

These Terms and Conditions apply to the provision of all Services by us, TWDS Digital Ltd, a company registered in England and Wales under number 07754873, whose registered office address is 3 Grimsdells Corner, Sycamore Road, Amersham, Buckinghamshire, HP6 5EL ("the Company").

**1. Definitions and Interpretation:**

**1.1.1** In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

**"Client"** means you, the individual, firm or corporate body purchasing the Services. Where an individual is entering into this Contract on behalf of a business, the individual confirms they have the authority to do so and to contractually bind that business and the business shall be the Client in the context of this Contract;

**"Contract"** means the contract formed as detailed in clause 2, which includes the acceptance of these Terms and Conditions;

**"Quotation"** means the written quotation provided by us to you, which unless otherwise stated, remains open for acceptance for a period of 30 days and constitutes our entire scope of works and services; and

**"Services"** means the web design, hosting, SEO, ad management and/or any other services provided by us to you.

**1.1.2** Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.1.2.a.1 "we", "us", "our" is a reference to the Company and includes our employees and agents;

1.1.2.a.2 "you" and "your" is a reference to the Client and includes your employees and agents;

1.1.2.a.3 "writing" and "written" includes emails and similar transmissions;

1.1.2.a.4 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.1.2.a.5 "these Terms and Conditions" is a reference to these Terms and Conditions as may be amended or supplemented at the relevant time;

1.1.2.a.6 a clause is a reference to a clause of these Terms and Conditions;

1.1.2.a.7 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.

**1.1.3** The headings used in these Terms and Conditions are for convenience only and shall have no effect upon their interpretation. Words imparting the singular number shall include the plural and vice versa. References to persons shall include corporations.

**1.1.4** No terms or conditions stipulated or referred to by you in any form whatsoever shall in any respect vary or add to these Terms and Conditions unless agreed by us in writing.

**2. The Contract**

**2.1.1** We will provide you with a written Quotation for our Services. The acceptance of our Quotation, electronically or otherwise, or the placement of an order, creates a legally binding Contract between you and us, and includes the acceptance of these Terms and Conditions, which will apply between us.

**2.1.2** You are responsible for the accuracy of any information you submit to us and for ensuring that our Quotation reflects your requirements. Our Quotation is based on the information provided to us at the time we prepare it. If any errors or discrepancies become evident, we reserve the right to make adjustments to it.

**2.1.3** You agree to provide us with any information, advice and assistance as we may reasonably require within sufficient time to enable us to perform the Services. However, any timescales we provide are a guideline only and are not of the essence of the Contract.

**3. Website Design and Build:** The following clause applies if we are providing website design and build Services only.

**3.1.1** Unless otherwise agreed by us in writing, our payment terms are as follows:

3.1.1.a.1 The first 50% of the quoted fee is due upon acceptance of our Quotation. Orders will not be deemed confirmed until the deposit is paid in full. This deposit is non-refundable;

3.1.1.a.2 The remaining 50% of the quoted fee is due once we have completed the Services, or 3 weeks after we are no longer able to proceed with the works due to your lack of reply or approval, whichever is the sooner, unless otherwise agreed. The website will not be launched until we have received this final payment.

**3.1.2** However, we reserve the right to charge additional interim progress payments as the works progress especially where we have encountered any delays outside of our control. We also reserve the right to request 100% of the quoted fee up front at our sole discretion. In either event, we will notify you accordingly in advance.

**3.1.3** We will provide you with a design concept in accordance with the brief received from you, which must be signed off before we commence working on the site.

**3.1.4** Any alterations required after approval of the design, any changes to the brief or any additional meetings, whether virtually or in person, required above the allowance included for in the Quotation will be chargeable at our standard rate applicable at the time.

**3.1.5** We can provide copy and source images for the website if we have included for this in our Quotation. Otherwise, you will be required to send us all logos, copy and graphics to be included on the website, in the agreed format.

**3.1.6** It is your responsibility to check for mistakes, including spelling and grammar mistakes, at all stages and we accept no responsibility for the same.

**3.1.7** We design our websites using editable platforms. Where it has been requested and once the website goes live, we will provide you with a login to access your site. This will enable you to edit the text and images on certain pages as agreed. However we do not recommend editing anything not agreed by us including but not limited to the home or core pages, or updating any plugins or content management systems, unless otherwise agreed, to avoid errors being made. We accept no responsibility for any changes made by yourself or any third parties.

**3.1.8** It shall be your responsibility to ensure that your site has a privacy policy and otherwise complies with GDPR and any other applicable law including those of other countries where necessary.

**4. Website Hosting and Maintenance:** The following clause applies if we are providing website hosting Services only.

**4.1.1** Payment for web hosting Services is due annually in advance, upon receipt of invoice unless otherwise agreed.

**4.1.2** The Contract for any web hosting and maintenance Services will be for an initial term of 12 months and thereafter, it will be automatically renewed, with the exception of the price, on the same terms and conditions as set out in this Contract on a rolling annual basis unless a written notice to terminate is given by either party in accordance with clause 9 below. We will notify you of any such price increase in accordance with these Terms and Conditions.

**4.1.3** We will use our best endeavours to ensure the web hosting Services are uninterrupted and shall endeavour to resolve issues as soon as possible upon becoming aware of such issues. However, we will be under no liability to refund the hosting fees for any period of downtime encountered.

**4.1.4** In addition, we cannot be held responsible for events that occur outside our control, including, but not limited to, loss of data and hacking. You are responsible for keeping your own passwords secure, adequately strong and for backing up any images and data you have added on the website.

**4.1.5** We cannot be held liable for the actions or inactions of any

other hosting provider. If you wish to transfer to another hosting provider, we may charge for all work, costs and expenses incurred by us during the process.

**4.1.6** It shall be your responsibility to ensure that your site has a privacy policy and otherwise complies with GDPR and any other applicable law including those of other countries where necessary.

**5. Ad Management and SEO Services:** The following clause applies if we are providing ad management and SEO Services only.

**5.1.1** The ad management services shall be subject to an initial term of 3 months and thereafter shall run on a rolling monthly basis unless a written notice to terminate is given by either party in accordance with clause 9 below.

**5.1.2** In order to provide our Services, we will need access, approvals and logins to the appropriate systems as necessary. Please provide this to us on acceptance of our Quotation to avoid delays.

**5.1.3** We shall set up and manage your Pay-Per-Click campaigns as an additional user and shall set targeting elements and price limits on the site. You shall have access to your Pay-Per-Click sites at all times and may choose to edit or cancel campaigns at any time.

**5.1.4** We shall make projections and suggestions based on Google algorithms and projections; however these are subject to change from time to time, and may not be accurate.

**5.1.5** We shall send you regular reports in the frequency agreed in your Quotation detailing your current rankings and improvements made. This shall be based on the keywords agreed to be targeted between us from time to time.

**5.1.6** Where we change our keyword focus this shall affect your ranking and may mean that it shall take additional time to improve your search results.

**5.1.7** Due to the nature of our services, we cannot guarantee any specific results in the provision of these services. We shall make all suggestions based on best practice and maintain regular industry knowledge and research.

## **6. Fees**

**6.1.1** All invoices are payable within 14 days from the date of invoice, unless otherwise specified.

**6.1.2** You agree to pay for any additional services provided by us that are not specified in the Quotation. These additional services shall be charged in accordance with our current rate in effect at the time of the performance of the services or such other rate as may be agreed.

**6.1.3** All sums payable by either Party are exclusive of VAT, where applicable or any other taxes on profit, for which that Party shall be additionally liable. All payments shall be made in pounds sterling without any set-off, withholding or deduction except such amount (if any) of tax as you are required to deduct or withhold by law.

**6.1.4** Unless otherwise stated in writing, we shall charge to you our reasonable travelling time and travel expenses, accommodation, any incidental expenses for materials used and for third party goods and services supplied in connection with the Services.

**6.1.5** The time of payment shall be of the essence. If you fail to make any payment by the due date then, without prejudice to any right which we may have under to any statutory provision in force from time to time, we shall have the right to suspend the Services, shut down your website and reuse the domain name (where applicable) and charge you interest at a rate of 8% per annum above the Bank of England base rate, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall be calculated on a daily basis.

## **7. Your Responsibilities**

**7.1.1** You agree, where applicable, to:

7.1.1.a.1 provide us with any information, advice and assistance as we may reasonably require within sufficient time to enable us to perform the Services;

7.1.1.a.2 provide us with suitable and sufficient material and images to enable us to perform the Services;

7.1.1.a.3 ensure all content uploaded by you or your employees, or provided to us, is suitably backed up and thoroughly proofread for mistakes;

7.1.1.a.4 virus-check all data and material supplied to us and ensure it is backed up regularly;

7.1.1.a.5 ensure any staff are trained in the proper use and operation of any system provided by us;

7.1.1.a.6 keep secure from third parties any passwords we may issue to you;

7.1.1.a.7 nominate a suitably qualified individual to act as your representative to liaise with us regarding the Services. This individual needs to be a decision-maker within the company; and

7.1.1.a.8 obtain and maintain all necessary licences, permissions and consents in connection with the Services.

**7.1.2** If you fail to meet any of the provisions of this clause 7, without limiting our other rights or remedies, we shall:

7.1.2.a.1 have the right to suspend performance of the Services until you remedy the default;

7.1.2.a.2 not be held liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay in performing any of our obligations as a result; and

7.1.2.a.3 be entitled to claim for any costs or losses sustained or incurred by us arising directly or indirectly from your default.

## **8. Variation and Amendments**

**8.1.1** If you wish to vary the Services to be provided, please notify us as soon as possible. We will endeavour to make any required changes and any additional costs incurred by us as a result will be invoiced to you.

**8.1.2** If, due to circumstances beyond our control, we have to make any change in the arrangements relating to the provision of the Services, we will notify you immediately. We will endeavour to keep such changes to a minimum and will seek to offer you arrangements as close to the original as is reasonably possible in the circumstances.

**8.1.3** Any agreed variation or amendment will be carried out in accordance with these Terms and Conditions and any price increase required as a result of an agreed variation or amendment will be payable in accordance with the terms for payment above.

## **9. Cancellation and Termination**

**9.1.1** Subject to clause 9.3, any one-off services as detailed in clause 3 cannot be cancelled after the Contract is formed. In the event of cancellation, you will be required to pay the total quoted fee, which will become immediately due and payable. Upon receipt of payment, we will hand over all works completed by us up to the date of cancellation in relation to the Contract.

**9.1.2** Either Party has the right to terminate the ongoing Services detailed in clauses 4 and 5 by the giving of 1 months' written notice before the end of the then-current term, whereby at the end of the term, there will be no continuing liability by either Party.

**9.1.3** Either Party has the right to terminate the Services immediately if the other Party:

9.1.3.a.1 has committed a material breach of this Contract unless such breach is capable of remedy, in which case the right to terminate immediately will be exercisable if the other Party has failed to remedy the breach within 14 days after a written notice to do so; or

9.1.3.a.2 goes into bankruptcy or liquidation either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation) or if a

receiver is appointed in respect of the whole or any part of its assets.

**9.1.4** In the event of termination for your default, all payments required under this Contract shall become due and immediately payable.

**9.1.5** Any and all obligations of the Parties which either expressly or by their nature continue beyond the termination, cancellation or expiration of this Contract shall survive termination under this clause 9 on a pro-rata basis.

**10. Confidentiality:** Each Party undertakes that throughout the duration of the Contract, the Parties may disclose certain confidential information to each other. Both Parties agree that they will not use the confidential information provided by the other, other than to perform their obligations under this Contract. Each Party will maintain the confidential information's confidentiality and will not disseminate it to any third party, unless authorised by the other Party in writing.

#### **11. Format**

**11.1.1** Any designs or other works created by us will be kept on file for a period of 1 year from completion of the Services, unless otherwise agreed in writing. After this time, they may be securely and irretrievably deleted from our system. Any copies required within this timeframe will be provided only at our discretion and may be chargeable. If you require additional copies after the data has been deleted, you will need to recommence the Quotation process with us.

**11.1.2** We include for any documentation or other media to be submitted in our normal standard format only. If additional copies or specific requirements are needed, we reserve the right to apply additional charges.

**11.1.3** We provide our designs in the format as may be agreed. The original source files for any designs we create remain our property at all times. If you wish to obtain these, you must notify us at the time of our Quotation and if we agree to do so, we will provide a price.

**11.1.4** We will retain title to the documentation and no documentation shall be handed over until all payments as detailed above have been paid in full.

#### **12. Intellectual Property**

**12.1.1** The copyright in any Services provided by us is and will become your property. Subject to a written agreement to the contrary, the Contract will give you ownership rights in the Services provided by us provided all payments due under the Contract have been received by us in full.

**12.1.2** The ownership will apply only to final versions provided by us and will not apply to any draft versions.

**12.1.3** We reserve the right to use any design created by us in any advertising or promotional material, publications, print, or any other purpose required by us.

**12.1.4** You warrant that any image, logo, document or instruction given to us will not cause us to infringe any advertising codes of conduct or any intellectual property or other legal rights, including any letter patent, registered design or trade mark, in the execution of our Services. You will indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in settlement of any claim for any such infringement, including infringement of stock photography copyright, which results from our use of any information supplied by you.

#### **13. Data Protection**

**13.1.1** Both parties agree to comply with all applicable data protection legislation including, but not limited to, the Data Protection Act 2018 and any subsequent amendments thereto.

**13.1.2** If you are providing us with the personal data of any other person (if for example, we are running newsletter campaigns on your behalf), it is your responsibility to obtain the consent of those persons to pass their data to us, as a third party. We will only process, store

and hold such data to perform our obligations under the Contract and will not use it for any other purpose.

**14. No employment:** Nothing in the Contract will render or be deemed to render us an employee or agent of yours or you an employee or agent of ours.

#### **15. Assignment and Sub-Contracting**

**15.1.1** You are not entitled to assign the benefits under the Contract.

**15.1.2** We may sub-contract the performance of any of our obligations under the Contract without your prior written consent. Where we are sub-contracting the performance of any of our obligations under the Contract to any person, we shall be responsible for every act or omission of the sub-contractor as if it were an act or omission of our own.

#### **16. Liability and Indemnity**

**16.1.1** Except in respect of death or personal injury caused by our negligence, we will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under the express terms contained herein, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by our servants or agents or otherwise) in connection with the performance of our obligations under the Contract.

**16.1.2** All warranties or conditions whether express or implied by law are expressly excluded to the full extent permitted by law.

**16.1.3** In the event of a breach by us of our express obligations under these Terms and Conditions, the penalty will be limited to a reasonable charge to remedy such, which in any event, shall not exceed the fees and expenses paid by you for the Services.

**16.1.4** We may provide professional advice and recommendations in relation to the Services but we cannot accept responsibility for any actions taken as a result of such advice or recommendations, nor can we guarantee the success or outcomes of any marketing campaign or any of the other Services provided. Further, we shall not be liable for any consequences should any professional advice not be taken. We may provide introductions or referrals to other companies, however, under no circumstances shall we be liable for the actions or lack of actions of said other companies.

**17. Restrictive Covenants:** Neither we nor the Client will, during the term of the Contract and for a period of 12 months after its expiry or termination, without the other's prior written consent, appoint in any way or cause to be employed, engaged or appointed an employee, agent, director, consultant or independent contractor of the other.

**18. Force Majeure:** Neither Party shall be liable for any failure or delay in performing their obligations under the Contract where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event beyond the control of the Party in question.

**19. Waiver:** No failure or delay by either Party in exercising their rights under the Contract shall be a waiver of that right, and no waiver of a breach of any clause of the Contract shall be deemed a waiver of any later breach of the same or any other clause.

**20. Severance:** The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and the Contract, as

appropriate). The remainder of these Terms and Conditions shall be valid and enforceable.

**21. Third Party Rights:** No part of the Contract is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.

**22. Notices:** Notices will be deemed to have been duly received and properly served 24 hours after an email is sent or three working days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that it was properly addressed to the address provided, stamped and placed in the post and in the case of an email, that it was sent to the specified email address of the addressee.

**23. Law and Jurisdiction**

**23.1.1** These Terms and Conditions and the relationship between you and us (whether contractual or otherwise) will be governed by, and construed in accordance with, the laws of England and Wales.

**23.1.2** Any dispute, controversy, proceedings or claim between you and us relating to the Contract or these Terms and Conditions (whether contractual or otherwise) will be subject to the jurisdiction of the courts of England and Wales.