

Terms SimpleERB

simpleERB software

By checking the "I accept" box displayed as part of the sign-up process, you agree to the following terms and conditions (the "agreement") governing your use of Social Deal's simpleERB online service, which may include offline components (collectively, the "Service"). If you are entering into this agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the terms "you" or "your" shall refer to such entity. If you do not have such authority, or if you do not agree with these terms and conditions, you must not check the "I accept" box and may not use the service.

As part of the simpleERB hosted Service, Social Deal B.V. (a limited liability company under the laws of the Netherlands, hereafter 'Social Deal' or 'the Company') will provide you with use of the Service, including a browser interface data encryption, (where relevant), transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the simpleERB website incorporated by reference herein, including but not limited to Social Deal's privacy and security policies.

1. Definitions and Interpretation

The following are the standard terms and conditions under which the Company licences computer software and supplies related services. These Terms and Conditions shall, unless otherwise expressly stated in writing, apply to the subject matter of any agreement in respect thereof.

1. In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:
 - "Acceptance Certificate" - means a document to be used in conjunction with the supply of Products to be signed by the Customer on delivery indicating their acceptance of that delivery, or in the case of a service, the act of using that service in a production environment;
 - "Agreement" - means any agreements entered into between the Company and a Customer to which these standard Terms and Conditions apply;
 - "Customer" - means the individual, business, or other organisation with whom the Company contracts;
 - "Supplier" - means any supplier of Products or Services to the Company;
 - "Products" - means computer hardware, software, such as the simpleERB Technology, and associated equipment that may be supplied by the Company;
 - "Services" - means any service supplied by the Company under the Agreement;
 - "simpleERB Technology" - means the simpleERB restaurant diary and management software as hosted by Social Deal.
2. Any reference to a day or days refers to business days - that is any day which is not a weekend or public or bank holiday in the Netherlands.
3. The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

2. Privacy & Security; Disclosure

Social Deal's privacy and security policies regarding the provision of the Services may be viewed at <http://www.simpleERB.com> and Social Deal reserves the right to modify its privacy and security policies in its reasonable discretion from time to time.

3. License Grant & Restrictions

Social Deal hereby grants you a non-exclusive, non-transferable, worldwide right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by Social Deal and its licensors. You may not access the Service if you are a direct competitor of Social Deal, except with Social Deal's prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes. You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libellous, or otherwise unlawful material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorised access to the Service or its related systems or networks.

4. Your Responsibilities

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify Social Deal immediately of any unauthorised use of any password or account or any other known or suspected breach of security; (ii) report to Social Deal immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another Social Deal user or provide false identity information to gain access to or use the Service.

5. Account Information and Data

Social Deal does not own any data, information or material that you submit to the Service in the course of using the Service ("Customer Data"). You, not Social Deal, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Social Deal shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of your breach), Social Deal will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. Social Deal reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and Social Deal shall have no obligation to maintain or forward any Customer Data. Customer Data originating from the Social Deal or partner websites belongs to Social Deal and not to you. Customers may click links in the free service and subscribe to Social Deal. If they have consented to information being sent to them by Social Deal, Social Deal may do this.

6. Intellectual Property Ownership

Social Deal alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the simpleERB Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the simpleERB Technology or the Intellectual Property Rights owned by Social Deal. The Social Deal name, the Social Deal logo, the simpleERB name, the simpleERB logo and the product names associated with the Service are trademarks of Social Deal or third parties, and no right or license is granted to use them.

7. Charges and Payment of Fees

Charges are monthly and per restaurant. For the avoidance of doubt if you operate more than one restaurant on the same physical site you may use the "Area" function in simpleERB to represent individual restaurants. If the restaurants are physically separated you must use multiple versions of simpleERB. You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. Payments for the service must be made monthly in advance unless otherwise mutually agreed upon in an Order Form or through the Online Order Centre. All payment obligations are non-cancellable and all amounts paid are non-refundable. You must provide Social Deal with valid credit card, approved purchase order information, or completed direct debit form as a condition to signing up for the Service. Social Deal reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 10 days prior notice to you, which notice may be provided by e-mail. All pricing terms are confidential, and you agree not to disclose them to any third party. Initial setup and training fees are subject to separate negotiation and are paid upon delivery.

8. Billing and Renewal

Social Deal charges and collects monthly in advance for use of the Service. Social Deal will automatically issue an invoice for each month upon receipt of payment. Social Deal will automatically renew and bill your credit card each year on the subsequent anniversary or as otherwise mutually agreed upon. The renewal charge will be equal to the then current license fee in effect during the prior term, unless Social Deal has given you at least 10 days prior written notice of a fee increase, which shall be effective upon renewal and thereafter. Fees for other services will be charged on an as-quoted basis. Social Deal's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties. You agree to provide Social Deal with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorised billing contact and License Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, Social Deal reserves the right to terminate your access to the Service in addition to any other legal remedies. If you believe your bill is incorrect, you must contact us in writing within 30 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

9. Non-Payment and Suspension

In addition to any other rights granted to Social Deal herein, Social Deal reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 3.0% above Bank of England base rate per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for licenses during any period of suspension. If you or Social

Deal initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that Social Deal may charge such unpaid fees to your deposit, credit card or otherwise bill you for such unpaid fees. Social Deal reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that Social Deal has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is 30 days or more delinquent.

10. Termination upon Expiration/Reduction in Number of Licenses

This Agreement commences on the Effective Date. The Initial Term shall be for one month or as otherwise mutually agreed upon in an Order Form, commencing on the date you agree to pay for the Service by completing the subscription form, or on the start date of the Order Form. Upon the expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms of one month, at Social Deal's then current fees. Either party may terminate this Agreement, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least one month prior to the date of the requested termination. In the event this Agreement is terminated (other than by reason of your breach), Social Deal will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. You agree and acknowledge that Social Deal has no obligation to retain the Customer Data, and may delete such Customer Data, more than 30 days after termination.

11. Termination for Cause

Any breach of your payment obligations or unauthorised use of the simpleERB Technology or Service will be deemed a material breach of this Agreement. Social Deal, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. You agree and acknowledge that Social Deal has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

12. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Social Deal represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online help documentation (FAQ and 'help' section on the simpleERB website) under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

13. Mutual Indemnification

You shall indemnify and hold Social Deal, its licensors and each such party's parent organisations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that Social Deal (a) gives written notice of the claim

promptly to you; (b) gives you sole control of the defence and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release Social Deal of all liability and such settlement does not affect Social Deal's business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim. Social Deal shall have no indemnification obligation, and you shall indemnify Social Deal pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(s).

14. Disclaimer of Warranties

Social Deal and its licensors make no representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the Service or any content. Social Deal and its licensors do not represent or warrant that (a) the use of the Service will be timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data, (b) the Service will meet your requirements or expectations, (c) any stored data will be accurate or reliable, (d) the quality of any products, services, information, or other material purchased or obtained by you through the Service will meet your requirements or expectations, or (e) the service or the server(s) that make the Service available are free of viruses or other harmful components. The Service and all content is provided to you strictly on an "as is" basis. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by Social Deal and its licensors.

15. Internet Delays

Social Deal's services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Social Deal is not responsible for any delays, delivery failures, or other damage resulting from such problems.

16. Limitation of Liability

In no event shall either party's aggregate liability exceed the amounts actually paid by and/or due from you in the twelve (12) month period immediately preceding the event giving rise to such claim. In no event shall either party and/or its licensors be liable to anyone for any indirect, punitive, special, exemplary, incidental, consequential or other damages of any type or kind (including loss of data, revenue, profits, use or other economic advantage) arising out of, or in any way connected with this service, including but not limited to the use or inability to use the service, or for any content obtained from or through the service, any interruption, inaccuracy, error or omission, regardless of cause in the content, even if the party from which damages are being sought or such party's licensors have been previously advised of the possibility of such damages.

17. Arbitration

Subject to the agreement of the parties, if any dispute or difference shall arise between the Company and the Customer on any matter relating to or arising out of the Agreement, such a dispute shall be exclusively referred to the competent courts of Amsterdam, the Netherlands.

18. Notice

Social Deal may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in Social Deal's account information, or by written communication sent by first class/registered mail or pre-paid post to your address on record in Social Deal's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class/registered mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Social Deal (such notice shall be deemed given when received by Social Deal) at any time by: e-mail to info@simpleerb.com.

19. Modification to Terms

Social Deal reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

20. Assignment; Change in Control

This Agreement may not be assigned by you without the prior written approval of Social Deal but may be assigned without your consent by Social Deal to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.

21. Proper Law and Jurisdiction

The Agreement shall be governed by and construed in accordance with the laws of the Netherlands. Any dispute concerning it or its interpretation shall be adjudicated in that Jurisdiction.

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