



TERMS & CONDITIONS

Version 2.4 | UPDATED 16/09/2024

1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in this agreement.

1.2. Definitions

Webstraxt: Webstraxt Limited incorporated and registered in England and Wales with company number 09973985 whose registered office is Office 11 Navigation Business Centre, 48 Mill Gate, Newark, Nottinghamshire, United Kingdom, NG24 4TS and whose office location is Suite 4, The Lawn, Union Road, Lincoln, LN1 3BU.

Customer: The entity identified on Sales Invoice and/or supporting proposal.

Agreement: the acceptance or deemed acceptance of the Agreement.

Business Day(s): a day other than a Saturday or Sunday or public holiday in England when banks in London are open for business.

Fees: The Fees in respect of the Services set out in the provided quotation, proposal or sales invoice.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.

Start Date – The date at which services commence as outlined on the sales invoice, proposal, quotation or service agreement.

Term – The period this agreement will be effective from the start date as outlined on the sales invoice, proposal, quotation or service agreement.

Quotation or Proposal – Means the Quotation or Proposal signed by the customer.

Materials: The content provided to Webstraxt by the customer from time to time for provision of services.

Service: The services provided and/or undertaken by Webstraxt on behalf of the company. Inclusive but not exclusive to development, design, hosting, integration and support services.

Site or Website: The customer's website

Business Hours: 9am GMT – 17:00 GMT on a business day only, excludes UK bank holidays.

Third Party Product: Any product owned or licensed by a third party company (Including but not limited to any plugins, modules or extensions).

Active Service Agreement or Service Agreement: A signed service agreement outlining agreed ongoing services to be provided by Webstraxt.

- 1.1 Clause headings do not affect the interpretation of this agreement.
- 1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.3 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 References to content include any kind of text, information, image, or audio or video material which can be incorporated in a website for access by a Visitor to that website.
- 1.6 Writing or written includes fax and email.

2. SERVICES

- 2.1 In consideration for the charges, Webstraxt shall provide the following services as described in the remainder of the General Terms or Business in respect to the customer.

2.2 The Services comprise of:

2.2.1 Development Services

Bug fixing, errors and issues affecting the operation of the Site in line with the original sales invoice, quotation or proposal for a maximum of 30 days following delivery of work to the customer.

Browser compatibility with the exception of the depreciated internet explorer browser.

Source code management through GitHub

2.2.2 Support Services

Website support services as outlined and agreed in the signed service agreement. Support services are limited to customers with an active service agreement or 30 days following development or project delivery.

Maintenance of a testing server (Staging Site)

Support is provided through Webstraxt standard SLA agreement outlined in Appendix A of the general Terms & Conditions. Inclusive of remote user support, questions and queries.

Support requests should be made via Email, Telephone or the Webstraxt support portal.

Platform and software updates and patches included on Service Agreements are undertaken on request by the customer.

2.2.3 Hosting Services

Webstraxt hosting services are provided by UK FAST LIMITED (03845616) & AMAZON WEB SERVICES EMEA SARL, UK BRANCH (BR019315)

Inclusive of daily backup during active hosting agreement term. This backup will be delivered to the customer in full as soon as reasonably practicable after termination of this agreement and may be subject to additional costs.

Server Operating System updates and patches are implemented on request by the customer and may result in Website downtime.

2.2.4 ERP Integration Services.

Integration to 3rd party ERP systems is provided through proprietary technology, software and modules and is subject to the customer having an active license agreement.

The provision of Integration services does not grant the customer ownership or rights to the software, technology or associated code as defined in clause 12.3

Termination of the license agreement or failure to meet the agreed payment schedule will result in a termination of services in relation to ERP integration.

3. SERVICE EXCLUSIONS

- 3.1 For the avoidance of doubt, the following matters are not included in the services
 - 3.1.1 Website re-design, re-alignment or redevelopment
 - 3.1.2 Paid Software Upgrades
 - 3.1.3 Search Engine Optimisation
 - 3.1.4 New Module Installations
 - 3.1.5 Website Content Generations
 - 3.1.6 New Development or design work without a separate signed quotation or proposal.

3.2 For the avoidance of doubt, the following matters are not included in the services without an active service agreement.

3.2.1 Maintenance of a development (Staging) server without an active Service Agreement.

3.2.2 Bug fixing, error resolution or issues identified after the final day of the 30-day support period following work delivery date

3.2.3 Ongoing system, application or security patches without an active support agreement.

3.2.3 Website and system upgrades

3.2.4 Any support or maintenance services provided outside of business hours

4. The parties agree that Webstraxt is being appointed as an exclusive supplier of the services.

5. LICENSES

5.1 For avoidance of doubt Webstraxt will provide the customer with the exclusive license and intellectual property rights in association to all design and development work undertaken with the exception of ERP integration work in accordance with clauses 2.2.4

5.1.2 Webstraxt will provide the company with a single non-transferable company license in respect of ERP integration in accordance to clause 2.2.4 and subject to an active service agreement.

5.1.3. The company license as outlined in the license agreement does not entitle the customer to maintain, keep, copy or resell the licensed software.

5.1.4 The company license does not in any means grant ownership to the licensed software and is strictly forbidden to resell or claim ownership of the software, it's associated technology or paid development work.

5.1.5 Webstraxt reserves the right to update and change license agreements and their associated pricing.

5.1.6 Payments made under a license agreement are non-refundable or transferable.

6. PAYMENT & FEES

6.1 Webstraxt Limited shall issue a VAT invoice in respect of the Charges, and the Customer shall pay to Webstraxt Limited the Charges set out in such Supplier's invoice within 15 days of the date of Webstraxt Limited's invoice.

6.2 All Charges are exclusive of VAT.

6.3 Webstraxt Limited reserve the right to increase its charges for its Services on thirty (30) days' written notice to the Customer.

6.4 All parties agree that any fees and/or expenses comprising the Charges payable pursuant to this Agreement shall be reviewed annually by Webstraxt Limited and may be increased by Webstraxt Limited with effect from 1 February in each year following the first anniversary of this Agreement. Webstraxt Limited shall notify the Customer of such increase at least 30 days prior to the effective date of increase.

6.5 If the Customer fails to make any payment due to Webstraxt Limited under this agreement by the due date for payment, then, without limiting Webstraxt Limited remedies, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank PLC base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

6.6 In the event of Termination the Customer shall not be entitled to any refund in respect of the monthly Commission fee or paid amounts.

7. RESPONSIBILITIES

7.1 The Customer acknowledges that Webstraxt's ability to provide the Services is dependent upon the full and timely co-operation of the Customer (which the Customer agrees to provide) and any information and data the Customer provides to Webstraxt. Accordingly, the Customer shall provide Webstraxt with access to, and use of, all information, data and documentation reasonably required by Webstraxt for the performance by Webstraxt of its obligations under this agreement.

7.2 In order that Webstraxt may carry out the Services the Customer:

7.2.1 hereby authorises Webstraxt to access their Site hosting account;

7.2.2 shall provide Webstraxt with any active user name and/or password combinations for access to the relevant server using FTP, SSH and Admin Access and ensure that the necessary write permissions are in place on Customer's Site hosting account;

7.2.3 shall co-operate with Webstraxt's personnel in diagnosis of any error or defect in the Site; and

7.2.4 shall make available to Webstraxt all reasonable information and facilities as requested.

7.3 In the event that the Customer fails to deliver any information and data in a full and timely manner, Webstraxt reserves the right to amend the timescales for delivery of the Services.

7.4 Any text provided by the Customer shall be in a Microsoft Word document. Photographs and graphics shall be in a .gif, .jpeg, .png or .tiff format. Webstraxt cannot guarantee that images in other media or printed material provided can be returned.

7.5 The Customer shall be responsible for the accuracy and completeness of the Materials on the Site (including content grammar and spelling) in accordance with clause 12.

8. DEVELOPMENT & ACCEPTANCE

8.1 In the event that the Customer wishes to make changes to the scope of work then the Customer shall email details of the changes to Webstraxt who shall provide the customer with a Quotation for the Charges for the additional work.

8.2 Once Webstraxt has completed the design and development of the Site Webstraxt shall notify the Customer that the Site is ready for User Accepted Testing (UAT).

8.3 The Customer shall complete the UAT without delay and in a timely manner.

8.4 Acceptance of the Site shall occur when the Customer notifies Webstraxt that the UAT has been completed.

8.5 Acceptance of the Site shall be deemed to have taken place upon the occurrence of any of the following events:

(a) the Customer uses any part of the Site for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or

(b) the Customer has not notified Webstraxt of completion of the UAT within 28 days of the Site becoming ready for UAT .

9. Third Party Products – Webstraxt purchase licenses for use by the customer. In the event that this agreement is terminated Webstraxt shall transfer the licenses to the customer with exception of clauses 2.2.4 and 5.1.4

10. Warranties

- 10.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform this agreement.
- 10.2 Webstraxt shall perform the Services with reasonable care and skill.
- 10.3 This agreement sets out the full extent of Webstraxt's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

11. Limitation of Liability

- 11.1 Nothing in this agreement shall operate to exclude or limit Webstraxt's liability for:
 - (a) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (b) fraud; or
 - (c) any other liability which cannot be excluded or limited under applicable law.
- 11.2 Webstraxt shall not be liable to the Customer for any damage to software, damage to or loss of data, loss of functionality, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- 11.3 Subject to clause 11.1, Webstraxt's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed £5,000 (five thousand pounds) in respect of any one claim or series of related claims.
- 11.4 Webstraxt shall not be liable to the Customer for any claim arising from any Third Party Product.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 All Intellectual Property Rights in the Work (including in the content of the Site and the Site Design), but excluding any Webstraxt licence agreements provided on licence by Webstraxt, arising in connection with this agreement shall become the property of the Customer.
- 12.2 Subject to and in consideration of the Customer's compliance with the terms of this agreement and payment of the Charges, Webstraxt shall assign and transfer all Intellectual Property rights in the Work to the Customer.
- 12.3 Intellectual rights relating to ERP Software integration development, software or technology remain the exclusive intellectual property of Webstraxt.
- 12.4 Webstraxt may include an acknowledgement and link to Webstraxt on the home page of the Site in a form to be agreed and the website developed may be presented in Webstraxt's portfolio.
- 12.5 The Customer shall indemnify Webstraxt against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe the Intellectual Property Rights of a third party.
- 12.6 Webstraxt shall indemnify the Customer against all damages, losses and expenses arising as a result of any action or claim that the Site infringes any Intellectual Property Rights of a third party in the UK, other than infringements referred to in clause 11.4.

12.7 The indemnities in clause 12.5 and clause 12.6 are subject to the following conditions:

- (a) the indemnified party promptly notifies the indemnifier in writing of the claim;
- (b) the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;
- (c) the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and
- (d) the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.

13. Data Protection

- 9.1 Webstraxt warrants that, to the extent it processes any Personal Data on behalf of the Customer:
 - a) it shall act only on instructions from the Customer; and
 - b) it has in place appropriate technical and organisational security measures
 - c) against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

In this clause, Personal Data has the meaning given in the Data Protection Act 2018.

- 9.2 Webstraxt may keep a copy of the customers database and data containing customer Personal Identifiable information in order to provide services agreed. This data will be stored securely within Webstraxt Premises and store inline with Webstraxt Data Protection Policy

14. TERM & TERMINATION

- 14.1 This agreement shall commence on the date on the Sales Invoice and continue until brought to an end by either party giving to the other not less than 1 months' notice.
- 14.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
 - a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
 - b) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - d) the other party commences negotiations with all or any class of any of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
 - f) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

- 14.3 On termination of this agreement by Webstraxt, all licenses granted by Webstraxt under this agreement shall terminate immediately.
- 14.4 On termination of this agreement, all services provided by Webstraxt will be terminated and 3rd Part ERP Integrations decommissioned and terminated. All customer, personal identifiable data will be removed immediately from the Webstraxt Platform.
- 14.5 If the date of termination is before the order end date detailed on an active service agreement, the customer will be liable for payment of all fees due up until the order end date.
- 14.6 If termination is requested prior to final delivery of work outlined in a sales quotation, proposal or invoice, the customer shall be liable to costs incurred and an early termination fee will apply.
- 14.7 Deposit payments are non refundable.

GENERAL PROVISIONS

15. FORCE MAJEURE

- 15.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, either party may terminate this agreement by giving 14 days' written notice to the affected party.

16. CONFIDENTIALITY

- 16.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
- 16.2 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.
- 16.3 The obligations set out in this clause 12 shall not apply to Confidential Information which the receiving party can demonstrate:
- a) is or has become publicly known other than through breach of this clause 12;
 - b) or
 - c) was in possession of the receiving party prior to disclosure by the other party;
 - d) or
 - e) was received by the receiving party from an independent third party who has full right of disclosure; or

was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

17. NOTICES

- 17.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:
- a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - b) sent by fax to its main fax number or sent by email to the address notified by each party as the email address of their principal contact.
 - c) if sent by fax or email, at 9.00 am on the next Business Day after transmission.

14. WAIVER

- 14.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15. ASSIGNMENT

- 15.1 Neither party may assign or transfer any of its rights or obligations under this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

16. ENTIRE AGREEMENT

- 16.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

17. THIRD PARTY RIGHTS

- 17.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

- 17.2 No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

18. DISPUTE RESOLUTION

- 18.1 If there is a dispute between the parties in relation to any matter under this Agreement, the parties' respective managing directors (or equivalent officers) shall meet to try to resolve any such dispute and if they fail to do so with a reasonable time the provisions of clause 21 (Jurisdiction) shall apply.

19. RIGHTS AND REMEDIES

- 19.1 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. SEVERANCE

- 20.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 20.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

22. GOVERNING LAW

- 22.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

23. JURISDICTION

- 23.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

APPENDIX A

Customer support requests should be logged by the customer through the mechanisms described in clause 2.2.2. Support requests are prioritised and acknowledged in accordance with the service levels set out below in Appendix A.

Maintenance requests received after 3.00pm GMT may not be completed until the next Business Day unless previously agreed in writing between the parties.

The parties shall act reasonably in resolving any disagreement regarding a priority level and shall if unable to agree otherwise, use the dispute resolution procedure set out in clause 18 of these General Terms and Conditions.

Priority 1 support requests will be responded to outside of standard business hours providing the customer has an active service agreement in place.

Website Service Level Agreement (SLA)

| SUPPORT TYPE | DESCRIPTION | RESPONSE TIME | RESOLUTION TIME |
|----------------------|---|----------------|-----------------|
| <div>P1</div> URGENT | <p>The Website is inoperable (or critical functions of the Website are inoperable, e.g. payment), i.e. anything that materially affects Customer processing transactions through the Website.</p> <p>Complete Integration Failure. i.e No Data is passing between Magento and your licensed ERP integration across all endpoints.</p> | 30 minutes | 4 hours. |
| <div>P2</div> HIGH | <p>Important areas of the Website are inoperable (i.e. not working but not adversely affecting normal business process).</p> | 1 Hour | 8 Hours |
| <div>P3</div> MEDIUM | <p>The request is not critical and the Website can operate for normal business (i.e. minor fault, minimum impact).</p> <p>Important parts of your licensed ERP integration are not working or are working Incorrectly.</p> | 4 Hours | 3 Business Days |
| <div>P4</div> LOW | <p>All others (i.e. cosmetic changes).</p> | 1 Business Day | 7 Business Days |