

Website Client Service Agreement

Business Terms & Conditions



This page (together with our Privacy Policy, Conditions of Use and our Cookies Policy) gives you information about Invincible Media Limited, trading as "Invincible Media" ("we" / "us") and these legal terms and conditions ("Terms and Conditions") on which we provide our products (including add-on products) and services to you.

These Terms and Conditions will apply to any contract between us and you for the supply of our products and services. Please read these Terms and Conditions carefully before ordering any products or services from our us. These Terms and Conditions, and any Contract between us, are only in the English language.

These Terms and Conditions are effective from 01/07/2020.

1. Definitions

1.1 In these Terms and Conditions:

- a) Business Day means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
- b) Charges means our charges for providing our products and services, including the Website Package;
- c) Component means each individual component of the Website Package as further described in Clause 4;
- d) Congratulations e-mail means an e-mail that we issue to you, to confirm publication of your Website;
- e) Contract means the contract between you and us for the supply of our products and services, including these Terms and Conditions and the Website Package;
- f) Eligibility Criteria means the criteria set out in Clause 3, as may be amended by us from time to time, that you must meet and continue to meet in order to be eligible to purchase our products and services;
- g) Initial Term has the meaning set out in Clause 5.4;
- h) Intellectual Property Rights means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered, which subsist or will subsist now or in the future in any part of the world and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- i) Sales Date has the meaning set out in Clause 5.3;
- j) Website means the website that we will build and publish for you in accordance with these Terms and Conditions;
- k) Website Content means any content, including any text, images, logos, videos or sound files that you provide to us for inclusion in the Website in accordance with these Terms and Conditions; and
- l) Website Package means our website package as further described in Clause 4.

2. Information About Us and Contact Details

2.1 Invincible Media Limited is a company registered in England and Wales under number 11397840, whose registered office is at Number Portland House, 113-116 Bute Street, Cardiff, UK, CF10 5EQ.

2.2 You may contact us by telephoning our customer service team at 029 2169 0028 or by e-mailing us at info@invinciblemedia.co.uk. If you wish to give us formal notice of any matter in accordance with these Terms and Conditions, please see Clause 13..

3. Eligibility Criteria

3.1 In order to enter into a Contract with us, you must be a business customer and not a consumer.

3.2 By entering into a Contract, you hereby warrant and represent to us that:

- a) you are purchasing our products and services solely for use in connection with your trade, business, craft or profession and not for your personal use; and
- b) you have authority to bind any business on behalf of whom you use our site to purchase products and services.

4. The Website Package and its Components

4.1 By using the Services, You agree to pay all associated set-up and subscription fees.

4.2 All set-up fees, one-time, monthly or annual, in connection with Services, including website design services are non-refundable.

4.2 Our Website Package is made up of the following six Components:

- a) An optional registered domain name: As part of our service, we purchase, manage, renew and host domains on our third-party servers on your behalf until the termination or expiry of our Contract with you.

You will be the registered legal owner of the domain name. You may, at any time, transfer the domain name to an alternative hosting solution at no additional cost, providing that you have no outstanding debts to us. We are not responsible for any third party charges incurred by transferring a domain name to an alternative hosting solution.

If you wish to change your domain name, we will need to register a new domain name at a current cost of £10 per domain name registered for one year from the date of registration.

If you do not renew your Contract with us in accordance with Clause 5 following the expiry of the Initial Term, we will not pay any renewal fees in respect of that domain name and will allow the domain name to expire. We cannot guarantee the continued availability of a particular domain name if registration lapses.

We are a Nominet registrar. For further information on domain names, please see Nominet's terms and conditions available here:

<http://www.nominet.org.uk/uk-domain-names/registering-uk-domain/legal-details/terms-and-conditions-domain-name-registration>.

- b) 1 separate professional e-mail forwarder: The Website Package includes 1 separate, individual e-mail forwarder. E-mail forwarders are created, managed and renewed by us. E-mail forwarding services on your domain name are available only during the term of your Contract with us. We are not responsible for the content and material sent or received in your e-mail account(s). It is your responsibility to manage your own e-mails and your own email disclaimer(s);

- c) Full hosting and maintenance services: We will host your Website on third party servers. You acknowledge that hosting systems, servers and equipment may from time to time be inoperative or only partly operational as a consequence of mechanical breakdown, maintenance, hardware or software upgrades, telecommunication connectivity problems or other causes outside the control of us or our third party hosting service providers.

In the event of any faults or issues that affect our ability to provide any part of the Website Package, we will, as soon as reasonably practicable: (i) notify you of the problem by e-mail; and (ii) arrange for the rectification of such faults or issues and the restoration of our services to full operational capacity.

Notwithstanding any language elsewhere in these Terms and Conditions, we and our subsidiary and holding companies and affiliates will not be liable for any delay or failure to perform any obligations where the delay or failure results from any cause beyond our reasonable control, including acts of God, labour disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, pandemic's or war.

- d) Website creation and publication: Subject to receipt of the Website Content in accordance with Clause 7, we will build and publish your Website. We will send you a Congratulations E-mail to notify you of your Website's publication;

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e) Listing of your Website: Your Website will be listed on the world's top search engines including Google. Once your Website is listed we are not responsible for its ongoing promotion.

You acknowledge that the order in which websites are ranked in the natural search results is controlled by the search engines. While we can optimise your site for this, we are unable to make any guarantees about the success of any search engine promotion activity.

f) Website Content changes: Once published, your Website will be treated by us as a fully functioning, completed work. However, you may make unlimited changes to the Website Content via our Content Management System (CMS). From an entitlement within the standard service package you are entitled to one professional change per month made by us to the Website Content, subject to any amendment to our Website Content changes fair use policy as provided or made available to you from time to time.

4.2 We may offer you certain add-on products in addition to the Website Package. We shall notify you of the specific terms relating to such add-on products at the time at which they are offered, including price, payment, delivery and cancellation, which shall apply to the provision of add-on products in addition to these Terms and Conditions.

4.3 Certain add-on products may not be available to all customers and, where we act as an intermediary in respect of third party add-on products, we shall not be liable for any damages, losses or expenses of any kind due to the use of such third-party add-on products.

5. Formation of the Contract and Duration

5.1 Where you make your order online, our shopping pages will guide you through the steps you need to take to place an order with us. Our order process allows you to check and amend any errors before submitting your order to us. Please take the time to read and check your order on each page of the order process. Where you make your order by telephone, email or face to face, our company representatives will guide you through the order process and will review your order with you before the process is concluded.

5.2 The Contract will remain in force for twelve (24) months from the Sales Date ("Initial Term"), subject to its monthly renewal in accordance with Clause 5.5 or its earlier termination in accordance with these Terms and Conditions.

6. Termination and Withdrawal

6.1. We may terminate all or part of the Contract with immediate effect by giving written notice to you if:

a) You commit a material breach of any of these Terms and Conditions which breach is irremediable or (if such breach is remediable) fail to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;

b) You repeatedly breach any of these Terms and Conditions in such a manner as to reasonably justify the opinion that your conduct is inconsistent with you having the intention or ability to give effect to these Terms and Conditions;

c) You cease or threaten to cease to carry on the whole or any part of your business or you are unable to pay your debts as they fall due;

d) Any step or action is taken in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on business, or if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

e) An administrator, receiver, manager or supervisor of a composition or scheme is appointed or applied for by you;

f) You undergo a change in control (other than as a result of reorganisation, amalgamation or reconstruction without insolvency);

g) You are the subject of a receiving order in bankruptcy (or in Scotland are sequestrated or in Northern Ireland are adjudicated bankrupt) or suffer execution, distress, any form of diligence or seizure

to be levied or effected on or against your premises, assets or effects; or

h) We suffer from any event or circumstance which is beyond our reasonable control or which we could not reasonably be expected to have taken into account at the Sales Date and which results in or causes our failure to perform any or all of our obligations under the Contract.

6.2 We may terminate our Contract with you with immediate effect upon written notice to you if we have upgraded, amended or disposed of the products and services to be provided to you thereunder such that we are unable to perform our obligations under the Contract. Upon such termination by us pursuant to this Clause 6.2, we shall seek to enter into a new Contract with you in respect of our upgraded, amended or new products and services. In the event we terminate the Contract pursuant to this Clause 6.2.

6.3 You are entitled to terminate the Contract by contacting our customer service team during the setup period of 30 days. We will provide you with written confirmation of your cancellation request. You will receive a full refund less any charges we have incurred in relation to the preparation for and publication (if applicable) of your Website.

6.4 We may withdraw any package product, or any promotional offer related to a package product, at any time without notice. Where we do so, we will honour any Contract for that package which has been formed prior to the date of the withdrawal.

7. Website Content and Intellectual Property Rights

7.1 You must provide us with all Website Content by the agreed deadline through the <https://my.invinciblemedia.co.uk/online> portal. We do not accept Website Content sent to us via post or facsimile.

7.2 You will retain all Intellectual Property Rights owned or licensed by you which are provided to us as part of the Website Content. We will retain all Intellectual Property Rights owned or licensed by us which are made available to you or used or developed by us in the course of the provision by us of our products and services.

7.3 You must obtain permission to use any third party Intellectual Property Rights that you provide to us as part of the Website Content. By entering into the Contract, you warrant that you have the legal right to provide such Intellectual Property Rights to us for the purposes of the Contract. We reserve the right to request evidence that such permissions have been obtained.

7.4 You shall indemnify us from and against all liabilities, costs, expenses, damages and losses (including without limitation any direct, indirect or consequential losses, loss of profit, loss of business or sales, loss of or damage to goodwill or our reputation and all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any actual or alleged infringement of any third party Intellectual Property Right relating to or in connection with the performance of our obligations under the Contract, except where such infringement arises from information or other materials or services provided by us.

7.5 Your Website Content, including any advertising of products or services related thereto, must comply and you undertake to provide that it will comply with any description and warranties made, all applicable law (including without limitation relevant advertising and broadcasting regulations, consumer credit legislation and the Trade Descriptions Act 1968), the Contract including these Terms and Conditions, and any of our standards for acceptable content provided or made available to you from time to time. We reserve the right (but undertake no duty) to make a determination as to whether your Website Content is in compliance with the above and we may immediately suspend or terminate services if we determine that such Website Content does not comply. If you are advertising goods in the course of your trade or business this must clearly be stated during the order process.

7.6 We may monitor your use of our products and services.

7.7 You shall indemnify us from and against all liabilities, costs, expenses, damages and losses (including without limitation any direct, indirect or consequential losses, loss of profit, loss of business or sales, loss of or damage to goodwill or our reputation and all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any breach by you of Clause 7.5 or otherwise in connection with the Website Content, except where such breach arises from information or other materials provided by us.

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8. Charges and Payment

8.1 This is a 24 month contract and:

a) For monthly Website Package customers, we will ask you to pay the total Charges for the Website Package in 24 equal monthly instalments or single lump sum at our sole discretion. The first instalment shall be made on the original date of sale and subsequent monthly instalments shall be paid every 30 days from the original sales date thereafter. Failure to pay a monthly Charge will result in the website and all services being suspended and the full outstanding balance of the remaining months will become due and payable immediately. Outstanding Charges will be passed to our collection agency.

b) interest may (at our sole discretion) be charged on any outstanding amounts owed to us at a rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment in full of the outstanding amounts, whether before or after judgment.

8.2 We reserve the right to adjust the Charges at any time if the cost to us in providing products or services to you increases.

8.3 Charges shall be in your local currency.

8.4 You can pay for our products and services using a credit, debit card or Direct Debit only.

8.5 If you cancel your Contract with us within the initial 30 day setup time limit specified in clause 6.3 above you will receive a full refund less any charges we have incurred in relation to the preparation for and publication (if applicable) of your Website.

8.6 Refunds requested in any other circumstances will be given solely at our discretion.

9. Liability

9.1 We only supply our products and services for internal use by your business, and you agree not to use our products and services for any resale purposes.

9.2 Nothing in these Terms and Conditions limits or excludes our liability for:

- a) death or personal injury caused by our negligence;
- b) fraud or fraudulent misrepresentation;
- c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- d) defective products under the Consumer Protection Act 1987.

9.3 Subject to Clause 9.2, we will under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- a) any loss of profits, sales, business, or revenue, including but not limited to any loss of profit suffered by you: (i) as a result of the expiration of the domain name where the Contract expires or is terminated in accordance with these Terms and Conditions; (ii) as a result of the expiration of the domain name resulting from a technical fault or any other fault caused by any third party; (iii) as a result of our services not being fully operational; (iv) as a result of Google Local accounts not being verified by you; or (v) the removal of the Website where the Contract expires or is terminated in accordance with these Terms and Conditions;
- b) loss or corruption of data, information or software;
- c) loss of anticipated savings; or
- d) loss of or damage to goodwill.

9.4 Subject to Clause 9.2, we will under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for any indirect or consequential loss.

9.5 Subject to Clause 9.2, we will under no circumstances whatever be liable to you or to any third parties, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract in respect of the Website Content.

9.6 Subject to Clauses 9.2 – 9.5 inclusive, our total liability to you in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total annual price of the Website Package provided to you.

9.7 Except as expressly stated in these Terms and Conditions, we do not give any representation, warranties or undertakings in relation to our products or services. Any representation, condition or warranty which might be implied or incorporated into these Terms and Conditions by statute, common law or otherwise is excluded to the fullest extent permitted by law. This shall include (without limitation) any warranty that our product or services will be fit for purpose.

10. Customer Service

10.1 We will endeavour to respond to all customer service requests within 24 hours. Where this is not possible, we will endeavour to respond within a maximum of 5 days.

10.2 We will use reasonable endeavours to finally resolve any customer service requests within 48 hours of sending our first response in accordance with Clause 10.2.

11. Complaints

11.1 A complaint is any expression of dissatisfaction, whether justified or not, about any aspect of our products or services. We view complaints as an opportunity to learn and improve for the future, as well as a chance to put things right for you. We therefore:

- a) provide a fair complaints procedure which is clear and easy to use for anyone wishing to make a complaint;
- b) publicise the existence of our complaints procedure so that people know how to make a complaint;
- c) ensure that our staff know what to do if a complaint is received;
- d) ensure that all complaints are investigated fairly and in a timely way; and
- e) gather information which helps us to improve the way we carry out our business.

11.2 Please send all complaints to info@invinciblemedia.co.uk. We will endeavour to respond to complaints within 24 hours of receipt by us. Where this is not possible, we will endeavour to respond within a maximum of 5 days.

11.3 For any abuse complaints (phishing scams, spam e-mails etc.) please send all complaints to info@invinciblemedia.co.uk. We will endeavour to respond to complaints within 24 hours. Where this is not possible, we will endeavour to respond within a maximum of 5 days.

11.4 For complaints relating to domains administered by Nominet, you may make a formal complaint about a registrar to Nominet (the UK registry) here: <http://www.nominet.uk/resources/complaints>. For any other complaints, you may contact the relevant registry.

12. Changes to these Terms and Conditions

12.1 We may change these Terms and Conditions at any time and we will notify you of such changes via our website www.invinciblemedia.co.uk (or via any other methods we may, in our discretion, choose to use). Your continued use of the products and services under a Contract shall be deemed acceptance of the amended Terms and Conditions.

12.2 Every time you order products or services from us or renew your agreement, the Terms and Conditions in force at the time of your order or renewal, as applicable, will apply to the Contract between you and us.

13. Notices

13.1 Any reference in these Terms and Conditions, to “in writing” shall include e-mail.

13.2 Any notice or other communication given by you to us, or by us to you, under or in connection with the Contract shall be in writing and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service or e-mail.

13.3 A notice or other communication shall be deemed to have been received: if delivered personally, when left at our registered office; if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting or if sent by e-mail, one Business Day after transmission.

13.4 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

13.5 The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

14. Entire Agreement

14.1 These Terms and our Privacy Policy, our Conditions of Use and our Cookie Policy constitute the entire agreement between you and us and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter.

14.2 You acknowledge that in entering into a Contract you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms and Conditions or our Privacy Policy, our Conditions of Use or our Cookie Policy.

14.3 You and we agree that neither of us shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

15. Third Party Rights

A Contract is between you and us. No other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

16. Assignment

16.1 We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under a Contract, but this will not affect your rights or our obligations under a Contract.

16.2 You will not assign or otherwise transfer the Contract or any of your rights and obligations under the Contract, without our prior written consent. Any assignment or transfer in violation of this Section 16 will be void.

16.3 Subject to the foregoing, the assignment of Contract will be binding upon, and inure to the benefit of the parties and their respective permitted successors and assigns.

17. Severance

Each of the Clauses of these Terms and Conditions operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining Clauses will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from the Contract but the rest of the Contract will remain in full force and effect.

18. Waiver

The failure by us to enforce any provision of the Contract will not constitute a present or future waiver of such provision nor limit our

right to enforce such provision at a later time. All waivers by us must be in writing to be effective.

19 Governing Law and Jurisdiction

19.1 A Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

19.2 We both irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with a Contract or its subject matter or formation (including non-contractual disputes or claims).