

THE BIG DOMAIN LIMITED
TERMS AND CONDITIONS OF SUPPLY

1. **Interpretation**

1.1 **Definitions**

- 1.1.1 “**Advertisement**” means matter to be published on the Website as set out in the Order Form completed by the Advertiser;
- 1.1.2 “**Advertiser**” means the owner (or his/her agent) of the property promoted in the Advertisement;
- 1.1.3 “**Advertising Copy**” means any data, documents or other materials, and any other information provided by the Advertiser to enable the production of the Advertisement.
- 1.1.4 “**Artwork**” means a photograph, plan, design, drawing, picture or other image, or any other record of any information in high resolution digital format such as but not limited to gif, tif, pdf, jpg, quark with embedded elements;
- 1.1.5 “**Buyer**” means the person or company or other business named in the Order Form for whom the Supplier has agreed to provide the Service in accordance with these Terms, whether such person be the Advertiser or the Advertiser’s advertising agent or other representative;
- 1.1.6 “**Charges**” means the charges shown in the Order Form;
- 1.1.7 “**Confirmation**” means the confirmation of receipt of the Order Form by the Supplier;
- 1.1.8 “**Contract**” means the contract for the provision of the Service and consisting of the Order Form and these Terms;
- 1.1.9 “**Copy Deadline**” means the date specified as such in the Confirmation;

1.1.10 “**Order Form**” means the on-line order form or the sheet to which these Terms are appended or on which these Terms are printed;

1.1.11 “**Service**” means the services specified in clause 2;

“**Supplier**” means The Big Domain Ltd (registered in England under number 4707652 whose principal place of business is at 1 Stable Court, 63 Clifton Park Road, Bristol, BS8 3HN, UK;

1.1.13 “**Terms**” means the terms and conditions set out in this document;

1.1.14 “**Website**” means the website located at www.thebigdomain.com;

1.2 The headings in these Terms are for convenience only and shall not affect their interpretation.

1.3 The use of any gender includes the others. The use of the singular includes the plural and vice versa.

1.4 The use of the word “including” is only intended to illustrate particular examples, and its use and the use of such examples is not intended to limit in any way whatsoever the interpretation or construction of the Contract or any words in the Contract.

2. **The Service**

2.1 The Supplier shall provide the Service to the Buyer subject to these Terms. Any changes or additions to the Service or these Terms must be agreed in writing by duly authorised representatives of the Supplier and the Buyer.

2.2 The Supplier is entitled to make reasonable enquiries as to the Buyer’s creditworthiness before providing the Service.

3. **Supply of the Service**

3.1 The Buyer shall on request by the Supplier and at the Buyer’s expense supply to the Supplier all necessary Artwork and Advertising Copy in the format specified by the Supplier by the Copy Deadline. The Buyer shall ensure the accuracy of all such materials.

3.2 The Buyer shall at its own expense retain duplicate copies of all materials provided under clause 3.1. The Buyer shall insure against the accidental

loss or damage of Artwork, Advertising Copy or other materials. The Supplier shall have no liability for any such loss or damage, howsoever caused. All such material shall be at the sole risk of the Buyer at all times.

- 3.3 In the event that the Buyer does not supply the necessary Artwork and/or Advertising Copy by the Copy Deadline the Supplier reserves the right to create and publish on the Website an Advertisement of its own design or to terminate the Contract immediately.
- 3.4 The Service shall be provided in accordance with the Order Form and subject to these Terms.
- 3.5 On request by the Buyer the Supplier undertakes to submit a draft copy of each Advertisement to the Buyer and the Buyer undertakes to check any such copy and to inform the Supplier in writing of any reasonable alterations or additions required by the Buyer by the date or dates stipulated by the Supplier. In the event that no such changes are notified to the Supplier, the Supplier shall be entitled to regard the Advertisement as having been approved by the Buyer for production and publication on the Website.
- 3.6 Notwithstanding clause 3.5, the Supplier may correct any typographical or other errors or omissions in any Advertising Copy or Artwork without any liability to the Buyer.
- 3.7 The Supplier may at any time without notifying the Buyer make any changes to the Advertisement including but not limited to changes that are necessary to comply with any applicable statutory requirements, or which do not materially affect the nature or quality of the Service.
- 3.8 The Supplier reserves the right not to publish the Advertisement if the Supplier believes that to do so would be in bad taste or would offend moral decency, and in such event reserves the right to charge to the Buyer a sum up to the amount specified in the Order Form.
- 3.9 The Supplier may sub-contract any part of the Service to third parties who shall include but not be limited to data processors, web developers, photographers, typesetters and illustrators.
- 3.10 The Supplier may with the Client's consent, such consent not to be unreasonably withheld, assign the benefit and burden of its rights and obligations hereunder to any other entity.

4. **Charges**

- 4.1 Subject to any special terms agreed in writing between the Supplier and the Buyer, the Buyer shall pay to the Supplier the Charges as specified in the Order Form.
- 4.2 All charges quoted to the Buyer for the provision of the Service are payable in the currency indicated in the Order Form and are exclusive of any Value Added Tax, for which the Buyer shall be additionally liable at the applicable rate from time to time where the supply is subject to VAT.
- 4.3 The Charges and any additional sums payable together with any applicable Value Added Tax shall be paid without any set-off or other deduction by the Buyer to the Supplier on or before the date specified in the Order Form and according to the terms set out therein or otherwise as notified in writing from time to time by the Supplier to the Buyer.
- 4.4 If payment is not made on the due date, the Supplier shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 5% above the base rate from time to time of Lloyds TSB Bank Plc from the due date until the outstanding amount is paid in full.
- 4.5 The Supplier shall not be obliged to perform the Service if and for so long as any Charges remain owing and unpaid by the Buyer.

5. **Intellectual property rights**

- 5.1 The property and any copyright or other intellectual property rights in:
 - 5.1.1 any Advertising Copy or Artwork shall belong to the Buyer and the Buyer represents and warrants that it has such rights;
 - 5.1.2 any Advertisement shall belong to the Supplier, subject to the payment by the Buyer to the Supplier of a reasonable release fee upon which payment the Supplier shall do all such things and sign and execute all such documents and deeds as reasonably required to effect assignment of such rights to the Buyer.
- 5.2 Any Advertising Copy, Artwork or other information provided by the Buyer which is so designated by the Buyer shall be kept confidential by the Supplier, and all information provided by the Supplier which is so designated by the Supplier shall be kept confidential by the Buyer. The foregoing shall not apply to any data, documents, other materials, or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.
- 5.3 The Buyer warrants that any Advertising Copy and/or Artwork and its use by the Supplier for the purpose of providing the Service will not

infringe the copyright or other rights of any third party, and the Buyer shall indemnify and keep indemnified the Supplier against any loss, damages, costs, expenses or other claims arising from any such infringement.

6. **Warranties and liability**

- 6.1 Subject to clauses 6.2 and 6.3 below the Supplier warrants to the Buyer that the Service will be provided using reasonable care and, as far as reasonably possible, in accordance with the details in the Order Form and at the intervals and within the times referred to in the Order Form.
- 6.2 The Supplier provides the Website and its contents on an “as is” basis and makes no representations or warranties of any kind, express or implied, with respect to the Website or its operation, contents, products or services.
- 6.3 The Supplier does not warrant that the Service will be uninterrupted or error-free or free of bugs, viruses, errors or any other problems that could cause system failures, or that the Service will reach the intended recipient.
- 6.4 The Supplier is not liable to the Buyer or the Advertiser if any hardware or software used in conjunction with the Website malfunctions, fails or is otherwise unable to communicate with other systems or Internet users (including where computer viruses have caused such failures) such that the use of the Website is hindered or impeded.
- 6.5 The Supplier shall have no liability to the Buyer for any loss, damage, costs, expenses or other claims for compensation arising from any Advertising Copy or Artwork or instructions supplied by the Buyer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Buyer.
- 6.6 Except in respect of death or personal injury caused by the Supplier’s negligence, or as expressly provided in these Terms, the Supplier shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Supplier, its servants or agents or otherwise) which arise out of or in connection with the provision of the Service or its use by the Buyer, and the entire liability of the Supplier under or in connection with the Service shall not exceed the amount of the Charges as expressly provided in these Terms.
- 6.7 The Supplier shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to

perform, any of the Supplier's obligations in relation to the Service, if the delay or failure was due to any cause beyond the Supplier's reasonable control.

- 6.8 The Buyer warrants that it contracts with the Supplier as a principal notwithstanding that the Buyer may be acting directly or indirectly for the Advertiser as an advertising agency or in some other representative capacity.
- 6.9 Where the Buyer is the Advertiser's advertising agency or is acting in some other representative capacity for the Advertiser the Buyer warrants that it is authorised by the Advertiser to place the Advertisement with the Supplier and the Buyer will indemnify the Supplier against any claim made by the Advertiser against the Supplier arising from the publication thereof.
- 6.10 The Buyer warrants that the Advertising Copy and Artwork are free from errors and defects including computer viruses.
- 6.11 The Buyer warrants that any information including photographs supplied to the Supplier in connection with the Advertisement is accurate, current, complete and true.
- 6.12 The Buyer warrants that the Advertisement complies with the requirements of all relevant legislation (including subordinate legislation, the rules of statutorily recognised regulatory authorities and the law of the European Economic Community) for the time being in force or applicable in the United Kingdom.
- 6.13 The Buyer shall indemnify and keep indemnified the Supplier against any claim made by any third party for any loss, damages, costs, expenses or other claims arising from any breach of the warranties contained at clauses 6.8 to 6.12 or otherwise arising from the publication of the Advertisement.

7. **Termination**

- 7.1 The Buyer shall have the right to terminate the Contract by providing not less than 3 months' notice in writing to the Supplier.
- 7.2 The Supplier shall be entitled to terminate the Contract forthwith by notice in writing to the Buyer in the event that the Buyer were to:
 - 7.2.1 commit a material breach of the Contract which in the case of a breach capable of remedy is not so remedied within 30 days;

7.2.2 commence any meeting of creditors or pass a resolution for winding up or suffer a petition for winding up or have an administrative receiver or receiver appointed over the whole or part of its assets or suffer the appointment of an administrator or being an individual have a bankruptcy order made against him or compound with his creditors or come to any arrangements with his creditors.

8. **Consequences of termination**

- 8.1 In the event of termination by either party the parties' rights, duties and responsibilities shall continue in full force during the agreed period of notice and whether or not there is a period of notice, the Buyer shall pay the balance of the Charges within 7 days of termination.
- 8.2 In the event of termination by the Buyer the Buyer will not be entitled to repayment of any sum calculated by reference to the unexpired term of the Contract.
- 8.3 In the event of termination by the Buyer of a Contract wherein a discount applies, the Supplier reserves the right to require that the Buyer shall pay to the Supplier in addition to the Charges a sum equivalent to the discount.
- 8.4 The Supplier reserves the right to charge a reasonable administration fee in the event of termination by the Buyer.

9. **General**

- 9.1 These Terms (together with the terms set out in the Order Form) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties as specified in condition 2.1. All other Terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 9.2 A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 9.3 Any notice to be given under this Agreement shall be either delivered personally or sent by first class recorded delivery post. Any such notice is deemed to have been served at the time of delivery if personally delivered, or if posted, 48 hours after posting.
- 9.4 Any notice sent by email, facsimile transmission or comparable means of communication shall be deemed to have been duly given on the day of

despatch provided that a confirming copy is sent to the other party within 24 hours after transmission.

- 9.5 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 9.6 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.
- 9.7 If any provision of these Terms is held by an English Court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.