

Emporio UK

Terms and Conditions



1. Definitions

1.1. In this Agreement unless the context otherwise requires, the following words and phrases shall have the following meanings:

Agreement: means the body of this document and the schedules.

Bespoke Software: means the Bespoke Software developed by Emporio.

Equipment: means the hardware supplied to the Client by Emporio.

General Terms: The terms detailed in this Agreement.

Support Fees: The initial and monthly fees charged to the Client by Emporio as documented in the quotation.

Support: The Service to be supplied to the Client by Emporio.

Third Party Software: The Third Party Software to be supplied to the Client by Emporio.

1.2. In this Agreement unless the context otherwise requires:

1.2.1. references to the singular include reference to the plural and vice versa;

1.2.2. reference to any clause or schedule is to the appropriate clause of, or schedule to, this Agreement. In the event of any conflict of inconsistency between any provision of any clauses and a provision of any schedule the clause shall prevail to the extent of any inconsistency. In the event of any inconsistency between the schedules, the schedule most recently updated prior to the date of this Agreement shall prevail;

1.2.3. the headings are used for convenience only and shall not affect the construction or validity of this Agreement.

2. Term and Contract

2.1. The Agreement will commence on the first day of the installation, and shall continue for the 36 months unless and until terminated in accordance with Clause 12.

2.2. Any supply of Equipment or Support by Emporio shall be subject to these General Terms.

2.3. Each of the parties acknowledges and agrees that, in entering into this Agreement it does not rely upon any Representations other than as expressly set out in this Agreement. Accordingly no such Representations shall give rise to any claim for damages by either party hereto nor to any right of rescission unless such Representations were made fraudulently.

2.4. Emporio shall be entitled to use sub-contractors in relation to its supply of Equipment or Support. In such event Emporio shall remain responsible for its obligations to the Client under these General Terms.

3. Quotations and Prices

3.1. Quotations are not binding on us until we have accepted an order in writing and we reserve the right to revise quoted prices and charges in the event of any change in our costs and/or prevailing conditions between the date of quotation and the date of installation. The acceptance of our quotation or price must be accompanied by sufficient information to enable us to proceed with the order forthwith otherwise our quotation or price shall be subject to amendment by us to cover any increase in cost which takes place after acceptance.

4. Fees and Charges

4.1. In return for Emporio providing the Client with the Equipment, Bespoke Software, Third Party Software and Support detailed in this Agreement, the Client will pay Emporio on demand the fees and charges set out in the Support Fees together with any other amount due or payable under this Agreement.

4.2. Unless stated otherwise, all fees, charges and other payments to be made by the Client are exclusive of VAT (at the prevailing rate) and any other relevant taxes and in addition to paying all such fees, charges and other payments, the Client will pay any such taxes.

4.3. The Client agrees to pay Emporio for the following items:

4.3.1. the cost of the Equipment installed into the Client's premises.

4.3.2. the Expenses incurred by Emporio relating to the installation and training. This includes any flights, hire cars, hotels, tolls, congestion charges, car parking, overnight fees (£30 per person / per night), fuel (45p per mile) etc. All expenses will be charged on at cost plus VAT.

4.3.3. the agreed Support Fees made on a monthly basis.

4.3.4. charges for any exceptional support services that the Client has requested.

4.4. Emporio may vary the fees by giving the Client 30 days' notice in writing.

5. Payment

5.1. Payment Ledger Accounts are opened subject to satisfactory references and credit checks.

5.2. Unless specifically agreed in writing, payment terms are 15th of the month following invoice date.

5.3. If our terms of payment are not adhered to Emporio shall be entitled to cancel the contract and suspend the provision of any of the Equipment, Bespoke Software, Third Party Software or Support until payment in full is made. We shall nevertheless be entitled to claim against the Client for any loss in consequence of non-completion of contract.

5.4. If the Client is a Limited Company and the said Limited Company fails to make payment on demand then the company directors singularly become liable for any outstanding amount.

5.5. If the Client fails to make payment as specified in clause 5.2, then the company shall be entitled to charge interest on the amount unpaid at the rate of 2% per annum above the base rate of National Westminster Bank PLC from time to time until payment is received in full.

6. Retention of Title

6.1. Property, legal and beneficial in any goods supplied by the seller shall pass to the buyer only when the seller has received full payment for all sums then owed by the buyer to the seller.

6.2. Goods in respect of which property has remained with the seller shall be identifiable as those of the seller, and the buyer shall at its own expense immediately return such goods to the seller, or permit the seller to enter into the buyers premises to collect such goods should the seller so request.

6.3. Risk shall pass to the buyer with possession of the goods.

7. Equipment to be Supplied

7.1. The Client acknowledges that Emporio is not the manufacturer of the Equipment it supplies in this Agreement. Emporio has no obligations or liabilities to the Client or any person claiming through the Client in respect of the quality or condition of the Equipment or their use. However, Emporio will use reasonable endeavours to extend the benefit of any warranty given by the supplier of the Equipment to the Client in respect of the Equipment at the written request of the Client.

7.2. The Equipment installed at the Client's premises shall be at the sole risk of the Client who shall indemnify Emporio against loss or damage caused howsoever it occurred. The Client will take reasonable care of the Equipment and keep the same in a safe condition and good working order and will not alter, amend or interfere with the same. The Client will report any damage to the Equipment forthwith to Emporio.

7.3. The Client will indemnify Emporio against all claims and all losses, costs, expenses, damages and liabilities whatsoever incurred by Emporio (including cost of repairing or replacing or removing the Equipment) by reason of, or in any way attributable to, the Client's use of the Equipment.

8. Delivery, Installation and Training

- 8.1. Emporio shall deliver and install the Equipment and provide Support in the manner set out in our Service Level Agreement.
- 8.2. Emporio will use reasonable endeavours to ensure that the Client enter the relevant licences for the Third Party Software directly with the licensor of such Third Party Software and where required Emporio will register the Client's details with the relevant licensor.
- 8.3. The Client shall allow Emporio, its employees, sub-contractors and agents such access and facilities as Emporio may require at the relevant location at such times as may be reasonably requested by Emporio in order to allow Emporio to undertake the delivery and installation, commissioning and testing under this Agreement.
- 8.4. Emporio shall provide training to the Client in the use of the Third Party Software and Bespoke Software as requested from time to time.

9. Support to be Provided

- 9.1. In return for the Support provided by Emporio, the Client agrees to pay the monthly Support Fees by monthly Standing Order as set out in this Agreement. For the avoidance of doubt, the Support Fees shall be payable in accordance with the provisions of clause 4 and are in addition to any other fees and charges payable under this Agreement.
- 9.2. In consideration of the payment by the Client of the relevant Support Fees, Emporio grants the Client a perpetual licence to the Bespoke Software.
- 9.3. As part of the Support Emporio will provide a system to back up the Store Operations' and/or Headquarters' database. It is however; the Client's responsibility to ensure they have an effective data recovery model. Emporio will not be held responsibility for any data loss.
- 9.4. The Support does not include any data management including listing of items or updating of prices and this is solely the responsibility of the Client. Should the Client wish to use the Emporio Price File Import tools made available they do so at their own risk and indemnify Emporio against all claims and all losses, costs, expenses, damages and liabilities whatsoever.

10. Liability

- 10.1. The express obligations and warranties made by Emporio in this Agreement are in lieu of and to the exclusion of any warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to the Equipment (or any modified version of the Equipment) or Support supplied or provided by Emporio under or in connection with this Agreement including (without limitation) as to the condition, quality, performance, satisfactory quality or fitness for the purpose of the Equipment or the Support or any part thereof and the same are excluded to the maximum extent permitted by law.
- 10.2. Except in respect of death or injury resulting from Emporio's negligence, Emporio will not be liable, whether under contract, tort (including negligence) or otherwise, for loss of production, loss of or corruption to data, loss of profits or of contracts, loss of revenue, loss of operation time, loss of goodwill or anticipated savings, wasted management or staff time and/or any indirect loss or consequential loss, damage, cost or expense of any kind whatsoever and howsoever caused.
- 10.3. In all other cases not falling within clause 10.2, Emporio's total liability (whether in contract, tort, including negligence, or based on any claim for indemnity or contribution or otherwise) in respect of each event arising out of or in connection with this Agreement shall not exceed the total amount payable by the Client to Emporio in respect of this Agreement.
- 10.4. The Client acknowledges and agrees that except as expressly provided in this clause 10 Emporio shall not be under any liability of any kind whatsoever and howsoever caused arising directly or indirectly in connection with this Agreement.
- 10.5. The Client acknowledges and agrees that the allocation of risk contained in this clause 10 is reflected in the fees agreed by the parties.

11. Confidentiality and Data Protection

- 11.1. Emporio shall keep strictly confidential and shall procure that none of its respective employees, agents or sub-contractors shall disclose information (whether written or oral) relating to the other party's business, finances, customers and other interests to any other party. Emporio will also keep confidential and ensure that its respective employees, agents or sub-contractors keep confidential any confidential information of the Customers or relating to the Customers.
- 11.2. Emporio undertakes and represents that it will not access the Data without the Client's consent and undertakes that any confidential information and Data it has access to will use it purely to fulfil its obligations under this Agreement and not for any commercial gain whatsoever.
- 11.3. The obligations imposed by clauses 11.1 and 11.2 shall not apply to any information or data which:
 - 11.3.1. is or becomes public knowledge other than by reason of a breach of the obligations imposed by this clause;
 - 11.3.2. is independently developed by the party seeking to disclose it;
 - 11.3.3. it lawfully obtained from a third party without restriction;
 - 11.3.4. is already known to the party seeking to disclose it; or
 - 11.3.5. is required to be disclosed by law or other governmental authority.
- 11.4. Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause 11.1 and 11.2 by its employees, agents and sub-contractors.

12. Termination

- 12.1. Subject to the terms of Clause 12.4 below, either party can terminate this Agreement at any time after expiry of the 36 months, by the giving of one month's notice in writing to the other party.
- 12.2. Emporio can terminate this Agreement immediately and stop providing the Support if any of the following happens:
 - 12.2.1. the Client shall fail to pay any Support Fees or other sums due under this Agreement when due or break an important condition of this Agreement; or
 - 12.2.2. the Client shall break any other condition of this Agreement and do not put it right within 7 days of a notice from Emporio requiring it to be remedied; or
 - 12.2.3. the Client shall become bankrupt or make any arrangement with its creditors or be liquidated or have an Administrator or receiver appointed or suffer any other form of insolvency event; or
 - 12.2.4. the Client is otherwise unable to pay its debts as they fall due.
- 12.3. The Client can terminate this Agreement immediately and stop paying the Support Fees if any of the following happens:
 - 12.3.1. Emporio demand any other costs that differ from the agreement
 - 12.3.2. the SLA is breached or there is an underperformance by Emporio
 - 12.3.3. Emporio becoming bankrupt or make any arrangement with its creditors
 - 12.3.4. Emporio assigns the rights of the agreement to a third party
- 12.4. Upon termination of this Agreement for any reason, the Client must, pay to Emporio forthwith:
 - 12.4.1. any and all sums then due and owing; and
 - 12.4.2. all Support Fees which would have been payable for the remainder of the 36 months but for the termination less such discount of 3% per annum for accelerated repayment; less
 - 12.4.3. at the discretion of Emporio, such sum as is reasonable in all the circumstances to reflect the return of the Equipment in good condition or any other costs that are saved by Emporio as a consequence of the termination prior to expiry of the 36 months.

13. Force Majeure

- 13.1. Neither party hereto will be liable for delay or for failure to perform its obligations if and to the extent such delay or failure results from circumstances beyond its reasonable control, but any such circumstances shall not relieve the Client from its obligations to pay for any Support Fees relating to Equipment supplied or to Support supplied to it prior to such circumstances.

14. Assignment

- 14.1. The Client may not transfer its account or any of its rights and responsibilities under this Agreement.
- 14.2. Emporio may assign or transfer its rights under this Agreement to a third party (an "Assignee") without consent of the Client. If Emporio assigns or transfers all or any its rights under this Agreement the Client will pay all Support Fees to the Assignee without deduction, set-off or counterclaim irrespective of whether or not the Support or Equipment are being used by the Client or for any other reason whatsoever.

15. Notice

- 15.1. Any notice or other communication to be given under this Agreement shall be in writing and shall be delivered by hand or post within the UK, by airmail if sent abroad, or by fax to the other party at its address contained herein (or such other address as shall have been notified to the other party) and shall be deemed to have been given in the case of a notice which is delivered by hand when it is deposited at the appropriate address, in the case of a notice sent by post (to and from destinations within the UK), 3 days after the date on which such notice is posted or 7 days if sent by airmail and in the case of a notice sent by fax when it is despatched (provided that in the case of a notice sent by fax, a confirmation copy shall also be sent by post).

16. Data

- 16.1. Emporio and its partners may provide certain information that rely upon your customer data. To provide such information, where available, Emporio and its partners may collect, use, transmit, process and maintain your customer data, including but not limited to sales, loyalty and location information. You hereby agree and consent to Emporio and its partners' collection, use, transmission, processing and maintenance of such data. You may withdraw this consent at any time by notifying Emporio by written communication.

17. General

- 17.1. No variation modification or waiver of any provision of these General Terms within the Agreement shall in any event be of any force or effect, unless the same shall be agreed in writing between the parties and then such variation, modification, waiver or consent shall be effective only on the specific instance and for the purpose and to the extent for which made or given.
- 17.2. No failure, delay, or indulgence on the part of Emporio or the Client in exercising any power or right conferred upon such party pursuant to these General Terms shall operate as a waiver of such power or right. Further, no single or partial exercise of any such power or right shall preclude any other or further exercise thereof or the exercise of any other such power or right arising or under the Agreement. Termination of this Agreement or the provision of any Service shall not affect the rights and obligations of either party prior to the termination.
- 17.3. In the event that any supply by Emporio of any Product or Service shall fail fully to comply with the Agreement Emporio shall be afforded a reasonable opportunity to correct such failure.
- 17.4. If any provision hereof shall be held by a court of competent jurisdiction to be invalid or voidable such provision shall be deleted and the remainder thereof shall remain in full force and effect.
- 17.5. The Client shall indemnify and keep Emporio indemnified in respect of any claims by third parties which are caused by or arise out of or in connection with any act or omission of Emporio carried out pursuant to instructions of the Client.
- 17.6. These General Terms (if and as varied and/or supplemented from time to time) shall be governed by and construed in accordance with the laws of England and both parties hereby submit to the exclusive jurisdiction of the English Courts.
- 17.7. Emporio is free to provide Equipment or Support to any other person in relation to any matter covered by this agreement. Nothing in this agreement shall restrict Emporio from doing so.
- 17.8. If the Client is more than one person, each person shall be jointly and severally liable under this Agreement.

Use of your Information

Emporio may use and share your information with third parties (credit reference agencies, our associated companies, our funders and any person to whom we may assign our rights under this Agreement) to help us and them assess financial and insurance risks, recover debt, develop customer relationships, services and systems, prevent and detect crime. Your information includes information about your transactions. From time to time we may change the way we use your Information. Where we believe you may not reasonably expect such a change we shall write to you. If you would like a copy of the information we hold about you please write to us. A fee may be payable.

Credit Reference and Fraud Prevention Agencies

A link between you and anyone with whom you have a joint account or similar financial association will be recorded at credit reference agencies, creating a "financial association". All parties' information will be taken into account in future applications until one of you successfully files a "notice of disassociation" at the credit reference agencies. We may make periodic searches of and provide information (including how you manage your account and any arrears) to credit reference agencies and fraud prevention agencies to manage and make decisions about your account. Such information may be used by other credit providers to take decisions about you and your financial associates. We and our assignees may send you information about our products or of other organisations which may be of interest to you or pass your information to selected third parties so that they may pass you information about their products or about products of other organisations by post or by telephone. Please tick the following box if you do not wish to receive such information by post or by telephone.

By signing this form I/we agree that we have read and accept your Terms and Conditions, as printed above. This form is subject to change without notice.

Signed: _____ Name of Director: _____ Date: _____

Signed: _____ Name of Director: _____ Date: _____

Signed: _____ Name of Director: _____ Date: _____