

DynamicWeb Software A/S

# Terms of Business

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## DynamicWeb Terms of Business

### 1. Definitions and General Terms

These terms of business ("Agreement") apply to services (collectively referred to as "Services") from DynamicWeb Software A/S ("DynamicWeb"). Services are collectively defined as any service provided on an hourly basis where the product is a service or other value added to the standard software. The terms of business do not apply to standard software or cloud services, for which reference is made to the license conditions or the service level agreement.

- 1.1. The terms of business constitute the contractual basis. These general terms take precedence to the extent of inconsistencies between this Agreement and the Solution Description (as defined in clause 1.5) and/or any other written agreement entered.
- 1.2. The terms of business apply only to Services from DynamicWeb and not to any third-party Services.
- 1.3. "Customer" means the legal person instructing DynamicWeb to deliver a task (the "Service").
- 1.4. "Solution Description" means the specific description of the Service agreed by the parties. The Solution Description incorporates these terms of business by reference.
- 1.5. The terms of business also apply to minor tasks reported through the DynamicWeb Care ("DynamicWeb Care") case system or by email even if such tasks do not directly refer to the terms of business.
- 1.6. All agreements for consultancy, delivery and development are based on hours spent.
- 1.7. A Solution Description applies only if it has been prepared by DynamicWeb or approved by DynamicWeb in writing as the basis of the provision of the Service.

### 2. The Service

- 2.1. Quotations must be accepted by the parties in writing.
- 2.2. Any changes to the Solution Description must be agreed in writing by the parties to be valid and any additional services delivered according hereto shall be invoiced based on hours spent.
- 2.3. Unless otherwise agreed, the Customer carries the full responsibility for ensuring that the Service has been clearly and exhaustively described in the Solution Description.
- 2.4. The Customer must make all necessary information available concerning the Service.

### **3. Provision and Arrangement**

- 3.1. DynamicWeb must provide the Service in accordance with the agreement set out in the Solution Description and if specifically agreed a Project Plan ("Project Plan").
- 3.2. If no Project Plan has been agreed, the Service must be provided at the speed deemed reasonable considering the scope of the Service and the circumstances in general. If a Project Plan has been prepared, DynamicWeb must provide the Services materially in accordance with the Project Plan.
- 3.3. The Service must be provided in consultation between the parties. Such consultation must be carried out through regular contact between the parties' contact persons.
- 3.4. If, within the time-limits materially agreed in the Project Plan, the Customer fails to accept, adjust or reject a Solution Description or any details concerning the Service, DynamicWeb will be entitled to decide to defer the provision of the Service until a response has been given, or initiate the performance of specific tasks materially in accordance with the Project Plan and the Solution Description provided. If the performance of tasks is initiated against that background, the Customer must pay for the time spent and other related costs until the response has been given. DynamicWeb must notify the Customer of any failure to respond on the part of the Customer prior to initiating the provision of the Service or parts of the Service.
- 3.5. Unless otherwise agreed, the Customer is responsible for coordinating and arranging the Service within its own business. A named employee of the Customer must act as the Customer's Project manager ("Project Manager") and, as such, will be entitled to accept with binding effect the Service and any agreements with DynamicWeb.
- 3.6. In connection with the provision of the Service, DynamicWeb is entitled to use subcontractors provided that such use does not cause any unnecessary inconvenience to the Customer.
- 3.7. To the extent that DynamicWeb uses subcontractors, DynamicWeb is subject to the same liability in respect of their work as if the work had been performed by DynamicWeb itself.
- 3.8. DynamicWeb must inform the Customer's Project Manager as soon as possible if there is a need for supplementary services or an extension of the Service. If a need arises for supplementary services during the provision of the Service, such services may be provided as an addition to the Solution Description.

#### **4. Prices and Payment**

- 4.1. All Services (including support) are invoiced based on time spent and according to the agreed hourly rate. If the Customer has entered into a Support Agreement containing prepaid hours, these are deducted from the hours invoiced.
- 4.2. The Customer receives an estimate for the Services prior to execution. The initial analysis that is required for preparing a Solution Description and an estimate is also invoiced based on time spent.
- 4.3. In case the Service is related to a bug in the DW platform the Customer is invoiced for the time spent on troubleshooting and implementing the error correction (e.g., via upgrading the solution). In case the Service is related to custom development on the Customer's solution, all work will be invoiced, as all support and maintenance on custom development is the responsibility of the Customer.
- 4.4. DynamicWeb will invoice Services on a bi-weekly basis based on time spent and invoices fall due for payment 14 days after issuance unless other agreements have been made with the Customer.
- 4.5. Time spent on transport, meetings, and costs in relation to meetings, which are not included in the Services Plan, will be invoiced separately if not otherwise specifically agreed. All travel costs in relation to on-site work at the Customer's premises are invoiced.
- 4.6. Services not included in the Solution Description will be invoiced based on time spent.
- 4.7. DynamicWeb may change its license fees and/or price per hour for services incurred with a written notice of 30 calendar days. Prices and fees are based on the standard price list in force at the time of purchase or license renewal unless otherwise agreed.
- 4.8. If overdue invoices are not paid, DynamicWeb may decide to suspend work until these invoices are paid.
- 4.9. DynamicWeb may demand payment of a reminder fee and default interest as from the due date at the rate provided for by the Danish Interest Act.
- 4.10. All prices are excluding VAT and tax.

## **5. Delivery and Guarantee**

- 5.1. Upon completion of a Service, DynamicWeb must deliver the agreed Service to the Customer. The nature of the delivery will depend on scope and complexity.
- 5.2. DynamicWeb is responsible for ensuring that the Service delivered complies with the solution specified in the Solution Description and any appendices.
- 5.3. The Customer must notify DynamicWeb of any defects discovered as soon as possible and in due time in accordance with the agreed deadlines.
- 5.4. If the Customer decides to deploy its solution to production in full or in part, such deployment will be deemed an acceptance, and the Delivery will be deemed to have been made and delivered.

## **6. Late Delivery**

- 6.1. If the parties have agreed on a Project Plan, cf. clause 3.4, the delivery will be late if the Service has not been delivered materially by the agreed delivery date. The delay runs until the date when delivery is made.
- 6.2. If the delay is due to circumstances not relating to the Service from DynamicWeb, DynamicWeb will be entitled to defer the agreed delivery date by at least the same number of days as the delay. If other circumstances justify a further delay, DynamicWeb will be entitled to such delay if it is able to state the reasonableness of such delay. DynamicWeb is entitled to compensation for any loss suffered directly as a result of the delay.
- 6.3. Unless otherwise agreed in writing in connection with the specific Service, the Customer will not be entitled to any compensation for direct or indirect losses caused by a delay.

## **7. Defects**

- 7.1. On delivery, the Customer must perform its own tests of the Service and verify that the Service complies with the Solution Description and any appendices.
- 7.2. If DynamicWeb is responsible for a Defect, the remedy of such Defect must be initiated within a reasonable time, or the Customer must be instructed how to remedy the Defect.
- 7.3. If, when remedying a Defect, DynamicWeb discovers that DynamicWeb has not caused the Defect, DynamicWeb will be entitled to compensation based on time spent in accordance with the price list in force at the time.
- 7.4. In case the Defect is related to custom development on the Customer's solution (i.e., not part of the DynamicWeb standard functionality), all work will be invoiced, as all support and maintenance on custom development is the responsibility of the Customer.
- 7.5. Defects caused by operational matters and third-party software are not attributable to DynamicWeb. Defective standard software must be reported to the DynamicWeb Care through the usual channels. Regarding error correction and prioritization of defects in standard software, reference is made to the standard License terms and the service levels in force.

## **8. Hardware and Operations**

- 8.1. If not deployed in the DynamicWeb Cloud, DynamicWeb assumes no responsibility for the performance of hardware, software, etc. made available by the Customer for the provision of the Service.
- 8.2. The Customer must ensure that hardware, software, etc. is made available in time to ensure that the provision of the Service is not delayed. If the solution is deployed in the DynamicWeb Cloud, DynamicWeb will take care of all hosting and deployment related matters as part of the delivery.
- 8.3. If the Customer itself or a third-party handles hosting, access to the DynamicWeb solution must not be impeded in any way to the effect that DynamicWeb spends an unnecessary amount of time on upgrades and support. By way of example, such an impediment could consist in time-limited access or a limited number of simultaneous administrators on the solution.
- 8.4. DynamicWeb reserves the right to invoice the Customer for any extra time spent as a result of the Customer handling hosting itself. The Customer is also obligated to inform DynamicWeb of any changes relating to access.
- 8.5. DynamicWeb must be allowed access 24/7 and on its own initiative.

## **9. Intellectual Right and Limitations of Liability**

- 9.1. DynamicWeb holds all rights in the technical design of the Service.
- 9.2. The copyright in the graphical design delivered by DynamicWeb will be assigned to the Customer in its entirety when payment has been made.
- 9.3. The customer must obtain a valid license for the DynamicWeb All-In-One Business Platform in accordance with the standard License terms.
- 9.4. After payment in full, the Customer will obtain a non-exclusive license to use the developed solution.
- 9.5. At the Customer's request and subject to approval from DynamicWeb, the source code for customized modules may be handed over to the Customer to the extent possible. The source code may only be used for the further development of the specific Service and may not be disclosed to any third party. Any costs involved in handing over the source code will be invoiced separately based on time spent.
- 9.6. The Customer will have no copyright in any source code or methods developed by DynamicWeb in connection with the provision of the Service.
- 9.7. DynamicWeb's entire liability under this agreement shall be limited to the fees paid for the Services causing the liability. DynamicWeb shall not be liable for any incidental, punitive, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits, data or goodwill or confidential or other information, for business interruption, for personal injury, for loss of privacy, for failure to meet any duty including of good faith or of reasonable care, for negligence, and for any other pecuniary or other loss whatsoever) arising out of or in any way related to the Services.

## **10. Duty of Confidentiality**

10.1. DynamicWeb undertakes not to disclose confidential information to third parties in connection with the provision of specific Services and the collaboration between the parties.

10.2. DynamicWeb is entitled to use the Customer as a reference for marketing purposes.

## **11. Force Majeure**

11.1. DynamicWeb is not liable for any damage to or defect in the provision of the Service, which is due to force majeure or similar circumstances. As a result, DynamicWeb is exempted from liability to the Customer if DynamicWeb is prevented from performing its obligations under the Agreement due to circumstances beyond the control of DynamicWeb, which DynamicWeb could not reasonably be expected to foresee at the time of the Agreement.

## **12. Disputes**

12.1. Any dispute concerning the interpretation of this Agreement or arising in connection with its conclusion, performance or termination will be settled by arbitration with final and binding effect in accordance with the rules of arbitration of the Danish Institute of Arbitration. This Agreement shall be governed by and construed in accordance with Danish Law disregarding its principles on the choice of law. The place of arbitration shall be Aarhus or Copenhagen at the choice of DynamicWeb.