

Bubblegum Marketing – Terms and Conditions

These Terms and Conditions shall apply to the provision of services by Define Marketing Limited, a company registered in England under number 08630250, hereinafter called “the Company” to the Client.

1. Definitions and Interpretation:

- 1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:
- “**Acceptance**” means the acceptance of our Quotation, the signing of a Contract, the placement of an order and/or the Client’s written consent to receive the services, and includes acceptance of these Terms and Conditions;
- “**Client**” means you, the individual, firm or corporate body purchasing the Services;
- “**Contract**” means the contract formed upon acceptance by the Client as detailed above for the provision of the Services;
- “**Expense**” means any cost incurred by us in direct relation to the provision of the services;
- “**Quotation**” means the written quotation to provide the services, which remains open for acceptance for a period of 30 days and shall constitute our entire scope of works; and
- “**Services**” means the graphic design, web design, printing and/or online marketing services provided by us to the Client.
- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 1.2.1 “we”, “us”, “our” is a reference to the Company and includes our employees and agents;
- 1.2.2 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 1.2.3 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.4 “these Terms and Conditions” is a reference to these Terms and Conditions and each of the Schedules as amended or supplemented at the relevant time;
- 1.2.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions;
- 1.2.6 a “Party” or the “Parties” refer to the parties to these Terms and Conditions.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 No terms or conditions stipulated or referred to by the Client in any form whatsoever shall in any respect vary or add to these Terms and Conditions unless otherwise agreed by us in writing.
- 1.5 Words imparting the singular number shall include the plural and vice versa. References to any gender shall include the other gender. References to persons shall include corporations.

2. Graphic and Web Design: The following clause shall apply to graphic, web design, web hosting and web maintenance services only.

- 2.1 Upon acceptance of our Quotation, or not more than 7 days thereafter, you shall be required to pay a deposit, which shall be an upfront development charge unless otherwise stated. Orders shall not be deemed confirmed until the deposit is paid in full. The deposit is non-refundable.
- 2.2 The monthly payments of the quoted fee shall start on the anniversary of the 1st month of accepting our Quotation, regardless of whether or not the works are complete, or on completion of the works, whichever is the sooner.
- 2.3 Notwithstanding the above, we reserve the right to request 100% of the quoted fee up front at our sole discretion.
- 2.4 The Services will commence upon your acceptance of our Quotation, therefore, you will not be entitled to cancel the services at any time after acceptance of our Quotation. Should you wish to cancel the services, the deposit shall be retained and any payments not yet received by us will become due and payable.
- 2.5 We will use our own exclusive judgement when carrying out the works and deciding upon artistic factors required for the provision of the services. We will not accept liability, and no refunds will be offered, in the unlikely event that you are dissatisfied due to a matter of personal taste.
- 2.6 Should you require any additional services after acceptance of our Quotation, we will provide you with a further Quotation, which must be accepted by you in writing before we will proceed. Such additional services will be charged in accordance with our standard hourly rate applicable at the time.
- 2.7 We will provide you with a flatplan or design proof, which must be signed off by you in writing. It is your responsibility to check for mistakes, including spelling mistakes, at this stage and we accept no responsibility for the same. Proofs should be approved by you within 7 days of receipt to avoid delays.
- 2.8 Any alterations required after approval of the design, any changes to the brief following the initial consultation or any additional visits required above the allowance included for in the Quotation will be chargeable at our standard hourly rate applicable at the time.
- 2.9 All invoices are payable within 7 days from the date of invoice.
- 2.10 We reserve copyright in all works produced by us in accordance with clause 14 below.
- 2.11 Although every effort is made with our website hosting and maintenance packages to keep your website secure and fast, we cannot guarantee the health of any website.
- 2.12 Any issues identified on a website by the client will be acknowledged within 48 working hours, and attempts will be made to resolve these issues within 5 working days. Communication will be made to the client if these issues are taking longer than 5 working days to resolve.
- 2.13 Daily backups are made on our hosting server with each one kept for a period of 30 days.
- 2.14 It is recommended that the client retains a full backup of their website before acceptance.

3. Printing: The following clause shall apply to printing services only.

- 3.1 Payment is required in full up front before we will commence the Services, unless otherwise agreed by a Director of the Company in writing. Orders shall not be deemed confirmed until payment is received in full.
- 3.2 The Services will commence upon your acceptance of our Quotation, therefore, you will not be entitled to cancel the services at any time after acceptance of our Quotation. If credit terms have been agreed, should you wish to cancel the services, the deposit shall be retained and any payments not yet received by us will become due and payable.
- 3.3 We will advise if any artwork supplied by you is acceptable or not. If the artwork is not acceptable, we will offer to produce the required artwork for an additional fee. Any further amendments required to the artwork will incur further costs. Any invoices for additional services are payable within 7 days from the date of invoice.
- 3.4 An order will not proceed to production until a visual proof has been signed off by you.

- 3.5 As such, we will not be held liable for any mistakes or faults in artwork supplied by you or us including, but not limited to, spelling mistakes.
- 3.6 Due to the variety of materials and processes used, we cannot guarantee to exactly match pantone/colour references provided by you. Whilst every effort is made to match as closely as possible to these pantone/colour references, we cannot be held liable for inconsistencies or for any loss or further costs that may arise as a result.
- 3.7 We use third party couriers to deliver the printed goods. Any delivery dates given by us represent a best estimate only. The Client is required to inspect the goods on delivery or if this is not possible, the delivery note or such other note as appropriate must be marked “not examined”. Should the goods received be in poor condition on delivery, the Client is required to take photographs of the alleged damage and forward these to us within 24 hours of receipt. In this event, we will investigate the damage with the courier company and will arrange redelivery as soon as reasonably possible.
- 3.8 We shall be under no liability for any damage or shortages that would be apparent on reasonable careful inspection if the provisions of this clause 3 are not complied with.

4. Online Marketing: The following clause shall apply to online marketing services only.

- 4.1 We will provide the online marketing services as specified in our Quotation. The contract is formed upon acceptance of our Quotation, which shall detail the entire scope of works.
- 4.2 The contract, including any website hosting, email hosting, SEO, social media management, pay per click, blogging and domain agreements, will be automatically renewed, with the exception of the price, on the same terms and conditions as set out in this agreement on a rolling basis unless a written notice to terminate is given by either party in accordance with clause 10 of this agreement. Any such price increase shall be notified by the Company to the Client in accordance with these terms and conditions.
- 4.3 All Services provided under this Contract will be invoiced on a monthly basis in advance throughout the Term of the Contract.
- 4.4 All invoices are payable within 7 days from the date of invoice, without set-off, withholding or deduction.
- 4.5 The Client will pay for any additional services provided by us that are not specified in the contract. These additional services shall be charged in accordance with our current, applicable hourly rate in effect at the time of the performance or such other rate as may be agreed. Any charge for additional services will be supplemental to the amounts that may be due for expenses. Payment shall be due within 7 days of the date of the relevant invoice.
- 4.6 In addition, we shall charge to the Client our reasonable travelling time and travel expenses, any incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the services.
- 4.7 All content provided by us for use on social media sites is done so in good faith and we are deemed to have your consent to do so until the contract is terminated in accordance with clause 10 below.
- 4.8 Where the contract states we are to carry out paid advertising campaigns on the Client’s behalf, the Client will be required to agree to the relevant advertising campaign website’s terms and conditions and a separate contractual relationship will be created between the Client and the campaign website. No credit or debit card information will be provided to us. At our sole discretion, we may offer to agree a budget with the Client and to pay for these services up front, whereby the payment provisions in clauses 4.4 and 4.5 will apply.
- 4.9 We will provide professional advice and recommendations in relation to the services but we cannot accept responsibility for any actions taken as a result of such advice or recommendations, nor can we guarantee the success or outcomes of any marketing campaign or any of the other services provided. Further, we shall not be liable for any consequences should any professional advice not be taken. We may from time to time provide introductions or referrals to other companies, however, under no circumstances shall we be liable for the actions or lack of actions of said other companies.
- 4.10 We shall use all reasonable endeavours to complete our obligations under the Agreement, but time will not be of the essence in the performance of these obligations.

5. Fees

- 5.1 The Client agrees to pay the fees in accordance with the terms of payment herein.
- 5.2 All sums payable by either Party pursuant to the Agreement are exclusive of any value added or other tax (except corporation tax) or other taxes on profit, for which that Party shall be additionally liable.
- 5.3 All payments required to be made by the Client shall be made in pounds sterling without any set-off, withholding or deduction except such amount (if any) of tax as the Client is required to deduct or withhold by law.
- 5.4 The cost of delays attributable to the Client including, but without limitation, failing to carry out agreed actions or not providing necessary information or services, or failing to give proper notice to terminate or cancel as detailed herein will be charged at our standard fee rates applicable at the time.
- 5.5 The time of payment shall be of the essence. If the Client fails to make any payment on the due date then we shall, without prejudice to any right which we may have pursuant to any statutory provision in force from time to time, have the right to suspend the services and charge the Client a penalty cost as well as interest on a daily basis at an annual rate equal to the aggregate of 8% above the base rate of the Bank of England from time to time on any sum due and not paid on the due date in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall be calculated cumulatively on a daily basis and shall run from day to day and accrue after as well as before any judgment.

6. Client’s Responsibilities

- 6.1 The Client agrees, where applicable, to:
- 6.1.1 provide us with any information, advice and assistance relating to the services as we may reasonably require within sufficient time to enable us to perform the services;
- 6.1.2 provide us with suitable and sufficient material and images to enable us to perform the services;
- 6.1.3 ensure any staff are trained in the proper use and operation of any system provided by us;
- 6.1.4 virus-check all data & material supplied to us and ensure it is backed up regularly;
- 6.1.5 keep secure from third parties any passwords issued by us to the Client in connection with the services;
- 6.1.6 nominate a suitably qualified individual to act as the Client’s representative to liaise with us regarding the services;

- 6.1.7 obtain and maintain all necessary licences, permissions and consents in connection with the services; and
- 6.1.8 comply with all applicable Health and Safety legislation and regulations whilst we are working at the Client's premises.
- 6.2 If the Client fails to meet any of the provisions of this clause 6, without limiting our other rights or remedies, we shall:
- 6.2.1 have the right to suspend performance of the services until the Client remedies the default;
- 6.2.2 not be held liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from our failure or delay in performing any of our obligations as a result; and
- 6.2.3 be entitled to claim for any costs or losses sustained or incurred by us arising directly or indirectly from the Client's default.
7. **Notice and/or Lead In Period:** Unless otherwise agreed in writing between the parties at the time of acceptance, and where applicable, we require a minimum of 7 days' formal notice to commence the services.
8. **Errors or Discrepancies:** The Client shall be responsible for the accuracy of any information submitted to us and for ensuring that the Quotation or contract reflects the requirements of the Client. Our Quotation is based on the information provided to us at the time of preparing such Quotation. Should any errors or discrepancies become evident which affect the order value, we reserve the right to make any adjustments to it.
9. **Variation and Amendments**
- 9.1 If the Client wishes to vary the services to be provided, they must notify us as soon as possible. We shall endeavour to make any required changes and any additional costs thereby incurred shall be invoiced to the Client.
- 9.2 If, due to circumstances beyond our control, we have to make any change in the arrangements relating to the provision of the services, we shall notify you immediately. We shall endeavour to keep such changes to a minimum and shall seek to offer you arrangements as close to the original as is reasonably possible in the circumstances.
- 9.3 Any agreed variation or amendment will be carried out in accordance with these terms and conditions and any price increase necessitated as a result of an agreed variation or amendment shall be payable in accordance with the terms for payment herein.
10. **Termination of Online Marketing Services**
- 10.1 Either Party has the right to terminate the services forthwith:
- 10.1.1 where a term has been agreed (specified in the Quotation), after the expiry of that term;
- 10.1.2 by the giving of 30 days' written notice, after the expiry of any agreed term if applicable, whereby there will be no continuing liability by either Party;
- 10.1.3 if the other has committed a material breach of this agreement, unless such breach is capable of remedy, in which case the right to terminate immediately will be exercisable if the other Party has failed to remedy the breach within 14 days after a written notice to do so; or
- 10.1.4 if the other goes into bankruptcy or liquidation either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets.
- 10.2 In the event of termination for default committed by the Client, all payments required under this contract shall become due and immediately payable.
- 10.3 With the exception of payment, any and all obligations of the Parties which either expressly or by their nature continue beyond the termination, cancellation or expiration of this Contract shall survive termination under this Clause 10 on a pro-rata basis.
11. **Confidentiality**
- 11.1 For the purposes of this clause 11, Confidential Information shall include all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature. Both we and the Client shall undertake that, except as provided by sub-Clause 11.2 or as authorised in writing by the other Party, it shall at all times during the continuance of the Agreement and for 2 years after its termination:
- 11.1.1 keep confidential all Confidential Information;
- 11.1.2 not disclose any Confidential Information to any other party;
- 11.1.3 not use any Confidential Information for any purpose other than as contemplated by the Agreement;
- 11.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
- 11.1.5 ensure that (as applicable) none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 11.1.1 to 11.1.4.
- 11.2 Subject to sub-Clause 11.3, either Party may disclose any Confidential Information to:
- 11.2.1 any of their sub-contractors or suppliers;
- 11.2.2 any governmental or other authority or regulatory body; or
- 11.2.3 any of their employees or officers or those of any party described in sub-Clauses 11.2.1 or 11.2.2;
- 11.3 Disclosure under sub-Clause 11.2 may be made only to the extent that is necessary for the purposes contemplated by the Agreement, or as required by law. In each case the disclosing Party must first inform the recipient that the Confidential Information is confidential. Unless the recipient is a body described in sub-Clause 11.2.2 or is an authorised employee or officer of such a body, the disclosing Party must obtain and submit to the other Party a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.
- 11.4 Either Party may use any Confidential Information for any purpose, or disclose it to any other party, where that Confidential Information is or becomes public knowledge through no fault of that Party.
- 11.5 When using or disclosing Confidential Information under sub-Clause 11.4, the disclosing Party must ensure that it does not disclose any part of that Confidential Information which is not public knowledge.
- 11.6 The provisions of this Clause 11 shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.
12. **Documentation:** We include for any documentation to be submitted in our normal standard format only. If additional copies or specific requirements are needed, we reserve the right to apply additional charges. We shall retain title to the documentation and no documentation shall be handed over until all payments as detailed above have been paid in full.
13. **Literature and Representations:** Any marketing literature is presented in good faith as a guide to represent the services offered and does not form a part of the Agreement. None of our employees or agents are authorised to make any representation concerning the services unless confirmed by us in writing. In entering into the Agreement, the Client acknowledges that it does not rely on and waives any claim for breach of any such representations, which are not so confirmed.
14. **Intellectual Property**
- 14.1 Subject to a written agreement to the contrary, we reserve all intellectual property rights which may subsist in the provision of the services. As such, we reserve the right to reuse material created during the provision of the services for whatever reason. Under no circumstances shall material provided by us be lent, hired out, sold or otherwise circulated by either manual or electronic means, nor shall it be photocopied or otherwise reproduced without our express written consent. We reserve the right to take such actions as may be appropriate to restrain or prevent infringement of such intellectual property rights.
- 14.2 The Client warrants that any document or instruction furnished or given by them shall not cause us to infringe any letter patent, registered design or trade mark in the execution of these services and shall indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in settlement of any claim for infringement of any patent, copyright, design, licence, trademark or any intellectual property rights which results from our use of the Client's information.
15. **No employment:** Nothing in this Agreement shall render or be deemed to render us an employee or agent of the Client or the Client an employee or agent of ours.
16. **Insurance:** We include for Public Liability Insurance and Professional Indemnity Insurance. Details are available on request.
17. **Assignment and Sub-Contracting**
- 17.1 The Client shall not be entitled to assign the benefits under the Agreement.
- 17.2 We may sub-contract the performance of any of our obligations under the Agreement without the prior written consent of the Client. Where we are sub-contracting the performance of any of our obligations under the Agreement to any person with the prior consent of the Client, we shall be responsible for every act or omission of the sub-contractor as if it were an act or omission of our own.
18. **Liability and Indemnity**
- 18.1 Except in respect of death or personal injury caused by our negligence, we will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under the express terms contained herein, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by our servants or agents or otherwise) in connection with the performance of our obligations under the Agreement.
- 18.2 All warranties or conditions whether express or implied by law are hereby expressly excluded.
- 18.3 The Client shall indemnify us against all damages, costs, claims and expenses suffered by us arising from loss or damage to any equipment (including that of third parties) caused by the Client, or his agents or employees.
- 18.4 We shall not be liable to the Client or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of our obligations if the delay or failure was due to any cause beyond our reasonable control.
- 18.5 In the event of a breach by us of our express obligations under these Terms and Conditions, the remedies of the Client will be limited to damages, which in any event, shall not exceed the fees and expenses paid by the Client for the Services.
- 18.6 Any property including both hardware and software supplied to us by or on behalf of the Client shall be held and worked upon by us at the Client's risk. We shall also not be liable for any loss or damage to any such property. Bubblegum Marketing shall not be liable for any losses or damages beyond its control, including those caused by third parties including any Hosting or Plugins or Security software.
19. **Restrictive Covenants:** Neither we nor the Client will, during the term of the Agreement and for a period of 2 years from the expiry of this Agreement, without the other's prior written consent, appoint in any way or cause to be employed, engaged or appointed an employee, agent, director, consultant or independent contractor of the other. Whilst the above restrictions are considered by the parties to be reasonable in all the circumstances, it is agreed that if, taken together they are adjudged to go beyond what is reasonable in all the circumstances for our protection but would be judged reasonable if part or parts of the wording of them were deleted or its period reduced or an area defined, they shall apply with such words deleted or with such modifications as may be necessary to make it valid and effective.
20. **Force Majeure:** Neither we nor the Client shall be liable for any failure or delay in performing their obligations under the agreement where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event beyond the control of the Party in question.
21. **Waiver**
- 21.1 ~~Notwithstanding~~ by us of any breach of the Agreement by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of the Agreement shall be effective only if given in writing and signed by the waiving Party and then only in the instance and for the purpose for which the waiver is given.
- 21.2 No failure or delay on the part of any party in exercising any right, power or privilege under the Agreement shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude, any other or further exercise of any other right, power or privilege.
22. **Severance:** The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions are found to be unlawful, invalid or otherwise unenforceable,

that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and the Agreement, as appropriate). The remainder of these Terms and Conditions shall be valid and enforceable.

- 23. Data Protection:** Both parties agree to comply with all applicable data protection legislation, including but not limited to the Data Protection Act 1998 and any subsequent amendments thereto.
- 24. Third Party Rights:** No part of the Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.
- 25. Notices**
- 25.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice. Notices shall be deemed to have been duly given: when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or on the tenth business day following mailing, if mailed by airmail, postage prepaid. In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.
- 25.2 Service of any document for the purposes of any legal proceedings concerning or arising out of the Agreement shall be effected by either Party by causing such document to be delivered to the other Party at its registered or principal office, or to such other address as may be notified to one Party by the other Party in writing from time to time.
- 25.3 Unless otherwise agreed, 30 days' notice must be given to end all services.
- 26. Law and Jurisdiction**
- 26.1 These Terms and Conditions and the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 26.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.