



These terms and conditions (together with the documents referred to) outline the terms upon which PrimarySite Limited supplies its services, including services supplied under its NurserySite trading name.

Please read these terms and conditions carefully before ordering any services from PrimarySite. By ordering any services from PrimarySite you agree to be bound by these terms and conditions.

## 1. Definitions

- 1.1. 'Client' means the business, Limited Company, Sole Trader, Partnership, Organisation or individual who enters into an agreement with PrimarySite for the provision of a service;
- 1.2. 'PrimarySite' means PrimarySite Limited registered company no. 5533790 whose registered office is at Tower House, Lucy Tower Street, Lincoln, LN1 1XW.;
- 1.3. 'Conditions' means the terms and conditions set out in this document and any special terms and conditions agreed in writing by PrimarySite;
- 1.4. 'Agreement' means the agreement between PrimarySite and the Client for the provision of Services under the Conditions;
- 1.5. 'Order Form' means the form completed by the Client to order the Services
- 1.6. 'Services' means any work carried out by PrimarySite for the Client including services supplied under its NurserySite trading name.
- 1.7. 'Material' means information uploaded or permitted to be uploaded by the Client onto PrimarySite's servers;
- 1.8. '[Acceptable Use Policy](#)' means the document used by PrimarySite to outline the terms of use of PrimarySite's Services;

## 2. Conditions applicable

- 2.1. An order for Services placed by the Client shall be subject to these Conditions.
- 2.2. The description of the Services is set out in the estimate/ quotation.
- 2.3. The Agreement shall commence upon the supply of the Service and shall continue for the period specified in the Confirmation of Order document subject to the provisions of clause 14.

2.4. The express provisions of this Agreement shall apply to the supply of the Services by PrimarySite to the Client. Any provisions not set out in this Agreement, including those of the Client which the Client purports to apply, shall not be the terms and conditions concerning the supply of the Services by PrimarySite to the Client, however such provisions are introduced (including but not limited to provisions included on purchase order(s), confirmations of order or similar documents).

2.5. Any variation to the provisions of this Agreement (including any special terms and conditions agreed between the Parties) shall be inapplicable unless agreed in writing by PrimarySite.

### 3. Orders

3.1. All orders for Services shall be deemed to be an offer by the Client to purchase Services pursuant to these Conditions.

3.2. The Client shall be responsible for ensuring the accuracy of the details provided on the Order Form and PrimarySite shall not be obliged to accept an order unless all details requested on the Order Form have been entered correctly.

3.3. No order submitted by the Client shall be deemed to be accepted by PrimarySite unless and until PrimarySite confirms acceptance of the order by letter, e-mail (where applicable), or by telephone.

3.4. By placing an order, the Client warrants that:

3.4.1. they are legally capable of entering into binding contracts; and

3.4.2. they are at least 18 years old;

3.4.3. If they are acting on behalf of a company, other business or organisation they further warrant that they personally have the authority to bind that company or business on whose behalf they are placing an order.

3.5. By placing an order for the Services, the Client consents to PrimarySite sending to the Client a regular newsletter informing the Client of developments at PrimarySite which may affect the Services provided to the Client by PrimarySite.

#### 4. Charges

4.1. PrimarySite reserves the right to charge the client additional sums in the event that the client requires PrimarySite to provide Services which were not in the original Order Form.

4.2. In view of the set up costs involved, PrimarySite will not commence the provision of the Client's NurserySite website design service until payment of the agreed deposit has been made by the Client to PrimarySite.

4.3. PrimarySite will not commence the provision of the Client's NurserySite live public website until payment of the agreed balance has been made by the Client to PrimarySite and the Client's completed standing order instructions for the payment of monthly NurserySite fees have been received by PrimarySite.

4.4. All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which shall be charged in addition at the rate in force at the date any payment is required from the Client.

4.5. PrimarySite reserves the right to invoice for partially completed Services if the delay in completing the Services is due to the Client not supplying PrimarySite with relevant information, or not responding to requests from PrimarySite to sign the Services off.

4.6. The set up prices for Services which are provided by PrimarySite to the Client on the Order Form are liable to change at any time. In the event that the Client does not place an order within 3 months of receiving the Order Form, PrimarySite reserves the right to adjust the set-up price to reflect any changes and to reissue the Client with a new Order Form with adjusted set-up prices.

4.7. If payment is not received by the due date, including via standing order for monthly NurserySite fees, PrimarySite shall be entitled:

4.7.1. to immediately suspend the Service to the Client;

4.7.2. to charge interest on the outstanding amount at the rate of 4% per annum above Santander PLC base rate, accruing daily;

4.7.3. to require the Client to make a payment in advance of any Service not yet delivered.

4.8. The Client agrees to pay PrimarySite all legal costs incurred by PrimarySite in connection with any legal proceedings taken by PrimarySite against the Client to recover sums due under this agreement on a full indemnity basis.

4.9. The Client may engage PrimarySite to action chargeable or non-chargeable technical jobs on their website post launch. These will be confirmed by email. Once the email has been returned to PrimarySite the job will be sent to PrimarySite's Technical Department. Jobs that incur a charge will be payable 30 days from invoice. If further work is needed to the website, increased charges may apply.

## 5. Client's obligations

5.1. The Client understands that in the event that they delay supplying PrimarySite with material or feedback required by PrimarySite to complete the Services, PrimarySite will not be liable if any estimated date of completion for the Services is not met by PrimarySite.

5.2. In using the Services provided by PrimarySite the Client agrees to accept and abide by all the terms contained in the [Acceptable Use Policy](#) which supplement these Conditions.

5.3. It is the Client's responsibility to maintain appropriate and up-to-date back-up copies of any data, information or other Material uploaded onto PrimarySite's servers as part of the Client's use of the Services. In the event of loss of or damage to the Client's Material the Client will not be given access to the server backup maintained by PrimarySite pursuant to PrimarySite's server backup procedure. The Client may request that PrimarySite recover lost or damaged Material from the server backup, but whilst PrimarySite shall use reasonable endeavours to recover the client's Material, PrimarySite does not warrant the complete restoration of the Material.

## 6. Website hosting services

6.1. In the event that the services to the Client include a website hosting service PrimarySite shall use reasonable endeavours to make their servers available to the Client for ninety-nine point nine-nine (99.99) per cent of each calendar month. PrimarySite does not warrant access to the servers will be uninterrupted or error free but PrimarySite shall use reasonable endeavours to keep downtime to a minimum. PrimarySite shall make all commercially reasonable efforts to provide the Client with advanced notification of all scheduled and emergency outages.

6.2. All PrimarySite's website hosting service packages come with an unlimited web space allowance, and an unlimited bandwidth allowance, provided that:

- 6.2.1. The Client's Material is linked into web pages;
- 6.2.2. The Client does not use the hosting service as a backup of, or repository for, the Client's Material;
- 6.2.3. The Client undertakes good housekeeping to maintain the Client's Material; and
- 6.2.4. The Client complies with PrimarySite's [Acceptable Use Policy](#). In the event that the client fails to comply with PrimarySite's [Acceptable Use Policy](#) PrimarySite reserves the right to suspend or terminate Services to the Client.

## 7. Support

If the Client encounters a problem with regard to the Services then the Client can access support through PrimarySite's support email address, [support@primarysite.net](mailto:support@primarysite.net). This email address is monitored between 9 am and 5 pm Monday to Friday. PrimarySite can also be contacted via telephone on 01636 616 630.

## 8. Risk

The risk in the Services shall pass to the Client upon commencement of the Services.

## 9. Property

The property in the Services shall not pass to the Client until PrimarySite has received all sums due under this Agreement (and all other sums that are due or owing to PrimarySite).

### 10. Intellectual property

10.1. The Client or the Client's licensor shall retain all intellectual property rights in the Material subject to clauses 8 and 9, and the Client grants to PrimarySite a worldwide, non-exclusive, royalty free licence to use, store and maintain the Client's Material on PrimarySite's servers and to publish the Client's Material on the Internet for the purpose of providing Services to the Client. The Client warrants that the Material does not infringe the intellectual property rights of any third party and the Client has the authority to grant

the licence in this clause to PrimarySite. PrimarySite is permitted to make such copies as may be necessary to perform obligations and provide Services.

10.2.The Client will defend, indemnify and hold PrimarySite harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with use of the Services or of any claim or action that the Material infringes, or allegedly infringes, the intellectual property rights of a third party.

## 11. Confidentiality

11.1.PrimarySite will endeavour to treat all information supplied by the Client as confidential. However, should it be served with an appropriate Court Order PrimarySite will be legally advised to co-operate with all law enforcement agencies in disclosing whatever information may be required about the Client.

11.2.PrimarySite will endeavour to keep any Material which relates to children confidential. PrimarySite warrants that all members of its staff are CRB checked.

11.3.Unless permitted pursuant to this Agreement the parties agree to keep confidential all information relating to the business affairs of the other disclosed to it by the other party. The obligation of confidentiality shall not apply to information which is in the public domain.

## 12. Liability

12.1.PrimarySite shall not incur or accept any liability concerning any representation made by PrimarySite (or made on PrimarySite 's behalf) to the Client (or any person acting on behalf of the Client) prior to the making of this Agreement where such representation was made or given in relation to the Conditions;

12.2.PrimarySite shall not accept any liability to the Client concerning any express term or provision of this Agreement where such representation was made or given in relation to the Conditions;

12.3.PrimarySite shall not be liable to the Client for any losses or damages sustained by the Client as a result the negligence or default of the Client.

2.4.PrimarySite do not monitor and will not have any liability for the Client's Material or any other communication transmitted, or allowed to be transmitted as part of the Services.

12.5.PrimarySite shall not be liable for the protection of the privacy of electronic mail or any other information transferred through the Internet or via any network provider and no guarantee or representation is given that the Services will be free from hackers or unauthorised users. The Client shall be liable for the content of any emails transmitted by virtue of the Services, for any Material uploaded to PrimarySite's servers and for ensuring compliance at all times with all relevant legislation (including, but not limited to the Data Protection Act 1998 and all other privacy laws, regulations and guidance notes made or issued thereunder).

12.6.All conditions, terms, representations and warranties that are not expressly set out in these terms and conditions (or the documents referred to in them) are hereby expressly excluded.

12.7.PrimarySite does not exclude or limit in any way liability:

- 12.7.1. for death or personal injury caused by our negligence;
- 12.7.2. under section 2(3) of the Consumer Protection Act 1987;
- 12.7.3. for fraud or fraudulent misrepresentation; or
- 12.7.4. for any matter for which it would be illegal for us to exclude, or attempt to exclude, our liability.
- 12.8.PrimarySite will not be liable for the following types of losses (in each case whether direct, indirect or consequential) and whether they are caused by our negligence or otherwise:
  - 12.8.1. loss of income or revenue;
  - 12.8.2. loss of business;
  - 12.8.3. loss of profits or contracts;
  - 12.8.4. loss of anticipated savings;
  - 12.8.5. loss of goodwill;
  - 12.8.6. loss of software or data;
  - 12.8.7. wasted expenditure (such as pay per click advertising costs); or
  - 12.8.8. wasted management or office time.

12.9.Subject to clause 12.7 and clause 12.8, PrimarySite's maximum aggregate liability under or in connection with the performance or contemplated performance of the Agreement, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed one hundred and ten (110) per cent of the price the Client has paid for the Services during the twelve (12) months preceding the event giving

rise to the liability in question. Accordingly, the Client is advised to acquire business interruption insurance, or other appropriate insurance, to protect in the event of interruption of the Services.

### **13. Force majeure**

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than six months, either party may terminate this Agreement by written notice to the other party.

### **14. Termination**

14.1. Without prejudice to any other right or remedy it may have and subject to clause 4.2, either party may terminate this Agreement at any time by giving the other party 30 days notice in advance of the termination date by first class post.

14.2. In the event that the Client cancels any Services, any data held by PrimarySite in relation to the Services cancelled will be immediately and permanently deleted from PrimarySite's system. Accordingly, the Client is strongly advised to make appropriate copies of such data before cancelling the Services.

14.3. Notwithstanding clause 11.1 or anything to the contrary in these terms and conditions, if the Client is in breach of an obligation of these terms and conditions PrimarySite may terminate the Contract by giving seven (7) days notice to the Client and/or, at our absolute discretion, terminate or suspend without notice any Services.

### **15. Assignment**

Neither party may assign, delegate, sub-contract, mortgage charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other party.



#### **16. Entire agreement**

This Agreement contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them.

#### **17. Waiver**

No failure or delay by PrimarySite in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

#### **18. Agency, partnership etc**

This agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this agreement.

#### **19. Notices**

Any notice to be given under this Agreement shall be in writing and shall be sent by first class mail or air mail, or by facsimile or e-mail to the address of the relevant party set out at the head of this Agreement.

## **20. Third parties**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

## **21. Law and jurisdiction**

This Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the parties submit.