



## GENERAL TERMS OF BUSINESS

The Terms set out below (“these terms”) should be read in conjunction with your Letter of Agreement, and shall be deemed to be part thereof. These terms supersede all previous terms.

### 1. Definitions

(a) “The Copywriter” means James Daniel, who is the Sole Director of EarthMonkey Media Ltd, also known as EarthMonkey: a UK limited company whose registered trading address is at Sandringham House, 1-3 Cemetery Road, Bridgend CF31 1LY. Telephone 0845 643 6261. E-mail: info@earthmonkey.co.uk. Registered in England and Wales 6183868. All contracts are issued by the Copywriter through EarthMonkey Media Ltd, and all payments are due to the same.

(b) “The Customer” means any person or company with whom the Copywriter contracts, either verbally or in writing. Where the Customer comprises more than one person, their liability under these terms and conditions shall be joint and several.

(c) “Contract” means any contract made between the Copywriter and the Customer for copywriting, marketing, training or consultancy services, or for third-party services such as graphic or web design. This includes any Letter of Agreement which is signed by both parties; any written quotation from the Copywriter which is accepted in writing by the Customer; or any written order or booking of the Customer which is accepted in writing by the Copywriter.

(d) “Services” shall mean any of the copywriting, marketing, training or consultancy services offered by the Copywriter; or any third-party services such as graphic or web design.

(e) Any reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

### 2. Basis of Contract

(a) The Contract shall incorporate and be subject to these Terms to the exclusion of any terms, which the Customer may purport to impose, and to the exclusion of any course of dealing established between the Copywriter and the Customer.

(b) No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of the Copywriter and the Customer.

(c) Any quotation given by the Copywriter is an invitation to the Customer to make an order only within 30 days of the quotation date and no order of the Customer placed with the Copywriter in pursuance of a quotation or otherwise shall be binding on the Copywriter unless and until it is accepted and confirmed in writing by the Copywriter.

(d) The Customer or its employees or agents are not authorised to make any representations concerning the products or services of the Copywriter or concerning the Contract unless confirmed by the Copywriter in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations, which are not so confirmed.

(e) Any advice or recommendation given by the Copywriter or its employees or agents to the Customer or its employees or agents is acted upon entirely at the risk of the Customer, its employees or agents and accordingly the Copywriter shall not be liable for any such advice or recommendation.

(f) Any typographical, clerical or other error or omission in any promotional literature, quotation, price list, invoice or other document or information issued by the Copywriter shall be subject to correction without any liability on the part of the Copywriter.

### **3. Orders**

(a) All orders for Services shall be accepted by the Copywriter subject to the availability of the Copywriter or its personnel and the Copywriter shall have no commitment to commence work on any such order until the order details have been confirmed by him in writing.

(b) All orders for Services shall be subject to Government and other local regulations, which may be introduced from time to time.

(c) The Copywriter will use his best endeavours to comply with all directions and requests for information to be included in any design or copywriting project, but responsibility for the accuracy of all information supplied by the Customer shall rest with the Customer and no liability will be accepted.

(d) Errors where copy or design is in accordance with a final proof approved by the Customer in accordance with the Copywriter's standard procedures will not be corrected by the Copywriter until additional billing is documented.

(e) The Customer warrants that where it has provided promotional materials such as advertising slogans and company or product logos, the same are not subject to any copyright or other intellectual property rights; and that reproduction of the same by the Copywriter will not cause any breach of any copyright or other intellectual property rights; and that the Customer will where appropriate secure all necessary licences and authorisations for publication of any such restricted material. The Customer hereby indemnifies the Copywriter against any and all actions, claims losses, damages and liabilities arising from any breach of copyright or other intellectual property rights caused by the provision of material for publication by the Customer.

(f) In the event of cancellation, the Customer shall be liable to pay 100% of the total contract price specified unless otherwise negotiated. Any such negotiation will be included in the Letter of Agreement under the title of 'Kill Fee', and will specify a scale for remuneration in accordance with the works completed at the time of cancellation.

(g) For copywriting services, the Copywriter shall produce the finished works according to an agreed creative brief, either on or before the completion date agreed by both parties. The Customer must submit any requests for amendments or revisions within 5 working days of receipt of the finished works. Failure to do so will constitute the Customer's approval of the finished works, and the Copywriter will invoice for the full contract fee. An additional charge will be made for any revisions or amendments that are requested after the 5<sup>th</sup> working day; or that are requested after the work has entered the public domain; or that fall outside the scope of the creative brief.

#### **4. Contract Prices and Fees**

(a) The prices or fees payable by the Customer shall be in accordance with the Copywriter's rates of payment, as specified in the Contract of which these terms form part.

(b) All prices and fees quoted are subject to United Kingdom Value Added Tax, or any other local tax payable by the Copywriter in any other jurisdiction unless otherwise stated.

(c) Where applicable, United Kingdom Value Added Tax or any local taxes will be charged at the rate ruling at the date of order.

## **5. Payment**

(a) The prices or fees payable by the Customer shall be in accordance with the Copywriter's rates of payment, as specified in the Contract of which these terms form part.

(b) Failure to pay by the due date will entitle the Copywriter to cancel any service being provided by giving written notice to the Customer and any part payment shall be retained by the Copywriter. The time of payment and the price of the goods shall be the essence of the Contract.

(c) If payment shall not be made in accordance with Condition 5 (a) above, the Copywriter shall pass the matter onto a collections agency and reserve the right to charge interest on overdue balances for the period from such date until the date of payment. This shall include any period after the date of any court judgement against the Customer. Interest shall be charged at the rate of 12.5% under the Late Payments of Commercial Debts (Interest) Act 1998, plus all penalty charges allowed by the same act at the time of contract.

(d) Payments are to be made by electronic bank transfer to EarthMonkey Media Ltd, Barclays Bank Plc, account number 20460338, sort-code 20-18-27. Cash, cheques and credit or debit card payments cannot be accepted.

(e) In the event of any cheques being accepted and subsequently dishonoured, a charge of £30 (or such other sum as the Copywriter may from time to time advise the Customer) will be made to the Customer to cover bank and administrative costs.

## **6. Ownership of Copyright**

(a) All creative, strategic and training materials provided by the Copywriter in respect of the Contract shall be the absolute property of the Copywriter and shall remain so until such date as full payment is made by the Customer. On such date, all rights to the same shall pass to the Customer, for use as detailed in the Contract. Further reproduction, imitation or creation of derivative works of the same is prohibited unless consent is given in writing. Such consent may be subject to further reimbursement.

(b) All the Copywriter's rights are reserved in respect of the Services provided for this or any other Contract.

(c) In the event of a cancellation of the Contract for whatever reason the Customer shall forthwith return to the Copywriter all documentation and information provided by the Copywriter in electronic or any other form. All copyright, patent, trade secret and intellectual property and performance rights

in the Services which the Copywriter may provide in relation to the Contract shall remain vested in the Copywriter (or the owner thereof for the time being). The Customer shall not acquire any intellectual property rights or licence relating to the Services, and may not copy or reproduce, the same.

(d) Unless otherwise agreed in writing at the point of contract, the Copywriter shall be entitled to include all works in a portfolio, to be viewed either on the Copywriter's website or in hard or e-copy for distribution to prospective clients. This includes the Copywriter's right to add the client's name to a client list for similar distribution.

(e) The client undertakes to supply a hard copy of any printed materials for the Copywriter's own promotional purposes.

## **7. Liability**

(a) Except in respect of death or personal injury caused by the Company's negligence the Copywriter shall not be liable to the Customer by reason of any representation, or any implied warranty condition or other term or any duty at common law or under express terms of the Contract, for any consequential loss or damage (whether loss of profits or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the Contract except as expressly provided in these terms.

(b) The Copywriter shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing its obligations under the Contract or any failure so to perform, if the delay or failure was due to any cause beyond the Copywriter's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

- (i) Act of God, explosion, flood, tempest, fire or accident;
- (ii) War or threat of war, sabotage, insurrection, civil disturbances or requisition;
- (iii) Acts, restrictions, byelaws, prohibitions or measures of any kind on the part of any government, parliamentary or local authority;
- (iv) Import or export regulations or embargoes;
- (v) Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Copywriter or of a third party);
- (vi) Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (vii) Power failure or breakdown in machinery.

(c) Without prejudice to the foregoing the Copywriter shall in no circumstances be liable for any loss, damage, costs or expenses, which exceed in the aggregate the fees payable by the Customer.

## **8. Insolvency of the Customer**

This clause applies if:

- (i) the Customer proposes any voluntary arrangement or enters into any compromise or other arrangement with its creditors; or
- (ii) an encumbrance takes possession, or a receiver or manager is appointed of any of the property or assets of the Customer, or
- (iii) being an individual or firm the Customer becomes subject to a bankruptcy petition or becomes bankrupt, or
- (iv) being a Company the Customer becomes subject to a winding-up petition or goes into liquidation or becomes subject to a petition or an administration order or upon the making of an administration order, or
- (v) the Customer ceases, or threatens to cease, to carry on business; or
- (vi) the Copywriter reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly

(a) If this clause applies then without prejudice to any other right or remedy available to the Company, the Copywriter shall be entitled to cancel the Contract or suspend the performance of the Contract without liability to the Customer.

## **9. Notices**

Any notice required or permitted to be given by either party to the other under these terms shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may be at the relevant time have been notified pursuant to this provision to the party giving the notice. No waiver by the Copywriter of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

## **10. Severability**

If any provision of these terms is held by any competent authority to be invalid the remainder of the provisions in question shall not be affected thereby.

## **11. Proper Law**

The Contract shall be governed by and construed in accordance with the laws of England and Wales.

## **12. General**

(a) The Customer shall not be entitled to assign its rights or transfer any of its rights or obligations under the Contract, in whole or in part, without prior written consent of the Copywriter.

(b) The expiration or termination of the Contract, however arising, shall be without prejudice to any provisions of the Contract (including these Conditions), which are to have effect after the date of such expiration or termination.

(c) The Copywriter undertakes not to disclose commercially sensitive information that is shared prior to or following formal engagement, and will add a non-disclosure clause to any letter of agreement at the client's request.