

1. Applicability

Unless otherwise agreed in writing, the following terms and conditions together with any proposal or quotation (collectively the "Agreement") shall apply to the purchase and sale of all Web Clare Deliverables to Customer.

2. Definitions

"Additional Work" means changes requested by Customer and may include work arising as a consequence of changes in industry best practice regarding Websites or SEO.

"Business Hours" means Monday through Friday (excluding public and bank holidays) during the normal business hours in Ireland.

"Country of Interest" is deemed to be Ireland except where the Customer advises Web Clare that the Services are to be targeted in relation to a country other than Ireland in an Order.

"Deliverables" means any and all Services and/or Support provided to a Customer under an Order.

"Force Majeure" means causes outside the reasonable control of a Party that cannot be avoided by the exercise of reasonable care, including but not limited to: (a) governmental actions, orders, legislation, regulations, restrictions or rationing; (b) riots, civil disturbances or disobedience, epidemic, quarantine, acts of terrorism or war; (c) strikes, lockouts or shutdowns; (d) shortages of labour or supplies, interruption or lack of transportation, embargo or prohibition of imports or exports; or (e) fire, flood, hurricane, earthquake, storm, lightning, explosion, acts of god or of a public enemy.

"Order" means Customer's written or electronic offer to purchase Deliverables.

"Party" or **"Parties"** means, individually or collectively, Web Clare and Customer.

"Service(s)" means any work that Web Clare performs for Customer, as stated in the Web Clare proposal or quotation to which the Order refers.

"Delivery" means delivery of the Deliverables by Web Clare to the Customer.

"Search Engine" unless otherwise agreed in writing the search engine to which the Services will be focused is Google™ in Ireland.

"SEM" means search engine marketing.

"SEO" means search engine optimization.

"SEO Campaign" means the Services provided after the initial selection of keywords is made by the Customer at the commencement of this Agreement.

"Support" means maintenance Services pertaining to maintaining the Website.

"Support Fee" means the fee that Customer is obliged to pay in order to receive Support during each Support Term.

"Support Term" means the period, as stated in the Web Clare proposal or quotation to which the Order refers, during which Customer is entitled to receive Support.

"Supported Product" means the Website or online presence (where applicable) for which Customer purchases Support.

"Web Clare" means the provider with its business address at Beech Park House, Smithstown, Shannon, Co. Clare, V14 YR20, Ireland.

"Website" means: (a) the website under the exclusive control of Customer; and/or (b) the website that is subject to receive the Services.

3. Pricing and Payment

3.1. Upon acceptance of an Order, Web Clare agrees to perform the Services for the Customer for the Price plus any applicable value added tax at prevailing rates ("VAT") as set forth in a relevant proposal or quotation.

3.2. Unless otherwise agreed in a proposal or quotation to the Customer, payment terms are:

3.2.1. **SEO Services:** via monthly direct debit as set out in Section 3.3;

3.2.2. **Website design:** via bank transfer (a) deposit payment (in advance), which must be cleared prior to the commencement of work; and (b) final payment, which must be cleared in advance of final delivery;

3.2.3. **Support Services:** via monthly direct debit as set out in Section 3.3.

3.3. The Price plus VAT is payable by direct debit as stipulated by Web Clare on the start date set forth in a proposal or quotation ("Start Date") and on the first day of each calendar month thereafter until the Agreement has expired or is terminated in accordance with Section 9 herein.

3.4. All work requested by the Customer in addition to the Services which Web Clare agrees to perform ("Additional Work") will incur charges ("Charges") additional to the Price plus VAT. Unless otherwise agreed in writing:

3.4.1. €50 plus VAT per keyword to change any keyword once the campaign has commenced;

3.4.2. €100 plus VAT per hour for any Additional Work, calculated in thirty (30) minute blocks;

3.4.3. Charges are payable on the first day of each calendar month in the same manner and time as the Price plus VAT; and

3.4.4. the terms of this Agreement will apply to any Additional Work.

3.5. If payment is past due, then Web Clare may suspend its supply of the Deliverables. Interest on past-due amounts shall accrue at the lesser of one-and-one-half percent (1.5%) per month or the highest rate permitted by law. Customer payments will be applied first against any accrued interest. Customer acknowledges and agrees that Web Clare may, at any time in its sole discretion and without prior notice, sell or transfer to third parties any receivables from Customer, whether in whole or in part.

4. Delivery

- 4.1. Web Clare will use commercially reasonable endeavours to abide by dates agreed for delivery of material to Customer. Customer agrees to supply materials to Web Clare in order for Web Clare to perform the Deliverables covered by this Agreement (where relevant) in advance of the Start Date. Web Clare will not be liable where failure to deliver is caused by a Customer delay in providing relevant materials.
- 4.2. Web Clare will not be responsible for any delay or failure to deliver material under this Agreement caused by Force Majeure. Where such delay occurs our obligations under this Agreement shall be suspended for the period of such delay, subject to Section 12.4.

5. Warranties

- 5.1. Web Clare warrants:
 - 5.1.1. the Deliverables for a period of fourteen (14) calendar days from delivery to Customer. Where the Customer does not confirm acceptance of the Deliverables within fourteen (14) calendar days from delivery, in writing, the Deliverables are deemed accepted by Customer. Where the Deliverables are rejected by Customer within fourteen (14) calendar days from delivery, whether in whole or in part, Web Clare shall endeavour to correct the Deliverables to ensure compliance with this Agreement.
 - 5.1.2. The aforementioned warranty does not extend to any Deliverables modified by anyone other than Web Clare.
 - 5.1.3. THE WARRANTIES IN THIS AGREEMENT ARE THE CUSTOMER'S SOLE REMEDY AND EXPRESSLY IN LIEU OF ALL OTHER CONDITIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR OF NON-INFRINGEMENT AND ALL OTHER OBLIGATIONS AND LIABILITIES OF WEB CLARE, EACH OF WHICH ARE HEREBY DISCLAIMED, WITH RESPECT TO ANY DEFECT OR DEFICIENCY APPLICABLE TO OR RESULTING DIRECTLY OR INDIRECTLY FROM, THE DELIVERABLES SUPPLIED HEREUNDER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE.
- 5.2. The Customer warrants that:
 - 5.2.1. the execution and delivery of this Agreement has been properly authorised;
 - 5.2.2. it has full power to execute, deliver and performs its obligations under this Agreement;
 - 5.2.3. this Agreement constitutes a legal, valid and binding obligation enforceable in accordance with its terms by appropriate legal remedy;

- 5.2.4. this Agreement does not conflict with or result in the breach of or default under any provision of its constitution, trust deed, or any material term or provision of any law or regulation to which it is a party or subject or by which it is bound;
- 5.2.5. there are no actions, claims, proceedings or investigations pending or threatened against it or by it of which it is aware and which may have a material effect on the subject matter of this Agreement.
- 5.2.6. the Website will be hosted on a reliable server located in the Country of Interest;
- 5.2.7. the Website will be online and functional at all times for Services related to SEO;
- 5.2.8. it will provide Web Clare with all information necessary to allow Web Clare to access the Website to perform the Services;
- 5.2.9. it will as soon as practicable inform Web Clare of all changes to the Website, including but not limited to passwords and content;
- 5.2.10. it will abide by the terms of the direct debit agreement between the Customer, Web Clare and the direct debit service provider nominated by Web Clare;
- 5.2.11. it will not engage any other party to provide any part of the Services in relation to the Website during the term set out in an Order;
- 5.2.12. it will comply with all relevant laws and regulations relating to the Website, including but not limited to GDPR (REF) and further that the Website will not contain any material that is illegal or unethical, including but not limited to racism, pornography, breaches of privacy, harassment, computer viruses, breaches of copyright or trademarks or incitement of any illegal or unethical activity;
- 5.2.13. to the best of its knowledge, any SEO or SEM applied to or in relation to the Website prior to this Agreement has not utilised any dishonest, unethical or illegitimate techniques or accepted methods.

6. Customer's Acknowledgements

- 6.1. The Customer acknowledges that:
 - 6.1.1. it should add fresh, relevant content to the Website regularly in order to maximise the beneficial effect of the SEO Services;
 - 6.1.2. any unavailability of the Website will adversely affect its ranking and the benefit of the SEO Services;
 - 6.1.3. the Customer's liability to pay for the Services is not affected in any way by the failure of Web Clare to provide the Services by reason of the unavailability of the Website, invalidity of FTP or CMS information;

- 6.1.4. the efficacy of the Services is dependent upon the decisions, algorithms and indexing of third-party search engines which are beyond the control of Web Clare;
- 6.1.5. Website ranking is subject to the activities of the search engines, competitor website operators and competitor keyword advertisers/users and the effect of those activities is beyond the control of Web Clare;
- 6.1.6. Web Clare makes no representation or warranty that the Website will achieve or maintain any specific position or ranking.

7. Indemnity

The Customer hereby unconditionally and irrevocably agrees to indemnify and keep indemnified Web Clare and its officers, employees and agents against any and all actions, claims, demands, losses, liabilities or costs (including legal costs) which arise or result from or are connected in any way with the Services.

8. Limitation of Liability

- 8.1. If the Customer is a "consumer" for the purposes of the Ireland Consumer Law, certain guarantees may be conferred on the Customer and certain rights and remedies may be conferred on the Customer which cannot be excluded, restricted or modified. If so, then to the maximum extent permitted by law the liability of Web Clare to the Customer is limited, at the option of Web Clare, to the resupply of the services or payment of the cost of re-supplying the services.
- 8.2. The liability of Web Clare to the Customer for negligence and breach of contract is limited to the cost of replacing the relevant part of the Services.
- 8.3. To the maximum extent permitted by law, Web Clare excludes all representations, warranties or guarantees whether express or implied by statute, trade or otherwise.
- 8.4. IN NO EVENT SHALL WEB CLARE HAVE ANY LIABILITY TO CUSTOMER UNDER OR IN CONNECTION WITH AN ORDER FOR ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF CONTRACTS, LOSS OF ANTICIPATED SAVINGS, NETWORK DOWNTIME, COST OF CAPITAL, COST OF SUBSTITUTE FACILITIES OR EQUIPMENT, OR LOSS OR CORRUPTION OF DATA, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE LOSS OR DAMAGES, EVEN IF WEB CLARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES OR CLAIMS MADE AGAINST THE CUSTOMER FOR ANY SUCH LOSS OR DAMAGES.

9. Termination

- 9.1. Deliverables may not be terminated in whole or in part by the Customer without the prior written consent of Web Clare. Upon termination, payment for all Deliverables provided up to the effective date of such termination will immediately become due and payable, despite any credit arrangements or facilities previously granted to Customer. Web Clare may also retain any

security given or monies paid by Customer and apply this against the assessed loss and damages incurred by Web Clare in performance of this Agreement. Termination is not an exclusive remedy.

- 9.2. This Agreement shall continue until performance of the Services set out in the proposal or quotation is completed. Annual Services may be terminated on three months' notice by either Party given at any time to expire on the anniversary of the Start Date or any subsequent anniversary of such Start Date as provided below.
- 9.3. Where one Party is in breach of this Agreement the other may serve written notice to terminate the Agreement forthwith, save that where the breach can be remedied. Thirty (30) days notice to remedy shall first be given and where remedied such termination will not take effect.
- 9.4. The Customer will breach this Agreement if it:
 - a. fails to pay any part of the Price or Charges when due; or
 - b. contravenes any of its obligations in Sections 5, 6, 7, 10 or 11.

Upon termination for breach, Customer's rights to use the Supplies shall cease and Customer shall retain no copies thereof.

- 9.5. Either party may terminate this Agreement forthwith by written notice where the other goes into liquidation or is declared bankrupt or otherwise is unable to pay its debts as they fall due.
- 9.6. On termination by Customer for breach or bankruptcy Web Clare shall send Customer, in accordance with Customer's reasonable directions, any material relating to the Website (where relevant) then in Web Clare's possession or control and the licence to use the Supplies shall continue without limit as to time.

10. Intellectual Property Rights

- 10.1. "Supplies" means all data, information, programs and other materials and software which Web Clare provides to Customer, but does not include any material which Web Clare obtains from Customer.
- 10.2. Web Clare confirms that to the best of its knowledge and belief the Supplies are original to Web Clare. Web Clare cannot be, and are not, responsible for compliance of the Supplies with laws of all jurisdictions of the world to which users of any relevant Website have access. It is Customer's responsibility to satisfy itself of such compliance.
- 10.3. Web Clare grants Customer a non-exclusive licence to the intellectual property rights, including, without limitation, copyright and related rights anywhere in the world, in the Supplies for the duration of this Agreement for the purposes of use on Customer's Website or otherwise as agreed in writing from the date of Customer's acceptance of the Supplies. For the avoidance of doubt, where Customer wishes to use the Supplies in any other form (such as on a CD) than as set out in this Agreement, Customer must agree terms with Web Clare in advance and make payments to be

agreed between the Parties. Web Clare reserve the right to veto any use outside the scope of this licence.

- 10.4. Web Clare assert its moral rights in the Supplies and Customer confirms that it shall not alter, reuse or otherwise exploit or jeopardise the artistic integrity of the Supplies without the prior written consent of Web Clare.
- 10.5. Customer shall ensure that any copyright notice of Web Clare shall not be removed or obscured on the Supplies.
- 10.6. Where Customer is licensed with computer software under this Agreement such licence shall be in object code version of the software only and Customer shall not reverse engineer or decompile such software save as permitted under EU Directive 91/250.
- 10.7. Intellectual property rights in any authorised improvements to the Supplies made by Customer shall be licensed to Web Clare on an exclusive basis, where such improvements are non-severable from the Supplies and on a non-exclusive basis for severable improvements. You will keep Web Clare informed of such improvements.
- 10.8. Where Web Clare supply Supplies to you on portable media (such as a disk drive, CD, etc.), Web Clare retain ownership of the portable media and no hire of the portable media shall occur.
- 10.9. The termination of this Agreement shall not affect the provisions of this Section 10 which shall continue thereafter.

11. Confidential Information

- 11.1. Any information about either Party or about the Parties products or financial or business information shall be treated as confidential, used only for the purpose of performance of obligations under this Agreement and not disclosed save as permitted under this Agreement, without limit as to time. Provided that information in the public domain otherwise than through the default of the other party shall not be deemed confidential under this clause.
- 11.2. The termination of this agreement will not affect this clause.
- 11.3. Web Clare shall be entitled to make reference to the Parties relationship in Web Clare's publicity material.

12. General

- 12.1. This Agreement states all the promises, agreements and conditions regarding its subject matter, supersedes all prior understandings (whether written, oral or otherwise) and constitutes the entire agreement between the Parties. If any provision of this Agreement shall for any reason be held to be unenforceable (in whole or in part) in any respect, then such unenforceable provision (or part thereof) shall be construed as if it had never been contained herein. Unless the Parties have mutually executed an agreement governing the purchase of Deliverables

subject to the Order, all Orders shall be fulfilled strictly in accordance with the terms and conditions of this Agreement, and no other terms and conditions shall apply.

- 12.2. Customer shall not assign or transfer this Agreement or any interest in the foregoing except with Web Clare's prior written consent.
- 12.3. Web Clare and Customer are each engaged in an independent business. Each Party shall perform its obligations as an independent contractor and not as the agent, employee or servant of the other Party. Each Party shall be solely responsible for: (a) the employment, direction, supervision, compensation and discharge of its own employees, agents and subcontractors, including compliance with social security, withholding and all other applicable regulations; and (b) its own acts and those acts of its employees, agents and subcontractors.
- 12.4. Any failure by either Party to fulfill any of its obligations shall not be deemed a breach of this Agreement if that failure is due to Force Majeure. Notice of Force Majeure shall be made promptly in writing to the other Party. The performance of a Party's obligations under this Agreement shall be suspended for as long as Force Majeure exists. Each Party shall take reasonable steps to limit the effect of Force Majeure. If Force Majeure continues for more than sixty (60) days, then either Party shall have the right to terminate this Agreement upon written notice.
- 12.5. No changes or additions to this Agreement shall be effective unless in writing and signed by Web Clare's authorized representative. Web Clare's failure to insist upon strict adherence to any term or condition of this Agreement shall not be a waiver by Web Clare of its right to thereafter insist upon strict adherence to that, or any other, term or condition.
- 12.6. Any provision of this Agreement that, given its purpose, interpretation or context, logically should survive the expiration or termination of this Agreement shall so survive.
- 12.7. This Agreement shall be governed by Irish law and the Parties submit to the exclusive jurisdiction of the Irish courts in relation to any dispute under this Agreement.
- 12.8. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act shall not apply to any transaction entered into between the Parties.
- 12.9. Any strategic plans provided to Customer in connection with the Agreement are indicative only. Any information referred to in a strategic plan is not intended to imply a binding commitment. The strategic plan represents reasonable time and plan estimates, based on Web Clare's current understanding of existing standards, technologies and market situations. These strategic plans may therefore change in the future.