

Also to be found at: <http://www.espan.co.uk/terms-and-conditions>

Terms and Conditions

Espan Digital Marketing Limited

1. Application

1.1. These terms and conditions together with the engagement letter to which they are attached ("Engagement Letter") shall form a binding contract between the Client named on the Engagement Letter (the "Client") and Espan Digital Marketing Limited ("Espan Digital Marketing Limited") and shall constitute the entire agreement between Client and Espan Digital Marketing Limited.

1.2. These terms and conditions shall apply to any trading agreement or other contract or arrangement between the Client and Espan Digital Marketing Limited.

1.3. These terms and conditions apply to the exclusion of all other terms or conditions of contract the Client may propose and shall not be varied or amended unless agreed in writing and signed by Espan Digital Marketing Limited.

2. Commencement and Scope of Engagement

2.1. In consideration of the payment by the Client to Espan Digital Marketing Limited of the fees as set out in the Engagement Letter (the "Fees"), Espan Digital Marketing Limited agrees to provide to the Client the goods and services described in the Engagement Letter (the "Works") in accordance with the Engagement Letter, with reasonable and due care in accordance with and subject to these terms and conditions. The Works shall unless terminated in accordance with clause 11, be provided by Espan Digital Marketing Limited for the period set out in the Engagement Letter (the "Engagement").

2.2. This Agreement shall not give rise to any exclusive relationship and nothing in this Agreement shall prevent Espan Digital Marketing Limited acting for or providing the same or similar works to the Works to any existing or prospective third party.

2.3. The Works provided by Espan Digital Marketing Limited shall be for the use and benefit of the Client and may not be supplied or passed on to any person without the approval of Espan Digital Marketing Limited. Espan Digital Marketing Limited's duty of care is to the Client, not to any third party, unless agreed Espan Digital Marketing Limited has agreed in writing to accept a duty to the third party. The Client may only rely upon the Works provided by Espan Digital Marketing Limited for the purposes which such goods and services are provided.

2.4. It is agreed and understood that any activities undertaken by the Client (or by any third party on its behalf) which is in relation to or similar to the Works, including without limitation any modification of the Works, modification or changes to the Client's web site, or the use of or inclusion of any third party product or service which might relate to the Works shall interfere with the provision of the Works by Espan Digital Marketing Limited and shall affect the results, outcomes and positions in search engines. All such activities should be discussed with Espan Digital Marketing Limited prior to implementation and the Client shall not implement the same without the prior written consent of Espan Digital Marketing Limited.

3. **Duties and Responsibilities of the Client**

3.1. The Client shall at all times during the Engagement co-operate with and act in good faith towards Espan Digital Marketing Limited and shall, on request, undertake such acts and provide such source materials (including those listed in the Engagement Letter) (collectively referred to as the "Materials") as Espan Digital Marketing Limited require to incorporate into the Works, or as Espan Digital Marketing Limited require to carry out its obligations under the Engagement Letter and hereunder.

3.2. In the event that the Client does not undertake those acts or provide those Materials required under clause 3.1 above within a reasonable time (and at least within 30 days) of being requested to do so, including without limitation carrying out any changes, modifications or optimisations to Client's website or other Materials as requested, recommended or required by Espan Digital Marketing Limited, Espan Digital Marketing Limited shall be entitled to invoice for the remaining Works as if Client had done so whether such are provided or not.

3.3. During the provision of the Works by Espan Digital Marketing Limited to the Client, the Client shall not:

3.3.1. Employ the services of any Search Engine Optimisation or Pay Per Click Company other than Espan Digital Marketing Limited to work on their website promotion;

3.3.2. Employ the services of any Submission Company other than Espan Digital Marketing Limited for the provision of their Search Engine Optimisation services;

3.3.3. Create any duplicate sites, duplicate content or pages, redirects or doorway pages to their website;

3.3.4. Request or exchange links with any link farms or undertake any spamming techniques which may harm the web site's search engine ranking with Google.

3.4. The Client shall grant the authority to submit the web site pages being promoted to search engines, directories and other web sites. The Client shall provide Espan Digital Marketing Limited with log-in information (FTP username and password) to allow us to gain access to the Client website.

3.5. The Client shall be responsible for informing as required by their webmaster or anyone else who has access to their web site, that Espan Digital Marketing Limited are performing Search Engine Optimisation or Pay Per Click services on their site.

3.6. The Client shall inform Espan Digital Marketing Limited of any change or changes made to their website throughout your Search Engine Optimisation or Pay Per Click campaign within 24 hours of such change or changes being implemented.

3.7. The Client shall inform Espan Digital Marketing Limited within 24 hours if access is granted to someone to the Client's Pay Per Click account. Espan Digital Marketing Limited is not responsible for any changes to Pay Per Click accounts made by the Client or a third party.

3.8. The Client shall inform Espan Digital Marketing Limited within 24 hours of work commencing if any other person or agency apart from Espan Digital Marketing Limited is working on or making changes or a change to the pay per click, Search Engine Optimisation or any other aspect of digital marketing.

3.9 The Client shall inform Espan Digital Marketing Limited within 24 hours of work commencing if any other person or agency apart from Espan Digital Marketing Limited makes a change or changes to your website/websites.

3.10 The Client shall grant the authority to connect accounts, including pay per click accounts and Analytics accounts to 3rd party tools/services for the purpose of administering the accounts, reporting and improving performance through bid management for example and also grants authority that from time-to-time Espan Digital Marketing Limited may seek an audit of the Client's Pay Per Click account from a third party.

3.11 The Client shall grant the authority to use the Client's name, trademarks, logos and a description of the services provided under the Works in any promotional or marketing materials or proposals which Espan Digital Marketing Limited may wish to publish and distribute.

4. **Fees and Invoicing**

4.1. Espan Digital Marketing Limited does not offer credit terms. Espan Digital Marketing Limited shall issue invoices on a monthly basis for all Works provided to the Client in a particular calendar month. Invoices will be issued upon completion of the Works for that calendar month or at the end of the Engagement if sooner. The Client shall raise any query and/or concern it may have in relation to any invoice within 7 days of the date of the invoice. Any queries and/or concerns raised after this 7 day period shall be null and void and the invoice shall be payable in full without deduction or set-off.

4.2. Notwithstanding the period set out in clause 4.1 of 7 days of date of issue of a invoice to raise any queries or concerns in relation to an invoice, all invoices are to be settled in favour of Espan Digital Marketing Limited without deduction or set-off within 14 days of the date of the invoice unless specified otherwise in the Engagement Letter.

4.3. In the event of non-payment of any invoice Espan Digital Marketing Limited shall be entitled to withhold or suspend the provision of further Works until such time as it receives payment of the invoice or other payments due. In addition Espan Digital Marketing Limited shall be entitled to retract the Works provided to the Client and invoiced for under any unpaid invoice until such time as it receives payment of that invoice.

4.4. In addition to the remedies for late payment of invoices set out in clause 4.3 hereof, Espan Digital Marketing Limited shall be entitled to charge statutory interest at the rate of 8% above the Bank of England reference rate in force on the date the invoice becomes overdue for payment and any subsequent rate where the reference rate changes and the invoice remains unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1988 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002 and shall be entitled to such reasonable costs as it incurs in the collection of such overdue payments.

4.5. Espan Digital Marketing Limited may charge additional fees in accordance with its then prevailing rates:

4.5.1. in the event of delays or additional works caused or required by Client including its failure to provide Espan Digital Marketing Limited with such information, Materials, instructions, media or approvals, as are reasonably required for the supply of the Works, properly and/or on time in accordance with clause 3.1 of these terms and conditions or otherwise;

4.5.2. in the event of changes to the cost of labour, materials, services and other circumstances outside of Espan Digital Marketing Limited's reasonable control;

4.5.3. in the event that Client requires the supply of Works, goods and services in addition to those described in the Engagement Letter or any variations to the Works. If Client requires any change or alteration to the Works ("Change"), Espan Digital Marketing Limited and Client shall, prior to such change being effective or implemented, agree:

- the nature of the Change;
- the procedures for implementation of such Change;
- and the variation to the Fees.

Until any Change is formally agreed between Client and Espan Digital Marketing Limited, Espan Digital Marketing Limited will continue to perform and be paid for the Works as if the Change had not been proposed.

4.5.4. All and any Changes to the Works shall be reflected and accompanied by appropriate amendments to the Engagement Letter and Fees.

5. Liability for Third Party Fees

5.1. In the event that the Works include Pay Per Click or other search engine placement services which require payments to third parties and are agreed with the Client prior to their implementation, the Client shall provide Espan Digital Marketing Limited with funds on account for any out of pocket expenses incurred by it in supplying the same.

5.2. In addition and as supplemental to clause 5.1 of these terms and conditions the Client shall during the Engagement retain ownership of their AdWords and/or other Pay Per Click accounts and shall be liable for any fees due to third parties for those accounts during the Engagement.

6. Confidentiality

6.1. The Client undertakes that it will keep secret and confidential the terms of the Engagement Letter and any information supplied by Espan Digital Marketing Limited in connection with the Engagement Letter or the business of Espan Digital Marketing Limited and the Works and shall not disclose or make available such information or part thereof to any third party (except to its own employees and advisers and then only on a need to know basis) without the prior written consent of Espan Digital Marketing Limited PROVIDED THAT this Clause shall not extend to information which was and can be shown to be rightfully in the possession of the Client prior to the issuance of the Engagement Letter or which is in the public domain (other than as a result of a breach of this Clause).

6.2. The Client undertakes to Espan Digital Marketing Limited to indemnify and hold harmless Espan Digital Marketing Limited in full and defend at its own expense Espan Digital Marketing Limited against all costs, damages and losses incurred by Espan Digital Marketing Limited arising out of its use of the Materials or breach by the Client of clause 6 of these terms and conditions.

6.3. The Client shall not modify, adapt or translate the Works except with the prior written consent of Espan Digital Marketing Limited or as otherwise permitted by law where all modifications,

adaptations, translations shall belong to and vest in Espan Digital Marketing Limited unless otherwise agreed and specified in writing in the Engagement Letter.

6.4. Espan Digital Marketing Limited warrants that it will use reasonable efforts to ensure that the Works do not infringe the copyright of any third party.

6.5. Espan Digital Marketing Limited shall not divulge details of the Client to any other existing or potential client.

7. Liability

7.1. Espan Digital Marketing Limited does not guarantee any specific result on any search engine, nor any increased level of traffic or sales as a result of the Search Engine Optimisation and/or Link Building and/or Pay Per Click campaign. Site rankings change frequently as a result of regular changes in the algorithms used by search engines to rank sites, and other factors. The Client agrees that the work done by Espan Digital Marketing Limited is in real time and will be affected by these and other factors.

7.2. The Client shall inspect the Works regularly and shall inform Espan Digital Marketing Limited immediately if it wishes to contend that any part of the Works do not comply with the Engagement Letter or are defective in material and workmanship.

7.3. If the Works do not comply with the Engagement Letter or are defective in material or workmanship, Espan Digital Marketing Limited's liability shall be limited to taking such practical steps to correct such defects as are possible within a reasonable time. Such reasonable time shall commence upon receipt of written notice from the Client of the alleged defective Works. Such remedial action shall be limited to no greater amount of work or key strokes than that carried out to do the work initially. The Client recognises that material put up on the web is not in practise always within the control of the author after initial dissemination and that Espan Digital Marketing Limited cannot be responsible for material, once released, residing on third party sites. Espan Digital Marketing Limited shall not be liable for any indirect, consequential losses or special losses and shall not be liable for any loss of turnover, sales, revenue or profits or for the loss of software or data. In addition Espan Digital Marketing Limited shall not be liable for:

7.3.1. any loss or damage caused by it being given access to the Client's computer systems (which shall only be required where necessary) including without limitation any remote servers to which it has access or stores data or any unauthorised access to or use of the same including without limitation for any misuse of any passwords, logins or accounts of the Client;

7.3.2. any interference in or modification of the Works or the Client's web site by the Client or any third party or the consequences thereof, remedy of which shall be as a Change;

7.3.3. loss of service, unavailability of files, damage of data, misuse of equipment by third parties, failure of any externally managed equipment or Communications devices or other services deemed to be beyond the control of Espan Digital Marketing Limited;

7.3.4. Loss of reputation of the Client online or offline.

7.3.5. penalisation or lower rankings resulting from SEO or link building activity carried out by other agencies, individuals or yourselves prior to our Engagement.

7.3.6. penalisation or lower rankings resulting from SEO or link building activity carried out by other agencies, individuals or yourselves during our Engagement.

7.3.7. poor performance or any issues resulting from pay per click or other digital marketing activity carried out by other agencies, individuals or yourselves during our Engagement.

7.4. When instructions or advice are given or received orally by Espan Digital Marketing Limited, it shall have no liability to Client for any misunderstanding or misrepresentation which may arise in relation thereto except in relation to fraudulent misrepresentations.

7.5. Espan Digital Marketing Limited shall have no liability to Client in respect of the Materials. On completion of the Works the Client agrees to collect the Materials within 2 months of completion of the Works, failing which, Espan Digital Marketing Limited may dispose of them on giving the Client 14 days notice.

7.6. Espan Digital Marketing Limited shall not be responsible for any activity that the Client has put in place or wants to put in place that is against Google AdWords policies or other Pay Per Click platform policies.

7.7. Espan Digital Marketing Limited will not be liable in any amount for failure to perform any obligation under the Engagement Letter and/or these terms and conditions if such failure is caused by the occurrence of any unforeseen contingency beyond the reasonable control of Espan Digital Marketing Limited including without limitation Internet outages, communications outages, fire, flood, war or act of God.

7.8. Save as provided for in clauses 7.1 to 7.6 of these terms and conditions, Espan Digital Marketing Limited shall have no liability to the Client whatsoever in relation to the Works and gives no warranty and makes no representation as to whether the Works contain or are free from racist, defamatory, sexually explicit, inflammatory, obscene or other legally restricted material and explicitly excludes all and any liability in relation thereto.

7.9. By entering into this agreement, the Client agrees to limit the claims which it makes, to claims against Espan Digital Marketing Limited. The Client agrees that it will not make any claims against any individuals related to Espan Digital Marketing Limited, however arising, and whether against an employee, consultant or member personally, in respect of losses which the Client may suffer directly or indirectly or which it may incur arising from the services. This does not prevent Espan Digital Marketing Limited being responsible to the Client for the acts or omissions of such persons, where it has such responsibility regardless of this clause. The individuals related to Espan Digital Marketing Limited (whether employees consultants or members) will be entitled to the benefit of the provisions of this Clause 7.9.

8. Legislation

8.1. The Client shall comply with all applicable rules, regulations, codes of practice and laws relating to its use of the Works including without limitation its obligations under the Data Protection Act 1998; Regulation of Investigatory Powers Act 2000; Competition Act 1998 and E-commerce Directive and equivalent legislation.

8.2. The Client shall guarantee throughout the Engagement that the material included in the web site:

8.2.1. Is not in breach of the Intellectual Property rights of any third party;

8.2.2. Is not obscene within the definition of the Obscene Publications Act 1959 or any other relevant provision or statute;

8.2.3. Is not in breach of any code or provision of statute or common law or otherwise in force from time to time in relation to Advertising of Goods or Services;

8.2.4. Contains no element of corparative advertising which is in breach of the Control of Misleading Advertisements (Amendment) Regulations 2000;

8.2.5. Is not in breach of the Defamation Act 1996 or any other relevant provision or statute;

8.2.6. Does not contain any misleading price comparison in breach of Consumer Protection Act.

9. **Third Party Materials**

9.1. Espan Digital Marketing Limited gives no warranty, representation or undertaking in relation to any third party materials or works.

9.2. Prior to any selection, use or reproduction by the Client of Works, Espan Digital Marketing Limited shall use reasonable efforts to, on reasonable request, provide the Client with copies and evidence of such rights, clearances, permissions and licences as shall be necessary for the use of the Works by the Client.

10. **Risk and Title**

10.1. Risk in any reports or information delivered to the Client will pass to the Client on dispatch and until payment in full has been received in cleared funds by Espan Digital Marketing Limited in respect of the Works, title in any physical products delivered to the Client shall remain with Espan Digital Marketing Limited.

10.2. The Client shall take out such insurance as shall be prudent against all risks usually incurred in respect of the Work whilst in its possession or control.

11. Termination

11.1. Subject to the provisions of clause 4 of these terms and conditions, Espan Digital Marketing Limited shall be entitled to immediately restrict, suspend or terminate the Engagement in the event of the Client's material breach of any of these terms and conditions and/or breach of the Engagement Letter.

11.2. In addition to clause 11.1 of these terms and conditions, Espan Digital Marketing Limited reserve the right to terminate the Engagement with immediate effect if it believes the Client's Materials or Web Site to be obscene, unfair or untrue. The discretion of Espan Digital Marketing Limited in this respect will be absolute.

11.3. The Client may not unilaterally terminate this Engagement except for material breach by Espan Digital Marketing Limited of the Engagement Letter and/or these terms and conditions. In the event of such a material breach the Client shall remain liable for payment of the Fees without deduction or set-off up to the time of such material breach.

11.4. Notwithstanding the provisions set out in clauses 11.1 to 11.3 Espan Digital Marketing Limited and/or the Client may terminate the Engagement by 30 days notice in writing to the other party (the "30 day notice period"). The Client shall be liable for payment of all outstanding fees and interest accrued under clause 4.4 of these terms and conditions together with all fees incurred in the 30 day notice period without deduction or set-off.

11.5. Either party may provide written notice to the other to terminate this agreement with immediate effect if one of the following events occurs:

11.5.1. Either party goes into liquidation or makes any arrangement or composition with its creditors or is otherwise unable to pay its debts within the meaning of Section 123 Insolvency Act 1986;

11.5.2. Either party's ability to carry out its obligations under this agreement is prevented or substantially interfered with for any reason for a period in excess of three months (whether or

not within the control of such party) including without limitation by reason of any regular law decree or any act of state or any other action of a government.

12. General

12.1. Nothing in the Engagement Letter or these terms and conditions shall be deemed to constitute a partnership or agency relationship between the Client and Espan Digital Marketing Limited and neither the Client nor Espan Digital Marketing Limited shall do or suffer to be done anything whereby it may be represented as a partner or agent of the other party.

12.2. If any part of the Engagement Letter or these terms and conditions become unenforceable, such part will at Espan Digital Marketing Limited's option be construed as far as possible to reflect the parties' intentions and the remainder of the provisions will remain in full force and effect.

12.3. No forbearance, delay or indulgence by Espan Digital Marketing Limited in enforcing the provisions of these terms and conditions or the Engagement Letter shall prejudice or restrict the rights of Espan Digital Marketing Limited nor shall any waiver of rights operate as a waiver of any subsequent breach the Engagement Letter and/or these terms and conditions.

12.4. The Client shall not assign the benefit or burden of these terms and conditions or the Engagement Letter without the prior written consent of Espan Digital Marketing Limited.

13. Law

13.1. These terms and conditions and the Engagement Letter are governed by English Law and any dispute, difference or claim arising under and /or out of these terms and conditions and/or the Engagement Letter are to be referred to the exclusive jurisdiction of the English courts.