



**ClimbOnline**

Digital Marketing Done Differently

## General Terms and Conditions

## GENERAL TERMS

### 1 BACKGROUND

- 1.1 These General Terms (**Terms**) apply to any services (**Services**) and all resulting data, reports, content and other information (**Work**) provided by Climb Online Limited (Company Number 09090758) (**Climb Online**) to its clients (**Client**).
- 1.2 These General Terms form a binding contract between Climb Online and Client in respect of the Services, incorporating the Key Terms set out in any Client Agreement or other binding agreement between the parties (**Agreement**).
- 1.3 These Terms shall be deemed effective upon the Client either signing the Client Agreement, or accepting any written proposal or any Services from Climb Online. These Terms apply for the period specified as the Term in the Agreement, automatically renewed at the end of each Term.
- 1.4 Climb Online is an online marketing agency and may rely on third parties to perform the Services. Climb Online is not responsible for the performance of such services by third parties.
- 1.5 Climb Online is an independent contractor to Client, not an employee or partner of Client in any way. The Services are provided for the sole benefit of the Client, unless expressly agreed otherwise.

### 2 KEY OBLIGATIONS

#### 2.1 Climb Online will:

- (a) provide the Services in accordance with the Key Terms and this Agreement;
- (b) perform the Services with reasonable care and skill;
- (c) sub-contract certain parts of the Services to specified third parties and shall not be responsible for the products or services provided by those third parties;
- (d) provide campaign reporting and other information to Client via email (or such other method agreed by Client);
- (e) comply with all the relevant laws and regulations relating to performance of the Services.

#### 2.2 Client will:

- (a) pay all Fees and additional charges in accordance with this Agreement;
- (b) ensure that Climb Online has unrestricted access to such electronic systems and materials, and promptly provide Climb Online with all assistance, directions, instructions or information, reasonably required by Climb Online to perform the Services;
- (c) provide timely updates on any information relevant to the Services;
- (d) maintain insurance covering the business of the Client from liability arising from the Services.

- 2.3 Client hereby warrants and represents that the Website and use of the Services for the marketing of products and services of the Client shall be for legitimate business purposes, in compliance with all applicable laws and regulations, and that Client has obtained all necessary approvals, consents and permissions from any relevant authority or third party.

2.4 Client accepts sole responsibility for all content and information provided to Climb Online and warrants and represents the accuracy and completeness such information.

### 3 FEES, INVOICING & PAYMENT

3.1 The Fees payable for the Services are specified in the Key Terms (or otherwise separate written agreement with Client) and payable monthly in advance (or in the month following external spend, where agreed in writing) without any set off or deduction.

3.2 Additional fees and charges may be applied by Climb Online, including for agreed out-of-pocket expenses, languages other than English, surcharges for payment methods, taxes and duties.

3.3 Client warrants and represents that there are sufficient funds on any credit or debit card registered with Climb Online to pay for all Fees and any charges payable under this Agreement.

3.4 In the event of cancellation of the Services or termination of this Agreement, subject to any consumer law that cannot be excluded, Climb Online may determine in its absolute discretion whether to refund any advance payment for Services (which shall exclude any costs that are not reimbursed by third parties).

3.5 If any amount due remains unpaid, Climb Online may charge additional administration costs and interest (both before and after judgment) on the amount unpaid at the rate for the time being that would be applicable if the debt were a qualifying debt under the *Late Payment of Commercial Debts (Interest) Act 1998*.

3.6 Climb Online will render a valid tax invoice to Client on request for all paid Services.

3.7 Unless expressly stated otherwise, all amounts payable under this Agreement are exclusive of VAT. If any payment pursuant to this Agreement constitutes the whole or any part of the consideration for a taxable or deemed taxable supply to recipient, the supplier shall increase that payment by an amount equal to the VAT which is chargeable in respect of the taxable or deemed taxable supply, provided that the recipient shall have delivered a valid VAT invoice in respect of such VAT.

3.8 All contracts are subject to 60 days cancellation in writing to Climb Online.

3.9 Climb Online shall be entitled to set off or withhold any amount owed to Client under this Agreement against any amount payable by Client to Climb Online.

### 4 INTELLECTUAL PROPERTY

4.1 All copyright, know-how, designs, and other registered or unregistered forms of intellectual property (**IP**) in the Work shall remain owned by Climb Online. Climb Online grants a non-exclusive non-transferrable worldwide licence to Client for its legitimate business purposes conditional upon payment in full of all Fees and compliance with this Agreement.

4.2 Climb Online acknowledges that the Client owns all IP relating to the Website and created or provided by Client in connection with the Services (**Client IP**). Client grants a non-exclusive non-transferrable worldwide licence to Climb Online for all purposes relating to the performance of the Services.

4.3 Each party has moral and registered rights in its trade marks and neither party shall not copy, alter, use or otherwise deal in such marks without prior written consent. Climb Online shall be entitled to refer to performance of the Services for the Client and include its trade marks in marketing activities unless expressly requested otherwise in writing.

## 5 DATA PRIVACY

- 5.1 Each party warrants and represents that it has adopted and implements a privacy policy compliance with the requirements under the *Data Protection Act 1998* in respect of all personal data provided to the other party in connection with the Services or otherwise under this Agreement. Without limitation, all necessary consent has been obtained by Client from individuals for the purposes of performing the Services.

## 6 THIRD PARTIES

- 6.1 Climb Online will engage third parties to perform specific parts of the Services, including paid campaigns on third party platforms (**Third Parties**). Client consents to the involvement of Third Parties and any arrangements entered into by Climb Online and such Third Parties. Specific terms and conditions may apply to the products and services supplied by Third Parties.
- 6.2 Climb Online is not responsible for any information transmitted by Third Parties or liable for any reliance Client makes upon the information or statements conveyed by Third Parties (or in relation to dealings with Third Parties), nor is Climb Online responsible for the accuracy of any advertisements or marketing provided by Third Parties.

## 7 CONFIDENTIALITY

- 7.1 Each party must maintain in confidence any written information that (**Confidential Information**):

- (a) Details the business of the Client;
- (b) Details the business of Climb Online;
- (c) Is identified by either party as confidential and/or proprietary,

other than information that the relevant party can establish:

- (d) was in the public domain at the time it was disclosed;
- (e) was already in the possession of a party when given, without having been acquired (directly or indirectly) from the other party; or
- (f) was received from another person who had the unrestricted legal right to disclose that information free from any confidentiality obligation.

- 7.2 Each party must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this Agreement; or
- (b) disclose any of the Confidential Information,

provided that each party may disclose Confidential Information that is required to be disclosed:

- (c) by law or by order of any court or tribunal of competent jurisdiction;
- (d) by any Government Agency, stock exchange or other regulatory body; or
- (e) to its personnel and advisors, where the party informs the recipient of the obligations in relation to the Confidential Information under this Agreement.

- 7.3 If a party is required to make a disclosure under this clause, that party must:

- (a) to the extent possible, notify the other party if it anticipates that it may be required to disclose any of the Confidential Information; and
- (b) only disclose Confidential Information to the extent necessary to comply.

7.4 The obligations under this clause continue in full force and effect after this Agreement ends.

## 8 DISPUTE RESOLUTION

8.1 If any dispute arises between Client and Climb Online in connection with this Agreement (**Dispute**), then either party may notify the other of the Dispute with a notice (**Dispute Notice**) which:

- (a) includes or is accompanied by full and detailed particulars of the Dispute; and
- (b) is delivered within 14 days of the circumstances giving rise to the Dispute first occurring.

8.2 Within 14 days after a Dispute Notice is given, a representative (with the authority to resolve the dispute) of Client and Climb Online must meet and seek to resolve the Dispute.

8.3 A party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause, provided that nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

8.4 Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Agreement and any related agreements.

## 9 FORCE MAJEURE

9.1 Neither party shall be liable for any failure or delay to performance of obligations under this Agreement if such failure or delay results from any cause that is beyond the reasonable control of that Party including power failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

9.2 In the event that any party cannot perform their obligations hereunder as a result of force majeure for a continuous period of 2 months, the other party may at its discretion terminate this Agreement by written notice at the end of that period.

## 10 LIABILITY

10.1 Climb Online does not guarantee traffic to the Website or any specific results from the Services. This Agreement is not a service level agreement.

10.2 To the extent permitted by law, by accepting the Services, Client acknowledges and represents that Client is not a consumer and no refund is payable in any circumstances whatsoever.

10.3 Nothing in the Services or the Work constitutes any recommendations or advice from Climb Online regarding the marketing or promotion of the Client's products or services and any marketing campaign shall remain the Client's commercial decision in its absolute discretion.

10.4 To the extent permitted by law, Climb Online's liability for breach of this Agreement or otherwise in connection with access to the Website, the Services or the Work and any implied warranty or condition that cannot be excluded, is restricted at the option of Climb Online to the re-supply of services, payment of the cost of re-supply of services or the applicable Fees.

- 10.5** In no circumstances will either party be liable for any consequential or indirect damages, loss of profits, or any other similar or analogous loss resulting from the Services or the Work, whether based on warranty, contract, tort, negligence, in equity or any other legal theory.
- 10.6** The Client shall indemnify Climb Online for, and hold it harmless against any loss, damage, costs, expenses, liability, deduction, contribution, assessment or claim (including reasonable legal and preparation costs) arising in connection with:
- (a)** any access to the Website;
  - (b)** any breach of its obligations under this Agreement;
  - (c)** any third party claims that may arise from the Services or any public disclosure or misuse of the Work; and
  - (d)** any tax, penalty, fine or interest incurred or payable in connection with the Services or in consequence of breach of this Agreement.
- 10.7** Climb Online may at its option satisfy such indemnity (whether in whole or in part) by way of deduction from any payments due to be paid to it under this Agreement.
- 10.8** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.
- 10.9** Nothing in this Agreement shall limit or exclude the liability of either party for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation.

## **11** TERMINATION, AMENDMENT AND ASSIGNMENT

- 11.1** This Agreement shall continue on a rolling monthly basis unless terminated by either party on written notice for the Notice Period, provided that either party may terminate summarily by giving the other party 60 days written notice if the other party:
- (a)** Has not remedied a breach after being given reasonable notice;
  - (b)** Has committed a breach incapable of remedy;
  - (c)** Is insolvent, bankrupt or otherwise incapable of paying its debts; or
  - (d)** Has a controller, receiver or other administrator appointed.
- 11.2** Upon termination of this Agreement, Client must pay for any outstanding Fees and charges payable under this Agreement and the parties acknowledge that any accrued rights shall not be affected and shall survive as necessary for enforcement and discharge of such liabilities.
- 11.3** This Agreement can only be amended, supplemented, replaced or novated by another agreement executed by the parties.
- 11.4** Climb Online may assign or subcontract its obligations under this Agreement. Client may only assign or otherwise create an interest in their rights under this Agreement with the written consent of Climb Online.

## **12** ELECTRONIC COMMUNICATION & NOTICES

- 12.1** In this clause, '**electronic communication**' has the meaning given to that term in Electronic Communications Act 2000 and the Electronic Signatures Regulations 2002.

**12.2** The parties acknowledge and agree that this Agreement if executed (including digitally or by counterpart) and conveyed by electronic communication. A consent, notice or communication under this Agreement is effective if conveyed by electronic communication and must be sent to the parties' contact details as specified in item A of the Particulars.

**12.3** Each party may be required to provide an original of such agreement or counterpart as soon as reasonably possible following request.

## **13** GENERAL

**13.1 Interpretation.** Headings are only for convenience and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) The singular includes the plural and the opposite also applies.
- (b) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (c) A reference to a clause refers to clauses in this Agreement.
- (d) A reference to legislation is to that legislation as amended, reenacted or replaced, and includes any subordinate legislation issued under it.
- (e) Mentioning anything after includes, including, or similar expressions, does not limit anything else that might be included.
- (f) A reference to a party to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (h) A reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (i) A reference to pounds or £ is to an amount in Great British Pounds.

**13.2 Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.

**13.3 Relationship.** The relationship of the parties to this agreement does not form a joint venture, partnership, employment, trust or agency.

**13.4 Third party rights.** A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce this Agreement, provided that this clause does not affect a right or remedy of a person which otherwise exists or is available.

**13.5 Waiver.** No clause of this agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy.

**13.6 Further Action.** Each party must do anything reasonably necessary (including executing agreements and documents) to give full effect to this Agreement, including in connection with any claim or proceedings brought against a part as a result of any breach of this Agreement.

- 13.7 Liability for Expenses.** Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this Agreement.
- 13.8 Inconsistency.** If this Agreement is inconsistent with any other preceding document or agreement between the parties, this Agreement prevails to the extent of the inconsistency.
- 13.9 Counterparts.** This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.
- 13.10 Severability.** Any clause of this Agreement, which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.
- 13.11 Governing Law.** This Agreement is governed by the laws of England & Wales. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction in England.

**END GENERAL CONDITIONS**