

Terms and conditions

By placing an order with Climbing Trees, you confirm that you are in agreement with and bound by the terms and conditions below. Anyone who experiences a problem with the service provided by us should raise the matter directly to us in writing, giving sufficient information to identify the issue and clearly outlining the grounds for complaint. Climbing Trees will do everything in its power to resolve the issue to the satisfaction of the complainant. Please read carefully our Terms and Conditions below before any Purchase or Order of our services.

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

Best Practice: the generally accepted informally standardised, best techniques, methods or processes which have proven to be effective at achieving a given task.

Climbing Trees: Climbing Trees Online Marketing Limited.

Contract: the Client's purchase order and Climbing Tree's acceptance of it under condition 3.

Client: the person, firm or company who purchases Services from Climbing Trees.

Deliverables: all products, materials and services developed and/or provided by Climbing Trees in relation to the Project in any media, including, without limitation, ecommerce, websites, CMS websites, design, hosting and search optimisation computer programs, data, diagrams, reports and specifications (including drafts).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Pre-existing Materials: materials which existed before the commencement of the Project.

Project: the project as described in the Project Plan.

Project Milestone: a date by which a part of the Project is estimated to be completed, as set out in the Project Plan.

Project Plan: the detailed plan describing the Project and setting out the estimated timetable (including without limitation Project Milestones) and responsibilities for the provision of the Services by Climbing Trees in accordance with the Contract.

SEO Services: all of the actions and Services provided by Climbing Trees under the Contract.

Services: the services (including SEO Services) to be provided by Climbing Trees under the Contract.

Climbing Trees's Project Manager: Climbing Trees's manager for the Project, appointed in accordance with condition 4.3.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.8 A reference to **writing** or **written** includes faxes and e-mail.

1.9 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

2 Application of Conditions

2.1 These conditions shall:

(a) apply to and be incorporated in the Contract; and

(b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Client's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Climbing Trees unless in writing and signed by a duly authorised representative of Climbing Trees.

3 Effect of purchase order

The Client's purchase order constitutes an offer by the Client to purchase the Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by Climbing Trees, or Climbing Trees's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions. The Client's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract

4 Climbing Trees's obligations

- 4.1 Climbing Trees shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Client, in accordance in all material respects with the Project Plan and Best Practice.
- 4.2 Climbing Trees shall use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 4.3 Climbing Trees shall appoint Climbing Trees's Project Manager who shall have authority to contractually bind Climbing Trees on all matters relating to the Project. Climbing Trees shall use reasonable endeavours to ensure that the same person acts as Climbing Trees's Project Manager throughout the Project, but may replace him from time to time where reasonably necessary in the interests of Climbing Trees's business.

5 Client's obligations

5.1 The Client shall:

- a) ensure that they have provided Climbing Tress with a valid email address for correspondence and notify Climbing Trees any change in the status of this email address, and if this email address is no longer accepting email it is the responsibility of the client to inform Climbing Tress immediately;
- b) co-operate with Climbing Trees in all matters relating to the Project and appoint the Client's Project manager, who shall have the authority to contractually bind the Client on matters relating to the Project;
- c) provide in a timely manner such access to the Client's premises and data, and such office accommodation and other facilities, as is requested by Climbing Trees;
- d) provide in a timely manner such information as Climbing Trees may request, and ensure that such information is accurate in all material respects;
- e) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services; and
- f) share any information relating to costs or process that Climbing Trees follow.

5.2 The customer confirms to Climbing Trees that it has not:

- g) employed the services of any search engine optimisation Company other than Climbing Trees to work on their website promotion;

- h) employed the services of any submission company during the same period of Climbing Trees providing their search engine optimisation services;
 - (a) created any duplicate sites, duplicate content or pages, redirects or doorway pages to their website whilst advertising online with Climbing Trees; or
 - (b) requested or exchanged links with any link farms or undertaken any spamming techniques which may harm the web sites search engine ranking with Google.

5.3 The Client agrees and confirms with Climbing Trees that their website is not hosted on free web space using domain forwarding (either framed or otherwise) whilst using Climbing Trees SEO Services.

5.4 The client warrants, represents and undertakes to Climbing Trees that at all times material included on its website:

- a) is not in breach of the Intellectual Property rights of any third party;
- b) is not obscene within the definition of the Obscene Publications Act 1959 or any other relevant provision or statute;
- c) is not in breach of any code or provision of statute or common law or otherwise in force from time to time in relation to Advertising of Goods or Services;
- d) contains no element of corporative advertising which is in breach of the Control of Misleading Advertisements (Amendment) Regulations 2000;
- e) is not in breach of the Defamation Act 1996 or any other relevant provision or statute; and
- f) does not contain any misleading price comparison in breach of Consumer Protection Act.

5.5 The Client shall provide Climbing Trees with log-in information (FTP username and password) to allow Climbing Trees to gain access to its website. Climbing Trees will maintain confidentiality of log-in information. The Client shall inform its webmaster or anyone else who has access to the Client's web site that Climbing Trees is performing SEO Services on its site.

5.6 If Climbing Trees' performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client or the Client's agents, sub-contractors or employees, the Client shall in all circumstances be liable to pay to Climbing Trees on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Climbing Trees confirming such costs, charges and losses to the Client in writing.

5.7 The Client shall not, without the prior written consent of Climbing Trees, at any time from the date of the Contract to the expiry of twelve months after the completion of the Services, solicit or entice away from Climbing Trees or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Climbing Trees.

5.8 Any consent given by Climbing Trees in accordance with condition 0 shall be subject to the Client paying to Climbing Trees a sum equivalent to 20% of the then current annual remuneration of Climbing Trees' employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Client to such employee or sub-contractor.

5.9 The Client shall indemnify Climbing Trees against all claims, costs and expenses which Climbing Trees may incur and which arise, directly or indirectly, from the Client's breach of any of its obligations under these terms and conditions and/or the Contract and/or the Project.

6. SEARCH ENGINE OPTIMISATION

6.1 The Client acknowledges and understands that search engines are independent companies who select and rank sites using their own criteria and therefore to obtain a high ranking the Client must follow Climbing Trees' recommendations for optimising their website for search engine listing. If the client fails to follow Climbing Trees' recommendations then the results achieved by Climbing Trees will have considerably less importance than would be achieved otherwise.

6.2 "A Top 10 ranking" means that the Client's selected search term or key phrase will be placed in the first 10 results on Google.co.uk within a minimum of 20 weeks of the optimisation techniques being uploaded to the Client's website. Although Google's results are displayed on other search engines e.g. AOL, Yahoo etc, the work that is carried out by Climbing Trees is solely aimed at increasing visibility and boosting search engine ranking on Google.

6.3 Search engines change their algorithms regularly, which can result in fluctuations in your search ranking positions. Climbing Trees will not be held responsible for these fluctuations or if an algorithm change results in dramatic changes to the fortunes of the Client's website and/or its rankings. Climbing Trees offers no guarantee for any specific result on any search engine, nor can Climbing Trees quantify the level of increased traffic or sales, as a result of the search engine optimisation campaign. Advertising online is an unpredictable market place and Climbing Trees can give no guaranteed positioning.

6.4 The Client agrees to provide Climbing Trees with the ability to optimise the structure and content of their web pages. Climbing Trees will work directly with the Client in order to, as far as possible, maintain the original look and feel of the Client's website.

6.5 Climbing Trees may terminate the Contract at any time if the Client's website contains any material which is illegal, pornographic, and/or racially abusive or is likely to cause offence or damage to Climbing Trees' reputation.

6.6 The search engines targeted will be those search engines that Climbing Trees considers to be the most important with regards to popularity, language, content, location, coverage or any other criteria that Climbing Trees considers suitable.

6.7 Climbing Trees will choose suitable sets of words to search for in the search engines and the position in the results obtained using these words will be used for assessing search engine listings.

6.8 Any SEO work the Client performs without Climbing Trees' recommendations, including link building, changes to the Client's website or anything else that negatively affects the Client's rankings or conversions will not be deemed the responsibility of Climbing Trees.

7. CHANGE CONTROL

7.1 The Client's Project Manager and Climbing Trees' Project Manager shall meet at least once every 2 months to discuss matters relating to the Project. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

7.2 If either party requests a change to the scope or execution of the Services, Climbing Trees shall, within a reasonable time, provide a written estimate to the Client of:

- a) the likely time required to implement the change;
- b) any variations to Climbing Trees' charges arising from the change;
- c) the likely effect of the change on the Project Plan; and
- d) any other impact of the change on the terms of the Contract.

7.3 If Climbing Trees requests a change to the scope of the Services, the Client shall not unreasonably withhold or delay consent to it.

7.4 If the Client wishes Climbing Trees to proceed with the change, Climbing Trees has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

8. CHARGES AND PAYMENT

8.1 Condition 0 shall apply if the Services are to be provided on a time-and-materials basis. Conditions condition **Error! Reference source not found.** and condition 0 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 0 shall apply in either case.

8.2 Where the Services are provided on a time-and-materials basis:

- a) the charges payable for the Services shall be calculated in accordance with Climbing Trees' standard daily fee rates as amended from time to time;
- b) Climbing Trees' standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
- c) Climbing Trees shall be entitled to charge at an overtime rate of [PERCENTAGE] of the normal rate for part days and for time worked by members of the project team outside the hours referred to in condition 1.4.1 b) on a pro-rata basis;
- d) Climbing Trees shall ensure that all members of the project team complete time sheets recording time spent on the Project, and Climbing Trees shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 1.4.1 e); and
- e) Climbing Trees shall invoice the Client monthly in arrear for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 0.

8.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Project Plan. The total price shall be paid to Climbing Trees (without deduction or set-off) in instalments as set out in the Project Plan on its achieving the corresponding Project Milestone. On achieving a Project Milestone, Climbing Trees shall invoice the Client for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 0.

8.4 Any fixed price contained in the Project Plan excludes:

- a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Climbing Trees for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Climbing Trees; and
- b) VAT, which Climbing Trees shall add to its invoices at the appropriate rate.

8.5 The Client shall pay each invoice submitted to it by Climbing Trees in full, and in cleared funds, within 30 days of receipt.

8.6 Without prejudice to any other right or remedy that Climbing Trees may have, if the Client fails to pay Climbing Trees on the due date Climbing Trees may:

- a) charge interest on such sum from the due date for payment at the annual rate of [3]% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. Climbing Trees may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- b) suspend all Services until payment has been made in full.

8.7 Time for payment shall be of the essence of the Contract.

8.8 All payments payable to Climbing Trees under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

8.9 Climbing Trees may, without prejudice to any other rights it may have, set off any liability of the Client to Climbing Trees against any liability of Climbing Trees to the Client.

9 INTELLECTUAL PROPERTY RIGHTS

9.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by Climbing Trees. Climbing Trees hereby licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If Climbing Trees terminates the Contract under condition **Error! Reference source not found.**, this licence will automatically terminate.

9.2 The Client acknowledges that the Client's use of rights in Pre-existing Materials is conditional on Climbing Trees obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Climbing Trees to license such rights to the Client.

10 CONFIDENTIALITY AND CLIMBING TREES' PROPERTY

10.1 The Client shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by Climbing Trees or its agents, and any other confidential information concerning Climbing Trees' business or its products which the Client may obtain. The Client shall restrict disclosure of such confidential material to such of its employees,

agents or sub-contractors as need to know it for the purpose of discharging the Client's obligations to Climbing Trees, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Client.

10.2 All materials, equipment and tools, drawings, specifications and data supplied by Climbing Trees to the Client shall at all times be and remain the exclusive property of Climbing Trees, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to Climbing Trees, and shall not be disposed of or used other than in accordance with Climbing Trees' written instructions or authorisation.

10.3 This condition 0 shall survive termination of the Contract, however arising.

11 LIMITATION OF LIABILITY

11.1 The following provisions set out the entire financial liability of Climbing Trees (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

- a) any breach of the Contract howsoever arising;
- b) any use made by the Client of the Services, the Deliverables or any part of them; and
- c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these conditions excludes the liability of Climbing Trees:

- a) for death or personal injury caused by Climbing Trees' negligence; or
- b) for fraud or fraudulent misrepresentation.

11.4 Subject to condition 0 and condition 0:

- a) Climbing Trees shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or

- (vii) loss of use; or
 - (viii) loss or corruption of data or information; or
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- b) Climbing Trees' total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to £90,750 **OR** the price paid for the Services (whichever is lower).

12 TERM AND TERMINATION

12.1 Subject to these terms and conditions, this agreement shall commence on the date determined in accordance with Clause 3 above ("Effective Date") and shall continue for an initial period of 6 months from and including the Effective Date ("Initial Term"). The agreement will continue in force unless otherwise terminated by either party in accordance with clause 12.2, by Climbing Trees in accordance with Clause 13 or by either party giving to the other a minimum of 30 days written notice at any time after the Initial Term.

12.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the other party; or
- (h) the other party takes or suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt.

- 12.3 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

13 SUSPENSION AND CANCELLATION OF SERVICES

Climbing Trees may immediately cancel and suspend any services to the Client if Climbing Trees reasonably believes that the Client is in breach of any of its obligations under these terms and conditions and/or the Contract, including where the Client does not respond to any notices or provides the relevant content set out in the Project Plan.

14 FORCE MAJEURE

Climbing Trees shall not in any circumstances have any liability to the Client under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Climbing Trees or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Climbing Trees or sub-contractors.

15 USE OF CLIENT EXAMPLES

Climbing Trees reserve the right to use Client's websites and SEO results as examples and/or case studies. This includes displaying images and screenshots of sites an

d/or logos across various medias such as PDF's, blogs etc. If the Client wants to opt out of this they can do so by notifying the Climbing Trees Project Manager in writing at any time.

16 WAIVER

- 16.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

- 16.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

17 SEVERANCE

- 17.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

- 17.2 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.

18 ENTIRE AGREEMENT

18.1 Each of the parties acknowledges and agrees that in entering into the Contract and the documents referred to in it or annexed to it, it does not rely on any statement, representation (whether innocent or negligent), assurance or warranty (Representation) (whether in writing or not) of any person (whether party to this agreement or not) other than as expressly set out in the Contract or those documents.

18.2 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract.

18.3 Nothing in this clause shall limit or exclude any liability for fraud.

19 ASSIGNMENT

19.1 The Client shall not, without the prior written consent of Climbing Trees, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

19.2 Climbing Trees may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

20 NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21 THIRD PARTY RIGHTS

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

22 NOTICES

22.1 Any notice under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Contract.

22.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

23

GOVERNING LAW AND JURISDICTION

23.1

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

23.2

The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including without limitation non-contractual disputes or claims).