

Essex Social Media LTD - General Terms and Conditions

The Services offered by Essex Social Media LTD (as defined below) can only be used by Clients who have accepted them unconditionally by ordering our services. It is not possible to proceed with the Order without this acceptance. The Client undertakes to fulfill the obligations contained within these terms and conditions. The agreement between the Client and the Consultant comes into force as soon as the Consultant receives initial payment from the Client, and/or the Consultant meets with the Client to secure the order. The General Terms and Conditions are made readily available on the Consultants Website. The Client should save and/or print a copy of these terms and conditions for future reference when making an Order. These General Terms and Conditions apply to the offering and provision of Services by Essex Social Media LTD. These General Terms and Conditions are subject to the Agreement which is made available to the Client and which the Client also accepts at the moment that an Order is actually placed. It is the Client's responsibility to familiarise himself/herself with the Consultants General Terms and Conditions. The Agreement applies to all new Clients and existing Clients and is effective from 11th July 2017. The Essex Social Media brand and www.socialmediainessex.co.uk, including all other domains associated with it, is wholly owned by Essex Social Media LTD. This Agreement is deemed to be a business-to-business Agreement between "Client" and "Consultant". The General Terms and Conditions can be changed by Essex Social Media LTD at any time without prior notice, and are with respect to the Services provided by Essex Social Media LTD, hereinafter referred to as the "work." Whereas, Consultant is a professional digital marketing agency of good standing; whereas, Client wishes Consultant to create certain work described more fully herein; and whereas, Consultant wishes to create such work; now, therefore, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

1. Definitions

- 1.1 "Agreement" means a business to business Agreement.
- 1.2 "Arrears Collection Action" is the action that we take when an account is in Default. Arrears Collection allows us to apply arrears management fees and litigation management fees to the Clients' account.
- 1.3 "Charges" means the Charges as set out in the Quotation and confirmed by the Order; or the Consultant's published price list or tariff structure in force from time to time.
- 1.4 "Contract" means a Contract, subject to these conditions, for the provision of the Services between the Consultant and the Client.
- 1.5 "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 Clients of either party or Information which may reasonably be regarded the Confidential Information of the disclosing party.
- 1.6 "Client" means the company, firm, body or person purchasing and/or using the Services provided by the Consultant.
- 1.7 "Client Content/Data" means text, graphics, photographs, sounds, Information, data, music, video, film or any other copyright work publicly available on the Web Site or provided for publication on the Web Site either by the Client or any other third party (excluding the Consultant) commissioned by the Client, 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).
- 1.8 "Consultant" means Essex Social Media Limited, company number 09839471, whose registered office is: The Galleries Charters Road, Sunningdale, Ascot, Berkshire, SL5 9QJ.
- 1.9 "Default" means any breach of the obligations of either party (including but not limited to a fundamental breach or breach of a fundamental term).
- 1.10 "Direct Debit" means a financial transaction in which The Consultant withdraws funds from the Clients bank account. Formally, the Consultant instructs his or her bank to collect (i.e., debit) an amount directly from the Clients bank account designated by the Client and pay those funds into a bank account designated by the Consultant.
- 1.11 "Domain Name" means the name registered with an Internet Registration Authority used as part of the Clients' URL.
- 1.12 "Information" means Information in any form (including visual and textual) published or otherwise made available (directly or indirectly) on the Internet via Social Media and/or Website .
- 1.13 "Social Media" means any online platform used by the Consultant to represent the client, including, but not limited to, Facebook, Twitter, Instagram, Pinterest, Blogspot.
- 1.14 "Installment Transaction" is a single purchase of Services billed to the Client in multiple segments, over a period of time agreed between the Client and the Consultant.
- 1.15 "Intellectual Property Rights" means patents, trademarks, 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 registerable or not and in any territory or jurisdiction (including but not limited to the United Kingdom).
- 1.16 "Invoices" means Invoices raised by the Consultant for Services provided pursuant to a Contract.
- 1.17 "Order" means a purchase Order in respect of the Services requested by the Client and submitted to the Consultant, together with all documents referred to in it.
- 1.18 "Quotation" means a Quotation for an agreed piece of work (incorporating these conditions) provided by the Consultant to the Client in respect of the Services.
- 1.19 "Recurring Card Payment" are multiple transactions processed at predetermined intervals, not to exceed one year between transactions, representing an Agreement between the Client and The Consultant to purchase Services provided over a period of time.
- 1.20 "Services" means the Services which are the subject matter of a Contract, being the work and/or Services or any of them to be

performed by the Consultant for the Client pursuant to the Order including, without limitation, the Ongoing Services.

1.21 "User" means any member of the public accessing the Social Media and/or Website via the Internet or by any other means.

1.22 "User Generated Content" means all such material posted by Users on the Social Media.

1.23 "Website" means the design, build, publication, hosting, domain purchase or anything related to an Order or Ongoing Service with a Consultant-built web page.

2. Confidentiality

2.1 The Client and Consultant may disclose Confidential Information one to the other to facilitate work under this Agreement. Such Information shall be so identified in writing at the time of its transmittal, and shall be safeguarded and not disclosed to third parties by the receiving party. Confidential Information shall not include Information that: • Is already known to the party to which it is disclosed; • Is or becomes part of the public domain without breach of this Agreement; • Is obtained from third parties, which have no obligations to keep Confidential to the parties to this Agreement.

3. General

3.1 Essex Social Media LTD is a Social Media Marketing, Web Design, Advertising and Business Consultancy Company. Further to an Order from the Client, the Consultant will immediately provide professional services to the Client as agreed.

4. Agreement

4.1 Your Agreement commences with us when you Order our Services. The Consultant may use recorded telephone lines and/or verbal agreement to facilitate a final and binding Agreement. The Consultant will confirm the Client's Order on the recorded telephone line, electronically (By email and/or fax) or face to face, which is deemed as a legally binding Order.

4.2 The Agreement is deemed business to business which is made in line with the distance and direct sales guidelines as laid down by the Office of Fair Trading.

4.3 Any right to a cooling off period is waived further to the Ordered Work commencing immediately post Order.

4.4 The Consultant does not provide midterm cancellations under any circumstances. The commitment made by the Client to the Consultant at the time of Order must be fulfilled in all circumstances.

5. Terms of Payment

5.1 Prices quoted are net and in Pounds Sterling.

5.2 As consideration for the performance of the Consultant's obligations under the Contract, the Client shall pay all sums owing pursuant to a Contract to the Consultant.

5.3 The Client shall, at the time of submission of an Order to the Consultant, pay to the Consultant the full amount attributable to the Work. In the event the Client chooses to pay for our Services by installments, a deposit shall be paid as agreed at the point of sale. The deposit is non-refundable.

5.4 Failure to make agreed payments by their Due Date is deemed as Default and may result in suspension/disconnection of any Service and/or Ongoing Service.

5.5 Failure to make agreed payments by their Due Date is deemed as Default and may also result in 'Arrears Collection Action'.

6. Charges

6.1 We will charge your account for the Services we provide to you in line with our Charges, and you agree to pay us the amount you are charged in accordance with such Charges.

6.2 We may update our Charges from time to time, and any changes will be posted on our Website. We reserve the right to request that you pay for the Services by Direct Debit and/or Debit or Credit card and you accept that your Charges may increase if you pay by any other means.

6.3 If a Direct Debit, Recurring Card Payment and/or Installment Transaction is dishonored or cancelled we shall be entitled to pass on to you any third party Charges we incur and in addition, we may lower your credit limit and suspend or terminate your Service.

6.4 If you wish to cancel or change the details relating to your Direct Debit, Recurring Card Payment and/or Installment Transaction you must tell us immediately and provide us with an alternative method of payment acceptable to us.

6.5 We will collect the first payment from you at the time of Order. This payment will be paid by you in the form of Debit or Credit card, cheque, and/or BACS bank transfer. Further to this payment our Services are immediately made available to you.

6.6 If you have a Contract with us you will receive your Invoices, receipts and any Agreements by electronic means. It is a condition of this Contract that you provide a valid email address for this purpose and that you keep us informed of any changes to it. You are responsible for ensuring your electronic mailbox is in proper working Order and we shall not be liable for any errors in sending or receiving emails unless caused by our negligence.

6.7 We will deduct the payment on the due date as agreed during your order of our services. If this due date falls on a weekend or a public holiday, we will deduct the payment on the next working day after that date. If you choose to pay by Direct Debit, and if we make an error in our Charges to you, under the Direct Debit scheme you are entitled to an immediate refund from your bank or building society. You may cancel a Direct Debit instruction at any time by writing to your bank or building society. If you do cancel your Direct Debit that you use to pay us, you must also tell us immediately and provide us with an alternative method of payment acceptable to us.

6.8 If any payment for Charges is dishonored or received by us after the due date you accept that we may charge you additional fees. Additional fees may include, however are not limited to, Arrears Management Fees and Litigation Management Fees.

6.9 If we accept that it is our mistake, we will refund any amounts that we have wrongly charged to your account within 30 days of receiving your comments. If you are unhappy with our decision, please refer to the dispute resolution process set out in our Code of Practice.

6.10 We can charge interest at £10 per day on any amount that is still due 7 days after the invoice date in line with these terms and

conditions. This interest will start to apply from 7 days after the due date for payment and will accrue each day until you pay the total amount you owe, whether or not this Contract has ended. Please also note that we may suspend or end your Services immediately.

6.11 You agree to pay all our reasonable legal and/or collection costs for collecting any overdue amounts you owe us.

7. Recorded Telephone Calls

7.1 The Client agrees that the Consultant will record selected telephone calls for the purpose of, but not limited to, training, marketing and dispute resolution.

7.2 The Client authorises the Consultant to use the recorded telephone calls as seen fit and if required provide them to third parties for the purpose of, but not limited to, training, marketing and dispute resolution.

8. Delivery and Completion Dates

8.1 The Consultant undertakes to use their reasonable endeavours to provide completed Services to the Client within the time frame stipulated in the Order, or if no time frame is specified, within 30 days of the date on which the Consultant receives an Agreement from the Client during the recorded telephone conversation.

8.2 The dates and timeframes for carrying out the Services and delivery of any resultant Work are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery or performance.

8.3 The Consultant 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 negligence of the Consultant.

8.4 No delay shall entitle the Client to reject any delivery or performance or any other Order from the Client or to repudiate the Contract or the Order.

9. Work

9.1 Where required by the Order, the Consultant shall provide agreed Services. The Consultant agrees to develop the relevant Work in accordance with the Specification as set out in the proposal.

9.2 The Client shall provide to the Consultant in a timely and suitable manner and in a format required by The Consultant, such Information as may be reasonably necessary to enable The Consultant to complete the Work in accordance with the Specification, provided that the Client shall not supply any Information which 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.

9.3 The Client unconditionally guarantees that any element of text, graphics or other artwork furnished to The Consultant for inclusion in the Work is owned by the Client, or that the Client has permission from the rightful owner to use each of these elements, and will hold harmless, protect and defend the Consultant and its subcontractors from any claim or suit arising from the use of such elements furnished by the Client.

9.4 The Consultant shall convert the Information and/or Client Content/Data into a display-ready format for the Work, to meet the Specification. If the Information and/or Client Content/Data are not in a suitable digital format, as agreed between The Consultant and the Client, an additional charge will be made for its conversion by The Consultant.

9.5 The Consultant including (but not limited to) any of their associates or partners makes no guarantee whatsoever to secure outcomes further to the Services provided by the Consultant.

9.6 Any statistics that are provided to the Client by the Consultant are approximate only and based on statistics available at the time of Order

10. Agreement Renewals

10.1 Any Ongoing Service that the Consultant provides for the Client is provided for a set period as agreed at the time the Client places the Order with the Consultant.

10.2 In the event the Client no longer wishes to use the Consultants Services, the entire term of the Agreement will be charged as per the Agreement when the Client Orders the Consultants Services.

10.3 The Clients Agreement with the Consultant will automatically renew at the end of the term. The Client is able to opt out of automatic renewal as detailed in clause 10.7.

10.4 Automatic payment for Ongoing Services will be made to the Consultant by the Clients preferred payment method on the due date.

10.5 Automatic renewal of the Services will be charged at the original Service cost, not the discounted cost as out lined at point and time of original sale.

10.6 In the event that the Client decides that automatic renewal of the Services and Agreement is not required and does not require Ongoing Services it is deemed the Clients full responsibility to inform the Consultant. The Client can inform the Consultant that they no longer want their Agreement with the Consultant to be automatically renewed by writing to: Essex Social Media LTD, The Old Gasworks, 43 Progress Road, Leigh-on-Sea, Essex SS9 5PR. It is the Clients responsibility in its entirety to ensure that the communication to this effect is received by the Consultant.

10.7 The Client agrees to inform the Consultant that they no longer want their Agreement with the Consultant to be automatically renewed at least Thirty (30) working days prior to the end of the Agreement.

11. Responsibility for Approving Completed Work

11.1 The Client acknowledges and agrees that the Consultant shall produce the Work based on the Specification as provided by the Client. It shall be the responsibility of the Client, and not the Consultant, to review and approve the completed Work (including, without limitations, the spelling of names and addresses and the accuracy of telephone numbers etc) at the time of the completion of such Work by The Consultant to the Client for approval by the Client.

11.2 The Consultant shall have no liability to the Client for any inaccuracies in the Campaign if and to the extent that the Client has failed to review and/or approve (or require amendment (as the case may be)) the Content provided pursuant to the Contract.

12. Client Warranties

12.1 The Client warrants that it has the right to include, and permit the Consultant to include, the Information and the Content on the Social Media and/or Website, or has obtained the rights from third parties to do so; it will not supply the Consultant with any Information or User Content that is; unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, libellous, invasive of another's privacy, hateful or racially, ethnically or otherwise objectionable; harmful to minors in any way; in breach of any third party right under any law or under a contractual or fiduciary relationship; an infringement of any Intellectual Property Rights; unsolicited or unauthorised advertising, promotional material, "junk mail", "spam", "chain letters", "pyramid schemes", or any other form of solicitation; 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; intentionally or unintentionally a violation of any applicable law and/or regulation having the force of law; data which contravenes the United Kingdom Data Protection Legislation in any way; it will comply with the Data Protection Act 1998.

12.2 The Client accepts that the Consultant is under no obligation to monitor or approve the Information and accepts that the Consultant excludes all liability of any kind for all material comprising the Information.

12.3 The Consultant warrants that it shall perform the Work with reasonable skill and care in accordance with the standards generally observed in the industry for similar Services; and that it will comply with the Data Protection Act 1998.

13. Intellectual Property and Licence

13.1 The Intellectual Property Rights in the Social Media and/or Website shall vest exclusively in the Consultant. As such, the Consultant shall be free to reproduce, use, disclose, display, exhibit, transmit, perform, create derivatives works, and distribute such material unless specifically agreed otherwise. Further, the Consultant shall be free to use any ideas, concepts, know how or techniques acquired in the deliverance of campaigns 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.

13.2 All rights, titles and interests in and to the Intellectual Property Rights in the Information associated with and content of the Social Media Account and/or Website shall vest exclusively with the Client. The Client acknowledges that any Intellectual Property Rights created, developed, subsisting or used by the Consultant in or in connection with the provision of the Services shall be the sole property of the Consultant.

13.3 Nothing in this Agreement grants to the Client any rights to sell or market the Social Media and/or Website to any third party.

14. Indemnity

14.1 The Client shall indemnify the Consultant against any loss, damage, cost or expense (including reasonable solicitors' fees and expenses) the Consultant may suffer or incur as a result of any claim by any third party that the Client's Information or Content infringes the Intellectual Property Right 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

14.2 The Consultant shall not be liable to the Client 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 Software, their use, application, support or otherwise, except to the extent which it is unlawful to exclude such liability.

15. Indemnity and Limitation of Liability

15.1 The Client shall indemnify the Consultant against any loss, cost or expense incurred by the Consultant arising from any act, omission, neglect or default, of the Client, its agents, or employees.

15.2 Nothing in this Agreement excludes or limits the liability of the Consultant for fraudulent misrepresentation or for any death or personal injury caused by the Consultants negligence.

15.3 The Consultant will not be liable to the Client 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 Clients reputation or goodwill or any other special, indirect or consequential loss (whatsoever and howsoever caused) which arise out of or in connection with a Contract.

15.4 The Client acknowledges and agrees that the Consultant's total liability in respect of the warranty provided under clause above shall be limited to re-performance of the Services or refund of the relevant Contract price.

15.5 Notwithstanding clause 15.4 above, the Client acknowledges and agrees that the Consultant'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 Client pursuant to the relevant Contract.

15.6 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.

16. Notices

16.1 Any notice or other communication to be given under these conditions must be in writing and may be delivered or sent by prepaid first class letter Post or facsimile transmission.

16.2 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 facsimile transmission, at the time of transmission.

17. Invalidity

17.1 The invalidity, illegality or unenforceability of any provision of these conditions should not affect the other conditions.

18. Third Party Rights

18.1 A person who is not party to this Agreement 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.

19. Fees and Additional Services

19.1 Changes in Client input or direction or excessive changes will be charged at £25.00 per hour. Any work the Client wishes the Consultant to create, which is not specified in the description section of this Agreement, or in the agreed proposal will be considered an additional service. Such work shall require a separate Agreement and payment separate from and above that specified in this Agreement.

20. Expenses

20.1 Client agrees to reimburse Consultant for any of the following expenses necessary in completion of the work: (e.g. Fonts, Messengers, Proofs, Props, Research, Shipping, Software, Stock photography, Travel, Telephone Consultation)

21. Assignment of Work

21.1 Consultant reserves the right to assign other designers or subcontractors to the Work, known as outsourcing, to ensure quality and on-time completion.

22. Reservation of Rights

22.1 All rights not expressly granted hereunder are reserved to Consultant, including but not limited to all rights in sketches, copy, or other preliminary materials.

23. Publication

23.1 The Client may publish or disclose Information regarding the Services and shall acknowledge the support of Consultant in all such publications.

23.2 The Client will not use the name of Consultant, in any advertising or publicity without the prior written approval from the Consultant.

24. Copyright Notice

24.1 Copyright is in Consultant's name. Upon completion of work, the copyright will only be released to the Client upon the Consultant's signing of the release of copyright. This will be undertaken on completion of full payment of Services rendered by the Consultant.

25. Termination

25.1 The Consultant does not provide midterm cancellations under any circumstances. The commitment made by the Client to the Consultant at the time of Order must be fulfilled in all circumstances.

25.2 If additional payment is due, this shall be payable within thirty days of the Client's written notification to stop work. In the event of termination, the Client shall also pay any expenses incurred by Consultant and the Consultant shall own all rights to the work.

25.3 The Client shall assume responsibility for all collection of legal fees necessitated by default in payment.

25.4 The Client and Consultant are independent parties and nothing in this Agreement shall constitute either party as the employer, principal or partner of or joint venture with the other party.

25.5 Neither the Client nor Consultant has any authority to assume or create any obligation or liability, either expressed or implied, on behalf of the other.

26. Law and Jurisdiction

26.1 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.