

BLUE DIGITAL GROUP LTD

TERMS AND CONDITIONS

These Terms and Conditions and the Purchase Order together form an agreement between Blue Digital and the Client.

DEFINITIONS AND INTERPRETATIONS

In these Terms and Conditions unless the context otherwise requires:

Agreement	means the agreement between Blue Digital and the Client for the provision of the Services pursuant to the Purchase Order and subject to these Terms and Conditions.
Client or You	means the person, corporate body, unincorporated association or partnership to whom Blue Digital is supplying services under this agreement.
Commencement Date	means the date upon which the Agreement commences being either the date the Purchase Order is signed by You or the date of the electronic acceptance by You.
Information	means all personal data and information of whatever kind or nature which one party obtains from the other under this Agreement whether or not it is in tangible or documented form.
Initial Term	means the minimum term of the Agreement as set out in Clause 8 and as may be extended in accordance with Clause 10.3.
Intellectual Property	means all copyright and other intellectual property rights howsoever arising and in whatever media, whether or not registered including, without limitation, patents, trademarks, service marks, database rights, trade names, logos, rights in designs and any applications for the protection or registration of these rights and all renewals and extensions thereof throughout the world and all know-how, goodwill, confidential information and all other intellectual property rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world, for their full term and any extension or renewal thereof.
Purchase Order or Order Confirmation	means the document, in paper or electronic form, provided to Blue Digital setting out the Client's order for the Services and incorporating the Services and Invoicing Schedule.
SEO	means Search Engine Optimisation.
Services	means the services to be provided to You by Blue Digital as described and in accordance with these Terms and Conditions.
Schedule	means the schedule that details when the Services will be provided and when you will be invoiced for those Services (subject to any variation in accordance with Clause 10.3).
Software	means the software, toolkits or technology developed and/or to be developed by Blue Digital including the structure and architecture of the software, toolkits or technology and the underlying code.
VAT	means value added tax and any tax which may from time to time replace it.
Blue Digital	means Blue Digital Group Limited, registered in England under Company number 10124067, trading from Bramley Grange, Skeltons Lane, Thorner, Leeds, LS14 3DW.
Content	means all articles, papers, news and promotional stories in any form and other related materials developed and/or provided by Blue Digital or use in, connection to or in relation to the Services.
Blue Digital IPR	means the Intellectual Property Rights vested in Blue Digital including but not limited to the Intellectual Property Rights in the Software and any Blue Digital supplied Content.

The headings in these Terms and Conditions are for ease of reference and shall not affect the interpretation of the Agreement.

Any reference in these Terms and Conditions to any provision of a statute shall (except where the context otherwise requires) be construed as a reference to that provision as amended, modified, extended or re-enacted at the relevant time and shall include any subordinate legislation, including statutory instruments or regulations made under any of the foregoing.

2 THE SERVICES

- 2.1 We will provide You with the Services in accordance with the Agreement and based on the information confirmed by You. You are responsible for ensuring that the details are correct.
- 2.2 We will provide the Services with reasonable skill and care.
- 2.3 Changes to the Services during the term of this Agreement will not normally be permitted. Any changes to the Services requested by You during the term of this Agreement must be agreed in writing and such agreement shall be at our sole discretion. Changes to the Services so agreed may incur additional costs in accordance with Clause 3.5.
- 2.4 Our performance of the Services is dependent upon you providing such information or feedback as we may reasonably require from time to time. Should you not provide information or feedback within 7 days of any such request, You acknowledge that this may affect our ability to provide the Services and You shall not be entitled to any refund or credit against fees in the event that We are prevented from providing the Services.
- 2.5 You must inform us in advance of any changes to (or in respect of) your website that may affect the provision or the performance of the Services. You acknowledge that You are solely responsible if any such changes affect the provision or performance of the Services and You shall not be entitled to any refund or credit against fees in this event.
- 2.6 You acknowledge that the provision of the Services is not subject to any performance guarantees or promises including but not limited to ranking positions on internet search engines or the number of searches, visitors or click-throughs, except where expressly stated otherwise in Schedule 1 of this Agreement.
- 2.7 We will ensure the appropriate security measures are put in place to ensure your data is secure but we are unable to ensure or guarantee the security of information transmitted over the internet. Any information or data transmitted through the use of, or in connection or relation to the Services is at your risk.

3 Fees and Payment

- 3.1 The fees for the Services are as stated in our proposal and order confirmation.
- 3.2 You will be invoiced as set out in the Services and will be invoiced monthly in advance. Payment will be due in accordance with the following payment terms unless expressly stated otherwise in the order confirmation.
 - 3.2.1 Where the Services are subject to a set-up fee or deposit, such fee will be payable by You immediately upon receipt unless payment terms are agreed by us with you and are confirmed on the purchase order. Any set-up fee or deposit is non-refundable.
 - 3.2.2 All other fees including ongoing or recurring monthly fees will be payable within 30 days of the invoice throughout the term of the Agreement. Unless payment terms are agreed by us with you and, are confirmed on the order confirmation.
- 3.3 If payment is not received in accordance with the payment terms specified in the Agreement, We shall be entitled, without prejudice to any other rights that may have, to charge You interest accruing on the sum due at the rate of four per cent above the annual base lending rate of Barclays Bank plc, from time to time.
- 3.4 If payment is not received in accordance with the payment terms specified in the Agreement, We reserve the right to suspend the provision of the Services and restrict your use of the Services until such time as payment is received. Such suspension of the Services will extend the Initial Term of the Agreement as detailed in Clause 10.3.
- 3.5 Any changes to the Services requested by You during the term of this Agreement in accordance with Clause 2.3 may result in an additional fee being charged to You.
- 3.6 All fees for the Services are stated and payable in British Pounds. Unless stated otherwise on the purchase order, Fees do not include VAT or any other taxes that may from time to time be applicable.

4 Cancellation and Refunds

- 4.1 The Agreement cannot be cancelled or terminated other than in accordance with Clause 8, Clause 10.3 or Clause 15.2, except with Blue Digital's express written agreement.
- 4.2 If You wish to cancel the Agreement other than in accordance with Clause 15.2 or Clause 8.2, You must write to Us giving notice of your request to cancel. The remaining fees will become payable for the duration of the initial contract period. All contracts will automatically renew annually after the initial contract term unless stated otherwise.

5 Intellectual Property Rights

- 5.1 Except as expressly set out herein, all work performed by Blue Digital is the copyrighted works of Blue Digital and all Intellectual Property Rights in and in relation to the Software, the Blue Digital Content and any other materials, documents and analyses developed or to be developed by Blue Digital shall remain vested in and be the exclusive property of Blue Digital unless otherwise agreed.
- 5.2 All Intellectual Property Rights in any materials, articles or documents supplied by You shall remain vested in You.
- 5.3 If You become aware of any infringement or threatened infringement of any of the Blue Digital IPR or of any action detrimental to any of such rights, You shall immediately notify Us giving full particulars of such matters and You shall make no comment or admission to any third party in respect of such matter.
- 5.4 We shall have the sole conduct of any proceedings relating to any of the Blue Digital IPR and shall in our sole discretion decide what action (including litigation, arbitration or compromise), if any, to take in respect of any infringement or alleged infringement of any of such rights or any other claim brought or threatened in respect of the use of any of such rights.

6 Warranties and Indemnities

- 6.1 Each party warrants to the other that it has full power and authority to grant the rights to the other party as provided in the Agreement.
- 6.2 We represent and warrant to You that We will provide the Services specified by the Agreement with reasonable care and skill, in good faith and in accordance with good industry practice.
- 6.3 You represent and warrant to Us that:
 - 6.3.1 Any materials delivered to Us under the Agreement shall be your property or You shall have licensed or obtained copyright permission to use such materials and none of the materials shall infringe copyright or patent laws, or involve the unauthorised use of the rights of any third party and do not contain any matter which is injurious or which is illegal, scandalous, obscene, libellous, defamatory or which would constitute a contempt of court; and
 - 6.3.2 As at the Commencement Date, there is no litigation, proceeding or claim pending or threatened against You or any other party relating to any material to be utilised in performance of the Agreement.
- 6.4 Each party warrants to the other that in relation to the Information, it has and will at all times comply with all relevant requirements of the Data Protection Act .
- 6.5 Except as expressly set out herein and to the fullest extent permitted by law, We exclude all conditions, terms, representations (other than fraudulent representations) and warranties relating to the Services or materials supplied pursuant to the Agreement, whether imposed by statute or by operation of law or otherwise, including without limitation, the implied warranties of satisfactory quality and fitness for a particular purpose.

- 6.6 Except to the extent caused by any fraud or dishonesty by Us, You agree to indemnify Us to the fullest extent permitted by law from and against all liabilities, losses, damages, and reasonable expenses, including but not limited to legal fees and expenses, relating directly to any third party claim against us regarding a breach of that 3rd party's intellectual property as a result of the use of or possession of material or information provided by You under the Agreement. Save that in such instance you will be given the opportunity to assume the exclusive defence and control of any such matter to the extent reasonably necessary we will cooperate with your defence of such claims and we will not agree nor enter into any settlement of any claim without your prior consent.
- 6.7 The obligations set out in this clause shall survive variation, renewal, termination or expiry of the Agreement

7 Exclusion of Liability

- 7.1 Nothing in this clause shall exclude or limit either party's liability for fraud or negligent misrepresentation or for personal injury or death resulting from the negligence of either party or its agents or employees.
- 7.2 Neither party will be liable in any way for any economic losses (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings) or any special or indirect or consequential losses, howsoever caused, whether or not such losses were within the contemplation of the parties at the Commencement Date, suffered or incurred by a party arising out of or in connection with the use of the Services or any other matter under the Agreement.

8 Term and Termination

- 8.1 The Agreement shall commence on the Commencement/Start Date. Thereafter:
- 8.1.1 if no changes are required to the Services, the Agreement will remain in force unless terminated by either part and;
- 8.1.2 Unless otherwise provided, each party's total liability to the other relating to any breach of this Agreement will be limited to the total amount payable by way of fees pursuant to this Agreement
- 8.2 Without prejudice to either party's other rights and remedies, either party may terminate the Agreement by immediate written notice to the other in the event that the other party:
- 8.2.1 Ceases or threatens to cease to carry on business; or
- 8.2.2 Is subject to bankruptcy or liquidation proceedings (other than a voluntary liquidation for the purpose of reconstruction or amalgamation), is determined to be insolvent or otherwise is unable to meet its financial obligations, or has a receiver or administrator appointed over all or any material part of its assets in which case all sums will be due in accordance with Clause 4.2 ; or
- 8.2.3 Commits a material breach of any provision of the Agreement, provided that in the case of any such material breach that is capable of remedy, termination shall only occur if the breach shall not have been remedied within thirty days of the other party having been given notice in writing specifying the nature of the breach and requiring it to be remedied. Any restriction or suspension of the Services by Blue Digital in accordance with Clause 3.3 shall not constitute a breach of this Agreement; or
- 8.2.4 Commits a material breach of any provision of the Agreement which has been previously breached once and then remedied.
- 8.3 Termination of the Agreement shall be without prejudice to any existing rights and/or claims that a party may have against the other party, and shall not relieve the other party from fulfilling its obligations accrued prior to such termination.

9 Consequences of Termination

- 9.1 Upon termination or expiry of the Agreement however arising:
 - 9.1.1 We shall cease to provide the Services to You;
 - 9.1.2 You shall immediately cease to use the Blue Digital IPR and any other Intellectual Property Rights and any other rights of Blue Digital relating to the Services;
 - 9.1.3 You shall immediately pay all outstanding charges under the Agreement up to the date of termination and any cancellation fees where applicable; and
 - 9.1.4 You shall immediately deliver and return to Us all material and information supplied by Us pursuant to the Agreement.
- 9.2 All provisions of the Agreement which in order to give effect to their meaning need to survive its termination shall remain in full force and effect after termination.

10 Suspension of Services

- 10.1 We may temporarily suspend the Services without compensation or recourse for the purpose of carrying out work at our premises or maintaining or upgrading our systems. We will endeavour to give You prior notice of such suspension but may be unable to do so and are not obliged to do so.
- 10.2 We may immediately and without notice suspend the provision of the Services to You without compensation or recourse in the event that:
 - 10.2.1 We are required to do so in order to comply with a legal order or request from a governmental or other competent authority; or
 - 10.2.2 We are reasonably aware or suspect that You are in breach of Section 11.
- 10.3 We may immediately and without notice suspend the provision of the Services to You in the event that We are taking action for non-payment in accordance with Clause 3.4. Any suspension of the Services pursuant to this clause will extend the Initial Term of the Agreement by the number of months during which the Services were suspended. In the event that it is necessary to suspend the provision of the Services by three months or more pursuant to this clause, We reserve the right to cancel the Agreement without notice and the provisions of Section 4 will apply.

11 Acceptable Use

- 11.1 You may only use the Services in accordance with the Agreement and for lawful and proper purposes which include complying with all applicable laws and regulations. You agree that You will not:
 - 11.1.1 Do anything or include any information on your website which is or may be harmful, illegal, obscene, offensive, threatening, defamatory, deceptive, discriminatory or otherwise in breach of any applicable laws or regulations including any Google regulations;
 - 11.1.2 Use the Services in a manner which may cause an infringement of copyright, privacy or the rights of Blue Digital or any other party including but not limited to any attempt to reproduce, copy or duplicate Blue Digital Content or other work performed by Blue Digital pursuant to the Agreement;
 - 11.1.3 Use the Services for or in connection with any illegal or unethical marketing practice including but not limited to spamming;
 - 11.1.4 Interfere or attempt to interfere with the operation of the Services or networks connected to the Services or Software via whatever means including but not limited to uploading or transmitting material containing corrupt data or software viruses or to access without authority any system or data;
 - 11.1.5 Attempt to deface, copy, reverse engineer, disassemble, decompile, translate, modify or otherwise alter the Software; or

- 11.1.6 Take any action that may lead to an unreasonably large load on our networks or infrastructure.

12 Changes to the Agreement

- 12.1 Any variation to these Terms and Conditions in contemplation or execution of the Purchase Order, including but not limited to any special terms agreed between the parties, shall only be valid if they have been confirmed in writing by a Director of Blue Digital .
- 12.2 Any notification from You which attempts to vary these Terms and Conditions will be invalid unless it has been agreed in writing by a Director of Blue Digital

13 Notices

- 13.1 Unless specified elsewhere, any notice given under this Agreement shall be in writing and served by hand or by recorded or special delivery post to the address as the relevant party may designate to the other in writing from time to time. References in this Agreement to “in writing” shall also include by email which must be sent to the email address as the relevant party may designate to the other in writing from time to time. Service of notice by facsimile is not acceptable or valid.
- 13.2 Any notice shall be deemed to have been served immediately if delivered by hand, 48 hours after posting if delivered by recorded or special delivery post and 24 hours after transmission if delivered by email.

14 Assignment

- 14.1 You may not assign or grant any sub-licences of any or all of its rights under the Agreement without our prior written consent.
- 14.2 We reserve the right to assign or otherwise transfer all or any of our rights under the Agreement at any time provided that such assignment shall not relieve any of our obligations under the Agreement. You will be duly notified at the earliest possible time.

15 Force Majeure

- 15.1 Neither party shall be liable to the other for any failure under the Agreement if and to the extent that such failure is due to force majeure which shall mean any circumstances beyond the reasonable control of the party concerned, including but not limited to war, acts of God, riot, terrorism, earthquake, accidents, explosion, fire, floods, any act or omission of Government or other agencies or failure of technical or electrical facilities not within such party's reasonable control.
- 15.2 The party affected by such a force majeure event shall as soon as reasonably practicable notify the other party in writing. In the event that the force majeure event so notified continues so as to prevent the performance of the Agreement for a period of six months or more after such notice then either party shall have the right to terminate the Agreement without liability for breach of contract.

16 Confidentiality

- 16.1 Each party shall keep any information relating to the private business affairs of the other party confidential and will keep all such information secure and protected against theft, damage, loss or unauthorised access and will not disclose any such information to any other person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority. Each party undertakes to procure that its employees and agents are aware of and are bound by the provisions of this clause, and the obligations of this clause shall survive

the variation, renewal or termination of the Agreement, but shall cease to apply to any information which has come into the public domain through no fault of the recipient.

17 General

- 17.1 Notwithstanding that any one or more sections, clauses or sub-clauses of the Agreement may prove to be illegal, invalid or unenforceable, the remaining sections, clauses and sub-clauses shall continue in full force and effect.
- 17.2 The Agreement and any other documents referred to herein shall constitute the entire agreement between the parties for the provision of the Services and supersede all previous agreements, arrangements and undertakings between the parties.
- 17.3 Sections 6, 7, 16 and 18 of the Agreement shall survive the termination of the Agreement.
- 17.4 The failure to exercise or delay in exercising any right shall not constitute a waiver of the right or remedy and no course of conduct or acquiescence shall constitute such a waiver other than a notice to that effect given to the other party specifying the right in question.
- 17.5 Except in the case of any permitted assignment of this Agreement pursuant to Section 14, a person who is not party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any clause of this Agreement.
- 17.6 Nothing in the Agreement is intended to or shall operate to create a partnership between the parties.

18 Governing Law

- 18.1 The Agreement shall in all respects be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of those countries in respect of any matter arising from or in connection with the Agreement.

Schedule 1 – Terms and Conditions relating to specific Services

The following Terms and Conditions apply to all our Services:

- S1.1 We will provide Services in accordance with the Purchase Order or Order Confirmation whichever is appropriate.
- S1.2 The Services may include optimisation or set-up work at the commencement of your campaign. You acknowledge that any such optimisation or set-up work will be performed in accordance with the Services and Invoicing Schedule included in the Purchase Order (and will usually be performed during the same calendar month as the Commencement Date unless stated otherwise in the Purchase Order). Set-up charges are payable in advance.
- S1.3 You will be invoiced in advance in accordance with the Services and Invoicing Schedule which forms part of the Purchase Order. Invoices will be issued and payable at the beginning of the month with the exception of the first month of the Agreement when invoices will be issued according to the Commencement Date. In addition, invoices may be issued other than at the beginning of the month in the event that We suspend the provision of the Services pursuant to Clause 10.3.
- S1.4 You must implement or otherwise act upon the recommendations We make during the provision of the Services. In the event that You do not implement recommendations within the requested timescale of being advised to do so, You acknowledge that this may affect the performance of your campaign for which We cannot be held responsible.
- S1.5 We may require the ability to directly optimise and amend the structure of your website. In the event that We consider this necessary, You will provide us with access to your website which may include an FTP (File Transfer Protocol) username and password and access to your content management system or control panel. We will keep secure any access details to your website which You provide to us. Should You not provide such access within 7 days of our request, You shall be responsible for implementing our recommendations and suggestions in accordance with Clause S1.4.
- S1.6 By entering into this Agreement, You confirm that You or any agent acting on your behalf have not at any time, created on any website which is the subject of this Agreement, any duplicate sites, duplicate pages or content, hidden links, doorway pages or redirects, nor have You or your agents undertaken any spamming techniques or purchased or otherwise acquired links which may harm the website's ranking within, or risk the imposition of penalty by, any internet search engine.
- S1.7 In the event that You are or should reasonably be aware with reference to Clause S1.6 or otherwise that your website or promotional works around it breaches Clause S1.6 or your website has been penalised by any internet search engine, You must inform Us prior to entering into this Agreement. You acknowledge that non-disclosure of such information may affect the performance of your campaign for which We cannot be held responsible. In the event of such non disclosure, We may offer to provide additional rectification services and these may incur additional fees but we are not obliged to do so. Nothing in this clause shall prevent us from performing the Services agreed in the Purchase Order.
- S1.8 If, at any time during the Agreement, You use an agent or other third party other than Blue Digital for search engine optimisation, You accept that this may have a significant detrimental effect on the performance of your Digital marketing campaign.
- S1.9 You acknowledge that the provision of our Services is not subject to any performance guarantees or promises including but not limited to the ranking of your website on internet search engines or the volume of searches, visitors, click-throughs or incremental revenue.