

TriggerPoint Software Ltd Terms & Conditions

BACKGROUND

- A. The supplier has developed and provides a service consisting of a document writing software to produce the relevant documentation for compliance with the Party Wall etc. Act 1996
- B. The customer wishes to use the Supplier's service in its business operations
- C. The Supplier has agreed to provide, and the Customer has agreed to take and pay for the Supplier's services subject to the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

Supplier: TRIGGERPOINT SOFTWARE LIMITED Incorporated and registered in England and Wales with company number 9600750 whose office is at 7 Bridle Close, Kingston upon Thames KT1 2JW

Customer: the person or firm which purchases a subscription from the Supplier

Services: Use of services supplied online by the Supplier on a monthly paid subscription or on a trial period.

The Site: triggerpoint-software.co.uk or any other website used by the Supplier for the Services

Conditions: the terms and conditions set out in this document

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

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Trial Period: Services provided to the Customer by the Supplier for an initial trial period of one calendar month from the Commencement Date

Commencement Date: Date on which the Customer begins to use the Services

Intellectual Property Rights: those rights contained in Clause 6 of these Conditions

Subscription Fees: shall mean the fee as posted on the Site from time to time and applicable in respect of your subscription of Services.

Documentation: the document/documents made available to the Customer by the Supplier online via the Site or such other web address notified by the Supplier to the Customer from time to time for supply of the Services.

Subscription Term: Being the Initial Subscription Term together with any subsequent Renewal Periods.

Privacy Policy: Policy as displayed by the Supplier on the Site

VAT: value added tax chargeable in the UK

Force Majeure: an event or circumstance beyond a party's reasonable control.

- 1.1. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2. In these Conditions, unless the context otherwise requires, the following words and expressions shall have the following meanings:
- 1.3. All references to Clauses are, unless otherwise expressly stated, references to the Clauses of these Conditions.
- 1.4. The headings in the Conditions are inserted for convenience only and shall be ignored in construing the Conditions.
- 1.5. A reference to a statute or statutory provisions is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2. TERM

- 2.1. The Conditions shall take effect from the date the Services are used by the Customer and shall continue to be in effect for the duration of the use of the Services until Termination of such under clause 7 of these Conditions.
- 2.2. Unless cancelled at any time during the Trial Period, the Services will continue on a rolling basis until cancelled by the Supplier or the Customer.
- 2.3. 3 months' notice period is required should the Customer wish to cancel the services after the initial trial period.

3. SERVICES

- 3.1. The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

3.2. The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

(a) planned maintenance carried out during the maintenance

(b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer

3.3. The Services provided under this agreement shall consist of standard Documentation for the administration of the Part Wall etc. Act 1996. The documents shall be amended as required for the suitability of the Customer.

4. TERMS FOR USE OF SERVICE

4.1. The Customer shall:

4.1.1. comply with any and all instructions provided to the Customer by the Supplier relating to the Service;

4.1.2. comply with the terms of the Privacy Policy;

4.1.3. not use the Services for any immoral or illegal purpose or in any way that would bring the supplier into disrepute;

4.1.4. procure that its officers and employees co-operate with the Supplier, its agents and sub-contractors in carrying out the Services.

5. PRICING AND PAYMENT

5.1. In consideration of the supply of the Service, the Customer agrees to pay the Supplier the Subscription Fee in accordance with the payment terms advertised on the Site at the relevant time. Unless otherwise expressly stated, all prices are exclusive of value added tax (VAT).

5.2. The Supplier shall send an electronic receipted invoice to the Customer upon receipt of the relevant payment.

5.3. Without prejudice to any other right or remedy it may have, the Supplier reserves the right to set off any amount owing to it at any time from the Customer against any amount payable by the Supplier to the Customer under or in connection with these Conditions.

5.4. If the Customer fails to pay any amount payable under these Conditions then the Supplier reserves the right to restrict access to the Services until full payment is made of all sums due.

5.5. No refund of any Subscription Fee shall be given under any circumstances.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. For the purposes of these terms references to the Intellectual Property Rights shall mean all patents, rights to inventions, copyright and related rights, trademarks and trade names, rights to goodwill or to sue for passing off, rights in designs, database rights, rights in confidential information (including without limitation know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or 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.
- 6.2. The Customer acknowledges and agrees that all Intellectual Property Rights existing or arising in any materials, know-how, specifications, inventions, processes, software, data or information supplied by the Supplier under or in connection with the these Terms shall at all times belong to and remain vested in the Supplier or its licensors and, save as expressly provided hereunder, no proprietary rights or any other rights whatsoever are assigned, granted or shall otherwise pass to the Customer.
- 6.3. The Supplier shall indemnify the Customer against any claim (including, without limitation, any losses and liabilities arising out of such claim but excluding any indirect, special or consequential loss or loss of profits, revenue or goodwill) that the Customer's use of the Service in accordance with the terms infringes the Intellectual Property Rights of any third party, provided the Customer:
- 6.3.1. promptly notifies The Supplier in writing of any such claim and not making any admissions of liability or settling any such claim without The Supplier's prior written consent;
 - 6.3.2. allows The Supplier (at The Supplier's request and expense) to solely conduct all negotiations and litigation resulting from any such claim; and
 - 6.3.3. at the request and expense of The Supplier, gives all reasonable assistance with such negotiations or litigation.
- 6.4. Clause 6.3 sets out The Supplier's entire liability to the Customer in respect of the infringement of the Intellectual Property Rights of any third party.
- 6.5. If any claim is made against The Supplier or the Customer alleging that the Customer's use of the Service infringes the Intellectual Property Rights of a third party and the Customer's use of the Services is not in accordance with the Conditions, the Supplier shall not be responsible and shall be entitled:

- 6.5.1. to require the Customer to cease using the Service until otherwise notified by The Supplier in writing, and
- 6.5.2. to require the Customer to indemnify The Supplier against any direct or consequential claim which may be brought against The Supplier by a third party under Clause 6.5.
- 6.6. In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 6.7. The Customer undertakes to notify The Supplier promptly of any infringement of the Intellectual Property Rights referred to in Clause 6.5 of which the Customer is or becomes aware and to render to The Supplier and/or The Supplier's relevant licensors all reasonable assistance in relation to any action, suit or proceeding taken by The Supplier and/or its relevant licensors in respect of such infringement.
- 6.8. The Supplier does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements. It is the Customer's responsibility to ensure the Documents are appropriate for the Customer;
- 6.9. This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

7. TERMINATION

- 7.1. The Customer shall be deemed to have terminated the terms if:
- 7.1.1. The Customer cancels their subscription to the Service or fails to pay The Supplier for a subsequent renewal.
- 7.2. The Supplier may terminate the Conditions at any time by giving the Customer not less than one (1) month's prior notice by email.

7.3. Without prejudice to its other rights and remedies, either party may, by written notice to the other, terminate the Conditions with immediate effect if the other party:

7.3.1. Subject to Clause 7.4, the Customer commits a material breach of the Conditions and shall, in the case of any remediable breach, fail to remedy the same within 14 business days of receipt of a written notice from the non-breaching party requiring such remedy; and/or

7.3.2. is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986) or otherwise becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other party (other than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the other party's assets or the other party enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction or if it ceases to trade or threatens to cease to trade.

7.4. For the avoidance of doubt, failure by the Customer to pay any Fees due to The Supplier in full in cleared funds by the due date shall constitute a material breach of the Conditions. Failure by the Customer to pay the Fees to The Supplier in cleared funds by the due date on more than two occasions shall entitle The Supplier to terminate the Conditions forthwith on giving written notice to the Customer.

8. CONSEQUENCES OF TERMINATION

8.1. Upon termination of the Conditions, The Supplier shall cease to make the Service available to the Customer.

8.2. Upon termination of the Conditions for any reason, the Customer shall promptly return (or at The Supplier's request destroy) all copies in any form (including in any human or machine readable form) of any materials relating to the Services which have been provided to the Customer by The Supplier as part of the Services and which are in the possession, custody or control of the Customer or its officers, employees or agents.

8.3. WARRANTIES

8.4. The Supplier warrants that it has all requisite power and authority to execute, deliver and perform its obligations under the Conditions.

8.5. The Customer warrants that:

8.5.1. it shall comply with all applicable laws and regulations relating to the Service and with all applicable rules, regulations and guidelines (whether or not having the force of law) of any regulatory organisations or bodies of which it is a member or by which it is bound; and

8.5.2. it has all requisite power and authority to execute, deliver and perform its obligations under the Conditions.

8.6. The Supplier does not warrant that the Service will meet the Customer's requirements nor that the Services provided through the Site will be error-free or uninterrupted.

8.7. The Services are provided on an "as is" basis. Save as expressly set out in the Conditions, all conditions, representations, warranties, undertakings or terms whether express or implied, statutory or otherwise, including in particular any implied warranty of satisfactory quality or fitness for any particular purpose or use are excluded from the Conditions to the fullest extent permitted by law.

8.8. The Customer confirms that neither The Supplier nor any of its representatives has made any claims or representations of guaranteed or anticipated profits that may result from the use of the Service and The Supplier expressly disclaims liability for any profit projections which may have been provided to the Customer.

9. LIABILITY AND INDEMNITY

9.1. the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Customer by the Supplier in connection with the Services, or any actions taken by the Supplier at the Customer's direction;

9.2. It is the Customer's sole responsibility to ensure all Documentation provided during supply of Services complies with all relevant legislations. The Supplier shall not be held liable for any Documentation supplied as part of the Services which are deemed or held to be contrary to the legislation.

9.3. The Supplier's total aggregate liability in contract tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

9.4. Nothing in this agreement excludes the liability of the Supplier:

9.4.1. For death or personal injury caused by the Supplier's negligence; or

9.4.2. For fraud or fraudulent misrepresentations

9.5. Subject to Clause 9.1, The Supplier shall not be liable to the Customer for any loss of profits or goodwill or any other type of special, indirect or consequential loss or revenue of any nature whatsoever (including loss or damages suffered as a result of an action brought by a third party) whether arising from negligence, breach of contract or otherwise, even if such loss was reasonably foreseeable or The Supplier had been advised of the possibility of the Customer incurring the same, and such liability is hereby excluded to the fullest extent permitted by law.

9.6. The Customer hereby undertakes and agrees to indemnify The Supplier and keep it fully indemnified from and against any costs, losses, damages, expenses and/or liabilities (including without limitation any legal fees and expenses) which may be suffered or incurred by The Supplier arising out of or in connection with (i) any claims, proceedings, demands or actions by third parties arising out of or in connection with The Supplier's supply of and/or the Customer's use of the Service (including without limitation claims under the Data Protection Act 1998) and/or any breach of the Customer's undertakings or obligations set out in the Conditions, and/or (ii) any breach by the Customer of its obligations under the Conditions, and/or (iii) the Customer's negligence or wilful misconduct.

9.7. The Customer agrees that all the limitations and exclusions of liability in favour of The Supplier in the Conditions are reasonable in the circumstances under which the Service is to be performed.

10. CONFIDENTIALITY

10.1. The parties recognise that under these Conditions they may receive each other's trade secrets and/or confidential or proprietary information of the other party. All information belonging to or relating to a party including without limitation information concerning business plans, customers, supplies, services, intellectual property and/or financial results received by the other party as a result of entering into or performing the Conditions which is designated as confidential by the disclosing party or is otherwise clearly confidential in nature constitutes "confidential information".

10.2. A party's confidential information shall not be deemed to include information that:

(a) is or becomes publicly known other than through any act of omission of the receiving party;

(b) was in the other party's lawful possession before the disclosure;

(c) is lawfully disclosed to the receiving party by a third party without restriction of disclosure: or

(d) is independently developed by the receiving party, which independent development can be shown by written evidence.

10.3. Each party agrees not to use confidential information for any purpose other than the purpose for which it is supplied under the Conditions and agrees not to divulge confidential information received from the other party to any of its employees who do not need to know it, and to prevent its disclosure to or access by any third party without the prior written consent of the disclosing party except to its professional advisers or as may be required by law or any legal or regulatory authority.

10.4. Each party will use a reasonable degree of care which in any event will not be less than the same degree of care which the receiving party uses to protect its own confidential information to keep and ensure its employees and agents keep any and all such information confidential.

10.5. This above provisions of this Clause 10 shall survive this agreement, however arising.

11. DATA PROTECTION

The Customer consents to The Supplier using its personal data (such as the Customer's name, contact details, address and any other information which personally identifies the Customer) in accordance with The Supplier's Privacy Policy.

12. CUSTOMERS INTELLECTUAL PROPERTY RIGHTS

12.1. Subject to Clause 12.2, the Customer agrees that The Supplier may use the Customer's logo, name and trade marks in connection with The Supplier's advertising and marketing materials but only in accordance with Clause 12.2.

12.2. The Supplier shall submit all advertising and marketing materials which incorporate the Customer's logo, name and/or trade marks to the Customer before publication. The Customer shall have a period of seven (7) business days commencing on the date on which The Supplier sends the materials in which to notify The Supplier as to whether the Customer approves or disapproves the materials, such approval not to be unreasonably withheld or delayed. If the Customer does not communicate its approval or disapproval to The Supplier within such seven day period, the Customer shall be deemed to have approved the materials.

13. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

14. ASSIGNMENT

14.1. The Customer shall not, without the prior written consent of The Supplier, sub-licence, assign or otherwise transfer or dispose of all or any part of the Customer's rights or obligations under the Conditions.

14.2. The Supplier shall be entitled to delegate or sub-contract the performance of all or any part of its obligations under or in connection with the Conditions to any third parties as is necessary to provide the Services.

15. SURVIVORSHIP

All Clauses intended by their nature to survive termination including but not limited to Clause 8, shall survive the termination of the Conditions.

16. SEVERANCE

If any provision of these Conditions or part of any provision is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain unaffected and in force.

17. ENTIRE AGREEMENT

17.1. These Conditions together with the Privacy Policy constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in them and supersedes any previous agreement between the parties relating to such matters.

17.2. Each of the parties acknowledges and agrees that in entering into these Conditions and the documents referred to in them, it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to these Conditions or not) other than as expressly set out in this these Conditions.

18. FURTHER ASSURANCE

Each party will, at the request of the other party and at its own cost, do (or procure others to do) everything necessary to give the other party the full benefit of these Conditions.

19. BENEFIT OF AGREEMENT

No person who is not a party to these Conditions is intended to receive a benefit under, or be entitled to enforce, this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

20. WAIVER AND REMEDIES

20.1. 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.

20.2. 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.

21. NOTICES

21.1. All notices shall be made in writing and sent by prepaid first class post, by facsimile, e-mail or delivered by hand to, in the case of The Supplier, the address set out at the beginning of the Conditions and, in the case of the Customer, to the address notified to The Supplier by the Customer or to such other address as each party may from time to time notify in writing to the other party.

21.2. Any notice served by facsimile or e-mail shall be deemed served at the time of transmission provided the sender can show satisfactory transmission and posts a hard copy of the notice within 24 hours of service provided that if any such notice would otherwise be deemed to be served outside working hours, such notice shall be deemed to be served at the start of working hours on the next business day. Any notice served by post shall be deemed served two business days after the date of posting and any notice delivered by hand, upon delivery.

22. CHANGES TO THE CONDITIONS

The Supplier may change these Conditions from time to time at its absolute discretion without prior notice to the Customer. The Customer agrees that such changes will be binding on it. Any changes will be posted on The Supplier's Site and will amend and form part of these Conditions. The Customer is responsible for reviewing the Supplier's Site on a regular basis to obtain timely notice of any such changes. The Conditions and any new agreement entered into after such changes have been posted will include those changes.

23. NO PARTNERSHIP OR AGENCY

Nothing in these Conditions will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between either of the parties or as authorising either party to act as agent for the other. Neither party will have authority to make representations for, act in the name or on behalf of or otherwise to bind the other party in any way.

24. APPLICABLE LAW

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

25. JURISDICTION

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