

Terms of Trade v4.5

Cohesion Online Ltd, December 2014

Definitions

"Customer" means the person, organisation, trust or company party to this Contract and includes all successors, assigns and personal representatives.

"Cohesion" means Cohesion Online Limited.

"Contract" means the agreement between the Customer and Cohesion in relation to any Services undertaken by Cohesion including the following documents which, in the event of any inconsistency, will apply in the following descending order of precedence:

1. The accepted Estimate;
2. These Terms of Trade; and
3. Any Development Schematic which may accompany the Estimate; and
4. Any accepted Technical Brief (if provided)

"Estimate" means the Estimate relating to production of services undertaken by Cohesion, and includes all references to fixed quotations and the Internet Development Schematic.

"Estimate Total" means the total sum payable excluding GST for delivery of the Service as set out on the Estimate.

"Services" means any service to be provided by Cohesion to the Customer which are anticipated by an Estimate accepted by the Customer.

1.0 Terms of Sale and Payment

- 1.1 All invoices are due for payment by the Customer by the 20th of the month following invoice. Where services are delayed at the request of the Customer or otherwise through no fault of Cohesion, the invoice balances are still required to be paid on the due date.
- 1.2 Cohesion retain the right to invoice a deposit for Services undertaken. Cohesion has no obligation to commence copy collection or production until such deposit has been paid in full, and shall not be responsible for any consequential delays.
- 1.3 Cohesion retain the right to invoice a progress payment for Services undertaken.
- 1.4 Licence and Hosting charges are invoiced monthly and shall be payable by the Customer by the 20th of the month following invoice. Licence and Hosting components are charged in advance; Storage components are invoiced in arrears due to their variable nature.
- 1.5 Licence fees and/or host charges commence when the CMS becomes available to the client and training has been provided, or otherwise at the discretion of Cohesion Online Ltd.
- 1.6 A notice period of 30 days is required for the discontinuation of any internet services including email, licence fees and hosting. Notice for the discontinuation is required to be provided in written form by either email or post.
- 1.7 Failure to pay any sum when due may incur a penalty fee of 2% per month interest compounded at monthly rests. Outstanding accounts may be referred to a debt collection agency or legal action undertaken in a court of law. All fees, disbursements, interest and expenses incurred in collection will be added to the Customer's account balance.
- 1.8 Customers seeking credit terms which vary from those expressed above must have written approval from the Managing Director of Cohesion.

2.0 Acceptance of Estimate and No Cancellation

- 2.1 By signing an Estimate the Customer accepts full liability for all Estimate Totals and any other sums payable pursuant to those Contracts. The Customer acknowledges that the Estimate sets out the entire agreement between the parties and it has not relied on any oral or written representations made to it by Cohesion, by any employee or any agent. Terms which could be implied from past transactions, correspondence or conduct between the parties are expressly excluded.
- 2.2 Once an Estimate has been signed and any deposit paid in full, the Customer acknowledges that this Contract may not be cancelled. If the Customer purports to cancel this Contract subsequently in writing or by conduct, the Customer agrees that Cohesion may immediately forfeit the deposit.
- 2.3 Cohesion reserves the right to suspend delivery of the Services at any time if the Customer is in breach of any of its obligations pursuant to this Contract, or, if Cohesion has any doubts whatsoever as to the Customer's credit worthiness or its ability to meet its obligations under this Contract.

3.0 Customer Responsibility and Modifications to Services

- 3.1 The Customer acknowledges responsibility for collecting copy and other relevant material and for providing that material to Cohesion where necessary. Failure to deliver material within ten working days of a request in writing may delay delivery of Services and may also result in increased costs being incurred. The Customer agrees that any such costs shall be charged in addition to the Estimate.
- 3.2 Following receipt of the completed Services, there is a 10 working day inspection period during which it is the responsibility of the Customer to check for errors, omissions and accuracy of content and performance and to notify Cohesion in writing of any modifications required. All valid items for modification accepted in writing by Cohesion shall be remedied no later than 10 working days after the inspection period.
- 3.3 Any modifications notified to Cohesion after the inspection period are not included in the Estimate and Cohesion shall be entitled to charge at their standard rates for such additional remedial work.
- 3.4 Any modifications requested by the Customer which were not described by the original Estimate shall be treated as variations to the Estimate and shall be charged for accordingly.
- 3.5 The acceptance of modifications by Cohesion does not entitle the Customer to withhold payment of any account balances. The Customer agrees that Cohesion shall not be obliged to remedy such modifications until the balance of the Estimate is paid in full.

4.0 Ownership Retention, Intellectual Property, Warranties and Indemnities

Refer also to Section 8.

- 4.1 All rights, title and interest in all Intellectual Property, concepts and systems contained within Services which have been developed or provided by Cohesion in relation to programming, shall at all times remain the property of Cohesion. All rights, title and interest in any Services (save for the foregoing reservations), compilation artwork and digital and database files remain the property of Cohesion until the Estimate has been paid in full at which time ownership shall pass to the customer.
 - 4.1.1 Where proprietary CMS and/or Mailout software is used under licence by the client it is accepted that this is non-transferrable to another provider.

- 4.2 Upon any breach by the Customer of its obligations which is notified to it by Cohesion, the Customer shall immediately:

- 4.2.1 Cease all use of the Intellectual Property and the services and return all files and code relating to any Estimate to Cohesion; and

- 4.2.2 Destroy all copies (whether electronic or otherwise) of such files and code in the Customer's possession or control.

- 4.2.3 Should the Customer, in Cohesion's sole opinion, fail to comply with its obligations pursuant to clause 4.2.2, then Cohesion or its duly authorised agents, shall be entitled to enter the Customer's premises where such files or code may be situated and destroy, delete and/or remove the same.

- 4.3 All warranties, descriptions, representations or advice given as to the fitness or suitability for any purpose, tolerance to any conditions, similarity to sample, merchantability or otherwise, are expressly excluded. No agent, employee or representative of Cohesion is authorised to make any warranties, representations or statements regarding services and Cohesion shall not in any way be bound by any such unauthorised warranties, representations or statements.

- 4.4 The Customer undertakes that the Services shall not be used for any purpose for which it is not suitable and shall use all necessary skill and care in handling any Services. The Customer expressly agrees and acknowledges that Cohesion shall not be liable for any material, statements, representations or information contained or used in any Services including, but without limitation, any material, statements, representations or information that:

- 4.4.1 is or is likely to be misleading or deceptive or otherwise infringing the Fair Trading Act 1986;

- 4.4.2 is in full or in part defamatory, in breach of copyright, trademark or other intellectual or industrial property right; or

- 4.4.3 is otherwise in breach of any provision of any rule of law.

- 4.5 Cohesion shall not be liable for any consequential, direct, indirect, economic or special damage or loss incurred or suffered by the Customer or any third party directly or indirectly through their use of the Services, nor shall Cohesion be liable for any loss of revenue, profits, goodwill, data or opportunities or loss of anticipated savings whether caused by negligence of Cohesion or its employees or otherwise, whether or not Cohesion was aware or should have been aware of the possibility of such damage. Without in any way limiting the foregoing, any liability of Cohesion whether in contract, tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of a Service or any other breach of Cohesion's obligations hereunder shall not in any event exceed an amount equivalent to the Estimate.

- 4.5.1 Cohesion is not liable for any errors or omissions in copy or material contained in any Services where such copy or material is made available to the public through any means.

- 4.5.2 The Customer indemnifies and shall hold Cohesion harmless from all claims, losses, damages, costs and liability asserted against Cohesion by any person to the extent arising from or in relation to the Customer's breach or non-performance of the Estimate or of its use of the Services or any acts or omissions of its employees, shareholders, directors or agents in connection with the breach or non-performance of the Estimate or of their use of the Services.

5.0 Consumer Guarantees Act

- 5.1 The Customer acknowledges that where Services are intended for business purposes the provisions of that Consumer Guarantees Act 1993 shall not apply.

6.0 Privacy Act

- 6.1 The Customer authorises Cohesion to collect from any source whatsoever, retain and use personal information about the Customer for purposes of:
 - 6.1.1 Assessing the Customer's credit-worthiness;
 - 6.1.2 Undertaking any dealings or transactions with the Customer;
 - 6.1.3 Enforcement of any legal or other rights Cohesion may have against the Customer;
 - 6.1.4 Making such disclosures as may in Cohesion's opinion be required for any of the above purposes; and
 - 6.1.5 Sending the Customer any advertising and/or promotional material.

7.0 General

- 7.1 If the performance by Cohesion of its obligations is prevented by reason of "Force Majeure" (which shall include fire, casualty, accident, act of God, natural disaster, any law, regulation, strikes, labour disputes, shortage or lack of skilled labour, computer viruses, power failure, hardware or software failure, delay in transit or other causes whatsoever beyond the reasonable control of Cohesion) then Cohesion shall be excused to the extent of such prevention.
- 7.2 Cohesion may at any time, vary these terms and conditions, and such variation shall become binding on the Client after notification of the variation in writing.
- 7.3 If any provision of this Terms of Trade is declared by any judicial or other authority to be void, voidable, illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority, the parties shall amend that provision in such manner as achieves the intention of the parties without illegality or, at the discretion of Cohesion, such provision may be severed from this Contract.
- 7.4 The failure by Cohesion to enforce its rights at any time or for any period in relation to any one or more of the terms or conditions of this Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Contract.
- 7.5 While Cohesion makes every effort to ensure a Client's search engine registration is carried out to the best of its abilities, Cohesion makes no guarantees as to the inclusion or rating of any listing.

8.0 Cohesion Products

- 8.1 Cohesion LiteSite and Cohesion CustomSite include a minimum licence and/or hosting requirement of a 12 month term, where the customer is utilising the Cohesion CMS. Thereafter 30 days notice is required for any discontinuation of services (Refer 1.6).
- 8.2 The Intellectual Property of Cohesion LiteSite, Cohesion Mailout and CohesionCMS remain the property of Cohesion at all times. This expressly excludes the page and data content contained within the product frameworks which at all times remains with the customer.