

Application for and
Terms of Credit Account
and
Terms of Supply
with
the flying lizard limited

TERMS OF CREDIT AND SUPPLY

1. APPLICATION

These terms and conditions of Credit and Supply apply to all Credit advanced, services supplied and goods sold ("the products") by The Flying Lizard Limited ("the Company") to the recipient of any credit and the purchaser of those products ("the Customer").

In addition all Products that are supplied under a Regular Service Contract are subject to the terms of that Regular Service Contract. In the case of any inconsistency between these Terms of Trade and the Regular Service Contract the Regular Service Contract will prevail.

2. ACCEPTANCE AND APPROVAL

- 2.1 Placing an order shall be effected by either:
- (a) the Customer signing and returning the Estimate to the Company; and
 - (b) paying the deposit (if any) referred to in the Estimate; and/or
 - (c) communicating its order to the Company in a manner otherwise than in accordance with (a) above and paying the deposit (if any) referred to in the Estimate.
- 2.2 Prior to any final production of Products by the Company, the Company shall supply to the Customer an example, mock-up or proof of the Products. The Customer shall notify the Company in writing of its approval or required amendments and where amendments are required the Company shall effect such amendments and resupply such example, mock-up or proof for the Customer's written approval. The Company accepts no responsibility for any errors in any final work where such work complies with the form of example, mock-up or proof approved by the Customer.
- 2.3 A deposit specified in the Estimate is payable upon signing and acceptance of the Estimate, unless agreed otherwise with the Company. The Company has no obligation to commence copy collection or production until the deposit has been paid in full. Failure to pay the deposit will delay delivery of the Service and the Company shall not be responsible for any such consequential delays. The deposit, once paid, is non-refundable.
- 2.4 The balance of the Estimate (including GST, all disbursements, variations, concept amendments and other additional costs) is payable within 7 working days after the Customer has appraised the completed Service, notwithstanding that modifications may still need to be completed. Where a Website does not go live at the request of the Customer or otherwise through no fault of the Company, the balance of the Purchase Price is still required to be paid on the due date.
- 2.5 The Company retain the right to invoice a progress payment (being a percentage of the Purchase Price) for Services undertaken, where the completion of a job is delayed by the Customer. Such progress payment is bound by the same payment terms as the Purchase Price.
- 2.6 Monthly Hosting for Internet Development (as defined in the Estimate) shall be invoiced monthly and shall be payable by the Customer on the 20th of the month following date of invoice. Whilst all hosting components are charged in advance, traffic and storage components being variable are invoiced in arrears.

- 2.7 Once an Estimate has been signed and the deposit paid in full, then the Customer acknowledges that this Contract may not be cancelled. If the Customer purports to cancel this Contract subsequently in writing or by conduct, the Customer agrees that the Company may immediately forfeit the deposit and the Customer shall remain liable to pay the balance of the Purchase Price as compensation to the Company for the loss of profits incurred due to the resulting production downtime but without prejudice to any other rights of the Company at law or in equity due to the breach by the Customer.

3. DELIVERY

- 3.1 Dates of delivery are approximate only.
- 3.2 The Company shall not be responsible or liable in any way to the Customer for delays in delivery of Products or any part thereof nor for any direct or consequential loss or damage arising therefrom.
- 3.3 Delivery of the Products shall be deemed to occur when the Products arrive at the location specified by the Customer or when the Customer or any employee or agent of the Customer takes physical possession of the Products, whichever is the first to occur.
- 3.4 The Customer is not entitled to reject Products for late delivery due to circumstances beyond the control of the Company and in any case is bound to accept Products if delivery is made within a reasonable time after the date stipulated.
- 3.5 Where any contract provides for installation of Products to be carried out by the Company such contract is upon the basis that it is the Customer's responsibility:
- To provide suitable access to the premises in all weather conditions for the vehicles and equipment that the Company will need to use in carrying out such installations;
 - To provide all necessary services and amenities to enable the Company to carry out such installation;
 - To provide all plant, materials and services required to be provided by the Customer at such times and in such manner as to cause the Company no delay in carrying out such installation;
 - To provide safe and secure onsite storage for materials and accessories supplies and used by the Company, its employees and contractors;
 - To advise the Company promptly of any decision or instruction which affects such installation.
- 3.6 The Customer acknowledges responsibility for collecting copy and other relevant material and for providing that material to the Company if necessary. Failure to deliver such material within the timeframe set out on the Process Path, or within 5 working days if requested in writing, may delay delivery of Products and may also result in increased costs being incurred. The Customer agrees that any such increased costs shall be charged by the Company and shall be in addition to the Estimate Total.
- 3.7 The Company reserves the right to suspend delivery of the Products at any time if the Customer is in breach of any of its obligations pursuant to this Contract or if the Company has any doubts whatsoever as to the Customer's credit worthiness or its ability to meet its obligations under this Contract in full.

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3.8 While the Company makes every effort to ensure a Customer's search engine registration is carried out to the best of its abilities, because they are independent of the Company, the Company has no control nor can make any guarantees as to the commencement of any listing, or the rating which any listing may have.

4. MODIFICATIONS TO SERVICES AFTER CLIENT RECEIPT

- 4.1 Following receipt of the Products, there shall be a 10 working day inspection period during which it is the responsibility of the Customer to check for errors, omissions and accuracy of content and performance and to notify the Company in writing of any modifications required.
- 4.2 Any modifications notified to the Company after the initial 10 working day inspection period shall not be included in the original Estimate and the Company shall be entitled to charge at its standard rates for such additional remedial work.
- 4.3 Any modifications requested by the Customer which were not envisaged by the original Estimate shall be treated as variations to this Contract and shall be charged for accordingly.
- 4.4 The acceptance of modifications by the Company shall not entitle the Customer to withhold payment of any part of the Purchase Price. The Customer agrees that the Company shall not be obliged to remedy such modifications until the balance of the Purchase Price is paid in full.

5. PAYMENT

- 5.1 The Customer shall make payment on the 20th of the month following date of invoice. If payment is not made on the due date, the Company may charge interest on a daily basis at the rate of 2.5% per month on any overdue amount.
- 5.2 Payment will be made without any set-off counterclaim or deduction of any kind.
- 5.3 The Customer shall pay at the same time as payment under Clauses 5.1 all Goods and Services Tax and other costs payable by the Customer as a result of supply of the Products.
- 5.4 The Customer will pay the Company all costs incurred by the Company, including costs on a solicitor-client basis incurred in the recovery of any amount due to the Company.

6. RISK AND TITLE

- 6.1 Risk in the Products but not title passes to the Customer upon delivery.
- 6.2 "PPSA" means the Personal Property Securities Act 1999 and its regulations.
- 6.3 The Products shall remain the sole and absolute property of the Company until payment in full has been received by the Company for all amounts due to the Company in respect of all Products supplied to the Customer and all other amounts due to the Company by the Customer under this Agreement.
- 6.4 Until such time as payment in full is received by the Company the Customer acknowledges and agrees that:
- 6.4.1 The Customer shall hold the Products as the bailee of the Company;
- 6.4.2 The Customer shall at its own cost store the Products safely and in a way which clearly

identifies the Products as the property of the Company; The Customer shall keep the Products fully insured.

- 6.4.3 The Customer may as fiduciary sell or otherwise dispose of the Products in the ordinary course of business on the understanding that the proceeds of sale at all times shall be the property of the Company and the Customer shall be accountable to and hold on trust for the Company such proceeds of sale;
- 6.4.4 If the Products are incorporated in the manufacture or construction of other goods or services, the provisions of this clause shall continue to apply to the proceeds of those component goods or services;
- 6.4.5 The Customer will not permit the Products to become an accession (as defined in the PPSA);
- 6.4.6 The Customer's right to possession and to use, sell or otherwise dispose of the Products in the ordinary course of business may be revoked at any time by the Company and shall automatically cease when the Customer is in default of any of its obligations to the Company, including when the Customer is overdue in making payment of any sum due to the Company;
- 6.4.7 The Customer irrevocably consents to the Company entering the Customers premises or any other premises where the Products are stored or where the Company believes the Products are stored to inspect or remove the Products and for such purpose the Customer gives the Company leave and licence without the necessity of giving any notice to enter if necessary forcibly any such premises to search for, take possession of and remove the Products without being liable in any way to the Customer and the Customer shall fully indemnify the Company in respect of any claim or demand brought against the Company in respect of such actions;
- 6.4.8 The Customer shall not grant or permit to exist any other security interest or financing statement over the Products while they remain the property of the Company;
- 6.4.9 The Customer acknowledges that this clause creates a Purchase Money Security Interest ("PMSI") as defined in the PPSA in both present and after acquired Products;
- 6.4.10 The Customer acknowledges receiving a copy of this document and waives all rights to receive from the Company verification of any financing statement, or any other notice of any event prescribed by the PPSA;
- 6.4.11 (a) Nothing contained in Sections 114(1)(a), 117(1)(c), 133 or 134 of the PPSA applies to the security interest created by this document.
(b) The rights of the Customer contained in Sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA do not apply to the security interest created by this document.

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- 6.4.12 The PMSI has attached to the Products and has not been deferred or postponed;
- 6.4.13 The Customer will do all things and execute all documents as are necessary to ensure the Company has a perfected first ranking PMSI in the Products;
- 6.4.14 The Customer will immediately notify the Company of any change of its name or address;
- 6.4.15 The Customer indemnifies the Company for any costs it incurs in registering, maintaining and enforcing the security interest created by this document."
- 6.5 Notwithstanding clauses 6.3 and 6.4 and payment in full by the Customer, the Company shall at all times retain all rights, title and interest in the following:
All copyright contained in any application software, source code and/or library code, and pre-existing templates and data contained in any Products sold to the Customer.
All copyright contained in any field film footage produced by the Company in the process of making any video or film Product for the Customer, which is not utilised in the final Product.
All copyright and ownership contained in all digital design files and/or digital file elements contained in any digital design file and/or digital file sold to the Customer.
- 6.6 In respect of any application software, source and/or library code, templates and data referred to in clause 6.5 above, the Company shall grant the Customer a nonexclusive licence to use the software code, templates and data.
- 6.7 Notwithstanding clauses 6.5 and 6.6 and payment in full by the Customer, the Company shall, at all times, retain all rights, title and interest in the digital files and digital file elements that constitute the final digital file supplied to the Customer unless agreed to in writing prior to the commencement of the job.
- 6.8 The Customer acknowledges that the Company may maintain from time to time digital files of design and artwork undertaken on the Customers behalf. The property in such digital files shall remain the property of the Company (unless otherwise agreed). In the event that the Customer requests a copy of the digital file, the Company may at its discretion provide a "locked" or "protected" file only.
- 6.9 All rights, title and interest in all Intellectual Property, concepts and systems contained within a Website which have been developed or provided by the Company in relation to website design and programming, shall at all times remain the property of the Company. All right, title and interest in a Website (save for the foregoing reservations), compilation artwork and digital and database files remain the property of the Company until payment in full has been received from the Customer.
- 6.10 Any risk attaching to a Website and its use on the internet shall pass to the Customer from the time of server set-up and site activation.
- 6.11 The Company reserves the right to include an imprint on all generated artwork, of not less than, The Flying Lizard Limited company logo and contact details.

7. TERMINATION

- 7.1 Without prejudice to any other rights or remedies of the Company at law or in equity the Company may terminate this contract.
 - (a) On 30 days written notice.
 - (b) Immediately if the Customer is in breach of any of these terms.
 - (c) Immediately if the Customer ceases or threatens to cease business, becomes insolvent, an application, resolution or order for liquidation is made if a Receiver is appointed, an arrangement is made with Creditors or, if the Company believes any of the above is likely to happen.

Without prejudice to any other rights or remedies of the Company at law or in equity upon termination: Any amounts owing by the Customer to the Company shall become immediately due and payable.

The Company shall be entitled to cancel all or any part of any Contract or Contracts with the Customer, which remains unperformed, in addition to and without prejudice to its other remedies.
 - 7.3 Upon any breach by the Customer of its obligations under this Contract, which is notified to it by the Company, the Customer shall immediately:
 - cease all use of the Intellectual Property and the services and return all artwork and code relating to any Website to the Company; and
 - destroy all copies (whether electronic or otherwise) of such internet code in the Customer's possession or control.

The Company shall be entitled (but without any obligation to do so) to re-sell the Products on commercially reasonable terms and apply the proceeds derived in or towards payment of the Purchase Price and other monies owing pursuant to this Contract and all costs and expenses of or incurred by the Company as a result of and incidental to any such action shall be payable to the Company by the Customer upon demand including without any limitation of the aforementioned any loss in price incurred by the Company on realisation against the Purchaser Price at which the Products were contracted to be bought by the Customer.
 - 7.4 Should the Customer, in the Company's sole opinion, fail to comply with its obligations pursuant to this clause, then the Company or its duly authorised agents, shall be entitled to enter upon the Customer's premises where such code may be situated and destroy, delete and/or remove the same.
- ## 8. LIMITATION OF LIABILITY
- 8.1 The Customer acknowledges that all products supplied by the Company to the Customer are acquired by the Customer for the purpose of resupply in trade and/or for the purposes of the Customers business, and the provisions of the Consumer Guarantees Act 1993 and the Sale of Goods Act 1908 are expressly excluded to the extent permitted by either Act.
 - 8.2 The Customer shall:
 - (a) Contract out of the provisions of the Consumer Guarantees Act where the Customers, customers are consumers who acquire the Products for the purposes of a business.

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- (b) Not make any representation concerning the description of the Products if it does not correspond with the actual description and specification of the Products.
- 8.3 The Customer shall indemnify the Company in respect of any loss, damages, costs, claims or other liability which the Company may face suffer or incur pursuant to the Consumer Guarantees Act 1993 in relation to any of the Products sold by the Customer to any consumer.
- 8.4 The warranty applicable to Products supplied by the Customer shall be limited to the warranty offered by the Company.
- 8.5 Except as provided herein the Company has no obligation to the Customer or its customers for sales by the Customer to its customers and the Customer will be responsible for all warranties, representations and terms of sale it enters into with the Customer's customers.
- 8.6 The Company warrants the Products to the extent only it has manufactured or produced the Products against faulty materials or workmanship (or both) for a period of 7 days after delivery of the Products provided always;
 - (a) All claims under this warranty are received within 7 days after delivery of the Products.
 - (b) The Customer gives the Company notice of any defect in the Products within 3 days of such defect becoming apparent.
 - (c) The Customer has maintained and operated the Products in accordance with good industry practices and
 - (d) The Customer has complied with all specific recommendations of the Company.
- 8.7 The Company will only be responsible for the replacement or the repair of faulty materials or workmanship (including faulty workmanship provided under this warranty).
- 8.8 Any such repair will be done at such a place as the Company may specify. The Customer is responsible for cartage or delivery as may be necessary of the Products (or any part thereof) or any goods the subject of service performed to and/or from the place as specified.
- 8.9 This warranty will not apply if the Products are repaired modified or altered by any person not authorised by the Company or if the Products are used other than for the purpose for which they were intended.
- 8.10 This warranty does not cover any specifications or requirements tendered to the Company by the Customer it being the Customer's exclusive responsibility to ensure that the Products supplied under this contract will be satisfactory to meet its specifications or requirements (or both).
- 8.11 This warranty is exclusive and all other warranties descriptions representations or conditions as to fitness or suitability for any purpose, tolerance to any condition, merchantability or otherwise whether of like nature or not and whether expressed or implied by law trade custom or otherwise are expressly excluded.
- 8.12 The Customer undertakes that the Products shall not be used for any purpose for which it is not suitable and shall use all necessary skill and care in handling

and using the Products. The Customer expressly agrees and acknowledges that the Company shall not be liable for any material, statements, representations or information contained or used in any Services including, but without limitation, any material, statements, representations or information that:

- (a) is or is likely to be misleading or deceptive or otherwise infringe the Fair Trading Act 1986 or any Act passed in substitution thereof;
- is in full or in part defamatory, in breach of copyright, trademark or other intellectual or industrial property right; or
- is otherwise in breach of any provision of any statutes, regulation or rule of law.

8.13 The Company shall not be liable for any consequential, indirect or special damage or loss of any kind whatsoever incurred by the Customer or any third party directly or indirectly through their use of the Products. Without in any way limiting the foregoing, any liability of the Company whether in contract, tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of the Products or any other breach of the Company's obligations hereunder shall not in any event exceed an amount equivalent to the Purchaser Price of the Products.

8.14 The Company is not liable for any errors or omissions in copy or material contained in any Products where such copy or material is made available to the public through any means.

9. INDEMNITY

9.1 The Customer shall keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, claims for consequential loss (including loss of profits) ("liabilities") which may be made against the Company or which the Company may sustain, pay or incur as a result of any breach or non performance of this Agreement by the Customer or in connection with the production, supply or use of the Products. Without limiting the generality of the foregoing, the Customer shall keep the Company indemnified against all such liabilities incurred as a result of the following:

any misrepresentation or breach of the Fair Trading Act 1986 by the customer;

any other breach by the Customer of any other New Zealand legislation regulating or relating to the customer's products and/or services, or advertising material supplied by the Customer to the Company;

any fine or penalty imposed by the Broadcasting Standards Authority on the Company or fine or penalty incurred by the Company as a result of a breach of the Advertising Code.

any infringement of third party intellectual property rights.

9.2 Where the Products are produced to the Customer's specification the Customer hereby warrants that the production and supply of such Products by the Company will not infringe any intellectual property right, registered design, trademark, copyright or other proprietary right ("Intellectual Property Right") of any person and the Customer indemnifies the Company against any liability to or action by a third party for infringement or alleged infringement of any Intellectual Property Right.

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10. PRICES

- 10.1 All prices are net and do not include goods and services tax. The Purchase Price, shall be the current price in force or current estimated/quoted price at the time of delivery or performance as applicable. The Company reserves the right to amend prices at any time without notice.
- 10.2 Goods and Services Tax and other taxes and duties on the supply of Products to the Customer and any other expenses resulting from exchange rate fluctuations, customs charges, shortages or such other costs or expenses imposed on the Company for the supply of goods, equipment, accessories ("expenses") are not included in the Purchase Price and shall be the responsibility of the Customer or where the payment of expenses is the legal responsibility of the Company, the Purchase Price shall be increased by the amount of such expenses. Any increase in the amount of expenses between the date of any quotation and the date of delivery of the Products shall be the responsibility of the Customer and the Purchase Price shall be increased accordingly and debited to the Customer's account (if any).
- 10.3 Any extra visits, if requested by the Customer, above the number allowed for in the Estimate, would be charged at the Company's standard consulting rates.
- 10.4 Disbursements for out of office expenses, e.g. travel, communications, etc, will be payable by the Customer.

11. AUTHORISATION RELATING TO PRIVACY ACT 1993

- 11.1 The Customer acknowledges that the information contained in this application or any other information held by the Company relating to the financial standing and/or credit worthiness of the Customer may be disclosed by the Company to a third party.
- 11.2 The Customer consents to the Company obtaining from any other person a credit report containing personal information about the Customer for the purpose of the Company:
- assessing the Customer's application for commercial credit; and or
 - collection of overdue payments in respect of commercial credit provided to the Customer; and/or
 - assessing whether to accept the guarantor as guarantor for credit applied for, or provided to the Customer.
- 11.3 The Customer agrees that if the Company approves or has approved the Customer's application for credit, this agreement shall remain in force until the credit facility covered by the Customer's application ceases.
- 11.4 The Customer agrees that the Company may give to and seek from any other person information about the Customer's credit arrangements for the purpose of assessing, on an ongoing basis the Customer's financial standing and/or credit worthiness.

12. CONFIDENTIAL INFORMATION

The Customer agrees to always keep the Company's Confidential Information confidential and not to: use the Confidential Information for any purpose other than the purpose for which it was supplied; or copy or reproduce any of the Confidential Information in any way.

13. GENERAL

- 13.1 The Company may assign in whole or in part this contract or all or part of any debt due to the Company hereunder.
- 13.2 If any provision of these conditions is invalid, illegal or unenforceable, it will be severed and all other provisions will remain in full force and effect. No amendments to these Terms of Trade shall be effective unless it is in writing and signed by the Company.
- Failure or omission by the Company at any time to enforce or require strict or timely compliance with any provisions of these Terms shall not affect or impair that provision in any way or the rights of the Company to avail itself of the remedies it may have in respect of any breach of that provision.
- Nothing in this Agreement shall create a partnership or agency between any of the parties unless expressly provided.
- This Agreement shall be governed by New Zealand law in every particular including formation and interpretation and shall be deemed to have been made in New Zealand.
- Both parties will be released from their respective obligations in the event of national emergency, war, prohibitive government regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of the Agreement impossible.

14. INTERPRETATION

"Company" means The Flying Lizard Limited together with its successors and assigns.

"Confidential Information" means any information relating to the business or financial affairs of the Company, its business or any associated affairs or business of the Company which has come to the knowledge of the Customer which is not already public knowledge.

"Customer" means the Customer named in the application together with the Customers successors, assigns and personal representatives.

"Estimate" means the Company's estimate of the cost of providing the Products to the Customer and includes fixed quotes and site schematic for Internet Development Services.

"Products" means any goods and/or services supplied by the Company.

"Purchase Price" means the total amount payable by the Customer for the Products.

Headings are for reference only and do not affect the interpretation of any clause.

The singular shall include the plural and vice versa.

Person and Persons include companies, partnerships and any other legal entity unless inconsistent with the context.

Reference to the term Customer includes the Guarantor(s) (if any).

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DECLARATION

The Customer certifies that the information supplied is true and correct. The Customer acknowledges the Terms and Conditions of Credit and Supply as per the reverse of this application including the provisions relating to the Privacy Act 1993 together with the trading terms and conditions incorporated and undertakes to be bound by them and to settle all accounts due to The Flying Lizard Limited in accordance with them.

Partnership/Sole Proprietor/Trust

EXECUTED by

Name of Partner/Proprietor/Trustees

Signature Date

Company

EXECUTED by

Name of Company

Signature of Director Date

Signature of Director Date

If the Company has only one Director then that Director's signature must be witnessed

Name of Witness

Signature of Witness

Address of Witness

GUARANTEE

In consideration of the Company at my/our request agreeing to supply the Customer with products I/We hereby unconditionally guarantee the due and punctual payment by the Customer of all moneys as and when they shall become due and payable by the Customer to the Company in respect of the products and I/We guarantee the Customer's obligations hereunder and indemnify the Company against any loss damage or costs whatsoever caused by the Customer's failure to comply with the Terms herein stated. My/Our liability under this guarantee shall be a continuing guarantee and shall not be discharged or affected by the Company giving any time, indulgence, extension of credit, waiver or consent at any time to the Customer or by any variation, modification, amendment to any agreement in respect of the supply of products or by the illegality, invalidity or unenforceability of any agreement relating to the supply of products.

SIGNED BY THE GUARANTORS

Signature of Guarantor Date

Signature of Guarantor Date

APPLICATION FOR AND TERMS OF CREDIT ACCOUNT AND TERMS OF SUPPLY WITH THE FLYING LIZARD LIMITED (THE COMPANY)

A) Customer

1) Type of Entity

Company Trust Sole Proprietor Partnership Incorporated Society

Other: specify

2) Full Legal Name

Trading Name (if different from above):

Company Number (if applicable):

3) Details of Customers Directors, Trustees, Partners, Proprietor

Name	Address	Date of Birth (required for PPSR)
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4) Accounts Person

Name: Telephone:

Email:

B) Addresses

1) Postal Address:

2) Premises Address(es):

3) Registered Office (if a company):

4) Fax No:

C) Bank Information

1) Name of Bank:

2) Branch Address:

3) Length of Time with Bank:

D) Accountant

1) Name:

2) Firm: Telephone:

E) Trade references

Name	Address	Date of Birth (required for PPSR)
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1)

2)

3)

F) Guarantors

1) Where Customer is a Company

Directors Full Name	Address
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