

These Terms and Conditions apply to the provision of all Services by us, Website Energizers Ltd, a company registered in England and Wales under number 06528837, whose registered office address is 24 Cornhill, Market Place, Banbury, Oxon. OX16 5NG (referred to as "us/we/our").

## 1. Definitions and Interpretation:

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

**"Customer"** means you, the individual, firm, or corporate body purchasing the Services. Where an individual is entering into this Agreement 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 Customer in the context of this Agreement.

**"Agreement"** means the agreement formed as detailed in clause 2, which includes the acceptance of these Terms and Conditions.

**"Proposal"** means the written Proposal 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"** means the website design & build, website hosting, SEO Services, paid advertising campaign management, graphic design, content writing, and/or any other Services provided by us to you.

**"Agency"** means Website Energizers Ltd.

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

1.2.1 "we", "us", "our" is a reference to the Agency and includes our employees and agents;

1.2.2 "you" and "your" is a reference to the Customer and includes your employees and agents;

1.2.3 "writing" and "written" includes emails and similar transmissions;

1.2.4 a statute (meaning "a law or regulation") or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

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

1.2.6 a clause is a reference to a clause of these Terms and Conditions;

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

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 any gender shall include all genders. References to persons shall include corporations.

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 Agreement

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

2.2 You are responsible for the accuracy of any information you submit to us and for ensuring that our Proposal reflects your requirements. Our Proposal 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.

2.3 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 Agreement.

2.4 We may provide estimated timescales for the works to be carried out. Such timescales are dependent on your feedback, response times and other factors outside of our control, therefore, they represent a guideline only and are not of the essence of the Agreement.

## 3. The Services (General)

3.1 In order to provide our Services, we may need relevant access, approvals and logins to your Systems, as necessary. Please provide this to us on acceptance of our Proposal to avoid delays.

3.2 For all one-off Services as detailed in Clauses 4, 5, 8 and 9 unless otherwise agreed by us in writing, we shall invoice you 100% of the quoted fee up front. We will not commence the Services until this Payment has been received in full.

3.3 For all retained Services as detailed in Clause 4, 6, 7, 8 and 9 we will invoice you on the commencement date, and thereafter shall run on a rolling monthly basis unless a written notice to terminate is given by either party in accordance with clause 13 below.

3.4 For all retained Services, we may at our discretion roll hours into the next month, but are under no obligation to, and should you terminate the Agreement these hours shall be lost. Should you need more hours on a retained basis then all additional hours will be charged at our standard hourly rate.

3.5 We reserve the right if necessary to charge additional interim progress payments as any works progress, and we will notify you accordingly in advance.

3.6 We cannot be held liable for any delays, errors, discrepancies or any other adverse consequences where you have provided incorrect information or have failed to provide information necessary for us to provide our Services.

3.7 Please note that we will retain title to all content, designs and assets and no

content, designs or assets shall be handed over, and you agree not to use or publish them in any way, until all payments have been paid in full.

4. **Graphic Design:** The following clause applies if we are providing Graphic Design Services.

4.1 We will provide you with an initial design concept based on the brief you have given to us. We will require your input and feedback on this concept, to enable us to work on your project through to completion. Any proofs we send to you must be signed off by you in writing.

4.2 Any alterations required after approval of the final design, any changes to the brief, any additional edits requested above the allowance of three will be chargeable at our standard rate applicable at the time.

4.3 Any copy and images you provide will be uploaded or delivered by us exactly as we receive it. It is your responsibility to check for mistakes, including spelling and grammar mistakes, and we accept no responsibility for the same.

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

5.1 We will provide you with an initial website design concept based on the brief you have given to us. We will require your input and feedback on this concept, to enable us to work on your design through to sign off. The final website design we send to you must be signed off by you in writing.

5.2 Where you have chosen a pre-designed layout, you must provide content to us in order to fit the layout chosen.

5.3 Any alterations required after approval of the final website design, any changes to the brief, any additional versions requested above the allowance of three will be chargeable at our standard rate applicable at the time.

5.4 We can provide written copy and source images for the website if we have included for this in our Proposal. Otherwise, you will be required to send us all logos, written copy and visual assets to be included on the website, in the agreed format.

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

5.6 We design our websites using editable platforms. 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 all pages.

5.7 Please note that where we have created any websites with a contact form, it shall be your responsibility to regularly check that contact forms are working as expected and that email replies to these website forms are being delivered to their intended recipient. We will not be liable in any way for failed email deliveries.

5.8 Our websites are built to respond to all screen sizes. Once your website is live it will look the same as the original signed off design on a screen width of 1920pixels. The layout of the website will display differently to the signed off design as it responds to different screen sizes including those on mobile phones and tablet devices.

6. **Website Hosting:** The following clause applies if we are providing website hosting Services.

6.1 We will use our best endeavours to ensure the web hosting Services are uninterrupted, and we will monitor for downtime and endeavour to resolve issues swiftly after becoming aware of such issues. However, we will be under no liability to refund the hosting fees for any period of downtime encountered.

6.2 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 the website, unless website backups are included in the hosting package you have chosen.

6.3 We cannot be held liable for the actions or inactions of any other hosting provider. If you wish to use another hosting provider, we may charge a set-up fee to transfer the site to this provider.

6.4 It is your responsibility to manage your email storage within your allocated allowance as agreed by us. If you exceed this allowance, you will not be able to send or receive emails until you clear necessary space or upgrade your package.

6.5 Where we host emails, it is your responsibility to regularly check that emails are being received by the intended recipient and we shall not be liable for the failure of any email deliveries.

6.6 Where it has been agreed that we will hold your domain in our registrar account, then you will retain ownership of that domain name providing that you have made all payments in accordance with Clause 10 and that your account is up to date. Please note that your domain will be subject to an annual renewal fee payable in advance, unless it is included in the hosting package you have chosen.

6.7 We provide an out-of-hours support service to cover critical website issues that were not caused by user error. These critical issues include:

6.7.1 Critical display issues that were not caused by user error or negligence.

6.7.2 The website experiencing downtime due to a hosting failure; and

6.7.3 Email-related issues such as bouncing or not being able to send/receive emails.

Please note that any issues resolved using our out-of-hours service that were determined to be caused by user error will be charged at our standard out-of-hours rate.

**7. Paid Advertising Campaign Management:** The following clause applies if we are providing paid advertising campaign management Services.

7.1 The paid advertising campaign management shall incur an initial set up fee which shall be detailed on the Proposal, and thereafter, fees shall run on a rolling monthly basis unless a written notice to terminate is given by either party in accordance with clause 13 below.

7.2 We shall set up and manage your paid advertising campaigns after gaining authorised access to your advertising accounts. You shall continue to always have access to your advertising accounts; however, we suggest you only edit or cancel campaigns with our prior written approval. Should the account be regularly changed without our approval, we reserve the right to terminate the Agreement.

7.3 We shall make projections and suggestions based on Google algorithms, projections and your suggestions; however, these shall be at our discretion and are subject to change from time to time and may not be accurate.

7.4 We shall send you regular reports detailing the current performance of your paid advertising campaigns.

7.5 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.

7.6 In order to maximise the benefit of our Services, you will be required to send us regular updates (including, but not limited to, details of special offers, new Services you provide, and Services no longer provided by you).

**8. SEO Services:** The following clause applies if we are providing SEO Services.

8.1 The SEO Services fees shall run on a rolling monthly basis unless a written notice to terminate is given by either party in accordance with clause 13 below.

8.2 We shall make projections and suggestions based on Google algorithms, projections, and your suggestions; however, these shall be at our discretion and are subject to change from time to time and may not be accurate.

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

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

8.5 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.

8.6 In order to maximise the benefit of our Services, you will be required to send us regular updates (including, but not limited to, details of special offers, new Services you provide, and Services no longer provided by you).

**9. Content Creation:** The following clause applies if we are providing content creation Services.

9.1 We can provide advice and assistance regarding implementing the documentation we have provided, however, it is your responsibility to ensure the copy is accurate and suitable for your needs. It is your responsibility to check for mistakes, including spelling and grammar mistakes, at all stages and we accept no responsibility for the same.

9.2 Any alterations required after approval of the final content, any changes to the brief, any additional versions requested above the allowance of three will be chargeable at our standard rate applicable at the time.

9.3 We shall issue the documentation in our standard format only. We will endeavour to accommodate any particular format requested, however this may be subject to an additional fee.

**10. Fees**

10.1 Our fees shall be payable in accordance with this clause 10 and any issued payment schedule. Where we have agreed to spread the cost of a Service, we shall indicate a minimum term which cannot be terminated prior to the end of such term, after which the Services shall move to a monthly rolling basis which can be terminated in accordance with Clause 13.

10.2 You agree to pay for any additional Services requested by you and provided by us that are not specified in the Proposal. 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.

10.3 Where applicable, we will charge for mileage together with all other reasonable travel expenses (including train and taxi costs as reasonably appropriate), accommodation and subsistence costs incurred by us in performing the Services, which shall be due in accordance with clause 10.4.

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

10.5 Where any direct debit payment fails, we reserve the right to charge to you a £5 administration fee per individual failure, plus 2% of the relevant invoice value.

10.6 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 any statutory provision in force from time to time, we shall have the right to charge you a late payment fee of 10% of the full amount of the invoice and / or suspend the Services, including shutting down your website if applicable.

10.7 We reserve the right to adjust our prices from time to time as is reasonably necessary, and we will notify you accordingly in advance.

## 11. Your Responsibilities

11.1 You agree, where applicable, to:

- 11.1.1 provide us with any information, advice and assistance as we may reasonably require within sufficient time to enable us to perform the Services.
- 11.1.2 provide us with suitable and sufficient material and images to enable us to perform the Services.
- 11.1.3 ensure all content uploaded by you or your employees, or provided to us, is suitably backed up and thoroughly proofread for mistakes.
- 11.1.4 virus-check all data and material supplied to us and ensure it is backed up regularly.
- 11.1.5 ensure any staff are trained in the proper use and operation of any system provided by us.
- 11.1.6 keep secure from third parties any passwords we may issue to you.
- 11.1.7 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
- 11.1.8 obtain and maintain all necessary licences, permissions, and consents in connection with the Services.

11.2 If you fail to meet any of the provisions of this clause 11, without limiting our other rights or remedies, we shall:

- 11.2.1 have the right to suspend performance of the Services until you remedy the default.
- 11.2.2 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
- 11.2.3 be entitled to claim for any costs or losses sustained or incurred by us arising directly or indirectly from your default.

## 12. Variation and Amendments

12.1 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.

12.2 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.

12.3 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.

## 13. Cancellation and Termination

13.1 Subject to clause 13.3, any one-off Services as detailed in clauses 4, 5, 8 and 9 cannot be cancelled after the Agreement 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 Agreement.

13.2 Either Party has the right to terminate the retained Services detailed in Clauses 4, 6, 7, 8 and 9 by the giving of no less than 14 days written notice before the scheduled invoice date/end of term, whereby at the end of the term, there will be no continuing liability by either Party.

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

- 13.3.1 has committed a material breach of this Agreement 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
- 13.3.2 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.

13.4 In the event of termination, we will hand over all work already finished at the point of termination and all payments required under this Agreement shall become due and immediately payable.

13.5 Upon termination of the Agreement, all data and assets held by us shall be returned to you or if this is not arranged by you, it will be destroyed within 3 months.

13.6 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 recommend the Proposal process with us.

13.7 Any and all obligations of the Parties which either expressly or by their nature continue beyond the termination, cancellation or expiration of this Agreement shall survive termination under this clause 13 on a pro-rata basis.

**14. Confidentiality:** Each Party undertakes that throughout the duration of the Agreement, 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 Agreement. 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.

**15. Format**

15.1 We include for all content, designs and assets to be supplied in our normal standard format only. If additional copies or specific requirements are needed, we reserve the right to apply additional charges.

15.2 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 Proposal and if we agree to do so, we will provide a price.

**16. Literature and Representations:** Any marketing literature is presented in good faith as a guide to represent the Services offered and does not form a part of the Agreement. None of our employees or agents are authorised to make any representation concerning the Services unless confirmed by us in writing. In entering into the Agreement, you acknowledge that you do not rely on and waive any claim for breach of any such representations, which are not so confirmed.**17. Intellectual Property**

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

17.2 This ownership will apply only to the final design and will not extend to any draft concepts, images, designs, or other material viewed by you. These cannot be used without our express permission. We reserve the right to reuse these designs at our discretion.

17.3 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.

17.4 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 trademark, 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.

**18. Data Protection**

18.1 Both parties agree to comply with all applicable data protection legislation including, but not limited to, the Data Protection Act 2018, the General Data Protection Regulation 2016, and any subsequent amendments to them.

18.2 If you are providing us with the personal data of any other person, 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 Agreement and will not use it for any other purpose.

**19. No employment:** Nothing in the Agreement will render or be deemed to render us an employee or agent of yours or you an employee or agent of ours.**20. Assignment and Sub-Contracting**

20.1 You are not entitled to assign the benefits under the Agreement.

20.2 We may sub-contract the performance of any of our obligations under the Agreement without your prior written consent. Where we are sub-contracting the performance of any of our obligations under the Agreement 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.

**21. Liability and Indemnity**

21.1 Except for any 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, loss of trade, loss of income, loss of revenue, 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 Agreement.

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

21.3 In the event of a breach by us of our express obligations under these Terms and Conditions, your remedies/compensation will be limited to damages, which in any event, shall not exceed the fees and expenses paid by you for the Services.

21.4 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.

**22. Restrictive Covenants:** Neither we nor the Customer will, during the term of the Agreement 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.**23. Force Majeure:** Neither Party shall be liable for any failure or delay in performing their obligations under the Agreement 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.**24. Waiver:** No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.**25. 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 Agreement, as appropriate). The remainder of these Terms and Conditions shall be valid and enforceable.**26. Third Party Rights:** No part of the Agreement is intended to confer rights on any third parties and accordingly the Agreements (Rights of Third Parties) Act 1999 shall not apply to the Agreement.**27. 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.**28. Law and Jurisdiction**

28.1 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.

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