

DOMAIN NAME TERMS

1 Application of the General Conditions

- 1.1 This Domain Name Terms shall be read together with the General Conditions and unless the context otherwise requires, such defined terms used in this Domain Name Terms shall have the same meaning as those in the General Conditions and vice versa.
- 1.2 In the event if any inconsistencies between the General Conditions and this Domain Name Terms, the provisions in this Domain Name Terms will prevail.
- 1.3 These terms and conditions apply equally to Continental's trading name of Webnetism

2 Definitions:

- 2.1 In this Domain Name Terms:
 - 2.1.1 **'Domain Name'** means the domain name specified in the Initial Brief and/or Brief (as the case may be).
 - 2.1.2 **'Domain Name Fees'** means the fees and/or charges payable by the Client to Continental for the domain name acquisition and registration services and/or the domain name renewal services offered by Continental to the Client as set out in the Brief.
 - 2.1.3 **'Intellectual Property'** means copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs and any other relevant intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
 - 2.1.4 **'Registry Administrator'** means the relevant organisation which deals with registering of domain names e.g. Nominet for .UK domain names; Network Solutions Inc for .com; .mobi; .org and .net domain names; and EURID for .EU domain names.
 - 2.1.5 **'Seller'** means the seller of the Domain Name which the Client wishes to acquire.

3 Appointment of Continental as agent to act for Client

The Client hereby appoints Continental as its agent to:

- 3.1.1 acquire the Domain Name from the Seller;
- 3.1.2 to deal with the relevant registrars of the Domain Name and the Registry Administrators in order to register the Domain Name on behalf of the Client either under the name of Continental or the Client (as agreed in the Brief) with the relevant Registry Administrator; and/or
- 3.1.3 renewal of the Domain Name registration.

By instructing Continental to carry out the services set out in Clause 3.1 of this Domain Name Terms, the Client shall be deemed to have read and agreed to any terms and conditions by the relevant Registrar Administrator and/or registrars which would apply to the services set out in Clause 3.1 of this Domain Name Terms.

4 Acquisition and Registration of Domain Name

Continental and the Client will discuss the various options of domain names which are available to the Client. Usually, such options will be set out in the Initial Brief. The Client will then provide Continental with a few of its choices and prioritising such choices in a manner which Continental may request and this information will be recorded and agreed in the Brief.

The Client will also provide all such information and assistance, and execute such documents as may be reasonably requested by Continental as soon as it is reasonably practicable. For the avoidance of doubt, the Client is solely responsible for the information which it provides to Continental.

Continental will upon receipt of the information required of the Client, submit the information to the appropriate registrar and/or Registry Administrator for approval and processing.

Continental will undertake the acquisition and registration of the Domain Name using reasonable skill and care.

Notwithstanding Clauses 4.3 and 4.4 of this Domain Name Terms, the Client acknowledges that such registration of the Domain Name is subject to the rules stipulated by the Registry Administrators and registrars of domain names. Continental makes no representation that the Domain Name the Client wishes to register is capable of being registered by or for the Client, or that it will be registered in the Client's name. The Client should therefore not assume registration of a requested Domain Name until the Client has been notified that it has been duly registered.

The Client shall have no right to bring any claim against Continental where the Registry Administrators and/or the relevant domain name registrar refuse to register the Domain Name. Unless refunded by the Registry Administrators or domain name registrar (as the case may be), any fees paid to the Registry Administrators or domain name registrar (as the case may be) by Client whether through Continental or otherwise are not refundable notwithstanding refusal by the relevant Registry Administrators and/or domain name registrars to register the Domain Name.

5 Renewal of Domain Names

The Client may request Continental to renew the Domain Name on behalf of the Client and Continental will undertake such renewal of the Domain Name for the Client using reasonable care and skill.

Notwithstanding any other provisions in the Conditions and/or reminders which Continental may subsequently send to the Client, the Client is solely responsible to notify Continental in writing and to ensure that Continental receives such notice with regard to the date of renewal of the Domain Name 14 days before such renewal date and Continental will not in any event be liable for any losses and/or damages suffered by the Client if the Domain Name was not renewed on time due to the failure of the Client to remind Continental of the date of renewal.

6 Search Engine Registration

Where requested by the Client, Continental will register the Domain Name with search engines. Details of such registration of the Domain Name will be set out in the Initial Brief and/or Brief (as the case may be).

All search engine registrations will be carried out by Continental using reasonable skill and care. Notwithstanding the foregoing, the Client acknowledges that Continental has no control over search engine registrations as these are subject to many factors including the terms and conditions and rules put in place by the applicable search engines, the resources and investment by the Client's competitors in respect of their website and the meta-tags used by the Client's competitors. As such, Continental does not make any warranties and/or representation as to how and/or where such search engines would rank the Client's Domain Name, nor how long an individual search engine directory may take to catalogue the information presented.

7 Domain Name Fees

In consideration of the Domain Name acquisition, registration, renewal services and/or Domain Name registration with search engines performed (as the case may be) by Continental for the Client, the Client shall pay to Continental the Domain Name Fee.

Continental shall be entitled to invoice the Client for the Domain Name Fee upon the Brief being agreed.

Invoices submitted by Continental should be paid before the registration of the domain name(s). Title to the domain name(s) remain with Continental until cleared funds are received by Continental.

In addition, the Client is also responsible to pay any disbursements and/or Registry Administrators' or domain name registrar's charges and fees.

8 Warranties and Indemnities

The Client warrants and represents that it has the full power and authority to enter into the relevant Contract for the services specified in Clause 3.1 of this Domain Name Terms and such other documents required to effect the Domain Name acquisition, registration (with the Registry Administrator, domain name registrars and/or search engines) and/or renewals (as the case may be).

The Client warrants and represents that it is able to pay the Domain Name Fee in accordance with the terms of this Agreement.

The Client warrants and represents to the best of its knowledge that neither the acquisition, registration (with the Registry Administrator and/or search engines) and/or renewal of the Domain Name (as the case may be) nor the manner in which it is directly or indirectly to be used infringes the Intellectual Property rights or any other legal rights of any third party and that the Domain Name is not being registered for nor shall it at any time whatsoever be used for any unlawful purpose. In this regard, the Client shall indemnify and hold harmless Continental against any claims, proceedings, losses, liabilities, damages (including reasonable costs), charges and expenses of whatever nature arising out of or in connection with any claim or action made against Continental relating to a breach of this Clause 8.3 provided that Continental will not make any admissions without the Client's prior written consent and not take any step (or omit to take any step) which would prejudice the Client's defence of the claim, and shall allow the Client to conduct and/or settle all negotiations and litigation resulting from such claim. Continental shall, at the request of the Client, afford all reasonable assistance with such negotiations or litigation and shall be reimbursed by Client for any reasonable out of pocket expenses incurred in so doing. Notwithstanding the

foregoing, Continental shall have the right to suspend access of the Domain Name on the internet where Continental is the webmaster in respect of the Domain Name.

The Client shall indemnify and hold harmless Continental against all damages, losses and expenses arising as a result of any action or claim arising out of or in connection with the relevant Contract with regard to the services set out in Clauses 3.1, 5 and 6 of this Domain Name Terms insofar as such action or claims is not caused by any negligence of breach of this Domain Names Terms and/or the General Conditions by Continental.

9 Limitation of Liability

Nothing in this Domain Name Terms and/or the relevant Contract in any way excludes or restricts Continental's liability for death and personal injury caused by negligence or fraud.

Continental shall not be liable to the Client for any loss and/or damages arising from the relevant Contract and/or the services provided by Continental under Clauses 3.1, 5 and 6 of this Domain Name Terms.

Subject to Clause 9.2, Continental shall not be liable for any indirect or consequential losses to the Client including damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity which relate to the relevant Contract, or the services provided by Continental under Clauses 3.1, 5 and 6 of this Domain Name Terms.

Subject to Clauses 8.1, 8.2 and 8.3 of this Domain Name Terms, Continental's aggregate liability in respect of claims based on the relevant Contract and/or the services specified in Clauses 3.1, 5 and 6 of this Domain Name Terms (as the case may be) whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed 100% of the Domain Name Fees paid by the Client in respect of the relevant Contract.

10 TERMINATION

Without prejudice to any other rights or remedies which the Parties may have, either party may terminate the relevant Contract without liability to the other if:

- 10.1.1 the other Party fails to pay any amount due under such Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
- 10.1.2 the other Party commits a material breach of any of the terms of the relevant Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- 10.1.3 is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of the relevant party under the relevant Contract) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed of its assets or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the party giving notice means that the other may be unable to pay its debts.

10.2 10.2 On termination of a Contract for any reason:

- 10.2.1 the Client shall immediately pay to Continental all of Continental's outstanding unpaid invoices and interest and, in respect of any services supplied but for which no invoice has been submitted, Continental may submit an invoice, which shall be payable immediately on receipt; and
 - 10.2.2 (where applicable) subject to paying such fees as on Continental's then applicable hourly rates, Continental will assist the Client to transfer the Domain Name to such other registrar and/or entities as the Client may instruct.
- 10.3 10.3 The accrued rights and liabilities of the Parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.