 Distribution of obscene or illegal material including that which is pornographic, abusive, threatening, malicious, harassing, fraudulent, defamatory or that which encourages criminal activities.
- 7.2 You may not use Your Client Website to link to any other websites or systems hosting any material described above in sub-Clause 7.1.
- 7.3 You undertake to monitor and supervise any and all third party activity on Your Client Website (including, but not limited to, the submission of material by users and the use of communication systems such as forums). Any third party activity that may fall within the provisions of sub-Clause 7.1 must be stopped or removed, as appropriate.
- 7.4 You undertake to ensure that any and all personal information collected through Your Client Website is gathered, processed and held in accordance with the relevant provisions of the Data Protection Act 1998.
- 7.5 You undertake to ensure that any and all e-commerce conducted through Your Client Website complies with all relevant laws in force at the relevant time including, but not limited to, the Distance Selling Regulations 2000 and the EU E-Commerce Directive 2000.
- 7.6 You shall be responsible for all activity relating to Your Client Website.
- 7.7 You must use reasonable endeavours to ensure that We are furnished with any information reasonably required to provide the Service in a timely manner.
- 7.8 Our hosting package does not include any backup service. You are therefore responsible for taking manual backups at regular times. We will not be liable for any data loss due to You not taking such backups.

8. Intellectual Property Rights

- 8.1 You shall not acquire any rights in or over any Intellectual Property Rights subsisting in any materials and/or property owned by Us or by any third parties (where, for example, We are using materials under licence). Any materials owned by Us used by You in the normal course of the Service are used under a non-exclusive licence only to the extent required in order for Us to provide the Service to You.
- 8.2 We shall not acquire any rights in or over any Intellectual Property Rights subsisting in any materials and/or property owned by You or by any third parties (where, for example, You are using materials under licence) including, but not limited to, Your Client Website. Any such rights are used under a non-exclusive licence only to the extent required in order for Us to provide the Service to You.
- 8.3 You hereby agree to fully indemnify Us against all costs, expenses, liabilities, losses, damages, claims and judgments that We may incur or be subject to as a result of the infringement of any Intellectual Property Rights arising out of Your failure to obtain the necessary rights and permissions from third parties with respect to any materials used by You as hosted by Us under the Contract.

9. Your Use of the Hosting Software and Licence

- 9.1 Your use of any and all Hosting Software that We may from time to time provide including, but not limited to, the Fasthost's client portal, is under a non-exclusive licence and may be used only in accordance with these Terms and Conditions and only for the duration of the Service. You shall not gain any form of ownership rights over any Hosting Software or the Intellectual Property Rights therein.
- 9.2 Where We provide access to third party software (which, for the purposes of these Terms and Conditions, falls within the definition of "Hosting Software") You agree to be bound by any licence agreements relating to such software upon Your first use of that software.
- 9.3 You may not under any circumstances:
 - 9.3.1 attempt to copy any Hosting Software;
 - 9.3.2 attempt to reverse-engineer, decompile, disassemble or in any other manner derive source code from any Hosting Software;
 - 9.3.3 write or otherwise create any derivative software that is based in whole or in part on any Hosting Software; or
 - 9.3.4 sell, lease, transfer, sub-licence, or in any other way treat any Hosting Software as Your property.

10. Limitation of Our Liability

- 10.1 Subject to the provisions of sub-Clause 3.4 and the remainder of this Clause 10, and to the fullest extent permitted by law, We shall not be liable to You or to any third party, whether in contract or tort (including negligence) for any loss or damage, direct or indirect, whether foreseeable or otherwise (including any indirect, consequential, special or exemplary damages) arising from:

- 10.1.1 interruptions or downtime to the Service;
 - 10.1.2 any damage, loss or corruption of data (including, but not limited to, Your Client Website or any part thereof);
 - 10.1.3 any incompatibility, whether of the Hosting Software, Hosting Hardware or Your Client Website with any of Your own equipment (or that of any third party);
 - 10.1.4 any inability, on Your part, to use the Service (including, but not limited to, failure to follow reasonable instructions provided by Us);
 - 10.1.5 the loss of confidentiality caused by the storage of information on the internet (this does not refer to the mutual confidentiality obligations of the Parties under Clause 14).
- 10.2 Nothing in these Terms and Conditions shall exclude Our liability for death or personal injury resulting from Our negligence or that of Our employees or agents.
 - 10.3 Nothing in these Terms and Conditions shall exclude Our liability for fraud or fraudulent misrepresentation.
 - 10.4 Nothing in these Terms and Conditions excludes or restricts Our liability for any loss resulting from Our failure to use reasonable skill and care, from Our gross negligence, or from Our wilful misconduct.

11. **Warranty Disclaimer**

Subject to the provisions of these Terms and Conditions, We give no further warranty, express or implied, in connection with the Service as to fitness for purpose, quality, non-infringement or merchantability.

12. **Your Indemnity**

You shall fully indemnify Us against all costs, expenses, liabilities, losses, damages and judgments that We may incur or be subject to as a result of any of the following:

- 12.1 Your misuse of the Service;
- 12.2 Your breach of these Terms and Conditions;
- 12.3 Your negligence or other act of default;
- 12.4 The activities of third parties conducted on or through Your Client Website.

13. **Data Protection**

- 13.1 All personal information that We may collect (including, but not limited to, Your name and address) will be collected, used and held in accordance with the provisions of the Data Protection Act 1998 and Your rights under that Act.
- 13.2 We may use Your personal information to:
 - 13.2.1 Provide the Service to You;
 - 13.2.2 Process payments made by You;
 - 13.2.3 Inform You of products and services available from Us. You may request that We stop sending You this information at any time;

- 13.2.4 In certain circumstances, and with Your consent, We may pass Your personal information on to credit reference agencies. These agencies are also bound by the Data Protection Act 1998 and should use and hold Your personal information accordingly.
- 13.3 We will not pass Your personal information to any other third parties without first obtaining Your express permission to do so.

14. Confidentiality

- 14.1 Except as provided by sub-Clause 14.2 or as authorised in writing by the other Party, each Party shall, at all times during the continuance of the Contract and for two years after its termination:
 - 14.1.1 keep confidential all Confidential Information;
 - 14.1.2 not disclose any Confidential Information to any other party;
 - 14.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to these Terms and Conditions;
 - 14.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 14.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 14.1.1 to 14.1.4 above.
- 14.2 Either Party may:
 - 14.2.1 disclose any Confidential Information to:
 - 14.2.1.1 any sub-contractor or supplier of that Party;
 - 14.2.1.2 any governmental or other authority or regulatory body; or
 - 14.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;to such extent only as is necessary for the purposes contemplated by these Terms and Conditions (including, but not limited to, the provision of the Service by Us), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 14.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 14, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
 - 14.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of Your acceptance of these Terms and Conditions, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.
- 14.3 The provisions of this Clause 14 shall continue in force in accordance with their terms, notwithstanding the termination of the Contract for any reason.

15. Force Majeure

15.1 Neither Party to the Contract will be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

16. Term and Termination

16.1 The initial period of Service provision shall commence on the date that Your Order is submitted and all Fees due under Clause 4 are paid. This period shall last for the duration specified in Your chosen Hosting Package, subject to any provisions in these Terms and Conditions to the contrary (including, but not limited to, this Clause 16).

16.2 Subsequent periods of Service provision shall last for the duration specified in Your chosen Hosting Package and shall follow on from a previous period, without interruption, subject to Your fulfilment of the payment obligations set out in Clause 4. All subsequent periods of Service provision shall remain subject to these Terms and Conditions unless expressly stated otherwise.

16.3 Either Party may immediately terminate the Contract by giving written notice to the other Party if:

16.3.1 any sum owing to that Party by the other Party under these Terms and Conditions is not paid within 30 Business Days of the due date for payment;

16.3.2 the other Party commits any other breach of any of these Terms and Conditions and, if the breach is capable of remedy, fails to remedy it within 30 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;

16.3.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;

16.3.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

16.3.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under these Terms and Conditions);

16.3.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;

16.3.7 that other Party ceases, or threatens to cease, to carry on business; or

16.3.8 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of the

Contract. For the purposes of this Clause 16, “control” and “connected persons” shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

- 16.4 For the purposes of sub-Clause 16.3.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 16.5 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

17. **Effects of Termination**

Upon the termination of the Agreement for any reason:

- 17.1 We shall ensure the complete and secure removal of Your Client Website and all related material from the Hosting Hardware;
- 17.2 any sum owing by either Party to the other under these Terms and Conditions shall become immediately due and payable;
- 17.3 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Contract shall remain In full force and effect;
- 17.4 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of these Terms and Conditions which exist at or before the date of termination;
- 17.5 subject as provided in this Clause 17 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 17.6 each Party shall (except to the extent referred to in Clause 14) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

18. **No Waiver**

No failure or delay by either Party in exercising any of its rights under these Terms and Conditions shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of these Terms and Conditions shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

19. **Set-Off**

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

20. **Assignment and Sub-Contracting**

- 20.1 Subject to sub-Clause 20.2 The Contract shall be personal to the Parties.

Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

20.2 We shall be entitled to perform any of the obligations undertaken by Us through any other member of Our group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of these Terms and Conditions, be deemed to be Our act or omission.

21. **Relationship of the Parties**

Nothing in these Terms and Conditions shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in these Terms and Conditions.

22. **Third Party Rights**

22.1 No part of these Terms and Conditions is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

22.2 Subject to this Clause 22 the Contract shall continue and be binding on the transferee, successors and assigns of either Party as required.

23. **Communications**

23.1 All notices or communications shall be given to Us either by post to Our premises at 19 Darklake Park, Darklake View, Estover, Plymouth, PL6 7FB or by email to accounts@cutec.co.uk. Such notice will be deemed received 3 Business Days after posting if sent by first class post, the day of sending if the email is received in full on a Business Day and on the next Business Day if the email is sent on a weekend or public holiday.

23.2 We may from time to time send You information about Our products and/or services. If You do not wish to receive such information, please click the unsubscribe link on the email.

24. **Severance**

In the event that one or more of the provisions of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of these Terms and Conditions. The remainder of these Terms and Conditions shall be valid and enforceable.

25. **Law and Jurisdiction**

25.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith)

shall be governed by, and construed in accordance with, the laws of England and Wales.

- 25.2 Any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.