



OMNI SEARCH TERMS & CONDITIONS OF SERVICE

1. INTERPRETATIONThe definitions and rules of interpretation in this clause apply in these Terms & Conditions of Service (“**Conditions**”).

- . 1.1. Definitions: **Customer:** any person or entity who purchases Services from Omni Search. **Customer's Project Manager:** The Customer's manager for the Project appointed in accordance with clause 4.1.1. **Deliverables:** all products and materials developed by Omni Search in relation to the Project in any media, including, without limitation, website designs, web pages, graphics, computer programs, data, diagrams, reports and specifications (including drafts). **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world. **Omni Search:** a SEO and digital marketing business managed by Graham Tester, with its address at 8 Station Road, Coltishall, Norfolk, NR12 7JL. **Project:** the project as described in the Project Statement. **Project Statement:** a statement describing the Project and the fees for the provision of the Services by Omni Search in accordance with these Conditions. **Services:** the services to be provided by Omni Search under these Conditions, as detailed in the Project Statement. **Third Party Materials:** third party materials used in the Services, including website templates and designs.
- . 1.2. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- . 1.3. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- . 1.4. The terms ‘including’, ‘include’, ‘in particular’ or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- . 1.5. A reference to ‘writing’ or ‘written’ includes faxes and email unless stated otherwise.

2. APPLICATION OF CONDITIONS

2.1. These Conditions shall:

- . 2.1.1. apply to and be incorporated into any Project between Omni Search and the Customer; and
- . 2.1.2. prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

3. OMNI SEARCH'S OBLIGATIONS

3.1. Omni Search shall:

- . 3.1.1. use reasonable endeavours to manage and complete the Project and to deliver the Deliverables to the Customer in accordance with the Project Statement;
- . 3.1.2. use reasonable endeavours to meet the performance dates specified in the Project Statement, but any such dates shall be estimates only and time shall not be of the essence in respect of the performance of the Services; and
- . 3.1.3. in respect of any website development Projects, make the amendments required by the Customer in accordance with clause 4.1.4 during the Approval Period (defined below). Any amendments taking longer than an hour to complete will be charged at Omni Search's hourly rates then in force.

4. CUSTOMER'S OBLIGATIONS

4.1. The Customer will:

- . 4.1.1. co-operate with Omni Search in all matters relating to the Project and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Project;
- . 4.1.2. promptly and fully provide all such information as Omni Search may reasonably request and ensure that such information is accurate;
- . 4.1.3. promptly provide any assistance and materials that are reasonably required by Omni Search for the performance of the Services; and
- . 4.1.4. ensure any content or materials contained on its website or provided to Omni Search are suitable for the intended use, compliant with all applicable laws and do not contain any defamatory, offensive or illegal content. The Customer will indemnify and keep Omni Search indemnified against all losses, costs and liabilities and all expenses, including

reasonable legal or other professional expenses, suffered or incurred by Omni Search arising out of or in connection with any claim in relation to a breach of this clause;

- . 4.1.5. in respect of any website development Projects, approve the website in writing within seven days of notification by Omni Search that the Project has been completed (“**Approval Period**”) and notify Omni Search of any interoperability errors, minor amendments (taking less than an hour to rectify) and spelling mistakes, typographical errors or pricing errors on the website within the Approval Period. After the Approval Period, the Customer will be deemed to have accepted the website and the Deliverables and further changes will become chargeable at Omni Search’s hourly rate then in force. All risk and responsibility for the website will pass to the Customer after the end of the Approval Period, once full and final payment for the website has been received by Omni Search.
- . 4.2. If Omni Search's performance of its obligations under these Conditions is prevented or delayed by any act or promission of the Customer or the Customer's agents, sub-contractors or employees, Omni Search will not be liable for any delay in the Project. For any such delays exceeding two weeks duration, the Customer shall pay to Omni Search on-demand any costs or expenses incurred by Omni Search as a result of the delay.
- . 4.3. The Customer shall not, without the prior written consent of Omni Search, at any time from the date of these Conditions to the expiry of six months after the completion of the Services, solicit or entice away from Omni Search or employ or attempt to employ any person who is, or has been, engaged as an employee, agent or contractor of Omni Search.

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1

4.4. Any consent given by Omni Search in accordance with clause 4.3 shall be subject to the Customer paying to Omni Search a sum equivalent to 30% of the then current annual remuneration of Omni Search's employee, agent or contractor or, if higher, 30% of the annual remuneration to be paid by the Customer to such employee, agent or contractor.

5. FEES AND PAYMENT

- . 5.1. Clause 5.2 shall apply if the Services are to be provided on a time-and-materials basis. Clauses 5.3 and 5.4 shall apply if the Services are to be provided for a fixed price. The remainder of this clause 5 shall apply in either case.
- . 5.2. Where the Services are provided on a time-and-materials basis:

- . 5.2.1. the Customer shall pay a deposit of 50% of the estimated fees prior to the commencement of the Services;
- . 5.2.2. the fees payable for the Services shall be calculated in accordance with Omni Search's standard hourly rates as amended from time to time;
- . 5.2.3. Omni Search shall be entitled to charge an overtime rate of 30% of the normal hourly rate for any time worked by members of the Project team outside of Omni Search's standard working hours (Monday to Friday, 9am-5pm, excluding bank holidays in England).
- . 5.2.4. Omni Search shall invoice the Customer monthly in arrear for its fees for time, expenses and materials for the month concerned, calculated as provided in this clause 5.
- . 5.3. Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Project Statement. The total price shall be paid by the Customer to Omni Search in instalments as set out in the Project Statement. Unless otherwise stated, the Customer shall pay a deposit of 50% of the fees payable prior to the commencement of the Services and the remaining 50% shall be payable upon completion of the Project (subject to these Conditions). All amounts due under these Conditions shall be paid by the Customer to Omni Search in full without any set-off, counterclaim, deduction or withholding. Omni Search shall invoice the Customer for the fees that are payable, together with expenses and the costs of materials, calculated as provided in clause 5.4.
- . 5.4. Unless otherwise stated, any fees exclude:
 - . 5.4.1. the cost of any ancillary expenses reasonably incurred by the Project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Omni Search for the supply of the Services; and
 - . 5.4.2. in respect of website development Projects: hosting of the website, domain name registering, video and image stock licences and any additional licences required for the operation and/or running of the website unless specified otherwise in the Project Statement.
- . 5.5. The Customer shall pay each invoice submitted by Omni Search in full, and in cleared funds, within 14 days of the date of the invoice.
- . 5.6. Without prejudice to any other right or remedy that Omni Search may have, if the Customer fails to pay Omni Search by the invoice due date, Omni Search may:
 - . 5.6.1. charge interest on such sum from the due date for payment in

accordance with the Late Payments of Commercial Debts (Interest) Act 1998, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and

- . 5.6.2. suspend the Services, including suspension of hosting, websites and emails. *Please note: suspension of hosting or web servers due to non-payment could result in a negative effect on your website's SEO and rankings.*
- . 5.7. All payments payable to Omni Search under these Conditions shall become due immediately on termination of these Conditions, despite any other provision. This clause is without prejudice to any right to claim for interest or any other right under these Conditions.
- . 5.8. Omni Search may, without prejudice to any other rights it may have, set off any liability of the Customer to Omni Search against any liability of Omni Search to the Customer.
- . 5.9. If the Customer requests for a website to be hosted by a different provider, the Customer will pay Omni Search on an hourly basis for any assistance required to transfer the website, including setting up any aspect of the server and dealing with correspondence with the new provider.

6. INTELLECTUAL PROPERTY RIGHTS

- . 6.1. The Customer hereby grants to Omni Search a non-exclusive, perpetual, irrevocable, royalty-free, worldwide licence to use the content supplied by the Customer for the purposes of the Project only.
- . 6.2. All Intellectual Property Rights and all other rights in the Deliverables shall vest and remain vested in Omni Search.
- . 6.3. Upon final payment for the Services, Omni Search licenses all Intellectual Property Rights in the Deliverables (to the extent that they do not include any Third Party Materials) to the Customer on a non-exclusive, worldwide, irrevocable, perpetual basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services for web publication.
- . 6.4. The Customer acknowledges that the Customer's use of rights in Third Party Materials may be conditional on Omni Search obtaining an end-user licence (or sub-licence) of such rights from the relevant licensor. Upon final payment for the Services, Omni Search licences the Third Party Materials used in the Services to the Customer in accordance with the licence scope agreed with the relevant licensor.

- . 6.5. For website development Projects, the Customer hereby grants Omni Search permission to place a link in the footer of its website which will link back to Omni Search's website. Omni Search also maintains the right to reproduce the Customer's website in its portfolio and in any marketing materials.
- . 6.6. The Customer warrants that any content (including any text, graphics, photos, designs or other material), instructions or specifications provided to Omni Search in relation to the provision of the Services are the Customer's original creations, or licensed from the relevant licensor and will not infringe any third party Intellectual Property Rights.
- . 6.7. The Customer acknowledges that the Deliverables have been created in accordance with the Customer's instructions and/or specifications and have been approved by the Customer. The Customer will therefore indemnify and keep Omni Search indemnified against all losses, costs and liabilities and all expenses, including reasonable legal or other professional expenses, suffered or incurred by Omni Search arising out of or in connection with any claim for actual or alleged

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2

infringement of a third party's Intellectual Property Rights arising out of or in connection with the Deliverables or any content, information or materials provided by the Customer.

7. CONFIDENTIALITY

- . 7.1. A party ("**Receiving Party**") will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**") or its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain ("**Confidential Information**").
- . 7.2. In relation to any Confidential Information received from the Disclosing Party or from a third party on behalf of the Disclosing Party, the Disclosing Party and the Receiving Party agree:
 - . 7.2.1. to treat the Confidential Information in confidence and to use it only for the purpose of discharging the Receiving Party's obligations under these Conditions;
 - . 7.2.2. not to disclose the Confidential Information to any third party without the express written permission of the Disclosing Party (except that the

Receiving Party may disclose the Confidential Information to its employees, agents and sub-contractors who need access to the Confidential Information in connection with discharging the Receiving Party's obligations under these Conditions and provided that such employees, agents and sub- contractors are made aware of the confidential nature of the Confidential Information and are subject to confidentiality obligations at least as onerous as those set out in these Conditions); and

- . 7.2.3. to treat the Confidential Information with the same degree of care and with sufficient protection from unauthorised disclosure as the Receiving Party uses to maintain its own confidential or proprietary information.
- . 7.3. Nothing in these Conditions will prevent the Receiving Party from using or disclosing any Confidential Information which:
 - . 7.3.1. is in or comes into the public domain in any way without breach of these Conditions by the Receiving Party or any person or entity to whom it makes disclosure;
 - . 7.3.2. the Receiving Party can show was (i) in its possession or known to it by being in its use or being recorded in its files prior to receipt from the Disclosing Party and was not acquired by the Receiving Party from the Disclosing Party under an obligation of confidence or (ii) to have been independently developed by the Receiving Party without reference to the Confidential Information;
 - . 7.3.3. the Receiving Party obtains or has available from a source other than the Disclosing Party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use;
 - . 7.3.4. is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or
 - . 7.3.5. is required by law to be released (e.g. by a court order), provided that, when permitted by the applicable law, the Disclosing Party is given as much prior written notice as possible of such request.
- . 7.4. This clause 7 shall survive termination of these Conditions, however arising.

8. LIMITATION OF LIABILITY

- . 8.1. The following provisions set out the entire financial liability of either party (including any liability for the acts or omissions of its employees, agents, consultants and sub-contractors) in respect of:

- . 8.1.1. any breach of these Conditions howsoever arising;
- . 8.1.2. any use made by the Customer of the Services, the Deliverables or any part of them; and
- . 8.1.3. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with these Conditions.
- . 8.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions.
- . 8.3. Nothing in these Conditions limits or excludes the liability of either party for death or personal injury resulting from negligence or for any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other party.
- . 8.4. Subject to clause 8.3 and excluding any provisions in these Conditions where an indemnity is provided by either party:
 - . 8.4.1. neither party will be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - . 8.4.2. each party's total liability to the other party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with these Conditions will be limited to the price paid or payable for the Services provided to the Customer by Omni Search giving rise to such claim for damages.
- . 8.5. **PLEASE NOTE:** Omni Search will not be liable to the Customer where a search engine changes its ranking algorithms and this results in a change to the Customer's website ranking. Omni Search will use reasonable endeavours to adapt its Services to address any changes, but some changes are out of Omni Search's control. No SEO campaigns guarantee ranking results, sales or enquiries due to the nature of Internet search engines.

9. TERMINATION

- . 9.1. The Customer may cancel or move the hosting of any website hosted by Omni Search by providing at least 30 days' written notice to Omni Search (subject to these Conditions).
- . 9.2. The Customer may pause or cancel an SEO campaign by providing Omni

Search at least 30 days' written notice, but please note that this may impact your rankings or website traffic.

- . 9.3. Without limiting any other rights or remedies, either party ("**Terminating Party**") may terminate these Conditions with immediate effect by providing written notice to the other party ("**Defaulting Party**") on or at any time after the occurrence of any of the events specified below:

- . 9.3.1. a breach by the Defaulting Party of its obligations under these Conditions which (if the breach is capable of remedy) the Defaulting Party has failed to remedy within 14 days after receipt of notice in writing from the Terminating Party requiring the Defaulting Party to do so;

- . 9.3.2. an event, including (or similar in nature to) the following:

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3

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the Defaulting Party is unable to pay its debts as they fall due; the Defaulting Party goes into liquidation either compulsorily (except for the purpose of reconstruction or amalgamation) or voluntarily; a receiver is appointed in respect of the whole or any part of the Defaulting Party; or a provisional liquidator is appointed to the Defaulting Party or the Defaulting Party enters into a voluntary arrangement or any other composition or compromise with the majority by value of its creditors or has a winding-up order or passes a resolution for the voluntary winding-up or has an administrative receiver appointed or takes steps towards any such event; or the Defaulting Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

- . 9.4. If these Conditions terminate for any reason:

- . 9.4.1. Omni Search shall not have any obligation to repay any charges paid by the Customer; and

- . 9.4.2. notwithstanding any other provision, all charges payable by the Customer to Omni Search under these Conditions will become due and payable immediately. This clause is without prejudice to any right by Omni Search to claim for interest or any other right under these Conditions.

- . 9.5. Any provision of these Conditions that expressly or by implication is intended to come into or continue in force on or after termination or expiry of these Conditions shall remain in full force and effect.

10. FORCE MAJEURE Neither party shall in any circumstances have any liability to the other party under these Conditions if it is prevented from, or delayed in, performing its obligations under these Conditions or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Omni Search or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. Where a force majeure event continues for a period of 4 weeks or more, either party may terminate these Conditions immediately by providing the other party with written notice.

11. VARIATION

- . 11.1. Omni Search reserves the right at any time to modify these Conditions and to impose new or additional terms or conditions. If the Customer continues to use the Services after being notified of any such modification or additional terms, the Customer will be deemed to have accepted these changes and they will be incorporated into these Conditions.
- . 11.2. Subject to clause 11.111.1, no variation of these Conditions will be effective unless it is in writing and signed by the authorised representatives of the parties.
- . 11.3. If the Customer wishes to make a change to the Project, Omni Search has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its fees, the Project Statement and any other relevant terms of these Conditions to take account of the change.

12. MISCELLANEOUS

- . 12.1. These Conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into these Conditions it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Conditions.

- . 12.2. If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Conditions.
- . 12.3. No failure or delay by a party to exercise any right or remedy provided under these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. The rights and remedies provided under these Conditions are in addition to, and not exclusive of, any rights or remedies provided by law.
- . 12.4. The Customer shall not, without the prior written consent of Omni Search, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Conditions. Omni Search may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Conditions.
- . 12.5. Nothing in these Conditions is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- . 12.6. No one other than a party to these Conditions, their successors and permitted assignees, shall have any right to enforce any of its terms.
- . 12.7. All notices must be in writing and are deemed given when mailed by registered or certified mail, return receipt requested, to the other party's main business address. It is agreed that serving notice by email or fax will not be an effective method of providing notice of a claim under these Conditions.

13. GOVERNING LAW AND JURISDICTION

These Conditions and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.