

# Hiltonian Media – Terms & Conditions for the Supply of Goods and/or Services

## 1) GENERAL

- i) This contract is between Richard Hilton trading as Hiltonian Media and any company, organisation, individual or other entity purchasing products or services from Hiltonian Media.
- ii) Every offer, quotation and contract for the sale or supply of goods by Hiltonian Media is made subject to these conditions. Any alternative conditions sought to be imposed by the purchaser are hereby excluded.
- iii) Hiltonian Media will not accept any claim for loss of turnover, sales, revenue or profits, indirect, consequential or otherwise, or any other type of loss however caused.
- iv) No claim will be entertained by Hiltonian Media where the materials have been incorporated, whether by or on behalf of the purchaser or by anyone else, into other goods. Hiltonian Media's liability for any failure to supply, any defects or inferior quality in the goods supplied shall not exceed an amount equivalent to the price payable to Hiltonian Media in respect thereof.

## 2) QUOTATIONS

- i) Unless otherwise stated Hiltonian Media's quotations are based on current cost of material, transport and labour and any variation between quotation and supply shall be the subject of a price adjustment.
- ii) The quantity and description of the goods or services shall be as set out in the Seller's quotation. Errors and Omissions excepted.
- iii) Quotations may be withdrawn by Hiltonian Media at any time and shall lapse 7 days from their date.
- iv) Hiltonian Media is continually improving the specification and design of its service and product range. Whilst care is taken to ensure that literature produced by Hiltonian Media is up to date, such should not be regarded as an absolute guide to current specification and Hiltonian Media reserves the right to modify any of its products or services without notice and without any liability.
- v) Hiltonian Media reserves the right to make any changes in the specification of the goods or services which are required to conform to applicable statutory requirements or which do not materially affect their quality or performance.
- vi) The prices quoted are exclusive of VAT and charges for delivery (unless otherwise stated).

## 3) ORDERS

- i) No order for goods or services will be considered binding until officially acknowledged by Hiltonian Media in writing.
- ii) Any order sent to Hiltonian Media by whatever means, e.g. post, email, web orders, telephone etc., shall be deemed as an offer in response to our

invitation to treat from whatever sources (printed advert, website etc.) and therefore Hiltonian Media reserve the right to not accept any offer that may be made to them.

- iii) The purchaser shall not be entitled to cancel the contract unless Hiltonian Media has agreed in writing.
- iv) Any modification and/or variation to an order must be confirmed in writing by the purchaser and agreed to in writing by Hiltonian Media.

## 4) SERVICES

- i) A deposit of £500 or 10% of the quotation (whichever is greater) may be required before any work will be carried out by Hiltonian Media or its agents. This deposit will be refunded if Hiltonian Media do not undertake any work requiring an invoice to be issued, for whatever reason.
- ii) Hiltonian Media remains the owner of any intellectual property that is created as part of the service to the purchaser until full payment is received and cleared. Once this has occurred, intellectual property rights for customised design work (such as graphic design or website layout) and textual copy will pass to the purchaser; intellectual property rights for all other work (such as new or customised program code) will remain with Hiltonian Media in perpetuity. All works provided by the purchaser (including, but not limited to, textual copy, graphics or program code) remain the intellectual property of the purchaser at all times and Hiltonian Media is indemnified for the use thereof.

## 5) INTERNET HOSTING AND DOMAIN NAMES

- i) While Hiltonian Media obviously tries to minimise any downtime on its Internet servers, Hiltonian Media shall not be held responsible for any loss or damage, material, financial or otherwise, that any downtime or other error or failure may cause.
- ii) UK domain names may be transferred to another IPS-tag and global domain names may be transferred to another ICANN registrar for no extra charge once full payment for any outstanding invoices has been cleared and upon written instruction from the purchaser.
- iii) Domain names are subject to the terms and conditions of the relevant naming authority and your contract is between them and yourself. You are responsible for complying with those terms and conditions (copies of which will be provided on request). Hiltonian Media are merely acting as your agents. Please see the following documents on the Internet for the Naming Authorities' Terms and Conditions and Dispute Resolution Policies:

- OpenSRS:  
<http://opensrs.com/resources/contracts/exhibita.htm>
- Nominet UK (.uk domains):  
<http://www.nic.uk/go/terms>
- ICANN DRP:  
<http://www.icann.org/dndr/udrp/policy.htm>
- ICANN R&R:  
<http://www.icann.org/en/registrars/registrar-rights-responsibilities-en.htm>

- iv) Hiltonian Media cannot guarantee that any particular domain name can be registered for the purchaser, and until we specifically confirm with the purchaser in writing, it cannot be assumed that a particular domain name has been registered.
- v) The purchaser is fully responsible for ensuring that the domain name does not infringe on the rights of any third party, and Hiltonian Media is indemnified in respect to any such claims of infringement
- vi) Hosting accounts and domain names must not be used for, or associated with any action which infringes on any law or the rights of any person or entity, or which is contrary to any relevant legislation.
- vii) Hiltonian Media shall be indemnified by the purchaser for any claims made against Hiltonian Media arising from the content or functionality of the purchaser's website.
- viii) Hiltonian Media reserves the right to disable hosting accounts or domain names which are believed to be making improper use of the service (including, but not limited to, material that is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way; the sending of unsolicited email and bulk mailing (opt-in or otherwise); transmitting viruses or malicious code; utilisation of excessive system resources (including CPU utilisation, bandwidth, memory usage, etc.)) immediately and without explanation or refund.
- ix) Hiltonian Media shall not be responsible for any loss or damage resulting from the failure of our servers or from your misuse. The purchaser should keep backup copies of all data associated with the hosting account and is fully responsible for doing so.
- x) Any complaints to Hiltonian Media by the purchaser about UK domain names will be acknowledged within 3 working days. Any such complaints that are not resolved to the purchaser's satisfaction within 60 days may be referred by Hiltonian Media or the purchaser to Nominet UK for resolution, which may result in the transfer of the disputed domain name to a new registrar.

- xi) Hiltonian Media may request evidence of the purchaser's identity and contact details before registering domain names. If any requested documentation is not supplied to the satisfaction of Hiltonian Media, the services requested by the purchaser may not be delivered.

## 6) TECHNICAL SUPPORT

- i) Technical support will be provided, where possible, to assist the purchaser to make full use of the product or service provided by Hiltonian Media. This may be provided by telephone, email, or other means as deemed suitable by Hiltonian Media.
- ii) Technical support will not be provided if there are any outstanding and unpaid invoices due to Hiltonian Media, or if the Purchaser is in legal dispute with Hiltonian Media.
- iii) Hiltonian Media waives all liability for any software installed on the purchaser's computer equipment as part of the support process. Such software is installed entirely at the purchaser's own risk. The purchaser should ensure that all important data is backed up.
- iv) In certain circumstances, a charge will be made for technical support. Hiltonian Media will advise the purchaser of this in advance.
- v) Technical support will only be provided when suitable representatives of Hiltonian Media are available. Hiltonian Media reserves the right to refuse to provide technical support at any time.

## 7) RESELLERS AND SUB-CONTRACTED WORK

- i) If the purchaser makes available goods or services provided by Hiltonian Media to a third-party, that third-party must be subject to terms and conditions at least as strict as those imposed upon the purchaser by Hiltonian Media.
- ii) Hiltonian Media is hereby indemnified by the purchaser in respect to any claims made by any third-party where the purchaser has provided use of Hiltonian Media's goods or services to a third-party.
- iii) If the purchaser requires Hiltonian Media to provide support directly to the purchaser's customers, the purchaser's customers must be made aware of and subject to these terms and conditions.
- iv) Where support is provided to the purchaser's customers, the purchaser is responsible for any charges imposed by Hiltonian Media under section 6)iv) of this agreement.
- v) The purchaser is responsible for ensuring that their customers are forwarded any and all service announcements, legal notices and other important information that is sent by Hiltonian Media to the purchaser from time to time.

## 8) DELIVERY

- i) Delivery dates are given as accurately as possible but while every reasonable effort will be made to comply with such dates compliance is not guaranteed and the purchaser shall have no right to damages or to cancel the order for failure to meet any delivery date stated. Time is not of the essence.
  - ii) Claims for shortages or damage in transit must be notified to Hiltonian Media within 24 hours of the receipt of goods with copies of any supporting documentary evidence.
  - iii) Goods or services correctly supplied against purchaser's order may not be returned or refunded.
  - iv) The date of delivery shall be dependent in every case on the purchaser's compliance with the terms of payment.
  - v) If the purchaser fails to accept delivery of goods within 7 days of notification that they are ready for dispatch, Hiltonian Media reserves the right to invoice the goods to the purchaser and charge him reasonable storage charges until the goods are either dispatched to the purchaser or disposed of elsewhere.
- 9) PAYMENT
- i) Payment is to be tendered in accordance with instructions on the invoice and within the time period set out therein. Hiltonian Media shall issue an invoice in respect of the goods or services at the time of despatch or completion, or at a date agreed with the customer in advance.
  - ii) Hosting accounts, domain names, or any other services provided with recurring billing, shall be invoiced to you at least 30 days before the payment is due. If payment is not received and cleared before the payment is due, your account may be disabled and/or your domain name become available for registration to other parties. Accounts may be reactivated for a one-off fee of £40. Domain names may be re-registered, if possible (i.e. if someone else hasn't registered it or the registry hasn't blocked the registration of the domain name), once a payment for the original invoice plus a £40 admin fee, plus any registry charges, has been cleared.
  - iii) Hiltonian Media reserves the right to impose a surcharge on orders which are not paid for in cleared funds. The charges are available on request from Hiltonian Media may vary from time to time.
  - iv) Hiltonian Media reserves the right to charge interest on any overdue balances at a rate of 5% above the Bank of England base rate prevailing at that time.
  - v) No disputes arising under the contract nor delays shall interfere with prompt payment by the purchaser. The purchaser may not set up against Hiltonian Media any breach of warranty or condition (express or implied) in diminution or extinction of the price.
- 10) WARRANTY
- i) Goods are provided with manufacturers' warranties only..
  - ii) The customer is responsible for the execution of warranties, either with the manufacturer or their agents, or with a third-party warranty and support company.
  - iii) Refunds, where given, are subject to a minimum 20% restocking fee as all products are manufactured to the purchaser's specifications at the time of order. Higher restocking fees will apply where the product purchased is not from the regular stock held by Hiltonian Media.
  - iv) Refunds, where given, will normally be provided within a 90-day period of a written request being received by Hiltonian Media, from the purchaser. It is the purchaser's responsibility to ensure that Hiltonian Media has received and understood their request.
  - v) The purchaser must accept full responsibility for the suitability of the goods for the purpose to which they are put, and no warranty or representation of fitness for any particular purpose is or has been given by Hiltonian Media.
  - vi) Suitability of software is the purchaser's full responsibility. Software support is provided on a chargeable basis at Hiltonian Media's absolute discretion.
  - vii) The product serial number must be legible to protect the warranty.
- 11) FORCE MAJEURE
- i) Hiltonian Media shall not be liable for any failure to deliver goods or services arising from circumstances outside Hiltonian Media's control.
  - ii) Non-exhaustive illustration of such circumstances would be act of God, war, riot, explosion, abnormal weather conditions, fire, flood, strikes, lockouts, Government action or regulation (UK or otherwise), delay by suppliers, accidents, illness, shortage of materials, labour or manufacturing facilities.
  - iii) If the circumstances preventing delivery are still continuing three months after, then either party shall be entitled to cancel the contract in writing. The purchaser shall be liable to pay the contract price less a reasonable allowance for what has not been performed by Hiltonian Media.
- 12) RISK AND PROPERTY
- i) Risk of damage or loss of goods shall pass to the purchaser on delivery.
  - ii) The property/title in the goods shall not pass to the purchaser until Hiltonian Media has received in cleared funds payment in full of the price of the goods and of all other goods or services agreed to be sold by Hiltonian Media to the purchaser for which payment is then due.
  - iii) Until such time as the property/title of the goods passes to the purchaser (and provided that the goods are still in existence and have not been resold) Hiltonian Media shall be entitled at any time to require the purchaser to deliver up the goods to them and if the purchaser fails to do so forthwith to enter upon any premises of the purchaser or of any third party where the goods are stored and repossess the goods.
  - iv) The purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of Hiltonian Media, but if the purchaser does so all monies owing by the purchaser to Hiltonian Media shall (without prejudice to any other right or remedy of Hiltonian Media forthwith) become due and payable immediately.
- 13) SEPARATE CONTRACTS
- i) Where the goods or services are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Hiltonian Media to deliver any one or more of the instalments in accordance with these conditions or any claim by the purchaser in respect of any one or more instalments shall not entitle the purchaser to treat any other related contracts as repudiated.
- 14) WAIVER
- i) No waiver by Hiltonian Media of any breach of a contract for the sale of goods by the purchaser shall be considered as waiver of any subsequent breach of the same or any other provision or contract.
- 15) NO ASSIGNMENT
- i) This Contract is personal to the purchaser and the purchaser shall not assign any of its rights or obligations under it without Hiltonian Media's consent.
- 16) MISCELLANEOUS
- i) Hiltonian Media's employees or agents are not authorised to make any representation concerning goods or services unless confirmed by Hiltonian Media in writing. In entering into the contract the purchaser acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
  - ii) Any advice or recommendation given by Hiltonian Media or its employees or agents to the purchaser or its employees or agents as to the storage, installation, application or use of the goods or services is followed or acted upon entirely at the purchaser's own risk, and accordingly Hiltonian Media shall not be liable for any such advice or recommendation which is not so confirmed.
  - iii) Any typographical, clerical or other error or admission in any sales literature, quotation, price-list, acceptance of offer, invoice or other document or information issued by Hiltonian Media shall be subject to correction without any liability on the part of Hiltonian Media.
  - iv) Hiltonian Media shall sell and the purchaser shall purchase the goods or services in accordance with any written quotation of Hiltonian Media which is accepted by the purchaser, or any written order of the purchaser which is accepted by Hiltonian Media. Subject, in either case, to these Conditions which shall govern such contract to the exclusion of any other terms and conditions subject to which such quotations are accepted or purported to be made by the purchaser (whether such other terms and conditions are set out in the purchaser's order in writing or otherwise).
  - v) Any consultancy, advice or recommendation made by Hiltonian Media or its representatives is given in good faith and Hiltonian Media is not responsible for any of the consequences of you following up or not following up the recommendation(s).
  - vi) The headings in this document are for reference only and do not form part of the terms and conditions.
  - vii) If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not thereby be affected.
  - viii) These terms and conditions may change at any time with or without notice. It is the purchaser's responsibility to check for an updated version of the terms and conditions on the Hiltonian Media website (<http://www.hiltonian.com/about/conditions>) from time to time.
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