

## **GENERAL TERMS AND CONDITIONS**

By signing an Order Form, the Customer is deemed to have understood and accepted these Terms and Conditions.

The supplier of the products and services is TJS Marketing Ltd

The contract for the supply of such products and services which are ordered by the Customer shall consist of these General Terms and Conditions and any applicable Specific Terms and Conditions noted in the Order Form.

Should any inconsistency or ambiguity exist between the General Terms and Conditions and the The Order Form, the following precedence shall apply to eliminate such inconsistency or ambiguity:

- A. The Order Form;
- B. The General Terms and Conditions;

The Customer may contact TJS Marketing Limited, 6 Granby road, Honington, Shipston-on-Stour, CV36 5AB

### **1. DEFINITIONS**

In these Terms and Conditions:

**Conditions** means these General Terms and Conditions as amended from time to time in accordance with Condition 2.6 or 21.

**Contract** means the Proposal and TJS Marketing's acceptance of it on the terms of these Conditions by the despatch of signed proposal.

**Customer** means the company, its employees, agents, representatives and subcontractors to whom the Services are provided as set out on the proposal.

**Effective Date** means the date referred to in Condition 2.4.

**Fee(s)** means the amount(s) payable by the Customer for the Services provided by TJS Marketing Limited in accordance with Condition 5.

**Force Majeure Event** shall have the meaning set out in Condition 12.

**Initial Term** means the initial term of the Contract specified on the bottom of the signed proposal.

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including knowhow), 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.

**Order Confirmation** means the receipt issued by TJS Marketing Limited to the Customer in respect of the first instalment of the Fee.

**Proposal** means a proposal sent by TJS Marketing Limited to the Customer for the supply of Services and which shall incorporate the breakdown of monthly services.

**Products** of the Services means all documents, information, drawings, specifications, computer programs, data, reports, specifications and other materials produced as a result of the provision of the Services.

**Services** means the services to be provided by TJS Marketing as specified in the Proposal.

**Specific Terms and Conditions** means any specific terms and conditions specified in the Proposal.

## **2. APPLICATION OF CONDITIONS**

2.1 Any quotation is valid for a period of 14 days only, and TJS Marketing Limited may withdraw it at any time by notice to the Customer.

2.2 When the Customer wishes to place an order for the Services, it shall notify TJS Marketing Limited and TJS Marketing Limited shall send a Proposal (electronically or as otherwise agreed) to the Customer.

2.3 The receipt by TJS Marketing Limited of the Proposal signed by the Customer shall be deemed to be an offer by the Customer subject to these Conditions. The Customer shall ensure that the Proposal is complete and accurate.

2.4 The Customer's offer shall only be deemed to be accepted when TJS Marketing Limited sends the invoice for the amount payable for month 1 as specified in the Proposal, at which point and on which date a binding contract shall come into existence (Effective Date).

2.5 No order which has been accepted by TJS Marketing Limited in accordance with Condition 2.4 may be cancelled by the Customer, except as set out in Condition 6 or with the agreement in writing of TJS Marketing Limited and provided that the Customer indemnifies TJS Marketing Limited in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by TJS Marketing Limited as a result of the cancellation.

2.6 These Conditions shall override any inconsistent terms or conditions (if any) contained in or referred to in documents or correspondence from the Customer (with the exception of the Proposal); and no addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on TJS Marketing Limited unless in writing and signed by a duly authorised representative of TJS Marketing Limited.

2.7 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of TJS Marketing Limited which is not set out in the Contract.

2.8 Any descriptive matter or advertising issued by TJS Marketing Limited, and any descriptions or illustrations published on TJS Marketing Limited website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

### **3. TJS MARKETING LTD OBLIGATIONS**

3.1 TJS Marketing Limited shall be responsible for providing the Services in accordance with the requirements of the Contract.

3.2 Although TJS Marketing Limited will use reasonable endeavors to supply the Services in accordance with any performance date set out in the Order Form, such date shall be an estimate only and time shall not be of the essence of the Contract.

3.3 For the avoidance of doubt, the Services will not include the cost of any third party software upgrades or web development which TJS Marketing Limited advises are required.

3.4 TJS Marketing Limited will not make any changes to a Customer's website without the Customer's prior consent and the Customer, as the website owner, agrees to and takes full responsibility for the changes made.

3.5 Where the Services being provided require, TJS Marketing Limited will liaise with the relevant web agency, hosting company or other third party, but TJS Marketing Limited will have no liability to the Customer under the Contract if it is prevented or delayed from performing its obligations under the Contract by any act or omission of the relevant web agency, hosting company or other third party.

3.6 TJS Marketing Limited shall not be liable for any failure to comply with the Contract if such failure arises as a result of an action or omission by the Customer or a third party including, by way of example and not limitation, any of the following occurrences:

A. the Customer changes the website or in any way hinders the progress of the website;

B. the Customer has removed any of the products or services, changed keywords, changed domains, interfered with the link building or not complied with the request and advice of TJS Marketing Limited;

C. the Customer has acted in a way that TJS Marketing Limited considers, at its sole discretion, is detrimental to achieving the first page listing or top rankings;

D. the Customer has interfered with or impaired the product or service;

E. the Customer has not maintained a 99% uptime at all times of the Customer's website for the duration of the Contract;

F. the Customer has breached any applicable law;

G. the Customer has breached any term of the Contract;

H. TJS Marketing Limited is prevented from or inhibited in its ability to perform its obligations under the Contract due to a Force Majeure Event;

I. the Customer fails to provide FTP access for TJS Marketing Limited to implement the on site recommendations;

J. changes or updates to third party software or analytics data that affects or prevents TJS Marketing Limited from reporting or tracking any data;

K. any action by a search engine provider, internet service provider or other third party including, without limiting the generality of the foregoing, the application of a so called "penalty" or any change to an algorithm or rules or terms of a search engine, internet service provider or other third party which results in the Customer's website appearing

lower in search result listings than was the case at the date of the Order Form or lower than the position which TJS Marketing Limited represented may be possible after providing the Services;

L. The Customer has not implemented TJS Marketing's onsite recommendations (Onsite Recommendations) to TJS Marketing's satisfaction within 1 month of receipt of TJS Marketing's notice of such Onsite Recommendations;

The Customer has failed to disclose within 14 days of the Effective Date:

A. all domain names they own or have owned within the preceding 12 months that currently have, or have had, a live website on them. This includes partner firms/resellers, franchisees and international website;

B. all website(s) or domain name(s) that redirect to the website(s) or URLs TJS Marketing Limited has been engaged to work on;

C. any website or local listings that are copies of, or an attempt to pass themselves off as, any of the website(s) or URLs on which TJS Marketing Limited have been engaged to work on;

D. if any content (written, visual or audio) on any website or URL TJS Marketing Ltd have been engaged to work on has been copied from another source; or

E. any work carried out a previous SEO company or any website / URL activity that may affect future results – examples include, but are not limited to, bulk link buying, manual penalties, automated penalties and website infection with malware.

3.7 If any of the events referred to in paragraphs (a) to (m) of Condition 3.6 occur (a "3.6 Event"), any relevant representation or contractual term regarding the results which may be achieved by providing the Services is withdrawn and will have no force or effect pending a review of the effect of the 3.6 Event by TJS Marketing Limited which has the right at its sole discretion to substitute a new representation or contractual term which will be deemed to be accepted by the Customer.

3.8 If a 3.6 Event occurs and the Customer requests TJS Marketing Limited to take steps to offset the adverse effect of the 3.6 Event, in the absence of written agreement regarding the additional costs of taking such steps:

A. TJS Marketing Limited is entitled to charge extra for the additional time spent and work done at

the rate which it charges at that time for such work; and

B. The Contract is deemed to be extended for such time as it takes to complete the additional work.

#### **4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall provide TJS Marketing Limited with:

A. all necessary cooperation relating to the Services;

B. direct and remote access to the Customer's website, Social Media Accounts, Paid

Advertising and such other facilities as reasonably required by TJS Marketing Limited; and

C. all necessary access to such information as may be required by TJS Marketing Limited in order to render the Services, including but not

limited to security access information and software interfaces to the Customer's other business applications;

D. comply with all applicable laws and regulations with respect to its activities; and

E. carry out all the Customer's tasks set out in the Contract in a timely and efficient manner. In the event that the Customer fails to perform such tasks, TJS Marketing Limited may adjust any timeline set out in the Contract as reasonably necessary.

4.2 The Customer accepts that TJS Marketing Limited will have the exclusive right to provide it with the Services which it has contracted to buy and that it will not purchase services which compete with any of those provided by TJS Marketing Limited from any third party for the duration of the Contract. For clarification, the reason for Condition

4.2 is to avoid the sort of problems which occur when a third party which provides services similar to the Services provides those services at the same time as TJS Marketing Limited.

4.3 The Customer warrants that the use of material provided by the Customer or its agents to TJS Marketing Limited to enable TJS Marketing Limited to provide the Services shall not infringe the intellectual property or other rights of whatever nature of any third party.

4.4 Where applicable, the Client shall notify the Company of any intended changes that it wishes to make to any aspect or element of the Website, prior to it doing so; the Client acknowledges that any un-notified changes may have an adverse effect on the results achievable by the Company's provision of the Services.

4.5 Although the Company will use reasonable care and skill to keep up to date with current trends and techniques in connection with the provision of Services, the Client accepts the Company has no control over the policies of any particular , social media platform, directory or similar, or the basis upon which such entities may or may not accept or rank a website, website content or particular pages belonging to or controlled by the Client, in a particular manner.

4.6 The Client grants or shall procure the grant of all necessary and reasonably requested access to all administrative and/or back-end systems, including without limitation the Client's hosting accounts, domain registrations, analytics and data (however or wherever held), and shall provide all necessary passwords, access and login information to all such accounts, from time to time, enabling the Company to provide the Services.

## **5. FEES**

5.1 The Customer shall pay the Fees set out in the Proposal for the Services. Payment of the Fees shall be a condition precedent to the obligation of TJS Marketing Limited to perform the Services.

5.2 All amounts and Fees stated or referred to in the Contract are exclusive of Value Added Tax, which shall be added to TJS Marketing Limited invoice(s) at the appropriate rate.

5.3 TJS Marketing Limited shall invoice the Customer for Fees which have become payable in accordance with the Contract.

5.4 The Customer shall pay each invoice submitted by TJS Marketing Limited by the due payment date specified on the invoice, and time for payment shall be of the essence of the Contract.

5.5 Without limiting any other right or remedy of TJS Marketing Limited, if the Customer fails to make any payment due to TJS Marketing Limited under the Contract by the due date for payment (Due Date)

TJS Marketing Limited shall have the right to:

- A. charge interest on the overdue amount at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998 accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly; and
- B. suspend all Services until payment has been made in full.

5.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set off or counterclaim against TJS Marketing Limited in order to justify withholding payment of any such amount in whole or in part. TJS Marketing Limited may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by TJS Marketing Limited to the Customer.

5.7 Without limiting any other right or remedy of TJS Marketing Limited, cheques and direct debits returned unpaid by the Customer's bank and credit card payments returned unpaid will incur an administration charge which under all circumstances shall be paid by the Customer.

5.8 In the circumstances envisaged in Condition 3.6 TJS Marketing Limited shall be entitled to charge the Customer a fee for resolving the issue. Such fee shall unless otherwise provided be subject to agreement and shall be in addition to the sums due under the Contract in respect of the Services.

5.9 Following receipt by TJS Marketing Limited of notice from the Customer to terminate the Contract for convenience as may be permitted under Condition 6, TJS Marketing Limited shall be entitled to invoice the Customer the remaining instalments of the full value of the Fees payable for the Services during the notice period without any deduction, discount or reduction.

5.10 All sums payable to the Company under these Conditions shall be paid in full without any deduction or setoff, except for credit notes or where an amount has been agreed by the Company, in writing, as being due to the Client.

## **6. TERM AND TERMINATION**

6.1 TJS Marketing Limited shall commence provision of the Services on the Effective Date and shall continue to provide the Services until termination of the Contract in accordance with its terms.

6.2 The Contract may be terminated by either party, by providing the period of written notice stipulated on the Proposal. If no notice period is stipulated on the Proposal then the standard notice period during the

Initial Term (if any) is 180 days. Where the contract is for an Initial Term of more than six months, it will on expiry of the Initial Term, auto renew onto a rolling 90 day contract terminable by either party on 90 days written notice. In order to terminate the Contract under this Condition 6, the Customer must send an email to [tj@tjsmarketing.co.uk](mailto:tj@tjsmarketing.co.uk) or a letter by registered post to TJS Marketing Limited, 6 Granby road, Honington, Shipston-on-Stour, CV36 5AB and receive an acknowledgement from a Director of TJS Marketing Limited confirming that TJS Marketing Limited has received and accepted the termination.

6.3 Without prejudice to any other right or remedy available to TJS Marketing Limited, TJS Marketing Limited may, at its sole discretion, terminate the Contract if the Customer:

A. fails to pay any sum due under the Contract and such sum remains unpaid for 15 days after written notice from TJS Marketing Limited that such sum has not been paid; or

B. ceases to carry on business or becomes insolvent, or has an administrator or receiver appointed or enters into liquidation or enters into any agreement with its creditors; or

C. commits a breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 15 days of the Customer being notified in writing of the breach; or

D. interferes with or impairs the Services, or TJS Marketing Limited ability to deliver the Services.

6.4 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

6.5 On termination of the Contract for whatever reason, the Customer shall immediately pay all of TJS Marketing Limited outstanding invoices and interest, and in respect of Services supplied but for which no invoice has been submitted, TJS Marketing Limited may submit an invoice which shall be immediately payable on receipt.

## **7. DISPUTE RESOLUTION PROCEDURE**

7.1 If any dispute arises in connection with the Contract, each party will give authority to a representative who holds a senior position in their business to settle the dispute and those representatives will, within 7 days of a written request from one party to the other, meet promptly or arrange a teleconference in good faith to resolve the dispute. Compliance with this requirement is a precondition to commencing litigation.

7.2 If the dispute is not resolved at that meeting or teleconference, the dispute resolution process set out in Condition 7.1 shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by the Contract in respect of such matter.

## **8. PRIVACY POLICY**

8.1 The Privacy Policy of TJS Marketing Limited, which may vary from time to time, can be found on the website here

<https://tjmarketing.co.uk/privacy/> .The Privacy Policy is hereby incorporated into the Contract.

## **9. LIMITATION OF LIABILITY**

9.1 The following provisions set out the entire liability of TJS Marketing Limited (including any liability for the acts or omissions of its employees) to the Customer in respect of any breach of the Contract and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.

9.3 Nothing in these Conditions excludes or limits the liability of TJS Marketing Limited for death or personal injury caused by TJS Marketing Limited negligence or fraud or fraudulent misrepresentation.

9.4 Subject to Condition 9.3, TJS Marketing Limited shall not be liable for

- A. any loss of profits,
- B. loss of business,
- C. depletion of or damage to goodwill
- D. loss of agreements or contracts
- E. loss of anticipated savings
- F. loss of use or corruption of software, data or information or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and TJS Marketing Limited total 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 the Contract shall be limited to 100% of the total Fees received by TJS Marketing Limited in the calendar year in which the incident occurs.
- G. Any claims of copyright infringement for any content used on any website created by TJS Marketing Limited for the client.

9.5 Provided that TJS Marketing Limited performs the Services with reasonable care and skill and notwithstanding any other provision of the Contract, it shall have no liability or obligation whatsoever in relation to the links that it builds up via the Services, any keywords that it may propose in order to build up those links or any website (including without limitation any website content) involved in or affected by the Services, and TJS Marketing Limited gives no warranty that it will obtain or maintain for any period of time specific ranking positions for selected keywords on any search engine.

9.6 For the avoidance of doubt, TJS Marketing Limited shall not be liable for any links being removed by a third party or any penalties incurred by the Customer.

9.7 The domain authority of a link, when domain authority is used as a metric is based on the live date of the link, not the reported date of the link.

9.8 The Customer shall indemnify TJS Marketing Limited against any claims, actions, proceedings, losses, damages, expenses and costs

(including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses ) arising out of or in connection with;

A. the Customer's use of the Services

B. any breach by the Customer of any term of or warranty given under the Contract or

C. TJS Marketing Limited use of any materials or data or other items supplied by the Customer to TJS Marketing Limited under the Contract.

9.9 The provisions of this Condition 9 shall continue to apply notwithstanding the termination or expiry of the Contract.

## **10. CONFIDENTIALITY**

10.1 Except as expressly provided in the Contract, each party shall keep in strict confidence all technical or commercial know how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by one party to the other. Each party shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging its obligations under the Contract and shall ensure that such employees are subject to corresponding obligations of confidentiality.

10.2 All Intellectual Property Rights and title in and to the Products of the Services shall at all times be, and remain, the exclusive property of TJS Marketing Limited, but shall be held by the Customer in safe custody at its own risk until returned to TJS Marketing Limited, and shall not be disposed of or used other than in accordance with TJS Marketing Limited written instructions or authorisation.

10.3 The parties shall be entitled to disclose such information to their professional advisers and to the extent necessary for the purposes of enforcing their rights under the Contract.

10.4 This Condition 10 shall survive termination of the Contract, howsoever caused.

## **11. NONSOLICITATION**

Neither party shall, during the continuance of the Contract, or within 12 months of its termination, whether on behalf of itself or via a third party, solicit or seek to entice away any employee of the other. In the event of breach of this Condition 11 the party in default shall pay the other a sum equal to 6 months gross pay of the employee concerned being a pre estimate of the cost of recruitment and training a replacement.

## **12. FORCE MAJEURE**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. For the purposes of these Conditions, Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lockouts or other

industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport or communications networks or systems (including the internet), acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions.

### **13. REMEDIES**

Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

### **14. WAIVER**

A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

### **15. ENTIRE AGREEMENT**

15.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

15.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.

15.3 In the event of any part of the Contract being held invalid, illegal or unenforceable it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision shall be deemed deleted. Any modification to or deletion of a provision or part provision under this Condition shall not affect the validity and enforceability of the rest of the Contract.

### **16. ASSIGNMENT**

16.1 The Customer shall not, without the prior written consent of TJS Marketing Limited, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2 TJS Marketing Limited may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

### **17. THIRD PARTY RIGHTS**

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

### **18. NOTICES**

18.1 Any notice (including Order Confirmation) given pursuant to the

Contract shall be in writing and shall be sent by email or delivered by hand or sent by prepaid first class post or recorded delivery post to the address of the party as set out in these Conditions, or, in each case, such other address as may be notified by one party to the other.

18.2 A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by prepaid first class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. An email shall be deemed to have been delivered at the time it is sent if receipt is acknowledged by the recipient or within 25 hours from the time of being sent.

## **19. GOVERNING LAW AND JURISDICTION**

19.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

19.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non contractual disputes or claims).

## **20. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another part for any purpose. No party shall have authority to act as agent for, or to bind, the party in any way.

## **21. CHANGES TO THE CONTRACT**

21.1 TJS Marketing Limited may modify the Contract, where it is required to do so, by notifying the Customer in writing, and giving 30 days' notice where possible, in order to accommodate changes to the law or to rules applied by any governmental or regulatory authority which require TJS Marketing Limited to modify its procedures, policies or services.

21.2 If the Customer wishes to vary any part of the Contract, the request shall be sent in writing to . TJS Marketing Limited shall respond to the Customer within 5 working days as to whether it is prepared to agree to the change and, if so, details of the cost of the change, any effect on any other part of the Contract including any change in timescales. The Customer may accept such proposal within such time as TJS Marketing Limited may specify or, if none, within 7 days, failing which it shall be deemed rejected. Pending acceptance or rejection TJS Marketing Limited may continue to perform the Contract without reference to the request.