



Touch Terms and Conditions

1. Introduction, Incorporation and Interpretation

- 1.1. Touch maintains and hosts each Touch Portal and permits local businesses and community groups to join the database of businesses listed on a Touch Portal and to promote their own products and services.
- 1.2. These terms are incorporated into each agreement entered into between the Customer and Touch relating to the supply of Products (each a "Contract") whether or not the Customer Order Form or any other document which the Customer signs makes reference to these terms.
- 1.3. In this Contract, the following expressions have the following respective meanings (unless the context otherwise requires);

"**Customer**" means the person identified as such on the Customer Order Form;

"**Customer Content**" means the Customer's content created or supplied by the Customer for publication on the Touch Portal;

"**Customer Links**" means any hyperlinks placed by the Customer in the Customer Content or otherwise on the Touch Portal;

"**Customer Webpro Site**" means the web site developed and hosted by Touch;

"**Fees**" means the set up fees and service provision fees for the Products as set out on the Customer Order Form;

"**Customer Order Form**" means the customer order form which forms part of this Contract;

"**Product**" means the product (as described in the Product Listing) actually specified on the Customer Order Form to be supplied by Touch;

"**Product Listing**" means the description of Touch's products and services as at the date of this Contract to which these terms apply;

"**Touch**" means Touch (GoE) Plc;

"**Touch Portal**" means one of the interactive local community portals operated by Touch;

"**Webpro Content Collection Sheet**" means the specification of the Customer Webpro Site attached to the Customer Order Form;

"**Webpro Product**" means any product identified in the Product Listing as a "Webpro" product.

- 1.4. References in this Contract to a clause is a reference to a clause of this Contract.

2. Services

- 2.1. Touch shall permit the Customer to post the Customer Content on the Touch Portal in accordance with the Product purchased for the relevant term and subject to the continued payment of Fees.
- 2.2. Touch shall be responsible for the hosting, operation and maintenance of the Touch Portal and although it shall use its reasonable endeavours to keep the Touch Portal available on the internet, Touch gives no guarantee as to continuing service availability.
- 2.3. The Customer accepts that Touch cannot ensure that the Touch Portal in all respects is visible in all browsers and versions of these browsers. Touch shall use its reasonable endeavours to ensure that web sites or listings generally within the Touch Portal are visible in the most commonly used version of Internet Explorer.
- 2.4. Touch reserves the right at anytime without notice to remove any Customer Content or Customer Links from the Touch Portal if it reasonably believes the Customer Content (or any web site linked to through a Customer Link) would put the Customer in breach of this Contract or otherwise would be detrimental to the interests of Touch, the Touch Portal or the goodwill of Touch or the Touch Portal. Any such action by Touch shall be without prejudice to Touch's other rights and remedies.
- 2.5. Information concerning the Customer contained on the Touch Portal (including without limitation that on the Customer Webpro Site) will be derived from information provided by the Customer and it is therefore the Customer's responsibility to ensure that the information is accurate by checking the Touch Portal or the Customer Webpro Site. Touch shall incur no liability for any errors in that information except those which could not reasonably be checked by the Customer and introduced by Touch.

3. Webpro Services

- 3.1. This clause 3 applies where the Customer has specified a Webpro Product as the Product.
- 3.2. Touch shall develop the Customer Webpro Site in accordance with the Webpro Content Collection Sheet. The Customer shall provide the Customer Content to Touch within 2 weeks from the date on the Customer Order Form (unless otherwise agreed in writing) and in such format as Touch reasonably requires. If Touch receives the Customer Content after the 2 weeks allowed then Touch reserves the

right to make an additional charge for the time spent in publishing the Customer Content in accordance with the current rates of our service plan. If after 2 weeks of placing the order Touch has not received any content then Touch will complete the Customer Webpro Site using basic business details and the balance of any Fee will become due and payable. Touch reserves the right to make reasonable changes from time to time to the structure and look of the Customer Webpro Site in particular but without limitation when it makes changes to the underlying templates.

- 3.3. Touch may agree to make submissions of the Customer Webpro Site to search engines and if it does so the Customer agrees that Touch has no control over these search engines and as such cannot guarantee that the submission will be accepted or at what position the item will appear.
- 3.4. Unless otherwise agreed in writing any property or material supplied by or on behalf of the Customer in order for Touch to create the Customer Webpro Site will not be returned to the Customer.
- 3.5. On termination of this Contract (except for termination by Touch under clause 6.3) and provided that the Customer has paid all Fees due to Touch whether under this Contract or otherwise Touch shall transfer to the Customer in electronic format the Customer Content contained on the Customer Webpro Site.
- 3.6. The Customer shall be responsible for all transactions effected on the Customer Webpro Site irrespective of the fact that those transactions are executed by means of Touch software or services available on or through the Touch Portal and in particular but without limitation the Customer is responsible for accepting orders from its own customers ("Users"), clearing credit card details, collecting payment and fulfilling orders. Other than hosting the Customer Webpro Site, Touch shall take no part in and have no responsibility or liability for such transactions and accordingly the Customer represents and warrants that it shall:
 - (a) agree its own contract terms with Users and perform those contracts in accordance with their terms and with all legal requirements;
 - (b) comply with the Data Protection Act 1998 including without limitation the data protection principles set out in that Act;
 - (c) indemnify and hold Touch harmless from and against any and all claims, damages and costs arising out of any claim brought by any third party (including without limitation those arising out of a breach or alleged breach by the Customer of the contract with a User).

4. Domain Names

- 4.1. Touch shall (if required by the Customer) use its reasonable endeavours to register in Touch's own name the domain name specified in the Webpro Content Collection Sheet or such other domain name which the Customer may wish Touch to register during this Contract. The customer represents and warrants that each such domain name is one in which all intellectual property rights are owned exclusively by the Customer. Touch shall use reasonable endeavours to maintain for the duration of this Contract that domain name at the appropriate domain name registry but shall not be obliged to do so in the event that a third party commences or threatens to commence proceedings to recover that name. The Customer shall indemnify Touch against any claims brought by any third party in relation to that domain name. Touch shall not be responsible for its inability to register or maintain the domain name.
- 4.2. On termination of this Contract (except for termination by Touch under clause 6.3) and provided that the Customer has paid all Fees due to Touch whether under this Contract or otherwise, Touch shall assign to the Customer any domain name registered for the Customer under this Contract, subject to the fees and costs for doing so being paid in advance by the Customer.

5. Payment of the Fees

- 5.1. Where the Fees set out on the Customer Order Form include those expressed to be initial set up fees, the Customer shall pay that element of the Fees on entering into this Contract. Where the Fees set out on the Customer Order Form include those expressed to be monthly set up or service provision fees, the Customer shall pay those elements of the Fees monthly in advance by direct debit unless otherwise specifically agreed by Touch.
- 5.2. All payments made shall include value added tax at the prevailing rate.
- 5.3. Touch reserves the right to increase its service provision fees at any time after the first anniversary of the date on the Customer Order Form subject to 21 days written notice to the Customer of such increase.
- 5.4. The Customer shall pay all amounts due to Touch in full without any deduction or withholding, and shall not assert any credit or set-off or counterclaim against Touch in order to justify the withholding of the whole or part of any such amount. If any Fees become overdue for payment Touch may claim interest (both before and after judgement) at a daily rate of 4% above Barclays Bank base rate until all outstanding Fees are received.

6. Term, Renewals and Termination

- 6.1. On receipt of notice from the customer to cancel the contract Touch reserves the right to remove any details relating to the Customer from the Touch Portal, but it is not obligated to do so and Touch may charge a reasonable removal fee to be paid in advance if it is requested that the details be removed.
- 6.2. Touch reserves the right to cease operating the whole or any part of the Touch Portal (including without limitation the Customer Webpro Site) at any time and following 30 days written notice from Touch this Contract shall automatically terminate.
- 6.3. Either Touch or the Customer may terminate this Contract with immediate effect by giving notice to the other party if that other party;

- (a) is in breach of any of its obligations under this Contract and, other than when the breach is a failure to pay Fees and where it is capable of remedy, the breach has continued unremedied for a period of seven days after the other party has given notice to the defaulting party specifying the breach and the steps required to remedy it; or
- (b) has a receiver or an administrative receiver appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect, or if that other party becomes subject to an administrative order or enters into any voluntary agreement with its creditors or shall cease or threaten to cease to carry on business.
- 6.4. The termination of this Contract (for any reason) shall; (i) be without prejudice to any other rights or remedies which Touch may be entitled to under this Contract or at law; (ii) not affect any accrued rights or liabilities which Touch may then have; and (iii) not affect the coming into or continuance in force of any provision of this Contract which is expressly or by implication intended to come into or continue in force after such termination.

7. Customer Content

- 7.1. Touch shall provide the Customer with a user name and password to access the Touch Portal and to publish Customer Content. The Customer shall keep the user name and password under strictest confidence and only use them for the purpose of entering the Customer Content in the manner permitted by the Touch Portal. The Customer takes responsibility for any person (whether or not authorised by the Customer) who uses the user name and password to access the Touch Portal.
- 7.2. The Customer represents, warrants and undertakes that the Customer Content is:
- (a) legal, proper, decent, honest and accurate and it complies with all relevant codes including, without limitation, the British Code of Advertising Practice and all other codes under the general supervision of the Advertising Standards Authority;
- (b) not an advertisement under the Financial Services Act 1986.
- 7.3. The Customer represents, warrants and undertakes that the Customer Content, and any web site linked to by the Customer Links ("Linked Content"):
- (a) will not contain obscene or indecent or other unlawful material;
- (b) will not contain materials which infringe the copyright, database rights, trademark rights, patent rights, moral rights or any other intellectual property rights of any third party;
- (c) will comply with all applicable law;
- (d) will not contain any defamatory or untrue material or material which abuses, harasses, threatens or is otherwise offensive to any other person;
- (e) will not contain any virus;
- (f) will not contain any other material which is likely to harm the reputation of Touch or the Touch Portal.
- 7.4. If in Touch's reasonable opinion any Customer Content or Linked Content puts (or is likely to put) the Customer in breach of clauses 7.2 or 7.3, then Touch may (without prejudice to its other rights and remedies) remove that Customer Content or the relevant Customer Link.
- 7.5. The Customer shall indemnify and keep fully indemnified Touch and all of its officers, employees and agents from and against all actions, proceedings, claims, demands, costs (including without prejudice to the generality of this provision the legal costs of Touch) awards and damages arising directly or indirectly as a result of any claim which, taking the claimants allegations to be true, would result in a breach by the Customer of clauses 7.2 or 7.3. This indemnity is given to Touch for itself and for its employees and agents and as agent for such employees and agent.
- 7.6. Any Customer Content which contains content of an unlawful or otherwise unacceptable nature (including but not limited to pornography or depicting violence) will be reported to the appropriate authorities.

8. Limitation of Liability

- 8.1. Except as expressly provided in this Contract, Touch gives no warranty in relation to the provision of services under this Contract and all warranties, express or implied, are excluded.
- 8.2. Subject to clause 8.4, Touch's entire liability to the Customer incurred arising out of or, in connection with this Contract including without limit for breach of contract, misrepresentation (except that fraudulently made) and tort (including negligence) is limited to the amount of the Fees paid by the Customer under this Contract in the preceding 12 months.
- 8.3. Subject to clause 8.4, Touch excludes all liability for any loss of profit or goodwill and any special, indirect or consequential loss.
- 8.4. Touch does not limit or exclude liability for death or personal injury caused by negligence.

9. Copyright and Intellectual Property

- 9.1. The entire copyright and any other intellectual property rights in the Customer Content throughout the world shall be and shall remain the exclusive property of the Customer.
- 9.2. The Customer grants Touch a perpetual licence to publish the Customer Content on the Touch Portal.
- 9.3. Subject to clause 9.1, the entire copyright, database right and any other intellectual property rights in the Touch Portal (including any materials created by Touch for the Customer) throughout the world shall be and shall remain the exclusive property of Touch or its licensors. The Customer obtains no rights in the Touch Portal.

10. Use of Data

- 10.1. The Customer hereby agrees and acknowledges that Touch (or representatives or agents of Touch) will collect personal data supplied by the Customer, including contact details such as names, addresses, telephone numbers and e-mail addresses, and that Touch may use and retain any personal data supplied by and relating to the Customer for the purposes set out in this Contract. The Customer agrees that Touch may use any Customer address or e-mail address for the purpose of contacting the Customer about Touch's products and services.

11. General

- 11.1. Touch shall not be liable for any loss, damage or delay howsoever arising caused by events which are not reasonably foreseeable or caused by circumstances outside its reasonable control including without limitation the failure of third parties to provide necessary or desirable services, failure of infrastructure or power suppliers, denial of service or similar attacks or other reasons causing service outages which result in the prevention or delay of its performance under this Contract. Touch shall be excused from such performance to extent of such prevention or delay.
- 11.2. All notices to be given under this Contract shall be in writing and shall be sent by first class post to the address on the Customer Order Form. Any notice given under this Contract, which is sent by post in accordance with this clause 11, shall be deemed to have been received two days after posting.
- 11.3. This Contract constitutes the entire agreement between the Customer and Touch in relation to the Products. No addition to or modification of this Contract shall be effective unless it is in writing and signed by a duly authorised representative of both the Customer and Touch.
- 11.4. Nothing in this Contract shall create, or be deemed to create, a partnership or joint venture between the Customer and Touch or the relationship of principal and agent between the Customer and Touch.
- 11.5. No delay or failure on the part of either party to exercise or to enforce any right given to it by this Contract or at law, or any custom or practice of the Customer and/or Touch at variance with the terms of this Contract shall constitute a waiver of either the Customer's or Touch's respective rights under this Contract or operate so as to prevent the exercise or enforcement of any such right at any time.
- 11.6. If any provision of this Contract is held to be invalid or unenforceable, in whole or in part, that provision or part shall to that extent be deemed not to form part of this Contract. However, the validity and enforceability of the remainder of this Contract shall not be affected.
- 11.7. The Customer may not assign the whole or any part of its rights or obligations under this Contract without the prior written consent of Touch. Touch may assign or sub-contract the whole or any part of its rights or obligations under this Contract without restrictions.
- 11.8. No person has any rights under this Contract save as may be set out in it and the parties agree that the Contracts (Right of Third Parties) Act 1999 is excluded.
- 11.9. This Contract shall be governed by and construed in accordance with English law and the Customer and Touch submit to the non-exclusive jurisdiction of the English courts.

The Direct Debit Guarantee

- This Guarantee is offered by all Banks and Building Societies that take part in the Direct Debit Scheme. The efficiency and security of the scheme is monitored and protected by your own Bank or Building Society.
- If the amounts to be paid or the payment dates change, Touch will notify you at least 14 days in advance of your account being debited or as otherwise agreed.
- If an error is made by Touch or your Bank or Building Society, you are guaranteed a full and immediate refund from your branch of the amount paid.
- You can cancel a Direct Debit at any time by writing to your Bank or Building Society. Please also send a copy of your letter to Touch.