

## **Grow Online Marketing Limited – Standard Business Terms and Conditions**

### **1. Scope**

1.1. These terms and conditions of business (“the Terms”) shall apply to all agreements concluded between Grow Online Marketing Limited a company incorporated in England under company number 08260283 whose registered office is at GROW ONLINE MARKETING LTD, D1 THE COURTYARD ALBAN PARK, HATFIELD ROAD, ST. ALBANS, HERTFORDSHIRE, AL4 0LA (trading as and hereinafter called “Grow Online Marketing”) and Grow Online Marketing’s customers (hereinafter called “the Customer”). The Terms may only be derogated from by express written agreement between Grow Online Marketing and the Customer.

1.2. An agreement concerning the delivery of Services from Grow Online Marketing to the Customer shall be legally binding only when an order has been accepted in writing between the Parties (hereinafter called “the Order”). This shall occur either when Grow Online Marketing has notified the Customer of its acceptance of the Order or when Grow Online Marketing has started to perform the Services having received the Order whichever happens first. The Order and any appendices to the Order may contain provisions supplementing or taking precedence over the present Terms of Business. Any subsequent amendments to the Order or Services added to or removed from the Order must be effected in writing and be accepted by both parties.

1.3. Services involved in the execution of an Order in accordance with the present Terms may cover, but shall not be limited to, consultancy services in connection with media and online marketing strategies, search engine optimisation, pay per click marketing, social media management, social media marketing, social media advertising, web design and development, management of email campaigns, content creation (“the Services”).

### **2. Grow Online Marketing obligations and warranties**

2.1. Grow Online Marketing warrants that it will perform the Services as stipulated in the Order using reasonable care and skill to conform with the Order specification.

2.2. The warranty set out in clause 2.1 is the Customer’s exclusive warranty and to the fullest extent permitted by law replaces all other warranties, whether express or implied, including but not limited to the implied conditions of satisfactory quality and fitness for a particular purpose.

2.3. Grow Online Marketing shall be entitled to use other subcontractors to execute the Order provided always that Grow Online Marketing shall remain liable to the Customer for the performance of the Services as if it had carried them out itself.

### **3. Customer's obligations and indemnities**

3.1. Where stipulated in an Order or as otherwise deemed necessary by the circumstances, the Customer shall provide all requisite assistance and technical information in sufficient time to facilitate the execution of an Order in accordance with any estimated delivery dates or milestones. The Customer shall have sole responsibility for ensuring the accuracy of all information provided to Grow Online Marketing and warrants and undertakes that the Customer's employees assisting in the execution of an Order have the necessary skills and authority.

3.2. The Customer shall be obliged as quickly as possible and within the agreed deadline to comment on/approve materials, including (without limitation) advertising copy, search terms, graphic material, submitted by Grow Online Marketing. In addition, the Customer shall be obliged as quickly as possible and within the agreed deadline to implement changes on websites, in IT systems or where it may otherwise be required.

3.3. The Customer shall be obliged to inform Grow Online Marketing immediately of changes of domain names, websites, technical setup and any other material information regarding the technical infrastructure which may affect the services delivered by Grow Online Marketing.

3.4. In the event that the Customer fails to undertake those acts or provide those materials required under this clause 3 within any agreed deadline (and at least within 3 months) Grow Online Marketing shall be entitled to invoice for the Services that it has supplied and the remaining Services specified in the Order whether or not Grow Online Marketing has been able to deliver them.

3.5. The Customer shall indemnify and keep Grow Online Marketing indemnified fully against all liabilities, costs and expenses whatsoever and howsoever incurred by Grow Online Marketing as a result of the performance of the services in accordance with the Order specification or the content of its advertising or web pages which result in claims or proceedings for infringement of any intellectual property rights or other proprietary rights of third parties, or for breach of confidentiality or contract or for defamation.

3.6. The Customer undertakes to comply with all applicable rules, regulations, codes of practice and laws relating to its use of the Services including without limitation its obligations under the Data Protection Act 1998, the Regulation of Investigatory Powers Act 2000; Competition Act 1998 and the E-Commerce Directive and equivalent legislation and hereby agrees to indemnify and to keep Grow Online Marketing indemnified in respect of any and all costs, claims or proceedings whatsoever brought against Grow Online Marketing by any third party in connection with any breach of the same by the Customer.

#### **4. Prices**

4.1. Unless otherwise expressly stated, all prices shall be stated in British Pounds exclusive of VAT and other duties. In the event that duties are introduced or changed after the conclusion of an Order or cooperation agreement, Grow Online Marketing shall be entitled to adjust the agreed prices accordingly.

4.2. Unless otherwise expressly stated, all prices shall be exclusive of costs for the acquisition of intellectual property rights for materials to be included in marketing materials, including if relevant (but without limitation) pictures and licences from third party owners and licensors.

4.3. Unless otherwise expressly stated, all prices shall be exclusive of shipment, including (but without limitation) costs for printing, transport, postage, messenger service, sending of emails and text messages.

4.4. For Orders that include the rendering of consultancy services, such as design and copywriting or project management, the price stated in the Order shall be a budgeted price estimate based on a qualified estimate of the number of man hours required. Consultancy services shall be invoiced in accordance with the actual number of man hours spent and on the basis of Grow Online Marketing's price list applicable from time to time. Grow Online Marketing shall be obliged to update the estimate and budgets on an ongoing basis following, among other things, changes made to an Order. The budgeted price shall always cover one proof of the materials prepared.

4.5. For Orders which include the rendering of marketing services that are dependent on Internet user traffic, clicks, registrations, purchases or the like, the price stated in the Order for a given period shall be based on budgeted/estimated consumption and shall not constitute payment for an obligation to deliver the marketing services in the entire period.

4.6. If the price for a Service has not been agreed, the price charged shall be in accordance with Grow Online Marketing's price list applicable from time to time.

## 5. Payment

5.1. Grow Online Marketing shall submit invoices in accordance with the Order but unless specified otherwise therein, Grow Online Marketing shall be entitled to submit an invoice in connection with the conclusion of an Order (which for the avoidance of doubt means the date the contract is entered into). For consultancy services, Grow Online Marketing shall be entitled to invoice up to 50 per cent of the budgeted price upon conclusion of the Order and subsequently every month according to Services consumed, on a pro rata basis or as agreed. For ongoing Services, Grow Online Marketing shall be entitled to invoice quarterly in advance, monthly or according to Services consumed, on a pro rata basis or as agreed.

5.2. Invoices shall fall due for cash payment within 30 days of the invoice date. The invoice number shall be stated on all payments.

5.3. In the event of overdue payment, interest shall accrue on the invoice amount at the statutory rate prescribed by the late payment of commercial debts (interest) at 1998 or at the rate of 2 per cent over the base rate of Barclays Bank Plc (whichever should be the higher). At Grow Online Marketing's discretion, a fee of £10 (to cover administrative expenses and not as a penalty) shall be charged per reminder submitted to the Customer. Grow Online Marketing shall be entitled to submit such reminders on a weekly basis once the fees have become over due for payment. Grow Online Marketing expressly reserves all rights at all times to bring any legal action it considers appropriate to recover any unpaid sums.

5.4. Late payment shall be considered as constituting a material breach of the Order entitling Grow Online Marketing (at its discretion) to cancel the Order or to affirm the Order and assert the usual remedies for breach.

5.5. In the event that a Service cannot be delivered either in full or in part due to the Customer's failure to assist or delay in assisting in the execution of the Order Grow Online Marketing shall be entitled to charge to the Customer an amount, possibly estimated, corresponding to the amount that would have been due had the Service been rendered in accordance with the Order. Grow Online Marketing shall be entitled to payment on the basis of Grow Online Marketing's price list applicable from time to time for any additional work required because of the Customer's failure to assist or delay in assisting.

5.6. In the event that the Services include pay-per-click or other search engine placement services which require payments to third parties and are agreed with Customer prior to their implementation, Customer shall

reimburse and indemnify Grow Online Marketing for any out of pocket expenses incurred by it in supplying the same.

## **6. Delays and non-conformities**

6.1. In the event that the Customer proves that a Service is delayed or non-conforming, Grow Online Marketing shall be obliged to remedy or redeliver, at its own discretion, without undue delay. In the event that the Service continues to be non-conforming after reasonable attempts have been made to remedy the non-conformity, the Customer shall be entitled to cancel the Order in accordance with clause 11.3.1, provided that the non-conformity is material.

6.2. Complaints concerning delays or non-conformities shall be submitted immediately after the time when the Customer became or should have become aware of the matter. If the Customer fails to bring the defect (unless by its very nature it is impossible to ascertain within such a period) to the attention of Grow Online Marketing within 48 hours the Customer shall be deemed to have accepted the Services and shall not be entitled to assert remedies based on delays or non-conformities.

6.3. The Customer hereby acknowledges that certain Services rely upon third parties and where, for instance, Grow Online Marketing is dependent upon placing an account with a third party service or infrastructure provider, the Customer hereby recognises that the placing of such an account will be governed by that third parties' terms and conditions and Grow Online Marketing cannot warrant that any such third party service will necessarily be made available to the Customer. The Customer further acknowledges that there may be delays in the placement of Customer accounts with third party service and infrastructure providers and Grow Online Marketing's only responsibility in this respect is to take reasonable care and skill in attempting to open such accounts with said third party service and infrastructure providers.

6.4. Unless specified otherwise in the Order specification Grow Online Marketing provides non-Grow Online Marketing goods and services without warranties of any kind whether or not such third party goods or services had been introduced to the Customer or obtained for the Customer by Grow Online Marketing. However, non-Grow Online Marketing suppliers may provide their own warranties to the Customer and the Customer must satisfy itself whether or not such warranties (where given) are acceptable for the Customer's business purposes or risk management policies.

6.5. The Customer's exclusive remedies for late delivery or non-conforming Services are as specified in

this clause 6 and, if the remedies set out herein have been exhausted, Customer's final remedy is limited to cancellation of the contract and Grow Online Marketing's sole liability is to refund any payments made subject to the limitations set out in clause 7 below.

## **7. Liability**

7.1. Except as expressly stated in this Clause 7 Grow Online Marketing shall have no liability to the Customer for any loss or damage whatsoever arising from or in connection with the provision of the Services or for any claim made against the Customer by any third party.

7.2. Without prejudice to the generality of Clause 7.1 above, Grow Online Marketing shall have no liability for any losses or damages which may be suffered by the Customer whether the same are suffered directly or indirectly or are immediate or consequential which fall into the following categories:

7.2.1. Special damage even though Grow Online Marketing was aware of the circumstances in which the special damage could arise;

7.2.2. Loss of profits; loss of anticipated savings; loss of business opportunity or goodwill;

7.2.3. Loss of data; and

7.2.4. Fraudulent clicks on any of the Customer's accounts managed by Grow Online Marketing.

7.3. The above exclusions shall apply to the fullest extent permissible at law but Grow Online Marketing does not exclude liability for:

7.3.1. Death or personal injury caused by the negligence of Grow Online Marketing, its employees or agents; or

7.3.2. for fraud.

7.4. To the extent such liability is not excluded by sub-clauses 7.1, 7.2, 7.5 and clause 8 below, Grow Online Marketing's total liability (whether in contract, tort (including negligence or otherwise)) under or in connection with the Order or any other agreement with the Customer relating to the Services or based on any claim for indemnity or contribution (including for damage to tangible property) or otherwise will not in any event exceed the total sum of the amounts invoiced to the Customer during the past 3 months before the Customer's written claim to Grow Online Marketing or £100,000 (whichever is the lower).

7.5. Grow Online Marketing will endeavour to provide the services within a reasonable timeframe but (in particular where Grow Online Marketing are dependent upon another operator to provide the services and/or

due to technical reasons) cannot guarantee to do so, and Grow Online Marketing will have no liability for any failure to meet such time commitments.

## **8. Other limitations of liability**

8.1. Grow Online Marketing shall not be liable for downtimes, interference in the form of hacking, virus, disruptions, interruptions, faulty third-party software, search engines or websites on which a service is dependent or other deliveries from a third party. Grow Online Marketing shall be obliged to assist in remedial efforts if so requested by the Customer. Any work connected with remedial efforts as described above shall be charged to the Customer separately in accordance with the terms applicable to the Order or on the basis of Grow Online Marketing's price list applicable from time to time.

8.2. Grow Online Marketing shall not be liable for any changes made without notice by the Customer or a third party employed by the Customer to domain names, websites, links, technical setup etc. and affecting the Services delivered by Grow Online Marketing. Preceding or subsequent work connected with any adjustments required as a result of such changes shall be charged to the Customer in accordance with the terms applicable to the Order or on the basis of Grow Online Marketing's price list applicable from time to time.

8.3. Grow Online Marketing shall use all reasonable endeavours to deliver Services relating to search engine optimisation, links, advertisements, banners and sponsorships in accordance with the guidelines applicable to the relevant search engines. However, Grow Online Marketing shall not be liable for delayed or non-conforming performance due to changes made to standard terms, assessment algorithms, search criteria, viewing policy, prices and campaign offers or other matters beyond Grow Online Marketing's control and shall reserve the right to make changes to Services as a result thereof. In addition, Grow Online Marketing shall not be liable for other changes or discontinuation of search engines.

8.4. Grow Online Marketing shall not be liable for Services relating to search engine optimisation, links, advertisements, banners or sponsorships leading to a minimum number of views, position or frequency in searches on relevant words or otherwise. In addition, Grow Online Marketing shall not be liable for ensuring that such Services lead to a certain volume of traffic, number of clicks, registrations, purchases or the like.

## **9. Intellectual property rights**

9.1. Unless expressly stated otherwise in these Terms or in an Order specification, the Intellectual Property

Rights (such definition to include any and all patents, patent applications, inventions (whether or not capable of protection or registration) know how, trade names, registered design, copyright, database rights or other similar intellectual property rights created, developed, subsisting or used in connection with the Services and whether in existence at the date hereof or created in the future)) in all materials, including (but without limitation) software, advertisements, copy, search terms, pictures, graphics, databases, articles, reports, analyses prepared or used by Grow Online Marketing as part of the execution of an Order shall vest in and be the property of Grow Online Marketing or the relevant third party from whom Grow Online Marketing has acquired a right of use with a view to executing the Order.

9.2. If the Customer is able to validly document that it has Intellectual Property Rights of its own in such materials then Grow Online Marketing shall not acquire any Intellectual Property Rights of its own in such materials save for such licences to use the same as may be necessary to perform the Services.

9.3. The Intellectual Property Rights as mentioned in Clause 9.1 shall not be used, assigned, distributed, copied, forwarded to online or offline activities by the Customer without a separate, express written agreement.

9.4. The Customer shall be responsible for ensuring that the contents of materials as mentioned in this clause 9 which the Customer has contributed or approved are not in contravention of legislation, decency, marketing rules or third-party rights, including that Grow Online Marketing is entitled to use the materials to execute an Order.

9.5. If Grow Online Marketing makes software, scripts, ASP services etc. available to the Customer as part of the execution of an Order, the Customer shall only acquire a non-exclusive temporary right of use under a limited personal non transferable license to use such material.

9.6. Grow Online Marketing shall not be held liable in the event that materials as mentioned in this Clause 9 which the Customer has contributed or approved are in contravention of legislation, decency, marketing rules or third-party rights. Grow Online Marketing shall be entitled to reject and delete such material without incurring any liability. In addition, Grow Online Marketing shall be entitled to cancel the Order.

9.7. The Customer shall be obliged to indemnify Grow Online Marketing for any loss, including costs incidental to legal or arbitration proceedings, suffered by Grow Online Marketing as a result of materials which the Customer has contributed or approved being in contravention of legislation, decency, marketing



rules or third-party rights. The parties shall be obliged to notify the other Party without undue delay of any claims raised against a Party as described in the present Clause.

9.8. The Customer accepts that Grow Online Marketing shall be entitled to use the Customer's name, figure, logo etc. as a reference on Grow Online Marketing's website, other marketing materials or types of media. The Customer's consent may be revoked, in full or in part, in writing at any time.

9.9. The Customer further acknowledges that certain Services may involve the licensing of third party intellectual property and that the Customer may be required to enter into a license directly with such third party and shall, in accordance with clause 4.2, be responsible for the costs.

## **10. Confidentiality and personal data**

10.1. During the term of the Order and for a period ending 5 years from the date of its conclusion, Grow Online Marketing shall be subject to the following provisos: to take the same care as Grow Online Marketing uses with its own similarly designated information, to avoid, without the Customer's consent, the disclosure to any third party (except a subcontractor working on the Services who is subject to similar undertakings of confidentiality) any of the Customer's business or operational information which the Customer has designated as confidential.

10.2. The obligation in Clause 10.1 will not apply to any information which is or becomes publicly available otherwise than through a breach of this agreement, is already or rightly comes into Grow Online Marketing's possession without an accompanying obligation of confidence, is independently developed by Grow Online Marketing, or which Grow Online Marketing is required to disclose by law.

10.3. During the term of the Order and for a period ending 5 years from termination thereof, the Customer will not disclose to any persons within its organisation that do not have a need to know, or to any third party, any information and non Customer materials provided by Grow Online Marketing concerning the method or approach Grow Online Marketing uses in performing the Services.

10.4. In the event that Grow Online Marketing processes any personal data received from the Customer in connection with the execution of an Order, Grow Online Marketing shall be regarded as data processor and the Customer as data controller. Grow Online Marketing shall thus only process such personal data on behalf of the Customer, and Grow Online Marketing shall not be entitled to use such data for its own purposes or in any other way than as instructed by the Customer.

10.5. The Customer warrants that the required processing of personal data contributed by the Customer may take place in accordance with the Data Protection Act 1998, including that the consent of the registered person has been obtained, if required.

10.6. Grow Online Marketing shall be obliged to take the necessary technical and organisational precautions to protect the data from accidental or unlawful destruction, loss or deterioration and from disclosure to unauthorised persons, abuse or any treatment in contravention of the principles set out in the Data Protection Act 1998.

10.7. After the execution of the Order and the final processing of the personal data in question, Grow Online Marketing shall be obliged to return the data to the Customer or destroy them as instructed by the Customer. In all events, the data shall be deleted within five years of the execution of the Order.

10.8. The Customer shall be obliged to indemnify Grow Online Marketing for any loss, including costs incidental to legal proceedings, suffered by Grow Online Marketing as a result of the processing of personal data which the Customer has contributed being in contravention of the Data Protection Act 1998 or marketing law. The Parties shall be obliged to notify the other Party without undue delay of any claims raised against a Party as described in the present Clause.

#### **11. Term, termination and assignment**

11.1. For ongoing Services, the Order concluded between Grow Online Marketing and the Customer shall be renewed automatically after one year or another agreed term corresponding to the preceding term as set out in the Order.

11.2. Each Party may terminate an Order by giving 30 days' written notice.

11.3. The Agreement may be terminated:

11.3.1 Subject to exhaustion of the remedies available to Customer under clause 6,1, by either party forthwith on notice in the event of a material failure by the other to comply with the Terms of the Order which (if capable of remedy) has not been remedied within 30 days of a written request from the party not in default specifying the nature of the breach and requesting the same be remedied;

11.3.2 If either party becomes or is insolvent or is unable to pay its debts (within the meaning of the Insolvency Act 1986) or (except for the purposes of a genuine amalgamation or reconstruction) a petition is presented or meeting convened or resolution passed for winding up the defaulting party or the defaulting

party enters into liquidation whether compulsorily or voluntarily or compounds with its creditors generally or has a receiver, administrator, or administrative receiver appointed over all or any part of its assets or the defaulting party ceases to carry on all or a substantial part of its business.

11.4. Grow Online Marketing shall, in addition to all other rights and remedies under these Terms be entitled to terminate this Order forthwith in the event that any of its charges for the Services are not paid in accordance with these Terms.

11.5. Upon termination, regardless of the reason therefore, the parties shall be obliged to return all materials received without undue delay. If relevant, the Customer shall be obliged to remove codes, etc, from websites without undue delay. If the Customer fails to do so, Grow Online Marketing shall be entitled to invoice for subsequent Services.

11.6. Customer shall not be permitted to assign or transfer all or any part of its rights or obligations under the Order and these Terms without the prior written consent of Grow Online Marketing.

11.7. Grow Online Marketing shall be entitled to assign or subcontract any of its rights or obligations under the Order and these Terms and the Customer acknowledges that certain elements of the Services will be provided by third parties.

## **12. Force majeure**

12.1. Neither party shall be held liable for matters beyond their control which the parties should not have considered at the time of conclusion of the agreement, including but not limited to war, terrorism, riots, strike or lockout, fire, natural disasters, currency restrictions, import and export bans, disruptions of the power supply and disruptions of the Internet in respect of both the parties and its subcontractors.

12.2. If a party believes that force majeure has occurred, such party shall immediately inform the other party of the start and end of the force majeure event.

12.3. Notwithstanding the other provisions of the present Terms, each party shall be entitled to terminate an Order by written notice to the other party in the event that the performance of such Order is impeded for more than 6 months due to force majeure.

## **13. Miscellaneous**

13.1. Grow Online Marketing reserves the right to modify or discontinue, temporarily or permanently, the Services with or without notice to the Customer and Grow Online Marketing shall not be liable to the

Customer or any third party for any modification to or discontinuance of these Services save for the return of any prepaid sums in connection with the provision of the Services.

13.2. Grow Online Marketing shall be free to provide its Services to third parties whether during or following the provision of the Services to the Customer.

13.3. During the term of the Order and for a period of 12 months thereafter, the Customer agrees not to employ or engage or offer to employ or engage anyone designated by Grow Online Marketing to work on the Services.

13.4. The failure of either party to enforce or to exercise at any time or for any period of time any right pursuant to these Terms does not constitute, and shall not be construed as, a waiver of such terms or rights and shall in no way affect that party's right later to enforce or to exercise it.

13.5. If any term of these Terms is found illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining Terms, be deemed omitted from these Terms and shall in no way affect the legality, validity or enforceability of the remaining Terms which shall continue in full force and effect and be binding on the parties hereto.

13.6. Any valid alteration to or variation of these Terms must be in writing signed on behalf of each of the parties by duly authorised officers.

13.7. Nothing in these Terms or any Order specification entered into and based hereon confers on any third party any benefits under the provisions of the Contract (the Rights of Third Parties) Act 1999.

#### **14. Entire Agreement**

14.1. The parties acknowledge and agree that these Terms (incorporating the Order and Order specification) supersede any prior agreement, understanding or arrangement between the parties, whether made orally or in writing and constitute the entire agreement between Grow Online Marketing and the Customer relating to these Services. Therefore, except as expressly provided, all other conditions and warranties (implied, statutory or otherwise) are hereby excluded.

#### **15. Law and jurisdiction**

15.1. Grow Online Marketing and the Customer shall be obliged to attempt to settle any disputes arising between them including disputes relating to the existence or validity of an Order through negotiation provided always that either party shall be entitled at all times to exercise any of its other remedies including

through taking legal action..

15.2. These Terms and this Order shall be governed by and construed in accordance with English law to the exclusion of all other laws and the parties hereby agree to submit to the exclusive jurisdiction of the English courts.

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VAT Number: 150 0416 65

Company Reg: 8260283

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online marketing