

Xemik Solutions! Ltd Terms and Conditions

Terms and conditions for our Web Hosting services are at: <http://www.xemik.net/terms.html>.

1. Definitions

In this Agreement the following words and expressions shall have the following meanings:

- a. "Xemik Solutions!" shall mean Xemik Solutions! Ltd;
- b. "Customer" shall mean any party whether an individual, partnership or company (incorporated or otherwise) which contracts to use the services provided by Xemik Solutions!;
- c. "the Services" means any services or facilities provided by Xemik Solutions!;
- d. "intellectual property rights" means patents, trade marks, design rights, applications for any of the foregoing, copyright, topography rights, database rights, rights in know-how, trade or business names and other similar rights or obligations, whether registrable or not in any country;
- e. Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

2. Introduction

- a. The Customer wishes to contract with Xemik Solutions! for the provision of services.
- b. Xemik Solutions! agrees to provide such services upon the following terms and conditions.

3. Duties

- a. Xemik Solutions! shall provide to the Customer the Services specified in their order subject to the following terms and conditions.
- b. The Customer shall deliver to Xemik Solutions! all relevant information in a format specified by Xemik Solutions! in such a manner as allow to Xemik Solutions! to provide the contracted Services.

4. Charges, Payment and Terms of Contract

- a. Payment is by cheque, bank transfers or Internet Banking.
- b. Xemik Solutions! may provide credit facilities with prior agreement.
- c. The Charges are exclusive of VAT, which, if payable, shall be paid by the Customer.
- d. Xemik Solutions! shall be entitled to charge interest in respect of late payment of any sum due under this Agreement, which shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 8% per annum above the base rate of the Bank of England from time to time in force.
- e. Where an account remains unpaid for more than 30 days after it becomes due, Services will be withheld and/or suspended until such payment has been received in full and the funds have cleared. In the event of a suspension of services, Xemik Solutions! will be deemed to have continued to supply such services and charges will apply accordingly.
- f. From time to time Xemik Solutions! may make enquiries on the Customer's company, proprietor or directors of the Customer's company with credit reference agencies. These agencies may record that a search has been made and share this information with other businesses.
- g. Xemik Solutions! does not provide 'Money Back Guarantees'.
- h. Pro-rata refunds will not be issued for services that are cancelled before the end of the term of the contract.

5. Alterations and Updates

Where Xemik Solutions! has been contracted to design and/or optimise a Website the services will be fulfilled upon successful upload to the Customer's webspace and the customer has acknowledged the successful upload. Any further alterations and amendments will incur a subsequent charge unless such an alteration or update is due to an error on Xemik Solutions! part.

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6. Warranties

- a. The Customer warrants and represents to Xemik Solutions! that Xemik Solutions!' use of the Content or the Customer Software in accordance with this Agreement will not infringe the intellectual property rights of any third party and that the Customer has the authority to license the Content and the Customer Software to Xemik Solutions! as set out in Clause 6(b).
- b. All conditions, terms, representations and warranties that are not expressly stated in this Agreement, whether oral or in writing or whether imposed by statute or operation of law or otherwise, including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded. In particular and without prejudice to that generality, Xemik Solutions! shall not be liable to the Customer as a result of any viruses introduced or passed on to the Customer.

7. Indemnity

The Customer agrees to indemnify and hold Xemik Solutions! and its employees and agents harmless from and against all liabilities, legal fees, damages, losses, costs and other expenses in relation to any claims or actions brought against Xemik Solutions! arising out of any breach by the Customer of the terms of this Agreement or other liabilities arising out of or relating to the Website.

8. Limitation of Liability

- a. Nothing in these terms and conditions shall exclude or limit Xemik Solutions!'s liability for death or personal injury resulting from Xemik Solutions!'s negligence or that of its employees, agents or sub-contractors.
- b. The entire liability of Xemik Solutions! to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the charges paid for the Services under this Agreement in respect of which the breach has arisen.
- c. In no event shall Xemik Solutions! be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or Xemik Solutions! had been made aware of the possibility of the Customer incurring such a loss.

9. Term and Termination

- a. This Agreement will become effective on the date the service is ordered and shall continue until terminated by either party in writing of its intention to terminate the Agreement.
- b. All service agreements are for a minimum of 12 months from date of order and shall continue thereafter for a further period of 12 months until terminated by either party in writing of its intention to terminate the Agreement. Such termination must be made in writing no less than three months prior to the end of the current agreement period.
- c. A customer may request that this agreement be terminated before the end of its current term. If Xemik Solutions! agrees to such a request, termination charges of not less than 75% of the outstanding contract value will be payable, plus any costs incurred by Xemik Solutions! in the servicing of this agreement. This agreement will remain in force until all outstanding contractual, termination and additional charges have been paid in full. As such, the customer will continue to be charged as if the agreement had not been terminated.
- d. Xemik Solutions! shall have the right to terminate this Agreement with immediate effect by notice in writing to the Customer if the Customer fails to make any payment when it becomes due.
- e. Either party may terminate this Agreement forthwith by notice in writing to the other if:
 - the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or
 - the other party commits a material breach of this Agreement which cannot be remedied under any circumstances; or

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- the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or
 - the other party ceases to carry on its business or substantially the whole of its business; or
 - the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.
- f. Xemik Solutions! reserves the right to waive any or all termination charges.
- g. Any rights to terminate this Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of this Agreement as at the date of termination.
- h. On termination all data held in the customer's account will be deleted.

10. Assignment

- a. Xemik Solutions! may assign or otherwise transfer this Agreement at any time.
- b. The Customer may not assign or otherwise transfer this Agreement or any part of it without Xemik Solutions!'s prior written consent.

11. Force Majeure

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, the act or omission of any Internet Service Provider, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

12. Severance

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

13. Notices

Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the address of the other party as appearing in this Agreement or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served two days following the date of posting.

14. Entire Agreement

This Agreement contains the entire Agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. This Agreement may be updated without notice.

15. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

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16. Distance Selling Regulations

All services supplied by Xemik Solutions! are excluded from the Distance Selling Regulations that are outlined in the Distance Selling Act.

17. Privacy

To protect your privacy we will not distribute your details to third parties, unless required to do so by law.

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