

TERMS AND CONDITIONS OF BUSINESS

- Juni 2006 -
metapeople Limited

1. Interpretation

1.1 In these Conditions:

“**Agreed Charges**” means the charges individually agreed by the parties and set out in the Specification Sheet in respect of the Specified Service.

“**Client**” means the person for whom the Supplier has agreed to provide the Specified Service in accordance with these Terms;

“**Contract**” means the contract for the provision of the Specified Service;

“**Document**” includes, in addition to a document in writing, a map, plan, design, drawing, picture or other image, or any other record of any information in any form;

“**Input Material**” means any Documents or other materials, and any data or other information provided by the Client relating to the Specified Service;

“**Output Material**” means any Documents or other materials (including, without limitation, the Supplier’s pre-existing templates, designs, data base rights, copyright and know-how), and any data or other information provided by the Supplier relating to the Specified Service;

“**Service Providers**” means third parties (including without limitation search engine providers) whose services the Supplier accesses or uses for the provision of the Specified Service;

“**Specific Service**” means the service to be provided by the Supplier for the Client as agreed and referred to in the Specification Sheet;

“**Specification Sheet**” means the sheet or sheets to which these terms are appended or applied;

“**Supplier**” means metapeople Limited (Company number 5648189), whose registered office is situated at 1 Bedford Row, London WC1R 4BZ, United Kingdom.

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

1.3 The use of the term “writing” and any similar expression includes facsimile transmission and electronic mail or other forms of electronic communication.

2. Supply of the Specified Service

2.1 The Supplier shall provide the Specified Service to the Client subject to these Terms and any terms contained in the Specification Sheet. Any changes or additions to the Specified Service, these Terms or any terms contained in the Specification Sheet must be agreed in writing by the Supplier and the Client.

2.2 The Client shall at its own expense supply the Supplier with all necessary Documents or other materials, and all necessary data or other information relating to the Specified Service, within sufficient time to enable the Supplier to provide the Specified Service in accordance with the Contract. The Client shall ensure the accuracy of all Input Material.

2.3 The Specified Service shall be provided in accordance with the terms of the Specification Sheet, subject to these Terms. In the event of a conflict between these Terms and the terms (if any) of the Specification Sheet, the latter shall prevail.

2.4 The Supplier may at any time without notifying the Client make any changes to the Specified Service which are necessary to comply with any applicable statutory requirements, or which do not materially affect the nature or quality of the Specified Service.

3. Charges

3.1 The Client shall pay the Agreed Charges and any additional sums (if any) which are agreed between the Supplier and the Client for the provision of the Specified Service or which, in the Supplier’s sole discretion, are required as a result of the Client’s instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Client.

3.2 The Supplier reserves the right, by giving written notice to the Client at any time, to increase the Agreed Charges to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (such as, without limitation, any increase in the fees charged by the Service Providers to the Supplier, foreign exchange fluctuations, currency regulations, alteration of duties, significant increase in the costs of labour or other services from time to time necessary for the supply of the Specified Service), and any costs caused by any instructions of the Client or failure of the Client to give the Supplier adequate information or instructions.

3.3 All charges quoted to the Client for the provision of the Specified Service are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time.

3.4 The Supplier will invoice the Client at the end of each month in which the Specified Service is provided, or at other times agreed with the Client.

3.5 The Agreed Charges and any additional sums payable (if any) shall be paid by the Client (together with any applicable Value Added Tax, and without any set-off or other deduction) within 14 days of the date of the Supplier’s invoice.

3.6 If payment is not made on the due date, the Supplier shall be entitled without limiting any other rights it may have

3.6.1 to suspend the Specified Service; and

3.6.2 to charge interest on the outstanding amount (both before and after any judgment) at the rate of 8% above the base rate from time to time of the Supplier’s bank from the due date until the outstanding amount is paid in full.

3.7 Insofar as the Contract provides that part or all of the Agreed Charges are calculated by reference to the number of clicks on certain internet websites, internet advertisements or sponsored listings or other agreed internet links of the Client the Supplier shall at the end of each month produce a report (“the Click Count Report”) setting out the relevant number of clicks and the amount of charges payable by the Client in respect thereof.

3.8 The Supplier will compare its Click Count Reports at the end of each year (or at the end of the term of the Contract, whichever is the earlier) with the click count reports produced by the relevant Service Providers. In the event of a discrepancy in the reported number of clicks between the Click Count Reports of the Supplier and any click count reports of the Service Providers, the data contained in the Supplier’s Click Count Reports shall prevail and be binding on the parties, save where the discrepancy is in excess of 5%, in which case each party shall pay to the other the relevant amounts overpaid or underpaid (as the case may be) no later than within 30 days of a written request from a party to do so.

3.9 The Supplier shall make available to the Client its Click Count Reports and shall further provide to the Client all additional information reasonably required in order to assist the Agreed Charges payable.

4. Client Assistance

4.1 The Client shall procure that its employees or sub-contractors (if any) render all necessary assistance as is reasonably required by the Supplier from time to time in order to provide the Specified Service. Such assistance shall include, without limitation, to effect any alterations and adjustments to the web pages of the Client which are deemed necessary by the Supplier for the provision of the Specified Service.

4.2 The Supplier shall not be obliged to perform the Specified Service if, in its sole discretion, the assistance rendered by the Client in accordance with clause 4.1 above is insufficient for the Specified Service and the Supplier shall further not be liable to the Client for any loss or damages suffered as a result of the Client’s failure to render such assistance.

4.3 The Client shall notify the Supplier forthwith of any change of its name or address or if any power of attorney or other authorisation granted to the Supplier is altered or withdrawn.

5. Additional Work

5.1 The Agreed Charges are in respect of the work agreed at the time of entering into the Contract. If the Supplier is asked to carry out additional work or to make material changes to the Specified Service, the Supplier reserves the right to make an additional charge on the basis of the Agreed Charges or, at the Supplier’s sole discretion, on the basis of its standard charges (if any) applicable to similar work as published in the Supplier’s brochures or on its website from time to time.

5.2 The Supplier will try to notify the Client in advance if additional work will incur additional charges, but this may not always prove possible where circumstances require the Supplier to carry out such additional work quickly and without notice to the Client, in which case the Supplier shall notify the Client of such additional charges as soon as possible after these being incurred.

6. Service Providers

6.1 The Client acknowledges and consents that the Supplier in the course of providing the Specified Service will have to share Input Material with Service Providers as are listed below (without limitation):

Ask.com UK (IAC Search & Media UK Limited), Google Germany GmbH, Google Inc., Google Ireland Ltd., Google UK Limited, LookSmart, Ltd., Metaapes GmbH, Mirago

PLC, MIVA (Deutschland) GmbH, MIVA (UK) Ltd, MSN Search UK,

Yahoo! Search Marketing Deutschland, Yahoo! Search Marketing UK

Should it become necessary for the Supplier to share Input Material with other service providers not listed herein, the Supplier will notify the Client of such data-sharing in writing as soon as reasonably possible and the Client herewith declares its consent in this regard.

7. Rights in Input Material and Output Material / Confidentiality

7.1 The property and any copyright or other intellectual property rights in:

7.1.1 any Input Material shall belong to the Client;

7.1.2 any Output Material shall, unless otherwise agreed in writing between the Client and the Supplier, belong to the Supplier, but the Client shall be entitled to use the Output Material for the purposes of utilising the Specified Service by way of a non-exclusive licence, subject to payment in full of all sums payable under the Contract.

7.2 Neither party shall without the prior written consent of the other party, either during the term of the Contract or at any subsequent time, disclose to any other person any information (including, without limitation, any results produced by the Supplier in the course of providing the Specified Service and any know-how, methods, techniques, inventions (whether patentable or not) drawings, specifications, formulae, ideas, technical information and plans, computer programmes and related software documentation, source code information, designs and marketing information) disclosed to it by the other party under this Contract and shall use its best endeavours to keep such information confidential (whether marked as such or not), except as provided by Clause 7.3 or 7.4.

7.3 Any of the information referred to in clause 7.2 may be disclosed to:

7.3.1 any governmental or other authority or regulatory body; or

7.3.2 any directors or employees of the party in question; or

7.3.3 any holding company or any subsidiary of the party.

to such extent only as is necessary for the purposes of the Contract or as required by law.

7.4 Any of the information referred to in clause 7.2 may be used by the party in question for any purpose, or disclosed by that party to any other person, to the extent only that any part of it is at the date of this Contract or subsequently becomes public knowledge through no fault of the party in question, provided that in so doing that party does not disclose any part of that information which is not public knowledge.

7.5 Each party shall promptly and fully notify the other of any actual, threatened or suspected infringement of any of its copyrights or any other intellectual property rights and at the request and expense of the other party shall render all assistance reasonably required to assist the other party in taking or resisting any proceedings in relation to any such infringement.

7.6 The Client warrants that any Input Material and its use by the Supplier for the purpose of providing the Specified Service will not infringe the copyright or other rights of any third party, and the Client shall indemnify the Supplier against any claims by such third parties for loss, damages, costs, expenses (including, without limitation, reasonable legal fees) or other liabilities arising from any such infringement.

8. Obligations of Client

8.1 The Client shall

8.1.1 be solely responsible for checking and approving the contents of all text, search terms, titles and URLs in respect of the Client which are displayed in any search engines or websites relating to the Client;

8.1.2 procure that all its website contents including contents of linked websites (if any) do not infringe the applicable laws of the relevant countries in which the websites are accessible and in particular do not infringe any intellectual property rights or any other rights of third parties.

8.1.3 The Client shall indemnify the Supplier against any third party claims, costs (including, without limitation, reasonable legal costs) and expenses arising from the Client’s failure to comply with clause 8.1 above.

9. Warranties and Liability

9.1 The Supplier shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client 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 Client.

9.2 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 Client 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 Specified Service (including any delay in providing or failure to provide the Specified Service) or their use by the Client, and the entire liability of the Supplier under or in connection with the Contract shall not exceed the amount of the Supplier’s charges for the provision of the Specified Service, except as expressly provided in these Terms.

9.3 The Supplier shall not be liable to the Client 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 Specified Service, if the delay or failure was due to any cause beyond the Supplier’s reasonable control.

10. Termination

10.1 Unless expressly agreed otherwise in the Specification Sheet, either party may terminate the Contract at any time by giving not less than three months’ written notice to the respective other party.

10.2 Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any breach of these Terms and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, or if the other goes into liquidation, becomes bankrupt, has a receiver appointed, makes a composition or voluntary arrangement with its creditors or enters administration, or a moratorium comes into force in respect of the other (within the meaning of the Insolvency Act 1986 as amended from time to time).

10.3 On the termination of the Contract for any reason:

10.3.1 any invoices issued by the Supplier to the Client at the time shall become due and payable in full immediately;

10.3.2 the licence granted pursuant to clause 7.1.2 of the Terms terminates and either party shall return to the other (or destroy in accordance with the other party’s instructions in writing) all Input Material, Output Material and other information (if any) provided during the term of the Contract;

10.3.3 the Client shall indemnify the Supplier in full for any liabilities to any third party which the Supplier has incurred for the provision of the Specified Service (contractually or otherwise) and which are not fully covered by the Agreed Charges as a result of the termination.

11. Advertising

11.1 Notwithstanding anything else contained in these Terms, either party shall be entitled to advertise its business or services including use of the fact that it is contracting with the other party. Any advertisements and announcements under this clause 11 shall be subject to the prior written consent (such consent not to be unreasonably withheld or delayed) of the respective other party.

12. General

12.1 These Terms together with the terms (if any) set out in the Specification Sheet, constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

12.2 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.

12.3 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.

12.4 If any provision of the Contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

12.5 The Contract shall be governed by English law and the parties hereby submit to the jurisdiction of the English courts.

12.6 The parties agree that any information (including without limitation the Input Material and Output Material) provided in connection with this Contract will be used according to the data protection principles of the Data Protection Act and any subsequent enactment or amendment thereof.