

# W2W Terms and Conditions



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## W2W Terms and Conditions

These terms and conditions (the “Terms”) are entered into between the customer named in the order form (“Customer”) to which these Terms are attached, and W2W incorporated and registered in México whose registered office is at Thiers 251, Anzures, Miguel Hidalgo, 11590, CDMX (“Supplier”). Customer and Supplier agree that these Terms together with the order form, and any agreed schedules, annexes, and exhibits, form a binding contract between the parties, to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

### 1. Interpretation

The following definitions and rules of interpretation apply in this agreement:

**Additional Responsibilities:** any additional responsibilities of the Customer under this agreement as agreed by the parties in writing.

**Applicable Laws:** (for so long as and to the extent that they apply to the Supplier) the law of México, the law of any member state of México and/or the México Data Protection Legislation and any other law that applies in México.

**Charges:** the sums payable for the Services agreed in writing by the parties.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Customer Materials:** all documents, information, designs, data, specifications, graphics, logos, trademarks, written content, and other materials provided by or on behalf of the Customer to be used by Supplier in connection with the provision of the Services.

**Data Details:** the details of the personal data to be processed by the Supplier under this agreement agreed by the parties in writing from time to time.

**Data Protection Legislation:** the México Data Protection Legislation and any other México legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Deliverables:** any output of the Services to be provided by the Supplier to the Customer as agreed by the parties in writing. Deliverables may include Customer Materials, Supplier Tools and Third Party Materials.

**Event Recording:** means audio-visual recordings of the Live Event created by the Customer on the W2W Platform Supplier under the agreement.

**Expenses:** any expenses or costs that may be incurred by the Supplier in providing the Services as agreed by the parties in writing, including licensing fees, stock or original photography, font or media licensing and online services

**Intellectual Property Rights:** patents, utility models, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.

**Performance Dates:** the date(s) agreed by the parties in writing for performance of the Services.

**Services:** the organisation, set-up, support and management of on-line events using the Supplier's Tools and the Support Services.

**Supplier's Tools:** the Supplier's platform at [www.w2w.co/](http://www.w2w.co/) and any and all associated software including modifications and improvements to them but excluding the Customer Materials.

**Support Services:** any additional support services agreed by the parties in writing.

**Third Party Materials:** materials belonging to third parties, including without limitation open source software, fonts and stock images.

**México Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in México including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**VAT:** value added tax chargeable in México.

**1.1** Clause headings shall not affect the interpretation of this agreement.

**1.2** Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

**1.3** Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.

**1.4** A reference to a statute or statutory provision is a reference to it as amended,

extended or re-enacted from time to time.

**1.5** A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

**1.6** A reference to **writing** or **written** includes email.

**1.7** Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

**1.8** References to clauses are to the clauses of this agreement.

**1.9** Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. Supplier's responsibilities

**2.1** The Supplier shall use reasonable endeavours to provide the Services, and deliver the Deliverables to the Customer, in accordance with this agreement in all material respects.

**2.2** The Supplier shall, to the extent within its reasonable control, meet each Performance Date.

## 3. Customer's obligations

**3.1** The Customer shall:

- (a)** co-operate with the Supplier in all matters relating to the Services;
- (b)** ensure that all persons to whom the Customer grants access to the Supplier's Tools comply with the Supplier's terms and conditions of platform use at [www.w2w.co](http://www.w2w.co)
- (c)** provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) reasonably required by the Supplier in connection with the Services and ensure that they are accurate and complete in all material respects; and
- (d)** comply with any Additional Responsibilities.

**3.2** If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

## 4. Charges and payment

**4.1** The Customer shall pay the Charges and the Expenses to the Supplier in accordance with the Payment Terms and to a bank account nominated in writing by the Supplier from time to time.

**4.2** All sums payable to the Supplier under this agreement:

- (a)** are exclusive of VAT (or applicable local law taxes), and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice;

and

**(b)** shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 5. Intellectual property rights

**5.1** Subject to clause 5.3, the Supplier (and its licensors) shall retain ownership of all Intellectual Property Rights in the Supplier's Tools and the Deliverables.

**5.2** The Supplier hereby grants and assigns to the Client absolutely:

**(a)** the entire copyright throughout the world in all media whether now known or hereafter developed for the full period of copyright and all renewals, revivals, reversions and extensions thereof (and thereafter, in so far as it is able, in perpetuity) including so called rental and lending rights and, to the extent relevant, by way of present assignment of future copyright; and

**(b)** all other rights whatsoever including all consents under Part II of the Copyright, Designs and Patents Act 1988 or any statutory modification or re-enactment thereof for the time being in force (CDPA) in the Event Recordings. The Supplier recognises that the Customer has the unlimited right to edit, copy, alter, add to, take from, adapt and translate all or any of the Event Recordings after delivery by the Supplier and hereby irrevocably and unconditionally waives the benefits of any provision of law relating to so-called "moral rights" (including without limitation any rights of the Supplier under section 77 to section 85 inclusive of the CDPA) and any similar laws of any jurisdiction in relation to the Event Recordings. Event Recordings shall be treated as "Customer Materials" for the purpose of clause 5.3.

**5.3** In relation to the Customer Materials, the Customer:

**(a)** and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and

**(b)** grants to the Supplier a non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to the Customer.

**5.4** The Supplier:

**(a)** warrants that the receipt of the Services and the use of the Supplier's Tools and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;

**(b)** does not warrant that the Customer's use of the Services will be uninterrupted or error-free and is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, or any third party services incorporated into the W2W Platform, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities and third party services;

**(c)** shall, subject to clause 8.4, indemnify the Customer against all liabilities, costs, expenses, damages and losses suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for infringement of a third

party's Intellectual Property Rights, to the extent that the infringement results from the receipt of the Services and use of the Supplier's Tools and Deliverables in accordance with the provisions of this agreement;

**(d)** shall not be in breach of the warranty at clause 5.4(a), and the Customer shall have no claim under the indemnity at clause 5.4(c) to the extent the infringement arises from:

- (I)** the use of Customer Materials in the development of, or the incorporation of the Customer Materials in, the Supplier's Tools or any Deliverable;
- (II)** any modification of the Supplier's Tools or any Deliverable, other than by or on behalf of the Supplier; and
- (III)** compliance with the Customer's specifications or instructions.

## **5.5** The Customer:

**(a)** warrants that the receipt and use in the performance of this agreement by the Supplier, its agents, subcontractors or consultants of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

**(b)** shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses suffered or incurred or paid by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for infringement of a third party's Intellectual Property Rights, to the extent that the infringement results from the hosting, receipt or use in the performance of this agreement of the Customer Materials.

**5.6** If either party (Indemnifying Party) is required to indemnify the other party (Indemnified Party) under this clause 5, the Indemnified Party shall:

**(a)** notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 5.4(b) or clause 5.5(b) (as applicable) (IPRs Claim);

**(b)** allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

**(c)** provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and

**(d)** not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

## **6. Data protection**

The parties agree that any data processing undertaken by the Supplier in relation to this agreement shall be governed by the terms of the Data Processing Agreement. The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier and/or lawful collection or processing of the personal data by the Supplier on behalf of the Customer for the duration and purposes of this Agreement.

## 7. Confidentiality

**7.1** Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 7.2.

**7.2** Each party may disclose the other party's confidential information:

- (a)** to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 7; and
- (b)** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**7.3** No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## 8. Limitation of liability

**8.1** References in this clause 8 to liability include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

**8.2** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

**8.3** Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:

- (a)** death or personal injury caused by negligence;
- (b)** fraud or fraudulent misrepresentation; and
- (c)** breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

**8.4** Subject to clause 8.3:

- (a)** the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b)** 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 an amount equal to the Charges.

## 9. Term and termination

**9.1** This agreement shall, unless otherwise terminated as provided in this clause, continue for the Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a "Renewal Term"), unless:

- (a)** either party notifies the other party of termination, in writing, at least 60 days before the end of the Subscription Term or any Renewal Term, in which case this agreement shall terminate upon the expiry of the applicable Subscription Term or Renewal Term; or
- (b)** otherwise terminated in accordance with the provisions of this agreement.

**9.2** Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a)** the other party commits a material breach of any term of this agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b)** the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or
- (c)** the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986.

**9.3** Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 (seven) days after being notified in writing to make such payment.

## 10. Consequences of termination

**10.1** On termination or expiry of this agreement the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt.

**10.2** Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

**10.3** Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or

expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## 11. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for thirty days the party not affected may terminate this agreement by giving seven days' written notice to the affected party.

## 12. Assignment and other dealings

Neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

## 13. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 14. Waiver

**14.1** A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

**14.2** A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**14.3** A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

## 15. Rights and remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## 16. Severance



**16.1** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

**16.2** If any provision or part-provision of this agreement is deemed deleted under clause 16.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **17. Entire agreement**

**17.1** This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**17.2** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## **18. No partnership or agency**

**18.1** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

**18.2** Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **19. Third party rights**

**19.1** Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**19.2** The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

## **20. Notices**

**20.1** Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

**(a)** delivered by hand or by pre-paid first-class post or other next business day delivery service at its registered office (if a company) or its principal place of business (in any other

case); or

**(b)** sent by email to the address agreed in writing between the parties

**20.2** Any notice shall be deemed to have been received:

**(a)** if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and

**(b)** if sent by pre-paid first-class post or other next business day delivery services, at 9.00 am on the second business day after posting or at the time recorded by the delivery service; and

**(c)** if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause (c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

**20.3** This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**20.4** A notice given under this agreement is not valid if sent by email.

## 21. Governing law

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

## 22. Jurisdiction

Each party irrevocably agrees that the courts of México shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation provided that each may enforce any judgement of the courts of México in the courts of any jurisdiction.

## 23. Use of name of parties

The Customer agrees that its name and standard logo (as published by the Customer on W2W) may be included by W2W on the W2W client list on its website and in its sales materials. W2W shall be entitled to use said list freely in its commercial efforts. Any other use of Customer name, logo or information shall only occur with Customer's prior written approval which Customer may withhold in its discretion.

Comercio Electrónico Digital S.A. de C.V.

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[www.w2w.co](http://www.w2w.co)

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