

Suffolk Computer Services

# TERMS AND CONDITIONS OF BUSINESS

General Terms and Conditions

Suffolk Computer Services



2008

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## General Terms and Conditions

Suffolk Computer Services

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### TERM AND CONDITIONS OF BUSINESS

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### 1. THE PARTIES

- 1.1 "Suffolk Computer Services" means Ruth Cheesley and includes her sub-contractors and employees
- 1.2 "The Customer" means the person, firm, company or organisation who orders the Services pursuant to these Conditions.

### 2. DEFINITIONS

In these Conditions:

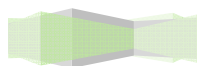
"Conditions" means these terms and conditions of business

"Services" means any service requested by the Customer including (but not limited to) the creation and maintenance of websites, IT Support and Network Management, removal of viruses, spyware, malware, adware, or the recovery of information following computer problems

"The Customer's Materials" means all materials delivered to Suffolk Computer Services by the Customer.

### 3. APPLICATION

- 3.1 Suffolk Computer Services and the Customer shall contract subject to these Conditions which shall govern their relationship to the exclusion of any other terms and conditions whether oral, or contained or referred to in the Customer's order, or in correspondence, or elsewhere, or implied by trade custom, practice or course of dealing, or by statute and any purported provisions to the contrary are hereby excluded.



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- 3.2 These Conditions supersede all previous agreements and understandings (if any) between the parties and all representations made with respect thereto.
- 3.3 No variation of these Conditions shall be binding upon Suffolk Computer Services unless made in writing and signed by one or more of Suffolk Computer Services.
- 3.4 All quotations and tenders are subject to withdrawal or amendment at any time prior to Suffolk Computer Services' acceptance of the Customer's order.

## **4. PRICES - GENERALLY**

- 4.1 Suffolk Computer Services will not be bound by any estimate given until they have received complete instructions and have had sight of and accepted the Customer's order.
- 4.2 Suffolk Computer Services shall not be bound by any clerical or arithmetical errors in any price list invoice statement quotation or other documentation whatsoever.
- 4.3 Unless otherwise agreed in writing by Suffolk Computer Services, payment of Suffolk Computer Services' invoices shall be made at time of delivery of the invoice.
- 4.4 If the Customer fails to make payment on the due date, Suffolk Computer Services shall be entitled to charge a surcharge of five pounds (£5.00) per day for each day or part of a day that the payment is overdue. This sub-condition shall continue to apply notwithstanding that Suffolk Computer Services obtain judgment against the Customer.

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- 4.5 Suffolk Computer Services shall have a lien over the Customer's Materials against payment of all costs or fees due to her by the Customer from time to time and shall be entitled to withhold all such items until payment in full is made.
- 4.6 Suffolk Computer Services may require the Customer to pay a deposit at the time the order is placed. Furthermore, if in the opinion of Suffolk Computer Services, the creditworthiness of the Customer shall have deteriorated prior to delivery; Suffolk Computer Services may require full or partial payment of the price prior to delivery.
- 4.7 The Customer shall not be entitled to withhold payment of any disputed claim by the Customer against Suffolk Computer Services nor shall the Customer be entitled to set off against any amount payable any monies which are not presently payable by Suffolk Computer Services or for which Suffolk Computer Services disputes liability.

## 5. PRICES

- 5.1 Without prejudice to condition 4. above Suffolk Computer Services reserve the right to increase any part of the costs or fees payable for the Services:
- 5.1.1 where the Customer's requirements are not clear or where the Customer's Materials are poor quality, necessitating the production of additional Services;
- 5.1.2 where the Services are ordered more than [30] working days prior to delivery, to reflect any increase in the costs to Suffolk Computer Services which is due to any factor beyond the

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control of Suffolk Computer Services such as, without limitation, increases in the costs of labour, materials or other costs, any change in delivery dates, quantities or specifications requested by the Customer, any delay caused by any instructions of the Customer, failure of the Customer to give Suffolk Computer Services adequate information or instructions or failure of the Customer to supply clear and legible copy.

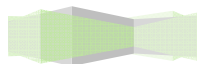
- 5.2 Suffolk Computer Services shall notify the Customer of the amount of any increase prior to carrying out any further work. The Customer shall have the right to cancel the order if the price has increased by more than 10% as soon as reasonably practicable on receiving notification of such increase but shall pay Suffolk Computer Services on a pro rata basis calculated from the costs and fees originally agreed for any part of the Services which had been completed at the time of cancellation of the order.
- 5.3 Without prejudice to the above, Suffolk Computer Services reserve the right to charge the Customer for all preliminary Services carried out, whether experimental or otherwise, at the Customer's request. In the event that Suffolk Computer Services accept early termination by the Customer of any contract, the Customer shall pay Suffolk Computer Services for the preliminary Services, if any, carried out prior to such termination on a pro rata basis.

## 6. DELIVERY

- 6.1 Delivery shall be deemed to take place when Suffolk Computer Services notify the Customer that the Services have been completed
- 6.2 Suffolk Computer Services shall endeavour to fulfil all orders which may from time to time be placed with it by the Customer and shall endeavour to comply with delivery dates quoted but the time for the delivery shall not be of the essence and failure by Suffolk Computer Services to make delivery on any particular date shall not entitle the Customer to terminate the contract with Suffolk Computer Services or refuse the delivery or to claim for any expenses loss of profits or other consequential losses whatsoever.
- 6.3 Where the order is to be delivered in instalments, each delivery shall constitute a separate contract and failure by Suffolk Computer Services to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of one or more of the instalments shall not entitle the Customer to treat the order as a whole as repudiated or cancelled.

## 7. CUSTOMER'S MATERIALS

- 7.1 Whilst Suffolk Computer Services shall endeavour to preserve the Customer's Materials in good order (subject to such wear and tear as may be incurred in the course of carrying out the Services), they remain at the Customer's risk and liability for damage to, destruction or loss of such materials is excluded save where such damage,



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- destruction or loss is caused by Suffolk Computer Services negligence.
- 7.2 Suffolk Computer Services shall have a lien over the Customer's Materials against payment of all costs or fees due to her by the Customer from time to time and shall be entitled (if any payment is not made on the due date) to dispose of the Customer's Materials for such sums (if any) as Suffolk Computer Services may in their discretion think appropriate towards settlement of the amount due.

## 8. INTERVENING EVENTS

- 8.1 Suffolk Computer Services shall not be liable for any breach of contract caused by Suffolk Computer Services' inability to produce materials or articles required for the performance of the contract or caused directly or indirectly by anything outside Suffolk Computer Services' reasonable control including without limitation to the generality of the foregoing, war, hostilities, government action, breakdown, delay in transportation, any form of labour dispute, fire, flood or act of God.

## 9. INSOLVENCY AND BREACH

- Where:
- 9.1 the Customer, being a company, makes any arrangement or composition with its creditors or has a receiver or administrator appointed or if the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or becomes insolvent or goes into liquidation within the meaning of Section 247

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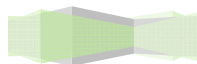
- of the Insolvency Act 1986 or an order is made or resolution passed for winding up (except for voluntary amalgamation or reconstruction); or
- 9.2 the Customer, being an individual, has a bankruptcy petition presented against him or is unable to pay his debts within the meaning of Section 123 of the Insolvency Act 1986 or becomes insolvent or makes any arrangement or composition with his creditors or takes any similar action in consequence of debt; or
- 9.3 the Customer is in breach of any of its obligations under these Conditions

then Suffolk Computer Services without prejudice to any of their other rights may immediately suspend the performance of any order placed by the Customer and shall be entitled to charge the Customer, and the Customer shall immediately become liable to pay, for any Services already carried out (whether completed or not) including the cost of any materials purchased on behalf of the Customer.

## 10. SUFFOLK COMPUTER SERVICES' LIABILITIES

10.1 Suffolk Computer Services do not seek to exclude the following liabilities:

- 10.1.1 for negligence causing death or personal injury.
- 10.1.2 under third party agreements.
- 10.2 Suffolk Computer Services shall not be liable for any indirect or consequential loss or damage including (without limitation to the foregoing) economic loss, loss of profits, business, operating time or



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- use or any other form of loss or damage of whatsoever nature and howsoever arising.
- 10.3 The implied conditions set out in the Sales of Goods Act 1979 and the Supply of Goods and Services Act 1982 shall be expressly excluded. Save as provided in these Conditions each and every liability of Suffolk Computer Services is excluded.
- 10.4 All emails and any attachments, graphics, web pages produced or sent by Suffolk Computer Services have been scanned for viruses, but it is the Customer's responsibility to conduct their own security measures and no responsibility is accepted by Suffolk Computer Services for loss or damage arising from the receipt or use of any such item.

## 11. CUSTOMER'S WARRANTY AND INDEMNITY

- 11.1 Suffolk Computer Services may refuse to work upon any of the Customer's Materials which in their opinion contains any defamatory or obscene matter or may infringe any Intellectual Property Rights of any third party.
- 11.2 The Customer warrants to Suffolk Computer Services that it owns the Customer's Materials and all Intellectual Property Rights in her and that the Customer's Materials do not infringe any Intellectual Property Rights of any third party and would not if used in relation to the provision of any Services infringe any Intellectual Property Rights of any third party.
- 11.3 The Customer shall indemnify Suffolk Computer Services and keep her indemnified in respect of all costs, claims, liabilities and

expenses to which Suffolk Computer Services may be subject as a result of any claim that any of the Customer's Materials contains any defamatory or obscene matter or infringes any Intellectual Property Rights of any third party. The indemnity shall extend (without limitation) to any amount paid on a lawyer's advice in settlement of any such claim and to Suffolk Computer Services' legal costs.

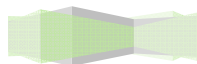
- 11.4 The Customer warrants that it has carried out any instructions from Suffolk Computer Services prior to delivery of the Customer's Materials to Suffolk Computer Services

## **12. INVALIDITY OF PART**

- 12.1 In the event of any provision of these Conditions being or becoming legally ineffective or unenforceable either in its entirety or in part this shall be without prejudice to the validity of and shall not invalidate the remaining provisions of these Conditions which shall remain in full force and effect.

## **13. HEADINGS**

- 13.1 The headings contained in these Conditions do not form part of her and such headings shall be ignored in construing each of the conditions herein contained.



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#### **14. PARTIES**

- 14.1 Where any party comprises more than one person the obligations and liabilities of that party under this agreement shall be joint and several obligations and liabilities of those persons
- 14.2 References to the masculine include the feminine and vice versa
- 14.3 References to the singular include the plural and vice versa

#### **15. NOTICES**

- 15.1 Any notice consent or the like required to be given under these Conditions shall be in writing and sent by registered post to the address of the other party as herein set out or at such changed address as shall for that purpose be notified to the other and every such notice consent or the like shall be deemed to have been given three days after transmission at the address to which it was sent.

#### **16. JURISDICTION**

- 16.1 These Conditions shall construed according to and be governed by English law and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.