



Terms and Conditions



These General Terms and Specific Service Offerings Terms (collectively “Agency Stack Terms and Conditions”) govern the Services provided by Agency Stack (“Company”) under the order form (“Order”) signed by Company and Client (as named on the Order). Upon signing the Order, these Agency Stack Terms and Conditions and the Order become a valid and binding agreement (“Agreement”) between Company and Client effective on the last date signed on the Order.

1. GENERAL TERMS

a. Service Offerings

Company shall perform the Services in accordance with the Order, and the terms and conditions of these Agency Stack Terms and Conditions.

b. Personnel

Company shall provide qualified personnel to perform the Services who can perform the requisite duties and tasks. Company personnel are not eligible for nor entitled to receive any compensation or benefits that the Client makes available to its employees. Company is solely responsible for all taxes, withholdings, and other similar statutory obligations regarding its personnel and their performance of the Services. Company may use subcontractors to perform a portion (or all) of the Services, provided that, Company will be responsible for any breach of this General Terms by the subcontractor.

c. Client Responsibilities

The Client will provide trained and qualified personnel who will perform the Client’s duties and tasks under the Specific Service Offerings Terms promptly, and any other duties and tasks as may be reasonably necessary for connection with the Company’s performance of the Services. The client will provide Company with the information, data, and other materials that the Client is to provide under the Specific Service Offerings Terms for Company to perform the Services (“**Client Content**”). The client is responsible for the accuracy and completeness of the Client Content. Client owns (and will continue to own) the Client Content.

d. Confidentiality

Each party may provide the other party with certain Confidential Information. The receiving party may use this Confidential Information solely for the business purposes related to these General Terms. They may only share this Confidential Information with its employees, agents, and representatives who need to know it, provided they are subject to similar confidentiality obligations. The receiving party will use a reasonable degree of care (in a similar way it protects its confidential information of like nature) to protect this Confidential Information and to prevent any unauthorized use or disclosure of this Confidential Information. The receiving party will promptly notify the disclosing party of any actual or suspected violation of this provision. The receiving party will return or certify the destruction of the Confidential Information belonging to the disclosing party. The receiving party may disclose Confidential Information when compelled to do so by law, so long as the receiving party provides prior written notice of the disclosure (if legally permitted) to allow the disclosing party the opportunity to seek protection or confidential treatment or to limit or prevent such disclosure. The receiving party also agrees to cooperate with the disclosing party if the disclosing party chooses to contest the disclosure requirement, seek confidential treatment of the information to be disclosed or to limit the nature or scope of the information to be disclosed.

2. PAYMENT

a. Services Fees

Client will pay Company the fees for the Services performed as outlined in the Order.

b. Expenses

Expenses are billed separately, as incurred, and are not part of the Services fees. Client will reimburse Company for the expenses incurred by Company that have been pre-approved in writing by Client. Company shall provide Client with receipts and other documentation for all expenses incurred. Services are performed remotely unless otherwise agreed. Client is responsible for the travel costs and expenses it incurs. For Services that are agreed to be performed at Client’s location, Client will reimburse Company for the travel-related costs and expenses incurred by Company (and unless otherwise agreed, includes the travel time of Company personnel). Company shall incur such expenses by Client’s travel and expense policy.

c. Payment Terms

Company shall invoice Client as stated on the applicable Specific Service Offering Terms or the applicable Order.



3. GENERAL

a. Termination for Cause

The Agreement may be terminated by a party for cause with 30 days' written notice if the other party commits a material breach of this Agreement, and does not cure such breach before the end of such period.

b. Warranty

Service Offering warranties (if any) are described in the applicable section of the Specific Service Offerings Terms below.

c. Cancellation/Termination

Specific terms apply to Service Offerings related to cancellation and termination are provided in the applicable Specific Service Offering Terms below.

EXCEPT AS EXPRESSLY PROVIDED IN THE SPECIFIC TERMS FOR THE SERVICES OFFERINGS, COMPANY HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES CONCERNING THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR FREEDOM FROM INFRINGEMENT ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.

d. Indemnification

Client shall indemnify, defend, and hold harmless Company (including its officers, directors, parents, and subsidiaries) harmless against any claim, suit, or proceeding arising out of, related to, or alleged infringement of any patent, copyright, trade secret, or other intellectual property right or violation of the law including but not limited to a privacy law right by Client Content provided to Company under this Agreement.

e. Limitation of Liability

IN NO EVENT WILL EITHER PARTY'S LIABILITY OF ANY KIND CONCERNING THE SERVICES PROVIDED UNDER THIS AGREEMENT, OR OTHERWISE ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. COMPANY'S LIABILITY FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE AMOUNT OF FEES PAID TO COMPANY BY CLIENT WITHIN THE PAST TWELVE (12) MONTHS UNDER THIS AGREEMENT CONCERNING THE SPECIFIC SERVICES DIRECTLY GIVING RISE TO THE LIABILITY.

4. MISCELLANEOUS

a. Governing Law

This Agreement is governed by and construed by the internal laws of the State of California, without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of California. Any legal suit, action, or proceeding arising out of or related to this Agreement hereunder will be instituted exclusively in the state or federal courts of California, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

b. Entire Agreement

This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties concerning the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, concerning such subject matter.

c. Amendment and Modification; Waiver

No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly outlined in writing and signed by the party so waiving. Except as otherwise outlined in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

d. Severability

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

e. Injunctive Relief

The parties agree that a breach of either party's intellectual property rights would cause



irreparable harm for which the other party will be entitled to injunctive relief without posting a bond or other security.

f. **Waiver of Jury Trial**

Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

5. **DEFINITIONS**

- a. **“Confidential Information”** means any non-public information disclosed in writing or orally by one party to the other party under this General Terms. Client Data is Confidential Information. Confidential Information does not include any information that (1) was known (without any confidentiality obligations) before disclosure by the disclosing party, (2) is publicly available (through no fault of the receiving party), (3) is rightfully received by a third party (without a duty of confidentiality), or (4) is independently developed (without access or use of Confidential Information).
- b. **“Change Order”** has the meaning described in the Project Design and Development Services Agreement.
- c. **“Client Data”** means the data or information provided by Client under this Agreement.
- d. **“Client Content”** means the content provided by Client under this Agreement, and may include text, data, graphics files, videos and sound files, and other materials contained in the website or as otherwise owned or created by the Client in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Client.
- e. **“Contract”** means collectively (as applicable) the Order, the Agency Stack General Terms, the Project Design and Development Services Agreement, and applicable SOW.
- f. **“Deliverables”** has the meaning described in the applicable SOW.
- g. **“Intellectual Property Rights”** means any common law, statutory and other industrial property rights and intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honoured or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto.
- h. **“Order”** means the Client’s order for Specific Services Offerings (as described in the Specific Services Offerings Terms) that references and incorporates these General Terms and Specific Service Offering Terms and is signed by both parties.
- i. **“Services”** means the services described in the Specific Service Offering Terms and the Order.
- j. **“SOW”** means the statement of work attached to a signed Project Design and Development Services Agreement.



SPECIFIC SERVICE OFFERING TERMS

Service offerings include the following services with more detailed descriptions below:

1. Website design services
2. Search Engine Optimization services (SEO)
3. Pay Per Click Services (PPC)
4. Content Creation Services

Website design services and Content Creation services may also require a signed Project Design and Development Services Agreement.

1. WEBSITE DESIGN SERVICES

a. Description of Web Design Services

The Company shall deliver web and design work ("Web Design Services") as outlined in the applicable SOW. Where the Company is developing a new website, the website will be developed and optimized for the most current browsers. Full care is taken to test the function and style of the website in older browser versions, yet we cannot guarantee full 100% compatibility for all browsers.

For compatibility with specific browsers/versions, additional costs will apply. Please note that not all visual elements can be reproduced the same across each browser as some browsers do not support the latest CSS3 / HTML5 elements.

The Client will be granted access to the Content Management System ("CMS") to upload content and maintain the site. Ownership of Client Website.

b. Ownership of Client Website

Subject to Company's receipt of full payment by Client, the Client will own all rights and ownership of the website and its design. Until full payment has been received, the website will be hosted on the Company's servers and the site may not be copied or replicated and no FTP access will be granted.

c. Limited Warranty

Company provides a Post-Implementation limited warranty for 28 days ("Warranty Period") following the website launch and subject to the following conditions: The warranty covers 28 days and commences from the date the client approves and launches the website. The warranty includes any issues raised within the Warranty Period that were part of the original development and scope. It does not include any bugs caused by a new version of the targeted website's hosting environment, client's browser updates or update to a third-party AI. It is the responsibility of the client to collate a list of bugs as above and provide them to the Company before the end of the Warranty Period. The project manager will schedule a date for when the bugs will be addressed. The Client will be provided with a release candidate build to verify that the bugs have been rectified, after which the website will be published to the live environment.

If the Company does not receive any final changes to be made to the site from you within 10 (ten) working days of having requested such details from you, the final payment will instantly become due and payable and the Company will hand over your site to you.

d. Cancellation and Termination

i. Company may terminate the Services if the following occurs:

- a. The Client does not respond to requests by email or telephone within ten (10) working days.
- b. The Client does not agree to a Change Order after requesting additional work (as described in the Project Design and Development Services Agreement SOW).
- c. The Client fails to provide content and any additional information requested by the deadlines stated. In the event of any of the above-stated occurrences, the Company may terminate the agreement with written notice to the Client. No refunds whatsoever will be made to the Client, and the Company will retain the funds received. Should the Client wish to resume the agreement, a written request must be sent to the Company for consideration within ten (10) working days of receipt of the termination notice.

i. Client may terminate the Services for any reason subject to 14 days notice provided that any Deposit (as described in the Project Design & Development Services Agreement) is non-refundable.

ii. Effect of Termination:

- a. Where this Agreement is terminated, we will invoice you for our Services performed up to and including the termination date with such final amount to be determined by us, taking into account any payments already made by you. You will also be liable to pay for all expenses, third party costs and service fees that we have incurred or have committed to incur about the cancelled Services.
- b. Where this Agreement is terminated and we have already provided you with partial or completed Deliverables, we may revoke your rights to use some or all of these.



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Should you terminate the service before completion you will be charged an early termination charge as follows:

Date of Cancellation	Termination Fee
Before you receive the first draft of the website design	50% of Total Contract Value for a Fixed Term Contract
After you receive the first draft of the website design	80% of Total Contract Value for a Fixed Term Contract
After completion of the design review process	Total Contract Value for a Fixed Term Contract

The Client agrees that should the Company undertake the Web Design Services dependent on third party services, including but not limited to 3rd party APIs, website services and libraries (e.g. Twitter API, Google Maps API, Facebook API), the Company cannot be held responsible for changes made to the third party service in question. This includes, but is not limited to, removal of support services, or changes the way in which a service is implemented. Should any further work be required as a result of such a change, the Company will be required to quote and charge for the additional work on a case by case basis. There are no refunds available on Web Design Services provided by the Company.

The Client is expected to respond to all requests and queries made by the Company. The Company will provide deadlines for the expected response if it is required in less than five business days. If no deadline is provided, then the default of five business days is applied.

If no response is provided within this timeline, it will be assumed that the Client accepts the Company's recommendation position on the matter, and work will continue, and the Client will be billed accordingly.

No response from the Client after a period of ten business days from the initial query may result in project cancellation, with the Client being charged for all work done to date.



2. SEARCH ENGINE OPTIMIZATION SERVICES (SEO)

a. Description of SEO Services

- i. SEO Services means the Search Engine Optimization (SEO) services supplied by us to you for the purpose of having the website found and listed by search engines for the key phrases in searches and attempts to improve the ranking of the website ("Your Web Site") in the search engines when the key phrases are searched.
- ii. You and the Company shall agree on the key phrase or key phrases (depending on the SEO Services that you have elected to obtain from us) in respect of which we will provide the SEO Services (as the context requires, depending on the SEO Services that you have elected to obtain from us) ("Agreed Key phrase/s").
- iii. You hereby authorize us to develop a link exchange program whereby links to and from Your Web Site, and other websites and/or industry guides and/or directories, are established, and you hereby appoint us as your agent for this purpose. We agree to use all commercially reasonable efforts to ensure that we do not insert links to and from Your Web Site to or from obscene, defamatory, or sexually explicit websites and/or industry guides and/or directories.

b. You acknowledge and agree that:

- i. search engines vary in the time taken to index and include website submissions in their search results and it may take several months for the performance of the SEO Services to have any noticeable effect on Your Web Site's rank or position in the search result of search engines;
- ii. search engines may vary their search and ranking algorithms and policies at any time, refuse to accept the submission of any website or otherwise exclude any website from their directories at any time without reason; and
- iii. the rank or position of Your Web Site in the search results of search engines can decrease due to factors beyond our control, including changes in the algorithms and policies of search engines as referred to above, the optimization and submission of competitor websites and competitors paying search engines to advertise or favor their websites, and
- iv. the extent and amount of optimization changes we make to your site may be limited by the particular structure of your website and its content management system
- v. we do not have any control over search engines and are not responsible for any delay in the performance of the SEO Services caused by the conduct of any search engines, nor the impact of any of the above on you or your business

c. TERM & TERMINATION

- i. SEO Services are contracted on a monthly basis as provided in the applicable Order. SEO Services may be cancelled at any time provided that the effective date of cancellation shall be after the next full month of services. For example, if SEO Services began January 1st, and were cancelled March 15th, the effective date of termination would be April 30th.
- ii. You understand and agree that after termination or expiration of this agreement, any or all off-page activities used to provide the Services to you may be suspended, cancelled or removed. You agree that the Company is not liable to you for any costs, loss or damages arising from any actions or omissions of the Company following termination of the Services.



3. **PAY PER CLICK SERVICES (PPC)**

a. **Description of PPC Services**

The PPC Services includes the creation, customization of advertising campaigns utilizing pay per click mediums including but not limited to Facebook, LinkedIn, Google and YouTube and ongoing support and management of the PPC campaign subject to payment of the monthly Fees.

Access to the advertising platform account will be limited for the duration of your campaign to ensure we are able to fully control and optimize your campaign outcomes. This means that you will not be provided account access unless this is 'read only' access.

You acknowledge that we have no control over the advertising policies of any advertising platforms with respect to the sites and/or content that it accepts now or in the future. Your campaign may be rejected or excluded at any time at the sole discretion of the platform in line with their policies.

We will use best efforts to ensure that your advertisements performance, however we make no warranty that the PPC Service will generate any increase in sales, business activity, profits or any other form of improvement to your business.

b. **Term & Termination**

PPC Services are contracted monthly as provided in the applicable Order. PPC Services may be cancelled at any time provided that the effective date of cancellation shall be after the next full month of services. For example, if PPC Services began January 1st, and were cancelled March 15th, the effective date of termination would be April 30th.

On cancellation or termination of the PPC Service, all licenses granted to you under this Contract shall immediately terminate.

In addition to any other obligation in this Contract, upon cancellation or termination of this PPC Service, we may delete all data, including any PPC Content, files (including, without limitation, email files, if applicable) from our systems (including any storage media) without any liability to you whatsoever.



4. **CONTENT CREATION SERVICES**

a. **Description of Content Creation Services**

The Company shall deliver the content creation services including the creation and customization of content whether graphical or written (“Content Creation Services”) as outlined in the applicable SOW.

b. **Ownership of Client Creations**

Subject to Company’s receipt of full payment by Client, the Client will own all rights and ownership of the Client Creations.

c. **Cancellation and Termination**

Company may terminate the Services if the following occurs:

- i. The Client does not respond to requests by email or telephone within ten (10) working days.
- ii. The Client does not agree to a Change Order after requesting additional work (as described in the Project Design and Development Services Agreement and applicable SOW.

The Client fails to provide content and any additional information requested by the deadlines stated. In the event of any of the above-stated occurrences, the Company may terminate the agreement with written notice to the Client. No refunds whatsoever will be made to the Client, and the Company will retain the funds received. Should the Client wish to resume the agreement, a written request must be sent to the Company for consideration within ten (10) working days of receipt of the termination notice.

Should you terminate the service before completion you will be charged an early termination charge as follows:

Date of Cancellation	Termination Fee
Before you receive the first draft of the Client project scoped as described in the applicable SOW.	50% of Total Contract Value for a Fixed Term Contract
After you receive the first draft of the Client project scoped as described in the applicable SOW.	80% of Total Contract Value for a Fixed Term Contract
After completion of the of the Client project scoped as described in the applicable SOW.	Total Contract Value for a Fixed Term Contract

The Client is expected to respond to all requests and queries made by the Company. The Company will provide deadlines for the expected response if it is required in less than five business days. If no deadline is provided, then the default of five business days is applied.

If no response is provided within this timeline, it will be assumed that the client accepts Agency Stack’s recommendation on the matter, and work will continue, and the Client will be billed accordingly.

No response from the Client after a period of ten business days from the initial query may result in project cancellation, with the Client being charged for all work done to date.