

**TERMS AND CONDITIONS
OF**
www.brandableflashgames.co.uk

1 DEFINITIONS

- (1) "Buyer" means the person who buys or agrees to buy Services from the Supplier.
- (2) "Consumer" shall have the meaning ascribed in section 12 of the Unfair Contract Terms Act 1977.
- (3) "Contract" means the contract between the Supplier and the Buyer for the sale and purchase of services incorporating these Terms and Conditions and licence agreement.
- (4) "Services" means the services which allow the Buyer to order the Buyer's chosen digital content including flash games, HTML 5 based games and HTML files. Digital content can then be used subject to the licence.
- (5) "Supplier" means Big Bang Creative Ltd of Boho One, Bridge Street West, Middlesbrough, TS2 1AE, UK that owns and operates www.brandableflashgames.co.uk; Big Bang Creative Ltd is registered in England & Wales No: 05846017. Registered Office: 20 Kingsway House, Kingsway, Team Valley, Gateshead, NE11 0HW, UK. VAT registration number 886654367. E-mail info@bigbangcreative.co.uk
- (6) "Terms and Conditions" means these terms and conditions but will also include any special terms and conditions agreed in writing by the Supplier.
- (7) "Website" means www.brandableflashgames.co.uk.
- (8) "Working days" means any Monday to Friday from 9am to 5pm excluding all Public and bank holidays in England and Wales.
- (9) "Licence" means at www.brandableflashgames.co.uk/terms-conditions which is a revocable, non-exclusive, non-transferable licence to allow the Buyer to purchase and use the digital content worldwide for unlimited time with any digital project. For the purpose of this licence a digital project is defined as any project that makes use of flash, html or web technologies such as a website, intranets, presentations. The digital content can be used on one single live domain and one single test domain at any one time. Use across multiple domains will require specific written permission from Big Bang Creative Ltd and may also require additional licences to be purchased..
- (9) "Intellectual Property Rights" means any patent, trademark, service mark, registered design, copyright, design right, any contact or database rights, know-how, confidential information or process, any application for any of the above, and any other intellectual property right recognised in any part of the world whether or not presently existing or applied for which are held by the owning party.
- (10) "Device" means any computer or device upon which the digital content can be properly used in accordance with these terms and conditions and licence agreement which the Buyer owns or controls.

2 CONDITIONS

- (1) These Terms and Conditions, which include the licence, apply to all contracts for the sale of Services by the Supplier to the Buyer and will prevail over any other communication, agreement or documentation.
- (2) If the Buyer purchases and receives any digital content then this shall be deemed conclusive evidence of the Buyer's acceptance of these Terms and Conditions.

(3) Any special conditions which apply will be set out in a separate schedule annexed to these Terms and Conditions.

(4) These Terms and Conditions can only be varied if the Supplier specifically agrees in writing.

(5) The Supplier is entitled to vary these Terms and Conditions at any time but this right shall not affect the existing Terms and Conditions (including any special or varied terms and conditions accepted by the Buyer upon purchase.

(6) Any complaints by the Buyer must be in writing to the Supplier's address stated in clause 1(5).

3 ORDERING

(1) To place an order the Buyer must use the enquiry form on www.brandableflashgames.co.uk or contact us by email at info@bigbangcreative.co.uk

(2) All orders for Services are deemed to be an offer by the Buyer to purchase Services pursuant to these Terms and Conditions and are subject to acceptance by the Supplier. The Supplier may choose not to accept an order for any reason whatsoever.

(3) If the Services are unavailable then the Supplier will notify the Buyer. The Buyer can either choose to wait until those Services are available or can receive a full refund within 28 days.

4 PRICE AND PAYMENT

(1) The price of the Services are exclusive of VAT and are those displayed on the website at the time of purchase. Prices exclude delivery charges as detailed on the website. The total price, including VAT and delivery, will be confirmed via email before the order is supplied.

(2) Payment of the price which is exclusive of VAT and any applicable delivery charges must be made in full before any Services are commenced, unless an order on account has been agreed.

(3) Once the Supplier receives the order the Supplier will e-mail confirmation of the order (including the Services ordered and the price).

5 SUPPLIER'S RIGHTS

(1) The Supplier reserves the right to withdraw any Services from the Website without notice without any liability whatsoever.

(2) The Supplier reserves the right to refuse any order without liability.

(3) Unless specifically displayed on the website, prices are not guaranteed for any length of time. The Supplier reserves the right to update the prices displayed and will use their best endeavours to ensure that prices are correct at the time the Buyer places an order.

(4) Unless specifically agreed otherwise in writing, the Supplier retains all the Intellectual Property Rights in the Services and any results whatsoever produced as a result of the Services.

6 PERFORMANCE OF SERVICES

(1) Performance of the Services shall usually begin within 72 hours after payment has been made by the Buyer but time shall not be of the essence. However when the Supplier can not supply the Services within a period of 14 days then the Supplier will notify the Buyer who can either agree to purchase alternative Services or receive a refund. The Supplier will never be liable for any losses,

costs, damages or expenses incurred by the Buyer or any third party arising directly or indirectly out of any failure to supply.

(2) Supply of Services is concluded once the Buyer has received the purchased digital content. In the case of a hosted solution, Supply of services will be concluded at the end of the agreed hosting timeframe.

(3) Services will be performed with reasonable skill and care and are complete upon download. However, where applicable, the Supplier does not guarantee that the Services will be uninterrupted, secure, free from any errors, virus and/or other code that has contaminating or destructive properties or that any data generated, stored, transmitted or used via or in connection with the Services will be complete, accurate, secure, up to date, received or delivered correctly or at all.

(4) The Supplier reserves the right to suspend the Services for repair, maintenance or improvement and will restore the Services as soon as is reasonably practicable.

7 CANCELLATION AND TERMINATION

(1) If the Services do not comply or are faulty, then the Buyer should notify the Supplier in writing within 7 days of such non-compliance or fault. The Supplier will, at their sole discretion, then rectify the problem or provide the Buyer with a refund.

(2) If the Buyer breaches these terms and conditions and/or licence, or the Supplier has reason to believe that the Buyer has breached these terms and conditions and/or licence, then the Supplier will terminate the Services without notice. Otherwise the Supplier reserves the right to terminate the Services and will provide the Buyer with at least 14 days written notice supplied to the e-mail address provided by the Buyer.

8 RESPONSIBILITY & USE

(1) The Buyer specifically accepts that the effectiveness of any Services will be dependent on having the correct computer or device to use the digital content, correct and effective use, inspection and periodic routine maintenance. It is the Buyer's responsibility to carry out checks and security procedures (including anti-virus and other security checks) to satisfy the Buyer's own requirements for the safety and reliability of data input and output and downloads.

(2) It is the Buyer's responsibility to ensure that the Services and digital content are suitable for the Buyer's own use.

(3)(a) The Buyer agrees to be solely responsible for the use of any Services supplied that they will use the Services legally and only for the purposes that such Services are intended to be used for and at all times in accordance with any applicable legislation, regulation, instructions, advice, suggestion, guidance and information.

(b) The Buyer specifically agrees to use the services and digital content with all reasonable care and skill.

(4) Furthermore the Buyer agrees that they will not misuse any Services supplied and will abide by applicable legislation and regulations.

(5) The Buyer is responsible for all the log-in details which includes user identification, passwords, or any other information required as part of the Supplier's security procedures and the Supplier is not responsible for any losses or claims in this regard whatsoever.

(6) The Buyer will indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Buyer's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any goods and/or services manufactured/designed according to the Buyer's specification and provided by the Supplier infringes any rights whatsoever of any third party.

9 LIMITATION OF LIABILITY

(1) Nothing in these Terms and Conditions shall exclude or limit the liability of the Supplier for death or personal injury resulting from the negligence of the Supplier or their employees or agents.

(2) In so far as the law allows, the Supplier shall never be liable for any losses or damage whatsoever, including, but not limited to, indirect, incidental or consequential loss or damage.

(3) Time shall not be of the essence and the Supplier shall incur no liability to the Buyer in respect of any failure to complete the Services by any agreed completion date.

(4) Other than those implied by law where the Buyer is dealing as a Consumer, in the event of the Supplier breaching any of these Terms and Conditions the Buyer's remedies are limited to damages which, in no circumstance whatsoever, will exceed the price of the Goods and/or Services.

10 WAIVER

Nothing in these terms and conditions and no express or implied waiver by the Supplier in enforcing any of its rights under this contract shall prejudice its rights to do so in the future.

11 FORCE MAJEURE

The Supplier shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, accidents, war, fire, strikes, lock outs, failure of any communications including telecommunications or computer systems, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Supplier shall be entitled to a reasonable extension of its obligations.

12 INVALIDITY & SEVERANCE

Each clause or any part at all of this agreement is to be regarded as independent of the others. This means that should any clause or any part at all of this agreement be found to be unenforceable or invalid it will be severed and will not affect the enforceability or validity of the rest of this agreement.

13 GOVERNING LAW AND JURISDICTION

These Terms & Conditions shall be interpreted, construed and enforced in accordance with English law and shall be subject to the exclusive jurisdiction of the English Courts.