



SMARTCONTENT

SMART DIGITAL ONLINE LTD trading as SMART CONTENT & www.smart-content-online.com

TERMS AND CONDITIONS

This document, the order form, the payment schedule and all other documentation provided by Smart Content clearly identify and state the terms and conditions on which Smart Content supply any of their products or services to their clients or resellers in their current product portfolio, whether the products are listed on the website www.smart-content-online.com or not.

Clients should understand that by signing an order form and ordering any one of the Smart Content products or services, they agree to be bound by these terms and conditions, for that reason, please read this document carefully before confirming your order and request confirmation on any questions that you have prior to your order being signed. Smart Content recommends that you print a copy of these terms and conditions for your future reference.

You confirm that you accept these terms and conditions by either making a payment for any one of the Smart Digital Online Ltd or trading as companies, products and services and/or by signing the order form provided by your Account Manager and returning it by either email or by fax to 0870 298 9551 or by posting it to:

Smart Digital Online Ltd
Unit 9a
Great Western Railway Yard
St Agnes
Cornwall
TR5 0PD

Please understand that if you refuse to accept these terms and conditions, and a compromise cannot be successfully agreed between our legal representatives then Smart Content reserve the right to not accept an order from you.

www.smart-content-online.com is a website operated by Smart Digital Ltd (company no. 06055984 VAT no. 902333466) (**We, Us or Smart Content**) of Unit 9A, Great Western Railway Yard, St Agnes, Truro, TR5 0PD.

1. Interpretation and Definitions

1.1 In this agreement the following terms shall have the respective meanings assigned to them:

"**Agreement**" means these terms and conditions, the payment terms, the order form, the reseller agreement and the NDA. In the event of any conflict between the terms of this agreement, the details of the order form shall prevail, except for payment terms where the payment schedule shall prevail;

"**The customer**" means the company its employees, agents, representatives and sub contractors, to whom the product or service is provided as set out on the order form;

"**Commencement Date**" means the date of commencement of the Services as set out on the order form;

"**Fees**" means the amounts payable by the Customer for the Services provided by Smart Content as set out in the Order Form;

"**Force Majeure**" means any act, event, omission or accident beyond reasonable control including but not limited to Acts of God, fire, lightning, explosion, flood, extreme weather conditions, outbreak of hostilities (whether war be declared or not), riot, civil disorder or commotion, acts of terrorism, industrial disputes or acts or defaults of any local or central Government or other competent authority;

"**Initial Term**" unless otherwise stated on the Order Form [one] year from the Commencement Date





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"**Order Form**" means the customers agreed schedule for the provision of Services forming part of these terms and conditions;

"**Payment Schedule**" means the agreed schedule of payments that the customer shall make to Smart Content for the Services forming part of these terms and conditions;

"**product or service**" means the services to be provided by Smart Content as specified in the order form;

"**Intellectual Property Rights**" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;

"**Service Specification**" means a statement of work, quotation or other similar document describing the services to be provided by Smart Content;

"**Smart Content**" means supplier; Smart Digital Group Limited, Unit 9A Great Western Railway, St Agnes Truro, TR5 0PD

1.2 The headings do not affect the interpretation of the Agreement.

1.3 Any reference to a party's employees includes its agents and sub-contractors.

2. Application of the Terms

2.1 These terms and conditions shall apply to and be incorporated in the Agreement.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Agreement shall be binding without exception, unless agreement in writing and signed by a duly authorised representative of Smart Content.

2.3 If the customer wishes to vary any part of the Agreement, the request shall be sent in writing to Smart Content Ltd prior to the order form being signed. Smart Content shall respond to the customer within 5 working days as to whether it is prepared to agree to the change and, if so, details of the cost of the change, any effect on any other part of the Agreement including any change in timescales. The customer may accept such proposal within such time as Smart Content may specify or, if none, within 7 days, failing which it shall be deemed rejected. Pending acceptance or rejection Smart Content may continue to perform the Agreement without reference to the request.

3. Contractual terms

3.1 Any quotation is valid for a period of 7 days only, unless otherwise specified, and Smart Content may withdraw any part of a quote, at any time by notifying the customer. Any quotation is given on the basis that no contract shall come into existence until we receive an acknowledgement of order in accordance with clause 3.3.

3.2 Each order or acceptance of a quotation for products or services by the customer shall be deemed to be an offer by the customer subject to these conditions. The customer shall ensure that its order is complete and accurate.

3.3 No order for products and services placed by the customer shall be deemed to be accepted by Smart Content until a written acknowledgement and payment (including email) is received by Smart Contents, or, if earlier, when Smart Content begins to provide the products and services to the customer.

3.4 No agreement may be cancelled by the customer, except with the prior agreement in writing of Smart Content and provided that the customer indemnifies Smart Content in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Smart Content as a result of the cancellation.

3.5 Smart Content's employees are not authorised to make any contractually binding representations concerning the Services. In entering into the Agreement, the customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of Smart Content.

3.6 Contract Cancellation – With the consent of a Smart Content Director, 12 month contracts may be allowed to be cancelled with 60 days prior written notice being sent by the customer and received by Smart Content. Upon cancellation 50% of the remaining contract balance will be payable by the customer. PLEASE note: Web content design contracts will not be allowed to be cancelled under any circumstances, only products relating to 12 month terms will be considered to be allowed to be cancelled.



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3.7 Any services provided and already delivered as part of a contract bonus or services that were agreed to be provided at a discount due to the client commitment to a contract term, will be invoiced at the full rate card amount if the contract term is not completed in full. The difference between the rate the client paid and the full rate card amount will be invoiced by Smart Content and difference payable by the customer.

4. Customer's obligations

4.1 The customer will provide Smart Content with reasonable direct and remote access to its website and shall provide such other reasonable assistance as Smart Content may request.

4.2 The customer shall comply with directions and advice from Smart Content within a reasonable period.

4.3 The customer shall not interfere or disrupt the Service.

5. Implementation of Service

5.1. In consideration of the payment by the customer of the fees in accordance with clause 11, Smart Content shall provide the products and services during the continuance of this Agreement.

5.2. Smart Content shall be permitted to subcontract or outsource any of the products and services or obligations under this Agreement.

5.3. Smart Content will use reasonable efforts to provide customers with the products and services in accordance with the estimated timeline set out in the order form.

5.4. Where the product or service being provided requires, Smart Content will liaise with the relevant web agency, hosting company or other third party in order to provide the product or services. Smart Content shall not be liable for any act or omission by the relevant web agency, hosting company or other third party, if such act or omission results in Smart Content breaching its obligations under this agreement.

5.5. Smart Content will not make changes to or update a customer's website prior to written or verbal consent from the customer, stating that Smart Content have the right to make the agreed changes and the Customer, as the website owner, agrees to and takes full responsibility for those changes being made.

6. Services

6.1 Smart Content offers no guarantee for the business generated by the Content products either onsite or on external sites

6.2 Smart Content write content for clients website or about the clients business on behalf of the client and to specification agreed by the client. It is the clients responsibility to add or not, any of the content submitted by Smart Content to their website.

7 Exclusions from products and services

7.1 When Smart Content is required to integrate with third party software Smart Content are in no way responsible for the 3rd party service level.

7.2 Bespoke content packages are signed off as agreed plans before the work begins. Any subsequent changes thereafter that diversify from the plan are chargeable and quoted for on an individual basis prior to that change being agreed as part of the contract between the parties.

8. Contract Term

8.1 The Services shall commence on the commencement Date and shall remain in force from year to year thereafter, unless and until terminated by either party giving 60 days notice expiring at any time after the end of the initial term or otherwise in accordance with clause 3.6 and any other clause stated in this contract

9. Payment

9.1 The customer shall pay the fees without set-off, deduction or delay, monthly in advance in the manner specified in the payment schedule. All prices are exclusive of VAT. No products or services shall be provided until payment has been received by Smart Content, unless Director Approval has been obtained. Smart Content shall be entitled at any time, and from time to time, to increase the fees to accord with any change in Smart Content's standard scale of charges by giving to the customer not less than [90] days' prior written notice.

9.2 If Smart Content provides any services not included within the Services at the request of the customer then Smart Content shall charge for the same at its then current price and the customer shall pay any invoice raised in respect of the same within 30 days.

9.3 The date for payment of Smart Content's invoices shall be of the essence of the Agreement.



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9.4 If the customer fails to make payment in full on the due date, the whole of the balance of the fees then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to Smart Content, all guarantees are null and voided and Smart Content may:

- I. appropriate any payment made by the customer to any outstanding sum;
- II. Charge interest on the amount outstanding from the due date to the date of receipt by Smart Content (whether or not after judgment), at the annual rate of 4% above the then current base lending rate of Barclays Bank plc, accruing daily and compounded quarterly; and
- III. Suspend all further delivery of services until payment has been received in full.

9.5 The Fees are not refundable, except where otherwise stated herein.

9.6 Cheques and direct debits returned unpaid by the customer's bank and credit card payments returned unpaid will incur an administration charge which under all circumstances shall be paid by the customer.

9.7 All legal fees incurred by Smart Content related to collecting late payments will be added to the invoice and charged accordingly to the customer without exception

9.8 If payments are delayed during the signing off process, then Smart Content will not launch the agreed content services as live, until the payment is made.

9.9 If payments are overdue on existing websites for upgrades and any other bespoke or standard work then Smart Content reserve the right to take the action required to collect the debt before the work is implemented.

10. Termination or suspension of service

10.1 Smart Content may, at its sole discretion, suspend the services or terminate this Agreement if the customer;

- I. Fails to pay any sum due under this agreement and such sum remains unpaid for 14 days after written notice from Smart Content that such sum has not been paid;
- II. Ceases to carry on business or become insolvent, or have an administrator or receiver appointed or enters into liquidation or enter into any agreement with its creditors; or
- III. Failed to fulfil any of its obligations under any part of this or any other agreement that it has with Smart Content; or
- IV. Interferes with or impairs the products or service, or Smart Content's ability to deliver the products or services.

10.2 Termination of the Agreement, 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.

11. Dispute Resolution Procedure

11.1 If any dispute arises in connection with this agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, meet promptly or arrange a teleconference in good faith to resolve the dispute.

11.2 If the dispute is not resolved in accordance with conditions set, then Smart Content will refer the dispute, to be appointed, in default of agreement, on the request of either party to the English Courts. In any claim Smart Content will submit a claim for interest in accordance with section and all legal costs associated to the claim against the customer.

12. Data Protection Act

12.1 If any Personal Data (as defined by the Data Protection Act 1998) is passed to Smart Content under this Agreement then the parties agree that the customer is the Data Controller and that Smart Content is the Data Processor.

12.2 The customer warrants that it complies with the Data Protection Act 1998

12.3 Smart Content shall:

- I. Process the Personal Data only in accordance with instructions from customer;
- II. Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the services or as is required by Law or any Regulatory Body;
- III. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing or loss, destruction, damage, alteration or disclosure; and
- IV. Take reasonable steps to ensure the reliability and confidentiality of any of Smart Content's personnel who have access to the Personal Data.



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13. Limitation of liability

13.1 The following provisions set out the entire liability of Smart Content (including any liability for the acts or omissions of its employees) to the customer in respect of any breach of the Agreement and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Agreement.

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

13.3 Nothing in these conditions excludes or limits the liability of Smart Content for death or personal injury caused by Smart Content's negligence or fraud or fraudulent misrepresentation. Subject to:

I. Smart Content shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and

II. Smart Content's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to 100% of the total fees received by Smart Content in the calendar year in which the incident occurs.

13.4 The provisions of this Clause 15 shall continue to apply notwithstanding the termination or expiry of this Agreement.

13.5 Smart Content will not be liable for any links being removed by a third party or any penalties incurred by customers.

14. Confidentiality (NDA)

14.1 Save as provided in this Agreement each party 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 by one party to the other. Each party shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging its obligations under the Agreement and shall ensure that such employees are subject to corresponding obligations of confidentiality.

14.2 All materials, drawings, specifications and data supplied by Smart Content to the customer shall at all times be, and remain, the exclusive property of Smart Content, but shall be held by the customer in safe custody at its own risk until returned to Smart Content, and shall not be disposed of or used other than in accordance with Smart Content's written instructions or authorisation.

14.3 This condition shall survive termination of the Agreement, however caused.

14.4 Points agreed via a separate 'Non Disclosure agreement' are agreed in addition to this agreement, not in replace of this agreement.

All code and work created by Smart Content remains the Intellectual Property of Smart Content.

15. Non-Solicitation

15.1 Neither party shall, during the continuance of the Agreement, or within 6 months of its termination, whether on behalf of itself or via a third party, solicit or seek to entice away any employee of the other. In the event of breach of this clause the party in default shall pay the other a sum equal to six months gross pay of the employee concerned being a pre-estimate of the cost of recruitment and training a replacement.

16. Force Majeure

16.1 Smart Content shall not be liable to the customer for any breach of its obligations under this the Agreement if such breach is due to or substantially contributed to a Force Majeure event.

16.2 If a Force Majeure event occurs, Smart Content shall inform the customer as soon as possible and take all reasonable steps to mitigate the effects of the Force Majeure event and resume performance

17. Waiver

17.1 A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

18 Entire Agreement

18.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.



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18.2 Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.

18.3 In the event of any part of this Agreement being held inapplicable or unreasonable, the remainder of the Agreement shall remain in full force and any clause held inapplicable or unreasonable shall be enforced to the fullest extent possible.

19. Assignment

19.1 The customer shall not, without the prior written consent of Smart Content, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

19.2 Smart Content 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 Agreement.

20. Third party rights

20.1 The Agreement 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.

20.2 The Client shall indemnify Smart Content against all claims, costs and expenses which Smart Content may incur and which arise, directly or indirectly, from the Client's breach of any of its obligations under this Agreement, including any claims brought against Smart Content alleging that any services provided by Smart Content in accordance with the Proposal/Order Form infringes a patent, copyright or trade secret or other similar right of a third party.

21. Notices

21.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall be sent by email or delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in these conditions, or, in each case, such other address as may be notified by one party to the other.

21.2 A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 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. An e-mail shall be deemed to have been delivered within 24 hours from the time of being sent, provided that no "non deliverable" notices is received by the sender.

22. Governing law and jurisdiction

22.1 The Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.

23. Partners including resellers and referrers

23.1. All partners agree to this agreement as well as the relevant partner agreements.

23.2 Partners or Agents do not represent, are not authorised to sign anything on behalf of or agree terms on behalf of, contract for or agree either verbally or in writing any for Smart Content.

23.3 If a customer is refunded in part or in full for fees paid for products and services from Smart Content then any commissions paid due to that contract will be clawed back from the partner or agent without discretion.

24. Changes to this Agreement

24.1. Smart Content may modify this Agreement where it is required to do so, by notifying the customer in writing and giving 30 days notice where possible. This would include where changes to the law, rules applied by other authorities which require Smart Content to modify its procedures, policies or services.

24.2. Smart Content may at any time modify this Agreement for new customers by publishing a new agreement on its website.