

# Terms & Conditions

In these conditions, unless the context requires otherwise.

**“Charges”** means the charges as set out in a quotation and/or an Order and/or Skyline’s published price list or tariff structure in force from time to time.

**“Confidential Information”** means all information designated as such by either party in writing together with all such other information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel and customers of either party or information which may reasonably be regarded the confidential information of the disclosing party.

**“Contract”** means a contract, subject to these conditions, for the provision of the Services between Skyline and the Customer.

**“CPI”** means Consumer Price Index.

**“Skyline”** means Skyline Marketing is a trading name of ADRO Limited. Registered in England and Wales (registered no. 07483969). The Innovation Centre, University of Exeter, Rennes Drive EX4 4RN, United Kingdom.

**“Skylines’s Website”** means the websites at [www.skyline-marketing.co.uk](http://www.skyline-marketing.co.uk) **“Customer”** means the person, company, firm or body purchasing the Services from

Skyline.

**“Customer Content/Data”** means text, graphics, photographs, sounds, information, data, music, video, film or any other copyright work publicly available on the Website or provided for publication on the Website either by the Customer or any other third party (excluding Skyline) commissioned by the Customer, together with all User Generated Content and information regarding Users (such as, for example, the number of page impressions, users email addresses or other information posted by Users or depicted by the Website about Users).

**“Due Date”** means the seventh day after the date on which Skyline issues an invoice to a Customer.

**“Domain Name”** means the name registered with an Internet Registration Authority used as part of the Customer’s URL.

**“Hosting Service”** means the installation of the Website onto the Server, such that the Website can be accessed by members of the public via the internet.

**“Information”** means information in any form (including visual and textual) published or otherwise made available (directly or indirectly) on the Internet via the Website.

**“Intellectual Property Rights”** means patents, trade marks, service marks, database rights, design rights (whether registered or otherwise), applications for any of the foregoing, copyright, know-how, trade or business names, domain names and other similar rights or obligations whether registerable or not and in any territory or jurisdiction (including but not limited to the United Kingdom).

**“Minimum Term”** for all Ongoing Services 1 month from the date of commencement of the relevant Ongoing Service.

**“Nominated Search Engines”** means the search engines known as “Google”, “Yahoo” and/or “Bing”

**“Ongoing Services”** means web hosting, web optimisation, pay per click or any other services of an ongoing nature offered by Skyline which impose a recurring charge to the Customer.

**“Order”** means a request in respect of any Services made by the Customer to Skyline.

**“PPC”** means Pay Per Click.

“**SEO**” means Search Engine Optimisation services being the means or process of affecting the visibility of a website or a web page in a search engine’s search results

“**Server**” means Skyline’s Internet server or the server belonging to Skyline’s nominated sub-contractor.

“**Services**” means the services which are the subject matter of the Contract, being the work and/or services or any of them to be performed by Skyline for the Customer pursuant to the Order.

“**Specification**” means the specification for the Website agreed between Skyline and the Customer and set out, or referred to in the Order, or otherwise stated/varied and agreed in writing by Skyline.

“**User**” means any person, company, firm or body accessing the Website via the Internet or by any other means.

“**User Generated Content**” means all such material posted by Users on the Website. “**URL**” means a uniform resource locator.

“**Website**” means the website developed and/or optimised by Skyline for the Customer as described in the Specification.

“**Website Design Services**” means all work in connection with the planning, design, development and maintenance of a website, to include but not limited to, initial prototype layouts, graphic design, wireframe concepts, HTML & CSS markup, JavaScript authoring, PHP & MySQL programming and adherence to our internal quality, usability and search engine guidelines.

## 1. GENERAL

- I. Quotations submitted by Skyline shall remain open for acceptance by the Customer for a period of 14 days from the date of the quotation, unless the quotation specifies some other period, or the quotation is withdrawn by Skyline.
- II. A Contract will only become binding upon acceptance by Skyline of the Order by signing or counter signing and dating of the Order and returning it to the Customer, or the issue by Skyline of an order acknowledgement.
- III. This Contract is subject to these conditions. Skyline reserves the right to vary the terms of the Contract from time to time. Notice of such variation and a current version of Skyline’s standard terms and conditions may be found on Skyline’s Website
- IV. These conditions shall, to the extent applicable, apply to goods and products in the same way as they apply to the Services.
- V. If the Customer is a limited company, the Services are provided upon the condition that the officers of the limited company are personally liable for, and hereby guarantee all sums payable by the Customer to Skyline. If the Customer does not make payment of any sums due to Skyline within 7 days of receipt of a written demand from Skyline (such demand not to be made sooner than the Due Date), then the officers of the limited company will make payment on behalf of the Customer.

## 2. PRICES

- I. The price for the Services shall, subject to Clause 1.1 above, be that stated in any relevant quotation and/or confirmed in an Order.
- II. Skyline shall (if applicable) add to the price of the Services, and the Customer shall pay, an amount equal to any VAT and any other tax or duty applicable from time to time to the sale or supply of such Services.

III. In relation to any Ongoing Services:-

- (i) Skyline shall be entitled to increase its prices at least once in any rolling 12 month period; and in any event, the price of the Ongoing Services shall increase automatically on the anniversary of this Contract
- (ii) by the CPI. Skyline may impose any such increased charges at any time after the anniversary date of the Contract.
- (iii) Skyline shall notify the Customer of any price increases made pursuant to Clause 2.3.1 in writing at least 7 days before any such price increase takes effect. For the avoidance of doubt, the issue of an invoice setting out the increased charges may constitute notice pursuant to this Clause.
- (iv) The Customer will be charged on a pro rata basis for the number of days the Customer receives the benefit of any Ongoing Services where such services are provided for less than a calendar month.

### 3. TERMS OF PAYMENT

- I. Prices quoted are net and in Pounds Sterling.
- II. In respect of Ongoing Services, the Customer shall, at the time of submission of an Order to Skyline, pay to Skyline a non-refundable sum equivalent to 100% of the amount to be paid on a recurring basis attributable to each of the Ongoing Services. For the avoidance of doubt, such charges may be levied on a monthly, quarterly or annual basis. Thereafter, charges for Ongoing Services will be invoiced to the Customer on a regular recurring basis in advance, in accordance with the the Order.
- III. In respect of SEO Services and PPC Services the Customer may be required to pay a non-refundable set up fee at the time of submission of an Order. The value of this set up fee shall be determined prior to the issuing of the first order.
- IV. In the event that the Customer's acts or omissions prevent the Website from being set live, in circumstances where Skyline has undertaken all of the work that it is reasonably required to undertake pursuant to this Contract and/or in any event, where the Customer fails to provide instructions or permit the progress of the Website for more than 6 months the Customer shall be liable for the full amount of the Order, whether or not the Website is completed and/or set live; and Skyline shall not be obliged to undertake any further work pursuant to the Contract.
- V. Unless otherwise specified by Skyline and without prejudice to the remainder of this Clause 3, the Customer must pay any invoice issued to it by Skyline by the Due Date in accordance with Clause 3.10 below.
- VI. Failure to make payment by the Due Date, or otherwise in accordance with this Clause 3 may result in the suspension and/or disconnection of any of the Services (at Skyline's discretion) without any liability to Skyline.
- VII. The Customer will make payments due to Skyline by any one or more of the following means:
  - (i) cheque (supported by an appropriate cheque guarantee card) made payable to Skyline:
  - (ii) arranged bank transfer direct to Skyline's following nominated bank account. Account Name: Skyline Communications Limited  
Bank Name: Barclays Bank PLC Account Number: 23016528 Sort Code: 20-30-51

- (iii) Standing order made payable to the bank account details set out in Clause 3.7.1 and in each case payment shall be in pounds sterling without setoff or deduction.

## 4. SEARCH ENGINE OPTIMISATION SERVICES

- I. Where specified in the Order, Skyline shall provide SEO Services. Skyline shall use its reasonable endeavours to improve the ranking of the Website in the Nominated Search Engines, however, Skyline does not in any way guarantee the results of such endeavours. For the avoidance of doubt, the Customer accepts that Skyline cannot guarantee any particular or specific position or ranking on any search engine, or the increase of any business to the Customer in respect of any of the Services provided.
- II. Skyline shall have no liability to the Customer for any changes to the position of the Website in the Nominated Search Engine results in response to a search.
- III. SEO Services may not be suspended during the Contract term.

## 5. WEB HOSTING SERVICE

- I. Where specified in the Order, Skyline shall provide Hosting Services.
- II. The Customer shall be solely responsible for the accuracy, legality, currency and compliance of the Website Information and User Generated Content and will be solely liable for false, misleading, inaccurate, or infringing information contained or referred to therein.
- III. The Customer acknowledges and accepts that Skyline may be required by law to monitor the Website Content and traffic, and if necessary give evidence of the same together with use of the logon ID to support or defend any dispute or actionable cause or matter which arises in relation to the same.
- IV. Skyline does not warrant that the Hosting Service or Server will be continuously available at all possible times (24 x 7 x 365 days), but will use its reasonable endeavors to keep downtime to a minimum; and the Customer agrees that Skyline shall have no liability to the Customer for the consequences in the event of any such downtime.
- V. Skyline may need to at times, temporarily suspend the Hosting Service for repair, maintenance or improvement and will give the Customer as much notice as is reasonably practicable in the circumstances before doing so. Skyline will also restore the Hosting Service as soon as reasonably possible.
- VI. The Customer accepts the Hosting Service and Server "as is" with any faults or failings and without any representation, warranty or guarantee whatsoever, express or implied, including without limitation any implied warranty of accuracy, completeness, quality, continuity of service, connectivity and fitness for a particular purpose.
- VII. Charges in relation to the Hosting Services may vary in accordance with the bandings specified in the ratecard. The Customer accepts and agrees that if its bandwidth usage rises to a higher banding in the ratecard, the Customer shall pay the relevant charges for the higher banding (in accordance with the ratecard) for the month in which the bandwidth usage rises to the higher band; together with an additional £50 administration fee.
- VIII. In the event that the Customer's bandwidth exceeds its usual/standard bandwidth for 3 consecutive months, the Customer accepts and agrees that its usual/standard bandwidth banding shall thereafter be increased to the relevant higher banding.

- IX. Skyline cannot guarantee the speed and robustness of the Services when the Customer's bandwidth usage increases to a higher band without reasonable notice to Skyline.
- X. If a Customer's bandwidth usage exceeds 100GB in any single month, Skyline may require the Customer to purchase a bespoke hosting package within 3 months, and the Customer agrees to be responsible for the associated costs of such bespoke package.
- XI. Where either party gives notice to transfer the Hosting Service from Skyline to a third party Skyline shall charge a transfer fee, and will not affect such transfer unless or until such fee and any/all sums owing to Skyline are paid in full.

## 6. PAY PER CLICK

- I. Where specified in the Order Skyline shall provide a PPC service on the search engine known as "Google".
- II. The Customer acknowledges and accepts its responsibility to ensure that all monies due and owing to Google are paid directly to it, unless otherwise agreed in writing with Skyline.
- III. Skyline shall take reasonable steps to ensure that it does not substantially exceed any PPC budget set by the Customer. However, Skyline does not accept any liability for any charges made by Google in excess of any such monthly budget, save where such sum is exceeded by more than 100% of the Customer's budget in the immediately preceding month. In this event, any potential liability to Skyline shall be limited to a sum equivalent to the Customer's monthly budget for PPC services.
- IV. Charges in relation to PPC shall vary in accordance with the bandings set out in the ratecard.
- V. Where Skyline has set up a PPC account with Google, Skyline shall retain ownership and/or control of such account unless or until the Customer has paid its monthly Charges for a minimum of 4 consecutive months.
- VI. The Customer may elect to suspend its PPC service at any time, but shall in any event remain liable for the average management fee paid or payable to Skyline in the preceding 4 months or less (whichever is the greater).
- VII. Skyline does not in any way guarantee the results or effects of the PPC service. For the avoidance of doubt, the Customer accepts that Skyline cannot guarantee any particular or specific position or ranking on any search engine, or the increase of any business to the Customer in respect of any of the Services provided.

## 8. DELIVERY AND COMPLETION DATES

- I. Skyline undertakes to use its reasonable endeavours to provide completed Web Design Services to the Customer within the time frame stipulated in the Order, or if no time frame is specified, within a reasonable period from the date on which Skyline receives a signed Order from the Customer.
- II. The dates and timeframes for carrying out the Services and delivery of any resultant Website are approximate only. The Customer hereby acknowledges and agrees that time is not of the essence for delivery or performance.
- III. Without prejudice to Clause 15, Skyline will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform save where the same is a result of the gross negligence of Skyline.

- IV. No delay shall entitle the Customer to reject any delivery or performance or any other Order from the Customer, or to repudiate the Contract or the Order.

## WARRANTIES

### I. The Customer warrants that:

- (i) it has the right to include, and permit Skyline to include, the Information and the Customer Content/Data on the Website, or has obtained the rights from third parties to do so;
- (ii) it will not supply Skyline with, or upload to the Website, post, email, or otherwise transmit (or allow to be transmitted) by the Website (or request that Skyline carries out any such upload, posting, email or transmission on the Customer's behalf), of any Customer Content/Data, Information or User Generated Content that is:
  - a) unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, libellous, invasive of another's privacy, hateful or racially, ethnically or otherwise objectionable;
  - b) harmful to minors in any way;
  - c) in breach of any third party right under any law or under a contractual or fiduciary relationship;
  - d) an infringement of any Intellectual Property Rights;
  - e) unsolicited or unauthorised advertising, promotional material, "junk mail", "spam", "chain letters", "pyramid schemes", or any other form of solicitation;
  - f) containing software viruses or any other computer code, files or programmes designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
  - g) intentionally or unintentionally a violation of any applicable law and/or regulation having the force of law;
  - h) data which contravenes the United Kingdom Data Protection Legislation in any way;
- (iii) it will comply with the Data Protection Act 1998.
- (iv) The Customer accepts that Skyline is under no obligation to monitor or approve the Information, Customer Content/Data or User Generated Content and accepts that Skyline excludes all liability of any kind for all material comprising the same.

### II. Skyline warrants that:

- (i) it shall perform the Services with reasonable skill and care in accordance with the standards generally observed in the industry for similar services; and
- (ii) it will comply with the Data Protection Act 1998.

## 9. INTELLECTUAL PROPERTY AND LICENCE

- I. The Customer acknowledges that any Intellectual Property Rights created, developed, subsisting or used by Skyline in or in connection with the provision of the Services shall be the sole property of Skyline.
- II. Subject to the provisions of Clause 13.3 below, the Intellectual Property Rights, together with all rights, title and interest in the same in relation to the Website and the Domain Name registration shall vest exclusively in Skyline. As such, Skyline shall be free to reproduce, use, disclose, display, exhibit, transmit, perform, create derivatives works, and distribute such material unless specifically agreed otherwise. Further, Skyline shall be free to use any ideas, concepts, know how or techniques acquired in the construction of the Website for any purpose whatsoever included but not limited to developing, manufacturing and marketing products and any other items incorporating such information unless specifically agreed otherwise.

- III. All rights, title and interest in and to the Intellectual Property Rights in the Customer Content/ Data belonging to the Customer shall vest exclusively in the Customer.

## 10. TERMINATION

- I. Unless otherwise agreed in writing with Skyline, the Customer acknowledges and agrees that the duration of the Contract will be for the Minimum Term, and subject thereafter to the notice provisions in this Clause 14.
- II. Following expiry of the Minimum Term either party may terminate the Contract:
  - (i) in relation to all Ongoing Services by giving one months' written notice; and
  - (ii) in relation to PPC services, by giving 1 months' written notice
- III. Either party may terminate the Contract immediately and without notice if:
  - (i) the other enters into a composition with its creditors;
  - (ii) an order is made for the winding up of the other;
  - (iii) an effective resolution is passed for the winding up of the other (other than for the purpose of amalgamation or reconstruction on terms approved by the first party (such approval not to be unreasonably withheld));
  - (iv) or the other has a receiver, manager, administrative receiver or administrator appointed in respect of it.
- IV. Skyline shall be entitled to terminate the Contract immediately upon service of written notice to the Customer if:
  - (i) any invoice remains outstanding for more than 30 days; or
  - (ii) the Customer fails to co-operate with and/or provide Skyline with clear instructions, or information requested by Skyline for more than 14 days; or
  - (iii) Skyline considers (at its sole discretion) reasonable to do so.
- V. Termination of the Contract shall be without prejudice to any other rights or remedies of either party.
- VI. Upon termination of this Contract for any reason, the Customer:
  - (i) shall cease immediately to be entitled to use the Website unless or until the Customer has paid all outstanding Charges up to the date of termination together with any sums due in respect of the Ongoing Services (whether already provided or contracted to be provided during the Minimum Term and/or any relevant notice period); and in any event
  - (ii) shall grant Skyline immediate access to the Website (whether hosted by Skyline or otherwise), and/or provide any/all such information necessary to facilitate such access for the purpose of disabling any links and/or removing any other SEO techniques and/or coding created by Skyline which form part of the SEO Services provided by Skyline, and for removing from the Website any other Intellectual Property Rights belonging to Skyline. For the avoidance of doubt, this may affect the appearance of the Website and the search engine ranking positions of the Website. Skyline shall not be liable for any such changes.
- VII. If the Customer fails to provide immediate access to the Website pursuant to Clause 14.7.2 above, the Customer shall remain liable for the relevant Charges for the Ongoing Services

on a recurring basis in accordance with the Contract until such time as the Customer complies with Clause 14.7.2 above.

- VIII. The terms of Clauses 13 (Intellectual Property), Clause 15 (Indemnity and Limitation of Liability) and Clause 16 (Confidentiality) shall survive the termination (howsoever arising) of this Contract.
- IX. Force Majeure: Skyline shall not be liable for failure to perform the Services if such failure is as a result any act beyond its reasonable control (including, without limitation, fire, flood, earthquake, storm, hurricane or other natural disaster), war, civil unrest, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or telephone service and/or any failure attributable to Skyline's sub-contractors and/or service providers (in Skyline's discretion)

## 11. INDEMNITY AND LIMITATION OF LIABILITY

I. The Customer shall indemnify Skyline against any loss, damage, cost or expense (including reasonable legal fees and expenses) Skyline may suffer or incur as a result of:

II. any act, omission, neglect or default of the Customer, its agents, or employees.

- (i) any claim by any third party that the Customer's Information and/or Customer Content/Data infringes the Intellectual Property Rights of a third party or is fraudulent, offensive, abusive, defamatory, obscene or menacing or causes annoyance, inconvenience or needless anxiety or constitutes unsolicited advertising or promotional material;
- (ii) work done in accordance with the Customer's instructions in hosting of the Website on the Server involving the infringement of any Intellectual Property Rights (including but not limited to framing or linking to third parties' websites):
- (iii) any claim by a third party arising from the Customer's breach of the warranties under Clause 12.1 above.
- (iv) Skyline shall not be liable to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Contract, the Server, the connectivity to the Internet, the hosting, the Website, its use (including but in no way limited to any unlawful or unauthorised access or use by any third party), application, support or otherwise, except to the extent which it is unlawful to exclude such liability.
- (v) Nothing in this Contract shall exclude or limit the liability of Skyline for fraudulent misrepresentation or for any death or personal injury caused by Skyline's negligence.
- (vi) Subject to Clause 8.3 above Skyline will not be liable to the Customer in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any economic loss of any kind (including but not limited to loss of profit, business, contracts, revenue or anticipated savings), any damage to the Customer's reputation or goodwill or any other special, indirect or consequential loss (whatsoever and howsoever caused) which arise out of or in connection with the Contract.
- (vii) The Customer acknowledges and agrees that Skyline's total liability in respect of the warranty provided under Clause 12.3 shall be limited to re-performance of the Services or a refund of the relevant purchase price.
- (viii) Notwithstanding Clause 15.4 above, the Customer acknowledges and agrees that Skyline's total liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the amount paid by the Customer pursuant to the relevant Contract.



- (ix) Neither party shall be liable for any failure in the performance of any of its obligations under the agreement caused by factors beyond its reasonable control.

## 12. CONFIDENTIALITY

I. Each party agrees and undertakes that it will hold in complete confidence any Confidential Information disclosed to it, and will not disclose it in whole or in part at any time to any third party, nor use any Confidential Information for any purpose other than the performance of its obligations under the Contract. This provision shall survive the termination of the Contract for any reason for a period of 2 years commencing immediately on the date of such termination.

II. The obligations set out in this Clause 16 shall not apply to any Confidential Information which:

- (i) at or prior to the time of disclosure was known to the receiving party as evidenced in writing, except to the extent that such information was unlawfully appropriated;
- (ii) at or after the time of disclosure becomes generally available to the public other than through any act or omission on the part of the receiving party;
- (iii) is received from a third party who was free to make such disclosure without breaching any legal obligation;
- (iv) is independently developed by the receiving party; or
- (v) is required to be disclosed by law, court order or request by any government or regulatory authority.

## 13. ASSIGNMENT AND SUBCONTRACTING

- I. None of the rights or obligations of the Customer under the Contract may be assigned or transferred in whole or in part without the prior written consent of Skyline.
- II. The Website shall be for the sole use of the Customer and shall not be capable of assignment to a third party by the Customer without the prior written consent of Skyline.
- III. Skyline shall be entitled to sub-contract any work relating to the Contract without obtaining the consent of, or giving notice to the Customer.
- IV. Skyline shall be free to assign its rights in the Contract to any third party without giving prior notice to the Customer.

## 14. NOTICES

- I. Any and all termination notices should be sent to [cancellations@skyline-marketing.co.uk](mailto:cancellations@skyline-marketing.co.uk)
- II. Any other notices must be sent in writing via first class post to The Innovation Centre, University of Exeter, Rennes Drive EX4 4RN, United Kingdom.
- III. Any notice or document shall be deemed served: if delivered, at the time of delivery; if posted, 48 hours after posting, and if sent by electronic mail, at the time of sending.

## 15. INVALIDITY

I. If any provision (or part of a provision) of this Contract is found by any court or administrative body of a competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

II. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## **16. THIRD PARTY RIGHTS**

I. A person who is not party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **17. LAW AND JURISDICTION**

I. The Contract shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.