

ADVERTISING MANAGEMENT TERMS OF SERVICE

These Terms and Conditions of Service (the "Terms") apply to your (the "Client") use of the services (collectively referred to hereinafter as the "Service") offered by Blue Spark (the "Company"), for controlling and managing your internet advertising.

All information and content on the Company web site (together with the design, layout and organisation and the underlying HTML files that implement the hypertext features), is hereinafter referred to as the "Site".

By entering into an agreement to use the Service the Client expressly agrees to be bound by the Terms in full. The Service and these Terms may be changed by the Company, in its sole discretion, at any time without notice. The Terms will be posted on the Company website on a page accessible by the Client and use of the Service subsequent to any change constitutes Client's acceptance of the change.

The Service

Subject to these Terms the Company may provide certain services to the Client related to the Company's service for managing and monitoring the Clients 'pay per click' search engine advertising campaign. Client understands and agrees that the Company may change, modify, alter, suspend, remove, disable access to, terminate or discontinue all or any portion of the services at any time for any reason, without notice, cost or liability.

Client understands and agrees that from time to time the Service may be inaccessible, unavailable or inoperable for any reason, including, without limitation, equipment malfunctions, software errors, periodic maintenance and reasons beyond the control of the Company, whether or not they were reasonably foreseeable, which includes the interruption or failure of telecommunication or digital transmission links, hostile network attacks, physical damage or theft of equipment.

While the Company will attempt to provide the Service described on a continuous basis, the Client acknowledges and agrees that the Company is not responsible for the functionality of a pay per click search engine, its interface or the functionality provided to control advertising, and that therefore the Service may be altered, suspended or withdrawn at any time. The Client accepts that the Company cannot guarantee that changes submitted to any search engine will be acted upon by the search engine in a timely manner, or at all.

Client agrees that changes the Client requests to their Service including but not limited to, bid strategy, maximum bid levels, advert wording and keywords or phrases will not necessarily be carried out immediately but will be acted upon by the Company when possible subject to workload. It is expressly agreed by the Client that when instructions are given to the Company that time is not of the essence.

Termination

Client may terminate service at any time and for any reason only by providing written notice of termination to the Company by letter or facsimile transmission. If the Client terminates the Service, the account will be deemed terminated on the last day of the month in which notice is given. On termination the Client is STILL RESPONSIBLE for any charges incurred up to and until the termination of the account by Company.

Client acknowledges and agrees that the Company may, in its sole discretion, suspend or terminate the Clients Service if the Client violates or acts inconsistent with any provision of or the spirit or intent of these Terms or Client engages in any conduct or activities that the Company determines violate the rights of the Company or any third party.

Copyright

Except as expressly provided herein, nothing contained in these Terms shall be construed as conferring any licence or right, by implication or otherwise, under copyright or other intellectual property rights, to use the Service or the Site through the use of framing or otherwise.

Except as expressly provided herein, no part of the Service, the Site nor any material provided to Client may be used, reproduced, duplicated, republished, copied, reformatted, displayed, reverse engineered, reverse assembled, transmitted, distributed, licensed, resold or exploited in any form or by any means without the prior written permission of Company.

Trademarks

The Company logo and any future trademarks, service marks or logos belong to the Company and the Client shall not display or use them in any manner without prior written consent of Company.

Acceptance

Company may, in its sole discretion, accept or reject for any reason a prospective client as a customer of the Service.

Third Party Web Sites

Client acknowledges that the Site contains hyperlinks to third party web sites. Client further understands that the linked sites are not under the control of Company, and the Company is not responsible for the contents, operation or policies of the linked site.

Third Party Charges

Clients agrees to pay and shall be solely responsible and liable for all charges associated with any third party accounts, including, without limitation, accounts for search engines whether opened directly by the client or by Company on the Client's behalf. Company shall have no responsibility or liability for any such charges, costs or liabilities.

Third Party Contracts

Client agrees that advertising on any search engine is subject to the terms and conditions of that search engine and the Company is not responsible for the operation and policies of the search engine to any extent or in any way. For the avoidance of doubt this specifically includes any complaint procedures, minimum charge policies, click fraud policies and editorial approval processes. Further, the Company cannot accept any responsibility if the Client believes that click charges levied by a search engine has been generated by an automated system, fraud or any other means not resulting from a legitimate click from a search engine user. Should such a situation arise, the Client must approach the search engine directly.

Payment

Client agrees to pay Company all charges and fees for the Services incurred on or through Client's account at the rates advised to Client at the time Client orders the Service, and as such rates may change from time to time, plus any and all applicable taxes (the "Account Charges"). Account Charges are non refundable except as expressly provided in "Refunds". Company may change the rates for the Service at any time.

Client shall pay all applicable Account Charges in full within 7 days of an invoice being presented. Payment is accepted by Paypal, cheque or BACS. Company may request payment on account in advance of the Service being delivered, and Client must comply with such a request otherwise the Service will be terminated. Company may suspend, cancel or terminate Service for Client should any Account Charges remain unpaid at any time.

Refunds

If the Company discontinues the Service, the Client will receive a prorated refund or credit of any account charges applicable for the day in the month in which the Service is discontinued that the Service was not offered. Client shall not be entitled to a refund for any other reason.

Client's Representations

Client represents and warrants to the Company that: (i) Client has the power and authority to enter into this agreement and that each person in the Client's organisation who accesses and uses the Service or the Site is authorised by the Client to act for and on their behalf; (ii) Client shall comply with all the terms and conditions of these Terms, as amended from time to time; (iii) that all information provided by Client to Company is truthful, accurate and complete and is not misleading in any way; (iv) that the Company is hereby authorised by Client to perform all Services on Client's behalf with each applicable pay per click search engine, including but not limited to, the opening of or changes to Client's accounts; (v) Client is legally bound to each applicable pay per click search engine for any and all charges to the Client's account as a result of Company's actions on behalf of the Client; (vi) Except for wilful misconduct by Company, Client shall be solely liable and responsible for, and shall pay when due, all charges levied by the applicable search engine even as a result of Company exceeding its authority or otherwise.

Independent Contractors

The relationship of the parties is and at all times shall remain one of independent contractors. Neither party in any way is a partner, joint venture, affiliate, agent or representative of the other for any purpose whatsoever.

Notices

Any notice given by Client pursuant to these Terms shall be in writing, signed by Client, and sent by: (i) first class registered post, postage prepaid; or (ii) overnight courier service, charges prepaid. The receipt of such notice shall constitute the giving of notice thereof:

blue spark
2 East Point
High Street
Seal
Sevenoaks
Kent TN15 0EG

Any notice to be given to Client in pursuant to these Terms may be sent by email to Client's email address as identified in Client's account information or by first class registered post. The sending of such notice shall constitute the giving of notice thereof.

Assignment

No rights or obligations under these Terms may be assigned by Client without the prior written consent of Company. These Terms shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

Law and jurisdiction

These Terms are governed by English Law, and English Courts shall have sole jurisdiction over any disputes that may arise under it. Any cause of action you may have with respect to your use of the Service must be commenced within 30 days after the claim or cause of action arises.

If any of these Terms and Conditions should be determined to be illegal, invalid or otherwise unenforceable by reason of the law of any state or country in which these Terms and Conditions are intended to be effective, then to the extent and within the jurisdiction in which that Term or Condition is illegal, invalid or unenforceable, it shall be severed and deleted from that clause and the remaining terms and conditions shall survive and continue to be binding and enforceable.

THE SERVICE, THE SITE AND ANY EQUIPMENT OR SOFTWARE USED TO OPERATE THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. USE OF THE SERVICES IS AT CLIENT'S OWN RISK.

SPECIFICALLY, BUT WITHOUT LIMITATION, COMPANY DOES NOT REPRESENT OR WARRANT, AND DISCLAIMS ANY AND ALL RESPONSIBILITY FOR ANY LOSS, INJURY, CLAIM, LIABILITY, PENALTY OR DAMAGE OF ANY KIND WHATSOEVER RESULTING FROM, ARISING OUT OF OR IN ANY WAY RELATED TO: (i) ANY ERRORS IN OR OMISSIONS FROM THE SITE AND ITS CONTENT, INCLUDING, BUT NOT LIMITED TO, TECHNICAL INACCURACIES OR TYPOGRAPHICAL ERRORS; (ii) THE UNAVAILABILITY OR UNINTERRUPTED USE OF THE SITE OR THE SERVICES OR ANY PORTION THEREOF; (iii) DEFECTS, VIRUSES OR OTHER HARMFUL COMPONENTS ON THE SITE OR THE SERVER THAT MAINTAINS THE SITE; (iv) ANY THIRD PARTY WEB SITES OR CONTENT THEREIN DIRECTLY OR INDIRECTLY ACCESSED THROUGH HYPERLINKS CONTAINED IN THE SITE, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS THEREFROM; (v) USER'S USE OF THE SITE OR THE SERVICES OR ANY RELATIONSHIP BETWEEN USER AND A LINKED SITE OR ANY SERVICES, PRODUCTS OR ADVICE PROVIDED OR PERFORMED BY A LINKED SITE FOR USER; AND (vi) USER'S USE OF ANY EQUIPMENT OR SOFTWARE IN CONNECTION WITH THE SITE OR THE SERVICES. FURTHER, COMPANY DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO ANY RESULTS THAT MAY BE OBTAINED BY USE OF THE SITE OR THE SERVICES.

UNDER NO CIRCUMSTANCES SHALL A "COVERED PARTY" (AS DEFINED BELOW) BE LIABLE TO USER OR ANY OTHER PERSON FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, RELIANCE OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ECONOMIC LOSS, PENALTIES OR LEGAL FEES, FOR ANY MATTER ARISING FROM OR RELATING TO THE SERVICE OR THE SITE, INCLUDING ITS CONTENT, THE SERVICES, OR THE INTERNET GENERALLY, INCLUDING, WITHOUT LIMITATION: (i) USER'S USE OR INABILITY TO USE THE SITE OR THE SERVICES; (ii) ANY CHANGES TO OR INACCESSIBILITY OF THE SITE OR THE SERVICES; (iii) DELAY, FAILURE, UNAUTHORIZED ACCESS TO OR ALTERATION OF ANY TRANSMISSION OR DATA; (iv) ANY MATERIAL OR DATA STORED, SENT OR RECEIVED OR NOT STORED, SENT OR RECEIVED; (v) ANY TRANSACTION OR AGREEMENT ENTERED INTO THROUGH THE SITE OR THE SERVICE; OR (vi) ANY DATA OR MATERIAL FROM A THIRD PERSON ACCESSED ON OR THROUGH THE SERVICES; WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, REGARDLESS OF ANY NEGLIGENCE OF ANY COVERED PARTY. IF USER IS DISSATISFIED WITH THE SERVICE OR THE SITE, USER'S SOLE AND EXCLUSIVE REMEDY SHALL BE FOR USER TO DISCONTINUE USE OF THE SERVICE OR SITE. A "COVERED PARTY" MEANS COMPANY, ITS AFFILIATES, AND ANY OFFICER, DIRECTOR, SHAREHOLDER, PARTNER, EMPLOYEE, SUBCONTRACTOR, REPRESENTATIVE, AGENT, SUCCESSOR OR ASSIGN OF COMPANY OR ITS AFFILIATES.

blue spark limited

Registered in England & Wales Company number 0934930

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