



TERMS OF TRADE

OUTLINED IN THIS DOCUMENT ARE THE TERMS AND CONDITIONS FOR THE SUPPLY OF DIGITAL MARKETING SERVICES BY EMPIRE9 LIMITED.

1. DEFINITIONS & INTERPRETATIONS

1.1

In these terms and conditions the following definitions apply unless otherwise stated:

- 'Business Day' means a day other than a Saturday, Sunday or public holiday.
- 'Contract' means the contract between Empire9 Limited and the Client for the supply of Services governed by these Terms and the Order.
- 'Client' means the individual or business entity who purchases Services from Empire9 and whose details are set out in the Order.
- 'Force Majeure Event' means an event beyond the reasonable control of either party, including but not limited to strikes, lock-outs or other industrial disputes, 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 subcontractors.
- 'Company' means Empire9 Limited (Empire9) a company incorporated in New Zealand under company number 5127681 whose registered office is at 196 St Asaph Street, Christchurch, New Zealand, trading as Empire9.
- 'Intellectual Property Rights' means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each

case whether registered or unregistered and including 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.

- 'Order' means the order placed by the Client through counter-signing Empire9's Quotation form.
- 'Order Form' means a Quotation form counter-signed by the Client which together with these terms and conditions shall form a binding contract.
- 'Quotation' means the written quotation prepared by Empire9 which contains its proposals for providing Services to the Clients.
- 'Services' means the services Empire9 will provide to the Client as specified in the Order.
- 'Specification' means the description or specification of the Services in the Order.
- 'Terms' means these terms and conditions as updated from time to time by Empire9.
- 'GST' means goods and services tax chargeable under New Zealand law for the time being and any similar additional tax.
- 'White Label Work' means Services provided by Empire9 to a Client who rebrands these services as their own for the benefit of their client.

1.2

Where these Terms use words in their singular form, they shall also be read to include the plural form of the word and vice versa. Where these Conditions use words which denote a particular gender, they shall be also read to include all genders and vice versa.

1.3

The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of these Terms.

1.4

A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted.

2. TERMS & CONDITIONS

2.1

These Terms shall apply to all agreements concluded between Empire9 and the Client to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2

These Terms and the Order may only be varied by express written agreement between Empire9 and the Client.

3. THE CONTRACT

3.1

The Order constitutes an offer by the Client to purchase the Services in accordance with these Terms. The Client shall ensure that the terms of the Order and any relevant Specification are complete and accurate.

3.2

The Order shall only be deemed to be accepted when Empire9 issues a written acceptance of the Order, or when Empire9 has started to provide the Services having received the Order, whichever happens first, at which point the Contract shall come into existence.

3.3

The Contract constitutes the entire agreement between Empire9 to provide the Services to the Client and for the Client to purchase those Services, in accordance with these Terms.

3.4

The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Empire9 which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by Empire9 and any descriptions or illustrations contained in Empire9's catalogues, website, social media properties or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or any other contract between Empire9 and the Client for the supply of Services.



4. COMPANY OBLIGATIONS AND WARRANTIES

4.1

Empire9 warrants that it will provide the Services as stipulated in the Order using reasonable care and skill to conform in all material respects with the Specification.

4.2

Empire9 shall use all reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time shall not be of the essence for the provision of the Services. Empire9 shall not be liable for any delay in delivery of the Services caused by a Force Majeure event or the Client's failure to provide Empire9 with adequate delivery instructions or any other instructions relevant to the supply of the Services.

4.3

Empire9 shall have the right to make any changes to the Services which are necessary to comply with any applicable law.

5. CLIENT'S OBLIGATIONS AND INDEMNITIES

5.1

The Client shall provide assistance and technical information to Empire9, as reasonably required by Empire9 in sufficient time to facilitate the execution of an Order in accordance with any estimated delivery dates or milestones. The Client shall have sole responsibility for ensuring the accuracy of all information provided to Empire9 and warrants and undertakes to Empire9 that the Client's employees assisting in the execution of an Order have the necessary skills and authority.

5.2

The Client shall be obliged as quickly as possible and within the agreed deadline to comment on and or approve materials provided under the Services, including (without limitation) advertising copy, search terms and graphic material submitted by Empire9. In addition, the Client shall be obliged as quickly as possible and within the agreed deadline to implement changes on websites, in IT systems or where it may otherwise be required by Empire9.

5.3

The Client shall be obliged to inform Empire9 immediately of changes of domain names, websites, technical setup and any other material information regarding the technical infrastructure which may affect the Services delivered by Empire9.

5.4

The Client shall indemnify and keep Empire9 indemnified fully against all liabilities, costs and expenses whatsoever and howsoever incurred by Empire9 in respect of any third parties as a result of the provision of the Services in accordance with the Order, Specification, or the content of the Client's advertising or web pages which result in claims or proceedings against Empire9 for infringement of any Intellectual Property Rights or other proprietary rights of third parties, or for breach of confidentiality or contract or for defamation.

5.5

The Client undertakes to comply with all applicable rules, regulations, codes of practice and laws relating to its use of the Services, including without limitation its obligations under the Privacy Act 1993, the Fair Trading Act 1986 and equivalent legislation and hereby agrees to indemnify and to keep Empire9 indemnified in respect of any and all costs, claims or proceedings whatsoever brought against Empire9 by any third party in connection with any breach of the same by the Client.

5.6

As standard across the Services and unless otherwise notified, the Client shall be exclusively responsible for implementing the optimisation changes recommended by Empire9. As notified by Empire9, in certain cases for amendments to existing optimisations, the Client shall allow Empire9 use of the site's FTP or content management system's username and password in order to gain access to make agreed changes.

5.7

Empire9 require that prior notice be given for any alterations relating to the Client's website(s) that may affect the services supplied by Empire9. If alterations are made by the Client or a third party to the Client's site(s) search engine placements may be

affected and Empire9 cannot be held responsible.

5.8

Empire9 advises that regular, fresh content added to the site will help to improve the stability of rankings within search engines and the Client understands that regular, unique content plays an important part in the success of a website and failure to add unique content will lessen the impact of SEO services.

6. PRICES

6.1

Unless otherwise expressly stated, all prices shall be in New Zealand Dollars and shall be exclusive of GST and other duties. In the event that duties are introduced or changed after the conclusion of an Order, Empire9 shall be entitled to adjust the agreed prices accordingly.

6.2

The Client acknowledges that certain Services may involve the licensing of third party Intellectual Property Rights and that the Client may be required to enter into a license directly with such third party. Unless otherwise expressly stated, all prices shall be exclusive of costs for the acquisition of Intellectual Property Rights for materials to be included in marketing materials, including if relevant (but without limitation) pictures and licenses from third party owners and licensors.

6.3

Whilst every effort is made to ensure that costing estimates are accurate, Empire9 reserves the right to amend any estimate, should an error or omission have been made.

7. PAYMENTS

7.1

Empire9 shall invoice the Client monthly (on the 30th), following Services delivered. Before Empire9 carry out any work, Clients may be asked to provide a non-refundable fees deposit. This deposit is kept securely and will be offset against the Client's last invoice(s) when the work detailed in an Order has been completed.



7.2

The Client shall pay each invoice submitted by Empire9 on the date stipulated on the invoice (usually 20 days following the invoice) and in cleared funds in accordance with clause 7.3 below. The invoice number shall be stated on all payments and payment by Bank Transfer is accepted.

7.3

The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against Empire9 in order to justify withholding payment of any such amount in whole or in part.

7.4

In the event of overdue payment, interest shall accrue on the invoice amount at of 2 per cent over the base rate of ANZ Limited. Empire9 expressly reserves all rights at all times to bring any legal action it considers appropriate to recover any unpaid sums.

7.5

Late payment shall be considered as constituting a material breach of the Contract entitling Empire9 (at its discretion) to cancel the Contract or to affirm the Contract and assert the usual remedies for breach.

8. DELAYS AND COMPLAINTS

8.1

In the event that the Client proves that the Services are delayed or not in accordance with the Contract, Empire9 shall be obliged to remedy or redeliver, at its own discretion, without undue delay. In the event that the Services continue to be not in accordance with the Contract after reasonable attempts have been made to remedy this, the Client shall be entitled to cancel the Order in accordance with clause 13.2 a), provided that the breach is material.

8.2

Complaints concerning delays or breach of Contract shall be submitted immediately after the time when the Client became or should have become aware of the matter. If the Client fails to bring the defect (unless by its very nature it is impossible to ascertain within such a period) to the attention of

Empire9 within 48 hours the Client shall be deemed to have accepted the Services and shall not be entitled to assert remedies based on delays or breach of Contract.

8.3

The Client hereby acknowledges that certain Services rely upon goods and/or services being provided by third parties ('Third Party Services'). The Client acknowledges that the Third Party Services will be governed by that third parties' terms and conditions and that Empire9 cannot provide any warranties in respect of the Third Party's Services and will not be liable to the Client for any delays and/or failings in respect of the same.

Providers of Third Party Services may provide their own warranties to the Client and the Client must satisfy itself whether or not such warranties (where given) are acceptable for the Client's business purposes or risk management policies.

8.4

Empire9's only responsibility in respect of the Third Party Services is to take reasonable care and skill when selecting the providers of the same.

8.5

The Client's exclusive remedies for late delivery or Services not conforming with the Contract are as specified in this clause 8 and, if the remedies set out in these Terms have been exhausted, the Client's final remedy is limited to cancellation of the Contract and Empire9's sole liability is to refund any payments for Services not conforming with the Contract, subject to the limitations set out in clause 9 below.

9. LIABILITY

9.1

Except as expressly stated in this Clause 9, Empire9 shall have no liability to the Client for any loss or damage whatsoever arising from or in connection with the provision of the Services or for any claim made against the Client by any third party.

9.2

Without prejudice to the generality of Clause 9.1 above, Empire9 shall have no liability for any losses or damages which may be suffered by the Client whether the same are suffered directly or indirectly or are

immediate or consequential which fall into the following categories:

- Any indirect or consequential loss arising under or in relation to the Contract even though Empire9 was aware of the circumstances in which such loss could arise;
- Loss of profits; loss of anticipated savings; loss of business opportunity or goodwill;
- Loss of data; and
- Fraudulent clicks on any of the Client's accounts managed by Empire9.

9.3

To the extent such liability is not excluded by sub-clauses 9.1, 9.2 and clause 10 below, Empire9's total liability (whether in contract, tort (including negligence or otherwise)) under or in connection with the Contract or based on any claim for indemnity or contribution (including for damage to tangible property) or otherwise will not in any event exceed the total sum invoiced for the Services.

10. OTHER LIMITATIONS OF LIABILITY

10.1

Empire9 shall not be liable for downtimes, interference in the form of hacking, virus, disruptions, interruptions, faulty third-party software, search engines or websites on which a service is dependent or other deliveries from a third party. Empire9 shall use its reasonable efforts to assist in remedial efforts if so requested by the Client. Any work connected with remedial efforts as described above shall be charged to the Client separately in accordance with these Terms or (at Empire9's discretion) Empire9's Rate Card applicable from time to time.



10.2

Empire9 shall not be liable for any changes made without notice by the Client or a third party employed by the Client to domain names, websites, links, technical setup etc. and affecting the Services delivered by Empire9. Preceding or subsequent work connected with any adjustments required as a result of such changes shall be charged to the Client in accordance with these Terms or on the basis of Empire9's Rate Card applicable from time to time at Empire9's discretion.

10.3

Empire9 shall use all reasonable endeavours to deliver Services relating to social media, search engine optimisation, links, advertisements, banners, pay per click and Google Analytics in accordance with the guidelines applicable to the relevant search engines and social platforms. However, Empire9 shall not be liable for delayed or non-conforming performance due to changes made to standard terms, assessment algorithms, search criteria, viewing policy, prices and campaign offers or other matters beyond Empire9's control and reserves the right to make changes to Services as a result of the same. In addition, Empire9 shall not be liable for other changes or discontinuation of search engines or social platforms.

10.4

Empire9 shall not be responsible for URLs dropped or excluded by a search engine for any reason.

10.5

If the Client does not implement some or all of Empire9's recommendations, Empire9 shall not bear any liability for any lack of success experienced by the Client relating to the Services.

11. INTELLECTUAL PROPERTY RIGHTS

11.1

It is the responsibility of the Client to ensure that they have the right to use any Intellectual Property Rights when they provide any text, image or representation ("Materials") to Empire9 for incorporation into the Services and the Client hereby grants or agrees to procure the grant of (as applicable) an irrevocable licence to Empire9

to use such Materials for the purposes of providing the Services for the duration of the Contract.

11.2

The Client shall be responsible for ensuring that the contents of Materials which the Client has contributed or approved are not in contravention of legislation, decency, marketing rules or any other third-party rights. Empire9 shall be entitled to reject and delete such material without incurring any liability. In addition, Empire9 shall be entitled to cancel the Order.

11.3

The Client shall indemnify Empire9 against all damages, losses and expenses suffered or incurred by Empire9 as a result of the Materials which the Client has contributed or approved being in contravention of legislation, decency, marketing rules or any action that any such Materials infringe any Intellectual Property Rights of a third party.

11.4

The parties shall be obliged to notify the other party without undue delay of any claims raised against a party as described above.

11.5

Unless expressly stated otherwise in these Terms or in an Order, the Intellectual Property Rights created, developed, subsisting or used in connection with the Services and whether in existence at the date hereof or created in the future shall vest in and be the property of Empire9 or the relevant third party from whom Empire9 has acquired a right of use with a view to executing the Order. The Client agrees to execute and deliver such documents and perform such acts as may be necessary from time to time to ensure such Intellectual Property Rights vest in Empire9.

11.6

The Intellectual Property Rights as mentioned in Clause 11.2 shall not be used, assigned, distributed, copied, forwarded to online or offline activities by the Client without a separate, express written agreement.

11.7

If Empire9 makes software, scripts, ASP services etc. available to the Client as part of the execution of an Order, the Client shall

only acquire a non-exclusive personal non transferable license to use such material until the Services under this agreement cease.

11.8

The Client hereby irrevocably licenses Empire9 to use and display the Client's name, figure, logo etc. as a reference on Empire9's website, other marketing materials or types of media whilst they are a Client of Empire9 and for 18 months after the Contract terminates. The Client agrees to send Empire9 its most recent logo or figure as and when it is amended from time to time.

12. CONFIDENTIALITY AND PERSONAL DATA

12.1

A party (Receiving Party) shall 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), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause shall survive termination of the Contract.

12.2

During the term of the Contract and for a period ending 5 years from the date of its conclusion, Empire9 shall take the same care as Empire9 uses with its own confidential information, to avoid, without the Client's consent, the disclosure to any third party (except a subcontractor working on the Services who is subject to similar undertakings of confidentiality) of any of the Client's business or



operational information which the Client has designated as confidential.

12.3

The obligation in Clause 12.2 shall not apply to any information which is or becomes publicly available otherwise than through a breach of this agreement, is already or rightly comes into Empire9's possession without an accompanying obligation of confidence, is independently developed by Empire9, or which Empire9 is required to disclose by law.

12.4

During the term of the Contract and for a period ending 5 years from termination thereof, the Client will not disclose to any persons within its organisation that do not have a need to know, or to any third party, any information and non Client materials provided by Empire9 concerning the method or approach Empire9 uses in providing the Services.

12.5

Each party agrees to comply with its respective obligations under the Privacy Act 1993.

12.6

The Client shall be obliged to indemnify Empire9 for any loss, including costs incidental to legal proceedings, suffered by Empire9 as a result of the processing of personal data which the Client has contributed being in contravention of the Privacy Act 1993 or marketing law. The parties shall be obliged to notify the other party without undue delay of any claims raised against a party as described in the present clause.

13. TERMINATION AND ASSIGNMENT

13.1

The Client can at any time terminate the Contract by providing 30 days notice in writing. All costs incurred up until this notification is received will be charged as outlined in this Agreement. Provided however in the event the Client has entered into a fixed term arrangement such 30 day notice is not available to be utilised.

13.2

Without limiting its other rights or remedies, each party may terminate the Contract with

immediate effect by giving written notice to the other party if the other party:

- commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- becomes or is insolvent or is unable to pay its debts (within the meaning of the Insolvency Act 2006) or (except for the purposes of a genuine amalgamation or reconstruction) a petition is presented or meeting convened or resolution passed for winding up the defaulting party or the defaulting party enters into liquidation whether compulsorily or voluntarily or compounds with its creditors generally or has a receiver, administrator, or administrative receiver appointed over all or any part of its assets or the defaulting party ceases to carry on all or a substantial part of its business.

13.3

Empire9 shall, in addition to all other rights and remedies under these Terms be entitled to terminate this Contract without notice in the event that any of its charges for the Services are not paid in accordance with these Terms.

13.4

Upon termination, for whatever reason, the parties shall be obliged to return all materials received from the other pursuant to the Contract without undue delay. If relevant, the Client shall be obliged to remove codes, etc, from websites without undue delay. If the Client fails to do so, Empire9 shall be entitled to invoice the Client in line with its then current terms and conditions for subsequent Services without such invoicing amounting to a waiver of Empire9's right to terminate the Contract.

13.5

The Client shall not be permitted to assign or transfer all or any part of its rights or obligations under the Contract and these

Terms without the prior written consent of Empire9.

13.6

Empire9 shall be entitled to assign or subcontract any of its rights or obligations under the Contract and these Terms and the Client acknowledges that certain elements of the Services will be provided by third parties.

14. FORCE MAJEURE

14.1

Neither party shall be held liable for a Force Majeure Event.

14.2

If a party believes that a Force Majeure Event has occurred, such party shall immediately inform the other party of the start and end of the Force Majeure Event.

14.3

Notwithstanding the other provisions of the present Terms, each party shall be entitled to terminate the Contract without liability to the other by written notice to the other party in the event that the performance of the Contract is impeded for more than 6 months due to a Force Majeure Event.

15. MISCELLANEOUS

15.1

Empire9 reserves the right to modify or discontinue, temporarily or permanently, the Services with or without notice to the Client and Empire9 shall not be liable to the Client or any third party for any modification to or discontinuance of these Services save for the return of any prepaid sums in connection with the provision of the Services which are subsequently not provided.

15.2

Empire9 shall be free to provide its Services to third parties whether during or following the provision of the Services to the Client.

15.3

During the term of the Contract and for a period of 12 months thereafter, the Client agrees not to employ or engage or offer to employ or engage anyone designated by Empire9 to work on the Services.



15.4

The failure of either party to enforce or to exercise at any time or for any period of time any right pursuant to these Terms does not constitute, and shall not be construed as, a waiver of such terms or rights and shall in no way affect that party's right later to enforce or to exercise it.

15.5

If any term of these Terms is found illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining Terms, be deemed omitted from these Terms and shall in no way affect the legality, validity or enforceability of the remaining Terms which shall continue in full force and effect and be binding on the parties to the Contract.

15.6

Any valid alteration to or variation of these Terms must be in writing signed on behalf of each of the parties by duly authorised officers.

15.7

A person who is not a party to the Contract shall not have any rights under or in connection with it.

17.2

The Contract shall be governed by and construed in accordance with the laws of New Zealand and shall be subject to the non-exclusive jurisdiction of New Zealand courts.

16. ENTIRE AGREEMENT

16.1

The parties acknowledge and agree that the Contract supersedes any prior agreement, understanding or arrangement between the parties, whether made orally or in writing and constitute the entire agreement between Empire9 and the Client relating to these Services. Therefore, except as expressly provided, all other conditions and warranties (implied, statutory or otherwise) are hereby excluded to the fullest extent permitted by law.

17. LAW AND JURISDICTION

17.1

Empire9 and the Client shall be obliged to attempt to settle any disputes arising between them including disputes relating to the existence or validity of the Contract through negotiation provided always that either party shall be entitled at all times to exercise any of its other remedies including through taking legal action.