

Terms of Use (basic)

by SEQ Legal

Terms of Use (basic)¹

(1) Introduction

These terms of use govern your use of our website; by using our website, you accept these terms of use in full.² If you disagree with these terms of use or any part of these terms of use, you must not use our website.

[You must be at least [18] years of age to use our website. By using our website and by agreeing to these terms of use, you warrant and represent that you are at least [18] years of age.³]

[Our website uses cookies. By using our website and agreeing to these terms of use, you consent to our use of cookies in accordance with the terms of our [privacy policy / cookies policy].]⁴

(2) Licence to use website

Unless otherwise stated, we or our licensors own the intellectual property rights in the website and material on the website. Subject to the licence below, all these intellectual property rights are reserved.

¹ There are two main purposes of website terms of use: first, they set out the contractual framework for the use of the website; second, they fulfil some of the legal obligations placed upon some kinds of businesses and websites. Our terms of use template is intended for use on websites focused on England and Wales; it can, however, be adapted for use in other jurisdictions – although this should only be done by someone with the requisite familiarity with the relevant law of the other jurisdiction. The template is designed for some of the most common kinds of websites: information sites, online brochures/adverts for products and services, personal websites, and similar kinds of sites. It contains optional provisions for websites with restricted access and/or user generated content. It is not on its own sufficient for use on websites which collect personal information (which will also require a privacy policy of some kind) or for ecommerce sites (i.e. those involving payment in relation to goods or services - which will also require legal provisions relating specifically to the goods or services that can be bought on the website). Websites with unusual or non-standard features should always use bespoke terms of use. The website terms of use template will need to be edited before it is ready for use. Square brackets in the document indicate the sections which need or are likely to need to be edited. However you should carefully review the whole document to ensure that it meets with your requirements. If you have any doubts, you should seek professional advice.

² The completed website terms of use should be easily accessible on your website, preferably from every page. Ideally, from a legal perspective, users should be asked to expressly agree to these terms (e.g. by clicking an "I agree" button). This is rarely done in relation to general website terms of use. If however users have to register to enter a restricted area of the website or to use functionality in the website, you should ensure that they accept the terms of use – e.g. by clicking "I accept" on an electronic version of the terms of use. You should retain evidence of the acceptance of the terms by each user.

³ The use of websites by minors can be legally problematic. There are a number of different legal issues. For example, under English law contracts may be unenforceable against minors. Another issue concerns data protection. The law of data protection imposes additional burdens in relation to the processing of any personal data of a minor and in relation to the processing of personal data provided by a minor. The effects of the law of indecency may also depend upon whether a website is accessible by minors. Obviously, the inclusion of a requirement in your terms of use that minors refrain from using a website is no guarantee that they will do so. Where your website is directed at, or likely to be used by, minors, we recommend that you seek specialist legal advice.

⁴ The inclusion of this statement in your website legal documents will not necessarily satisfy the requirements of the Privacy and Electronic Communications (EC Directive) Regulations 2003 as regards consent to the use of cookies. Guidance concerning methods of obtaining such consent is included on the Information Commissioner's website (<http://www.ico.gov.uk>). Details of cookie use should be set out in the privacy policy or cookies policy.

You may view, download for caching purposes only, and print pages [or [OTHER CONTENT]]⁵ from the website for your own personal use, subject to the restrictions set out below and elsewhere in these terms of use.

You must not:

- (a) republish material from this website (including republication on another website);
- (b) sell, rent or sub-license material from the website;
- (c) show any material from the website in public;
- [(d) reproduce, duplicate, copy or otherwise exploit material on our website for a commercial purpose;]
- [(e) edit or otherwise modify any material on the website; or]
- [(f) redistribute material from this website [except for content specifically and expressly made available for redistribution [(such as our newsletter)].]

[Where content is specifically made available for redistribution, it may only be redistributed [within your organisation].]⁶

(3) Acceptable use

You must not use our website in any way that causes, or may cause, damage to the website or impairment of the availability or accessibility of the website; or in any way which is unlawful, illegal, fraudulent or harmful, or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

You must not use our website to copy, store, host, transmit, send, use, publish or distribute any material which consists of (or is linked to) any spyware, computer virus, Trojan horse, worm, keystroke logger, rootkit or other malicious computer software.

You must not conduct any systematic or automated data collection activities (including without limitation scraping, data mining, data extraction and data harvesting) on or in relation to our website without our express written consent.

[You must not use our website to transmit or send unsolicited commercial communications.]

[You must not use our website for any purposes related to marketing without our express written consent.]

[(4) Restricted access⁷

[Access to certain areas of our website is restricted.] We reserve the right to restrict access to [other] areas of our website, or indeed our whole website, at our discretion.

If we provide you with a user ID and password to enable you to access restricted areas of our

⁵ The scope of the licence to use will vary with the site. Consider carefully exactly what your users should be allowed to do with your website and material on your website.

⁶ Where you have content which is specifically available for redistribution, it is usually a good idea to have a more detailed licence setting out the redistribution rights.

⁷ This section should be included if your website or parts of your website have (or will in future have) restricted access – e.g. a password-protected area for members.

website or other content or services, you must ensure that that user ID and password is kept confidential.

You must notify us in writing immediately if you become aware of any unauthorised use of your account or password.

You are responsible for any activity on our website arising out of any failure to keep your password confidential, and may be held liable for any losses arising out of such a failure.

You must not use any other person's user ID and password to access our website[, unless you have that person's express permission to do so].

[We may disable your user ID and password in our sole discretion without notice or explanation.]

[(5) User generated content⁸

In these terms of use, "your user content" means material (including without limitation text, images, audio material, video material and audio-visual material) that you submit to our website, for whatever purpose.

You grant to us a worldwide, irrevocable, non-exclusive, royalty-free licence to use, reproduce, adapt, publish, translate and distribute your user content in any existing or future media. You also grant to us the right to sub-license these rights, and the right to bring an action for infringement of these rights.

You warrant and represent that your user content will comply with these terms of use.

Your user content must not be illegal or unlawful, must not infringe any third party's legal rights, and must not be capable of giving rise to legal action whether against you or us or a third party (in each case under any applicable law).

You must not submit any user content to the website that is or has ever been the subject of any threatened or actual legal proceedings or other similar complaint.

We reserve the right to edit or remove any material submitted to our website, or stored on our servers, or hosted or published upon our website.

[Notwithstanding our rights under these terms of use in relation to user content, we do not undertake to monitor the submission of such content to, or the publication of such content on, our website.]⁹

(6) Limited warranties

We do not warrant the completeness or accuracy of the information published on this website; nor do we commit to ensuring that the website remains available or that the material on the website is kept up-to-date.

To the maximum extent permitted by applicable law we exclude all representations, warranties and conditions relating to this website and the use of this website (including, without limitation, any warranties implied by law of satisfactory quality, fitness for purpose and/or the

⁸ This section should be included if your website has a bulletin board, chat room, comments feature, or similar user generated content functionality. You will need to think carefully about, first, the terms of the licence which the user grants to you, and second, the restrictions you propose to place upon users.

⁹ This provision is intended to disclaim editorial responsibility for user content. This should (it is thought) give you a better chance of gaining the protection of the general defences in Sections 17-19 of the Ecommerce Regulations and the libel-specific defence in Section 1 of the Defamation Act 1996.

use of reasonable care and skill).

(7) Limitations and exclusions of liability¹⁰

Nothing in these terms of use will: (a) limit or exclude our or your liability for death or personal injury resulting from negligence; (b) limit or exclude our or your liability for fraud or fraudulent misrepresentation; (c) limit any of our or your liabilities in any way that is not permitted under applicable law; or (d) exclude any of our or your liabilities that may not be excluded under applicable law.¹¹

The limitations and exclusions of liability set out in this Section and elsewhere in these terms of use: (a) are subject to the preceding paragraph; and (b) govern all liabilities arising under the terms of use or in relation to the subject matter of the terms of use, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

[To the extent that the website and the information and services on the website are provided free-of-charge, we will not be liable for any loss or damage of any nature.]¹²

[We will not be liable to you in respect of any losses arising out of any event or events beyond our reasonable control.]

[We will not be liable to you in respect of any business losses, including (without limitation) loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.¹³]

[We will not be liable to you in respect of any loss or corruption of any data, database or

¹⁰ Limitations and exclusions of liability are regulated and controlled by law, and the courts often rule that particular limitations and exclusions of liability are unenforceable. The courts are particularly likely to intervene where a party is seeking to rely on a limitation or exclusion of liability in a consumer contract or in its standard T&Cs, but will also sometimes intervene where a term has been individually negotiated. You should take legal advice if you may wish to rely upon a limitation or exclusion of liability, or if you want to exclude or limit - or purport to exclude or limit - any liability to a consumer. Please note that the guidance notes to this Section provide only an incomplete and basic overview of this complex subject.

Exclusions and limitations of liability in UK B2B and B2C contracts are regulated by The Unfair Contract Terms Act 1977 ("UCTA"). Relevant legislation in the case of B2C contracts also includes The Consumer Protection Act 1987 and The Unfair Terms in Consumer Contracts Regulations 1999.

The courts may be more likely to rule that provisions excluding liability - as opposed to those merely limiting liability - are unenforceable.

If there is a risk that any particular limitation or exclusion of liability will be found to be unenforceable by the courts (for example, because it may be unreasonable under UCTA), that provision should be drafted as an independent term, and be separately numbered from the other provisions.

It may improve the chances of a limitation or exclusion of liability being found to be enforceable if the party seeking to rely upon it specifically drew it to the attention of the other party before the contract was entered into.

¹¹ Do not delete this paragraph (except upon legal advice). Without this paragraph, the specific limitations and exclusions of liability will not usually be enforceable.

¹² This sort of exclusion is most unlikely to be enforceable.

¹³ You should consider carefully the particular kinds of loss you want to try to limit or exclude.

If you wish to try to limit/exclude for liability in respect of reckless, deliberate, personal and/or repudiatory breaches of contract, you should specify this in relation to the relevant paragraph (for example, using the following wording: "The limitations and exclusions of liability in this paragraph will apply whether or not the liability in question arises out of any [reckless, deliberate, personal and/or repudiatory] conduct or breach of contract"). In some circumstances the courts will find these types of limitations and exclusions to be unenforceable (e.g. because unreasonable under UCTA).

software.]

[We will not be liable to you in respect of any special, indirect or consequential loss or damage.¹⁴]

(8) Indemnity

You hereby indemnify us and undertake to keep us indemnified against any losses, damages, costs, liabilities and expenses (including without limitation legal expenses and any amounts paid by us to a third party in settlement of a claim or dispute on the advice of our legal advisers) incurred or suffered by us arising out of any breach by you of any provision of these terms of use[, or arising out of any claim that you have breached any provision of these terms of use].¹⁵

(9) Breaches of these terms of use

Without prejudice to our other rights under these terms of use, if you breach these terms of use in any way, we may take such action as we deem appropriate to deal with the breach, including suspending your access to the website, prohibiting you from accessing the website, blocking computers using your IP address from accessing the website, contacting your internet service provider to request that they block your access to the website and/or bringing court proceedings against you.

(10) Variation¹⁶

We may revise these terms of use from time-to-time. Revised terms of use will apply to the use of our website from the date of the publication of the revised terms of use on our website. Please check this page regularly to ensure you are familiar with the current version.

(11) Assignment

We may transfer, sub-contract or otherwise deal with our rights and/or obligations under these terms of use without notifying you or obtaining your consent.

You may not transfer, sub-contract or otherwise deal with your rights and/or obligations under these terms of use.

(12) Severability

If a provision of these terms of use is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

(13) Exclusion of third party rights

These terms of use are for the benefit of you and us, and are not intended to benefit any third party or be enforceable by any third party. The exercise of our and your rights in relation to

¹⁴ "Consequential loss" has a special meaning in English law: it means losses that, whilst not arising naturally from the breach, were specifically in the contemplation of the parties when the contract was made.

¹⁵ This additional wording is useful, although users may think it unfair to demand an indemnity where liability has not been proven – and in many circumstances, for example in relation to consumers, it will probably not be enforceable.

¹⁶ Changes to the notices will not be retrospectively effective.

these terms of use is not subject to the consent of any third party.¹⁷

(14) Entire agreement

These terms of use[, together with our privacy policy,]¹⁸ constitute the entire agreement between you and us in relation to your use of our website, and supersede all previous agreements in respect of your use of this website.

(15) Law and jurisdiction¹⁹

These terms of use will be governed by and construed in accordance with English²⁰ law, and any disputes relating to these terms of use will be subject to the [non-]exclusive²¹ jurisdiction of the courts of England and Wales.

(16) Our details²²

The full name of our company is Raw Nibbles Limited.

We are registered under registration number 08792536.

Our registered address is 82C EAST HILL, COLCHESTER, ESSEX, CO1 2QW .

You can contact us by email to nibble@rawnibbles.co.uk.

¹⁷ This provision is designed to exclude any rights a third party may have under the Contracts (Rights of Third Parties) Act 1999.

¹⁸ If you collect personal data from users, you should have a privacy policy as well as terms of use. You should also refer here to (for example) any terms of sale or terms of subscription which relate to your website.

¹⁹ The questions of what law governs a contract, and where disputes relating to the contract may be litigated, are two distinct questions.

²⁰ These terms of use have been drafted to comply with English law, and the governing law provision should not be changed without obtaining expert advice from a lawyer qualified in the appropriate jurisdiction. (NB in some circumstances the courts will apply provisions of their local law, such as local competition law or consumer protection law, irrespective of a choice of law clause specifying that a different law applies.)

²¹ Choose "non-exclusive" jurisdiction if you may want to enforce the terms of use against users outside England and Wales. Otherwise, choose "exclusive jurisdiction". (NB in some circumstances – particularly where you are contracting with a consumer - your jurisdiction clause may be overridden by the courts.)

²² UK companies must provide their corporate names, their registration numbers, their place of registration and their registered office address on their websites.

Sole traders and partnerships who carry on a business in the UK under a "business name" (i.e. a name which is not the names of the trader/partners or certain other specified classes of name) must also make certain website disclosures: (i) in the case of a sole trader, the individual's name; (ii) in the case of a partnership, the name of each member of the partnership; and (iii) in either case, in relation to each person named, an address in the UK at which service of any document relating in any way to the business will be effective.

All websites covered by the Ecommerce Regulations must provide a geographic address (not a PO Box number) and an email address.