

The Click Hub - Terms & Conditions of Service

Updated 11th August 2016 – These will apply to all existing Customers from 1st September 2016

In these conditions, unless the context requires otherwise:

“Charges” means the charges as set out in a quotation and/or an Order and/or The Click Hub’s published price list or tariff structure in force from time to time.

“Confidential Information” means all information designated as such by either party in writing together with all such other information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel and customers of either party or information which may reasonably be regarded the confidential information of the disclosing party.

“Contract” means a contract, subject to these conditions, for the provision of the Services between The Click Hub and the Customer.

“The Click Hub” means The Click Hub , a trading name of B&M Marketing Ltd. Registered in England and Wales (registered no. 09623049). Office 7, 35-37 Ludgate Hill, London EC4M 7JN.

“The Click Hubs’s Website” means the websites at www.theclickhub.com or any other associated website.

“Customer” means the person, company, firm or body purchasing the Services from The Click Hub.

“Customer Content/Data” means text, graphics, photographs, sounds, information, data, music, video, film or any other copyright work publicly available on the Website or provided for publication on the Website either by the Customer or any other third party (excluding The Click Hub) commissioned by the Customer, together with all User Generated Content and information regarding Users (such as, for example, the number of page impressions, users email addresses or other information posted by Users or depicted by the Website about Users).

“Due Date” means the seventh day after the date on which The Click Hub issues an invoice to a Customer.

“Domain Name” means the name registered with an Internet Registration Authority used as part of the Customer’s URL.

“Hosting Service” means the installation of the Website onto the Server, such that the Website can be accessed by members of the public via the internet.

“Information” means information in any form (including visual and textual) published or otherwise made available (directly or indirectly) on the Internet via the Website. **“Intellectual Property Rights”** means patents, trade marks, service marks, database rights, design rights (whether registered or otherwise), applications for any of the foregoing, copyright, know-how, trade or business names, domain names and other similar rights or obligations whether registrable or not and in any territory or jurisdiction (including but not limited to the United Kingdom).

“Minimum Term” for all Ongoing Services 1 month from the date of commencement of the relevant Ongoing Service.

“Nominated Search Engines” means the search engines known as “Google”, “Yahoo” and/or “Bing”

“Ongoing Services” means web hosting, web optimisation, pay per click or any other services of an ongoing nature offered by The Click Hub which impose a recurring charge to the Customer.

“Order” means a request in respect of any Services made by the Customer to The Click Hub.

“PPC” means Pay Per Click.

“RPI” means Retail Price Index.

“SEO” means Search Engine Optimisation services being the means or process of affecting the visibility of a website or a web page in a search engine’s search results.

“Server” means The Click Hub’s Internet server or the server belonging to The Click Hub’s nominated sub-contractor.

“Services” means the services which are the subject matter of the Contract, being the work and/or services or any of them to be performed by The Click Hub for the Customer pursuant to the Order.

“Specification” means the specification for the Website agreed between The Click Hub and the Customer and set out, or referred to in the Order, or otherwise stated/varied and agreed in writing by The Click Hub.

“User” means any person, company, firm or body accessing the Website via the Internet or by any other means.

“User Generated Content” means all such material posted by Users on the Website.

“URL” means a uniform resource locator.

“Website” means the website developed and/or optimised by The Click Hub for the Customer as described in the Specification.

“Website Design Services” means all work in connection with the planning, design, development and maintenance of a website, to include but not limited to, initial prototype layouts, graphic design, wireframe concepts, HTML & CSS markup, JavaScript authoring, PHP & MySQL programming and adherence to our internal quality, usability and search engine guidelines.

1. GENERAL

1. Quotations submitted by The Click Hub shall remain open for acceptance by the Customer for a period of 14 days from the date of the quotation, unless the quotation specifies some other period, or the quotation is withdrawn by The Click Hub.

2. A Contract will only become binding upon acceptance by The Click Hub of the Order by signing or counter signing and dating of the Order and returning it to the Customer, or the issue by The Click Hub of an order acknowledgement.

3. This Contract is subject to these conditions. The Click Hub reserves the right to vary the terms of the Contract from time to time. Notice of such variation and a current version of The Click Hub’s standard terms and conditions may be found on The Click Hub’s Website.

4. These conditions shall, to the extent applicable, apply to goods and products in the same way as they apply to the Services.

5. If the Customer is a limited company, the Services are provided upon the condition that the officers of the limited company are personally liable for, and hereby guarantee all sums payable by the Customer to The Click Hub. If the Customer does not make payment of any sums due to The Click Hub within 7 days of receipt of a written demand from The Click Hub (such demand not to be made sooner than the Due Date), then the officers of the limited company will make payment on behalf of the Customer.

2. PRICES

1. The price for the Services shall, subject to Clause 1.1 above, be that stated in any relevant quotation and/or confirmed in an Order.

2. The Click Hub shall (if applicable) add to the price of the Services, and the Customer shall pay, an amount equal to any VAT and any other tax or duty applicable from time to time to the sale or supply of such Services.

3. In relation to any Ongoing Services:-

1. The Click Hub shall be entitled to increase its prices at least once in any rolling 12 month period; and in any event, the price of the Ongoing Services shall increase automatically on the anniversary of this Contract by the previous February's RPI, rounded up to the nearest £5, or a minimum of £5, whichever is the greater. The Click Hub may impose any such increased charges at any time after the anniversary date of the Contract.
2. The Click Hub shall notify the Customer of any price increases made pursuant to Clause 2.3.1 in writing at least 7 days before any such price increase takes effect. For the avoidance of doubt, the issue of an invoice setting out the increased charges may constitute notice pursuant to this Clause.
3. The Customer will be charged on a pro rata basis for the number of days the Customer receives the benefit of any Ongoing Services where such services are provided for less than a full calendar month.

3. TERMS OF PAYMENT

1. Prices quoted are net and in Pounds Sterling.

2. In respect of Ongoing Services, the Customer shall, at the time of submission of an Order to The Click Hub, pay a non-refundable sum equivalent to 100% of the amount to be paid on a recurring basis attributable to each of the Ongoing Services. For the avoidance of doubt, such charges may be levied on a monthly, quarterly or annual basis. Thereafter, charges for Ongoing Services will be invoiced to the Customer on a regular recurring basis in advance, in accordance with the the Order.

3. In respect of SEO Services and PPC Services the Customer may be required to pay a nonrefundable setup fee at the time of submission of an Order. The value of this setup fee shall be determined prior to the issuing of the first order.

4. In the event that the Customer's acts or omissions prevent the Website from being set live, in circumstances where The Click Hub has undertaken all of the work that it is reasonably required to undertake pursuant to this Contract and/or in any event, where the Customer fails to provide instructions or permit the progress of the Website for more than 6 months the Customer shall be liable for the full amount of the Order, whether or not the Website is completed and/or set live; and The Click Hub shall not be obliged to undertake any further work pursuant to the Contract.

5. Unless otherwise specified by The Click Hub and without prejudice to the remainder of this Clause 3, the Customer must pay any invoice issued to it by The Click Hub by the Due Date.

6. Failure to make payment by the Due Date, or otherwise in accordance with this Clause 3 may result in the suspension and/or disconnection of any of the Services (at The Click Hubs's discretion) without any liability to The Click Hub. A late payment fee of £25.00+VAT may also be levied. If payment continues to be late, statutory interest of 8% plus the Bank of England Base Rate may be charged in addition too.

7. Unless otherwise agreed, the Customer will make their initial payment by Faster Payment/BACS to the following nominated account:

- Account Name: The Click Hub
- Bank: HSBC Bank PLC, Exeter High Street Branch
- Sort-Code: 40-20-30
- Account Number: 42635518

8. Unless otherwise agreed, the Customer will make all further payments due to The Click Hub by Direct Debit. Our Direct Debit service is provided by GoCardless Ltd. You will be provided with a Direct Debit link to complete your bank details. All future payments will be taken by Direct Debit a minimum of 7 days after your invoice date. Any failed Direct Debit payments may incur a late payment fee of £25.00+VAT as per Clause 3.6 above.

GoCardless Ltd is authorised by the Financial Conduct Authority under the Payment Services Regulations 2009, registration number 597190, for the provision of payment services.

4. SEARCH ENGINE OPTIMISATION SERVICES

1. Where specified in the Order, The Click Hub shall provide SEO Services. The Click Hub shall use its reasonable endeavours to improve the ranking of the Website in the Nominated Search Engines, however, The Click Hub does not in any way guarantee the results of such endeavours. For the avoidance of doubt, the Customer accepts that The Click Hub cannot guarantee any particular or specific position or ranking on any search engine, or the increase of any business to the Customer in respect of any of the Services provided.
2. The Click Hub shall have no liability to the Customer for any changes to the position of the Website in the Nominated Search Engine results in response to a search.

5. WEB HOSTING SERVICE

1. Where specified in the Order, The Click Hub shall provide Hosting Services.
2. The Customer shall be solely responsible for the accuracy, legality, currency and compliance of the Website Information and User Generated Content and will be solely liable for false, misleading, inaccurate, or infringing information contained or referred to therein.
3. The Customer acknowledges and accepts that The Click Hub may be required by law to monitor the Website Content and traffic, and if necessary give evidence of the same together with use of the logon ID to support or defend any dispute or actionable cause or matter which arises in relation to the same.
4. The Click Hub does not warrant that the Hosting Service or Server will be continuously available at all possible times (24 x 7 x 365 days), but will use its reasonable endeavours to keep downtime to a minimum; and the Customer agrees that The Click Hub shall have no liability to the Customer for the consequences in the event of any such downtime.
5. The Click Hub may need to at times, temporarily suspend the Hosting Service for repair, maintenance or improvement and will give the Customer as much notice as is reasonably practicable in the circumstances before doing so. The Click Hub will also restore the Hosting Service as soon as reasonably possible.
6. The Customer accepts the Hosting Service and Server "as is" with any faults or failings and without any representation, warranty or guarantee whatsoever, express or implied, including without limitation any implied warranty of accuracy, completeness, quality, continuity of service, connectivity and fitness for a particular purpose.
7. Charges in relation to the Hosting Services may vary in accordance with the bandings specified in the rate card. The Customer accepts and agrees that if its bandwidth usage rises to a higher banding in the rate card, the Customer shall pay the relevant charges for the higher banding (in accordance with the rate card) for the month in which the bandwidth usage rises to the higher band; together with an additional £50 administration fee.
8. In the event that the Customer's bandwidth exceeds its usual/standard bandwidth for 3 consecutive months, the Customer accepts and agrees that its usual/standard bandwidth banding shall thereafter be increased to the relevant higher banding.
9. The Click Hub cannot guarantee the speed and robustness of the Services when the Customer's bandwidth usage increases to a higher band without reasonable notice to TheClick Hub.

10. If a Customer's bandwidth usage exceeds 100GB in any single month, The Click Hub may require the Customer to purchase a bespoke hosting package within 3 months, and the Customer agrees to be responsible for the associated costs of such bespoke package.

11. Where either party gives notice to transfer the Hosting Service from The Click Hub to a third party The Click Hub shall charge a transfer fee, and will not affect such transfer unless or until such fee and any/all sums owing to The Click Hub are paid in full.

6. PAY PER CLICK

1. Where specified in the Order The Click Hub shall provide a PPC service on the search engine known as "Google", unless otherwise agreed.

2. The Customer acknowledges and accepts its responsibility to ensure that all monies due and owing to Google, either directly to the Search Engine or via The Click Hub's PPC Billing Account are paid by the Due Date.

3. The Click Hub shall take reasonable steps to ensure that it does not substantially exceed any PPC budget set by the Customer. However, The Click Hub does not accept any liability for any charges made by Google in excess of any such monthly budget, save where such sum is exceeded by more than 10% of the Customer's budget in the immediately preceding month. In this event, any potential liability to The Click Hub shall be limited to a sum equivalent to the Customer's monthly budget for PPC services.

4. Where The Click Hub has set up a PPC account with Google, or equivalent, The Click Hub shall retain ownership and/or control of such account unless or until the Customer has paid its monthly charges for a minimum of 4 consecutive months.

5. The Click Hub does not in any way guarantee the results or effects of the PPC service. For the avoidance of doubt, the Customer accepts that The Click Hub cannot guarantee any particular or specific position or ranking on any search engine, or the increase of any business to the Customer in respect of any of the Services provided.

7. DELIVERY AND COMPLETION DATES

1. The Click Hub undertakes to use its reasonable endeavours to provide completed Web Design Services to the Customer within the time frame stipulated in the Order, or if no time frame is specified, within a reasonable period from the date on which The Click Hub receives a signed Order from the Customer.

2. The dates and timeframes for carrying out the Services and delivery of any resultant Website are approximate only. The Customer hereby acknowledges and agrees that time is not of the essence for delivery or performance.

3. Without prejudice to Clause 7.2, The Click Hub will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform save where the same is a result of the gross negligence of The Click Hub.

4. No delay shall entitle the Customer to reject any delivery or performance or any other Order from the Customer, or to repudiate the Contract or the Order.

8. WARRANTIES

1. The Customer warrants that:

1. it has the right to include, and permit The Click Hub to include, the Information and the Customer Content/Data on the Website, or has obtained the rights from third parties to do so;

2. it will not supply The Click Hub with, or upload to the Website, post, email, or otherwise transmit (or allow to be transmitted) by the Website (or request that The Click Hube carries out any such upload, posting, email

or transmission on the Customer's behalf), of any Customer Content/Data, Information or User Generated Content that is:

- a) unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, libellous, invasive of another's privacy, hateful or racially, ethnically or otherwise objectionable;
 - b) harmful to minors in any way;
 - c) in breach of any third party right under any law or under a contractual or fiduciary relationship;
 - d) an infringement of any Intellectual Property Rights;
 - e) unsolicited or unauthorised advertising, promotional material, "junk mail", "spam", "chain letters", "pyramid schemes", or any other form of solicitation;
 - f) containing software viruses or any other computer code, files or programmes designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
 - g) intentionally or unintentionally a violation of any applicable law and/or regulation having the force of law;
 - h) data which contravenes the United Kingdom Data Protection Legislation in any way;
3. it will comply with the Data Protection Act 1998.

2. The Customer accepts that The Click Hub is under no obligation to monitor or approve the Information, Customer Content/Data or User Generated Content and accepts that The Click Hub excludes all liability of any kind for all material comprising the same.

3. The Click Hub warrants that:

1. it shall perform the Services with reasonable skill and care in accordance with the standards generally observed in the industry for similar services; and
2. it will comply with the Data Protection Act 1998.

9. INTELLECTUAL PROPERTY AND LICENCE

1. The Customer acknowledges that any Intellectual Property Rights created, developed, subsisting or used by The Click Hub in or in connection with the provision of the Services shall be the sole property of The Click Hub.

2. Subject to the provisions of Clause 9.3 below, the Intellectual Property Rights, together with all rights, title and interest in the same in relation to the Website and the Domain Name registration shall vest exclusively in The Click Hub. As such, The Click Hub shall be free to reproduce, use, disclose, display, exhibit, transmit, perform, create derivatives works, and distribute such material unless specifically agreed otherwise. Further, The Click Hub shall be free to use any ideas, concepts, know how or techniques acquired in the construction of the Website for any purpose whatsoever included but not limited to developing, manufacturing and marketing products and any other items incorporating such information unless specifically agreed otherwise.

3. All rights, title and interest in and to the Intellectual Property Rights in the Customer Content/Data belonging to the Customer shall vest exclusively in the Customer.

10. TERMINATION

1. Unless otherwise agreed in writing with The Click Hub, the Customer acknowledges and agrees that the duration of the Contract will be for the Minimum Term, and subject thereafter to the notice provisions in this Clause 10.

2. Following expiry of the Minimum Term either party may terminate the Contract:

1. in relation to all Ongoing Services by giving 1 months' written notice; and
2. in relation to PPC services, by giving 1 months' written notice

3. Either party may terminate the Contract immediately and without notice if:

1. the other enters into a composition with its creditors;
2. an order is made for the winding up of the other;

3. an effective resolution is passed for the winding up of the other (other than for the purpose of amalgamation or reconstruction on terms approved by the first party (such approval not to be unreasonably withheld)); or
4. the other has a receiver, manager, administrative receiver or administrator appointed in respect of it.

4. The Click Hub shall be entitled to terminate the Contract immediately upon service of written notice to the Customer if:

1. any invoice remains outstanding for more than 30 days; or
2. the Customer fails to co-operate with and/or provide The Click Hub with clear instructions, or information requested by The Click Hub for more than 14 days; or
3. The Click Hub considers (at its sole discretion) reasonable to do so.

5. Termination of the Contract shall be without prejudice to any other rights or remedies of either party.

6. The terms of Clauses 9 (Intellectual Property), Clause 11 (Indemnity and Limitation of Liability) and Clause 12 (Confidentiality) shall survive the termination (howsoever arising) of this Contract.

7. Force Majeure: The Click Hub shall not be liable for failure to perform the Services if such failure is as a result any act beyond its reasonable control (including, without limitation, fire, flood, earthquake, storm, hurricane or other natural disaster), war, civil unrest, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or telephone service and/or any failure attributable to The Click Hub's sub-contractors and/or service providers (in The Click Hub's discretion).

11. INDEMNITY AND LIMITATION OF LIABILITY

1. The Customer shall indemnify The Click Hub against any loss, damage, cost or expense (including reasonable legal fees and expenses) that The Click Hub may suffer or incur as a result of:

1. any act, omission, neglect or default of the Customer, its agents, or employees.
2. any claim by any third party that the Customer's Information and/or Customer Content/Data infringes the Intellectual Property Rights of a third party or is fraudulent, offensive, abusive, defamatory, obscene or menacing or causes annoyance, inconvenience or needless anxiety or constitutes unsolicited advertising or promotional material;
3. work done in accordance with the Customer's instructions in hosting of the Website on the Server involving the infringement of any Intellectual Property Rights (including but not limited to framing or linking to third parties' websites):
4. any claim by a third party arising from the Customer's breach of the warranties under Clause 11.1 above.

2. The Click Hub shall not be liable to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Contract, the Server, the connectivity to the Internet, the hosting, the Website, its use (including but in no way limited to any unlawful or unauthorised access or use by any third party), application, support or otherwise, except to the extent which it is unlawful to exclude such liability.

3. Nothing in this Contract shall exclude or limit the liability of The Click Hub for fraudulent misrepresentation or for any death or personal injury caused by The Click Hub's negligence.

4. Subject to Clause 8.3 above The Click Hub will not be liable to the Customer in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any economic loss of any kind (including but not limited to loss of profit, business, contracts, revenue or anticipated savings), any damage to the Customer's reputation or goodwill or any other special, indirect or consequential loss (whatsoever and howsoever caused) which arise out of or in connection with the Contract.

5. The Customer acknowledges and agrees that The Click Hub's total liability in respect of the warranty provided under Clause 11.3 shall be limited to re-performance of the Services or a refund of the relevant purchase price.

6. Notwithstanding Clause 11.4 above, the Customer acknowledges and agrees that The Click

Hub's total liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the amount paid by the Customer pursuant to the relevant Contract.

7. Neither party shall be liable for any failure in the performance of any of its obligations under the agreement caused by factors beyond its reasonable control.

8. B&M Marketing Ltd will not be held liable for any work completed prior to 1st November 2015 or any invoices or monies paid to ADRO Limited. All Customer contracts that were transferred from ADRO Limited, have an effective start date of 1st November 2015.

12. CONFIDENTIALITY

1. Each party agrees and undertakes that it will hold in complete confidence any Confidential Information disclosed to it, and will not disclose it in whole or in part at any time to any third party, nor use any Confidential Information for any purpose other than the performance of its obligations under the Contract. This provision shall survive the termination of the Contract for any reason for a period of 2 years commencing immediately on the date of such termination.

2. The obligations set out in this Clause 12 shall not apply to any Confidential Information which:

1. at or prior to the time of disclosure was known to the receiving party as evidenced in writing, except to the extent that such information was unlawfully appropriated;
2. at or after the time of disclosure becomes generally available to the public other than through any act or omission on the part of the receiving party;
3. is received from a third party who was free to make such disclosure without breaching any legal obligation;
4. is independently developed by the receiving party; or
5. is required to be disclosed by law, court order or request by any government or regulatory authority.

13. ASSIGNMENT AND SUBCONTRACTING

1. None of the rights or obligations of the Customer under the Contract may be assigned or transferred in whole or in part without the prior written consent of The Click Hub.

2. The Website shall be for the sole use of the Customer and shall not be capable of assignment to a third party by the Customer without the prior written consent of The Click Hub.

3. The Click Hub shall be entitled to sub-contract any work relating to the Contract without obtaining the consent of, or giving notice to the Customer.

4. The Click Hub shall be free to assign its rights in the Contract to any third party without giving prior notice to the Customer.

14. NOTICES

1. All termination notices should be sent to cancellations@theclickhub.com

2. Any other notices must be sent in writing to support@theclickhub.com or via first class post to The Click Hub, Studio 17, McCoy's Arcade, Fore Street, Exeter, EX4 3AN.

3. Any notice or document shall be deemed served: if delivered, at the time of delivery; if posted, 48 hours after posting, and if sent by electronic mail, at the time of sending.

15. INVALIDITY

1. If any provision (or part of a provision) of this Contract is found by any court or administrative body of a competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

16. THIRD PARTY RIGHTS

1. A person who is not party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

17. LAW AND JURISDICTION

1. The Contract shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.