

All Web Commerce Merchants must comply with these Terms and Conditions. To preserve the integrity of our service to You, all Merchants must also agree to be bound by our Acceptable Use Policies which may change from time to time.

# Demon Web Commerce

## Terms and Conditions

### 1 DEFINITIONS

1.1 The following terms have the following meanings when capitalised in this Agreement:

**"Acceptable Use Policies"** Demon's acceptable use policies applicable to the Services, as may be amended by Demon from time to time, which are available at: <http://www.demon.net/helpdesk/aup/generic-commerce.shtml>.

**"Agreement"** The terms and conditions set out in this agreement, the Order Form, and the Acceptable Use Policies.

**"Agreement Date"** The date of last signature to this Agreement.

**"Associated Company"** A division, subsidiary or holding company of either party or a subsidiary of any such company ('**holding company**' and '**subsidiary**' having the meanings defined by Sections 736 and 736A of the Companies Act 1985).

**"Authorised User"** In relation to C-Billing, the individual(s) appointed by You as responsible for the payment of the Demon online invoices and as granted access rights to Your C-Billing.

**"Bank"** Barclays, NatWest, Midlands, Lloyds, Bank of Scotland or Royal Bank of Scotland, as indicated by You if You choose the Direct Merchant Option. Your Bank will authorise and process debit and credit card transactions and facilitate settlement of transactions for Demon Commerce.

**"Bureau Service Option"** The preferred option for Merchants whereby You execute a merchant services agreement with NetBanx where NetBanx acts as principal in the merchant services agreement with the Bank.

**"Card"** Visa, Mastercard and/or such other cards which may later be approved by Demon as a means of payment to purchase Products through Demon Commerce.

**"Card Information"** Any information about a Customer's Card, and the amount of money to be authorised for a Web Commerce transaction.

**"Catalogue Creation"** See "**Services**".

**"C-Billing"** The online data access services provided, at the discretion of Demon, to You to enable You to access via the Internet Your current and accumulated twelve (12) months of historic invoices, as derived from financial systems, and providing electronic billing facilities.

**"Charges"** The relevant one-off charge for the Services payable by You to Demon pursuant to this Agreement as set out on the Order Form attached (stated exclusive of VAT) and the charges for Your Demon Web Hosting account.

**"Confidential Information"** Information or material received by one party of a confidential, technical or business nature relating to the business, products or services of the other including, but not limited to, trade secrets, information of commercial value, including but not limited to details about the Demon Platform.

**"Content"** Any information entered by You or on Your behalf onto Your Website, and onto the Secure Shopping Cart or any other template which is part of the Demon Platform. Content includes, but is not limited to, all information displayed on Your Website and/or which can be transmitted to Customers, and all trade marks, service marks and domain names contained therein from time to time.

**"Customer"** A person who offers to purchase a Product advertised on Your Website by completing and submitting the Secure Shopping Cart to the Demon Platform.

**"Demon"** means THUS plc, whose registered office is at 1-2 Berkeley Square, 99 Berkeley Street, Glasgow G3 7HR, Scotland, Company Number SC 192666 being the company which is providing the services under these terms and conditions.

**"Demon Platform"** The computer platform used by Demon for the provision of Web Commerce, consisting of Open Market Transact and Open Market ShopSite software.

**"Demon Web Hosting"** The service offered by Demon that provides a user with configured Internet web space between 10Mb and 10,000Mb.

**"Direct Merchant Option"** The option for Merchants whereby the Merchant has separate agreements with NetBanx and the Merchant's selected Bank.

**"Effective Date"** The date on which Your Demon Web Hosting web space is enabled with Web Commerce.

**"Internet"** In relation to C-Billing, the interconnected system of networks that connects computers around the world through an established protocol enabling the transmission and exchange of electronic information and data.

**"Licence"** Demon's licence to use the Open Market Transact software and to use Open Market ShopSite.

**"LoginID"** In relation to C-Billing, the login identity allocated to each Authorised User by Demon.

**"Merchant/You"** The merchant as identified on the Order Form.

**"Merchant Identification"** The username(s), password(s), security checkpoint question(s) and store identification issued to You by Demon to enable You to use Web Commerce if You are using the Direct Merchant Option.

**"Merchant Number"** The number issued to You by NetBanx to enable You to be linked to the Bank.

**"NetInvest"** NetInvest Limited, the parent company of NetBanx. NetInvest has agreements with the Banks for secure processing and storing of Card transaction data submitted via the Internet for authorisation and payment. NetInvest's registered office is at Communications House, Station Court, Station Road, Great Shelford, Cambridge, CB2 5LR.

**"NetBanx"** NetBanx Limited, a wholly owned subsidiary of NetInvest. Netbanx has a dedicated computer server network with transmission links to the Banks. Netbanx processes debit and credit card transactions of Customers and collects Transaction Fees. Netbanx's registered office is at NetBanx House, Station Court, Station Road, Great Shelford, Cambridge CB2 5LR.

**"Order"** An irrevocable offer by a Customer to buy a Product made when the Customer completes the Secure Shopping Cart and submits it to the Demon Platform.

**"Order Form"** The Demon Web Commerce Order Form attached completed by the Merchant and submitted to Demon for approval to use the Services.

**"Products"** The goods and/or services which You offer for sale from time to time on Your Website.

**"Secure Shopping Cart"** The electronic form (which Demon may amend and/or substitute from time to time) which appears on the Demon Platform and which is the Customer's interface to the Demon Platform. Customers enter Card Information and other details on to the Secure Shopping Cart to Order a Product.

**"Services"**

**(a) Demon Web Commerce** An electronic-commerce service to be provided to You by Demon under this Agreement. It is a service with a secure connection to NetBanx (if You are using the Bureau Service Option) or Your selected Bank (if You are using the Direct Merchant Option) for the purpose of collecting Orders from Customers for the purchase of Products by means of Your Website, authorising credit and debit card transactions in respect of such Products and arranging for the transfer and settlement of purchase funds. It is offered to Demon customers who have a current Demon Web Hosting account. Demon Web Commerce has the following elements:

- (i) it will allow Customers to create cryptographically protected digital offers to buy Products, based on information provided by You on Your Website about Your Product(s) (including, but not limited to, Product name, weight and price);
- (ii) it will manage all purchase transactions with Customers so that once a Customer enters Card Information onto the Secure Shopping Cart and forwards it to the Demon Platform, Demon will forward that Card Information to NetBanx to request authorisation to debit the Card;
- (iii) it will arrange debits to a Card for Products purchased by a Customer using Demon Web Commerce. For physical goods, a debit will not occur until You have indicated to Demon Web Commerce through an online interface that You have shipped the goods to the Customer;
- (iv) it will provide You with a Merchant Identification allowing You to have secure access to Demon Web Commerce and configure Your Website;
- (v) it will allow a Customer (upon request by the Customer) to register with the Demon Platform so that information about the Customer is retained. Such registration will allow the Customer access to Smart Statements. It will also provide a password and user name which the Customer may use for purchasing Products from Your Website and from the web site of any other merchant who has entered into an agreement with Demon for the provision of Demon Web Commerce;
- (vi) it will facilitate refunds and credits to a Card for Products purchased by a Customer using Demon Web Commerce. To arrange such refund or credit (if this becomes necessary), You will access a Customer service screen (called a store report). This screen links a refund or credit request made by You with the corresponding Secure Shopping Cart and sends an instruction to NetBanx to arrange the credit or refund the relevant amount;
- (vii) it will provide You with information to assist You to use Demon Web Commerce;
- (viii) it will provide You with 24 hour Customer support by phone on connecting to the servers, locating relevant documentation, changing passwords, confirming Demon Web Commerce availability and reporting faults.

**(b) Catalogue Creation** An optional service offered by Demon whereby You provide Demon with an electronic version of Your Product catalogue and Demon then publishes this catalogue online within Your Demon Web Commerce product.

**"Smart Statements"** Digital receipts on the Demon Platform which set out details of all transactions which a Customer has undertaken using Demon Web Commerce.

**"SSL"** Secure Sockets Layer, a standard protocol for encrypted communication of traffic over the Internet.

**"THUS"** See "**Demon**".

**"Transaction Fee"** The current fee charged and collected by NetBanx for each transaction on Demon Web Commerce, as listed in Your contract with NetBanx (including the Demon commission collected by NetBanx on behalf of Demon).

**"VAT"** Value added tax.

**"Demon Web Commerce"** See "**Services**".

**"Website"** The website which You configure, and on which You display Your online store front for Customers to see and use Demon Web Commerce.

**"You/Merchant"** See "**Merchant/You**".

## 2 PROVISION OF DEMON WEB COMMERCE

- 2.1 Demon will provide Demon Web Commerce to You under the terms of this Agreement from the Effective Date according to Your choice of the Bureau Service Option or the Direct Merchant Option.
- 2.2 This Agreement applies only to the single Merchant Number issued to You in respect of this Agreement; it does not cover those issued to any Associated Company, or any other Merchant Numbers.
- 2.3 If you are using the Direct Merchant Option Demon will issue You with a Merchant Identification to enable You to use Demon Web Commerce.
- 2.4 Demon Web Commerce transactions, including requests for Card authorisations and refunds or credits, will be processed in sterling, unless a specific arrangement is made with NetBanx to use a different currency.

## 3 YOUR OBLIGATIONS

- 3.1 You are Your Customers' point of contact for all queries and problems connected with their use of Demon Web Commerce. You are responsible for any action to be taken if a Customer requests a refund to their Card for Products purchased (or purported to be purchased) or if the Customer reports problems relating to the delivery of Products or Charges applied to Cards.
- 3.2 To use Demon Web Commerce, YOU MUST:
- 3.2.1 have a current Demon Web Hosting account with Demon;
- 3.2.2 create and configure Your own Website store; it is Your responsibility to correctly enter all relevant information, including, but not limited to, all necessary information about Products, delivery, price and VAT into templates provided by the Demon Platform; You may purchase Demon's Catalogue Creation to help You put Your Product catalogue online in which case the supplementary terms and conditions in Clause 22 apply;
- 3.2.3 comply with all reasonable instructions which Demon gives You from time to time;
- 3.2.4 display on Your Website a hyperlink to Your terms and conditions for transactions to be conducted using Demon Web Commerce; Your terms and conditions must comply with the Acceptable Use Policies; in particular, Your terms and conditions must state that Demon is not a contracting party to any sale from a Merchant to a Customer;
- 3.2.5 NOT inform the Demon Platform that Products have been sent or charge a Card until the Products have been sent; You must promptly update the Demon Platform on the relevant online form that Products have been sent;
- 3.2.6 keep Your own records of the transactions which You enter using Demon Web Commerce;
- 3.2.7 NOT use or copy Demon's or THUS's name, trade mark or logo in any way whatsoever, without the prior written consent of Demon;
- 3.2.8 NOT change any prices on Your Website for a particular transaction once a Customer has submitted an Order for a Product.

## 4 CHARGES AND PAYMENT

- 4.1 If You are using the Bureau Service Option You must have an agreement with NetBanx who will act as principal in the merchant services agreement with the Bank. NetBanx will make all proper enquiries as to Your credit worthiness before it accepts any agreement with You.
- 4.2 If You are using the Direct Merchant Option You must have a separate agreement with NetBanx and Your selected Bank. You must comply with all the terms of those agreements.
- 4.3 The Charges and Transaction Fees are extra to any Charges You pay to the Bank under Your agreement with the Bank.
- 4.4 Demon will invoice You for the charges for Demon Web Commerce at the Effective Date.
- 4.5 You must pay the Charges and the VAT on the Charges to Demon in sterling within thirty (30) days from the date of the invoice and by the method specified on the Order Form.

## 5 SECURITY

- 5.1 You must not harm, or attempt to harm, the integrity, security and/or availability of the Demon Platform.
- 5.2 If You believe that the integrity and/or security of the Demon Platform has been, or is at serious risk of being harmed, You must notify Demon immediately on telephone: **0845 272 2555** (or any other number which Demon notifies to You).
- 5.3 Demon will take any steps which it deems necessary, including barring Your access for Demon Web Commerce, to eliminate a real or potential threat to the integrity, security or availability of the Demon Platform.
- 5.4 You agree, notwithstanding Clause 9 of this Agreement, to fully indemnify Demon against all liabilities (including, but not limited to, legal and other professional fees and expenses) which Demon may incur in connection with Clause 5.3.
- 5.5 You must treat Your Merchant Identification as strictly confidential. You may however create 'employee accounts' (like sub-Merchant Identifications) which will enable Your employees to have limited access and control of Your Website for processing Orders.
- 5.6 You must contact Demon immediately if You think that any unauthorised person has discovered Your Merchant Identification and/or employee accounts. Failure to protect Your Merchant Identification and/or employee accounts could make You liable for any losses You incur if they are misused.
- 5.7 You may change the passwords and security checkpoints associated with Your Merchant Identification and employee accounts at any time.

## 6 MODIFICATION OF SERVICES

- 6.1 At any time during this Agreement, Demon may modify the Services. Demon will make reasonable endeavours to notify You prior to any material modification being made.
- 6.2 If Demon modifies the Services under Clause 6.1 so that the Agreement is materially amended, Demon will notify You of that modification and You may terminate this Agreement by giving written notice to Demon within thirty (30) days. If You do not notify Demon of termination within thirty (30) days from notification You will be deemed to have accepted the modification with effect from the thirty-first (31st) day after notification by Demon.
- 6.3 If modification to the Services made under Clause 6.1 allows You to make changes to the format of the Secure Shopping Cart and/or other templates based on the Demon Platform, You must not make any such changes without Demon's prior written approval.

## 7 SERVICE LEVEL

- 7.1 Demon will reasonably endeavour to minimise any downtime of Demon Web Commerce within its reasonable control, subject to:
- 7.1.1 any event of force majeure as set out in Clause 12; and
- 7.1.2 suspension Demon Web Commerce due to an act or omission by You; and
- 7.1.3 suspension of Demon Web Commerce for up to eight (8) hours in any one (1) calendar month to perform non-emergency maintenance work (Demon will reasonably endeavour to give You three (3) days notice of such suspension via email); and
- 7.1.4 fulfilment of material third party contracts by the third party, to provide services to Demon.

## 8 WARRANTIES AND UNDERTAKINGS

- 8.1 You warrant and undertake to Demon that You:
- 8.1.1 will at all times be responsible for the accuracy and completeness of the Content;
- 8.1.2 will promptly fulfil Orders made by Customers using the Secure Shopping Cart and deliver all Products ordered by a Customer;
- 8.1.3 will register under and comply with the Data Protection Acts 1984 and 1998 (and all their subsequent revisions and updates) regarding all information communicated to You through use of Demon Web Commerce. This includes, but is not limited to, Card Information and all other information entered by You or Your Customers onto the Secure Shopping Cart or other template forms;
- 8.1.4 will not make available any Product nor include any Content on Your Website which:
- 8.1.4.1 is in violation of any law, regulation or acceptable use policy applying to Your Website, including the Acceptable Use Policies; or
- 8.1.4.2 is defamatory, menacing, or obscene; or
- 8.1.4.3 is in breach of any third party intellectual property rights (including, but not limited to, copyright); or
- 8.1.4.4 is in breach of the duty of confidence or any other right or duty owed to a third party; or
- 8.1.4.5 in Demon's sole discretion, brings Demon's (and/or the Bank's and/or NetInvest's and/or NetBanx's) name into disrepute and/or potentially exposes Demon (and/or the Bank and/or NetInvest and/or NetBanx) to proceedings or claims of any sort.
- 8.2 Demon makes no warranties or representations to You about the Services except those which are expressly stated in this Agreement. All terms expressed and implied by statute are excluded from this Agreement (including those relating to reasonableness and fitness for purpose) to the extent that such terms may be excluded as a matter of law. In particular, but not by way of limitation, Demon does not warrant or represent to You:
- 8.2.1 that the Services will increase Your revenues or be of any particular benefit to You and/or Your business;
- 8.2.2 that the contracts entered into between You and Customers through use of the Website will be enforceable;
- 8.2.3 that Demon Web Commerce will be free from defects or that Your use of Demon Web Commerce will be uninterrupted or error free.

## 9 LIMITATION OF LIABILITY AND INDEMNITY

- 9.1 Demon will not be liable to You except in relation to the provision of the Services under this Agreement. This Clause applies whether a claim arises in contract, tort or in any other way and whether or not either party knew (or should have known or anticipated) that the other could incur such losses. For example, but not by way of limitation, Demon is not liable in relation to:
- 9.1.1 the configuration of Your Website or any Content on Your Website, including information entered by a Customer;
- 9.1.2 any infringement of a third party right contained on Your Website;
- 9.1.3 any act or omission by anyone who may gain access to Your Website;
- 9.1.4 the fraudulent use of Demon Web Commerce by any person;
- 9.1.5 the Products advertised by You or sold directly or indirectly through Your Website;
- 9.1.6 any failure to receive payments through Demon Web Commerce;
- 9.1.7 Your breach of any applicable laws (including tax laws in any jurisdiction) concerning any sale of a Product;
- 9.1.8 Your misuse of any trade mark or logo owned by Demon or THUS or an Associated Company or any other party;
- 9.1.9 Demon Web Commerce being unavailable to You due to any act or omission of the Bank, NetBanx, NetInvest or any other third party;
- 9.1.10 the information transmitted to You by the Bank by means of the Demon Platform (for Direct Merchant Option);
- 9.1.11 any loss of revenue, profits, business, contracts, anticipated earnings or goodwill which You may suffer from using Demon Web Commerce; or
- 9.1.12 any loss You may suffer if any information, data or transaction is lost due to a cause beyond Demon's reasonable control;
- 9.1.13 any special, indirect, or consequential losses whatsoever arising out of or in connection with this Agreement or any breach of it or Your use of the Services;
- 9.1.14 any legal action taken against You regarding any illegal Product;
- 9.1.15 any loss or consequential loss whatsoever due to the suspension, modification, removal or unavailability of Demon Web Commerce (or any part of it);
- 9.1.16 any Customer refund or credit which may become due from using Demon Web Commerce;
- 9.1.17 any losses You suffer if You rely on Demon Web Commerce as a sole means of receiving Orders or payment for the Products.
- 9.2 You fully indemnify Demon against all claims and liabilities (including, but not limited to, legal and other professional fees and expenses) which Demon may incur due to a breach of:
- 9.2.1 any of Your warranties in Clause 8.1; or
- 9.2.2 any of the matters listed in Clause 9.1 except those relating to third parties.
- 9.3 This Agreement does not limit Demon's liability for:
- 9.3.1 death or personal injury resulting from its negligence; or
- 9.3.2 the negligence of its employees while acting in the course of their employment; or
- 9.3.3 any other liability to the extent that it cannot be limited by law.

**9.4** Subject to the other provisions in this Agreement, Demon's liability under this Agreement is limited to an amount not exceeding:

- 9.4.1** £1,000 in respect of any one incident; or
- 9.4.2** £5,000 in respect of any series of incidents arising from a common cause in any three (3) year period;
- 9.4.3** £500,000 in respect of total liability arising from any number of incidents.

## **10 SUSPENSION OF DEMON WEB COMMERCE**

- 10.1** Demon may, at its sole discretion and without liability to You, suspend Demon Web Commerce immediately until further notice.
- 10.2** Any suspension of Demon Web Commerce will not exclude Demon's right to subsequently terminate the Agreement where appropriate

## **11 TERM**

- 11.1** This Agreement will commence on the Effective Date.
- 11.2** This Agreement may be terminated by either party:
  - 11.2.1** as set out in Clause 12.3; or
  - 11.2.2** if the other party breaches any of the material terms of this Agreement and such breach is not remedied within thirty (30) days following written notice to the other demanding such remedy (unless the remedy under Clause 11.3.1 is used).
- 11.3** Demon may terminate this Agreement immediately on notice in writing to You:
  - 11.3.1** if You fail to pay the Charges when due; or
  - 11.3.2** if a voluntary arrangement is proposed or approved or an administration order is made, or a receiver, administrative receiver, liquidator, manager or similar officer is appointed in respect of all or part of Your assets; or
  - 11.3.3** a winding-up resolution or petition is passed or presented in respect of all or part of Your assets (otherwise than for the purposes of a solvent amalgamation or reorganisation where the resulting entity assumes all of the obligations of the relevant Policies under this Agreement); or
  - 11.3.4** if Demon loses necessary maintenance support from third parties for the software that provides Demon Web Commerce on the Demon Platform; or
  - 11.3.5** if the agreement between Demon and NetInvest for provision of a payment gateway is terminated for any reason; or
  - 11.3.6** if the Licence is suspended, terminated or revoked in accordance with its terms; or
  - 11.3.7** if Your Demon Web Hosting account is terminated.
- 11.4** Termination of this Agreement (for whatever reason) will not affect the rights or liabilities accrued by either party, nor will it affect the continuance of Clauses 8, 9 and 13.
- 11.5** Any breach of Clause 3.2 or Clause 8.1.4 will be deemed to be a material breach of this Agreement and will entitle Demon to terminate the Agreement by giving thirty (30) days notice to You. It will be irrelevant whether You are aware of the Content of any material held on or transmitted from Your Website or of any Product offered for sale.

## **12 FORCE MAJEURE**

- 12.1** Either party's obligations under this Agreement will be suspended where that party cannot fulfil them due to any circumstances beyond its reasonable control. Such circumstances include, but are not limited to:
  - 12.1.1** flood, earthquake, war, and other such disasters;
  - 12.1.2** Demon Web Commerce being unavailable due to the Bank being unable to provide authorisation services; and/or
  - 12.1.3** any other person being unable to provide goods or services to Demon, including telecommunication services.
- 12.2** If either party cannot fulfil its obligations due to the circumstances set out in Clause 12.1, such party must:
  - 12.2.1** give notice of suspension of the Agreement as soon as reasonably possible to the other party which must state the date, extent and cause of such suspension; and
  - 12.2.2** resume the performance of their contractual obligations as soon as reasonably possible after the removal of the cause of the suspension; and
  - 12.2.3** notify the other party once their contractual obligations have been resumed.
- 12.3** If the cause of the suspension continues for more than six (6) months, either party may terminate this Agreement by giving thirty (30) days notice to the other party.

## **13 CONFIDENTIALITY**

- 13.1** During and after this Agreement each party undertakes to the other that it will:
  - 13.1.1** keep any Confidential Information secret and confidential; and
  - 13.1.2** ensure that its directors, employees, servants, representatives, agents and any Associated Company will also keep any Confidential Information secret and confidential; and
  - 13.1.3** not use, copy, adapt, alter or part with possession of, or disclose to any third party, any Confidential Information;
  - 13.1.4** ensure that its directors, employees, servants, representatives, agents and any Associated Company will not use, copy, adapt, alter or part with possession of, or disclose to any third party, any Confidential Information.
- 13.2** Notwithstanding Clause 13.1, Confidential Information may be disclosed if:
  - 13.2.1** it is required to be disclosed pursuant to this Agreement or by law; or
  - 13.2.2** it was already known to the receiving party at the time of such disclosure who was not under an obligation to keep it confidential; or
  - 13.2.3** it is, or has become, public knowledge without breach of this Agreement or the negligence of either party; or
  - 13.2.4** it subsequently comes lawfully into the possession of the receiving party from a third party not under any obligation of confidentiality.
- 13.3** Each party further agrees and undertakes to the other that access to and disclosure of Confidential Information will be restricted to personnel who need such access and disclosure for the performance of this Agreement.

**13.4** Unless otherwise allowed under this Clause 13, neither party may make or release a public statement about the existence and/or terms of this Agreement to any person, except with the prior written approval of both parties or as required by law.

## **14 ASSIGNMENT**

- 14.1** Neither party may assign or otherwise transfer in full or in part any of its rights, obligations or duties under this Agreement without the prior written consent of the other party.

## **15 WAIVER**

- 15.1** Failure by either party to exercise or enforce any right conferred by this Agreement will not be deemed to be a waiver of any such right. Nor shall such failure bar the exercise or enforcement of such right or of any other right on any later occasion.

## **16 NOTICES**

- 16.1** In all Your correspondence with Demon You must refer to Your Merchant Number.
- 16.2** Notices given under this Agreement must be in writing. Notices must be delivered personally or sent by first class pre-paid post or by facsimile to the other party at the following addresses:  
**Demon@THUS plc,**  
**Gateway House,**  
**322 Regents Park Road,**  
**Finchley,**  
**London,**  
**N3 2QQ;**  
Merchant's address, as set out on the Order Form; or to such other address as You or Demon subsequently notifies to the other.
- 16.3** A notice sent by post will be deemed to have been given seven (7) days after the date of posting.
- 16.4** A facsimile transmission will be deemed to have been given at the time of despatch (provided that the sender has a transmission report confirming that the notice was sent to the correct number and that all the pages were transmitted).

## **17 SEVERABILITY**

- 17.1** If any provision of this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, the remaining provisions of the Agreement will remain in full force and effect and the parties will immediately begin negotiations to replace invalid or unenforceable provisions that are essential parts of the Agreement.

## **18 ENTIRE AGREEMENT**

- 18.1** This Agreement constitutes the entire understanding between the parties relating to the subject matter of this Agreement. It supersedes all other agreements and representations made by either party whether oral or written, including any Demon sales, marketing or instruction documents. Neither party to this Agreement has relied on any statement, representation or promise of the other party (or of any officer, agent or representative of the other party) in entering into this Agreement, except as expressly stated in this Agreement. This Clause does not exclude liability for any fraudulent misrepresentations(s) made by either party.

## **19 GOVERNING LAW**

- 19.1** This Agreement is governed by and construed in accordance with the laws of England and Wales. The parties submit to the non-exclusive jurisdiction of the English courts.

## **20 VALIDITY**

- 20.1** This Agreement will be valid once the Order Form is signed by at least one authorised signatory of the Merchant and once Demon has notified You by email that Demon has accepted You to become a Demon Web Commerce merchant.

## **21 GENERAL**

- 21.1** Any reference in this Agreement to a statutory provision will be deemed to include a reference to any statutory modification of that provision.
- 21.2** In this Agreement any undertaking by You not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing.
- 21.3** Unless the context otherwise requires, the plural includes the singular (and vice versa) in this Agreement.

## **22 SUPPLEMENTARY TERMS AND CONDITIONS FOR CATALOGUE CREATION**

- 22.1** To use Catalogue Creation You must have a current Demon Web Hosting account and Demon Web Commerce.
- 22.2** Demon will invoice You for Catalogue Creation upon receiving Your signed Order Form. You must pay Demon's invoice by the due date on the invoice.
- 22.3** You must provide Your Product catalogue to Demon in electronic format in the spreadsheet templates provided by Demon, and according to all data format specifications set out in the criteria for Catalogue Creation at: <http://www.demon.net/demon/products/hosting>.
- 22.4** Demon accepts no liability for checking information supplied by You.
- 22.5** Demon will insert the data supplied by You onto Your Website.
- 22.6** Demon will inform You when the Catalogue Creation process is complete.
- 22.7** You must sign the Catalogue Creation sign off agreement provided to You by Demon and return it to Demon as instructed within 14 days of notification that the Catalogue Creation process is complete, at which point Demon will return access to the Demon Web Commerce area of Your Website to You.

- 22.8** If the Catalogue Creation sign off agreement is not completed and returned to Demon within 14 days, Demon will remove the Catalogue Creation product from your Website, access to your Website will be returned to You, and Demon will not accept any further liability. Please note that payment will still be due in these circumstances.
- 22.9** Demon's total liability for Catalogue Creation under this Agreement will not exceed the one-off charge for the level of Catalogue Creation chosen by You.

### **23 C-BILLING**

- 23.1** The Authorised User will be allocated an individual LoginID and password by Demon to enable access to C-Billing.
- 23.2** The Authorised User shall not share use of C-Billing or any part of it with any other person including, if the Authorised User is a company, any person who is an officer of or contracted to the company, whether directly or indirectly, other than in accordance with these Terms and Conditions.
- 23.3** The Authorised User must not operate C-Billing in a way that does not comply with these Terms and Conditions or with any legislation or applicable licence or that is in any way unlawful or fraudulent, or to its knowledge has any unlawful or fraudulent purpose or effect, or in connection with the carrying out of a fraud or criminal offence against any telecoms operator, or in a way that does not comply with the reasonable instructions given by Demon, or operate or attempt to operate C-Billing in any way that modifies, decompiles or reconfigures the facility or any software or hardware, or copy any manual or documentation relating to C-Billing, without the prior written consent of Demon.
- 23.4** The Authorised User shall maintain the security of its allocated LoginID and password and will not disclose such to any third party for any purpose other than in accordance with these Terms and Conditions. The Authorised User shall immediately notify Demon and change any password which may have been compromised, or is reasonably believed to have been so compromised.
- 23.5** Demon shall not be liable in contract, tort (or delict) pre-contract or other representations (other than fraudulent or negligent representations) or otherwise arising out of or in connection with C-Billing for any special, indirect or consequential loss or any destruction or loss of data, in any case, whether or not such losses were within Your contemplation at the Agreement Date, suffered or incurred by You arising out of or in connection with these Terms and Conditions or C-Billing.
- 23.6** Without prejudice to its rights and remedies, Demon may terminate C-Billing, or any part of it, forthwith in the event that You or the Authorised User is in material breach of these Terms and Conditions, becomes insolvent or has a receiving order made against it or commences to be wound up or grants a trust deed on behalf of its creditors or if Demon is no longer authorised to operate the Demon telecommunications system.
- 23.7** Without prejudice to its rights and remedies, Demon may at its sole discretion elect to suspend provision of C-Billing forthwith until further notice if it is entitled to terminate it or if You or the Authorised User is in breach of these Terms and Conditions or if Demon is obliged to comply with any relevant order or instruction of government or other regulatory authority or if any consent or authority required for the purpose of providing C-Billing is withdrawn, revoked or otherwise ceases to have effect.

More information on Demon Web Commerce can be found at:

<http://www.demon.net/demon/products>, or if You would like to speak to us in person please call us on: **0800 027 0666** (Monday - Friday 9.00 am - 5.30 pm)