

Terms and Conditions of Trading 01.02.2009**1.0 DEFINITIONS AND INTERPRETATION**

1.1 In these Conditions, the words and expressions listed below shall have the following meanings, unless the context requires otherwise:

Business Day	a day other than a Saturday or Sunday or a public holiday in England and Wales.
Company	POBox Hosting Limited, a company incorporated under the Companies Acts registered number 3875244, with its registered office at 6 Regent Gate, Chestnut, Herts, EN8 7AF.
Conditions	these terms and conditions relating to the supply of Goods and Services which are agreed in writing between the Company and Customer.
Contract	this contract incorporating the Conditions for the supply of Goods and Services to the Customer.
Contractual Term	6 month term commencing from the date of execution of the Contract.
Customer	a person who has been supplied with the Goods by the Company.
Goods	any goods or services, including but not limited to computer hardware and internet services, supplied or to be supplied to the Customer in terms of the Contract, including any instalment of the goods or services or any substituted goods or services.

1.2 References to a "person" include any natural person, any legal person, body or organisation incorporated or unincorporated or any other person, body or organisation whatsoever, as the context may require.

1.3 References to a "party" or the "parties" are references to the parties to this Contract unless the context requires otherwise.

1.4 References to any statute, or to any statutory provision, including any regulation, statutory instrument, or other subordinate legislation derived from such statutory sources, shall include references to any statute or other statutory provision which amends, extends, consolidates or replaces the original statutory reference or which subsequently affects any such revised statutory reference.

1.5 A reference to a time of day shall be construed as the time in the United Kingdom expressed in terms of the twenty four hour clock.

2.0 SALE AND PURCHASE

2.1 The Company sells and the Customer purchases and shall pay the price for the Goods in accordance with these Conditions which shall alone govern the Contract to the exclusion of any other conditions of the Customer notwithstanding that they may be set out in any order, invoice, acceptance or other document used by the Customer in its dealings with the Company.

2.2 The Conditions may only be varied by written agreement with the Company.

2.3 The Customer is deemed to have notice of and is bound by these Conditions on submitting an order for the Goods, and by taking delivery of, or accepting, the Goods.

2.4 The Customer is deemed to have acknowledged that the Company would and will only supply Goods subject to these Conditions.

2.5 The Customer acknowledges that its use of its own standard terms and conditions or documents referring to any other terms or conditions at any time during its dealings with the Company or on the supply of any Goods to it by the Company is a matter of administrative convenience only and is not intended by it to qualify or amend these Conditions in any way.

3.0 ORDERS AND DELIVERY

3.1 Orders for Goods may be placed with the Company in writing (email, fax or post) or verbally by telephone. No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed by the Company either in writing (email, fax or post) or verbally by telephone.

3.2 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order, including all specifications, submitted by the Customer, and for giving the Company any necessary information relating to the Goods or its requirements within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.3 The quantity, quality, description of and any specifications for the Goods shall be those set out in the Company's quotation or the Customer's order (if accepted by the Company).

3.4 The Company shall be deemed to have delivered the Goods, and the Customer shall be deemed to have accepted delivery of the Goods, on the date that the Customer is notified that delivery is active unless a written dispute is raised with the Company within 30 days of notification.

3.5 No order which has been accepted by the Company may be cancelled by the Customer without the agreement in writing of the Company and subject to the Customer indemnifying the Company in full against all loss (including loss of profit), damages, charges, and expenses incurred by the Company as a result of such cancellation.

3.6 Following receipt of an order for Goods, the Company may from time to time provide a Customer with details of other Company Goods which it believes may be of interest to the Customer. If the Customer does not wish to receive such communications it should notify the Company immediately or upon receipt of such communication.

4.0 TERMS OF PAYMENT

4.1 The Customer shall pay to the Company the price of the Goods and any other charges in terms of the Contract together with any VAT, free of all deductions and setoff.

4.2 Payment is due as stated on the invoice.

4.3 Receipts for payments will only be issued on request.

4.4 Any queries regarding an invoice must be received by the Company within 14 days of issue. The Company shall respond to any queries within 14 days of receipt and, in any case, before payment of the invoice is overdue.

4.5 If the Customer fails to make full payment of all sums due in accordance with these Conditions the Company shall be entitled as follows:

4.5.1 to rescind the Contract and suspend any deliveries of Goods under this or any other contract with the Customer;

4.5.2 to ascribe any payment made by the Customer to any Goods supplied to the Customer under any other contract, as the Company may think fit;

4.5.3 to require that any further supply of Goods be paid for on or before delivery.

4.6 The Company reserves the right to take legal steps to recover any loss (including loss of profit), damages, charges, and expenses incurred by the Company as a result of a breach of this clause by the Customer.

5.0 CUSTOMERS ORDERING DIRECT BANDWIDTH CONNECTIONS

5.01 This clause shall only be applicable to customers ordering bandwidth connections from the Company.

5.02 Except in the case of emergencies, the Company shall give the Customer no less than 5 Business days prior notice of any scheduled service or maintenance or alterations within their network, which shall affect the Customer. Wherever reasonably possible the Company shall endeavour to perform these activities in such a way as to minimise any interruption in the delivery of Goods.

5.03 The Company does not provide any warranties in respect of goods or services provided by third parties outside their network.

5.04 Where the Company provides routing equipment the Customer will have access to the usage statistics via the Company usage stats pages. A username and password will be provided when signed contracts are received and the service is set up.

5.05 The Company works under the auspices of RIPE allocation of IP address space, and may only provide IP addresses to Customers if they adhere to RIPE's terms and conditions.

5.06 Where the Company provides a bandwidth bursting service, the Customer will be charged monthly in arrears in any week it exceeds its prepaid bandwidth for more than five minutes. Bandwidth usage is determined solely from MRTG statistics and the Company takes weekly records upon which all charges are solely based. The Customer will be provided with web access to their statistics so that it can monitor its usage at all times.

5.07 In the event of Customer hardware failure, the contracted bandwidth is still available and therefore chargeable at standard rates.

5.08 Should the Customer wish to upgrade their bandwidth, a new agreement will be drawn. If an upgrade is requested within the first 4 weeks of Goods being delivered, the original agreement will remain in force subject to the relevant amendments concerning fees and details of the increased bandwidth speed to be provided.

5.09 Downgrading of bandwidth is only permitted on the one year anniversary of the agreement and upon the Customer satisfying the Company that usage has fallen due to market forces and not due to a secondary bandwidth provider supplying goods or services.

5.10 The POBox Hosting Service Level Agreement will accompany this document.

6.0 CUSTOMERS ORDERING COLOCATION SPACE

6.01 This clause shall only be applicable to Customers ordering colocation space from the Company.

6.02 The terms set out in clause 4 will also apply to the Customer.

6.03 The Customer acknowledges and agrees that the colocation space will contain equipment of other Customers as well as their equipment and that the use of the location will be shared with others Customers.

6.04 Under the Company's security procedures, the Company reserves the right to refuse any person entry to the building where the colocation space is located, including any employee for whom the customer has failed to request rights of access from the Company as well as any third party telecommunication carrier or maintenance representative in respect of whom the Customer fails to give reasonable notice to the Company of the name of such representative together with the time and date when access to the equipment is required. The Company will not be responsible for any loss or damages caused by such refusal by the Company to permit entry as a result of the Customers failure to provide notification of its access requirements.

6.05 The Customer may only install a server in the Company's rack space with a depth of no greater than 610mm and a width of no greater than 445mm. The correct rail kit(s) for the equipment must be used. In the case that rail kits are not provided the customer must take an additional 1U space and pay for or supply a 1U shelf.

6.06 The Customer is responsible for setting up its own server software and supplying all configuration equipment (this clause only applies to Customers taking colocation space and not to customers also taking managed servers).

6.07 The Customer shall at all times throughout the term of the contract maintain an up-to-date complete and accurate inventory of the equipment and provide the Company with a copy on request.

6.08 The Company will only supply the Customer with rack space if bandwidth is also purchased from the Company.

6.09 The Customer shall ensure that the equipment is clearly identified as belonging to the Customer.

6.10 The Customer shall ensure that the equipment conforms at all times to the environmental and operating standards required.

6.11 Access to the location will not be granted to the Customer if their account is overdue by more than 45 days and the outstanding amount is not in dispute.

6.12 In the event that payment is not received by the Company within 60 days of the amount being due and the outstanding amount is not in dispute, the supply of Goods will be suspended without further notice.

6.13 In the event that payment is not received by the Company within 60 days of the amount being due and the outstanding amount is not in dispute, the supply of Goods will be terminated.

6.14 The Company reserves the right to take custody of the Customers equipment as security against an outstanding debt. If payment is not received within 30 days of termination of supply of Goods, the Company will sell/auction the Customer's equipment in order to recover the sum of the outstanding invoice(s). If the sum required is not raised by this action a debt recovery agency will be employed to recover the outstanding debt in addition to any other losses suffered by the Company as a consequence.

6.15 The Customer will at all times make available the content/data help with the server(s) at any time to an officer of the Company.

7.0 CUSTOMERS ORDERING MANAGED SERVER(S)

7.01 This clause shall only be applicable to Customers ordering managed server(s) from the Company.

7.02 The terms set out in clause 4 will also apply to the Customer.

7.03 The Customer will enter into a separate agreement with the Company governing the provision of a managed server to the Customer by the Company (the "Agreement"). The terms of the Agreement will apply in addition to the terms of this contract.

7.04 Managed servers and any other hardware supplied to the Customer will remain the property of the Company throughout the term of the Agreement.

7.05 The Company will undertake the installation and configuration of managed servers. This is limited to the operating system and other applications as agreed in the schedule of services. Installation of router(s) will also be included with managed servers. (In the event of split bandwidth being utilised, the Company will install two routers).

7.06 Internet bandwidth will be supplied in accordance with the schedule of services contained in the Agreement. Should the Customer wish to increase the amount of bandwidth, an increase in monthly rental will apply. This will not effect the contract duration of this agreement. No reduction in rental will apply if a downgrade of bandwidth is requested.

7.07 In the event of Customers requiring additional servers, a new Agreement will be drawn; this Agreement will cancel and fully replace any previous contract. However, no reduction in bandwidth will be considered whatsoever and no reduction in term length will be offered.

7.08 In the event of an operating system error, the Company will endeavour to respond to the Customer within the period of their Service Level Agreement

7.09 If a tape changing contract is requested as part of the Agreement, backup tapes will be provided to the Company in order for the Company to initiate the backup procedures requested by the Customer. This will be activated remotely by the Customer and is not the responsibility of the Company.

7.10 The Company will store backup tapes in a safe and secure environment; however tapes will not be retained for longer than 40 days. Should the Customer not request for their tape(s) to be forwarded, it will be overwritten with new data. New tapes will be supplied from time to time and charged for accordingly.

7.11 The Company do not undertake any responsibility for the data held within the server(s) or backup tapes.

7.12 If the Company resources are being used in conjunction with this service, the client undertakes this responsibility to ensure against unauthorised security breaches of our network or systems.

8.0 RETENTION OF TITLE AND RISK

8.1 If applicable, risk of damage to, or loss of, the Goods shall pass to the Customer, in the case of Goods delivered otherwise than at the Company's premises, at the time of delivery to the place or person agreed.

8.2 Notwithstanding the delivery of the Goods or the passing of risk to the Customer, title to the Goods shall pass to the Customer only when all sums due by the Customer in relation to the supply of the Goods under this Contract have been paid in full to the Company.

9.0 CONFIDENTIAL INFORMATION

9.01 For the purposes of these Terms and Conditions, the term "Confidential Information" shall mean any information or data, written or unwritten, and whether or not expressly stated or identified as being confidential relating to the Customer or Company which that person may have, or acquire, through this Contract;

9.02 Confidential Information shall not include or apply to information which:

9.02.1 is, or lawfully becomes, publicly available (otherwise than as a result of a breach of this Contract);

9.02.2 or is lawfully acquired from a third party, to the extent that it is acquired with the right to disclose it;

9.02.3 is lawfully in the possession of the relevant party free of any restriction on disclosure as can be demonstrated by the written records or other reasonable evidence of that party;

9.02.4 following disclosure under this Contract, becomes available to the relevant party from a source other than another person who is not bound by any obligation of confidentiality in relation to such information.

9.03 Each of the parties shall use their best endeavours to keep confidential any Confidential Information.

9.04 No party shall use for its own purposes or disclose to any third party any Confidential Information without the consent of the other party subject to clause 9.5.

9.05 The restrictions contained in this clause shall not apply to the disclosure of Confidential Information to the following persons:

9.05.1 the directors or employees of the Customer or Company who need to know that Confidential Information solely for purposes relating to this Contract;

9.05.2 to the extent it is required to be disclosed by law or any court of competent jurisdiction, any duly entitled governmental official or regulatory authority or, pursuant to any binding judgment, order or requirement, any other competent authority;

9.05.3 any Tax Authority to the extent reasonably required for the purposes of the Tax affairs of the parties;

9.05.4 the professional advisers of the parties required to be disclosed for purposes relating to this Contract.

9.06 Each party shall presume that all information received by, or coming into the possession of, that party is Confidential Information, whether or not expressly stated or identified as being Confidential Information, unless that party has good reason to believe the information is excepted pursuant to clause 9.2.

9.07 Each party shall inform any officer, employee or agent or any professional or other adviser advising that party in relation to matters relating to this Agreement, or to whom that party provides Confidential Information, that such information is confidential and shall instruct them:

9.07.1 to keep it confidential;

9.07.2 and not to disclose it to any third party (other than those persons to whom it has already been or may be disclosed in accordance with the terms of this clause).

9.08 Each party shall remain responsible for any breach of this clause by the person to whom any Confidential Information is disclosed.

9.09 Without prejudice to any other rights or remedies which a party may have, each of the parties acknowledge and agree that damages would not be an adequate remedy for any breach of this clause and the remedies of injunction, specific performance and other equitable relief are appropriate for any threatened or actual breach of any such provision and no proof of special damages shall be necessary for the enforcement of the rights under this clause.

9.10 The provisions of this clause shall survive the termination of this Agreement and shall continue without limit of time.

10.0 WARRANTIES AND LIABILITY

10.01 The Company warrants that the Goods will correspond with their specifications at the time of order subject as follows:

10.01.1 the Company shall be under no liability in respect of any defect arising from wilful damage, negligence of the Customer, abnormal conditions or failure to follow the Company's instructions;

10.01.2 the Company does not warrant that the Goods will be delivered without fault or interruption;

10.01.3 the Company does not provide any warranties in respect of Goods that are provided by a third party to the Customer although it will endeavour to act in the best interests of the Customer when resolving any problems created by a third party supplier.

10.01.4 the Company shall be under no liability under the warranty if the total price for the Goods has not been paid by the due date of payment;

10.02 The Customer warrants that when using Goods supplied by the Company, it shall comply with the Company's acceptable usage policy which can be found at http://www.poboxhosting.co.uk/slas/terms_conditions.htm, any relevant legislative and regulatory provisions, and shall not use the Goods for any illegal purpose and shall indemnify the Company in respect of any liability incurred as a result of a breach of this clause 9.2.

10.03 The Customer shall indemnify and hold harmless the Company against any loss, damages, costs and expenses arising from or in connection with any claims or proceedings brought by third parties against the Company in respect of or arising directly or indirectly from resale of Goods by the Customer.

10.04 No advertisement, brochure, circular, or other promotional data shall constitute a warranty or representation in relation to any Goods, and the Customer shall only be entitled to rely on specifications or warranties referred to, or detailed in, the Contract or an invoice for the Goods. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

10.05 Any claim by the Customer which is based on any alleged defect in quality, shortage or failure of the Goods delivered shall be notified to the Company upon delivery by way of written notice as specified in Clause 11 of these Conditions. If the Customer does not notify the Company of any defect in quality, shortage or failure in accordance with Clause 11, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect, shortage or failure. In addition, the Customer shall be bound to pay the full price as if the Goods had been delivered in accordance with the Contract.

10.06 Where any claim in respect of any of the Goods which is based on any defect in quality, shortage or failure of the Goods delivered or their failure to meet specification is notified to the Company in accordance with these Conditions and is accepted by the Company, it shall be entitled to:

10.06.1 replace the Goods at no additional cost to the Customer;

10.06.2 or collect the Goods (if applicable) from the Customer's premises;

10.06.3 but the Company shall have no other liability to the Customer and the Customer may not dispose of the defective Goods without the Company's prior consent.

10.07 Neither the Company nor its network service suppliers shall be liable to the Customer for any consequential loss or damage whether for loss of profit or otherwise, costs, expenses or other claims for consequential compensation whatsoever, whether caused by the negligence of the Company, its employees or agents or other, which arises out of, or in connection with, the supply of the Goods or their use or resale by the Customer, except as expressly provided in these Conditions.

10.08 Neither the Company nor its network service suppliers shall be liable for unauthorised access to or alteration, theft or destruction of end users data files, programs, procedures or information through accident, fraudulent means or devices, or any other method, regardless of whether such damage occurs as a result of the Company's negligence or that of its network service suppliers.

10.09 The Company shall not be liable to the Customer or be deemed to be in breach of these Conditions by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control, including any of the following:

10.09.1 Act of God, explosion, flood, tempest, fire or accident, terrorist act, war or threat of war, sabotage, insurrection, civil disturbance or requisition;

10.09.2 acts, import or export regulations or embargoes, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any local, national, or supranational, government body or authority;

10.09.3 strikes, lockouts or other industrial actions or trade disputes whether involving employees of the Company or of any third party;

10.09.4 difficulties in obtaining raw materials, labour, fuel, parts or machinery or power failure or breakdown of machinery.

10.10 All warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by the law except where the Goods are sold to a person dealing as a consumer within the meaning of the Unfair Contract Terms Act 1977.

11.0 CUSTOMER DEFAULTS

11.1 The Company shall be entitled immediately on becoming aware of any event of default to rescind the Contract without notice, suspend any further deliveries under the Contract, require payment in advance of any delivery or recover the Goods delivered (if applicable).

11.2 Each of the following shall constitute an event of default:

11.2.1 the Customer ceases or threatens to cease, to carry on business;

11.2.2 the Customer makes any voluntary arrangement with its creditors, becomes bankrupt or subject to an administration order, or goes into liquidation, or has a receiver appointed over any of its property or assets;

11.2.3 the Company reasonably considers that any of the above events may occur in relation to the Customer;

11.2.4 the Customer fails to pay for the Goods supplied by the due date as stated on the invoice.

12.0 TERMINATION

12.1 A party shall be entitled, at any time, by notice in writing to the other party, to terminate this Contract immediately by notice of thirty (30) days in writing upon any of the following events:

12.1.1 **Expiry of Contractual Term:** Upon expiry of the Contractual Term either party may terminate this Contract within 30 Business Days of giving notice in the form specified in clause 13 from the party requiring termination of the Contract;

12.1.2 **Breach:** the other party commits a material breach of any of the terms of this Contract which is irremediable or which, if capable of remedy, has not been remedied within ten (10) Business Days of a written notice from a party requiring the remedy of the breach;

12.1.3 **Insolvency:** the other party, becomes insolvent or enters into liquidation whether voluntarily or compulsorily or has a liquidator or a receiver or an administrator appointed over all or any of the assets or undertaking of the other party, or any petition or other process is commenced for the appointment of such a person or that party ceases or threatens to cease to carry on business;

12.2 For the purposes of this clause, and without prejudice to any other type of breach of this Agreement, any breach of the duties of either party in terms of clause shall be deemed to constitute a material breach of this Contract incapable of remedy entitling the innocent party to terminate the Contract immediately whether or not, such breach is, in fact, capable of remedy.

12.3 Any right of a party to terminate this Contract pursuant to this clause shall be without prejudice to any other right or remedy of that party in respect of the relevant breach or any other breach.

13.0 NOTICES

13.1 Any notice required or permitted to be given under this Contract shall be sufficiently given to either party if sent in a legible form by first class or express registered post ("post"), electronic mail ("email"), facsimile transmission ("fax") or by personal delivery, including courier delivery, to the postal address of the addressee within the United Kingdom last notified in writing to the sender.

13.2 Any notice served shall be deemed to have been received in the case of:

13.2.1 delivery, two hours after the time of delivery to the address of the addressee, evidenced, where appropriate, by the courier's receipt duly countersigned for or on behalf of the addressee;

13.2.2 fax, three hours after the time of despatch, evidenced by the relevant duly completed transmission report;

13.2.3 post, within the United Kingdom, 36 hours from midnight (24.00 hrs) on the date of posting, evidenced by the relevant proof of posting;

13.2.4 post, within the European Union (excluding the United Kingdom), 60 hours from midnight (24.00 hrs) on the date of posting, evidenced by the relevant proof of posting;

13.2.5 post, outside the European Union, 108 hours from midnight (24.00 hrs) on the date of posting, evidenced by the relevant proof of posting;

14.0 NO WAIVER

14.1 No delay, omission or failure by either of the parties to exercise any right or remedy shall operate as a waiver. Any partial exercise of a right or remedy shall not preclude any other or further exercise of any such right of action.

15.0 SEVERABILITY

15.1 If any of the Clauses, Sub-Clauses or other provisions of this Contract are found by an arbiter, court or other competent authority to be void or unenforceable, such provision shall be deemed to be deleted from the Contract but the remaining provisions of the Contract shall continue in full force and effect insofar as they are not affected by any such deletion.

16.0 GOVERNING LAW

16.1 The construction, validity and performance of this Agreement shall be governed by the Law of England and the parties submit to the exclusive jurisdiction of the English Courts.