

## 1. TERMS AND CONDITIONS

1.1 These terms and conditions together with the client order form ('Order Form') will form a binding contract between the Client named on the Order Form or letter ('Client') and Sunflower Netmedia Limited ('Sunflower') which shall constitute the entire agreement between Client and Sunflower and apply to any trading agreement or other contract or arrangement between Client and Sunflower;

1.2 These terms apply to the exclusion of all other terms or conditions of contract Client may propose and shall not be varied unless agreed in writing, signed by Sunflower.

## 2. SUNFLOWER

2.1 In consideration of the payment by Client to Sunflower of the Fees as set out in the Order Form, Sunflower agrees to provide to Client the goods and services described in the Order Form ('Works') in accordance with the Proposal (where one exists), with reasonable and due care in accordance with and subject to these terms.

2.2 Sunflower undertakes that the Works shall be faithful to the basic conceptualisation of the underlying works, pitch or Proposal (where one exists) and reflect the same standards of quality and integrity. Sunflower shall meet its optimisation promise subject to all conditions of this contract being met to its satisfaction.

2.3 This Agreement shall not give rise to any exclusive relationship and nothing in this Agreement shall prevent Sunflower acting for or providing works the same or similar to the Works to any third party.

2.4 It is agreed and understood that any activities undertaken by Client (or by any third party on its behalf) which is in relation to or similar to the Works, including without limitation any modification of the Works or the Client's web site or the use of or inclusion of any third party product or service which might relate to the Works shall interfere with the provision of the Works by Sunflower and affect the results, outcomes and positions in search engines. All such things should be discussed with Sunflower prior to implementation and Client shall not implement the same without the prior written consent of Sunflower. Remedy of such matters shall be dealt with by way of Change.

2.5 The client shall advise Sunflower of any previous optimisation contracts entered into prior to commencement of the Works and accepts that failure to disclose the same may materially affect the results achieved by Sunflower. The client accepts that third party optimisation work may negatively impact the works.

## 3. CLIENT

3.1 Client will co-operate with and act in good faith towards Sunflower and, on request, undertake such acts and provide such source materials (including those listed in the Order Form) 'Materials' as Sunflower are to incorporate into the Works, or as Sunflower require to carry out its obligations hereunder. Materials may include, but no be limited to site content, artwork, marketing and branding information, logos, server access information, pay per click logins, content management systems, databases and general web code.

3.2 In the event that Client does not undertake those acts or provide those Materials required under clause 3.1 above within a reasonable time (and at least within 2 weeks) of being requested to do so, including without limitation carrying out any changes, modifications or optimisations to Client's web site or other Materials as requested, recommended or required by Sunflower, Sunflower shall be entitled to invoice for the remaining Works as if Client had done so whether such are provided or not.

## 4. PAYMENT

4.1 Invoices shall be issued as listed on the Order Form and Client shall pay Sunflower the Fees without deduction or set-off (with VAT thereon) within 30 days of receipt of a valid invoice unless specified otherwise in the Order Form. Sunflower shall be entitled to withhold or suspend the Works until such time as it receives the Fees or other payments due including, in respect of the first month's Works, receiving the Fees for that month prior to commencement. In such cases where invoice details are not provided on the contact form, all work shall be immediately payable on completion.



4.2 Sunflower shall be entitled to charge interest on any overdue payment at the rate of 3% over National Westminster Bank's base rate prevailing at the time and shall be entitled to such reasonable costs as it incurs in the collection of such overdue payments.

4.3 Sunflower may charge additional Fees in accordance with its then prevailing rates:

4.3.1 in the event of delays or additional works caused or required by Client including its failure to provide Sunflower with such information, Materials, instructions, media or approvals, as are reasonably required for the supply of the Works, properly and / or on time;

4.3.2 in the event of changes to the cost of labour, materials, services and other circumstances outside of Sunflower's reasonable control.

4.3.3 in the event that Client requires the supply of Works, goods and services in addition to those described in the Order Form or any variations to the Works.

4.4 If Client requires any change or alteration to the Works ('Change'), Sunflower and Client shall, prior to such change being effective or implemented, agree:

4.4.1 the nature of the Change;

4.4.2 the procedures for implementation of such Change; and

4.4.3 the variation to the Fees.

4.5 Until any Change is formally agreed between Client and Sunflower, Sunflower will continue to perform and be paid for the Works as if the Change had not been proposed, unless otherwise requested by Client.

4.6 All and any Changes to the Works shall be reflected and accompanied by appropriate amendments to the Proposal and Fees.

4.7 In the event that the Works include pay-per-click or other search engine placement services which require the payments to third parties and are agreed with Client prior to their implementation, Client shall reimburse and indemnify Sunflower for any out of pocket expenses incurred by it in supplying the same.

## 5. INTELLECTUAL PROPERTY RIGHTS / CONFIDENTIALITY

5.1 All copyright, design right, registered designs, trade marks, patents, database rights and confidential information and ideas and all other rights whatsoever of a like nature world wide whether registered or not of whatever nature in material devised, created or commissioned by Sunflower, in supplying the Works and under this Agreement will vest in and belong to Sunflower unless otherwise agreed and specified in writing on the Order Form or otherwise and signed by both Parties.

5.2 In consideration of and upon payment of the Fees in full, Client shall have the Rights of Use set out in the Order Form which rights shall take effect on receipt by Sunflower of the Fees. Where no such rights are specified Client is granted a non-exclusive licence to use the Works for the Purpose described in the Order Form, Proposal or other Works documentation. Rights of Use shall be extended only with the consent of Sunflower and payment of additional fees.

5.3 Client grants Sunflower a nonexclusive royalty free licence to use the Materials for all purposes relating to this Agreement and warrants that it has obtained and is fully entitled to grant Sunflower these rights and that the Materials are free of racist, defamatory, obscene and other legally restricted material.

5.4 Client undertakes that it will keep secret and confidential the terms of this Agreement and any information supplied by Sunflower in connection with this Agreement or the business of Sunflower (including the Proposal) and the Works and shall not disclose or make available such information or part thereof to any third party (except to its own employees and advisers and then only on a need to know basis) without the Sunflower's prior written consent provided that this Clause shall not extend to information which was and can be shown to be rightfully in the possession of Client prior to the commencement of the negotiations leading to this Agreement or which is in the public domain (other than as a result of a breach of this Clause);



5.5 Client undertakes to Sunflower to indemnify and hold harmless Sunflower in full and defend at its own expense Sunflower against all costs, damages and losses incurred by Sunflower arising out of its use of the Materials or breach by Client of this clause 5.

5.6 Client shall not modify, adapt or translate the Works except with the prior written consent of Sunflower or as otherwise permitted by law where all modifications, adaptations, translations shall belong to and vest in Sunflower unless otherwise agreed and specified in writing on the Order Form.

5.7 Sunflower warrants that it will use reasonable efforts to ensure that the Works do not infringe the copyright of any third party.

## 6. INSPECTION AND ACCEPTANCE

6.1 Client shall inspect the Works regularly and shall inform Sunflower immediately if it wishes to reject any part of the Works because such do not comply with the Proposal or are defective in material and workmanship;

6.2 If the Works do not comply with the Proposal or are defective in material and workmanship Sunflower's liability shall be limited to correcting such defects within a reasonable time.

6.3 Client shall only be entitled to reject the Works because such do not comply with the Proposal or are defective in material and workmanship and if they are not rejected within 48 hours of delivery then Client shall be deemed to accept the Works. Rejection without good reason shall be deemed a breach of these terms.

## 7. LIABILITY AND WARRANTY

7.1 Subject to Clause 7.2 below, Sunflower's liability for any loss or damage direct or otherwise and howsoever caused whether in tort (including negligence) or contract or otherwise shall not exceed 25% of the amount invoiced by Sunflower to Client hereunder.

7.2 Sunflower shall not be liable to Client for any consequential loss or damage.

7.3 When instructions or advice are given or received orally by Sunflower, it shall have no liability to Client for any misunderstanding or misrepresentation which may arise in relation thereto except in relation to fraudulent misrepresentations.

7.4 Sunflower shall have no liability to Client in respect of the Materials. On completion of the Works Client agrees to collect the Materials within 2 months of completion of the works, failing which, Sunflower may dispose of them on giving Client 14 days notice.

7.5 Sunflower's liability shall be limited to using reasonable skill and care in the supply of the Works. In particular Sunflower shall not, except in the case of gross negligence and willful or deliberate act, be liable for:

7.5.1 any loss or damage caused by it being given access to Client's computer systems (which shall only be required where necessary) including without limitation any remote servers to which it has access or stores data or any unauthorised access to or use of the same including without limitation for any misuse of any passwords, logins or accounts of Client.

7.5.2 any interference in or modification of the Works or Client's web site by Client or any third party or the consequences thereof, remedy of which shall be as a Change.

7.6 Sunflower undertakes to provide the Works with reasonable skill and care, however the client fully understands that Sunflower cannot give any warranty, guarantee or representation as to visibility obtained within search engines due to the operation of such being out of its control. Where visibility is gained through pay per click services, the client fully understands that no guarantees can be made by Sunflower as to search positioning due to the operation of such being out of its control.



7.6.1 Where Sunflower offers an optimisation promise in respect of the works, this will be subject to the client meeting all its obligations as listed in the supporting Sunflower pitch or proposal. Failure to meet these obligations to Sunflower's satisfaction shall render the promise null and void.

7.6.2 Should search engines issue a major algorithm release or update during the period that may materially affect the works or the impact of the works, the client will afford Sunflower all reasonable time to assess the impact of the change and implement any necessary changes to the client strategy. Sunflower and the client shall agree a reasonable extension to the contract in such exceptional circumstances.

7.7 Sunflower may provide hosting as part of any customer contract (either under this contract or in the future) to provide the best possible outcomes for client works. The client accepts our service level agreement (SLA) at all times which is available upon request. Our limit of liability for any server downtime outside of our SLA shall be £1.36 per day. Where email services are provided to the client, the client is entirely responsible for safe download and storage and server availability shall be governed by our SLA. Sunflower shall not be liable for any losses, howsoever caused, through the loss of email, non delivery of email or non collection of email. The client is entirely responsible for advising Sunflower of any hosting issues as they may arise.

7.8 The client shall be solely responsible for testing of all Works released by Sunflower and for general updates to the Works as released under a specific project, client request or client retainer. The client is solely responsible for identifying and reporting all site issues including but not limited to code bugs, browser errors, site functionality errors, form errors and similar site issues that could materially affect the performance of the website in any way whatsoever. Where appropriate a sign off certificate may be required by Sunflower.

7.9 Sunflower shall support all popular browser platforms when delivering the works. Minority browsers (minority browsers shall be classed as those with less than 10% worldwide market share as listed on w3schools.com) will not be supported unless agreed to in writing by Sunflower. Sunflower shall also have no liability or obligation to correct site code for new or updated versions of popular browsers (where layout and functionality has been affected by the new release) without satisfactory payment for such work. Requests for such work shall be deemed as a change request.

## 8. LEGISLATION

8.1 Client shall comply with all applicable rules, regulations, codes of practice and laws relating to its use of the Works including without limitation its obligations under the Data Protection Act 1998; Regulation of Investigatory Powers Act 2000; Competition Act 1998 and E-commerce Directive and equivalent legislation;

## 9. THIRD PARTY MATERIALS

9.1 Sunflower gives no warranty, representation or undertaking in relation to any third party materials or works.

9.2 Prior to any selection, use or reproduction by Client of Works, Sunflower shall use reasonable efforts to, on reasonable request, provide Client with copies and evidence of such rights, clearances, permissions and licenses as shall be necessary for the use of the Works by Client.

9.3 Subject to the foregoing Sunflower shall have no liability to Client whatsoever in relation to the Works and gives no warranty and makes no representation as to whether Works contain or are free from racist, defamatory, sexually explicit, inflammatory, obscene or other legally restricted material and explicitly excludes all and any liability in relation thereto.

## 10. RISK AND TITLE

10.1 Risk in any information delivered to Client will pass to Client on dispatch and until payment in full has been received in cleared funds by Sunflower in respect of the Works, title in any physical products delivered to Client shall remain with Sunflower.

10.2 Client shall take out such insurance as shall be prudent against all risks usually incurred in respect of the Work whilst in its possession or control.

10.3 Client accepts all risk for data provided to Sunflower under any Works including but not limited to private and commercially sensitive data required by Sunflower to fulfill its obligations under the Works. Where any such data is stored on our



managed web server, the client accepts full responsibility for the data's accuracy, loss, damage or theft and indemnifies Sunflower completely against all losses, claims or otherwise.

## 11. TERMINATION

11.1. Sunflower shall be entitled to immediately restrict, suspend or terminate the Works and Client's use of any Works and or terminate this Agreement upon Client's material breach of this Agreement (including without limitation the non-payment of any sum as and when due) unless Client remedies such breach within 14 days of its occurrence.

11.2 Sunflower will not be liable in any amount for failure to perform any obligation under this Agreement if such failure is caused by the occurrence of any unforeseen contingency beyond the reasonable control of Sunflower including without limitation Internet outages, communications outages, fire, flood, war or act of God.

11.3 Client may not unilaterally cancel its order of the Works or otherwise terminate this Agreement (except for material breach by Sunflower of a fundamental term of this Agreement) at any time without full payment of the Fees.

11.4 During the course of this Agreement and for a period of 12 months afterwards, Client shall not solicit the staff of Sunflower or entice them to transfer their employment or services.

## 12. GENERAL

12.1 Nothing in this Agreement shall be deemed to constitute a partnership or agency relationship between the Parties and neither of the Parties shall do or suffer to be done anything whereby it may be represented as a partner or agent of the other party.

12.2 If any part of this Agreement is or becomes unenforceable, such part will at Sunflower's option be construed as far as possible to reflect the parties intentions and the remainder of the provisions will remain in full force and effect.

12.3 No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of rights operate as a waiver of any subsequent breach of this Agreement.

12.4 Client shall not assign the benefit or burden of this Agreement without the prior written consent of Sunflower.

12.5 The UK shall be considered the place of first publication of any material on the internet.

12.6 No person who is not a party to this Agreement shall be entitled to enforce any of the terms pursuant to the Contracts (Rights of Third Parties) Act 1999.

12.7 These Terms are made in accordance with the laws of England and the Parties submit to the exclusive jurisdiction of the English courts.

Sunflower Netmedia Limited T/A Sunflower  
Company Registration Number: 4670806  
VAT Registration Number: 856 3711 11

### Trading Address:

Suite 12  
The Quadrant  
99 Parkway Avenue  
Sheffield, S9 4WG

### Registered Address:

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