



Goscar Rock's Terms and Conditions for the supply of goods and services

1. Terms and Conditions and Contract Formation

- 1.1 These terms and conditions (the "Conditions") together with the order form or letter to which they are attached (the "Order Form") will form a binding contract between the client named on the Order Form (the "Client") and Goscar Rock (the "Contract") which shall constitute the entire agreement between the Client and Goscar Rock and shall apply to any trading agreement or other contract or arrangement between the Client and Goscar Rock.
- 1.2 Goscar Rock's quotation for the goods and services requested by the client (the "Quotation") is valid for 30 days from the date of the Quotation. No Order Form or acceptance of Quotation shall be deemed accepted by Goscar Rock and no contract between Goscar Rock and the Client shall be formed until the first payment instalment (specified in the Order Form) has been paid in full cleared funds to Goscar Rock and a receipt for the same has been issued to the Client or Goscar Rock delivers the goods or services to the Client, whichever occurs earlier.
- 1.3 These terms and conditions apply to the exclusion of all other terms or conditions of the contract the Client may propose and shall not be varied unless agreed in writing and signed by Goscar Rock and the Client.

2 Goods and Services

- 2.1 In consideration of the payment by the Client to Goscar Rock of the fees set out in the Order Form (the "Fees"), Goscar Rock agrees:
 - i) to provide the goods and services to the Client as described in the Order Form (the "Works") with all reasonable care and skill in accordance with and subject to these terms and conditions; and

- ii) that the Works shall be faithful to the Client's brief for the Works as set out in the Order Form in all material aspects

but all and any other warranties, conditions or terms implied by statute or common law are excluded to the fullest extent permitted by law.

- 2.2 Where Goscar Rock agrees to host the Client's website (once the Works are completed) as specified in the Order Form, Goscar Rock shall use all reasonable endeavours to host the Client's website for the period set out in the Order Form, save that Goscar Rock shall have no liability to the Client for any losses or expenses of any kind arising from any **[scheduled or unscheduled]** downtimes with the server during the hosting period.
- 2.3 The Contract shall not give rise to any exclusive relationship between Goscar Rock and the Client and nothing in the Contract shall prevent Goscar Rock from using any materials, concepts and/or ideas developed during the provision of the Works which have general application to other clients of Goscar Rock.
- 2.4 The Client agrees that any activities undertaken by the Client or by a third party on its behalf in relation to the Works, including without limitation any modification to the Works, the Client's existing website or the inclusion of any third party products or services to the Works, shall interfere with the provision of the Works by Goscar Rock and may affect the results, outcomes and positions in search engines incorporated in the Works. Any such activities should be discussed with Goscar Rock prior to implementation and the Client shall not implement such activities without the prior written consent of Goscar Rock.
- 2.5 Goscar Rock shall not be required to use any content or materials during performance of the Works which in Goscar Rock's opinion are or contain works which are racist, defamatory, inflammatory, sexually explicit, obscene or illegal.

3 Client's Obligations

- 3.1 The Client shall co-operate with Goscar Rock and act in good faith towards Goscar Rock and, upon request, undertake such acts and provide such source materials (including but not limited to those listed in the Order Form) (the "Materials") required by Goscar Rock to provide the Works.
- 3.2 In the event that the Client does not undertake those acts or provide the Materials within a reasonable time (and in any event no later than 3 months of being requested to do so) including without limitation carrying out any changes, modifications or optimisations to the Client's website or providing other materials requested, recommended or required by Goscar Rock, Goscar Rock shall be entitled to terminate the contract without further notice to the

Client and invoice the Client for the remaining Works as if the Works had been completed. Any future work requested by the Client shall be quoted for as a separate job.

3.3 The Client grants Goscar Rock a non-exclusive royalty free licence to use the Materials for all purposes relating to this Agreement and warrants that;

who Goscar (i) it has obtained all and any permissions required from third parties have rights in and to the Materials and is fully entitled to grant Rock these rights; and

(ii) the Materials are free of racist, defamatory, obscene and other legally restricted material.

3.4 The Client is responsible for maintaining insurance for the Materials at all times during the performance of the Works. Upon completion of the Works the Client agrees to collect the Materials within 2 months of delivery of the Works, failing which, Goscar Rock may dispose of them on giving the Client 14 days prior notice.

3.5 The Client acknowledges that once the Works have commenced, Goscar Rock sets aside time and resources to carry out the Works, therefore the Client may not unilaterally cancel its order of the Works for no reason or otherwise terminate this agreement (except for material breach by Goscar Rock of a fundamental term of this Agreement) at any time once the Works have commenced without full payment of the Fees including any additional charges pursuant to Condition 5.1 or express written agreement with Goscar Rock.

3.6 With regard to .uk domain name registration the client is subject to Nominets terms and conditions. Goscar Rock abides by the standard terms and conditions and good practice terms laid down by Nominet.

4 Delivery, Risk and Title

4.1 Unless agreed otherwise between Goscar Rock and the Client, delivery of the Works takes place:

i) where Goscar Rock is developing the Client's website, when the Client's website is hosted live in a web domain notified by Goscar Rock to the Client; and

ii) where Goscar Rock is providing goods, when the goods are delivered by Goscar Rock to the Client's premises or such other location specified in the Order Form.

- 4.2 Goscar Rock shall use its best endeavours to deliver the Works within the estimated delivery time specified in the Order Form, but time for delivery shall not be of the essence of the contract.
- 4.3 Goscar Rock shall not be responsible for the late delivery of the Works where this is caused by the late delivery of Materials or performance of required actions by the Client pursuant to Condition 3.1.
- 4.4 With immediate effect from delivery of the Works, all risk in the Works which includes the Client's website shall pass to the Client and, unless agreed otherwise, Goscar Rock shall have no further obligations whatsoever in relation to the Works and the Client's website, including, but not limited to any maintenance of the Client's website.
- 4.5 Title to the goods supplied by Goscar Rock to the Client shall pass to the Client once such goods have been paid for by the Client in full cleared funds.

5 Payment

- 5.1 The Client shall pay the Fees for the Works in accordance with the payment schedule set out in the Order Form.
- 5.2 Goscar Rock shall issue the Client invoices for the Fees before the Fees become due and the Client shall pay Goscar Rock the Fees in full cleared funds in pounds sterling (£GBP) without deduction or set off (with VAT thereon) within 7 days of the date of the invoice, unless agreed otherwise.
- 5.3 Goscar Rock may charge the Client additional fees in accordance with its then prevailing rates:
 - 5.3.1. in the event of delays or additional works caused or required by the Client including its failure to provide Goscar Rock with such information, Materials, instructions, media or approvals as are reasonably required for the supply of the Works properly and/or on time;
 - 5.3.2. in the event of any changes to the cost of labour, materials, services or other circumstances outside of Goscar Rock's reasonable control; and
 - 5.3.3. in the event that the Works include pay-per-click or other search engine placement services which require payments to third parties (as agreed with the Client prior to implementation) such payments due to third parties and any expenses incurred by Goscar Rock to supply the same.
- 5.4 Goscar Rock shall be entitled to withhold or suspend the Works under all and any contract with the Client until such time as all Fees or other charges or

payments due under any contract with the Client have been paid to Goscar Rock in full cleared funds. In the event that any payment due has not been received in full cleared funds within **[30]** days from the due date, Goscar Rock are entitled to remove all Works undertaken under all and any contracts it has with the Client, and remove the Client's website from any server Goscar Rock has access to until the outstanding payment is paid in full.

- 5.5 Goscar Rock shall be entitled to charge interest on any overdue Fees and any additional fees pursuant to Condition 5.3 at the rate of 5% per month over HSBC base rate prevailing at the time and the Client shall indemnify Goscar Rock for all costs it incurs to collect such overdue payments.
- 5.6 If the Client requires any change or alterations to the Works ("Changes"), Goscar Rock and the Client shall, prior to the Changes being effective or implemented, agree:
- 5.6.1 the nature of the Changes;
- 5.6.2 the procedures for implementation of such Changes; and
- 5.6.3 the variation to the Fees.
- 5.7 Until any Changes are formally agreed between the Client and Goscar Rock, Goscar Rock will continue to perform and be paid for the Works as if the Changes had not been proposed, unless otherwise requested by the Client.
- 5.8 All and any Changes to the Works shall be reflected and accompanied by appropriate amendments to the Order Form and Fees.

6. Intellectual Property Rights

- 6.1 Subject to Condition 6.2, all copyright, design rights, registered designs, trade marks, patents, database rights and all other rights whatsoever of a like nature worldwide whether registered or not of whatever nature in material (the "Intellectual Property Rights") devised, created or commissioned by Goscar Rock in supplying the Works under this Agreement will vest in and belong to Goscar Rock, unless otherwise agreed, and specified in writing either on the Order Form or other appropriate document signed by both Parties.
- 6.2 All and any Intellectual Property Rights either subsisting in the content and/or Materials supplied by the Client to Goscar Rock pursuant to Condition 3.1 shall remain vested in the Client or third parties where applicable.
- 6.3 In consideration of and upon payment of the Fees in full cleared funds, the Client shall have the rights to the Works as set out in the Order Form. Where

no such rights are specified the Client is granted a non-exclusive licence to use the Works for the purpose described in the Order Form.

- 6.4 Prior to any selection, use or reproduction by the Client of the Works, Goscar Rock shall use reasonable efforts upon reasonable request by the Client to 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 Client.
- 6.5 Goscar Rock warrants that it will use its reasonable efforts to ensure that the Works do not infringe the copyright of any third party.
- 6.6 The Client acknowledges that, save for the Materials and content it provides to Goscar Rock, all Intellectual Property Rights in all other aspects of the Works, including all website designs, mock ups, specifications, belong to Goscar Rock or a third party and the Client shall not modify, adapt or translate the Works except with the prior written consent of Goscar Rock or as otherwise permitted by law.

7. Confidentiality

The Client undertakes that it will keep secret and confidential the terms of this Agreement and any information supplied by Goscar Rock in connection with this Agreement or the business of Goscar Rock (including the Order Form) 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 Goscar Rock's prior written consent PROVIDED THAT this condition shall not extend to information which was and can be shown to be rightfully in the possession of the Client prior to the commencement of the negotiations leading to this Agreement or which is in the public domain (other than as a result of a breach of this Condition).

8. Client's Indemnity

The Client shall indemnify and keep indemnified Goscar Rock its associated companies, employees, officers and representatives fully on demand from and against all actions, claims, legal expenses, costs, losses, including loss of profits, revenue and/or goodwill or damages;

- (i) arising as a result of Goscar Rock's reliance on the Materials or content supplied by the Client where the use thereof which infringes the rights of any third person;
- (ii) arising from breach of the Client's obligations at Condition 7; and

- (iii) arising from breach of the Client's obligations at Condition 11.

9. Inspection and Acceptance of the Works

- 9.1 The Client shall inspect the Works regularly and shall inform Goscar Rock immediately if it wishes to reject any part of the Works because such works do not materially comply with the Order Form or are defective in material and workmanship.
- 9.2 If the Works do not comply with the Order Form or are defective in material and workmanship Goscar Rock's liability to the Client shall be limited to correcting such defects within a reasonable time.
- 9.3 ***[The Client shall only be entitled to reject the Works where they do not comply with the material specifications in the Order Form or are defective in material and workmanship within 48 hours of delivery, following which the Client shall be deemed to accept the Works.]***
- 9.4 After 48 hours from delivery of the Works and/or the receipt of Goscar Rock or a signed off work sheet delivered by the Client, any future amendments or changes to the Works shall be charged at Goscar Rock's prevailing daily rate or quoted for as a separate job.

10 Liability

- 10.1 Subject to Condition 10.2 below,
- 10.2 Goscar Rock's total liability to the Client in respect of any claims arising out of or in connection with the Contract howsoever caused whether in tort (including negligence) or contract or otherwise shall not exceed the total Fees payable by the Client to Goscar Rock under the Contract (which includes the Fees and any additional fees charged not included in the Order Form);
- 10.3 under no circumstances shall Goscar Rock be liable to the Client for any loss of income, loss of profit, loss of contract, loss of goodwill or any other economic loss (whether such loss is direct, indirect or consequential) or for any indirect consequential loss or damage of any kind whatsoever.
- 10.4 Nothing in these terms and conditions shall be interpreted as excluding or restricting the liability of Goscar Rock for any matter in respect of which it would be illegal or unlawful for Goscar Rock to do so.
- 10.5 When instructions or advice in relation to the Works are given or received orally by Goscar Rock, it shall have no liability to the Client for any misunderstanding or misrepresentation which may arise in relation thereto except in relation to fraudulent misrepresentation.

11. **Legislation**

11.1 In performing its obligations under this agreement, the Client shall comply with all applicable rules, regulations, codes of practice and laws relating to 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 as amended and in force from time to time.

12. **Termination and effect of Termination**

12.1. Goscar Rock shall be entitled to restrict, suspend or terminate the Works or terminate the Contract with immediate effect:

- i) if the Client is in material breach of the Contract (including without limitation the non-payment of any sum as and when due) unless the Client remedies such breach within 14 days of its occurrence; or
- ii) in the event that the Client becomes unable to pay its debts within the meaning of s123 of the Insolvency Act 1986; or
- iii) the Client ceases or threatens to cease to carry on whole or any part of its business; or
- iv) if at any time Goscar Rock has reasonable concerns regarding the Client's financial status.

12.2 During the course of the Contract and for a period of 12 months afterwards, the Client shall not solicit the staff of Goscar Rock or entice them to transfer their employment or services.

12.3 Conditions [6.6,7,8,10,11 and this Condition 12] shall survive termination of this agreement howsoever caused.

13. **General**

13.1 Nothing in the Contract shall be deemed to constitute a partnership or agency relationship between the parties and neither of the parties shall do or suffer to be done anything whereby it may be represented as a partner or agent of the other party.

13.2 Neither party shall be liable to the other in any amount for failure to perform any of its obligations under the Contract if such failure is caused by the occurrence of any unforeseen contingency beyond the reasonable control of

the party including without limitation Internet outages, communications outages, fire, flood, war or act of God.

- 13.3 If any part of the Contract is or becomes unenforceable, such part will be deemed severable from the Contract and the remainder of the provisions will remain in full force and effect.
- 13.4 No forbearance, delay or indulgence by either party in enforcing the provisions of the Contract shall prejudice or restrict the rights of that party nor shall any waiver of rights operate as a waiver of any subsequent breach of the Contract
- 13.5 The Client shall not assign the benefit or burden of the Contract without the prior written consent of Goscar Rock.
- 13.6 Goscar Rock shall be entitled to assign, transfer, charge or otherwise deal with any of its rights under the Contract.
- 13.7 No person who is not a party to the Contract shall be entitled to enforce any of the terms pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 13.8 The laws of England and Wales apply to the Contract and the parties submit to the exclusive jurisdiction of the English courts in respect of any disputes relating to the Contract and, for the avoidance of doubt, the UK shall be considered the place of first publication of the Works.
- 13.9 Any breach of the terms and conditions by the Client may result in Goscar Rock removing the Client's website from all servers and services owned or accessed by them and group of companies until the issue is resolved to the satisfaction of Goscar Rock
- 13.10 All notices sent pursuant to the Contract shall be sent to the respective party's addresses as set out in the Order Form.

Goscar Rock is a trading arm of Activity Wales LTD.